

**REPORT OF PROCEEDINGS OF
LEGISLATIVE COUNCIL**

**Douglas, Tuesday, 27th June 2000
at 10.30 a.m.**

Present:

The President (Hon N Q Cringle), 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, Dr E J Mann, Messrs J N Radcliffe and G H Waft, with Mr T A Bawden, Clerk of the Council.

The Lord Bishop took the prayers.

Charteris Project – Members’ Briefing – Question by Mr Crowe

The President: No apologies this morning, hon. members, so we go straight on with our order paper, and the first is a question for oral answer. I call upon the hon. member, Mr Crowe.

Mr Crowe: Mr President, I beg leave to ask a member for the Treasury:

Is it intended that Treasury will brief Tynwald members on the Charteris project?

The President: Mr Radcliffe to reply.

Mr Radcliffe: Thank you, Mr President. Charteris Limited was awarded a contract by the Information Systems Strategy Committee, which is a subcommittee of the Treasury and is chaired by myself, and Charteris were awarded the contract to undertake a study to establish the most appropriate means of developing and implementing an effective environment within which electronic commerce can flourish in the Isle of Man.

Charteris carried out their study and reported to that subcommittee in April 2000. Their report has since been considered by the Treasury and also by the Council of Ministers. A comprehensive report on the recommendations of Charteris has recently been finalised and will be presented to Tynwald for approval in July. Thank you, Mr President.

Mr Crowe: Mr President, I thank Mr Radcliffe for that answer. I am, and I am sure we are all, interested in the future of telecoms and the growing e-commerce market and I will be very interested in this report when it comes before Tynwald in July. Thank you.

Mr Lowey: Could I ask a supplementary? Is it the intention of the Treasury to give members a briefing on this particular subject and, with Tynwald being early in the next fortnight, with something as complicated as e-commerce and all the rest of it, is it intended to give a briefing to members in advance of the Tynwald resolution?

Mr Radcliffe: Mr President, the report is now a Council of Ministers report - this is what hon. members will receive. It is a report on the Charteris report. It will be issued by the Chief Minister’s Office, I understand, within the next day or two. Some of the stuff in it is fairly technical, I would agree, and it is one I think which members will have to peruse and ask questions if they feel so inclined at that time.

The Charteris report itself, which is a fairly substantial document - and that is it there - we are reluctant to issue in totality, because certain information in it is confidential and could be of assistance to some of our competitors, so the report will be before Tynwald in July; that is a précis, if you like.

A subcommittee of the Council of Ministers has sat with this one; it comprises the Chief Minister, who chairs it of course, with representatives for the Department of Trade and Industry, Home Affairs, particularly on the communications side, Treasury and myself as Chairman of the IFSC. The report - we have not sat on it - only came out in April, was considered by Treasury shortly after that and considered by the Council of Ministers, and a report within the next week or so to members.

Mr Waft: Mr President, can I just ask, as I understand Mr Radcliffe is a member of the committee who will be considering this report, that he does give consideration to the perhaps rising digital divide within the community with regard to access to computers, not so much for adults, but certainly for the under-privileged population of children who perhaps do not have access to a computer at home but can have access perhaps for a limited time at the school? There are a number of computers throughout the community which are being 'skipped', for want of another word, which could be in a revival programme with the change of hard disk at not any great cost, and perhaps access could be given to those people to bring on their computer skills and so not create a perhaps digital divide in the future. Thank you, Mr President.

Mr Radcliffe: Mr President, there is indeed a digital divide, and I must admit that for myself I am on the wrong side of that particular division. (*Laughter*) However, if we refresh our memories we certainly know that the Department of Education are acting to ensure that the upper age limit of pupils all will have a lap-top. I hear what the hon. member says about computers being 'skipped', as he calls it, which is thrown out, and we - and again this goes back to the Information System Strategy Group - have looked at this. Sadly, when a computer is out of date it is out of date completely, and the ones which we have - I think, to use the hon. member's own words - 'lying round' here and there in these government buildings - some of the disks on them do contain information which would need to be wiped out, and that again is additional cost to the whole operation. The cost quoted was going to be something like £500 per unit to wipe the disk out and get some of the confidential information which is contained in them out of them. So it is perhaps better to grind the teeth and say 'Once they are out of date they are out of date' and dispose of them completely. I might say that to help to bridge the divide, certain hon. members both in this Court and the other place have their own lap-tops and perhaps the divide may not be quite so large in perhaps a short time to come.

Human Rights Bill – First Reading Approved

The President: Hon. members, we move on then to item 2 on the order paper, the Human Rights Bill, and I call on Mr Waft for the first reading.

Mr Waft: Thank you, Mr President. The principal purpose of the Human Rights Bill is to give further effect in domestic law to rights and freedoms guaranteed under the European Convention on Human Rights, which is a treaty of the Council of Europe. This council was established at the end of the Second World War and is part of the allies' programme to prevent recurrence of human rights abuse. The United Kingdom played a major part in drafting

the convention and was amongst the first group of countries to sign it, and was the first country to ratify it in March 1951. The Isle of Man was included in that ratification.

As the convention extends to the Isle of Man, an Isle of Man resident can already argue that his or her human rights have been breached and take the matter up at the European Court in Strasbourg. When the convention was ratified, the view was taken that the rights and freedoms which the convention guaranteed were already fully protected in law. It was not considered necessary to write the convention itself into statute or to introduce any new laws in order to be sure of being able to comply with the convention. However, since its drafting nearly 50 years ago, almost all the states party to the convention have incorporated the convention into their domestic law. The effect of this non-incorporation is that enforcing the rights is a lengthy and costly process. On average it takes five years to get an action into the European Court of Human Rights once all domestic remedies have been exhausted and costs an average of £30,000. For this reason the United Kingdom Government decided, based on a pre-election pledge, to incorporate the convention into UK law, the consequence of which will be that the United Kingdom residents will be able to argue for their personal and individual rights in the United Kingdom courts.

In December 1997 the Council of Ministers noted that the United Kingdom had published a white paper proposing the incorporation of the European Convention of Human Rights into the United Kingdom law and declared in principle, and subject to detailed scrutiny of the United Kingdom legislation once enacted, it would propose similar legislation in the Isle of Man.

The United Kingdom legislation has now been passed and it is now considered that the time has come for the Isle of Man to recognise the importance of making these rights more directly accessible under the convention by enabling people to pursue them in the Island's courts rather than having to incur the delays and expense which are currently involved in taking a case to the European Human Rights Commission and Court in Strasbourg. Mr President, I beg to move that this Bill now be read a first time.

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

The Lord Bishop: Mr President, I would like just to raise a few points at this first reading just for the hon. member to come back in due course.

I have a concern that the briefing that was held last Friday, I believe, for various members of the administration, not particularly members of Tynwald, the member of the Home Office declared that this legislation in England was made bearing in mind that England was not a Christian country but a multifaith one, and I wonder if that really means that we can apply this wholesale from that multifaith country to one which is still, I think, a Christian country. I think it does make a difference of emphasis. I just wanted to point that out.

But I think we should need some reassurance about the effect on Manx legislation of the requirement for compatibility noted in clause 4, also the requirement on any member moving new Bills in the future to give an assurance that it complies with the European Convention. If it is not in compliance, then the mover will not be able to move it and that seems to me to be quite a lack of freedom on the part of a member of the Keys or anybody else in moving Bills in Manx legislation. So I hope the hon. mover will go into some detail on that when we get into the Bill itself.

I am concerned about the impact of clause 6, which appears to include the Church in the term 'public authority'. Specific regulations or doctrinal statements made by churches might then well be considered unlawful as a public authority when judged by a general and vague convention right. For example, if you look at article 12 in the convention, the right to marry, it says 'Men and women of marriageable age have the right to marry and to found a family according to the national laws governing the exercise of this right. Now, if national laws could interpret marriage, it does not actually say there that a man may not marry a man or a woman may not marry a woman, or that a family may not consist of people that you have from surrogate means and that you have paid for as is in England at the moment with two men adopting two children. That is according to article 12; the right to marry is therefore enshrined. Now, if the Church or a Church body says that their rules on marriage are very different, they could probably be taken to court under article 12 for contravention of that right, and I just worry a bit about that because it seems to me that conventions are rather vague.

