

**REPORT OF PROCEEDINGS OF  
LEGISLATIVE COUNCIL**

**Douglas, Tuesday, 28th March 2000  
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, 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.*

**Apologies for Absence**

**The President:** Hon. members, I have to extend to Council the apologies for absence from Mr Delaney.

**Dr Mann Welcomed Back to Council**

**The President:** Now this morning, hon. members, we welcome back to Council the hon. member, Dr Mann, who was sworn in for a further time earlier today by his Honour the Deemster, the Clerk of the Rolls. We welcome you, sir, and acknowledging your tradition of service to this particular Council we welcome your participation for the future.

**Members:** Hear, hear.

**Joint Committee on the Emoluments of Certain Public Servants – Members Re-Elected**

**The President:** Now, hon. members, we proceed to the election of two members for the Joint Committee on the Emoluments of Certain Public Servants in place of Dr Mann and Mr Radcliffe. Now, I would point out that Dr Mann and Mr Radcliffe are both eligible for re-election. So may I have nominations, please?

**Mr Lowey:** Could I nominate both Mr Radcliffe and Dr Mann for the positions?

**Mr Waft:** I second that, Mr President.

**The President:** Are there any further nominations? If not, I will put those names to Council for endorsement. Are you all agreed?

**Members:** Agreed.

**The President:** Thank you, hon. members.

**Procedural**

**The President:** Now, the Employment (Sex Discrimination) Bill is in the hands of the hon. Mr Delaney, and in view of his absence this will be held over until the next sitting of the Council.

**Police (Amendment) Bill – First Reading Approved – Second Reading Approved –  
Clauses Considered**

**The President:** Now, for first reading we have the Police (Amendment) Bill and I call upon the hon. Mr Lowey to take that reading.

**Mr Lowey:** Thank you, Mr President. The Police (Amendment) Bill and the history of why it has been introduced was that the Council of Ministers considered a report of a subcommittee of that Council in February last year, 1999, which had been formed to examine the need to effect changes to the terms and conditions concerning the employment of the Chief Constable and ways in which the roles of the Police Authority and the Police Consultative Committee could be rationalised. It also considered the framework for the involvement of the public in the development of policing policy on the Isle of Man.

The Bill is principally to amend the provisions of the Police Act 1993 relating to the functions of the department and the Chief Constable, and the appointment and tenure of the Chief Constable, and the main amendments to the Police Act are that the Chief Constable could be appointed for a fixed term; a member of a UK police force could be seconded to act as Chief Constable in the Isle of Man; thirdly, the Chief Constable could be dismissed, suspended or required to resign in the interests of efficiency and effectiveness of the police force of the Isle of Man; and another of the main proposals is that an independent person should hold an inquiry on behalf of the Council of Ministers if the Chief Constable appeals against a decision that he should be dismissed or be required to resign; and that a Chief Constable's right to direct access to the Council of Ministers is to be limited to matters relating to national security or public order. At the moment he has access to both the department and the Council of Ministers on virtually any subject, and the Police Advisory Group is advisory at the moment and that is going to be made a statutory board under the Bill and the department is to have the power, after consultation with the Chief Constable, the advisory group and the consultative forum, to determine the policies, objectives and priorities of the police force and prepare and lay before Tynwald annually a plan specifying those policies, objectives and priorities and the means by which it is intended that they should be achieved. The department's powers are limited to give direction to the Chief Constable as to the exercise of his functions. It may not do so in respect of any operational matter. That is purely the realm of the Chief Constable. The department is to have the power to give written general directions to the Chief Constable or to the Police Advisory Group, or the Police Consultative Forum as to the exercise of his or its functions and seek information or written reports from the Chief Constable of either body.

Mr President, this Bill has had wide publicity. It has the support of the former Chief Constable, the present Chief Constable and the police force. It is a rationalisation of the Police Act and it is bringing the police force up to date, and I warmly commend it to this House. I beg to move the first reading be read.

**Mr Kniveton:** I beg to second, sir.

**Mr Crowe:** Mr President, could I just ask the hon. Mr Lowey about the secondment provision where he is talking that the department may appoint as Chief Constable a member of the police force seconded for the purpose; would this be seen as a temporary measure or would it be more of a longer-term measure to secure pension rights and things like that?

**Mr Lowey:** No, it may be in an extreme case that they may have to have a temporary measure and therefore it is deemed it would be necessary to get a serving officer of Chief

Constable rank to run the Isle of Man on a temporary basis. This gives them the ability to do that. They cannot have a vacuum, in effect, so again it is a proviso that should be in place if that unfortunate occurrence should happen. I do not think it would ever happen, but I think it is wise to have it in being where they can actually do it if they so wished.

**Dr Mann:** Could I ask the mover if this is placing future police Chief Constables in a similar relationship to other Chief Constables in the United Kingdom?

**Mr Lowey:** Yes, much more, they know exactly where they are coming from. It is based on the Police Act in the UK to a large degree and I think it is a formula that in the past the Chief Constables of the Isle of Man, for example, having the direct access, not just to the department, but to the Council of Ministers. It has not been exercised as a regular occurrence, but should it be there? And the answer is 'No, it should not, only on matters of national security,' I would suggest, as outlined in this Bill, so the whole rationale behind the Bill is to make it transparent what the rights and responsibilities of the department are, what the Chief Constable and the force is and also the advisory and statutory functions of the Police Advisory Body are, and I think those working together will actually produce an effective police force that is compatible with the needs of the community, with the political application of money and the supply of good policing methods, and to that extent this Bill actually lays the framework where everybody knows where their responsibilities are, and I think it is good for the police. It is good for the community and I think it is one that I am delighted has been received so well by the Chief Constable.

**Mr Waft:** Just for clarification again on that point, Mr President, with regard to 'the Chief Constable shall have the right to access to the department in all matters affecting the police force', surely that is already in being, is it not? is there some difference there?

**Mr Lowey:** Well, let me just get it absolutely right for the hon. member. It is dealt with in clause 2. He has at the moment the right of direct access to both the department and the Council of Ministers on all matters. What it will be in the future is, it will be restricted to his right to the Council of Ministers on national security or public order matters only.

**Mr Waft:** Okay.

**Dr Mann:** Mr President, can I ask the mover also, does this Bill actually represent a greater political control over a future Chief Constable inasmuch as if the Chief Constable became in conflict with the department, the department then overrides?

**Mr Lowey:** Yes, indeed. I think it would be right to say that - I do not like the word control, because there is a tenure there, but it is right that at this moment in time the Chief Constable is appointed on a . . . Well, the present Chief Constable is on a fixed term contract. This is the first time ever, but in the past the Chief Constable has been appointed and could go on, really, indefinitely. The rules under the Police Act are a little bit woolly. I know as a former Minister for Home Affairs the difficult task of differentiating between what I would call direction from the political end to achieve something. This Bill clearly lays down that annually there will be a direction and it will be publicly stated in Tynwald Court what the aims and objectives of the Home Affairs Board are for the police, and it is up to the police to deliver that, but in operational terms - and I cannot stress this enough - that must be left to the discretion of the Chief Constable and his senior officers. So, yes, in one way it is a greater political input and direction, but it is not on a political direction policing day-to-day matters, it is in the

direction of where the emphasis should be, and the Chief Constable will have to supply that service for the department.

**Mr Waft:** Just further on to that point, Mr President, the Police Advisory Group shall advise the department on maintaining and improving the efficiency and the effectiveness of the police force. Surely, that is the domain of the Chief Constable? Now, I can understand it being for obtaining the views of the people of the Island about policing of the Island and prevention of crime. I can understand obtaining the views and transferring them to the department, but to advise them on improving the effectiveness and efficiency of the police force - I thought that would be down to the Chief Constable.

**Mr Lowey:** Well, let us get it quite -

**Mr Waft:** Maybe I am misreading it?

**Mr Lowey:** Yes, I think you are, really. There are two new advisory bodies, the Police Advisory Group and a Police Consultative Forum, and they are to replace the present Police Consultative Committee. It requires the department, in section 18(1), to establish a Police Advisory Group which will advise it on efficiency and effectiveness, on internal aspects of the police force, and a Police Consultative Forum, which will be a sounding board for public opinion on policing and crime prevention, and I think this is a conduit as much for the service for the police to know what the concerns are and, as you know, the present Chief Constable and the former Chief Constable have been very, very keen on getting a public input into policing and how it is affecting the community which they serve, and that is the operative word: the police are there not to control the community, they are there to serve the community, and I think it is an important part of that process for the officers to actually know what the community they are serving thinks about the services that they are providing. I think those two forums are very valuable.

**The President:** Right, hon. members, I will put the resolution that the Police (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.

Now, the hon. member has indicated to me his wish to, if possible, proceed with the second reading of this Bill, so it is over to you, sir.

**Mr Lowey:** Yes, could I seek the permission of the Council to suspend standing orders to take the second reading and the clauses of this particular Bill? As I did say, Mr President, this Bill has had a lot of publicity and it has had universal support for its aims and objectives, and therefore I think it is important that we should expedite it as quickly as we can in this Council. So could I ask for the suspension of standing orders?

**The President:** Will you move the suspension of standing orders, sir?

**Mr Lowey:** Could I move:

*That Standing Order 22(2) be suspended to enable the second reading and clauses of this Bill to be taken.*

**Mr Kniveton:** I second, sir.

**The President:** Any comment, hon. members?

**Mrs Christian:** Mr President, I do not really have a problem with the suspension, but I do not think an argument has really been put for it to say that everybody has agreed with it and that is the reason. Is there a deadline somewhere in this?

