

**REPORT OF PROCEEDINGS OF  
LEGISLATIVE COUNCIL**

**Douglas, Tuesday, 30th May 2000  
at 10.30 a.m.**

Present:

The President (Hon N Q Cringle), the Lord Bishop (the Rt Rev Noël Debroy Jones), the Attorney-General (Mr W J H Corlett QC), Hon C M Christian, Messrs E A Crowe, D F K Delaney, 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, we have apologies from Mr Kniveton this morning who is indisposed.

**Fibre Optic Cable – Consideration of Use – Question by Mr Waft**

**The President:** We will turn straight on to our order paper and deal with the questions. I call on the hon. member Mr Waft.

**Mr Waft:** Thank you, Mr President. I beg leave to ask a member of the Council of Ministers:

- (a) *What is the remit of the Department of Trade and Industry committee examining the end use of the fibre optic cable;*
- (b) *who will be giving advice to that committee; and*
- (c) *what action will be taken to ensure consideration of competition in the consumer interest for future telecommunications and internet provision?*

**The President:** Mrs Christian to reply.

**Mrs Christian:** Mr President, the background to this matter is that in June 1999 the Minister for Trade and Industry, recognising the strategic importance of future control of the fibre optic cable, took steps to secure that control within government. I am advised that since that decision, the department has been engaged in a dialogue with the Manx Cable Company to secure a lease agreement for the cable. Those discussions are being progressed under the direction of the minister and are not being dealt with by a separate committee. The end use of the cable is not a matter solely for the DTI because it will involve several other parts of government including the Communications Commission as the licensing body, the Treasury and the Council of Ministers.

As regards advising the end use, which is the second part of the question, each of the bodies involved will presumably seek out their own advice as they deem necessary.

With reference to the third part of the question, it is important to remember that the department is working on the lease which will secure the control of the fibre optic cable in the long-term economic interest of the Island. E-commerce is increasingly a key driver of economic growth on a global basis and I am sure that we all acknowledge that competitive

telecommunications charges are key to the Island's ability to develop as an international e-commerce centre. Having said that, the question of competition in the consumer interest for future telecommunications is one for the appropriate licensing authority to consider. With regard to this, I can say that the Council of Ministers has already approved a proposal from the Communications Commission to introduce limited competition in telecommunications on the Island for internet and internet-related services. This could include the possible licensing of telecommunications systems using the DTI fibre optic cable to support such services: however, that licence may be one which requires Tynwald approval.

The Council of Ministers has also asked the Communications Commission to begin discussions with Manx Telecom and others on the form of future telecommunications legislation and licensing on the Isle of Man. These considerations will undoubtedly include the possibility of introducing competition in a form which is of benefit to the Island.

**Mr Waft:** I thank the minister for her reply and I am very grateful for the interest that has been shown by the department and I am sure the general public will be delighted with that answer. Would the minister agree with me that new, emerging technologies must be available to the benefit of everyone, otherwise we will be creating a digital divide, excluding those on a low income from enjoying the benefits of internet provision?

**Mrs Christian:** Mr President, I do recognise that as we go forward the availability of these technologies to everyone will be a critical factor in the development of the Island and, with a view to that, as I have indicated, discussions are going on in relation to the future form of licensing - in order, as far as possible, to ensure that the availability of these technological advances is available to everybody.

**Mr Waft:** I thank the minister for her reply. Would the minister also agree with me that this is a timely opportunity to set down some real targets and rules which will set the scene for future greater liberalisation and competition within the industry?

**Mrs Christian:** Mr President, I am quite sure that that sort of platform is one which is under consideration by the Communications Commission, and will be by the Council of Ministers and the DTI, in dealing with licensing of the fibre optic cable or any other developments which appear in the near future.

**Mr Crowe:** Mr President, could I ask the hon. minister first of all when it is anticipated that the lease would start? What would the start date of this lease be to a new Isle of Man Government-controlled company? And as it is such a valuable asset, this fibre optic cable, presumably there is so much capacity on the fibre optics to be a series of subleases to eligible people. Is this the way it is expected that it would work?

**Mrs Christian:** Mr President, my understanding is that the lease will be with the DTI. I am not aware that it will be with a new company as such. The lease will be with the DTI for whom, I understand, applications will be made. They will have to become a licensed operator and obtain the necessary licence to control that fibre optic cable. Then, as I understand it, elements of the cable will be available to other users.

**Mr Crowe:** Mr President, just following up from that, I thank the hon. minister for her reply but as the cable is owned, I believe, by the Manx Cable Company which has as its parent companies the UK energy supplier and the MEA, would not it make some logical sense

to have a separate company operating the fibre optic cable, controlled by the DTI or controlled by the government? It makes a clean operating system that would allow no blur at the edges. It would be clearly controlled by that company - which could be owned by the DTI or owned by nominees of government - which could then license or sublease the fibre optics to eligible people who met the criteria that the DTI or the Communications Commission wanted to impose.

**Mrs Christian:** Mr President, I am not quite sure what advantage the hon. member sees in interposing a company here between the DTI and the users. As I understand it - and I will certainly explore this further with the DTI, if the hon. member wishes - the lease will be direct with the DTI and the DTI will be the body with whom any subletting of parts of the fibre optic cable will occur. The relationship with the Manx Cable Company is such that the whole of the fibre optic cable will be leased by the DTI and fibres from that cable will be leased back to the MEA for their purposes. But it does mean that there will not be a split there between the MEA and the DTI as regards the whole of the cable. The DTI will control all of it and will sublet part of it back to the MEA for their use and will, as and when they see fit, let the rest of the cable capacity.

**Mr Crowe:** Mr President, just concluding on that point, possibly the learned Attorney might be able to just clarify the statutory function of the DTI, as to how it sits as a department for agreeing leases and licences. It has that statutory function to act as lessee of the cable, of the fibre optic?

**The Attorney-General:** Mr President, certainly it is within the power of a department to lease and to sublease within the range of activities the hon. minister has referred to. That is within the Government Departments Act.

**Mr Crowe:** Thank you for that answer, but is not the minister deemed to be the department in law and would not then the DTI and minister have quite a lot of control over this fibre optic cable and its lease?