I should also like to know what effect this Bill, as we have taken it from the English law, will have on the long-standing and well-tried ecclesiastical court system and it goes with discipline in place in churches.

Also, looking at clause 8 of our Bill, clause 8 provides for the court to grant relief or remedy as it considers appropriate on successful applications - that is, where a public authority, i.e. the Church, has acted unlawfully and is in breach of human rights. The relief would include awarding costs, but there is no provision for an award of costs where the application was unsuccessful, and so the public body like the Church could win the case yet have to pay the costs, and I can imagine that crippling any sort of Church body, certainly like mine, that has not got much in the way of funds.

So I am concerned about those clauses so mentioned. I also would like the mover to answer why protocol 1 of the convention is not included in this Bill. Protocol 1 to the convention deals with, in articles 1, 2 and 3, protection of property and the rights of education and the right to free elections, and I would have thought that that omission from the Bill would be quite important.

Mr Crowe: Mr President, yes, the Lord Bishop and myself must have been reading similar clauses where some of the ones he has mentioned did cause me some concern, and in clause 4, the declaration of incompatibility, it strikes me that this might lead to a lot more primary legislation to correct situations where the current legislation is at odds with the human rights legislation. And just in clause 6 it talks about public authorities, and perhaps you might be able to define the exact parameters of what is a public authority, because it seems to be quite a wide net that has been thrown out.

Again, on clause 16, where we are talking about this statement of compatibility it does strike me that we could have a situation where it is recommended that all new legislation will have a statement to the effect that provisions are compatible or a statement to the effect that although the member is unable to make such a statement the member nevertheless wishes to proceed with the Bill. Now, that to my mind seems to be almost a contradiction in terms as to moving a Bill which is at odds with human rights legislation. I mean, there must be some fundamental reason why it says that and perhaps the mover might be able to respond.

Just on a couple of general issues there is no reference to legal aid in the Bill, and I am wondering whether this will require some special rules, because I just have a worry that this new legislation might lead to a lot more litigation in the courts and, with that in mind, will the operation of the courts change? Will there be any amendments to the present operating procedures or will the present situation apply?

Mr Lowey: I am rather surprised at the comments of my two previous colleagues. Can I take the Bishop on straight away? Human rights, as far as I can see - it does not matter whether you are a Christian or a member of any other faith; I would have thought your human rights are fundamental and it does not matter whether you are a Moslem or a Hindu or a Christian, and to say that somehow human rights should be based on Christianity as opposed to any other faith seems to me to be a contradiction. Human rights are human rights.

The Lord Bishop: We are talking about legislation.

Mr Lowey: Well, legislation, sir -

The Lord Bishop: Ours is based on the Christian model.

Mr Lowey: With respect to my Lord Bishop, I think human rights are fundamental and the right to practice your faith is a human right, and for us as Christians to define it in our model seems to me to be. . . forgive me, sir, if I say it is an arrogance, but it is an arrogance from my point of view, not from the Lord Bishop's point of view, but I take note of that and I have no concern with the human rights. I would remind the two hon. members that human rights are already enshrined in law; it just means that you have got to go to Europe. Now, if anybody can tell me why I have got to go to Europe to get my rights upheld or adjudicated on when I have courts in my own land that should be quite capable of doing that, then I am sorry, I think I should go to the first port of call, which is my own . . . It means if I am wealthy and can afford to do it or I have backing from specialist groups I can do it, but as an individual I cannot do it because most of us cannot afford that route, and I do not think that is right. Now, I believe personally that everybody and all institutions should come within it and that includes the Church, and so I do not think that the convention should be narrowed and exclusive; I think it should be inclusive and as widely inclusive as possible, and that is why I welcome the thought that public authority is defined in the widest possible terms.

As I said, my own view is that human rights will irk, will annoy, may even offend, but at the end of the day I think part of the price we pay of living in an understanding, caring society is that we acknowledge people's human rights and act accordingly as the founding fathers who introduced it after the second Great World War of the last century intended it to be introduced. As far as I am concerned I think the Human Rights Bill is an important piece of legislation and I will be supporting it, warts and all.

Mr Delaney: There are two things; one I have already raised with the mover of the Bill. I too was interested in this wonderful presentation that took place even the fact that we have just had the first reading in this branch of the legislature. I will just like to ask him again: the government has spent a lot of money and will spend a lot of money bringing together places like the Villa Marina, and I understand that we went out to Mount Murray to have this presentation when down the road here we have got a wonderful building which needs use and has been paid for. We have got staff which we are paying for and, particularly during the day when we are paying for the staff, as the hon. member on my left knows very well, I would like

someone to be told before we go anywhere else, 'Let us use what the public are paying for as far as briefing anyone on this or any other issue where it is possible.'

The second one on this one - it is only an observation from the smallest mind, probably, in this Council: this Bill is going to come; it is part of the whole package of things happening in the world and has happened and will happen. What fascinates me under clause 12 is the thought of conscience and religion, and all the way through all these debates over many years I have watched and seen the changes in the world where new religions or religions from other places have moved into different hemispheres, and then we have a huge move towards equal rights, far overdue, particularly of the sexual, of equalisation of the rights from men and women in marriage, out of marriage, everywhere else, and yet I still see what is going to happen when it comes to the big bust-up where religion, which still has it in certain categories where women are kept particularly in the background of marriage and have little rights, particularly when it comes to choosing husbands et cetera, and when this eventually comes in and somebody brings a case into Europe saying 'Well, hang on a minute - I do not want to marry him' or 'this marriage has been arranged and yet, under legislation, I am protected and here I am, yet freedom of religion says that my father can virtually sell me off to somebody else' and we use this example. I see the big clash coming and I wonder if somebody who has got a greater mind than me can tell me where all this is all going to lead us. I understand the need for all this, but I am more interested and think that the priority is equal rights within our own sexes and our own religion et cetera, but the way the religion has moved in, certainly into Britain, I see the big crunch coming, and somebody asked the big question, 'Well, okay, if everyone has got equal rights, why is it some religions, particularly, do not seem to incorporate them into their statutes?' And it is not on this occasion the Christian religion, by the way.

Mr Radcliffe: Mr President, as the hon. mover said, this legislation was first framed 50 years ago, and of course at that time, in the aftermath of a World War and what was revealed had been happening, the torture, deprivation, victimisation and so on which went on, the whole question of human rights was a very emotive one and everyone but everyone agreed the proper legislation should be introduced, but I do not think that anyone at that time could have foreseen, years later, the effect that the original legislation and what followed had on everyday activities, almost. One should have the right to protect oneself on one's property, but it is against human rights, it would appear, from court decisions made, and certainly my fear - and I echo the fear of many others in this community and beyond - is that human rights really have gone a bit too far and in certain instances it has been abused by the offenders. I support the Bill, I have got to support the Bill, but certainly I have reservations about what is in it and particularly in the schedules.

Mrs Christian: Mr President, I think that all of us have some concerns about how this Bill will be interpreted in the future. Nobody, when it is at a distance and after the war, would have any concerns -

Mr Radcliffe: Yes, exactly.

Mrs Christian: - about signing up to a human rights convention. What we are doing now is bringing the focus closer to home, and I think that that is right - and I have to say I have modified my view on this slightly. I was very concerned, when these issues have been raised in the past, that they would undermine the democratic right of a community through its parliamentary system to decide how it wants to control its affairs, but we have to recognise

that we have accepted the convention and we ought to be applying it now in the way in which we make our laws and so on, and so it is right, I think, that we do bring it closer to home to enable people in the Island who feel that their human rights under the terms of the convention have been breached to have those issues dealt with here in our own courts.

I think essentially the fear about the Bill is how, in dealing with individual human rights, we may somehow come into conflict with society's general view, and I am quite sure that that is going to be tested quite a lot in the future if the Bill is accepted and becomes a part of our statute law.

