

**REPORT OF PROCEEDINGS OF  
LEGISLATIVE COUNCIL**

**Douglas, Tuesday, 7th December 1999  
at 10.30 a.m.**

Present:

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

*The Lord Bishop took the prayers.*

**Apologies for Absence**

**The President:** Hon. members, we have apologies for absence this morning from the hon. Dr Mann. I understand he is indisposed.

**Welcome to Visitor**

**The President:** Now, hon. members, this morning it is a delight to welcome to the Council, before turning to our agenda, a visitor, Mrs Altaa Surenhorloo, who comes from Mongolia, and we are delighted to have her with us for the proceedings of this ancient Council. You are very welcome, madam.

**Mr Delaney:** Hear, hear.

**Douglas Head Bill – Third Reading Approved**

**The President:** Now, turning to the agenda paper, item 1, we have the Douglas Head Bill for third reading and I call upon the hon. member Mr Delaney to move.

**Mr Delaney:** Thank you, Mr President. The Douglas Head Bill of 1999 has now come to the final stages in this particular branch of the legislature. It had no real contentious matters raised in the other place. Here any small matters, I hope, are cleared. I beg to move the third reading of the Douglas Head Bill 1999.

**Mr Crowe:** I beg to second, Mr President.

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

**Companies (Transfer of Functions) Bill – Clauses Considered – Third Reading Approved**

**The President:** Now, moving along to item 2 on the agenda paper, we have the Companies (Transfer of Functions) Bill and I call upon the hon. Mr Radcliffe to take the clauses at this stage.

**Mr Radcliffe:** Thank you, Mr President. If we move straight into the clauses, sir, clause 1 states that the functions of the Chief Registrar under the enactments specified in schedule 1, which is part of clause 1, are transferred to the Financial Supervision Commission. The

schedule showing the full effect of the amendment is attached as appendix 1 at the back of the Bill. I beg to move that clause 1 stand part of the Bill.

**Mr Crowe:** I beg to second and reserve my remarks.

**Mr Lowey:** Mr President, could I just ask the mover of the Bill: in the transferring of the functions of the Chief Registrar I did ask him at the first reading who was going to actually do the work, and he said it was the people who had been transferred from the registrar. Now, I understand that clause 1 says all the functions of the Chief Registrar - but his officers actually carry them out, obviously - are going to be transferred to the Financial Supervision Commission. I was amazed to discover that the Financial Supervision Commission are thinking of moving house and expanding their office accommodation to no doubt take note of this. Are the costs that are included in this Bill, which actually says at the end there should be no or limited costs, to accommodate the transfer of all these functions included in this Bill or are they to be lost in general government support?

**Mr Delaney:** Mr President, I, like Mr Lowey - and I have spoken to Mr Lowey on the subject, but I have not had the opportunity to speak to many other members on this - am somewhat astounded at the procedures that have been taken in relation to the matter Mr Lowey has raised. We seem to be constantly creating new kingdoms outside of the areas under our control. Common sense would have dictated to me, for example, that when the Post Office moved, their offices, which were exactly adjacent to this building and the general government offices, would have been the first port of call in relation to getting themselves premises, and now that I hear the possibility of this taking place when the need to the Island seems to be to try and control the amount of offices and buildings that this government has to maintain, repair, pay for, I believe there is more necessity for other developments within the community and certainly in the sheltered accommodation section which I have been looking at recently, and it seems to me the empire is growing and we are building castles to protect the empire and now we are moving to the Finch Hill Church up there. I think it is an appalling run-down and statement of where our priorities are in this community.

**Mrs Christian:** Mr President, I think we need to keep our eye on the ball here, and the function of the first clause is to move the companies area to the Financial Supervision Commission. The fact that they have got to sit and work somewhere seems to be taking over the debate. Naturally they have, but the fact is that they are occupying space now. This does not represent any increase in space. It may represent a move so that you have got all the functions operating together and that seems to me to be a sensible thing to do. I think we should not close our eyes to the fact that it is possible, of course, that they would not actually physically have to move. Nevertheless, government is still going to have to provide more office space for other functions. Mr Lowey is shaking his head in doubt, but let me assure him that there are many departments looking for extra space. So I think what we need to consider primarily is, is it sensible to move this function to the Financial Supervision Commission? I think all the recommendations have been that it is sensible and it is appropriate for the companies area to come under the Financial Supervision Commission, and to that extent I think the schedule and the clauses need supporting and the practical considerations follow.

**Mr Lowey:** Could I just say that there has been no case made, really, for why these should be transferred, other than convenience, from the General Registry to the Financial Supervision Commission. We were assured by the mover of the Bill that it would save on

security matters, the leaking from one department to another, and that is about the only case that has been made. But I would urge the minister to remember that already the space that was occupied in the General Registry has been allocated and publicly stated so that the drugs squad is moving into the space vacated by these people moving out.

**Mrs Christian:** The point I was trying to make, Mr President, was that if they did not move out somewhere else would be found for the drugs squad so it is not -

**Mr Lowey:** They are somewhere at the moment, aren't they?

**Mrs Christian:** Well, no, they are not. That is the point. The drugs squad have been increased considerably in number and therefore need more accommodation.

**Mr Lowey:** When they are appointed.

**Mrs Christian:** I think, Mr President, we have to, if we are speaking in the committee phase, recognise that if they are going under the Financial Supervision Commission, which is recommended, then it makes practical sense to have them all together in due course.

**Mr Crowe:** Mr President, I think this is a precursor to the corporate service providers legislation which is being debated at the present time. I think it is a transfer of functions but the responsibility will follow when further legislation comes in for the supervision of the corporate administrative section. So I think this is more the legal part of transferring the functions as far as I am aware.

**The President:** Reply, hon. member?

**Mr Radcliffe:** Thank you, Mr President. I endeavoured to explain both to the hon. members Mr Lowey and Mr Delaney last time this Bill was considered that there were good reasons for transferring these functions to the Financial Supervision Commission, not least that we have supervision under one roof, under the one hand almost. There is a shortage of accommodation in that particular section of government. That has been acknowledged for quite a while and this move has been on the block for a little while.

Interesting, the hon. member Mr Delaney's comment - sheltered accommodation; what on earth that has got to do with this particular Bill, I do not know!

**Mr Delaney:** The priority is the community.

**Mr Radcliffe:** But I think the hon. member to my right, Mrs Christian, has made the point and made the point very well that we do need to keep our eye on the ball, and this is a vehicle for having all functions to do with regulation and so on under the one hand, under the one roof, and there has been to the best of my knowledge no criticism about this particular move taking place, that the transfer of functions should go from the General Registry to the Financial Supervision Commission. There have been no qualms about that at all outside of this chamber. I beg to move that clause 1 and schedule 1 stand part of the Bill.

**The President:** The resolution, hon. members, is that clause 1 along with schedule 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 and schedule 2, sir.

**Mr Radcliffe:** Thank you, sir. Clause 2 deals with the transfer of other functions to the commission and any related amendments. The functions transferred and the related

amendments are detailed in schedule 2 to clause 2. There is little to be said on that one and I beg to move that clause 2 stand part of the Bill.

**Mrs Christian:** I beg to second.

**Mr Waft:** Mr President, members will have a copy of an amendment with regard to clause 2 and schedule 2. It is on page 12. For the purposes of the Civil Service Act 1990 government bodies are split into two classes: firstly, departments and other bodies which are specified in the 1990 Act - those departments and bodies are staffed by civil servants; secondly, other government bodies which are not staffed by civil servants, for example the Financial Supervision Commission and the Insurance and Pensions Authority. The Companies (Transfer of Functions) Bill transfers the functions of the General Registry, which is staffed by civil servants, to the Financial Supervision Commission, which is not staffed by civil servants. As part of this transfer a number of civil servants will be transferred or seconded to the registry on a transitional basis. Those civil servants will have the option of remaining within the civil service or of becoming employees of the Financial Supervision Commission. That will be achieved by agreement. Civil servants who at the end of a transitional period do not wish to stay in the registry as employees of the FSC will be offered positions within the civil service. It has recently been suggested that the Civil Service Commission does not have the power to second staff to a body such as the FSC even on a transitional basis. That argument is not entirely accepted, but it is clear that the powers of the Civil Service Commission should be clear and the amendment is therefore proposed.