**The Attorney-General:** Mr President, it is certainly correct that the minister, again under the provisions of the Government Departments Act, has the power to act on behalf of the department. Leases, however, would be taken out in the name of the department which is deemed to have a corporate entity for the purposes of taking leases and purchases and sales and so on. It has capacity in its own right but the minister is the person who exercises the powers of the department.

**The President:** Minister, is there anything that you wish to add to that?

**Mrs Christian:** Simply that I understand anyway that the DTI will themselves have to obtain a licence from the Communications Commission to be the controller of the licensee in respect of the cable. I am at a slight disadvantage in that I am not intimately acquainted with the operations of the DTI in this respect and I am answering on the basis of the information I have.

**The President:** Well, let us not get in too deep but I will ask Mr Delaney.

**Mr Delaney:** Mine are two small supplementaries, Mr President, if I may. One is on the individual leasing of the fibre optics or services coming through the cable - who fixes the price? Is it the department itself or is it the joint controller that fixes this? And who will monitor those

prices and costs to people who wish to use them, which will then be passed on to customers? Secondly, what I am interested in is the situation where we have the minister negotiating at the moment, which I am pleased about. Could you tell us who else is involved, other than his own officers, in these negotiations on behalf of government - if anybody?

**Mrs Christian:** Mr President, as I understand it, first of all the cost of the lease is a matter for negotiation with the Manx Cable Company but will be, I understand, based on actual costs with no profit for the cable company. As far as the price from the DTI to any subsequent user, that, as I understand it, would be established by the DTI.

**The President:** Can I return then to the original questioner to put this one to bed? Mr Waft.

**Mr Waft:** Just two small ones, Mr President. Would the minister agree with me that we owe it not only to the finance and business sector of the Island but also to the Island's residents to provide a high-quality, competitive industry which can be regulated to keep the interests of the customer uppermost and this is the ideal which this committee should be examining?

**Mrs Christian:** Mr President, I did say earlier that there is not a committee but I am sure that the department is fully in agreement with the sentiments expressed by the hon. member.

**Mr Waft:** Just one last question, Mr President. Keeping with fibre optics, do you know if the Isle of Man Government would be charging British Telecom and Manx Telecom for their right to run an undersea fibre optic cable through Manx waters, as they intend to do from this year?

**Mrs Christian:** Without the information to answer that question, Mr President, I presume they will treat it on the basis that they treat any other application.

**Mr Lowey:** It may not be related but then, as the minister knows, I am the least technical member of this Council. Can the minister explain to me and the general public why the Isle of Man has missed out in the recent selling-off of mobile franchises in the UK? Why has the Isle of Man Government not sold its franchise for mobile phones?

**Mrs Christian:** Mr President, I am not in a position to answer that, I am sorry.

**The President:** They are widening the question too far, I think.

### **Monopolies and Public Utilities – Regulation and Supervision – Question by Mr Waft**

**The President:** We will turn to question 2 and I call on the hon. member Mr Waft.

**Mr Waft:** Thank you, Mr President. I beg to ask a member of the Council of Ministers:

*What is government's view to establishing an independent regulatory mechanism to oversee monopolies and the public utilities sector?*

**The President:** Again, Mrs Christian to respond.

**Mrs Christian:** Mr President, the current view of the Council of Ministers is as contained in the report of the Monopolies and Mergers Subcommittee, and approved by Tynwald, that it would not be appropriate to establish an independent regulatory mechanism to oversee monopolies and public sector utilities. The conclusion of that report was that the existing statutory provisions along with proposals to amend the Fair Trading Act 1996, which are to be

brought forward shortly, should be considered to be sufficient and this continues to be the case.

**Mr Waft:** Would the minister agree with me that, with very few exceptions, we are only to examine the cost to Island residents of those price rises which have already been charged?

**Mrs Christian:** Sorry, Mr President, I did not quite get the question.

**Mr Waft:** Would the minister agree with me that, with very few exceptions, we are only able to examine the cost to Island residents of price increases after they have already been charged? In other words they have no obligation to get any go-ahead from government at all. And if there are any increases which seem too high -

**The President:** Too high in whose opinion?

**Mr Waft:** - then it is only then that the Office of Fair Trading can act.

**Mrs Christian:** I think, Mr President, that that is probably the case.

**Mr Delaney:** A supplementary. Is it not true, through you, Mr President, the fact that the Isle of Man in the western world has the least law in being, to protect the consumers, of any community?

**Mrs Christian:** Mr President, my knowledge of the legislation in other parts of the western world is not such that I can answer that.

**Mr Delaney:** Well, it should be. On this subject it should be pretty well known.

#### **Chief Secretary and Chief Officers – Meetings – Question by Mr Lowey**

**The President:** I think we will go on, hon. members, to question 3 on the order paper and the hon. member Mr Lowey.

**Mr Lowey:** Thank you, Mr President. I beg leave to ask a member of the Council of Ministers:

- (a) *How many meetings of the Chief Secretary and chief officers have taken place in the past six months;*
- (b) *who has seen the minutes of such meetings; and*
- (c) *is this in best interests of open government?*

**The President:** Again it is for Mrs Christian to answer.

**Mrs Christian:** Thank you, Mr President. Between December 1999 and the end of May 2000 the Chief Secretary and chief officers have met as a group on five separate occasions. With regard to the minutes of such meetings, as is usual practice after a meeting, the minutes are circulated to those who make up the group, together with a copy to the Chief Registrar for information. There is nothing secret about the issues discussed by the chief officers and the Chief Minister can have sight of the minutes whenever he so wishes.

**Mr Delaney:** A supplementary. Could you tell me, to your knowledge, if any meetings have taken place where individual members of departments, political members of departments, have been under discussion?

**Mrs Christian:** Mr President, I have no knowledge of such.

**Mr Lowey:** I note the silence on the last part of the question that I posed to the minister, regarding is this in the best interests of open government when civil servants, who are there to carry out policy - as I deem it - are actually discussing policy matters amongst themselves.

**Mrs Christian:** Mr President, I think that depends on your perspective of what this group does. There is often criticism of government that departments do not function well enough together and interrelate sufficiently in the pursuit of policy matters, and I cannot personally see any difficulty in chief officers meeting in order to make sure that all departments are pursuing policy matters on a united front. We know that from time to time there are differences of view on policy between departments and they are matters that have to be ironed out. I cannot see any difficulty with chief officers, as well as political members, meeting in order to do that.