There are concerns that individual groups in society who have a particular view may feel that their view is undermined by the Bill, and there do seem, in reading it, to be within the individual rights themselves conflicts which is going to be a challenge for the courts to interpret, I would suggest. Nevertheless, I think it is appropriate that we say 'Bring this into our own statute law; let us decide for ourselves.' The crunch will come when our people, through their representatives, feel that they do not want to accept a change to something which has been declared incompatible. Then we will have crunch time.

The other point I would like to make is that, notwithstanding that many other countries have embodied a Human Rights Bill into their own statute legislation for a number of years, they are still found to be in breach, so there is no perfect solution to all of this. They have taken it into their own statute, but their people still challenge them at Strasbourg, as our people will be able to do if they are not satisfied with the decision here.

The other thing I feel concerned about is that we may have a lot of frivolous claims initially in relation to this, because it is very easy to say, 'Oh, my human rights have been breached here,' but I think it has to be, and I am sure it will be, considered in a very balanced and sensible way by the courts. Our difficulty, I believe, in going forward will be in interpreting these generalised rights in a way which leaves it with the court to decide and which is not really in the form of the legislation which we are used to, which is much more precise. Nevertheless, Mr President, I believe that it is appropriate that we do support the Bill.

The Attorney-General: Mr President, I thought it would be appropriate for me to say a few words because I was the chairman of the seminar on Friday that was held at the Mount Murray Hotel. It was a seminar that was organised on a joint basis by the Chief Secretary's Office and by the Home Office Civil Service College.

It was, I think, a very useful seminar. It was attended by some 200 representatives, primarily heads of department and senior civil servants, also representatives from the local authorities. There were two speakers from the UK, and I spoke in the afternoon. There was also a very active question-and-answer session in the afternoon.

That undoubtedly will be the first, I think, of many seminars and perhaps not on such a large scale, but I am sure there will be many seminars which will perhaps concentrate on particular areas which are of relevance to particular departments.

There is no doubt that there is a huge learning curve for us all. It is a most difficult subject, human rights, and of course one of the things that one will have noticed from the Bill in the clause at the end, clause 23, is that the Act can come into force at such times as the Council of Ministers direct, and I think the clear message that came over was that it is

important that we enact the legislation, but it is equally important that we do not rush into bringing the Act into full effect. As was so graphically described by His Honour Jack Corrin who was present, 'We must hasten slowly.' So I am quite convinced in my own mind that it is an entirely proper thing for us in the Island to enact the legislation. It shows that yet again we are complying with international norms and obligations. It is important not only that we are a well-regulated financial services centre; it is equally important, in my view, that we can demonstrate to the world that we are keeping up to date with human rights developments, and of course earlier in the year the Island was scrutinised by the United Nations Human Rights Committee. Whether we like it or not, the focus is always going to be on the Island in the human rights context.

I do not in any way wish to forestall the mover of the Bill - there are very many questions that have been put to the hon. mover of the Bill - but if there are any points which he feels I might be able to assist him on in the questioning and answering at this stage, I would be more than happy to do so.

The President: Mr Kniveton, do you want to speak?

Mr Kniveton: No, it has all been said, sir, as far as I am concerned.

The President: Mr Waft, then.

Mr Waft: Thank you, Mr President. There are a number of questions there. I am glad I was not going to go on to the second reading and clauses stage!

The hon. Lord Bishop was concerned about the briefing held last Friday and the member of the Home Office with regard to the multifaith situation they have in the UK, and perhaps not Christian. I think we have to recognise that there is a multifaith situation in the UK and perhaps even increasing on the Island. That has to be recognised and I think that is probably at the back of the Bill and the reason for it. If you look at clause 4 and the laws comply with the European Union convention and cannot move laws that do not comply, that is not entirely correct; you can move laws which do not comply to human rights legislation, but you have to give a reason as to why you think laws should be passed without the necessary underwriting of the human rights with the convention.

Clause 6, which includes the doctrinal statements and the right to marry et cetera - I am sure that will come out during the course of the examination of clauses and we can deal with that as and when.

The ecclesiastical court system - I think for my own view it is probably the same as any other situation where breaches of human rights have taken place. The Attorney might be able to clarify that for me, but human rights are human rights as far as I am concerned; wherever they are breached, there is still a reason and it needs sometimes to find an end situation to the problem, and everybody has a right to human rights irrespective of how he feels that he might have been disenfranchised, and because of clause 8 and the costs to be awarded perhaps the Attorney might be able to reflect on that as well.

Protocol 1 and why this is not included, rights to free elections et cetera - perhaps the Attorney might be able to elaborate on that as well.

Mr Crowe mentioned also clause 4, the declaration of incompatibility. I think I did clarify that at the beginning, that there is a possibility of commencing a Bill which is incompatible with human rights, but there needs to be a declaration about that.

With regard to clause 6 and local authorities, this does include any authority which has rights over another, I would have thought, and it does clarify the situation with regard to the Keys and Tynwald and the Legislative Council.

It mentions legal aid; perhaps the Attorney might be able to deal with that as well.

I would like to thank Mr Lowey for his defence of the Bill. He reiterates the situation with regard to how important this piece of legislation is to the Island.

The hon. Mr Delaney mentioned with regard to the venue of the seminar. I agree with the member. (**Mr Kniveton:** Yes, hear, hear.) I was not invited to the last seminar. I did not have anything to do with it, so I do not claim responsibility for that at all. He mentions as well religion and rights; it is becoming a bit of a minefield, this, and different religious faiths will have their problems with human rights, I would think, from time to time.

Mr Radcliffe does not feel that any one at the end of the Second World War realised that the human rights legislation would go so far, and I think he is not alone in this. There are certain worries in some places about human rights legislation.

I thank the hon. Mr Christian for pointing out that we have accepted the convention and would support our own courts dealing with human rights situations. I am sure I would agree with her that frivolous claims would get short shift from the courts. I thank the Attorney-General and acknowledge the fact that he was chairman of the seminar which I did not attend - I was not invited - (*Laughter*) and recognise that 200 representatives that were there and the two speakers from the UK, I am sure, clarified some of the concerns. As he states, there is a huge learning curve for us all, especially me, and they recognised that we should hasten slowly. They also mentioned the United Nations and the human rights situation there and how we have to meet them from time to time. I think not to pass the Bill because of some of the items mentioned would be a retrograde step. We have to be recognised in a nation in our own right and we should proceed cautiously, and this is the start of that procedure. I beg to move, Mr President.

The President: Okay, hon. members, the motion is that the the Bill now be read a first time. Are we agreed? Those in favour? Anybody against? No? Okay.

Protection from Harassment Bill – First and Second Readings Approved – Clauses Considered – Third Reading Approved

The President: We turn to the third item on your order paper, the Protection from Harassment Bill, and again it is for first reading. I call upon the Attorney-General.

The Attorney-General: Thank you very much, Mr President. The Protection from Harassment Bill 2000 is based on the 1997 Act of England of the same title. The short title to the Bill is to make provision for protecting persons from harassment and similar conduct. It was passed in England for the purpose of dealing with stalking, which, it has been suggested, is one of the fastest growing crimes in the United Kingdom. Although, mercifully, stalking does not appear to be such a significant problem on the Island, nonetheless there are disturbing indicators that it is now starting to cause real concern for the police, and of course for the

victim stalking can be a terrifying experience. There is no attempt at a definition of harassment, although clause 7(2) of the Bill provides that references to harassing a person include alarming the person or causing the person distress. It is clear, therefore, that the Bill, if passed, may be used to prosecute a range of persons apart from those commonly referred to as stalkers. Moreover, the Bill creates a civil remedy under which an injunction may be obtained to restrain harassment and obtain damages. Mr President, I move that this Bill be now read a first time.

Mr Kniveton: Mr President, I am happy to second this Bill. To continue not to be able to go about one's every day life and business without some other person causing intimidation or personal abuse must not only be nerve-racking but stressful and cause even mental illness and is just not acceptable. More and more we hear about stalking, as the hon. mover has just mentioned, repeatedly following another person, and that repeatedly can and often does lead to further serious offences. Telephone calls at all hours of the day and night have the same effect. We have heard so much about it in the UK through television and newspapers and I believe it is in many ways mainly on account of broken marriages, ending of personal affairs causing jealousy and envy, and of course it is premeditated.