The amendment has the effect of adding a new subsection to section 3 of the Civil Service Act 1990. The subsection clarifies the powers of the Civil Service Commission. It will permit the commission to make arrangements for the secondment of civil servants onto the staff of statutory boards which are not normally staffed by civil servants, for example the FSC. The arrangements must be temporary and must be for periods not exceeding three years. In addition, the amendment will permit the civil service to arrange for the secondment of civil servants with employees outside government but only with the consent of the officer concerned, and then for not more than three years. The amendment is seen as complementing the current arrangements which are clearly permitted under the Civil Service Act 1990, under which non-civil servants can be seconded within departments or boards. Mr President, I beg to move the amendment standing in my name:

*In Schedule 2, Page 12: After entry 34 insert -*

**“Civil Service Act 1990 [c.8]**

35. *After Section 3(1) insert -*

*“(1A) The Civil Service Commission may make*

*arrangements for the secondment of persons (being members of the Isle of Man Civil Service) to serve with any Statutory Board or, with the consent of the officers concerned, with any other person for a period not exceeding 3 years”.*”,

*and re-number the subsequent entries.*

**Mr Kniveton:** I beg to second, sir, and reserve my remarks.

**Mr Lowey:** It does seem to me, Mr President, quite amazing that this Bill that is a government measure did not take into consideration the staffing and the implications and has to be amended in this place at the clauses stage of a government Bill. It seems rather amazing to me that it has not been picked up before that the commission are non-civil servants and the registry are civil servants and, like oil and water, they do not mix, and here we are trying now to rescue this particular piece of legislation. Again, clause 2 - speaking to the clause and not the amendment - is dealing with functions relating to the Chief Registrar, who was in charge of the registry of companies and this is transferring it to the Financial Supervision Commission.

Now, we all know that the commission is a committee. It is five lay people who have been transferred for their banking expertise who are in the Financial Supervision Commission, and I find it rather strange that the commission is going to oversee a very sensitive area of our business life and no explanation is given why one man who has been dealing with that sort of work and built up an expertise over the years, is to be supplanted by a committee of five no doubt very esteemed people, but I remember when we were appointing some of these that we went for their legal and financial acumen. It does seem to me that there is a difference here and that when you are dealing with companies - and we know how sensitive that is - we are actually doing the right thing. Now, I think it is time to tease this out a bit and ask, is it the commission that will be ultimately responsible? Will it be the chief officer who has got expertise in financial banking matters, but what expertise has he got in the company formation? I do not know so I am asking these open questions and I hope I can get a satisfactory response.

But it does, coming back to the amendment, seem to me rather amazing that we have to amend the Bill at this stage to deal with the core issue of staff which should have been spotted earlier by the government when they were actually writing the Bill.

**Mrs Christian:** Mr President, if I may respond to that particular point in speaking to the amendment, the hon. member is slightly misinterpreting the position. The government certainly recognised the difference between the civil servants involved in the registry and those who are non-civil servants in the Financial Supervision Commission. What is being clarified in the Bill is putting into some statutory form the ability of the Civil Service Commission to act in this way just to give certainty to the fact that they have the power to do so. To suggest that it was not recognised that there is a difference is not accurate, but to clarify the legal position it is necessary just to give certainty to have this amendment.

I would suggest also, with regard to the fact that this is transferring to the Financial Supervision Commission, it is undoubtedly true that they delegate responsibilities to staff with particular expertise and I cannot see that there is any reason why they should not do the same sort of thing, although they are ultimately responsible, in this situation.

**Mr Delaney:** With due respect to my colleague on my left, that does not give the answer that I was hoping to hear, and I will be asking the mover: here we are now in our chamber, it has gone through and there is the importance of this Bill to government functionings for the future and in the very responsible area in relation to the companies; this answer I have had from my left does not give me any ease of mind at all, because this is so fundamentally important to the operation of running a company, of the staff of the company, to realise now in the law you have got to clarify it now. It should have been picked up when it was in the other place or before it got to the other place. If somebody has not been doing his homework - and I

do not blame the legal draftsman at all, he has done what he is supposed to be doing - I would like to know when they spotted this and when it was decided this was the place to move their amendment, because in reality it should have been picked up a long time ago. This has been going through the other place and it should have been picked up then. If there was a problem of clarification it should have been known then and the answer I have been given - I am hoping for a better answer from the mover. I do not accept what has been said.

**Mr Crowe:** Mr President, from the mover of the amendment, the hon. Mr Waft, it seems to be it is a fine point on the powers of the Civil Service Commission to second people to the FSC. This seems to be the point that is being made here. The query I would have is, if staff do not wish to be seconded from the registry to the FSC or if they are seconded and wish to return after three years, will they have those rights to return to the civil service rather than remain with the FSC? Thank you.

**The President:** Do you wish to comment, sir?

**Mr Waft:** Only to perhaps explain, Mr President, this transfer of functions, I think, was derived from the Edwards report to facilitate some kind of transparency with that regard. The civil service Government Officers Association have been in co-operation with the Financial Supervision Commission to identify any problems that might arise during the course of this transition and are really still debating the issue. This facility was seen to be perhaps a grey area and to clarify the position, and this is why the amendment has been moved at this time, but negotiations are still ongoing with the Government Officers Association with regard to this.

**The Attorney-General:** Mr President, hopefully with a view to clarifying the matter, the amendment seeks to put on a more certain basis the position of civil servants. I think it is true to say that the draftsman of the Bill was very much aware of the position of civil servants, and when we come to look at the next clause, clause 3(8), we will see there that a provision expressly states that a person who immediately before the commencement of this Act was a civil servant shall not cease to be a civil servant by virtue only of the passing of this Act unless he, the Civil Service Commission and the Financial Supervision Commission otherwise agree in writing. So in other words there certainly will not be a situation where a civil servant who is working in the General Registry loses his status as such merely because of the transfer. If he wishes to and he agrees in writing to become not a civil servant but an employee of the commission, then that is something which is expressly catered for in the Bill.

Now, I think that the anxiety of the members could perhaps be assuaged when I point out that under the Civil Service Act as it presently stands, of course, civil servants may be transferred from one department to the next by the commission without their consent and that, I am afraid, is one of the problems that a civil servant has to endure - that he or she may be transferred against his or her consent amongst departments or between departments. The purpose of the amendment is to make it clear that we can have a transfer from a government department to the FSC, and we are putting the FSC on the same standing and basis as a government department or board but, as I say, there can be no question of a person losing his status as a civil servant merely because he is transferred to the commission.

**The President:** Reply, hon. member?

**Mr Radcliffe:** Thank you, Mr President. Can I say first of all that the amendment is acceptable to me as the mover of the Bill and I have no qualms about it. It has been thrashed

round pretty well here by hon. members and I am grateful to the learned Attorney-General for his explanation as to some of the reasons and what goes on. The two hon. members who made the point 'why wasn't this taken up in the other place?' - well, I would not know why it was not taken up in the other place but it has been picked up now and it has been put in order. I will not comment on what does or does not go on in the other place!

The hon. Mr Lowey mentioned about expertise, and of course the Financial Supervision Commission are ultimately responsible for decisions but they do delegate - there is nothing unusual in that - and among the staff who will transfer from the General Registry to the Financial Supervision Commission are at least two who have a great deal of expertise in company law and company activities so the safeguard is there, the experts are moving from one house to another. So I think we should have no qualms about the way that things will be run from the Financial Supervision Commission. It will be the way things are run from the General Registry on the companies side.

I beg to move, Mr President, that clause 2 and schedule 2 stand part of the Bill.

**The President:** The resolution, hon. members, is that clause 2 along with schedule 2 do stand part of the Bill. To that resolution we have the amendment in the name of the hon. member Mr Waft. That is set out on the white paper in your possession and relates to clause 2 and schedule 2. Will those in favour of the amendment standing part of the resolution please say aye; against, no. The ayes have it. The ayes have it. Now, will those in favour of the clause as amended please say aye; against, no. The ayes have it. The ayes have it. Clause 3, sir.