**Mr Lowey:** Would the minister not agree that the only public document that members of Tynwald have seen does not purport to support the very reasoned argument placed by the minister here this morning? The document that I saw, they were actually discussing policy, which is not the role of senior civil servants.

**Mrs Christian:** Mr President, I think that depends how you interpret that. If they are discussing government policy, one cannot see any harm in it. If you are suggesting that they are formulating policy, well, is there any evidence to suggest that ministers are not pursuing the policies as set out in the policy document and are somehow being undermined by their chief officers? If the hon. member feels that to be the case, I am quite sure he would be specific about areas in which he felt ministers were not controlling their policy or controlling their departments.

The other point I would raise is that thoughts about the development of services are not exclusive to political members. I do not see any harm in officers or any member of any department who has a useful thought to provide to political members - doing that. And if you regard that as somehow driving policy, the more people who give thought to what we are doing and make a contribution - even if it is not accepted - the better, I would suggest.

**Mr Lowey:** Would the minister not agree we already have that forum? Members of Tynwald meet with the executive - we have just had a seminar - with the officers, to formulate, to put into. We do not have that on a monthly basis but the officers are sitting in isolation and I would suggest that they do drive government policy.

**Mrs Christian:** The hon. member has his opinion. I would not agree with him. Whether or not we meet more often than annually with senior officers there for members of Tynwald to talk to them, I would suggest that for within departments. Certainly in my own department I have no problem at all if officers come forward with ideas on how we might better run departments. I do not see that as a weakness. I think it is making best use of the brains that are available in the community and I do not agree that because chief officers meet together that they are running policy matters or controlling government.

**Mr Delaney:** Noticeable in the answers - and I hope you would agree with me, minister - that you never mentioned once to carry out government policy. If they were meeting every month for how best to carry out the government policy - or the policy of Tynwald, which is more important - we would agree with you. But you never once mentioned that word.

**Mrs Christian:** I would, Mr President, contradict the hon. member. That was the first thing I did say in my answer. I did say that the object of the chief officers is to make sure that they work together to pursue government policy. That is the very first thing I said after the initial answer I gave.

**Mr Delaney:** I will pursue it.

**The President:** Okay, well, that concludes our questions this morning, hon. members.

### **Corporate Service Providers Bill – Second Reading Approved – Clauses Considered**

**The President:** We go on to item 2 on your order paper which is the Corporate Service Providers Bill for second reading and it is in the hands of Mr Radcliffe.

**Mr Radcliffe:** Thank you, Mr President. The purpose of the Corporate Service Providers Bill is to introduce a regulatory regime for those who, by way of business in or from the Island, provide corporate services to companies. It also requires Isle of Man incorporated companies carrying on any of the regulated activities outside the Island to be licensed.

The initiative for some form of regulation of those engaged in the business of company formation and company administration was that of the Island's own government. It was fortunate that when, in 1998, Mr Andrew Edwards, on behalf of the Home Office, carried out a review of the regulations of the financial services industry in the Crown dependencies, the proposals for the introduction of a corporate service providers regulatory regime were already well advanced. Mr Edwards acknowledged that the Island's proposals to regulate corporate service providers would, in a large part, deal with a number of his criticisms of the Island as an international company registration and administration centre. So you see, then, that the Bill before us is of our own initiative. We had already commenced the thinking - and indeed acting - about a Bill before Mr Andrew Edwards came on the scene.

Loss of confidence in the Island's finance sector, following the collapse of the infamous Savings and Investment Bank, gave the impetus for the Island to examine possible problem areas. It is worth noting that the need for this legislation was originally identified in 1991 in the First Deemster's report to the Council of Ministers which recommended that, in order to eliminate undesirable and unscrupulous practitioners, company law be amended so that those who acquire and own Manx companies are properly and effectively accountable to the authorities and for legislation to be introduced to regulate and control those who form and administer Manx companies.

Subsequently, a working party consisting of representatives of the Treasury, the Financial Supervision Commission, the Insurance and Pensions Authority, the General Registry and Her Majesty's Attorney-General examined these issues. In 1994 they recommended that the Financial Supervision Commission be asked to advise the Treasury on the development of a regulatory regime for those engaged in the formation and administration of companies, with the primary aims of protecting the Island's reputation by: (1) deterring criminal abuse of the Island; (2) establishing minimum standards of competence; and (3) deterring fraud against clients. The Financial Supervision Commission issued the first consultation paper to practitioners and their representative professional bodies and associations way back in January 1995.

What we have before us today is ground-breaking legislation which has moved to a licence-holder regime from the commission's initial proposals that all Island-incorporated companies and all foreign companies registered in the Island be required to appoint a corporate agent. The concept of a corporate agent for each and every company was considered by many in the industry to be unnecessary, or an unnecessary additional layer on top of existing company law, and the preferred option was for all persons operating in this sector to be required to be licensed. The commission really makes no apology for having taken the development of this legislation forward very slowly. It has been through extensive consultation to arrive at what is believed to be a consensus with an industry which, whilst supporting the principle of legislation, is largely unaccustomed to the requirements of a regulatory regime. This particular industry is one of vital commercial importance to the Island, as it is one of our principal industries which brings in a lot of benefit to the Island.

The Financial Supervision Commission has also met with associations representing corporate service providers, and with individual CSP firms of varying sizes, and it is worth noting that the representative associations with which the commission has had the most active liaison are the Association of Corporate Service Providers, the chartered accountants, the chartered secretaries, the Law Society and the Institute of Directors.

As far as the actual operation of the regulatory regime is concerned, the Bill is enabling legislation, and the secondary legislation, namely the regulatory codes for the conduct of corporate service provider business, will follow. The draft codes have already been circulated for consultation and the commission has met several times with the representative associations which have been advising on the development of these codes. In its consultation with the industry, the commission has always maintained that it will apply a lighter touch to the regulation of CSPs and this is demonstrated by the requirements of the draft codes, which aim to promote good practice and acknowledge that there are small businesses as well as large ones engaged in CSP activity. For example, systems and controls are expected to be appropriate to the level and scope of the CSP's business. There is no intention to drive the small operators out of business, and indeed there is no requirement for a CSP to operate as a corporate entity and there is no financial capital requirement.