This Bill, as I see it, makes it an offence to action which amounts to harassment of some form to another person, or to put that other person in fear of action in the form of violence against him, or indeed her, in many cases. These things are just not acceptable and I hope that through this short Bill we can stamp out these courses of action here on the Island should they start arising - actions by what I would call evil persons. Obviously, I support the Bill.

Mr Lowey: Can I say, I support the Bill wholeheartedly. Harassment is not perceived, it is real, as the Attorney-General said; it is one thing that we do know is taking place, and of course for the victim there are no visible signs, there are no bruises, there are no cuts, but the damage is real, their lives are affected, and I believe this particular Bill will actually give the courts the necessary instruments in which to prevent it from happening. I do not think there is any division between any of us on this one and I think the quicker this instrument is on the statute book and able to be used by the courts, the better. I support the Bill.

Dr Mann: I welcome this Bill and most certainly will support it. The greatest difficulty I can see with it is its implementation is the difficulty of obtaining the evidence, because most of the offences are very much personal ones, they are not witnessed necessarily by any other person and, as I say, I welcome the legal protection. I have some difficulty in seeing how the evidence is going to be collected by the victim, because unless the police or some other private agency comes in, it is going to be incredibly difficult to produce the evidence.

Mr Crowe: Mr President, like other members I fully support this Bill and will be very happy to see it on the statute book. There is just one point of clarification, if I could ask the learned Attorney-General please: can civil action be taken at any time or does it have to be proved that harassment has taken place in the criminal court before civil action can be taken following, or can the civil action be taken to restrain in the absence of any criminal action?

Mr Waft: Mr President, I would support this Bill. It is obviously necessary by events in the past and they are becoming more common and perhaps coming to the attention of the authorities more often these days. I would just like to mention that there are distinct psychiatric illnesses which are identifiable, which can be treated and which may come under the auspices

of this category of offence, and it would be necessary to define whether the perpetrator has got a psychiatric illness and not purely a psychopathic one, which are two entirely different matters. So it would have to be dealt with with that in mind.

With regard to the attitude of everyone when they do come across a situation, the law will be there and will be available and the attitudes to the police, when they do receive complaints such as this, will be changed when they know they have legal recourse in the courts to take the perpetrator to court. I would support this Bill.

Mr Radcliffe: I find this Bill, to my mind, easier to support than the one that was previously before us. It is long overdue. Certainly I suppose probably most members here have had instances of harassment reported to them over the years and have had people asking you to do something directly about it. I have always said that it requires legislation to do it properly.

I would ask the learned Attorney, did I read right in the Bill that there has to be third time? You get away with it twice harassing people, but, like a dog having a bite, the person who is doing the harassing can get away with once or twice but then the full weight of the law comes down on them. So I would just seek the learned Attorney's comments on that. I may be reading the whole thing wrong, sir.

The President: Right, okay. May I ask the Attorney to reply, then?

The Attorney-General: Thank you very much, Mr President, and I am most grateful to the hon. members for their general support in relation to this Bill. I am particularly grateful to Mr Kniveton for his speech and for seconding the Bill and also to Mr Lowey for his expression of general support.

So far as Dr Mann is concerned, again he supports the Bill but he has an anxiety about whether it might be difficult to obtain evidence to support court proceedings. As to that, I think that often these cases unfortunately are in the context or framework of a domestic relationship and, again, unfortunately these cases are very well known to the police. I think, in fact, that it will be easier than perhaps Dr Mann considers to obtain evidence, because I am quite sure that the police will be very much in support of someone who complains that he or she has been subjected to harassment.

Again, Mr Crowe - I am grateful to him for his support, and he asks an interesting question as to whether civil proceedings can be brought, as it were, independently of criminal proceedings. I think the answer to that is in clause 3 of the Bill where it provides that an actual or apprehended breach of section 1 may be the subject of a claim in civil proceedings, and I think that is a clear indicator that you do not have to take someone to court - that is, the criminal court - to prosecute; if you actually apprehend that someone is going to subject you to harassment you can bring your case in the civil court before a deemster in the High Court and obtain your injunction. You do not have to bring the case before the criminal court.

Mr Waft - again, I am grateful to him for his support. He emphasises that often the person who is guilty of harassment may also be suffering a psychiatric illness. That again is something, I am sure, is something that will be taken into account by the courts in relation to sentencing.

And again, Mr Radcliffe - I am grateful to him for his support and for his expression that this Bill is easier to support than the Human Rights Bill. I do understand that. The question as to the course of conduct and 'do you have to be guilty of harassment on two occasions?' - that again is set out in clause 4 of the Bill so that it provides that a person whose course of conduct causes another to fear, on at least two occasions, that violence will be used is guilty of an offence if he knows or ought to know that his course of conduct will cause the other to fear. So there is, as it were, a requirement that you show a course of conduct and one incident in isolation will not suffice.

Mr President, with those answers which I hope deal with the questions which have been raised, I move that this Bill be read a first time.

The President: The motion is that the Bill be read a first time. Those in favour please say aye; against, no. The ayes have it. The ayes have it. The Bill is passed a first time. Now, Mr Attorney.

The Attorney-General: Mr President, the Bill is sponsored by the Department of Home Affairs and the minister has asked me to apply to you, sir, with the leave of hon. members, to waive the requirement of standing orders and move to a second reading, if you would be prepared to do that, and possibly thereafter even to a third reading. I understand, indeed I acknowledge, this is an extraordinary application, but it is, as you have heard, a matter of anxiety that we get this Bill enacted as soon as possible.

Mr Lowey: I would like to support. I would second the suspension of standing orders. I do not think there is any division between us in the necessity for the Bill. The way it has been designed is simple. It does give protection. In general terms, I think this is a well-motivated piece of legislation that should be in place, and the quicker we can get it in place the better, and on my thinking that we are here to service the people of the Isle of Man I have no difficulty in squaring my rights for considered judgement on this particular subject as I did not do last week (but I should have done if I had been here) for the financial Bills that came before us. This will affect ordinary people and I think we should be prepared on this occasion to waive standing orders and get on with the business.

The President: Does any other member wish to speak to the suspension of standing orders?

Mr Radcliffe: Well, I am the one who in the past has opposed the suspension of standing orders, but I think when there is good cause for suspension and I support that particular proposition. . . and I think there is good cause for suspension of standing orders on this particular one. I know of a case which has gone on and on and on, and I think the only protection that this particular person is going to get is through the medium of this Bill and, if for no other reason than that, I support the suspension of standing orders.

Mr Waft: I support the suspension, Mr President. I think government must be seen to be speeding up legislation such as this. When there is absolute necessity and urgency there is a possibility for us to be able to do so, and I think this is one of the occasions.

Mrs Christian: Mr President, I have no problem with the suspension of standing orders in this. I do note the support of the other members of Council on this issue where they had expressed concern not too long ago about the introduction of this measure in what they felt

was a precipitous manner, but I am glad to see that they are now of the view that we should get on with it.

The President: Mr Attorney, do you wish to say anything?

The Attorney-General: Mr President, only to thank hon. members for their sympathetic consideration of my application. As I say, I do feel it is almost important matter that we get the Bill enacted as soon as ever possible and I am very grateful to hon. members.

The President: Hon. members, the motion is that we suspend standing orders to allow further deliberation of the harassment Bill. There is a requirement, as I understand it, in standing orders to have five members to support that, so those in favour please say aye; against, no. Having said that there are no noes, it appears that I have got seven, so there we are! We can move on to the second reading stage, and again I call on the learned Attorney.

The Attorney-General: Thank you very much, Mr President. I have nothing further to add by way of introduction on the second reading and, if I may, I would like to move to the clauses stage.

The President: Are members agreed that we should?

Members: Agreed.

The President: In that case, hon. members, we can continue with the clauses stage of the Bill.