**Mr Lowey:** No, but I think there is an important aspect of trying to get the police and its arrangements in being and settled down as quickly as possible, and when there is unanimity in the objectives and in the way of achieving it, then I can see no reason at all why it should not be put in place as quickly as possible. There are no impediments in speaking this piece of legislation through.

**The President:** I will put the resolution, hon. members, that standing orders be suspended to enable the second reading and consideration of clauses to be taken in respect of this Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Proceed, sir.

**Mr Lowey:** Thank you, Mr President. This Bill is principally, as I said, to amend the provisions of the Police Bill 1993 relating to the functions of the department and the Chief Constable, and the appointment and tenure of the Chief Constable.

There are a number of new provisions to note in the Bill: the first, it enables the department to appoint a Chief Constable for a fixed term or by way of secondment from a UK force. The terms of such a secondment must be agreed with the UK Police Authority and the person concerned will be approved by the Council of Ministers. It also enables the department to require the Chief Constable to resign in the interest of efficiency and effectiveness of the police force.

The second one limits the Chief Constable's right of direct access to the Council of Ministers to matters of national security or public order, not matters affecting the police force.

The third element gives the department a new duty to decide on the policies, objectives and priorities of the police and to produce an annual plan setting them out with ancillary powers to give direction to secure their achievement and to obtain information. It also clarifies the department's duty to maintain the police force and the department's powers are limited to give directions to the Chief Constable as to the exercise of his functions. It may not do so in respect of any operational matters.

The fourth area gives the department new powers to make regulations for the Special Constabulary, and the fifth main clause provides for the establishment, as I have said, of two new advisory bodies, a Police Advisory Group which will advise the department on efficiency and effectiveness - for example, on internal aspects of the police force - and the Police Consultative Forum, which will be a sounding board for public opinion on policing and crime prevention in the Isle of Man. Mr President, I beg to move the Bill be read a second time.

**A Member:** I beg to second.

**Dr Mann:** I cannot understand the undue haste in putting this Bill through, and I must say it takes me back a long time to Mattie Ward, when he was in charge of the Police Board, who said he would be totally and absolutely opposed to political control of the police force, but it would take a few Bills and this seems to be the final one.

**Mrs Christian:** Mr President, I think that in terms of setting out where the political involvement begins and ends this is a useful measure, because undoubtedly in the past there

has been a view that the police were, shall we say, a law unto themselves in terms of how they were deployed and what they did. This does give some clarity in terms of where the department fits into this, and I think, from the point of view of the public, I believe that they would feel that there should be some political direction in respect of how the police force operates in the Island. That is not to say - and the hon. mover has indicated this - it is a question of controlling deployment or the way in which they go about fulfilling those policies, but I do believe it is appropriate that we have a clarity here in statutory form of what involvement the Department of Home Affairs shall have in determining the policies under which the police operate.

**Mr Crowe:** Mr President, could I ask the mover just about the question of the Police Advisory Group and the Police Consultative Forum which are to replace existing bodies? Perhaps he could give an indication of numbers of people and what their main objectives are likely to be, and these bodies would be established fairly soon after the appointed day order, I would presume. Perhaps the mover could just throw a bit of further light on that?

**Mr Kniveton:** Can I add to Mr Crowe, please - who appoints them, sir, and what qualifications are required? Thank you.

**Mr Waft:** Could I just ask perhaps what would be the interpretation of the criteria in which the efficiency and effectiveness of the police force or otherwise were in the public interest? What criteria would be used in the case of the dismissal of the Chief Constable?

**The President:** Reply, sir.

**Mr Lowey:** Well, could I first of all thank the members for their interest in this Bill. As I said at the first reading, Mr President, there should be no impediments in getting into statute form the regulations which clearly, as Mrs Christian has said, eliminate grey areas, and there have been; as a former Home Affairs Minister I know only too well the delicate balance between control and direction and the sensitivities on both sides and, as mention has been made of my late friend, Mr Mattie Ward, who was Chairman of the Police Authority, his views were mirrored by myself, and the word used is 'accountability' and it is absolutely right and proper that the police are accountable. Therefore I think this particular Bill does clearly lay down the divisions and where their responsibilities are. It gives the politicians their role, it gives the police their role and it gives the ability for the community to have an input and an influence before events happen in regard to the form of policing that is required for the Isle of Man. So I have no doubt at all that the aims of the Bill are right, the means by which they hope to achieve it are right and I hope, when I come to the clauses, I will be able to persuade members that it is the correct vehicle.

Now, Mr Crowe and Mr Kniveton mentioned the setting up of the consultative and advisory bodies. Well, in this case they provide for members of those bodies to be appointed by the Council of Ministers after appropriate consultations, with terms of office to be decided by the Council. They are not to include serving members of the Isle of Man Constabulary, so apart from that anybody else is eligible. The department would consult with those bodies where it thinks fit and requires it to have regard to their advice, whether or not it is asked for it. It is also the duty of the department to consult those bodies when exercising its planning and policy functions under the new Bill, so there is a responsibility on the department not just to use them as and when; there is a statutory obligation on the department to consult with those

bodies before it makes its policy statements annually to Tynwald Court. Again, I think the way in which the Council of Ministers appoint these people and who are eligible to it - in the past they have advertised in the press for people with an interest, they have asked members of Tynwald to submit names to a panel and then they are vetted and there is a selection taken from the names that are not evolved but screened out and regional, sex - so many women, so many men. I can assure all of those balances come into play when the Council of Ministers decide who will be sitting on those departments and if Mr Waft will remind me of his question I will attempt to answer it.

**Mr Waft:** It is just, Mr President, about the criteria for dismissal of a Chief Constable. What constitutes 'in the interests of efficiency and effectiveness' or would that clearly be set out for a Chief Constable as guidelines?

**Mr Lowey:** Yes, there will be. There is a formula in which the Chief Constable cannot be dismissed as a whim, or for them to suspend him or require him to resign. There would have to be a proper set of rules and I would assume - and I look to the Attorney-General here to give me advice - that those rules will run parallel to what is in operation in the United Kingdom. So again, there are set formulae; each step has got to be taken before you can move on to the next and so there will be a formula and a framework in which they can operate.

**The Attorney-General:** Mr President, just in support of the hon. mover, clause 1 (5), (6), (7) and (8) does build in protection for the Chief Constable. The Chief Constable is given an opportunity to make representations to the department, and nowadays human rights considerations are very much to the fore. This hearing, when considering whether or not the Chief Constable is to be dismissed, would have to have regard to the duty to give a fair trial, a fair hearing to the Chief Constable, and if the department had acted unreasonably and unfairly and, to use the mover's words, had acted on a whim in saying that the Chief Constable had not been efficient or had not been effective, then in the usual way the Chief Constable could apply for a judicial review by petition of dolence.

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

**Mr Lowey:** Thank you, Mr President. Clause 1 replaces section 2 of the Police Act 1993 and deals with the appointment, tenure of office and the removal of the Chief Constable.

Section 2(1) requires the department to appoint a Chief Constable. Before doing so it must consult the Council of Ministers. This is no change to the existing practice.

Section 2(2) further requires the department to advertise the job, to interview selected applicants. It also must consult the Council of Ministers on the short list and consider the views of the Council of Ministers before making an appointment. Again, there is no change to the existing formula.

Section 2(3) enables the department to make an appointment for a fixed term. This is a new provision.

Section 2(4) also enables the department to make an appointment of a person seconded by a UK police force. The terms of such secondment must be agreed with the UK Police Authority, obviously, and the person concerned and approved by the Council of Ministers and

are in any case subjected to the provisions in (5), (6), (7), (8), and (9) below. Again this is a new provision.

Section 2(5) enables the department to dismiss the Chief Constable, suspend him or require him to resign either in the interests of the efficiency and effectiveness of the police force or in the public interest. The power to require him to resign is new, as is the reference to efficiency and effectiveness; otherwise there is no change.

Section 2(6) requires the department, before acting under (5), to give him an opportunity to make representations and consider those representations. If it decides to dismiss him or to require him to resign it must give him 28 days' advance notice and, apart from the reference to requirements to resign, there is no change to the existing regulations.

Section 2(7) enables the Chief Constable to appeal to the Council of Ministers against an intended dismissal or requirement to resign, and in that case no action can be taken without the Council's consent, and apart from the reference to the requirement to resign there is no change in the present legislation.

Section 2(8) requires the Council of Ministers, in case of an appeal, to appoint a person to hold the inquiry. Again, there is no change in that to the existing legislation.

Section 2(9) requires Council to consider the report of the inquiry before giving its consent under subsection (7). Again there is no change in that. So, Mr President, I beg leave to move clause 1.

**Mr Waft:** Just one more point, Mr President: with regard to 2(4) and the secondment of another Chief Constable from a force in the UK for the purpose by the Police Authority of that force for such a term, would the mover maybe elaborate on the situation there with regard to pay and accommodation and that sort of thing?

**The President:** You are seconding the clause?

**Mr Waft:** I would second then, yes.

**The President:** Thank you.

**Mr Lowey:** Well, that would be a matter between the department and the individual as to the terms and conditions of pay and on what terms you would be employed. That would be a contractual matter between the Department of Home Affairs and the person who was coming in.

**Mr Waft:** Can I take it this is for the benefit of the UK force?

**Mr Lowey:** No, this would be for the benefit of the Isle of Man. We would be seconding a Chief Constable, as I see that, for a temporary appointment in the Isle of Man and the pay and conditions are what I would call contractual arrangements between the department and the individual concerned.

**Mr Waft:** So we could be paying for two Chief Constables, in fact?

**Mr Lowey:** Well, that could very well be. If that scenario arose where there was a challenge and we had not got rid of one before we seconded somebody else in, then that could very well be, but I would see that as a very, very rare occasion. I could win the National Lottery more often, I would have thought, than that actually, but it could be that we could

actually be in a position where there would have to be a temporary thing, because these things would not be settled, I would have thought, very rapidly if there was a conflict.