**Mr Radcliffe:** Thank you, Mr President. Clause 3 is covering a lot of matters. It contains in this clause all the transitional and saving provisions.

Sub-clauses (1) and (2) provide that all personal property held by the Chief Registrar for the purpose of the transferred registry functions will vest in the commission.

Sub-clause (3) states that the rights, obligations and liabilities which were enforceable against the Chief Registrar immediately before the coming into operation of the Bill and which were enjoyed or incurred for the purpose of the transferred functions will become enforceable by or against the commission.

Sub-clause (4) provides that all references to the Chief Registrar will be construed as a reference to the commission in so far as they relate in any way to the transferred functions.

Sub-clause (5) allows for the continuation by the commission of anything commenced by the Chief Registrar and maintains the validity of anything done by the Chief Registrar before this Bill comes into operation.

Sub-clause (6) ensures that anything done by the Chief Registrar prior to the coming into force of the Bill shall have effect as if made or done by the commission so far as is necessary for continuing its effect after that date.

Sub-clause (7) permits documents, forms and signs used in connection with the transferred functions to continue in use notwithstanding that they contain references to the Chief Registrar. Any such references will be construed as a reference to the commission.

Sub-clause (8) enables employees of the company registry, and indeed the learned Attorney-General has explained this particular point of clause 3.

Sub-clause (9) defines certain of the terms which have been used throughout clause 3.

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

**Mrs Christian:** I beg to second, Mr President.

**The President:** Does any hon. member wish to speak? For clarification, learned Clerk, please, we have an amendment in relation to clause 2 from the Keys.

**The Clerk:** The Keys have inserted a clause 2A.

**The President:** In this particular clause?

**The Clerk:** No, not in this clause. It is a separate clause of the Bill which can be taken after this clause.

**The President:** We proceed, hon. members, with clause 3 as printed. It has been proposed and seconded. Does any hon. member wish to speak? The hon. Mr Lowey.

**Mr Lowey:** Can I speak on schedule 2.2 and it says: 'The Financial Supervision Commission may make rules concerning any of the following matters.' One of them is the fees to be paid to the commission under this Act. Am I to assume, then, that the Financial Supervision Commission acts as its own paymaster? In other words, can they set the fees, and do they have to refer to anybody else on this matter? That does seem to me pertinent.

**The President:** Reply, sir.

**Mr Radcliffe:** Well, I would reply, sir, that as far as fees and so on go, Treasury concurrence is involved in the acceptance of those and advice was given as to what should or should not be the proper level. I do not think there is much to add to that, Mr President. (*Mr Lowey interjecting*)

**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.

Now, I think it is appropriate to include at this point the new clause passed by the House of Keys and submitted to us which relates to the qualifications as auditors. Would you care to move, sir?

**Mr Radcliffe:** Yes, sir, I move the appropriate clause.

**The President:** Which of course will be renumbered appropriately.

**Mr Radcliffe:** Thank you, sir.

**The President:** A seconder?

**Mrs Christian:** I beg to second, Mr President.

**The President:** I will put the new clause, then, as printed to the Court. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. We move on, then, to the printed clause 4 along with schedule 3. Hon. member.

**Mr Radcliffe:** Thank you, Mr President. A simple clause, this clause deals with the repeals which are detailed in schedule 3 to the Bill, and I beg to move, sir, that clause 4 stand part of the Bill.

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

**The President:** Does any hon. member wish to speak to the resolution? If not, I will put the resolution that clause 4 along with schedule 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 5, sir.

**Mr Radcliffe:** Clause 5, Mr President, provides that the expenses of the commission in respect of any of the functions transferred by this Bill will be payable out of the general revenue of the Island. Additionally any fees, duties or other moneys received by the commission in respect of this Bill will be paid into and form part of the general revenue of the Island. Mr President, I beg to move that clause 5 stand part of the Bill.

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

**Mr Lowey:** Could I perhaps ask under this, Mr President, is there any way in which the Financial Supervision Commission can decide that any surplus moneys after their expenses - for the wages of the people and all the rest of it - can be put to one side to build up a reserve fund for whatever purpose, or do all the moneys at the end of the day have to come back into the general revenue? In other words, when do they decide this is the surplus and this is what they can have? I think this is a clause where I really should point out, who do the Financial Supervision Commission answer to? I think it is the Treasury, because I am still of the opinion - I may be wrong - that this Bill does not debar a political head of the Financial Supervision Commission, and I would like to ride my old hobby horse that I do not believe serving politicians should be on it because regulators and the regulated should be kept separate and I do not believe that we can be totally independent when we make the laws and have a political input into the Financial Supervision Commission. We are there to carry out our remit.

**The President:** Reply, hon. member?

**Mr Radcliffe:** Thank you, Mr President. The hon. Mr Lowey asked, can the commission build up a surplus and use surpluses to build up a fund? Well, they cannot. They are subject to Treasury surveillance and any moneys gained are paid into the general revenue of the Island. They are part of the budget and estimate process, the same as any other department of government, so they cannot build up a fund of their own and they are, as I have said, answerable to Treasury.

The hon. member Mr Lowey says that the Bill does not have anything about whether politicians should or should not chair the commission. Well, it is new and different legislation, certainly, that is going to be required for that and, as the hon. member is well aware, the Chief Minister has stated in the past that he or the Council of Ministers are looking at the possibility of debaring politicians from holding the chair of both the IPA and the FSC. So that is, as I say, a different ball-game altogether and one which will be discussed and debated in full in another forum.

**Mr Lowey:** I wondered why the opportunity was not taken.

**The President:** Hon. members, the resolution is 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. And finally, clause 6, the short title.

**Mr Radcliffe:** Thank you, Mr President. As you say, sir, clause 6 gives us the short title of the Bill and states also that the Act will come into operation on such day as the Treasury may, by order, appoint. I beg to move, sir, that clause 6 stand part of the Bill.

**Mrs Christian:** I beg to second, Mr President.

**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. Bill read a second time.

We now turn to the second part of item 2 on the agenda paper and that is the third reading, sir.

**Mr Radcliffe:** Yes, thank you very much, sir. I was a little worried there that you were going to pass me by! *(Laughter and interjections)*

**Mr Delaney:** You have been transferred!

**The Lord Bishop:** Which you would reluctantly, of course! *(Laughter)*

**Mr Radcliffe:** Mr President, the third reading of this Bill - there is little to reiterate about the Bill. We have examined the clauses here this morning, sir. It is purely to transfer and centralise all the matters relating to the regulation of companies. There is no new legislation in this; it is merely a transfer of functions from one part of government to another. The aim is to try and improve the effectiveness with which we administer company law, and I am quite sure that this will be the case, and it will be a more uniform administration, and of course allied with administration is enforcement and this Bill is to enable things to be streamlined a little bit as far as company law goes. I beg to move, Mr President, that the Bill be now read a third time and do pass.

**Mrs Christian:** I beg to second, Mr President, and in so doing perhaps would just like to comment on the point which was made by the hon. member Mr Lowey during the clause but as I reserved my remarks on that clause I felt I could not respond, but I am concerned that he somehow seems to interpret part of schedule 2 as giving the Financial Supervision Commission a power to vote their own fees, and it is my understanding that the Bill does not give them any such power. I think that it gives them a power to control fees to be paid to the commission for company purposes under the Act. It is not my understanding - and perhaps if I am wrong the learned Attorney will correct me - but I do not believe that any part of this measure gives the Financial Supervision Commission any authority to change their own fees, which I think was implied by the hon. member.

**Mr Lowey:** Yes, it was. I withdraw that. On reading it again a second time, you are right.

**Mr Crowe:** Mr President, whilst supporting the third reading I would just like to emphasise the importance of the corporate service sector to the Island and the need to continue this part of the financial services sector on the Island and the need to ensure that there is a smooth transition so that there is a continuation and the staff feel comfortable with it,

and that from the outside perspective the Island is seen as supporting the corporate service sector as well as regulating it. Thank you.