The Attorney-General: Thank you very much, Mr President. Clause 1 deals with the prohibition of harassment and it prohibits a person from pursuing a course of conduct which the person knows, or ought to know, amounts to harassment of another. The course of conduct must involve conduct on more than one occasion. A number of defences are included in the clause. A breach of the prohibition is an offence under clause 2 and an actual or apprehended breach may be the subject of a claim in civil proceedings under clause 3.

Sub-clause (1) of clause 1 prohibits a course of conduct which amounts to harassment of another if the person knows or ought to know that it amounts to harassment. There are three elements of the prohibition which the prosecution must prove. First of all there must be a course of conduct, and that is defined in clause 7(2) as requiring conduct, which includes speech, on at least two occasions. Secondly there must be harassment of another. Harassment is not defined in any detailed manner because of the variety of conduct which might be adopted by stalkers and others in harassing their victims. Clause 7(1) does include within harassment the causing of alarm or distress. The effect of that clause is to focus upon the effect of the harassment on the victim. And the third element is knowledge. It is not necessary to prove that the defendant intended to cause harassment; it is sufficient that the defendant knew or ought to have known that his actions would amount to harassment.

Sub-clause (2) of clause 1 sets out the test for determining the cases in which a person ought to know that his actions would amount to harassment. This is to be determined by the 'reasonable man test' - that is, whether a reasonable person in possession of the same information would think the course of conduct taken by the defendant amounted to harassment.

Sub-clause (3) provides defences for conduct which might otherwise be described as harassment. Such conduct is exempted from the provisions of the prohibition if the person who pursued the course of conduct shows one of three things: firstly, that the conduct is pursued for the purpose of preventing or detecting crime - for example, police officers or customs officers; secondly, that the pursuit of the conduct is permitted under an enactment or rule of law; and thirdly, that in the particular circumstances the pursuit of the conduct was reasonable. For example, the actions of private investigators, journalists and so on. This does not mean that all activities by such persons are exempted, only those which are reasonable in the particular circumstances. Mr President, I move that clause 1 do stand part of the Bill.

Mr Kniveton: I beg to second, sir.

Mr Waft: Mr President, I wonder if the Attorney-General could clarify for me the situation where somebody feels they have been harassed? I am thinking about the telephone now and if they have not got the ability or they are unable to use a tape recording to establish that they have been harassed twice. I just wonder about what processes are gone through to be able to record a telephone conversation? I understand that the Chief Minister can allow the interception of telephone messages with regard to serious crimes, et cetera, but I wondered how easy it was to obtain this in situations such as this.

Mrs Christian: Mr President, whilst welcoming the Bill I think we are all thinking in terms of adult individuals. I wonder if the learned Attorney would comment on how he sees this piece of legislation and this clause applying to children, because we know that children can be bullying and by any other definition bullying equals harassment in some circumstances. We do know that schools are doing what they can to clamp down on bullying, but nevertheless it seems to me that there can be bullying by individuals or groups against other children on a continuing basis which would, as the Bill is defined and as this clause sets it out, equate to harassment, and I wonder if he could indicate if adults on behalf of children or children in their own right could use this provision in relation to bullying or harassment, whether it be in a school situation or anywhere else?

Mr Crowe: Mr President, If I could just ask the learned Attorney a point on this clause 1. I think we all accept and we are familiar with stalking and threatening behaviour by use of telephone; that is widespread, but just to bring it down to a slightly different frame, would it cover situations in the workplace such as bullying or pressure to perform and undue pressure in a workplace? I am just wondering if that would be, say, a minor degree of harassment, and if that would come within the legislation. And just an observation on Mr Waft's point: I believe that if people are getting threatening calls they can ask Manx Telecom to intercept all calls without it going to the Chief Minister. There is a filter mechanism that allows all calls to be diverted and handled by an operator, so I am not sure that helps, but that is available.

Mr Lowey: I have got a query on sub-clause (3) where it says, 'Subsection (1) does not apply to a course of conduct if the person who pursued it shows - (a) that it was pursued for the purpose of preventing or detecting crime.' I would like the Attorney to give me an assurance that that does not give - let me be brutal - the police unlimited, unbridled access to do what they want. I presume this clause does not override what I would call the normal. The police have got to pursue things, obviously, and that one does not mind, but I see that it does not apply in preventing or detecting crime - in other words, this is not a green light for them to

pursue a line of action that is covered maybe in other legislation. I understand what it is trying to do, keep parameters, but I would just like that assurance.

Mrs Christian: I wonder if the learned Attorney would indicate, following on from what Mr Lowey has said, whether or not someone could actually take a case against the police in these circumstances if they felt that they were being pursued in an unreasonable and unrealistic way.

With regard to the telephone calls - again the learned Attorney will confirm or contradict - if you agree to have a tape of your telephone conversations there is not a problem; I think the intervention of the Chief Minister is when it is a secret matter and not known to the people who are concerned, but if you are being harassed I think most people would agree to allow their conversations to be taped.

Mr Waft: I was just going to clarify that point with regard to the telephone. I appreciate what the hon. Mr Crowe states about the intervention of Manx Telecom. The point is, that is after the situation has occurred that you ask for the intervention; I am talking about two harassment cases that need to be established before the police can act, and the necessity to have the telephone calls intercepted is a possibility but they are intercepted, finished, and there will be another form of harassment taking place if they know all the calls are being intercepted. To actually get the intercepted calls as proof of evidence they will need to be taped by somebody in authority, I would have thought.

Mr Kniveton: Mr President, just following on from Mrs Christian and telephone calls, I would add that I would doubt if a person is harassing that they would put a message on an answering machine, because that is one way of giving up evidence, and I doubt whether an answering machine would be used.

I am particularly interested in the response to bullying at school. We hear of it going on; certainly in the UK we have heard even of youngsters taking their own lives because of being bullied, but I wonder, if they are minors and being bullied by minors, whether that could be taken into account. I look forward to that reply. Thank you, sir.

The President: Mr Attorney.

The Attorney-General: Thank you, Mr President, and thank you, hon. members, for the very interesting questions.

Mr Waft asks as to the procedures which would be applied in obtaining evidence, and I think it is unlikely, isn't it, that there will just be two occasions of harassment by 'phone calls. In fact, what ordinarily happens, as I understand it, is that there could be a course of several dozen if not hundreds of phone calls sometimes by someone who is absolutely infatuated by someone or has a very real course of conduct to pursue, and I think what happens in practice is that the person who receives the phone calls makes a very early complaint to the police and the police are then more than able and willing to accommodate the problem and to take a tape recording of the telephone calls, and I am quite sure that there will be more than two very easily obtainable. The tape recordings can then be used in evidence in court.

I might just comment on the Interception of Communications Act. That is a very specialised piece of legislation where the Chief Minister authorises a telephone interception where there is very real evidence or suspicion of extremely serious crime. It is not something

that is done with any frequency at all, very rarely indeed, but it is obviously a very important power that the Chief Minister has.

Mrs Christian asked about the problem of bullying in schools, and does the legislation apply to children? Well, the legislation does apply to all persons who pursue a course of conduct which amounts to harassment, and if a child is of sufficient age to be criminally responsible in law he or she will be capable of being called before the courts, and bullying, I would imagine, is a very real and very vivid example of harassment provided it can be shown that the course of conduct causes alarm to the person or causes distress to the person, and we all know of some very worrying and alarming cases in the school playground and elsewhere where conduct can result in terrible effects for the person concerned, so certainly in my view the legislation would apply to bullying by children, but of course again the courts would take into account the age of the offender when imposing a sentence.

Mr Crowe again asked a similar question as to bullying in the workplace, and again in my view harassment can certainly occur in the workplace provided that the course of conduct causes alarm or distress to the person concerned. I am very grateful to him for pointing out the procedures for obtaining telephone interceptions when a complaint is made to Telecom. I think again they are very sympathetic and co-operative generally.