A lot of mention was made in another place about human rights' issues, and members may be aware that in consultation on this Bill some lobbyists referred to the impending adoption by the Island of the European Convention on Human Rights, through the Human Rights Bill. In this context, concerns were raised in the other place about the Financial Supervision Commission's statutory indemnity and procedure for appeal against the commission's decisions. Prior to its submission to the branches - and to address the concerns raised by the industry - the provisions relating to the commission's statutory indemnity and the review committee were amended. The clause relating to the commission's statutory indemnity previously stated that neither the commission nor its officers shall be liable to any action, suit or proceedings, in respect of any of their actions in the performance of their functions under the Bill. Expert advice was received from a United Kingdom barrister who is a specialist in human rights law and he considered that the commission's statutory indemnity, which mirrored the provisions of the Investment Business Act of 1991 and 1993, would not - repeat not - be contrary to the European Convention on Human Rights. However, the commission considered it preferable to deal head-on with any possible future challenge by removing the words 'any

action, suit or proceedings' and substituting for them 'shall not be liable in damages for any act' et cetera, unless the act is shown to have been in bad faith. Schedule 3 of the Bill before us makes a similar change in the legislation relating to the regulation of investment and banking business.

Turning now to the mechanism for review of the commission's decisions. It was claimed in consultation that the original procedure for review of the commission's decisions, namely by a committee appointed by the Treasury, was not sufficiently independent of the commission and that such a review process may therefore be contrary - again - to the European Convention on Human Rights. Although this review mechanism has worked very satisfactorily in the past, in respect of investment and banking business, a Council of Ministers' appointed committee has now replaced the Treasury's review committee in order to forestall any future challenge. Members will recall the Retirement Benefits Scheme Bill 2000, which was recently approved by this chamber, contains a similar review mechanism.

The Bill contains powers of inspection and investigation which mirror those in the Investment Business Act of 1991-93 and the Banking Act of 1998. There has been much comment, both in consultation and in the other place, on these powers and the commission firmly believe that the powers are the minimum necessary for any regulatory regime to be credible and effective. The right of entry without any form of warrant refers only to inspection visits. This is clause 10, I think, from memory. An inspection visit could not be performed without the co-operation of the person concerned. For a search of premises, on the other hand, the Bill requires that the commission obtains a warrant for that purpose.

It is worth noting, perhaps, that regulation in any form is new to the majority of corporate service providers. Those who are part of an organisation which is already regulated for its investment or banking business activities have, it may be said, been less alarmed by the CSP legislation. The commission is well aware that it is necessary to build up a relationship of trust and this is one reason why extensive consultation was undertaken with the CSP sector. It is the commission's belief that once the regime is in operation it would be able to demonstrate that its powers are not excessive and that there are the appropriate checks and balances contained in the Bill.

While it is generally acknowledged that it is in the best interests of the Island - and as an enhancement of its reputation abroad - that it has a well-regulated finance sector, references are sometimes made to ensure that the Island is on a level playing field with its major competitive jurisdictions. The commission again has liaised closely with Jersey and Guernsey, both of whom are in the process of introducing similar legislation. Indeed these jurisdictions in their legislation will be going further than the Isle of Man because they propose also to regulate fiduciaries, that is to say providers of trust services, and that is with them right from the outset but is not the case with this Bill. Once the regime for the corporate sector has been established, however, the Island will also be looking at the introduction of legislation to regulate those who provide trust services. But that is at a later date. It is worth also saying, perhaps, that the Jersey Bill was approved by their parliament two or three weeks ago.

The explanatory memorandum to the Bill contains figures for the fee income for licensing in the first full year of operation. However, it should be noted that it is no more than a provisional broad estimate, as there is currently no firm information as to how many corporate service providers will be coming forward to be licensed or how many companies they actually

administer. The proposals put to the industry for comment were that an application fee for a CSP licence should be on a sliding scale in relation to the size of the business, starting at a level in line with the lower end of the fee scale for investment business licence applications. The annual licence fee thereafter: the commission is considering a fee relating to the size of the CSP operation, based on the number of client companies, domestic and overseas, for which the CSP provides only the regulated activities. It is anticipated that CSPs would be able to pass on this fee to their client companies, who will be the persons benefiting from the protection of supervision. That is still currently under consideration in the latest comments received from the industry.

I would conclude by reminding hon. members that the Bill before us today has, as I said, resulted from our own government's initiation. It must also be acknowledged that as an offshore finance sector higher demands - and continually higher demands - are being made of us, in order that the Island can continue to compete in a world where there is an increasing emphasis on the need for regulation - and the Island just cannot afford to be left behind.

A certain amount of uncertainty has existed over this Bill. As I say, time was taken off in the Bill's passage in the other place to consult. There is no doubt that uncertainty is one of the greatest enemies of this industry and indeed I have been told that one major player is anticipating that they will have lost some clients because of the uncertainty as to how this Bill will actually work. The Bill will remove that sense of uncertainty and, as I said, there has been a long period of thought and consultation. It is up to us now as legislators to get the Bill onto the statute book in order that those involved in the industry know exactly what is going to be required of them.

Mr President, I beg to move that the Corporate Service Providers Bill be read a second time.

**Mrs Christian:** Mr President, I beg to second. The hon. member has indicated that this form of legislation has had a considerable gestation, I would suggest, and a difficult one. However, it is inevitably the case that occasionally we have to introduce law which seems to be burdensome to the majority because of the actions of minority. Nevertheless, I think it is important that the prime consideration should be the Island's reputation in this area. I do think, as a result of the consultation processes that have gone on, considerable efforts have been taken to find a suitable balance so that the disreputable element of the business should be eliminated but that we should not burden too much the legitimate and responsible individuals in this area.

If we were to introduce legislation which was too weak, as the hon. mover has said, it would be regarded, I think, as window dressing but it would still have with it a sort of attendant bureaucracy. If the legislation is too strong, it could be detrimental to business and, whilst we want to be on a level playing field, we do not want to seriously damage our own Island's legitimate business. So I do think that considerable efforts have been made to find that balance and, as the hon. mover indicates, the way in which the Financial Supervision Commission applies the rules will be significant. It will be critical really for them to develop the trust of those people who provide the services in the way they promote this particular piece of legislation.