**Mr Lowey:** Sir, a note of comfort. I wish this Bill well and I think the aims and the objectives of the mover are to be applauded in that. He does make the point, however, that no new powers are being given. All we seem to be transferring is an image that somehow, if the companies are being supervised by the FSC, it will give a better image outside as opposed from the registry. I hope that is not the only reason we are doing it. I do hope that we are going to be seen as a quality place where we only want quality business here in the Isle of Man. Now, the Financial Supervision Commission, in my view, are fully stretched at the moment dealing with financial matters and I just hope that somehow, by putting this very complicated work - and I understand what he says about the officers being transferred, but seal of approval, whether by the Financial Supervision Commission or the General Registrar himself as in the past, seems to me to be flimsy if it is not backed up with what I would call proper regulation firmly applied and seen to be firmly applied by the world at large, because I think the reputation of the Isle of Man is important and I do accept that we are only interested in quality business, and I think this move is underpinning and underlining that, and I will put my weight to it on the strength of that: we are only interested in quality business.

**The President:** Do you wish to reply, sir?

**Mr Radcliffe:** Thank you, Mr President. I thank members for their support for the third reading of this Bill. I would just comment that the hon. member to my right has pointed out, and quite rightly, that the Financial Supervision Commission have not the power to make their own fees and the hon. member has acknowledged that now anyway. I would say that all company regulations will in the future, as they have been in the past, be firmly but fairly applied and there will be no change in that whatsoever, I would suggest. There is no new image here; it is purely, as I said, a transfer from one part of government to another. There is little more to be said, Mr President, and I beg to move that the Bill be now read a third time and do pass.

**The President:** The resolution, hon. members, is that the Companies (Transfer of Functions) Bill of 1999 be now read a third time and do pass. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Bill read a third time.

### **Shops Bill – First Reading Approved**

**The President:** Turning to item 3 on the agenda paper, we have the Shops Bill for first reading and I call upon the hon. Mr Waft.

**Mr Waft:** Thank you, Mr President. I have great pleasure in bringing this Bill forward for first reading and should begin by explaining the principal objects of the Bill, which are to repeal the existing regulation of shop opening hours on Sundays under the Shops Act 1985, to prohibit the opening of shops on Christmas Day, to introduce new employment protection provisions for shop workers in respect of work on Sundays and Christmas Day and to continue to regulate the hours which shop workers may be required to work under their contracts of employment.

Whilst I have rightly detailed the principal objects of the Bill I should like to remind members that the principal reason for bringing such a Bill forward in the first place was to

remove the unfairness that was perpetuated by the Shops Act 1985, which tended to discriminate against local specialist shops.

Those of you who attended the presentation given by the Office of Fair Trading or who have seen the schedule prepared by the office will understand what I mean by unfair. Permitting a large supermarket to open all day on a Sunday, during which time it may sell clothing, while restricting the hours that a dedicated clothes shop may open is totally unfair and had to be changed. Removing the unfair restrictions on Sunday trading were necessary for the benefit of the retail industry, but the Office of Fair Trading recognised that workers had to be protected from unfair pressure from employers to work on Sundays and I believe the right balance has been struck between removing those restrictions and providing adequate protection for employees.

Although some amendments were successfully moved in another place, the Bill largely remains as originally drafted but as a revising chamber it is only right and proper that the consequential amendments resulting from those amendments should be moved in Council. Mr President, I beg to move the first reading of the Shops Bill.

**Mr Kniveton:** I beg to second, sir. Mr President, if this Bill had come before us four, five, six years ago I would certainly have opposed it. Today I feel rather different about it and the prospects of repealing the existing regulation of shop hours under the Shops Act 1985. Today we are only considering the principal objects of the Bill with the amendments from another place. Thus I do not propose to go into the clauses and their meanings at this stage.

Whoever we are, whether we are employees, employers, church and objectors known to us, all have to accept that we live in a very modern world. We have to accept change; we have to adjust to change even if we do not want to, even if we do not like to, and I believe that the vast majority of people want change through this Bill. Everybody, I believe, has to move forward and accept the change. All too often we are telling those people outside what they cannot do, rarely telling them what they can do. In this case I believe that there are now less reasons for saying you cannot do this or you cannot do that because of the existing regulations.

I believe the Bill, if accepted, will create more of a level playing field for all types of workers. Nobody considers through regulations all other types of workers having to work on Sundays. Let me just give you one example: if a person goes to church for the 8 a.m. service on a Sunday morning he can collect his newspaper on the way home. Nobody spares a thought for the crew of the *Ben my Chree*, the van men, the sorters, the distributors, the newsagent, the delivery boy, not forgetting the harbourmaster and all those people involved there - so many people involved in that person being able to purchase his newspaper so early in the morning on the way home. And of course most of us buy a newspaper on a Sunday morning.

I will not go on and on with other examples. I could, but that is just one example this morning. I think we might well have some very interesting debates when it comes to the clauses. I repeat, I fully agree with the principal objects of the Bill. In many ways I have to agree with an hon. minister in another place when he suggested we should just repeal the Shops Act 1985 and make it just about free for all, like the 24-hour shopping in the UK. We cannot all shop together for a full 24 hours. There will still be plenty of time for sport, church,

visiting friends and relatives and all those other things we do on a Sunday. Thank you, Mr President.

**The Lord Bishop:** Mr President, legislation affecting Sunday seems to date back to Constantine, who in 321 promulgated a law commanding abstention from work, including legal business, for everyone except farm labourers. So it is a very ancient law. The obligation to attend church and observe other ecclesiastical duties was imposed and enforced rigorously from then on, well into the 13th century. Then canon law began to hint at some freedom with the granting of various dispensations, and the use of terminology which stated that Christians should 'abstain from work or business which would inhibit worship to be given to God or the joy proper to the Lord's day or the due relaxation of mind and body.' So things were being brought into the whole abstention system.

From then on the centuries brought a regular see-saw of excess or stricture which has led to the very widely held differences of opinion around us today. At the beginning of this 20th century the Sunday was still mainly devoted to duties of piety, but the dramatic advances of technology has led to a secularisation of life generally and to a considerable reduction in religious observance.

For many years most governments and civil authorities, acting not out of religious conviction but out of consideration for social well-being, encouraged cessation of work on Sundays as a day of rest, but increased leisure facilities and expectations have brought firm pressure to abolish all restrictions in both recreational and commercial activities. In the trading arena, as we are all too aware, piecemeal erosions into Sunday have resulted in anomalies and confusion.

Most people, however, in commenting on their lifestyle find it easy to say that at least they try to live by the Ten Commandments. I would remind hon. members that this includes the fourth: 'Remember to keep holy the Sabbath Day.' I thus find myself between a rock and a hard place in approaching this Bill, because while I appreciate the thought and care which has gone into its formulation and whilst I am keenly aware of the vast numbers of people who have to work on a Sunday, including myself, and whilst I applaud efforts to protect the retail employees through elements of this legislation, I also have to say that I find little in it which observes the Fourth Commandment, which is one of God's laws and not ours. I know that we in this chamber will give the Bill serious consideration and I ask you to bear in mind that its implementation will mean that Sunday here will never be the same again. You might argue that it would make it better, but in a completely deregulated situation it is hard to see where holiness gets a chance.

I shall be considering some amendments to bring before the Council as we progress, because in that way I would hope that the best end result will be achieved. However, I think it would be wrong if I did not indicate at this first reading that I will have problems in voting for the Bill in general.

**Mr Lowey:** Mr President, the first thing I would like to say is that I will be supporting the Bill, not with great relish, because I still am not quite clear - is this a government Bill or not? I have seen it in the government programme for the past few years and yet I note that government ministers, the very department of which is responsible for this, voted against the Bill. Now, if that is not *Alice in Wonderland* in political realities then I do not know what is! So I

have to look at the Bill in what it aims to do. I noted in the paper that has just been given to me that among services that can open all day now, because they are not included, are hairdressers. Well, quite honestly they could open for half a day a year with my demands! (*Laughter and interjection*) However, this Bill does not make it compulsory for people to shop on a Sunday. It does decriminalise people who would be committing criminal offences just by being open, and I think that must be right.