**Mr Kniveton:** Under subsection (8), Mr President, 'If the Chief Constable appeals under subsection (7), the Council of Ministers shall appoint a person to hold an inquiry' - can I ask the hon. mover, does the Chief Constable have a right of objection to the appointed person?

**Mr Lowey:** I would not have thought so, but I would leave that to the Attorney-General to confirm my suspicions. It would be a matter for the Council to decide who the independent person is. You cannot have somebody saying 'By the way I do not want him, but I will have him.'

**The Attorney-General:** Yes, I entirely support that, Mr President. It would be the duty of the Council of Ministers to appoint a person who is wholly independent of the Chief Constable and of the department, someone who would have some experience in relation to these matters, and again I would just emphasise how important it is that a fair hearing be given. It would be quite wrong for the appointed person to be biased one way or the other.

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

**Mr Lowey:** Thank you, Mr President. Clause 2 amends section 3 of the Police Act so as to limit the Chief Constable's right of direct access to the Council of Ministers to matters of national security or public order, not matters affecting the police force. At present he has the right of direct access to both the department and the Council of Ministers on all those matters and this is not something which is desirable, not that they have exercised it but it should not be there, and I beg to move clause 2 stand part of the Bill.

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

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

**Mr Lowey:** Clause 3, Mr President. This clause gives the department a new duty to decide on the policies, objectives and priorities of the police and to produce an annual plan setting them out with ancillary powers to give directions to secure their achievement and to obtain information. It also clarifies the department's duty to maintain a police force.

Sub-clause (1) provides that the department's general duty is to maintain an efficient and effective police force in place of 'adequate and effective' as at present based on the UK Police Act 1996.

Sub-clause (2) substitutes section 4 and inserts a new section 4A in the Police Act 1993.

Section 4(1) gives the department a new duty to decide on the policies, objectives and priorities of the police and to produce an annual plan setting them out. It must consult the Chief Constable and the new Police Advisory Group and Police Consultative Forum, which is a new provision.

Section 4(2) gives the department powers to give directions to the Chief Constable and those bodies and to obtain information from them in order to decide on its policies and to

secure their achievement. This is a new provision except that the department can at present require reports from the Chief Constable.

Section 4(3) limits the department's powers to give directions to the Chief Constable as to the exercise of his functions. It may not do so in respect of operational matters, the discipline and disposition of the police force, et cetera. This is a new provision.

Section 4(4) enables the Chief Constable, if he thinks fit if it is unnecessary or ought not to be disclosed, to refuse to comply with a request by the department for information unless it is confirmed by the Council of Ministers. This is no change in the present policy. And section 4A requires the Chief Constable to give the department an annual report which is to be laid before Tynwald, and, apart from altering the timing from the year to 31st December to the year to 31st March, there is no change in that provision.

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

**Dr Mann:** You say under section 4A, right at the end, 'The Chief Constable shall, as soon as possible after 31st March. . . submit to the department a general report in writing. . .' You say there is no change. I thought at the moment the Chief Constable's report was the responsibility of the Chief Constable and he issued the report. Here there is a change inasmuch as it has to come to the department first and then to the Council of Ministers before presumably it is being published.

**Mr Lowey:** Well, my recollection was that the report was always submitted to the department, then to the Council of Ministers and then to Tynwald as soon as practical after 31st March, and that is the advice that I have been given by the department, that there is no change in the existing one apart from altering the timing of the year to 31st December from 31st March.

**Mrs Christian:** Mr President, I think that in practice those procedures, though in place, were not always observed and that may have led to the misunderstanding about what the procedures were.

**Mr Lowey:** The lack of clarity again.

**Mrs Christian:** Yes.

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

**Mr Lowey:** Thank you, Mr President. This clause gives the department new powers to make regulations for the Special Constabulary.

Sub-clause (1) inserts a new section 8A in the Police Act 1993. Section 8A(1) gives the department power to make regulations for the government, discipline, administration and conditions of service of special constables similar to its powers under the 1993 Act, which actually says 'to make police regulations for the regular constabulary'. This is a new provision. And section 8A(2) applies provisions of section 8 to regulations under (1). They may be made retrospective in relation to pay and conditions, but not so as to reduce pay or allowances retrospectively.

Sub-clause (2) is a transitional provision. An order made by the Governor in 1954 currently regulates special constables, but it is doubtful whether it is, and I hate to say it, legally valid, but there is certainly no power to amend or replace it, so until new regulations are made the order as amended is given legal effect and will continue in force as if it were regulations under the new section 8A. This is a transitional period until the new regulations are placed before Tynwald and approved.

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

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

**Dr Mann:** Do these regulations, Mr President, have to be laid before Tynwald or approved by Tynwald, or are they just regulations made by the department within itself?

**Mr Lowey:** I would have to take some advice on that one. I would have thought that as most regulations are usually approved by Tynwald. . . but rather than hazard a guess I would rather come back to the hon. member at the third reading and give a definitive answer as opposed to guessing it. My view is that I think it could be laid before Tynwald for approval.

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

**Mr Lowey:** Clause 5, Mr President, provides for the establishment of two new advisory bodies, a Police Advisory Group and a Police Consultative Forum, and this will replace the present Police Consultative Committee. It substitutes a new section 18 in the Police Act 1993.

Section 18(1) requires the department to establish a Police Advisory Group, which will advise it on efficiency and effectiveness - for example, on internal aspects of the police force - and a Police Consultative Forum, which will be a sounding board for public opinion on policing and crime prevention.

Section 18(2) provides for members of those bodies to be appointed by the Council of Ministers after appropriate consultations, which I have explained, with terms of office to be decided by the Council. They are not to include serving members of the Isle of Man Constabulary.

Section 18(3) requires the department to consult with those bodies where it thinks fit and requires it to have regard to their advice, whether or not it has asked for it. Also the duty of the department is to consult with those bodies when exercising its planning and policy functions under the new section 4 and its powers to give them direction and to require them to give information. So it is a two-way street: it is a requirement on the department to set these bodies up and consult with them and they can actually ask these new bodies for their views whether they are forthcoming or not, and the reverse is true - that both those bodies can actually give advice to the department whether it is asked for or not. I think that is a healthy exchange of views; it is a two-way street, and I think that can only augur well for the future.

I beg to move clause 5 stand part of the Bill.

**Mr Crowe:** Mr President, I beg to second the clause and just again comment on the new groups. Could I ask the mover, is he able to give an indication of how many people would be

involved in these groups? Would it be 5 or 10 or 15 or 20? Has any optimum figure been set or is it still subject to review?

**Mr Lowey:** It is still subject to review, and I think it is a matter of which is the most appropriate and most effective. I would have thought myself you would be able to keep the Police Advisory Group to a small number to make it effective, because that is an operational matter. When I say 'operational', efficiency and effectiveness - I can see areas where people in the new technologies are able to use that advice and advise the best use of resources for policing in the Isle of Man and yet a sounding board for public opinion does seem to me to demand a larger number of people to be able to reflect the many facets of Island life and community, and therefore I would have thought one would be small, one would be larger but both have that ability to either offer advice up or to be asked by the department for its advice. I think that is right, but the exact numbers - no, I cannot say that those have been decided.

**The Lord Bishop:** Mr President, could I just ask, bearing in mind that we have in recent times appointed alcohol advisory groups and drug advisory groups, isn't it getting a bit top-heavy with advisory groups and fora (or whatever the plural of forum is) or would this be incorporated in the consultative forum body? There seem to be an awful lot of advisory groups meeting and perhaps they will be acting without consultation with each other.

**Mr Lowey:** Well, I would have thought that, whereas the alcohol is specific, policing generally is wider. There is a danger, obviously, my Lord Bishop, that you can be so busy consulting that you cannot make decisions and it runs into the sand. On this particular thing I believe the balance is right. I think the work of the first Police Consultative Forum has been invaluable. It has been a forerunner, a trial. I think lessons have been learnt by that and these two new bodies, I think are the next logical development of that, and again I think the police want to hear what the community think about them and the way in which they are delivering the service, and I come back to those words I used in my opening remarks: it is about the police serving the community, and I think it is vital that, if that is the case, then they should have avenues open to them other than politicians as well that they can actually hear what the public are considering. So yes, there is a danger that you can have too many, but I do not think we have quite reached it yet in the way in which has perhaps been suggested by my Lord Bishop.

**Mr Waft:** There is some sort of a parallel with the Department of Local Government and the Environment and the Planning Committee and the advisory bodies that are on there, and I am interested when it says that 'The Department shall consult with those bodies on all matters on which it appears to the Department that their advice would be desirable'. In other words, they can take it or leave it as they think fit, which was an item of concern when a previous Bill went through.

**Mr Lowey:** Yes, indeed, and the answer to that is, I have to say that all advisory bodies at the end of the day - advice can be just that. You take as much or as little as you think, but I do not think you can statutorily lay down that because it comes from the advisory body therefore it must be, but I think it is very important when you are garnering information that you should be subject to advice from perhaps an opposing point of view. Whether you take it or not, or take a little bit of it or not, I think, is a matter for you at the end of the day but advisory groups are there to advise. It is for politicians and departments to act on it and then come up with a definitive answer. This is not a way of absolving politicians from their responsibilities; it

is a matter of trying to get the best advice before you make the decision, and I think that can only be healthy.

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

Finally, clause 6, the short title and commencement.

**Mr Lowey:** Thank you, Mr President. This clause gives the Bill its short title and provides for it to come into force on a day or days to be appointed. I beg to move clause 6 stand part of the Bill.