Notwithstanding the difficulties, I do believe that it is important that this Bill is accepted and becomes enacted.

**Mr Delaney:** Mr President, the last time this was in front of the Council I raised a number of issues, some of which I thought would need amendment. Let me clear one first of all: the figure 10 is quite clear that it is after negotiation, the situation that 10 companies - without directorships in the companies, without gilding the lily - will find themselves able to operate. And I, of course, believe that the industry accepts that figure 10, so let us clear that one. I am not totally happy with it but let us leave that now.

But then the second issue I raised in relation to the situation of who we were governing: I had a meeting with the hon. member and his officers and I raised and had clarified that the situation is that company secretaries would not be incorporated in the body to be regulated, as such. I told them I was satisfied with the answers - until I had a chance to speak to the Attorney-General, I had communication. I am now not satisfied with that particular area. It seems to me that one part of the Bill is laughing at another part of the Bill here. It looks as if company secretaries and - I am not talking just about company secretaries of local companies dealing with local matters but company secretaries generally - as indicated in the facts that were sent to me, would automatically, because of their duties and responsibilities - the question I raised at the time - become embroiled in this legislation.

I wish to know first of all an explanation of why and how we have the situation of the Attorney-General quite clearly indicating his situation - and yet the department's staff seem so adamant that their situation, as they outlined - is the opposite and clear? I believe that there are a lot of people out there acting as company secretaries who do not realise, at this moment in time, that they are automatically caught in the net by the lack of clarity in this Bill. I disagree with the mover. It is not important we get this on the statute, it is important we get it right before we get it on the statute. That is what is of importance here. I do not want to hold up this Bill at all, but I want it right. It is no use afterwards trying to amend it. I believe it is so important to so many people - a lot of small people - that we get it right.

I would like an explanation of the variance of interpretation in these clauses, certainly in relation to looking at clause 2(1) and (2) in relation to preparation of accounting records of a company, where we have a list of people who are not covered by this - legal practitioner et cetera - but people who are taken on the secretarial side are quite clearly of the opinion that they have a responsibility and will be regulated. I believe that that wants clarifying so a lot of people out there, who are sitting having their morning coffee, will know they are going to become under the auspices automatically. Thinking that the Bill does not mention them and leaves them clear - but it does not leave them clear.

**The President:** Any other hon. member? Dr Mann.

**Dr Mann:** Mr President, I believe we are certainly being asked this morning to accept a fairly draconian Bill. I think even the mover would have to admit that there are some very strong powers in this Bill. Assurances that the Financial Supervision Commission will use it with a light touch is all very tempting but in fact we are giving them these enormous powers. These powers are certainly the equivalent of - and I question maybe even in excess of - banking control and similar legislations. The uproar that has followed or has accompanied the introduction of this Bill undoubtedly is because we are going from non-regulation to regulation

of a very serious kind. In other aspects of regulation we have gone step by step, gradually making the regulation tighter and more comprehensive. Here we are going from none to the total in one step and of course that is quite frightening to the people legitimately operating in this area and I am not surprised, in any way, that there is fear and anxiety.

I must comment on one or two aspects of the mover's second reading speech. He refers to the Edwards review; he refers to the fact that this administration, this government since 1991 has identified the need to control. I accept that and I do not think anybody sitting around this table would ignore the fact that we need to control in some way. The question is whether this Bill is the correct way. The claim that we must have a level playing field, and we choose the Channel Islands to be that level playing field, of course is not entirely correct because it is not a level playing field with the UK. The UK has not adopted this level of regulation. It is a level playing field, as we say, between offshore jurisdictions. Well, that may be necessary. It certainly is not true that this is a level playing field with our surrounding jurisdictions and one has to raise the question why.

There is a fear that the introduction of this legislation is going to lead to a dramatic fall in the number of corporate service providers here in the Isle of Man. Now, it is true we do not know at this moment how many of the corporate service providers are actually going to seek registration. There may be a dramatic fall at that particular point. Certainly, if we compare it with what has happened in other sectors including banking, the number of licensees gradually does consolidate. It is almost inevitable. And a regulatory authority, whether it is here or anywhere else, far prefers to deal with a few big ones rather than a lot of little ones. It is far easier to control to start with and, secondly, it is seen to be less likely for a big one to go wrong. I do not know that that is necessarily true but it certainly is what happens as a regulatory regime gets tighter. Okay, we say we are just doing it with a light touch but within this Bill there is the capability of gradually squeezing a certain number of corporate service providers out of the frame. It must be. We are all saying there are some bad eggs. They have got to be removed anyway. But in removing them, are we also damaging the legitimate business? This is where we have got to be very careful as we look at each individual clause to at least establish that we are not, by so doing, damaging the legitimate business that is going on.

One of the points that the mover suggested was that it will make people feel safer, that in fact the amount of fraud against the client will reduce. First of all I do not know that we know how much fraud against the clients is actually occurring and, secondly, I think it is quite clear that it does not matter how good the regulation - if somebody out there is determined on fraud he will commit fraud. It may be that the regulatory regime will pick up the fraud after it has happened but it will not necessarily prevent it and that is not a good reason for us this morning passing this sort of legislation.

But also he said there are no financial capital requirements, and that is true. Within this Bill there is no requirement for capital basis for companies that are holding clients' assets. But how long will it be before a regulatory authority will insist on capital requirements? And once you start insisting on capital requirements, because you are holding assets of clients which may be worth considerable sums you can, as a regulatory authority, gradually increase the capital requirement - which of course most small organisations then cannot meet. So some of

the soothing things that are being put forward by the mover, in fact do not necessarily soothe all those people who are actually working on the ground out there in the finance sector.

I just introduce these questions because - as I said at the first reading - we as a Council are here as a revising body. It is our job to take the second look and say, 'Has the first thing gone wrong or should we in some way modify it?' I still come back to the fact that a Bill is necessary; it certainly has to be something that is going to work. All I say is, as we go from clause to clause, that we look very carefully at the powers that are being granted and the protection also that is necessary for legitimate business - and I am sure all of us sitting around this table will have to do just that. I hope the mover is able to answer worries of this type as we go from clause to clause. I will certainly support the Bill in its general concept and I wish the mover well.