I must confess that all the changes that I have seen around in the last couple of decades in what my Lord Bishop has said is the secularising of the Sabbath do not please me somewhat, but it is an advance which seems, like the juggernaut, remorseless; it goes on and on. I think this Bill accepts reality and says, 'Right, this is the way that we should do it,' and I do not decry the efforts that have been made to protect the workforce. I think they are minimal enough and, if there should be more protection for more workers, then so be it, but, as I said, I shall be supporting the Bill in spite of it being a so-called government measure. Perhaps the mover of the Bill would like a comment on whether it is still a government measure or whether it is now a private measure from his agency of government that is included in the Department of Trade and Industry.

**Mr Delaney:** Mr President, I have made it clear in the other place when I was a member there exactly how I felt about laws in relation to opening and closing and about laws being for everybody and laws having to encompass everybody, and it takes me back, when I was reading this Bill, to the battle of the time even to open the pubs on a Sunday: even though you could get drinks on a Sunday in other places, yet you could not in a public house, and I never understood that and that has gone by the board, but what these 24 years have certainly brought home to me is that consistency is important and I do applaud this Bill for that, of trying to get some consistency into it. But I have one concern on this and it takes my other hat, which is a very poor hat, I must admit, but here we are saying one day a year is when everything will close. Now, good or bad Christian as I am, I in my own mind cannot understand the theory or the practicality of it. In Christianity, I understand, we celebrate Christmas as the birth of Jesus Christ, we celebrate the resurrection on Easter Monday and I understand the reasons for the celebration, but the one day of the year that I have always thought in Christianity was the saddest day of the year was the anniversary of the death of Jesus Christ, and yet Good Friday is not in any way treated like any other day of the year, and the Christian community - as bad a Christian as I am I find that hard to come to terms with, and even when I was involved in that Sunday opening Bill I must admit that was the one thing I could not accept. Of course, times have changed, but I would like somebody to explain to me when they talked about all this - and I, like every other member, have had letters from all sorts, extremists one side or the other, but I cannot understand the rationale behind this. If we are saying that there is one day when we will close, which is the Christmas Day, why didn't they include probably in my mind the one day of the year for all Christians which is the worse day of the year in Christianity, the death of Jesus Christ? That is the part I find hard to contemplate and I hope somebody can explain: were we doing it because we are just trying to give everyone a day off, Christmas Day, and making sure that at least the shop workers got that one day off, or was it for some other reason?

**Mr Lowey:** Not everybody is off.

**Mr Delaney:** I believe, as I have said, in getting the law working for everybody and I think this Bill does that to some extent, but when it came down to the practicality of the Christian side of it that was the one thing I found confusing in this Bill. Why Christmas Day they are closing and the other days, the holiest days of the year, they are opening? That is the one part that I would like some explanation on.

**A Member:** Hear, hear.

**Mrs Christian:** Mr President, I, like other members, have been in a bit of a dilemma about this particular legislation but I think I have been persuaded and I have to echo the views of the mover in another place, that we could choose either to have no opening at all on a Sunday or to accept this measure. I think we have to recognise that the provision at the moment of the law which relates to Sunday opening is bad law in that it is so unbalanced and unfair (**Mr Delaney:** Hear, hear.), so something needed to be done about it.

I think, in terms of the way society is moving, my Lord Bishop referred to obligation to attend church centuries ago or even not centuries ago. I think it is recognised now that people must be driven by their own beliefs in that regard and there is not the same pressure on people irrespective of their fundamental beliefs. So I think society pressured people much in the past to attend church.

But the other aspect of it is the social considerations. Traditionally weekends and particularly Sundays have been a time when we did get a bit of respite and there was an opportunity for most people, not everybody, to have a family day, and we do recognise that many people for the good of our society do continue to work on Sundays in the caring services and the emergency services and so on, so there are people who already are obliged to work on that day. I think, in coming round to the view that I may support this measure, it is because there is a provision in here that there is protection for people who do not wish to work on a Sunday, and I am advised by the mover in another place that many of the people who work on Sundays actually do so out of choice and may not be working for the rest of the week in the retail trade, and I think all of these considerations need to be borne in mind. But I would, along with another colleague who has expressed a concern about the way in which society is changing - it will seem a very strange society to me when Sunday is much as any other day and all the shops are open, but maybe society itself will control this issue in terms of demand. This allows shops to open, it does not compel them to do so, and from that perspective I think that we will find the level which society today will find acceptable through this measure.

**The President:** The hon. member to reply.

**Mr Waft:** Thank you, Mr President. I would like to thank the hon. member Mr Kniveton for seconding the first reading and his helpful remarks. He mentioned also the need for change in the existing situation and perhaps repealing the existing Shops Bill as an overall possibility for the future. Whether that would ever happen I do not know, but this goes some way in relieving some of the problems that we have.

I would like to thank My Lord Bishop for his comments and his reference to Constantine, on which he would have more information than me! (*Interjections*) He mentioned the difference of opinion, the anomalies and perhaps the confusion and also makes particular reference to the Fourth Commandment, to keep the Sabbath Day holy, and nobody can deny that. (**Mr Kniveton:** Hear, hear.) He acknowledges the consideration given to the shop workers and he

says he is considering amendments, which I can only say I look forward to debating when the time comes for the clauses stage of the Bill. So we look forward to that debate in the future.

I would like to thank Mr Lowey for his remarks. His comments on the department not voting for the Bill - I really cannot answer for the members of the Department of Industry; the leading people came from that department via the Office of Fair Trading. I really do not know why they did not vote; that is down to them. He does mention that it does decriminalise some of the shop workers who could not open on Sunday, and that is a concern especially for the officers who have to regulate the existing hours.

I would like to thank Mr Delaney for giving us perhaps an historical perspective on the Bill. He mentions, 'why only one day a year?' and indeed mentions Good Friday, and that was fully debated in another place and I am sure the reasons will be in there but there, are reasons for that and when we get to that clause perhaps I might elaborate a little bit further on the Good Friday situation.

I would like to thank the hon. Mrs Christian for her remarks accepting that there is some unfairness in the present situation and also she mentions the social consideration and the family day. This has been one of the considerations we have all had with regard to this Bill and it is with a certain amount of trepidation that we do go down this road, but there is a situation that really members have decided just cannot go on eternally, making considerations given to Tynwald once or twice a year to change the existing Bill, and we point to this situation where something has to be done and they have done it, so this is the situation as we find ourselves in.

The hon. member mentions the emergency services - they have had to work on that day all through their professional life. I know for the last 30 years I have certainly had to work on a Sunday; nobody ever gave me any consideration for that or any special treatment.

**Mr Delaney:** Tough, George!

**Mr Waft:** However, that is bye the bye. He mentions also the choice of the worker not to work on that day, and I hope that is encompassed within the Bill, but it will certainly be looked at and they should be accommodated with regard to all the shops being open. Of course, they will not be open; all this Bill does is give them the ability to open should they so desire.

I beg to move. Thank you, Mr President.

**The President:** Hon. members, I will put the resolution that the Shops Bill be now read a first time. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

### **Social Security Bill – First Reading Approved**

**The President:** Turning now to agenda item 4, I call upon the hon. Mrs Christian to move the first reading of the Social Security Bill.

**Mrs Christian:** Thank you, Mr President. Hon. members are, I am sure, aware that the Social Security Act of 1982 gives the department an enabling authority for the United Kingdom social security legislation to be applied to the Island by order and gives us a power to make any exceptions, adaptations and modifications as seem appropriate within those orders.

This Bill, if it is enacted, will replace that particular Act and the purpose of the Bill is twofold: firstly, it updates and consolidates that 1982 Act, and secondly, it gives the

department a new legal authority to apply an order with immediate effect but which has to be approved by Tynwald at its next or next-but-one sitting if it is to remain in force. In the past it has been the practice to apply some new UK legislation administratively before the necessary application order has been made in the expectation that the order would apply retrospectively so as to validate the department's past actions, and we have an authority for that.