**Mr Waft:** 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.

**Mr Lowey:** Thank you, Mr President.

### **Retirement Benefits Schemes Bill – First Reading Approved**

**The President:** We move on, hon. members, to item 5 on the order paper, and I call upon the hon. Mr Radcliffe to take the first reading of the Retirement Benefits Schemes Bill.

**Mr Radcliffe:** Thank you, Mr President. I am delighted that this Bill has at last got to this particular forum. I would just briefly give members an overview, if I may, of the reason and the thinking behind this Bill. Government decided quite some time ago that there should be a regulatory framework for domestic and international pensions and that it was important and this should be developed. Responsibility for that development and the subsequent management of the pensions area was delegated through the Treasury to the Insurance and Pensions Authority. Treasury, the authority and all those who participated in the development stages took their terms of reference from the pensions law review and that was known as the Goode Committee. They also took terms of reference from the 1995 Pensions Act, which is a UK Act, and the many changes which have happened to pensions provisions around the world. The focus has always been, though, to provide an effective, proactive but uniquely Manx framework to promote pension provision and to protect members of Manx schemes.

Consultation upon the contents of this Bill has been ongoing and very, very extensive. In 1996 a pensions task force was assembled under the auspices of the IPA to develop the proposals, and this working party was drawn from not only the Manx marketplace but it included members of the authority, personnel from the income tax division, personnel from the Department of Health and Social Security and the IPA's external consultants, legal, financial and actuarial. Further discussion was conducted with interested parties, including insurance companies, schemes and other potential product providers, and this consultation was on an ongoing basis.

In September 1997, two and a half years ago, a formal presentation of the proposals was given to an audience of some 250 people at the Manx Museum - it seems an awful long time ago - and this particular presentation heralded the first public airing of the proposals and marked the beginning of an extended period of consultation. In all, over 1,000 consultation packs were issued and the response, as far as responses go, was good in that only 20

responses were received - in other words, the industry was satisfied with what they had in those consultation documents. In view of the responses which were received, few though they were, the authority made certain revisions to the initial proposals. In May 1999 the authority again consulted upon the revised proposals, well on to 1,000 consultation packs were again issued and 24 responses were received.

Now, prior to the introduction of the Bill the authority, in its pursuit of open and democratic consultation, assembled a review group drawn from the consultative respondees; in other words, those who made criticisms were invited for their comments as part of a full consultation and this review group assisted the authority with the final deliberations. So there can be no doubt that consultation upon this particular Bill has been very extensive, and indeed the authority continues to have dialogue with the marketplace.

If I can just move on, up to now only Luxembourg has enacted legislation which constitutes a more formal solution than those in existence. The Luxembourg framework is very different from that proposed by this Bill as the target market from the Luxembourg end is the European Union whereas the Isle of Man Bill that we look at today is pan-global in outlook. Furthermore, the Luxembourg model is based in legal terms upon a corporate structure whereas the Manx model is based upon trust law, and this is very much in keeping with our historical strengths. However, the very existence of such legislation in another jurisdiction indicates that the international pensions market is ripe, and enactment of the Bill will enable the Isle of Man to capitalise on the potential which is there.

It is only fair to point out that in due course there will be a further Bill promoted by the income tax division of Treasury, and this particular Bill will set out measures for a fiscally attractive environment to encourage high levels of pension contribution and to allow contributions from certain groups not currently permitted to make contributions. The two Bills therefore, although having separate objectives and able to exist in isolation, are mutually complementary and together will positively influence the development of the pensions market in and from the Isle of Man.

The Bill also introduces extensive whistle-blowing provisions, introducing a duty upon the trustees, administrators and professional advisers to report any suspicions to the authority at the earliest possible opportunity, and this will act as an early warning alarm system and is very, very essential, I would suggest.

So finally, this Bill heralds a timely development in the pensions arena. The Bill represents a commercially sensitive and innovative solution to the problems of pension regulations which is uniquely Manx in its approach. Enactment of the Bill will help to protect the interests of all those who participate in Manx pensions whilst at the same time developing the infrastructure to facilitate a new market for international pensions. This will help the Isle of Man to cater for our domestic interests and diversify the finance industry still further.

I beg to move, Mr President, that the Retirement Benefits Schemes Bill be read a first time.

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

**Mr Crowe:** Mr President, having had an interest in this area for many years I am happy to support the Bill. Retirement benefits - the whole subject - has become a very important

feature in the future management of the financial affairs of many people, and expatriates and many people living and working outside their usual home base are seeking a secure home for their pension funds, and the Island has been successful in doing this. Any moves which will develop the international business of the Island are to be welcomed. As the mover says, we recognise there is a great deal of competition with other jurisdictions - Guernsey, Jersey, Ireland, to mention a few, and Luxembourg where, as the mover has obviously mentioned, new legislation which is geared to the European Union market. So the Isle of Man is a world player in this market and to reinforce the security of a person's investment will only help in this objective. Thank you, Mr President.

**Mr Waft:** Just for clarification, Mr President, I can understand the large pension schemes and large companies who have deposits on the Island - I am thinking in terms of people who actually pay for their pension scheme, and the company that administers that pension scheme can actually sell that pension scheme to another company who will administer that pension scheme, and so the person who is paying a pension is suddenly finds that the company which administers their pension is suddenly now administered from another country, perhaps, or certainly another company. It mentions in the explanatory memorandum about the legislation which deals with both domestic schemes under which benefits are available to residents - that is fine - and international schemes, in which benefits are made available to non-residents, but there are some international schemes which make payment to residents. I just wonder if he sees that could be a problem in trying to monitor international schemes. I am only concerned with the payer of the pension scheme who finds himself actually paying into a pension which is administered by a different company and what the security is that that person has. Thank you, Mr President.

**Mrs Christian:** Mr President, I welcome the Bill. The question of pension provision has become very much more high profile in recent times, given the consideration in relation, for example, to the future of state provision and its adequacy or otherwise, and it is good to see that we are introducing legislation here which will allow domestic schemes to be developed in the Island. As the hon. member Mr Crowe has indicated, of greatest concern to anybody who is putting aside resources for their future retirement is the security of the scheme, and the hon. mover has indicated that the provisions of this Bill and the way in which our Insurance and Pensions Authority operates will provide for proper regulation of these schemes to give people a measure of security in their investment here, and I think this is to be welcomed.

**Dr Mann:** I also would like to welcome this Bill. Certainly the domestic market here, although very small, of course, is potentially very fragile and we certainly need this sort of legislation to improve the feeling of security of our own domestic schemes, but it is, of course, geared to a wider marketplace which will be, I think, much more difficult actually to establish than everybody thinks, so we are starting with a very necessary provision domestically with the hope that eventually this will build upon something very much bigger and I certainly will support it.

**The President:** Reply, sir.

**Mr Radcliffe:** Thank you, Mr President. Well, I thank hon. members for their support for the Bill. It is a timely Bill. It is, to my mind, rather a pity it has taken something like three years or more to get from the initial consultation, almost, to today.

I thank various members for their support. If I just say, in answer to the hon. member Mr Crowe, the move these days is to move away from state benefit schemes, there is no doubt about that, and everybody is giving due warning that in time state benefit schemes will not be able to provide all that is required, and people are being encouraged - I would not say forced, that is too strong a word, I suppose - certainly to make their own provisions for retirement, and the market is there; why shouldn't we be one of the leading players in it? It is as simple as that, really.

The hon. member Mr Waft and his query about companies who administer pensions selling that interest onto another company. This is certainly acknowledged to be the case, and the provisions are in the Bill and I will explain, perhaps, more fully at the clauses stages the safeguards that are there for that sort of thing. The important thing is the security of those who invest in pension funds. We all know of the examples where, because of insufficient control, the whole schemes have gone awry and people have lost a tremendous amount of money through that.

The hon. member to my right, Mrs Christian, again welcomes the Bill. This certainly will give full and proper regulation of schemes; the whistle-blowing aspect is there. The onus is very much on trustees; they are trustees and are well aware of their duties as trustees in respect of any particular scheme.

The hon. member Dr Mann again welcomes the Bill. Certainly it does give security for domestic schemes. The international schemes - the interest is certainly there. I know from the contacts and the enquiries we have had regarding this legislation - this is directly to the Insurance and Pensions Authority - that people all over the world, pretty well, are waiting for this legislation to come into being, asking where and when is it, and indeed the pension providers are pressing for the Bill to be enacted. So they have their plans already laid and what they want is the legislation behind them to enable them to go out and sell. The interest is there, I think there is huge potential for this particular one and I beg to move, sir, that the Bill be read a first time.

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

### **Agriculture (Miscellaneous Provisions) Bill – First Reading Approved**

**The President:** Item 6, the Agriculture (Miscellaneous Provisions) Bill. I call upon the hon. Mr Crowe to take the first reading.

**Mr Crowe:** Mr President, this Bill will amend legislation relating to agricultural holdings, wildlife, sea fisheries and agriculture.

Firstly, the Agricultural Holdings Act of 1969 is amended to enable tenancies of bare agricultural land for a term of between one and five years to be agreed subject to certain conditions being complied with. Consultation has taken place with the Manx National Farmers Union and the Isle of Man Agricultural Marketing Society to arrive at this formula.

Moving on to the Wildlife Act of 1990, that Act is amended so that occupiers of land will require a licence from the Department of Agriculture before killing or taking birds in areas of special protection.

The next part of this Bill contains amendments to legislation relating to the charging of fees and is designed to simplify existing provisions.

Turning now to the Agricultural Marketing Act 1934, amendments are included in this Bill giving powers of entry to ensure compliance with import restrictions under the 1934 Act.