**Mr Waft:** Mr President, I, like other members, have had correspondence with various chartered accountants - and all the other types of accountants - and I have, as others have, had to get in touch with the Financial Supervision Commission to clarify the perceived problems and the real problems that have arisen from time to time. There has been consultation with all the various bodies as the mover has pointed out. However, it is not our job, as has been stated by the mover, to get it on the statute book. It is our job to examine the situation as it is and try and find out all the problems that can ensue from legislation of this type. I can well understand the mover saying that it was on the cards prior to the Edwards review that it needed to be addressed. However, the problem as I perceive it is the large corporations will probably find it easier to adhere to this legislation. However, the smaller ones are rather concerned about the restrictions it does place on them and there are some worries about whether they have to be under registration or not for certain companies. The situation will evolve as we get through to the clauses stage but I have my doubts whether we are going to, with this legislation, accede to everybody's concerns.

With regard to the Financial Supervision Commission and the power that they have, I have yet to see whether there has been evidence of abuse of that power and - before we start giving them any more power - we need to take cognizance of the situation as it is now, and whether they really need that power to do the job that they feel is within their remit to do. It is an all-embracing, omnipotent power that we do offer to the FSC and it must be handled with concern for the damage that they can do to a company when they start to investigate a company. Even if there is no foundation at the end of the day for the actions that they take, there is damage to the company involved that sometimes could be irreparable. So it is a very delicate situation that they could find themselves in. We have got to be very careful as to what powers we give them. Thank you, Mr President.

**Mr Lowey:** Yes, it is only the powers of the FSC, Mr President, that I wish to comment on. I tend to agree with a lot of what my colleagues have said but the answer is we are getting confusing messages. Now, if the Bill requires the severe - what I would call - investigatory powers that the FSC say they require, it is rather strange that we are then saying, 'By the way, when we have got them, we are not really going to use them.' If that is the case, why put them in in the first place? That is number one. Number two is that the FSC have got to convince me at the moment that they require them.

Great play has been made that we were introducing this legislation before Edwards. I suppose the question could have been asked: if this legislation had been in, would we have

needed Edwards in the first place? My view is that we will have to have legislation. It has been a long time coming, it has been too long. Even at this stage of the proceedings I question whether we are right to give the FSC more powers than we give the customs and excise. And of course it is no answer to say, 'Well, the FSC say these are the minimum we require.' Well, they would say that, wouldn't they? If you give them the total power that this gives them, it says they have got a choice of three. Well, the option will be go for the first one to gather them all in and then we are sure. My own view is I am uneasy with that, I really am uneasy with that. But as for the principle of the Bill of regulation, well, I think they do need to be regulated. I just wish that service providers had regulated themselves into an organisation and put their own constraints on their membership. Perhaps, then, the need for this Bill would not be so obvious. But, in the absence of that, the Bill I think will have to be supported but I want more reassurances on the powers that we are giving to the FSC.

**The President:** Mr Radcliffe to reply.

**Mr Radcliffe:** Thank you, Mr President. There is quite a bit there to reply to, too. The hon. seconder on my right: as she rightly said, there has been a long gestation in this Bill. The consultation has been going on and on and it may seem in part burdensome legislation but I think we have to acknowledge that we are protecting the reputation of the Isle of Man with this. As I said in my remarks in the second reading stage, the lighter touch would apply. The FSC are not going to go in with the full panoply of power and just descend on a place and wreck it, looking for evidence. There are three stages. The first is when they are invited to go in. The second and third subsequent stages require warrants to get access.

The hon. member, Mr Delaney, raised issues last time and I met with him, as he rightly said, last weekend. We had a long chat about what is in the Bill. It is rather unfortunate that there seems to be a divergence of opinion, perhaps, as to what is actually in the Bill. But I do agree with the hon. member that it is up to us in this chamber to get it right, it is very important to get it right, and if that should mean that the schedule for the Bill should slip, I think we have to live with that, if that is necessary.

Dr Mann calls this a draconian Bill. I do not know that it is any more draconian than some others we have had over the past few years. He is very dubious about the lighter touch which I talked about but I can assure him that that will apply, initially anyway. If people are obstructive and do not seem to be wishing to be examined, well, I think then the heavier hand has to come down then. But initially it will be by agreement, almost by invitation, to come in and look at my books and see what you can find there. The hon. doctor said there had been uproar from certain sections. Fair enough, there has been a certain amount of comment from certain sections, but I would suggest that it is the small CSPs who are making all the noise; the large providers have suggested that they can take this in their stride. They are regulated to a certain extent, anyway, on other things and they are not nearly as bothered as some of the smaller providers who are unused to any form of regulation.

The hon. doctor mentioned level playing fields and certainly it is offshore playing fields we are talking about but, as I understand it, the FSA in the UK is looking at introducing legislation which will deal with CSPs in the UK. Are we damaging our existing business? I do not think we will. Clients, I would suggest, should feel safer by having some form of regulation of CSPs. If you are letting a company handle your affairs - and considerable finance is

involved at times - I would imagine that it is some comfort to a client to say, 'Yes, that provider is a regulated provider.'

The hon. doctor also mentioned that it said in the Bill no requirement for capital requirements but he fears that will come. I do not see that the Bill will be amended at some future date to provide for that, but of course it cannot look into the future anyway. But as the Bill stands, there is no requirement for capital requirements. We are providing, I think, with this legislation a comfort, a protection for legal businesses.

The hon. member Mr Waft mentioned again the period of consultation and the extent of consultation. As I remarked to the good doctor, the large players will probably take this in their stride but the smaller players are the concerned ones because this is coming completely new to them. He also asks has there been any abuse of the Financial Supervision Commission's powers, and I am unaware that there has been any abuse whatsoever. The Financial Supervision Commission are not there to apply draconian powers the first minute they visit a person or make contact with a person. The powers are there if need be, and we have to have enough teeth in legislation that is going to be some use at the end of it.