Where practical, the department varies the effective date in the UK legislation so that it applies in the Island no earlier than the date of Tynwald approval and in those circumstances there is no difficulty. However, for some legislation such as that increasing contribution and benefit rates each April, a later date than that applicable in the United Kingdom is impractical, bearing in mind our reciprocal arrangements. The increase in quantity of UK legislation and the extent of the changes made by it has made the practice of backdating legislation somewhat risky. If the delay between the administrative action and the validation by Tynwald is wider than a few months, then depending upon the nature of the legislated change there is a danger that an appeal lodged in that interim period would be subject to legal challenge, which would declare the department's administrative action without authority.

The Bill is designed to address that particular weakness. It shortens the time between the making of an application order and its coming into effect by providing that it will be subject to subsequent approval instead of prior approval by Tynwald but within a specific period of time, so that instead of having to have the order approved by Tynwald before it comes into force, this Act will enable it to come into force immediately provided it is approved by Tynwald at the next or next-but-one sitting, and if Tynwald does not so approve then the order will cease to have effect.

The Bill does not apply the provisions of any UK legislation to the Island but simply provides an enabling authority. Mr President, I beg to move the first reading.

**Mr Radcliffe:** I beg to second, Mr President.

**Mr Waft:** Could I just ask, Mr President - probably a side issue - I notice that this Bill comes into force in the next sitting but one at Tynwald, the DHSS Bill and quite rightly so. I wondered if perhaps, when you are considering bringing Bills to Tynwald and signing them perhaps you might give a thought to the Chronically Sick and Disabled (Amendment) Act 1991 which might be brought into being very shortly.

**Mr Delaney:** On the Bill I understand very clearly why it has got to happen. There is one concern which you yourself, sir, raised in Tynwald chamber: it is because it is such a big matter and it so grown and widespread, it is the explanations and the way the text is laid out when it comes here: 'The department shall make a copy of the text prepared under section 2 available for public inspection free of charge at its principal office' et cetera. Could we please get the word back to the department, because I have been reading texts, as other members have, and explanations to these texts. The explanations recently have been more difficult to understand than the texts themselves, and when it comes to the public, we have the ability to go and ask the department or go round and ask the Attorney-General's department et cetera but the general public will not. So when this is laid out and an explanation, I assume, is going to be given for the layman to read, then it is put in layman's language rather than the recent blend, which has been to confuse the members of Tynwald more than the original order itself.

**Mr Lowey:** I can see from the minister's and the department's point of view the necessity to get clarity and to bring it in earlier and then get it agreed, so I have no difficulty at all in accepting the principle. No doubt I shall be having rows with the minister and her successors on its application from time to time, but as a piece of machinery and what I would call logistics of government I think it is sensible and I will support the Bill.

**Mrs Christian:** Mr President, first of all can I respond to the hon. member Mr Waft who refers to the Chronically Sick and Disabled Act. Now, his message is frequently that we should be doing more about implementing the Chronically Sick and Disabled Bill and that is something that the department is very conscious of. We do seek, through our budgets and so on, to implement elements of that Bill and I hope are making progress in that direction, albeit somewhat slower than the hon. member would wish. However, I do not think we should confuse the orders which are made under this piece of draft legislation with any other piece of legislation. The Social Security Act deals with social security legislation only, and the hon. member, I think, did in his remarks acknowledge that he was going off at somewhat of a tangent. He has made his point.

**Mr Waft:** You cannot blame me for trying!

**Mrs Christian:** No, not at all.

Now, with regard to the comments of the hon. member Mr Delaney, I am disappointed that the hon. member has expressed this view, because the department does try and set out its explanations in a fully understandable way. The fact that the legislation itself is complex, I am afraid, requires sometimes complex explanation. The danger of simplifying it is that something will be missed out or misunderstood. But I note that the hon. member is still having difficulty with our explanations. I will endeavour -

**Mr Delaney:** I am not the only member, I assure you!

**Mrs Christian:** Well, I will endeavour to give as much clarity as we can within the supplementary information and the memoranda that come out with our social security legislation, but I do have to add that where matters are very complicated it is dangerous to over-simplify. Nevertheless, we will endeavour and continue to endeavour to give explanations which fully expand on the implications for any order which the department puts forward.

**The President:** Hon. members, I will now put the resolution that the Social Security Bill be read a first time. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

### **Public Health (Amendment) Bill – First Reading Approved**

**The President:** We turn next to item 5 on the agenda, the Public Health (Amendment) Bill, and I call upon the hon. Mr Crowe to take the first reading.

**Mr Crowe:** Thank you, Mr President. This Bill primarily concerns amendments to part IV of the Public Health Act 1990, which concerns refuse disposal. It also effects amendments to the Local Government (Miscellaneous Provisions) Act of 1984, the Building Control Act 1991 and the Food Act of 1996.

With regard to the Public Health Act of 1990 the principal effects of these amendments will be to enable the conditions of a waste disposal licence to be enforced in relation to a

waste disposal site after the licence has been terminated. It will also enable the department to make charges in respect of waste disposal licences and further enable the department to ensure that a waste disposal site is safe before accepting the surrender of the licence. It will also enable the department to make charges for the disposal of all waste delivered to it. It imposes 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 it will enable local authorities to recycle waste.

The Building Control Act 1991 is amended to strengthen the power 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 of 1996 is to give the Department of Transport statutory powers to upgrade 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.

**Mr Delaney:** I beg to second and so doing, Mr President, wish to congratulate the operatives on this one in getting this Bill forward, particularly the section dealing with the open land to be tidied up. (**A Member:** Hear, hear.) I mean, I recently, on behalf of a department of government, have had to travel round the Island and look at its sites for different reasons, and I have been appalled at some of the state of small areas of land to the annoyance of the neighbours and to the general populace of this Island, and we should, the public, and the people we serve, should not have to put up with it. One thing that for the future we have got to have is an Island which is pleasant to live in and for all the visitors to see and appreciate, and the sites are so numerous, but particularly one which I hope will be the first on the agenda when this Bill is passed - and hopefully it will be passed quickly - is that site on Douglas Head which is a future site for a piggery, which is adjacent right to the centre of our capital and seen by everyone. If that is the way that the community has got to put up with bad neighbours, as soon as it is stopped the better. I wish to commend the department for getting this underway and wish it well.

**Mr Kniveton:** Mr President, whereas I can support the first part of this Bill in relation to the disposal of rubbish, waste, licensing of sites, safety on sites, local authority disposal of waste, I am particularly pleased, as Mr Delaney is, with the second part of the Bill regarding ruinous, dilapidated or neglected buildings. Procedures for restoration or demolition, unfinished buildings, tidying of land - there are far too many ruinous buildings, 'scruffy' - if that is the word - neglected buildings and such like, let alone areas of land. Like Mr Delaney, if I can just pick one out, can I mention the old open air swimming pool at Port Erin where visitors come to this Island and they look down on this old pool of rust and old concrete and so on. That is the sort of thing I believe should be removed forthwith. Perhaps if this Bill is enacted it will force land and property owners to do something about the poor condition, or either repair or demolish or even sell what they might think are assets on to somebody else to be

responsible for. None of us, I am sure, would like a ruined building or an unsightly rubbish piece of land next to wherever they live. Certainly it is detracting from their environment and certainly it must have some effect on the value of their property or land. Mr President, I do support the basics of this Bill and I look forward to the clauses stage. Thank you.

**The President:** Reply, sir?

**Mr Crowe:** Mr President, I thank the hon. Mr Delaney for seconding this Bill and for his comments and also the hon. Mr Kniveton for supporting the Bill. The question of this our green and pleasant land - it is so important that we have a beautiful Island and maintain it. I think both issues that were raised by the hon. members actually give strength to the local authorities and give them greater powers to act against people with dilapidated or neglected buildings or where open land is very untidy. So with those remarks, Mr President, I beg to move the first reading.

**The President:** I will put the resolution, hon. members, that the Public Health (Amendment) Bill be now read a first time. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

### **Acquisition of Land (Amendment) Bill – First Reading Approved**

**The President:** Agenda item 6, the Acquisition of Land (Amendment) Bill. I call upon the hon. Mr Radcliffe to take the first reading.