Other features of this Bill are to amend the byelaw-making powers of the Department of Agriculture, Fisheries and Forestry under section 2 of the Sea Fisheries Act of 1971. It concerns the carriage of undersized fish on board vessels and the possession and sale of undersized sea fish in the Isle of Man. I beg to move the first reading.

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

**Mr Lowey:** I will be supporting the Bill but I would not let it go without commenting. It does seem strange to me, on the security of tenure, the principle that somehow you create a better environment if you do not give somebody security in the tenure of the land, because agriculture is or it used to be, not something that is short-term; it was very much long-term. There was rotation of the fields and all the rest of it. I understand that agriculture changes and the needs of agriculture changes, and I have heard today the farmers' leaders saying that it has got to change and therefore it comes as no surprise, but getting rid of it altogether, it seems to me, could create . . . What was it brought in for? It was to ameliorate against short-termism, and we are going back to short-termism as the answer. Now, I know history goes in cycles and all the rest of it. As I say, it does seem rather strange to me that farming today is going backwards in the sense of security of tenure of land. While there may have been some abuses in the past I think it served the Island and the industry quite well. Obviously the department, after consultation with the industry, have come to a different conclusion. I hope they are right; I hope we are not going to have to come back in a few years' time and say we need to reintroduce it, because reintroducing it will be harder than abolishing it, I can tell you that, and so to that extent I have to go along with it, but I think it would have been wrong to see it just cease, without some comment because there are very strong arguments on both sides. But I am going along with the department who, I am assured, will have taken advice from the industry and have come up with this solution. Whether it is the right solution for farming in the long term I, as an outsider, would question.

**Mr Waft:** I think that if you think of farming as a business and the right of a business to carry on provided the lease is renewed, to evict someone in that situation would not be in anybody's best interest, really, but I just wondered at this stage whether there had been consultation taking place with all the people that need to be consulted. And I wondered about the one to five years, whether this is retrospective, or is it five years from the date of the Bill going through? Perhaps the mover might clarify that.

**Mrs Christian:** Mr President, I suspect that when we get to the clauses we might get into some detailed discussion on that particular provision of this Bill, which is a mixed bag of items, but that seems to be the one of major concern. It is a difficult situation and the hon. member Mr Lowey has intimated that security of tenure will disappear out of the window. I think it is still there for those who have it currently, even with these changes, but if and when someone vacated a property and gave up that security then obviously I think that the tendency will be to revert to this new provision.

I can see the department are in a difficult position in seeking to promote an improvement of the situation where currently land is only let on a 364-days' basis, which cannot be good for husbandry in the longer term, so to that extent an extension of 364 days to five years, albeit only on bare land, does, I would suggest, represent an opportunity for improved husbandry. I think it is being proposed that this is being done to improve the lot of the young person who may wish to get into agriculture. However, I think when we come to the clauses we might think about that in some detail.

It is not an easy issue to resolve. I think that the expansion to five years does represent an improvement in respect of husbandry, but for whom that advantage will be made available, I think, is questionable, possibly only for existing farmers who can take on additional land rather than the objective which I think is behind it in terms of young people trying to get into the industry. They may be able to but there may be difficulties in that.

**The President:** Reply, sir.

**Mr Crowe:** Thank you, Mr President. Can I thank Mr Lowey, Mr Waft and Mrs Christian who have all raised this question of the security of tenure, and can I just confirm to members that it is important to stress that all of the present protection on tenancies is retained for existing long-term tenancies, and the present situation is, as members are aware and some members have commented, that you have either an existing long-term tenancy or you rent land for a day less than one year; you rent it for 364 days. Now, in order to give rotation of crops and improved husbandry of the land it was felt that periods of between one and five years would allow proper management of the land, and this was discussed and debated and agreed with the farming community. The intention is that it will improve tenancies, giving more security of tenure, and help the land and help agriculture generally. So I know, as members have said, we will get into further debate in the second reading and the clauses stage, so with those comments can I move the first reading, sir?

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

### **Electronic Transactions Bill – Clauses Considered**

**The President:** Turning now to item 7 on the order paper, I call upon the hon. Mr Crowe to take the clauses of the Electronic Transactions Bill and I understand, sir, you wish to take them singly.

**Mr Crowe:** Yes, sir.

**The President:** Clause 1 then, sir.

**Mr Crowe:** Yes, sir. I think I have come out of the frying pan into the fire! *(Laughter)*

Clause 1 lays down the general rule that any transaction may normally be carried out by means of an electronic communication.

Sub-clause (1) sets out the rule that a transaction is not invalidated simply because it is carried out wholly or in part by means of an electronic communication - that is, by fax or e-mail.

Sub-clause (2) provides this general rule is a default provision. It is subject to various exemptions in part 1, clauses 1 to 3, and part 2, clauses 4 to 8.

Sub-clause (3) enables regulations made by the Department of Trade and Industry or the Treasury, subject to Tynwald approval, to exclude the general rule in a particular case, either by reference to the kind of transaction or to the provisional rule which requires a communication to be in a particular form; for example, regulation may require a will or a transfer of land to be effected by a paper document. I beg to move clause 1.

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

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

**Mr Crowe:** Clause 2 recognises that it is important for many purposes to determine when and where information is sent and received. For example, in relation to the formation of a contract or compliance with a statutory requirement to provide information, it lays down general rules which will apply where the parties to a transaction have not agreed otherwise. There are rules for determining when an electronic communication is to be treated as being sent and it deals with single information systems such as a bank, ATM or multiple information systems such as used in the internet for e-mails. It also covers rules to determine when an electronic communication is to be received. This is important for determining when a contract is made. As a general rule, it is treated as received by him when it reaches his ISP system, so a person cannot avoid receiving a message by refusing to open his electronic mail box. If his e-mail address is not known it will be received when it comes to his attention.

This clause also covers the situation where a person may be travelling and uses e-mail. This clause covers the situation, and a message is to be treated as being received or sent from the person's usual place of business. Exclusions to the general rule may be made by the Department of Trade and Industry or the Treasury subject to Tynwald approval. I beg to move clause 2.

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

**Mr Lowey:** I am puzzled. I said I was when I started, Mr President. I am more puzzled now only in clause 2. Could the mover perhaps tell me: what we say is, this will happen when it is put into the electronic except when the department, with the approval of Tynwald, decides otherwise. I am puzzled; I cannot for the life of me understand when the Department of Trade and Industry would want to step in and for what purpose - ever.

**The President:** Reply, sir.

**Mr Crowe:** Thank you. Could I thank Mr Lowey for his comments. I think the whole concept of electronic communications is one that we all, shall we say, struggle a bit on the concept of, and I have as much difficulty as everybody on this and I think it is converting it almost to the point of bringing it down to the basis of a paper contract where you and I might be buying or selling a house and the advocate gives me a contract to sign and I sign it and then it goes to another advocate, and you sign, and the contract is complete when the two sides have each confirmed it. This is really bringing that concept so that if you and I are on an e-mail internet communication system, when I send it there are rules as to when it is sent by

me into the system. So these determine the general rules and then you can have exclusions which can be made by order. For instance, if I was travelling in the USA and wanted to communicate with you I would do it through an e-mail system in the USA and it would arrive at your e-mail box in the Isle of Man or wherever it was. Now, if we had agreed a contract verbally and this was confirming it through communication, you could not switch your machine off and say 'I didn't want to know about that.' There are the rules that it hits your box or your provider's system and then that is the contract. So it is the sending and receiving - it is the principle of establishing that.

**Mrs Christian:** Mr President, given that many of us are only beginners in respect of this sort of technology and people, I think, when they first get on to e-mail do not look at it regularly because they do not get mail regularly, the point that the hon. mover has made is an interesting one, that as soon as it is in your box that is it recorded. I presume the technology is there to accurately record the time of dispatch and the time of arrival. As one who has not yet moved all my clocks on, (*Laughter*) I presume that there is something in the system which determines on a universal or a worldwide basis the accuracy of the timings which apply, particularly in respect of contracts and so on. I do not know whether the hon. member can answer that or not, but if I were going to use such a system I feel sure I would want to have satisfaction that the timings were accurate and universally established.

**Mr Crowe:** Mr President, I would thank Mrs Christian for that point. I am on e-mail and I use the internet, so fortunately I can answer that question, but the internet system is that the whole of the world is on the internet universal system and I am on the Microsoft system, but when I switch my computer on it records the time as shown continually, and on Monday morning when I switched it on, the computer told me that it had altered the clock already for daylight saving or summer time, and would I just confirm it by hitting the enter button, which I duly did. So machines have not actually taken over our lives yet but they are certainly doing that. But the internet system and the e-mail system has an in-box and an out-box and a 'send message' and an archiving system, and every message is dated, who it is from, the author of the message and the actual physical time it hit the e-mail. So everything is recorded and every document that is printed off is recorded with the time and date on each piece of paper. So the basic and fundamental system works in that category. I hope that helps members.

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

**Mr Crowe:** Thank you, sir. Clause 3 makes it clear in relation to electronic communications that normally a communication which appears to be from a person is only treated as sent by him if it was actually sent by him or by his actual or ostensible authority.

Sub-clause (1) restates in relation to electronic communications the common law rule is that normally a communication which appears to be from a person is only treated as sent by him if it was actually sent by him or by his authority.

Sub-clause (2) does not affect the ordinary law of agency under which a person who is held out as being authorised by a person to act as his agent can bind that person even if he goes beyond the terms of his authorisation.

Sub-clause (3) provides an exception in the case of statements which may be taken as admission to legal proceedings. The ordinary rules of evidence will apply to determine whether a party is to be taken to have admitted a fact or liability in civil or criminal proceedings.