The hon. member Mr Lowey: why does the FSC require these particular powers, draconian powers? Again, as I say, without teeth of some sort it would be a useless Bill anyway. You have to give people power where transgressions are being performed. It does not mean to say that you are going to move in with the full majesty of power straight away - it is a three-stage thing. And if people are recalcitrant and just will not co-operate, this will give the FSC the power to say, 'Right, well we are moving in then to see what on earth you are trying to hide.' More powers than the customs and excise. I don't know. I think I would question that because the customs and excise certainly have a lot of power for entry and so on. He mentioned finally a very nice thought - self-regulation by CSP providers. It is all very well in theory but I think again you have to have somebody over the top of that, to make sure everything is above board and being handled properly. I have little more to say on that.

I do not know if the Attorney-General would care to comment on this divergence of opinion which the hon. member Mr Delaney has raised. In fact I think we all have a copy of a letter from your good self, sir, setting out what you see in the Bill and I wonder, Mr President, whether I could ask the learned Attorney to comment on that particular part.

**The President:** Well, it can be done that way or I would consider that in fact we could deal with it as we reach the clauses stage, could we?

**Mr Delaney:** Mr President, with due respect, I want to hear exactly before we get to clauses stage. It has not been agreed yet that we are going to that.

**The Attorney-General:** Mr President, following upon the last reading of this Bill, I did take the precaution of having a meeting with the commission because I was concerned about the issues which had been raised by the hon. member, Mr Delaney. And although Mr Delaney has indicated that there is a difference of opinion between what I have written to him in my letter of 26th May and what he was told by the commission, I am in fact heartened to read a note that has been given to me (*Mr Delaney interjecting*) by the commission this morning to say that I am probably correct in saying that performing any of the company administration activities, unless exempted, would draw in company secretaries. I think, if I may, I will go through my letter and I will try to explain it as best I can.

I think the first point that I would make is that it is surprising in many ways that the Bill does not expressly say that acting as a company secretary is a licensable activity. One would have expected that that would be easy to say and it would have perhaps cleared any doubt out of the air. But what in fact we have is a regime whereby first of all anybody who asks another to act as a company secretary, someone who arranges for another person to be a company secretary, that person is deemed to be a corporate service provider and is regulated, or is capable of being regulated, provided it is done by way of business. This is a common theme which, if I may, I would emphasise: all these activities are only caught by the licensing regime if it is done by way of business. So if I, as an advocate in practice, ask one of my managers to act as a company secretary and I am receiving a fee by virtue of that, then, subject to the domestic exemption - which I can come to later on - I am a licensable corporate service provider. That is the first point. So if I arrange for someone else to be a company secretary that is caught.

Now, the question then arises, if I act as a company secretary myself, will that constitute a regulated activity? In my letter I have invited Mr Delaney, and I would invite hon. members, to look at part I of schedule 1 and, if you could be kind enough to look at the top of page 29 you will see there this really repeats the point I have made that arranging for others to be officers of companies, that is a regulated activity. And 'officer', you will see there in subparagraph (3) of paragraph 6, includes a 'person occupying the position of company secretary, by whatever name called' and 'officer' also includes director. As I say, surprisingly we do not see company secretary there being a regulated activity.

But if we look at company administration, paragraph 8 of schedule 1, we see a list there of company administration services: the keeping of shareholders' registers, the keeping of accounting records, the preparation of annual returns and so on, the submission of documents, the convening of meetings. All of these things are things which a company secretary would be expected to do. Therefore, almost obliquely, the Bill is saying that if you are involved in company administration, you are caught, and of course we know that a company secretary is involved in company administration therefore a company secretary is caught.

But again I would emphasise, if I may, that he or she will not be caught if we are not involved with business - and also if we are not involved with offshore activities, because there is an exemption which recently came into the Bill in the other place which we can look at now in schedule 2. There is an exemption whereby companies which are involved peculiarly with domestic activities are not going to be caught, they are exempted. So therefore if you are a secretary of a company which is exempted because it is a domestic company, it is not a regulated activity. So I hope I have made that clear thus far. If you provide somebody else as a company secretary, you are a regulated activity; if you act yourself as a company secretary, you are going to be caught if you are involved with non-domestic business, but if you act as a company secretary of a domestic company then you are not going to be caught.

The new clause that came in in the other place was clause 5 of part 1 of schedule 2. You will see there that the sections 2 (1) and 2(2), which are the operative bits, shall not apply in respect of any regulated activity which is undertaken in the Island by a person who is resident in the Island, if the company which is the subject of the activity is resident, has a permanent establishment and then carries on certain listed trades or businesses which are particularly

related to the Isle of Man. Now, in my view, if I may say so, my respectful opinion is that that combination of provisions achieves the right balance. We do need to license people who provide officers, whether they are directors or secretaries, for companies which are involved in business outside the Isle of Man but equally the legislation - or the proposed legislation - provides an exemption for people who are not carrying on business and, secondly, who may be carrying on business but in respect of peculiarly domestic activities.

So I hope that is of some assistance to hon. members and, as I say, I am reassured that the officer from the FSC thinks that I may have it right now.

**Dr Mann:** Mr President, would the Attorney agree that first of all the mover has referred to what is in and what is not in this Bill and we have a question about who is encompassed within the Bill. Is it usual to have, under part II of schedule 1, the power that the commission may by regulation 'add to, amend, or repeal' the regulatory activities specified? We are talking about what is in and what is not in but the commission themselves can decide by regulation and they can alter it, add, delete. What sort of Bill are we actually passing? Is this a unique power built in to every regulatory authority that we can say what is acceptable now but they could alter it?

**The President:** The Attorney to reply.

**The Attorney-General:** Mr President, certainly there is power for the commission to alter the lists of regulated activities and that actually was brought in at the request of people who were going to be affected by this legislation. In other words, it was recognised by the draftsman and by the promoters of the Bill that it might not be possible to cover all those activities which ought to be exempted because they were particularly domestic. So this power to amend the lists is done to protect people not to bring them within the fold of regulation. It is there to extend the list of exempted activities.

This has been described as ground-breaking legislation. Nonetheless I am aware that in very many areas of financial regulation it is reserved to the regulator to amend, by regulation and by code, certain very important aspects of the legislation. This is not unique in that respect.