**Mr Radcliffe:** Thank you, Mr President. The object of this Bill is to make amendments to the law relating to the compulsory acquisition of land; of course, that is obvious by the very title of it anyway. The various clauses alter and amend the rules relating to the assessment of compensation and so on. It is fair to say that the exercise of compulsory powers is, to say the least, unpopular and indeed in actual fact has rarely been used in recent times. The compensation payable as of this moment until the coming in of this particular Bill is fair to owners but you have got to say is not over-generous, and it certainly does not take into account the interests of persons other than owners, particularly persons displaced who have no interest in the land but probably an interest on what is on the land.

The Bill is intended to make the use of compulsory powers more palatable - I say well nigh impossible in some cases; it is impasse before we get to that stage very often, but the Bill is intended to make the compulsory powers more palatable by enhancing the rights of owners and, now, occupiers of land with compensation available for them. A lot more detail in the clauses stage obviously, Mr President, but I would just beg to move formally that the Acquisition of Land (Amendment) Bill of 1999 be now read a first time.

**Mrs Christian:** I beg to second, Mr President.

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

### **Smoking and Passive Smoking – Law – Select Committee Appointed**

**The President:** Item 7. I call upon the hon. Mr Waft to move the resolution standing in his name.

**Mr Waft:** Thank you, Mr President. I beg to move:

*That a special committee of three members be appointed to consider and report with recommendations upon the law relating to smoking and passive smoking in public places.*

I was given leave to introduce the Smoking in Public Places Bill some time ago by this Council. In the intervening period we have had two separate Bills concerning tobacco: first there was the Children and Young Persons (Protection from Tobacco and Liquor) Bill, which virtually prevented agents acting on behalf of young people buying tobacco for a child under 16 and liquor for a minor under 18; then we had the sale of addictive and intoxicating substances, which prohibited the sale of cigarettes to children under 16 and which was subsequently amended to under 18.

The proposed Bill is set to improve our general health by creating smoke-free environments and importantly recognise the right of non-smokers to work in a safe and healthy environment free from tobacco smoke, and no employee shall be required by his contract to work in a smoke-filled area. The occupier of such premises would have to take reasonable steps to designate an area where smoking is permitted. Where smoking is allowed adequate mechanical assisted ventilation would have to be provided to maintain a good standard of air quality. There will, of course, be considerable lead-in time to allow for changes to be made where thought necessary.

I would stress that the proposed Bill is not an anti-smokers Bill by any means. The BMA are concerned that voluntary arrangements do not always work and are likely to be undermined. The Independent Scientific Committee on Tobacco and Health has advised that passive smoking can cause lung cancer in non-smokers. The committee estimated that passive smoking may be causing several hundred lung cancer deaths a year in the UK. Passive smoking also has an acute irritant effect on the eyes, throat and respiratory tract and can aggravate asthma. It is undesirable for parents to smoke in the same room in which children are living.

The Bill is not a further move towards a nanny state. This is a very serious issue which should be addressed. I have contacted a variety of sources during the past year including the DHSS, the Office of Fair Trading, the Chamber of Commerce, the Environmental Health Executive, Heron & Brearley, the Hospitality Association, the Department of Transport, the community surgeon and the Roy Castle Foundation. Before proceeding with this Bill I would respectfully ask that a special committee of this Council be formed to enable the general public to make their views and concerns known. Mr President, I so move.

**Mr Kniveton:** Mr President, I will second and I will support the motion put to us by the hon. Mr Waft. I do so with certain reservations, but overall I hope a special committee may well help to convince me that control of smoking and of passive smoking in public places may or will be possible. Certainly I understand the objectives of the motion, but I am rather concerned or uncertain as to how it could be put into place.

I know there will be an outcry from certain of the general public and I do wonder of late just how many times we can be telling the public what they cannot do, especially when it comes to socialising.

As I say, Mr President, I will support the appointment of a committee and hopefully await their report to convince me as to how they could impose more bans if that, as I believe, is what this motion is about. Thank you, sir.

**Mr Delaney:** I one hundred per cent will support this; I would have anyhow, even though I am a smoker. I think, I hope and I wish that people in the future will not smoke - it is as simple as that. None of my family smoke and I am grateful for that, and I think as time progresses less and less smokers will occur in society. But I do support, Mr Waft. The thing I would ask for is for those who suffer this burden of being 'under the weed' in actual fact will be given a fair hearing. I personally believe that it is possible during the period when the public are educated to not smoking at all for facilities to be made for those who wish to smoke. I believe that can happen and should happen. But I do support the move in this direction and I hope success will come out of it. Whether or not all the general public also have my view I do not know. The smokers - I hope they have my view, because it is obvious to me as a smoker it is not the best thing in the world; unfortunately I am a victim of this generation. I accept that times will change and less and less smokers will occur and I hope that is the case. But I wish the committee well, but I would not want to serve on it, because my views will be completely not the general public's views on how they should operate.

**The Lord Bishop:** Mr President, just picking up one point of the hon. member who has just spoken, I hope that if a committee is formed and listens to representations and makes recommendations it will do something for the spectacle of those who do smoke being pushed outside their buildings and their offices and smoking in the open air or in -

**Mr Delaney:** Supply them with bells!

**The Lord Bishop:** - sheltered corridors, not least near the Attorney-General's steps. Not only is it unfair to them, it is also hideously untidy for the streets which are then left cluttered with butt ends, and I really feel that to degrade the smokers to that level is not fair, although I am a reformed character, I used to smoke and, like all converts, I am a bore. So you might go on the committee and you might do yourself some good. But I do hope that that would be something that such a committee would address, because I really feel it is an unpleasant attitude not to make some provision for smokers. Mr Waff's comments about properly aerated rooms or whatever it may be, but I am sure that something better can be done than is currently done at the minute.

**Mr Crowe:** Mr President, yes, I would follow the Lord Bishop on this: it would be nice for the smokers that they were given some smoking rooms in their offices. It is, as I agree, degrading to see people smoking outside in the rain. It just shows the strength of the addiction. But on the statistics of smoking it is rather intriguing that the older generation are giving up smoking, or trying to give up smoking, and there are a number of legal actions involved on passive smoking in the USA, and yet we read now that younger people, 14-year-olds onwards, are taking up smoking on the grounds that it is helpful to stop them eating, so an image that the pop world, shall we say, are giving to younger people is that smoking is a desirable thing and that is something that should be avoided.

But again, we have also to look at the dichotomy between the cost of medical treatment for people who get illnesses through smoking and the tax revenue generated to the government, so the government actually are operating almost a double standard of encouraging smoking to get the tax revenues and yet having to bear the brunt of the medical cost.

So I will support the hon. Mr Waft in his move and it is interesting, reading the actual resolution, that it is to look at the law relating to smoking as well as passive smoking in public premises.

**Mrs Christian:** Mr President, certainly the hon. member has referred to discussions with the DHSS and there can be no doubt in anybody's mind about the very serious damage to health which occurs as a result of smoking, and the other evidence of the effects of passive smoking. From a government point of view we have been exploring in the first instance a policy in relation to smoking on government premises and that is ongoing and will produce, I hope, a result before too long.

The hon. member seeks to go further at this point and talked about all public premises, not simply government premises. I think government's view was we should put our own house in order before we seek to change the position of people outside of government. However, I do see some virtue in the committee being established. It will give us an opportunity to get views from the public about the issues of smoking in public places and the effects of passive smoking. I do concur with my hon. colleagues: first of all it is a curious thing that people who otherwise are model citizens and would tut-tut about litter dropping think nothing at all of throwing their fag ends all over the place, and in fact the whole of Douglas is awash with fag ends; it is a disgrace, really. I do not really understand why people who otherwise would not dream of dropping litter think nothing of throwing their cigarette ends down. So we do need to make some provision for those who are smokers whilst at the same time continuing efforts to discourage people taking up smoking (**Mr Delaney:** Hear, hear.) in the first instance and then assisting them to stop it when they express a desire to do so. I have not the same confidence as my hon. colleague, Mr Delaney -

**Mr Delaney:** Your honest smoker!

**Mrs Christian:** - that it will die out. The evidence is that in certain age groups it is coming under control but in other areas it is on the increase, and somehow we are not getting the message across to younger people in particular and, I think, to some categories of women who were not smokers but now are becoming smokers. So there is a considerable amount to be done in this area and I see no problem with a committee being established to further explore the views of the public in particular on this issue.