Sub-clause (4) enables regulations made by the Department of Trade and Industry or the Treasury, subject to Tynwald approval, to exclude the above rules in a particular case either by reference to the kind of transaction or to the provision or rule of law in question. I beg to move clause 3.

**Mr Waft:** I beg to second, sir.

**Mrs Christian:** Mr President, I beg to second. I think this clause illustrates something we take for granted most of the time and it offers a parallel with the written word in a sense, doesn't it? We are assuming here that the communication is sent by an individual or with the authority of the particular individual and sometimes, if you are using technology and something appears on your screen, you have to accept what is there and do so as a matter of faith in the same way, I suppose, as we do when we receive a letter signed by somebody. We, as a matter of faith, assume assume that it has genuinely been sent by that person. So to the extent that when you look at this at face value it does involve a degree of faith in the structures and the systems, but I would suggest that it is probably no different from the sort of faith we put in written communication today.

**Mr Lowey:** Can I just read a couple of statements made by the mover where he says it will be regulations drawn up by the department and therefore there has to be a dedicated person in the department. Yet, in the opening paragraph on item 5 in the explanatory memorandum, 'The Bill is not expected to have any significant effect on public revenue, expenditure or personnel.' Now, can the mover tell me, have they a dedicated officer in the departments ready to go with this? It is the future. We are living in an e-mail and computer world. Is there personnel in the department ready to be up and running and au fait with this modern technology?

**Mr Waft:** I think, Mr President, with regard to electronic transactions great care must be taken with e-commerce and with buying and selling, especially on the internet. It needs to be done very carefully with a great deal of full knowledge as to the dangers involved in buying and selling on the internet and it is not something to be taken too lightly and people need to take advice before they start delving straight into e-commerce and buying and selling. I have no problem with the need for this Bill to be in place, but at the same time a warning needs to be said with regard to jumping in at the deep end, so to speak, and quite careful consideration should be given to who you are dealing with and their bona fides and actually go on good advice before they start on any venture on the internet.

**The President:** Reply, sir.

**Mr Crowe:** Thank you, Mr President. Can I thank members for their comments and Mrs Christian first of all, comments with which I agree, and Mr Lowey's point about the time involved in doing this. There is a balance here, and electronic communication will actually save in certain areas. An example that was given to me by the department is at present, when a film is being made by the Film Commission, the documentation and the legal documentation extends to many masses of documents, and every participant in those agreements with a film - and they are major - the producers, the bankers, the lawyers, whoever is involved, all have to

sign all of these contracts, and these are very weighty documents and take a lot of time by courier. The situation in the USA at present is that those contracts can be sent by internet. One person sends it, feeds it in, and it goes to destinations of as many people as you want, that is accepted as a legal document and is signed or submitted back.

So as well as drafting of regulations, there are going to be time savings as well which will counter-balance this extra work of drafting regulations, and I would guess that as we have got an evolving situation with the internet which is capturing so many people's imaginations and it is being hyped up greatly, I take Mr Waff's point because there are inherent dangers of trading in the internet and not only buying and selling goods - because you can buy a car on the internet or you can buy whatever you want to do in the USA which is mailed to you through the internet; you have to give your credit card details and there is an inherent risk. I was reading or hearing yesterday the FBI are actually checking on internet sites because there are certain fraudulent people who are deliberately setting up to abuse the system.

So the general public must be aware, and again it is to do with buying and selling stocks. We have all heard of the internet stocks which are flavour of the month at the minute, but you can buy and sell on the internet the stocks and shares that are part of the internet. So there is a risk in buying stocks and shares if you are not taking proper advice. So again it is a cautionary stance, but what we are trying to do with this legislation is to try and put a basic framework in having electronic communications equal to paper. That is really the fundamental issue here. So I thank members for those comments and would move clause 3.

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

**Mr Crowe:** This clause allows a person, subject to certain safeguards, to use electronic communication in any case where he is required or permitted by law to provide information in writing. It is purely permissive. No-one is required by this clause to use any form of electronic communications except that, subject to compliance with technical requirements, a public authority is obliged to accept electronic communications in place of documents.

Sub-clause (1) enables a person who is required to provide information in writing to comply with the requirements by using some kind of electronic communication - for example, e-mail, if he wishes, subject to conditions detailed in sub-clause (3).

Sub-clause (2) makes a similar provision where a person is permitted to provide information in writing.

Sub-clause (3) sets out the conditions which must be fulfilled if a person is to take advantage of sub-clauses (1) or (2). For example, the information must be readily accessible and possibly be in a particular form. In addition, the recipient must have consented to the information being given electronically.

Sub-clause (4) does not affect any statutory provision supplied in a particular medium - for example, on a disk - or in a particular way, again - for example, by e-mail.

Sub-clause (5) makes it clear that the rules above apply whatever may be the terms of the law requiring or allowing information to be given.

Sub-clause (6) sets out various kinds of legal action which are covered by the term 'give information'. It covers practically any kind of communication having some legal significance. Note that exemptions from this clause can be made by regulations under clause 8. I beg to move clause 4, sir.

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

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

**Mr Crowe:** In this clause is a general provision enabling any legal requirement for a signature to be satisfied in the case of an electronic communication by any method of identifying the originator and indicating his approval of it providing it is as reliable as is appropriate and provided that any particular statutory requirements are fulfilled.

Sub-clause (1) provides that in general, where a signature is required for any document, that requirement is satisfied in the case of an electronic communication by any suitable device. This recognises the basic function of a signature of a written document - that is, by identifying the maker of the document and indicating that he adopts it as his own. In the case of an electronic communication the signature must be by a method which clearly identifies the person concerned and shows that he approves the contents. The signature must be as reliable as is appropriate. In the case of a communication to a public authority, which lays down particular technical requirements, the signature must comply with those particular requirements. In the case of a communication to a person other than a public authority that person must have agreed to receiving a signature in the form in question.

Sub-clause (2) does not affect the operation of any other statutory provision which may in the future require an electronic signature or require a particular kind of authentication of a communication. Mr President, I beg to move clause 5.

**Mr Waft:** I second, Mr President.

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

**Mr Crowe:** This clause makes provision corresponding to clause 4 allowing a person, subject to certain safeguards, to use an electronic communication in any case where he is required or permitted by law to produce a document. Again, it is purely permissive.

Sub-clause (1) enables a person who is required to produce a document to comply with the requirements by sending an electronic copy using some kind of electronic communication, for example e-mail.

Sub-clause (2) makes similar provision where a person is allowed to produce a document.

Sub-clause (3) sets out the conditions which must be fulfilled if a person is to take advantage of sub-clauses (1) or (2).

Sub-clause (4) defines what is meant by 'maintaining the integrity' of a document. The information in it must be shown as complete and unaltered apart from any endorsement such

as routine details added by an internet server when forwarding an e-mail. One means of maintaining the integrity of an electronic document is to make an encrypted copy which cannot be tampered with.

Sub-clause (5) does not affect any legal requirement that a document be supplied in a particular medium, for example, on a disk or in a particular way such as e-mail.

Sub-clause (6) provides a new exemption from copyright law: to produce or transmit an electronic form of a document for these purposes does not constitute a breach of copyright in the document. Mr President, I beg to move clause 6.

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

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

**Mr Crowe:** Clause 7 enables any legal requirement that documents or communications be recorded or retained to be satisfied by recording or retaining them in electronic form.

Sub-clause (1) enables a legal requirement to record information in writing to be satisfied by recording it in electronic form provided that it is readily accessible when required and complies with statutory requirements.

Sub-clause (2) enables a legal requirement to retain a document to be satisfied by retaining an electronic copy provided that its integrity is maintained, that it is accessible and complies with any statutory requirements.

Sub-clause (3) enables a legal requirement to retain information to be satisfied in the case of information in an electronic communication to be satisfied by retaining or arranging for a third party to retain the information in electronic form subject to accessibility, maintaining integrity of the document, being able to identify the originator and the recipient and complying with any special statutory requirements.

Sub-clause (4) defines what is meant by maintaining the integrity of information or a document.

Sub-clause (5) enables a requirement to make a document available for inspection to be satisfied where the document is in electronic form by making it available in visible and legible form; for example, this would be complied with by showing the text on a VDU screen.

Sub-clause (6) provides a further exemption from copyright law. Mr President, I beg to move clause 7.

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

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

**Mr Crowe:** This clause enables regulations to exclude the general rules in clauses 4 to 7 in particular cases and makes an exception for court and tribunal procedures.

Sub-clause (1) enables regulations to exclude the general rules in clauses 4 to 7 in relation to a particular requirement or permission or to a particular enactment or common law rule.

Sub-clause (2) makes an exemption for court and tribunal procedures. Where written documents are required in legal proceedings electronic communications will not suffice unless rules of court so provide.

Sub-clause (3) makes a similar exemption in relation to evidence, such as deeds and documents. This will not affect the admissibility of electronic communications themselves and legal proceedings, for example, where a contract has been made by exchange of e-mails. Mr President, I beg to move clause 8.

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

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

**Mr Lowey:** Mr President, I am always interested why there are exclusions, and why should the courts in this e-modern day age that we all proclaim be excluded from that development? It does seem to me that once again the age of the quill pen. . . and I am sure the learned Attorney-General will forgive me if the impression given to the outside world is that even in the courts today electronic equipment is not permitted in the recording of court proceedings; most of the judgments are taken by the learned deemsters in longhand and yet we live in a world of technological change. This Bill is highlighting that and yet the courts are now saying again that they need to be excluded, as I see it in this particular clause, and I would like an explanation as to why this special group has been excluded from the real world, which we all know is happening out there. Perhaps he could explain to me - or perhaps I am being too damning in my interpretation, but it does seem to me again another opportunity for getting the courts up to date is being missed.