Mr Lowey asks a very interesting question and a very understandable concern about the powers of the police. I do not think in any way that this Bill could be construed as a carte blanche for police to pursue an alleged criminal in an overbearing and unreasonable way, and in fact if there was any suggestion that that was happening the officer concerned would, I feel sure, not only be liable to disciplinary proceedings but also in turn could be the subject of a court injunction and possibly, to take up Mrs Christian's point, could himself be prosecuted because I think the golden thread throughout this clause is that there must be unreasonable behaviour - in other words, if a police officer acts unreasonably, then he is guilty of harassment as much as anybody else. If, on the other hand, the court believes that in pursuing reasonable enquiries the officer, for example, trails a suspect in a car or walks behind him over a period of time to see what his comings and goings are, provided he does not go over the realms of reasonableness there will be no problem.

Mr Kniveton asked a question about, again, telephone answering machines, and I entirely agree that people who are out to harass someone are unlikely to leave answers on answering machines or leave a message on an answering machine, but I hope I have explained the way I believe evidence will be obtained.

So, Mr President, with those answers I move that clause 1 do stand part of the Bill.

The President: Those in favour please say aye; and against, no. The ayes have it. So we move on to clause 2.

The Attorney-General: Thank you, Mr President. Clause 2 of the Bill deals with the consequences in criminal law of breaching clause (1).

Sub-clause (1) makes it an offence for a person to pursue a course of conduct in breach of the prohibition in clause 1.

Sub-clause (2) sets the maximum penalty for an offence at six months' custody and/or £5,000. The offence is a summary offence, which is dealt with in the High Bailiff's Court or a Magistrates' Court.

Sub-clause (3) amends the Police Powers and Procedures Act so that the police have the power to arrest an offender or a suspected offender without a warrant, and of course that indicates the seriousness of the offence.

So, Mr President, I move that clause 2 forms part of the Bill.

Mr Kniveton: I beg to second, sir.

Mr Crowe: Mr President, I was just interested in the Attorney's last comment about being able to arrest without a warrant. Presumably then, the householder could complain, particularly if it is a domestic situation, and the police could come along and arrest one of the parties at that moment; there would be no need to get a warrant?

The Attorney-General: Yes, Mr President, that is correct. Section 27 of the Police Powers and Procedures Act lists various serious offences in respect of which the police do not have to obtain a warrant before arresting someone and, as I say, an offence under section 2 of this Bill will be one of those offences.

Mr Waft: Mr President, could I just clarify this issue with regard to the term of custody? Say, for instance, a perpetrator received six months by the presiding officer of the court, that could subsequently be reduced to three months, could it not, when he is in prison?

The Attorney-General: Certainly, Mr President. In the usual way a prisoner is entitled to remission and there is no special régime being created here. As we know, prisoners are entitled to remission for good conduct and so on.

The President: The normal law would apply?

The Attorney-General: The normal law, yes.

Mr Lowey: Can I just ask for clarification, is the six months the maximum summary conviction? Is that the maximum the magistrates can award? I think what we have got here is the best of both worlds: we have got a firm thing which can actually. . . and it is a deterrent, I think, six months or £5,000 or both, and I think arrest without warrant signifies to society that we are not going to have it, and I think it is right in this.

Mr Kniveton: Mr President, just talking about the convictions and the penalties, I seem to recall that there have been instances where the defendant has been told he cannot go within so many hundred yards, miles and so on. That does not need to be incorporated if the court has the power to do that just the same - is that right?

The Attorney-General: Mr President, if I may, that is an additional matter which is dealt with later in the Bill in clause 5 and enables the court to give a restraining order.

The President: Okay, well, the motion, hon. members, is that clause 2 stand part of the Bill. Those in favour please say aye; and against, no. The ayes have it. So we move on to clause 3.

The Attorney-General: Thank you, Mr President. Clause 3 of the Bill enables a person who is the victim of harassment to bring civil proceedings in the High Court against the perpetrator of the conduct.

Sub-clause (1) enables the victim to make a claim in the High Court in respect of an actual or apprehended breach of the prohibition of harassment in clause 1.

Sub-clause (2) sets out the damages which are available under a claim under sub-clause (1). The damages, of course, will be monetary compensation which, quite apart from compensation for any actual physical damage, may include compensation in respect of anxiety and any financial loss caused by the harassment. Where there is a right for the High Court to grant damages, the court also has the power to grant an injunction ordering the person concerned to stop the particular activity complained of. The High Court will have the power to grant an injunction either in addition to damages or instead of damages depending on the circumstances. An applicant can ask the court to issue an injunction without asking for an award of damages.

Sub-clause (3) deals with the cases where the High Court has granted an injunction and it is alleged by the plaintiff that the offender has breached the injunction. In such cases the plaintiff may apply to a deemster for the issue of a warrant to arrest the offender.

Sub-clause (4) requires an application for the issue of a warrant for the arrest of a person to be made to a deemster.

Sub-clause (5) requires the deemster, before issuing the warrant, to be satisfied that there are reasonable grounds for believing that there is a breach of the injunction. The application must be substantiated on oath.

Sub-clause (6) makes it an offence for a person to do anything which is prohibited by an injunction. Normally the breach of an injunction is treated as a contempt of court, but under the legislation it will be an offence so that the use of police investigative powers will assist to provide adequate protection for the victims.

Sub-clauses (7) and (8) prevent the possibility of double jeopardy, where a person who has been convicted of an offence under sub-clause (6) could be punishable for contempt of court in respect of the same breach, and vice versa.

Sub-clause (9) provides the penalties for an offence under sub-clause (6). On conviction in the Court of General Gaol Delivery the maximum penalty is five years' custody and/or an unlimited fine. On conviction before a High Bailiff or a Court of Summary Jurisdiction the maximum penalty again is six months and/or a fine of £5,000.

Mr President, I move that clause 3 do form part of the Bill.

Mrs Christian: I beg to second.

Mr Crowe: Could I, Mr President, say a few words? Yes, the Attorney has obviously covered the point where the civil remedy can stand alone from the criminal action, or the two can run together hand in hand, so that point has been covered. I was interested in the sentencing where, under the civil remedy, the custody can be for five years or a fine, so perhaps he could just expand on the reasoning behind that lengthier sentence which seems to be part of the civil remedies?

The President: Reply, Mr Attorney.

The Attorney-General: Thank you, Mr President. I believe that the reason why the Bill provides a much more draconian penalty is that not only will the person concerned have been guilty of harassment but also, if he is in breach of an order under clause 3, he is actually acting in contempt of court, and it is to reflect that additional aspect of it that the proceedings could be brought either in the Court of General Gaol Delivery when you have the heavier penalties or again before a High Bailiff or magistrates.

The President: The motion, then, hon. members, is that clause 3 stand part of the Bill. Those in favour please say aye; and against, no. The ayes have it. So we turn to clause 4.

The Attorney-General: Thank you, Mr President. Clause 4 makes it an offence for a person to pursue a course of conduct which he knows or ought to know causes another to fear, on at least two occasions, that violence will be used against him. The clause includes a number of defences. A court that deals with the person under this clause may make a restraining order under clause 5 to prevent further harassment.

So sub-clause (1) creates a new offence, where a person pursues a course of conduct where he knows or ought to know that the conduct will cause the other person to fear, on at least two occasions, that violence will be used against him. Again, the prosecution must prove three elements: first of all the course of conduct again defined in clause 7(2) on at least two occasions; secondly, that the victim must be caused to fear on at least two occasions that violence will be used against him - violence is not defined and will be given its ordinary everyday meaning by the courts; and thirdly, that the defendant knew or ought to have known that his actions would cause the other to fear violence on those two or three occasions.

Sub-clause (2) sets out the test for determining the cases in which a person ought to know that his actions would amount to causing another to fear the use of violence, and again this is to be determined by the 'reasonable man test', which I referred to earlier.

Sub-clause (3) provides defences for conduct which puts another in fear of violence in contravention of sub-clause (1). Such conduct is exempted if the person charged with the offence shows that: firstly, the conduct is pursued for the purpose of preventing or detecting crime - again perhaps a police or customs activity; secondly, that the pursuit of the conduct is permitted under an enactment or rule of law; thirdly, in the particular circumstances the pursuit of the conduct was reasonable; and fourthly, in self-defence, in defence of another or in defence of property. The defence recognises, therefore, that there are occasions when it is reasonable to threaten force - for example, ejecting trespassers, when reasonable force may be used.