**Mr Radcliffe:** Mr President, I make no secret of the fact that I am a smoker, I enjoy a smoke and one of my parents smoked. I must say that none of my children smoke, at least not to my knowledge anyway, but I would say that it is purely a matter of choice; we should not be trying to legislate as to what people may or may not do.

I think that the hon. member's request for a committee is, quite honestly to me, going to be a time-waster because you will certainly get the extreme views but you will not get a very balanced picture at the end of it. I would say that if the hon. member wants to form a special committee I would suggest that they should not be wasting time on this sort of thing but getting on with much more important things such as social legislation which we all know is lacking, and to waste committee and other people's time on this particular aspect of life, I think, has no merit and I will not be certainly voting for it.

Great mention is made these days of this passive smoking, intake of all sorts of substances which do one harm. I was following a vehicle this morning for 20-odd minutes on

my journey in, and the intake of fumes I had from that vehicle because I could not get past the beggar (*Laughter*) -

**Mr Delaney:** Have a word with the Chief Minister!

**Mr Radcliffe:** - was much more, I would suggest, than I have had in a week of smoking cigarettes, and indeed, if the hon. member was to stand outside this very chamber at certain times of the day, the passive intake of fumes, certainly harmful fumes, is much more than you would ever get in a smoke-filled room.

The hon. member has had in his mind for a while this particular Bill, and I do wish he had had the courage of his convictions, put it to the test and got it before the House and possibly disposed of the thing then, but, as I say, to ask for a committee to sit for Lord knows how long considering whether the Bill should be introduced, I think, is a complete waste of time. I will not be voting for it, Mr President.

**Mr Lowey:** Mr President, I am a non-smoker from a smoking family so I am not only the odd one out as a politician but I am also an odd one out because I do not smoke. But having said that, really I think one of the things you cannot ignore is the evidence. As the minister for health has already said, the evidence is there and you cannot ignore it, it does damage your health and therefore that is why I do not accept the point made by my hon. colleague, Mr Radcliffe, where he says people have the right to choose. We know scientifically that it is bad for the health and therefore governments do not have that option to abdicate and wash their hands and say, 'It has got nothing to do with us, you can do it, you've got the right to choose to damage your own health.' We do not give it to them on a whole variety of fronts. How much more with less scientific evidence than we have for this, and yet we tend to say, 'Well, because so many of our colleagues and our citizens do it therefore we shouldn't really try and persuade them.'

I think it is about persuasion and I think one of the successes - and I do not think we should take our mind off this or our eyes off the fact - is that there has been a really successful transformation in the last 10 or 15 years - no smoking areas in theatres and planes; you name it and they have succeeded to a large degree.

I think that role models are important and I think part of that selling the message has to be in journalism, and I look to my friends in the media again because I am out of step with my editorial friends and another headline next week that I am out of step with reality - well, so be it! I do not think we do have that option.

Now it is all right saying, 'Ah, but the government are taking money in by taxing it.' Yes, and I can tell you what Jersey have done this year: they have put the price of cigarettes up by 30p a packet, not to raise money but to actually try and deter people from smoking, and I coin the phrase from the finance leader of that particular Island, where he said they were, 'Going for short-term pain' - and he was there talking of tourism - 'to the long-term health gain to the people of the Island.' I think that is an example of where government are positively trying to discriminate.

There is a whole series of messages but this resolution is not about that. The mover is asking for a committee to consider and report with recommendations on the raw after hearing what people out in the street feel.

Now, I tend to agree that we should make provision for smokers because it is not illegal to smoke. We should have better facilities; I accept that. But I do not think that is a reason for not supporting this particular committee.

I do not believe that governments have the option to do nothing, let people choose. I think that is not an option when we know that it is bad for them, and I believe we have shown that we can make inroads, I just think we have taken our foot off the accelerator and other things have taken centre stage, but I think we need to concentrate and particularly on what I would call impressionable youngsters, and perhaps the impressionable middle-aged like Mr Radcliffe and myself. We are doing it whether we like it or not; we are banning advertising of the products. We are making people restrict their use. I think we have to keep on that pressure for the health of the nation and I think that is imperative. I do believe that this move is well worthy of support in its own right.

**The President:** Reply, hon. member.

**Mr Waft:** Thank you, Mr President. I would first like to thank Mr Kniveton for seconding the motion, and recognise his reservations and his concerns. But I think we should be reminded that the motion is 'that a special committee of three members be appointed to consider and report with recommendations upon the law relating to smoking and passive smoking in public premises.' It is not looking to hurriedly pass some legislation through, this is to give it a wider range of people who might be able to put forward their views on legislation prior to legislation being enacted, and that, I think, is something we do fall down with from time to time. His concern is exactly the same concern that I have, and this is why I have asked for a committee to be formed when we will get far more information than I have been able to elicit.

I thank the hon. Mr Delaney for his support. He mentioned a variety of situations.

I thank the Lord Bishop for his views. He mentions the office worker and smoking in open air. The proposed Bill did recognise the need for smoking rooms to be provided for smokers and to get away from the need of seeing clutches of office workers in shirts in the rain in the winter standing outside offices. (*Mr Delaney interjecting*) it is not really correct, but there are certain areas and you drive past and you can see this happening.

I thank Mr Crowe; he made a similar remark and he mentioned the older generation are now giving up smoking but the areas of smokers are increasing, especially in young females.

I thank the hon. Mrs Christian, who mentioned the serious damage to health and the fact that government is looking at smoking in public premises and wishes that perhaps government might put their house in order first. Well, that is quite true. We have been waiting for some considerable time for that but it has not really happened yet, but I appreciate that they are giving it consideration.

I thank Mr Radcliffe for his remarks, that perhaps we might be wasting our time on this committee when we should be considering some social legislation. We do have a Social Issues Committee who do look at social legislation from time to time. I cannot remember who is on it but I know -

**Mr Radcliffe:** That is how important the committee is! (*Laughter*)

**Mr Waft:** - but perhaps he might direct his comments towards that committee. Perhaps he thinks - well, he did say - perhaps we might get only one-sided views on passive smoking. I

do not think that would be the case. I certainly have not had one-sided views myself up to now; I have had a diverse range of views so I think, if we do form this committee, we will be able to get views from a different variety of sources and it can do nothing but good, I would have thought, to get more views on the subject before we continue with legislation.

I thank Mr Lowey and his mention of Jersey and putting up 30p per packet of cigarettes. It is not my desire to penalise smokers at all; it is just to give everybody a fair crack of the whip and let them, if they are non-smokers, have a non-smoking area, and if the smokers want to smoke they can have their area as well. I am not here to penalise anybody at all.

So I would thank the members for their support and, Mr President, I so move.

**The President:** Hon. members, I will now put the resolution set out at item 7 on the agenda paper in the name of the hon. Mr Waft. Will those in favour of that resolution please say aye; against, no. The ayes have it. The ayes have it.

*A division was called for and voting resulted as follows:*

*For: The Lord Bishop, Messrs Lowey, Waft, Kniveton, Mrs Christian, Messrs Delaney and Crowe - 7*

*Against: Mr Radcliffe - 1*

**The President:** Hon. members, there is nothing passive about the response (*Laughter*), 7 votes being cast in favour of the resolution, 1 vote against. I declare the resolution carried.

Now the election of a committee of three, and the committee will be in being so we can proceed to it right away with nominations, please.

**Mr Lowey:** I would like to propose Mr Waft.

**Mr Crowe:** I second Mr Waft.

**Mrs Christian:** I propose Mr Kniveton.

**The Lord Bishop:** Seconded.

**Mr Lowey:** I propose Mr Crowe.

**Mrs Christian:** I beg to second.

**Mr Radcliffe:** I propose nominations be closed, Mr President. (*Laughter*)

**The President:** Agreed?

**Members:** Agreed.

**The President:** The committee will consist of Mr Waft, Mr Kniveton and Mr Crowe. Right, that concludes our public business. We move into private to consider the items on the agenda paper.

*The Council sat in private.*