**Mr Waft:** I am given to understand - the mover might know - some application forms for various things are now available through the internet from the Isle of Man Government. Is it the intention to extend that to other departments?

**The Attorney-General:** Mr President, if I may just comment in relation to the question raised by the hon. Mr Lowey, I think the first thing I should say is that by virtue of the High Court Act court proceedings must be recorded; there must be a tape recording taken of proceedings in court and of course one will see deemsters and other judges taking notes, but, unlike the old days, those notes are not the formal record of the proceedings. I can well remember how difficult it was to find out exactly what had happened, trying to decipher the deemster's manuscript note. Those days have gone and there will always be a tape recording.

I would also point out, if I may, that in clause 8(2) it says, 'This Part does not apply to the practice and procedure of any court or tribunal; and. . . "practice and procedure" includes any matter in respect of which rules of court may be made.' I think it is well within anticipation that rules of court will be made to assist the electronic age, and almost every day now in courts and tribunals one sees not only barristers but also the judges with their VDUs in front of them. I know for a fact that judges are very well able to keep notes and to prepare judgments as the proceedings are ongoing, and I would anticipate very much that the courts will not fall behind

as the hon. member fears may be the case, and in particular I know His Honour the First Deemster is very keen that court procedures should be up to date as soon as possible.

**Mr Lowey:** Then why exclude them?

**The President:** Reply, sir.

**Mr Crowe:** Thank you, Mr President, I thank Mr Lowey for his comment, and the learned Attorney has, I believe answered the points of principle that he raised, but I think in general the whole population of maintaining a balance of embracing the new technology whilst making sure that there are enough checks and balances in there that there is security for the people on the Island.

Just commenting on Mr Waft's point about the information available on Isle of Man Government websites, I think we had a recent example of this with the tourist department; they use the website of the Isle of Man to promote the Island for tourism and racing and weekends and so on, and I believe the DTI and the shipping register have their own websites where you can go straight in and read the documentation and read the rules and regulations, and I believe the intention is that every government department will have their own websites, and instead of a lot of paper documents you will be able to download your own application forms or information sheets from your own computer and fill those in and send them back or return them by e-mail or whatever. So I think there is a great deal of adventure in this in embracing the technology, but always to keep our feet on the ground, I think, is the important thing. So, Mr President, I would move clause 8.

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

**Mr Crowe:** Clause 9, sir, enables a voluntary system for approval of certification service providers, or CSPs in the short form, to be set up. The function of the CSP is to provide a service whereby electronic signatures can be verified, thus making electronic commerce more secure and increasing consumer confidence. Where such signatures are desirable there may be a need for one more independent trusted body which can provide such verification. This verification is usually achieved by means of public key cryptography. These are methods of encrypting electronic data using two specially generated strings of data, a public key and a private key. A digital signature is created using the sender's private key, his public key being made available to the recipient, who can use it to decode the signature and verify that the communication came from the sender. The clause enables a voluntary system for approval of CSPs to be set up and, if such a system is found to be desirable, it will be set up by regulations made by the Department of Trade and Industry.

Sub-clause (1) confers powers to make regulations setting up a system of registration of approved CSPs. The regulations will deal with the establishment of the system, the identity of the operator, procedures, operating principles, the working of registration, appeals and fees, and these regulations will be made by the Department of Trade and Industry or the Treasury and will, of course, be subject to Tynwald approval.

Sub-clause (2) enables the regulations to create criminal offences of making false statements in connection with registration and falsely claiming to be registered.

Sub-clause (3) defines various terms used in this clause. Mr President, I beg to move clause 9.

**Mr Waft:** I beg to second, Mr President. I would reiterate the concern that the corporate service providers that we are talking about within this Bill are only local corporate service providers. Many of the corporate service providers are based outside the Isle of Man.

**Dr Mann:** The point I wanted to make is why we are just making this voluntary (**Mr Lowey:** Hear, hear.) because it is so critical I would have thought that it would be essential that a register was set up, but we have to accept and the Island presumably has to accept that most, in fact almost all, the service providers do not exist here and to have this legislation here is very comforting, but how can it possibly apply to the service providers who are not here, which at this moment in time, I think, is almost 100 per cent outside the Isle of Man?

**Mr Lowey:** The very point I was going to make, Mr President. I notice that the regulations *may* provide for and the regulations *may* make it an offence, and that surely is the wrong signal to be sending out. It should be mandatory. Perhaps there is a reason why it should be 'may' and not 'shall', but at first glance it does not seem to stack up on the point of the providers being mainly outside. There was a case recently broadcast over the BBC which I overheard, which actually said there was a transaction taking place in Essex which transpired from a company in the free zone in Dublin, the financial centre which is like a freeport, and there are no controls at all over the agency operating in there. There is a little bit of control here. It may be done, but isn't it the wrong message that we are getting out if we are setting up to control them, then saying, 'Well, we *might* do this' and 'We *might* do that' and 'We *may* do the other'? Surely it should be we *shall* be doing this and we *shall* be doing that?

**Mrs Christian:** Mr President, I think - well, in my view of the Bill - we are in danger of straying from what is just enabling, and the Bill is, in my view, is simply enabling in that it says people can use electronic transactions and they will be legal, but it is up to them to determine between the parties concerned whether they accept electronic transactions in the legal sense. What I think that this clause says is that as well as allowing people, if they want, to use electronic transactions and give those transactions some authority, they may also use a certification service provider, which is not every service provider out here, but a particular provider who will set up a security system operating under the Bill in terms of encryption of signatures, and it is those people who this clause refers to. It is not every service provider under the internet; it is some person or body who wants to be a certification authority for these security measures, and I do not see any problem with the department or whoever else or regulations being enabling. This can allow people to go and deal in electronic transactions without the security of these service providers if they so wish, but if you want to establish a register it is an option, it seems to me, that if you want to use one of these people who have been certified you can, but you do not have to.

**Mr Lowey:** Can I just follow that through to get the point quite clear? It is not so much for the provider, it is for the customer of that provider, and the customer of that provider, if he is going to a certificated person, should know that that certificated person meets certain requirements. This particular clause surely says that if you want to be a certificated supplier we *may* do this and we *may* do that and we *may* do the other, and the person who is buying that service in does not know what that certification means. It gives too much leeway there, surely?

**Dr Mann:** Could it be, Mr President - perhaps the mover can enlighten us - that the reason for the enabling is because none of the neighbouring jurisdictions have a register and we are going ahead of neighbouring jurisdictions?

**The President:** Right, with those questions posed, reply, sir?

**Mr Crowe:** Thank you, Mr President. Yes, I think the validity of the electronic signature is certainly vital to this and I thank members for their input on this. As Mrs Christian says, it is enabling and there is an example, not strictly parallel but almost parallel in the present banking system around the world, where money is sent around the world bank to bank and they have a test key arrangement where each bank sends money to the other bank by testing with one another. Now the encryption, which is so important, will be a similar basis and banks, or any two parties to a contract, can use an encryption system that they agree between themselves. Major companies will be having business arrangements with other major business concerns and the encryption that they have between themselves will be the public key and the private key so that they know exactly that it is a correct transmission. This actually is allowing an intermediary to sit in the middle between two people and a contract so the third party is the certification service provider who will be there solely to verify and validate the signature and the CSP will be able to confirm, so I will be sending a message to you but it would go through the CSP, and the message and my signature would be checked by the CSP and then the message will be sent on to you and you would know that the CSP has validated it. So it is this sort of arrangement that you have organisations who become CSPs, and this is what the clause is all about.

**Mr Lowey:** Mr President, again I want clarification because surely the whole thing of this is certificated; in other words, the person that I am allowing to operate as the middle man in this is qualified, certified. Now, he must be certified by somebody, and under these conditions surely they are saying that to get that certificate you may do this and you *may* do that, and I would have thought that that is not the right way, to be giving somebody an official authenticity, and from the consumer's point of view what is the advantage of my dealing with a certificated person if that certificate means - well, it *may* have been done it *may* not have been done. I want to have certainty when I deal with a certificated intermediary.

**The President:** Right then, following on to the hon. member's reply once again. I think this will be the final reply.

**Mr Crowe:** I thank Mr Lowey. Can I bring this point back at the third reading and just clarify that side of it?

**The President:** Right, now you have all got the message and the resolution, which is that clause 9 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 10, sir.

**Mr Crowe:** Thank you, Mr President. Clause 10 clarifies the position of internet service providers. These are ISPs and telecommunication system operators with regard to electronic communications sent through them. They are not to be subject to criminal or civil liability in respect of such communications, for example pornographic images or defamatory messages, provided that they take appropriate action if the communications are brought to their notice. They are not required to monitor the content of communications sent through them.

Sub-clause (1) deals with possible criminal liability by ISPs and telecom operators who handle communications - for example, under the Obscene Publications and Indecent Advertisements Act of 1907. They are given a defence if they did not know that the circumstances might give rise to an offence and, as soon as they did know, they took reasonable steps to stop the handling, and as well as that they notified the proper authorities.

Sub-clause (2) deals with possible civil liability of ISPs and telecom operators who handle communications - for example, libel. They are given a defence if they did not know that the circumstances might give rise to an offence and, as soon as they did know, they took reasonable steps to stop the handling.

Sub-clause (3) provides that ISPs and telecom operators are not subject to any civil liability to their customers for any reasonable steps they take in good faith to avoid liability under sub-clauses (1) or (2).

Sub-clause (4) makes it clear that ISPs and telecom operators are not required to monitor their systems to ensure they are not handling material which might give rise to criminal or civil liability.

Sub-clause (5) is a saving for any obligation to comply with a court order and for any contractual liability to the ISP's or operator's customers.