Sub-clause (4) sets the maximum penalty for an offence under this section. The maximum penalty is five years' custody and/or an unlimited fine on conviction in the Court of General Gaol Delivery or six months' custody and/or £5,000 on conviction by a Magistrates' or High Bailiff's Court. The penalty reflects the seriousness of the offence, which involves violent behaviour rather than harassment.

Sub-clause (5) enables the Court of General Gaol Delivery to regard conviction for an offence under clause 2 as an alternative to conviction for an offence under this clause. This

can apply even where the alternative charge is not mentioned in the information setting out the charges.

Sub-clause (6) is a technical provision to ensure that the Court of General Gaol Delivery has full power to deal with alternative convictions for offences under clause 2. Offences under that clause are summary only and would not ordinarily be triable in the Court of General Gaol Delivery except in the case of an alternative verdict under sub-clause (5) of this clause. So Mr President, with that I move that clause 4 do form part of the Bill.

Mr Kniveton: I beg to second, sir.

Mrs Christian: Mr President, the Attorney-General made an interesting comment when he said that violence can be used in certain circumstances, or a reasonable degree of violence could be used - for example, in ejecting somebody who was trespassing. Could it be considered if someone trespasses on a regular basis that they are causing harassment? It just seemed to me that this would turn the whole thing around. I mean, you can irritate people by breaching certain rules and regulations to the point where you may be moved to violence, but the boot would be on the other foot. Would you not be inciting that yourself by breaching that person's rights?

Mr Crowe: Mr President, obviously this is a completely new remedy in law and I was just wondering how it sits with the current legislation, because there must be degrees of criminal offence such as a breach of the peace or moving through to grievous bodily harm. I was just wondering how this sits in, shall we say, the league table of crime, and how that actually sits as an option for a criminal charge.

Mr Lowey: I tend to agree that the court should have the flexibility in sentencing to adjudicate downwards. Sometimes the law can be too rigid and I can remember many cases before where the death penalty was being applied, if I can go from one extreme to another, where lots of juries would not convict if they thought that they would, but if they had thought it was manslaughter they would have done it and they would bring it in, and I think the flexibility there, each case being judged on its merits, could be, if you like, the first or second, an intermediary thing where the courts in adjudicating will say, 'Well, it will be the top end of the lower court sentences that I would give but I cannot give at the lower end of the top areas.' And I just think that is right in introducing the flexibility into the court into the judgment system, and I am sure it is not unique; I am sure there is an ability for the courts to be flexible in sentencing, so I do not think this is a new one. But, having said that, I do believe that it is right that we should put into place in legislation our view of the seriousness of this and, if it is repeated, then it is very serious and I think the consequences will flow. Most people, no matter how irrational they can become, at the end of the day, if they are told, 'Realise you could be sentenced to five years for repeating this offence' - I think it will have a salutary effect and I support the clause as written.

Mr Waft: Mr President, I would just like to say we are back to the 'reasonable person' again, what a reasonable man would do in a certain situation, and all situations vary and we have all got greater or lesser degrees of violence which we may think would be used in certain circumstances, so I think that a lot of common sense has to be built into this somewhere along the line, so I am fully in support of this clause.

The President: Mr Attorney to reply, then, to the debate on clause 4.

The Attorney-General: Thank you, Mr President. Again, some very interesting points were raised by the hon. members.

In so far as the question raised by Mrs Christian is concerned and the issue of the persistent trespasser, I think that the courts and certainly a jury, if it came before a jury, would be well able to assess whether a person was acting reasonably in defending his property or his own person or the person, as it were, of people who were near and dear to him. I cannot imagine that somebody acting reasonably to defend his property or to protect himself or a close friend or relative is going to be put in any greater jeopardy as a result of this Bill than he would have been before. As always, it is a question of reasonableness.

Turning to the question from Mr Crowe, it is an interesting point as to the league table of crime. The way I see it is, perhaps starting with the least serious crime we would have assault. Assault is actually the threat of violence, so if I simply threaten you and I do it on one occasion and it is not such a bad threat, that is technically an offence. If I coupled that threat with a punch, then that is battery and you can be prosecuted for that, but if I engage on a course of conduct which comes within clause 4 of the Bill, that is a far more serious matter and it triggers off the far more serious penalties, so in terms of the league table of crime this clause 4 will be at the top end of seriousness.

I thank Mr Lowey for pointing out the merits of flexibility in the criminal law and the merit of having a number of penalties to deal with a number of criminal conduct.

As far as Mr Waft is concerned, I do appreciate his reference again to the reasonable man. In the English law textbooks we always have to look at the man on the Clapham omnibus and ask what he would have done in the circumstances, so perhaps it is the man on the Onchan omnibus that we must look at when assessing whether someone is acting reasonably!

Mr President, with those comments I again move that clause 4 do form part of the Bill.

The President: The motion, hon. members - clause 4 be part of the Bill. Those in favour please say aye; and against, no. The ayes have it. So we turn to clause 5.

The Attorney-General: Thank you, Mr President. Clause 5 of the Bill gives a new power to a court as sentencing a person convicted of an offence under clause 2 or 4 to make an order restraining him from pursuing further conduct against the victim or any other person named in the order which amounts to harassment or will cause fear of violence. The order may run for a specified period or until further order is made, and application may be made to vary or discharge the order. It is an offence for the defendant to breach an order without reasonable excuse. The purpose of the power is to avoid the necessity of the victim, following a conviction of the offender, to endure a second hearing in a civil court to gain an injunction to prevent further harassment. So, in other words, the court can, as it were, tack on, add a panel to make a restraining order.

Sub-clause (1) therefore enables the court which convicts a person of harassment under clause 1 or of putting another in fear of violence under clause 4 to make a restraining order. A restraining order is additional to any other penalty.

Sub-clause (2) enables the order to prohibit activities by the defendant. The things which the offender may not do must be set out in the order. The purpose of the restraining order is to prevent conduct which amounts to harassment or causes fear of violence.

Sub-clause (3) deals with the period of operation of a restraining order. It may have effect for so long as satisfied or until a further order is made.

Sub-clause (4) enables applications to be made by those concerned for the variation or discharge of a restraining order.

Sub-clause (5) makes it an offence to do anything which is prohibited by a restraining order unless there is reasonable excuse.

Sub-clause (6) provides the penalties for an offence under sub-clause (5). On conviction in the Court of General Gaol Delivery the maximum penalty is five years' custody and/or an unlimited fine, and again, on conviction before a High Bailiff or Court of Summary Jurisdiction, the maximum penalty is six months' imprisonment and/or a fine of £5,000. Mr President, I move clause 5 to form part of the Bill.

Mr Kniveton: I beg to second, sir, and of course this answers the earlier query I put to the Attorney-General, a point I had omitted, of course, and I am quite happy with that. Thank you.

Mr Crowe: Mr President, a very important clause which protects, shall we say, the victim and presumably it would stop a person harassing from speaking to or approaching the person or barring them from a property. If the Attorney could comment on sub-clause (3), which talks about a specified period or interned until further order - I would assume that it would be for a fixed period rather than without time limit. That would be my only point there.

The President: Okay, Mr Attorney, reply to the debate on clause 5 then.

The Attorney-General: Yes, thank you, Mr President. In answer to the question raised by the hon. member Mr Crowe, clause 5(3) enables the court to make an order - for example, that Mr X should be restrained from using violence towards his former wife, shall we say, for a period of 12 months. Alternatively, if the court felt that a fixed term like that was not sufficient, the court might say that Mr X should be restrained forever - that is, until he makes an application to the court to vary the order. Sometimes these situations are so serious that the victim has to be protected forever unless cause can be shown by the offender that he should be relieved from the order.

The President: Hon. members, the motion, then, in front of you is that clause 5 stand part of the Bill. Will those in favour please say aye; and against, no. The ayes have it. Perhaps we could deal with clauses 6, 7 and 8, Mr Attorney.