Sub-clause (6) defines terms used in this clause. Mr President, I beg to move clause 10.

**Mr Waft:** I beg to second, Mr President. It is important to differentiate, and this clause does differentiate between certification service provider and the internet service provider, which are two entirely different things.

**The President:** Reply, sir?

**Mr Crowe:** Yes, thank you, Mr President, I would confirm that, yes.

**The President:** I will put the resolution, hon. members, that clause 10 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Now, I have notice of a new clause from the learned Attorney-General, and I call upon him to move.

**The Attorney-General:** Thank you very much, Mr President. I hope that hon. members have a copy of the proposed amendment which I wish to move as I would imagine, sir, a new clause 10A for the purposes of the Bill. The amendment in my name concerns the admissibility and evidential weight of electronic records.

The effect of sub-clause (1) is to enable information recorded in electronic form to be admissible in evidence in court proceedings. The information is not to be dismissed as evidence merely because it is in electronic form or because it is not in its original form. However, the weight to be attached to the evidence is something to be assessed by the judge, taking into account the matters listed in sub-clause (2).

Sub-clause (3) preserves the special rules as to the admissibility of evidence from computers in civil and criminal cases respectively, so that a party to any proceedings can still comply with the procedures laid down in the Civil Evidence Act 1973 or the Criminal Justice Act 1991 where the requirements of the relevant sections are complied with. The proposed new clause in the Bill provides an alternative method of adducing computer evidence and

gives the court a discretion to admit the evidence if it is reasonably reliable, and I so move, Mr President:

**Evidence**

**10A.** (1) *Nothing in the rules of evidence shall operate to prevent information recorded in electronic form being admissible in evidence in proceedings in any court or tribunal —*

- (a) *solely on the ground that it is recorded in electronic form, or*
- (b) *on the ground that it is not in its original form, if it is the best evidence that the person adducing it could reasonably be expected to obtain.*

(2) *Information recorded in electronic form and adduced in evidence in that form shall be given such weight as is appropriate in all the circumstances; and in determining what weight should be given to it, regard shall be had to —*

- (a) *the reliability of the means by which it was generated, sent, transmitted, received, stored or otherwise processed;*
- (b) *the reliability of the means by which its integrity was maintained;*
- (c) *the means by which its originator was identified; and*
- (d) *any other material facts.*

(3) *This section does not affect —*

- (a) *sections 5 and 6 of the Civil Evidence Act 1973<sup>1</sup>, or*
- (b) *section 7 of, and Schedule 1 to, the Criminal Justice Act 1991<sup>2</sup>.*

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<sup>1</sup> 1973 c.18

<sup>2</sup> 1991 c.25

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

**The President:** Does any hon. member wish to speak to the resolution? If not, I will put the resolution that the new clause standing in the name of the learned Attorney-General stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. I would assure hon. members that the clauses will be renumbered in due course.

**The Attorney-General:** Thank you, Mr President.

**The President:** Clause 11, sir.

**Mr Crowe:** Clause 11, Mr President, defines terms used in the Bill, and I beg to move clause 11.

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

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

**Mr Crowe:** This clause deals with Tynwald control over regulations under the Bill - that is, regulations made by the Department of Trade and Industry or the Treasury.

Sub-clause (1) in general requires prior Tynwald approval to any regulations.

Sub-clause (2) makes special provision for certain regulations made by the Treasury, which may have to be brought in at once; for example, there may be a special provision relating to VAT. If this sub-clause is quoted, the regulations can come into force before Tynwald approval, but they must be laid before Tynwald and must be approved by Tynwald at the next or next-but-one sitting after they are made. Mr President, I beg to move clause 12.

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

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

**Mr Crowe:** Mr President, clause 13 gives the Bill its short title and provides for its commencement on a day or days to be appointed. This is to enable any regulations to be made exempting specified transactions et cetera from particular provisions of the Bill. I beg to move clause 13.

**Mr Waft:** I beg to second.

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

**The Lord Bishop:** There is another one, sir.

**The President:** Sorry, my apologies. I jumped the European Communities (Amendment) Bill inadvertently.

**Mr Lowey:** Easily understood! (*Laughter and interjections*)

**The President:** Learned Attorney, I would not willingly deprive you of the opportunity to take the second reading!

### **European Communities (Amendment) Bill – Second Reading Approved – Clauses Considered**

**The President:** I call upon the learned Attorney-General to take the European Communities (Amendment) Bill for the second reading.

**The Attorney-General:** Many thanks, Mr President. As I explained at the first reading, the purpose of this Bill is to transfer the power to make orders in respect of sanctions measures from the Governor in Council to the Council of Ministers. The Bill also introduces a new Tynwald procedure in respect of sanctions measures in so far as an order made by the Council of Ministers will require to be laid before Tynwald as soon as practicable after it is made and it must then be positively approved. This will enable the Council of Ministers to implement sanctions measures speedily and thereby avoid possible international embarrassment, which would otherwise be caused by adhering to the existing procedures.

Mr President, I beg to move that this Bill be now read a second time.

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

**The President:** Does any member wish to speak to the second reading? I will put the resolution then, hon. members, that the European Communities (Amendment) Bill be now read a second time. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Clauses, sir. Clause 1.

**The Attorney-General:** Thank you, Mr President. Sorry, I have temporarily lost my note.

**The President:** I am delighted to hear I am not the only one! (*Laughter*)

**The Attorney-General:** If only it was on computer! I am so sorry, Mr President.

**The President:** It is all right.

**The Attorney-General:** Thank you. Yes, Mr President, clause 1 of the Bill transfers the power of the Governor in Council to make orders under section 2A of the 1973 Act to the Council of Ministers and introduces a new Tynwald procedure in relation to orders under section 2A which apply European Communities instruments to the Isle of Man.

Sub-paragraph (a) amends subsection (1) of section 2A of the 1973 Act. The amendment effects the transfer of the power of the Governor in Council to make orders under section 2A to the Council of Ministers. Sub-paragraph (b) amends subsection (4) of section 2A of the 1973 Act. It makes the Tynwald procedure under that section subject to the new Tynwald procedure introduced by paragraph (c). Paragraph (c) amends subsection (1) of section 2A of the 1973 Act by inserting new subsections (4A) to (4B). Section 2A requires orders made under it to undergo a unique Tynwald procedure. A draft of an order made under that section must be laid at two separate sittings of Tynwald. The draft order must be approved at the second sitting before it can be made. The amendment introduces a new Tynwald procedure for orders made under section 2A which apply European Communities instruments which deal with sanctions and the like. The new procedure will require a positive Tynwald approval in all cases, but gives sufficient flexibility to commit the Council of Ministers to ensure immediate implementation of European sanctions when necessary. I would stress that the new Tynwald procedure deals only with sanctions.

The new subsection (4A) enables sanctions orders to come into operation immediately they are made. The order must, however, be laid before Tynwald and to receive Tynwald approval as soon as practicable - that is, with all due speed, taking into account the circumstances, dates of sittings and rules of procedure. If the order is not approved by Tynwald at the sitting at which it is laid, or at the next following sitting, the order ceases to have effect. That means that it will be treated as being revoked and anything done under the order while it was in force will continue to be valid.

The new subsection (4B) specifies the orders to which the new Tynwald procedure applies. The orders must apply European Community instruments which in whole or part deal with Community sanctions, embargoes and restrictive measures against countries, territories, nationals, ships, aircraft or assets.

The new subsection (4C) is a transitional provision to avoid doubt about the applicability of the new procedure to orders which do no more than repeal instruments made before the Bill and which were approved under the pre-Bill procedure.

Finally, paragraph (d) makes a consequential amendment to subsection (6) of section 2A of the 1973 Act. It replaces a reference to the Governor in Council with a reference to the Council of Ministers. Mr President, I move that clause 1 do stand part of the Bill.

**Mrs Christian:** Mr President, I beg to second and would suggest that this is a very practical measure. There are periods when, particularly in the summer recess, Tynwald does not sit for a number of months, and I think that these provisions will allow actions to be taken in respect of embargoes which would prevent any embarrassment to the Isle of Man if there is a delay and so I am happy to support clause 1, Mr President.

**Mr Lowey:** I am very happy to support on three grounds. It is right for the evolution from the Governor in Council to executive government. It is another minor step along the way of taking more and more executive control, and it is also right that that executive should ultimately be held to account in parliament for its actions and it is pragmatic and practical that if there is a sanction that has come in in the summer recess any other recess and needs to be applied, it has to be applied for obviously practical reasons, and I think the formula that is encapsulated in clause 1 makes that possible and I think it should be supported for all those very sound reasons.

**Mr Waft:** Mr President, just a thought. I fully agree with the principles of the Bill, it is just that I think that we should not be seen to be rubber-stamping whatever EU sanctions, enforcements, embargoes or whatever they happen to be thinking at the time because, often as not, the withholding of drugs and medications hits the poorest part of that country which they are trying to make changes in, and it does not really affect the people that they need to affect and so great care must be taken when looking at sanctions on any particular country.

**The President:** Reply, sir.

**The Attorney-General:** Thank you, Mr President. I am obliged to hon. members for their general support of the Bill. I do, of course, recognise the force of what Mr Waft, the hon. member, says in respect of sanctions. I would hope, though, that generally speaking EC sanctions orders will be considered carefully before they are made. Of course, it is for the Council of Ministers to assess whether or not the order will be replicated in our jurisdiction, but I would volunteer the suggestion that invariably we will be following the EC sanctions.

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

**The Attorney-General:** Thank you, Mr President. Clause 2 is a short clause providing a short title to the Bill and I so move.

**Mr Lowey:** I beg to second.

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

That indeed concludes our public business for this day. The Council will now sit in private.

*The Council sat in private.*