The Attorney-General: Very well, Mr President. Clause 6 amends the Limitation Act 1984; that Act prescribes a three-year limitation period for bringing actions for compensation for personal injuries. So this clause will enable claims for damages in respect of harassment cases to be brought within six years rather than the more restrictive period of three years.

Clause 7 of the Bill is an interpretation clause.

Sub-clause 7(1) extends the meaning of 'harassment' to include alarm and distress.

Sub-clause (2) declares that where the Bill refers to a course of conduct, this means conduct on at least two occasions.

Sub-clause (3) defines conduct to include speech.

Clause 8 is the short title and commencement. It makes provision for a short title and enables the Department of Home Affairs to bring the Bill into operation by appointed day order. Different provisions may be brought into operation on different dates. I move that clauses 6, 7 and 8 do form part of the Bill.

Mr Kniveton: I beg to second, sir.

Mr Waft: Just on the point of claim for damages as a result of the harassment case, that would be made, I take it, by the plaintiff within that three-year period and it would not be assessed by the presiding officer at the end of the case. Why the necessity if the presiding officer does not feel that damages are a possibility when the case actually takes place? How would it be any more possible later on?

The Attorney-General: Mr President, if I may just give a brief introduction to that, the theory behind the Limitation Act is that you must bring your action for civil damages - this is in a civil court - within a certain period of time, and ordinarily the period is three years from the date when the damage was suffered or three years from when you became aware of the damage. What this section is saying is that in respect of personal injuries suffered as a result of harassment you are allowed to bring your action within the more liberal period of six years from the time when the cause of action arose. So it will not necessarily be related to the criminal proceedings. If someone is found guilty of harassment and is convicted, that is one thing and then it is for the victim to decide whether or not he or she wishes to bring a claim for damages for personal injuries.

Mr Waft: So they would have to appear in court in the presence of the defendant?

The Attorney-General: Yes, certainly if the defendant was going to contest the claim, Mr President, that would be so.

Mr Crowe: Mr President, just rather more of a general question on damages but relating to this clause 6, the award may be given relating to the seriousness of the crime but it may not relate to the ability of the person to pay, so there could be a problem in an award of damages which reflects the serious nature of the crime but which takes no resultant effect on the ability or the inability of the criminal, shall we say, to pay those damages. So that is more of a general point than a specific point.

The Attorney-General: Mr President, yes, I am afraid quite often awards of damages are made against defendants who are unable to pay personally. Often, of course, they have the benefit of an insurance policy but in situations like this, where clearly someone is harassing another, there will not be an insurance element and therefore it is quite possible that a person will not be able to pay, but of course the victim could always make a claim to the Criminal Injuries Compensation Tribunal and the tribunal has extensive powers to award compensation in an appropriate case for a crime of violence.

The President: Hon. members, the motion is that clauses 6, 7 and 8 stand part of the Bill. Will those in favour please say aye; and against, no. The ayes have it. So that concludes our committee stage or clauses stage of the legislation. Now, Mr Attorney?

The Attorney-General: Well, Mr President, I hope this is not a bridge too far (*Laughter*) but may I leap into the unknown and ask again the indulgence of hon. members and your

good self to allow me to proceed with the third reading of the Bill for the same reasons I mentioned last time. I beg to move:

That standing order 22(2) be suspended to enable the third reading of this Bill to be taken.

Mr Lowey: I beg to second, sir, the suspension.

Mr Radcliffe: The only comment I have to make, Mr President, is I thoroughly approve of all readings today. Could the learned Attorney inform us, presuming that he gets his third reading, how quickly the department involved would be able to move to bring this into being?

The President: Does anybody else wish to speak? Mr Attorney to reply, then.

The Attorney-General: Thank you, Mr President. The brief I have received from the Department of Home Affairs is that it is the wish to have all the readings prior to the summer recess with a view to having Royal Assent granted as soon as ever it is possible.

The President: Hon. members, the motion there moved by the Attorney, then, is that we continue and suspend standing orders to allow the third reading to take place this morning. Will those in favour please say aye; against, no. We certainly have a clear majority in favour of that, so I invite Mr Attorney to take the third reading.

The Attorney-General: Well, Mr President, I am most grateful to hon. members for allowing me to proceed in this way today. As we have heard, the Bill has been introduced to combat a very real fear on the part of the police and the department, of course, that harassment is likely to become even more prevalent than it is now in our Island. We have seen from the Bill that the Bill does provide teeth in so far as not only may a person who is guilty of harassment be pursued in the criminal courts but also, and I suspect just as importantly, civil proceedings may be brought by that person to obtain an injunction to restrain the person and also civil proceedings may be commenced with a view to obtaining damages in the civil court. Furthermore, when dealing with a person in the criminal court, the court can make a restraining order so that the victim of the harassment will be protected from conduct which amounts to harassment either for a specific period of time or indefinitely.

In my respectful view, this Bill does seek to achieve a very valuable object in our society and I would move that the Bill be read a third time and do pass.

Mr Kniveton: Mr President, I beg to second.

Mr Lowey: It is just that again I think this Bill can be seen as a preventative measure; there is no doubt about that in my view. If we see something growing and this actually is a preventative measure, it gives . . . What do people really want? They would like it not to take place, obviously, and I think by having a very severe Bill in place - and the penalties are severe - after that, if it does happen, then I think the victims then would like the ability to prevent it from recurring, and they have got that with the exclusion zones and all the rest. It is all in this Bill and, at the end of the day, if they feel so severe that they want to go for damages, that permits it under this Bill too. I think the Bill, although it is only a small Bill, sends out all the right signals and at the right time and it is worthy of support.

Mrs Christian: Mr President, I would endorse the remarks of the hon. member Mr Lowey in the sense that I do not think as a community we are generally aware that there is a huge

amount of harassment going on, but for those individuals who may be subject to it, it is obviously a very painful experience. I think he is right in saying that whilst there may be some cases there now which are recognised by the police and they feel they have not got the powers to deal with it, no doubt the message will go out when this is enacted that it will inhibit people who might be tempted to pursue the course of action which would fall under the ambit of the Bill, and it is to be welcomed.

The Lord Bishop: Mr President, I presume that the learned Attorney can assure us that it will not contravene article 10 of the European human rights freedom of expression (*Laughter*) and deny anybody the right to have a crush on anybody he likes and follow it through.

Mr Crowe: I fully endorse what other speakers have said and support the Bill. Harassment seems to be a growing problem and I think it should be attacked with the measures under this Bill, so I am very happy to support the third reading.

Mr Waft: I would support the Bill, Mr President. I would only just say at this stage that to have a Bill on the statute book is essential, but to actually get people to invoke this Bill who are in fear of their life and to know that there is a policeman going to call round at the door of the perpetrator and then walk away - the protection for the individual who is or has been suffering the harassment cannot be dismissed. They must have the full protection of society when they do make a complaint under the Protection from Harassment Act and the public must be seen to know that this protection is available to them, positive protection, when they do make a complaint under the legislation that we are passing at the moment, Mr President.

The President: Mr Attorney to reply.

The Attorney-General: Thank you very much, Mr President, and again I am most grateful to the hon. member Mr Kniveton for seconding this third reading. I am very grateful to the other hon. members for their support of the Bill.

Interestingly, the Lord Bishop refers to the Human Rights Bill and I know that perhaps this was not an entirely serious point but actually article 10 of the Human Rights Convention does say that certainly everyone has the right to freedom of expression but then, in article 10(2), it states that the exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interest of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals and so on. So I am pleased to say that the draftsmen of the Human Rights Convention anticipated the question by the Lord Bishop. (*Laughter*)

I am also very grateful for Mr Waft's comments. I am sure that the police will be pleased that this new armoury of rights and penalties is set out in our proposed legislation and the public will be protected accordingly. So, Mr President, I move the third reading.

The President: Hon. members, the motion is that the Protection from Harassment Bill be read for a third time. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Well, we have dealt speedily with that particular piece of legislation this morning. I am grateful to members and the Council will now sit in private. Thank you very much.

The Council sat in private.