**Mr Delaney:** A couple of things. First of all on the clause which I hope and I would love to think - the Catch 22 clause I call it, Mr President - that is in this Bill and is appearing more and more often in government Bills, by the way - the situation is - and we would all hope that is the reason - it is brought in to aid our people. But unfortunately, I think, another directive is in being where that does not happen and it is our job to make sure that directives are not being used to the detriment of the public.

Going back to your interpretation, Mr Attorney, for which I appreciate the extra work you have put in, certainly on a Bank Holiday, I only received this this morning. I had my meeting with the officers and the mover at the end of last week. I was quite happy with the interpretation which now you have been told. I have not had a note from anybody. But you have been told that you are right, they were not quite so right. I would like to have first of all a copy of that note or similar. Because I went to the trouble, as the member of the Council I think I am due that.

I am also aware - and this is what worries me - that a lot of people out there on this issue are under the same impression we were under - and members in another place are of the impression - when this matter was raised lightly that, 'Ah, it does not affect company secretaries.' And if you read the amount of paperwork that has been coming and going, it is in there. But in actual fact our worst fears have been highlighted. If you deal locally, you are not affected, we are clear on that. I am worried about Mr and Mrs Bloggs up the road here, who happen to have a company which is handling for them property or business off the Island, who are not a 'Sark lark' but, according to my interpretation of what I am reading, because it is not primarily Isle of Man business, they are going to be affected. But they do not know that now. Nobody out there knows this. They have been told through debate that they are not affected. And I think it is only right and proper that our colleagues in another place are made clear. They got over the problem of a number of the lads being registered as directors and that is very nice but then why is it to be secretary to those companies - if they are dealing with family business not on the Isle of Man but off the Isle of Man - they are up to regulation, as I understand it.

**The Attorney-General:** Mr President, the hon. member just at the tail end of his address there referred to family companies, family business. Can I make it absolutely clear that if the company is involved in holding assets, shall we say (*Mr Delaney interjecting*) land for the family and the immediate members of the family, that is not a regulated activity.

**Mr Delaney:** I did not mean that, Mr President.

**The Attorney-General:** That is the first point I would like to make.

The second point is this: I hope that I can always advise objectively on the legislation as I see it. I was asked by the hon. member Mr Delaney to advise on this question of company secretaries and I had a meeting, as I say, with the Financial Supervision Commission on Friday morning and following upon from that meeting I wrote my letter to Mr Delaney. That letter represents my opinion and I feel that it is correct. Now, the Bill of course has evolved in debate in another place as well and there is no doubt about it, it is a complicated piece of legislation and I am quite certain that the commission would be well advised to issue guidance notes, sooner rather than later, I entirely agree.

It is perhaps a little unfair to have the officer's informal note to me made available, without me perhaps clearing it with the officer. There is nothing controversial in it. It is a note. I really introduced it in a light way to indicate that the officer now believes that my opinion in this letter is correct but I have no hesitation in confirming there is nothing untoward in that note.

**The President:** Can we just clear, Mr Delaney - I think you were wishing to clear the question in relation to maybe a difference between family business of somebody involved on the Island and whatever. If you would like to follow that point again.

**Mr Delaney:** I am quite clear from both sources, from the officers of the Financial Supervision Commission and the Attorney. I am quite clear if it is dealing with family property business. I am talking about the couple who may have entered into a business - not dealing with family property assets, running a business - off the Island, whether it be a property development company or whether it be a horticultural company, and it is adding to their business but it is off the Island. As I understand it, the situation is that now that that company secretary would have to be regulated because they are running a business dealing with other

persons, not just family estate. Now, that is my understanding and I would like to be told I am wrong there.

**The Attorney-General:** Mr Delaney is absolutely right, in my view, and I think it is absolutely correct that the Bill covers these people.

**Mr Delaney:** Now, we have the situation then that the interpretation from people dealing in these companies is that now we have got to the 10 - which was my original point - directorships being exempt, the company secretary of only one company - which may be the wife or may be the same person, because under company law you can be a director and a secretary - they are caught. There is no limitation of 10 for them, just one. I cannot believe that that was the intention originally of the Bill. Saying that, we have actually kidded them because the members downstairs fought like heck to get this 10 figure involved - and I agree it was arbitrarily drawn out on 10 - but they never realised, I am sure, because it was not made clear, that the secretary to a company - which they have got to have by law - that company, unless it is dealing purely in local matters, will need to be registered. So it does not matter about the other directors, the companies are covered under secretarial.

That is the situation as I see it and I think the least we should do is hold this over so the House of Keys know the interpretation of who is exempt and who is not exempt. Every company, I believe, is caught now through the secretary.

**The President:** Well, at the moment we are still dealing with second reading. Now, Mr Radcliffe, I do not know whether there is anything that you wish to add to your winding-up speech, having had the further debate - or not?

**Mr Lowey:** If I could just tease the learned Attorney -

**The President:** As long as you are teasing to get a result, and not just teasing!

**Mr Lowey:** No, I am teasing to get a result, Mr President. He did say that the regulations are not unique to this Bill where the regulatory authority can add or subtract, but the intent was, when it was introduced, actually to be easier to withdraw some of the regulations as opposed to adding to. The question I am asking is, it is a two-way street? If you put that clause in, you can add more regulations as well as take regulations off but are those regulations then subject to Tynwald approval? Because if you give the regulatory authority unlimited powers to add to or take off without somebody having a say, saying, 'Hang on, that is not. . .' But is it covered by Tynwald? That is the point I am making.

**The Attorney-General:** It is, Mr President, under clause 22 of the Bill.

**Mr Lowey:** That is fine.

**The Attorney-General:** All regulations made by the commission and all regulatory codes shall be laid before Tynwald as soon as practicable, and so on, and if Tynwald at the sitting at which they are laid or at the next following sitting, fails to approve them, they shall cease to have effect.

**The President:** We turn then to Mr Radcliffe to finally move the second reading.

**Mr Radcliffe:** Quite honestly, Mr President, with little to add to what I already have said - the learned Attorney-General has clarified some of the points which were a little bit cloudy - I am content to leave it at that, sir, and ask that the Bill be read a second time.

**The President:** Right, okay. Well, hon. members, the motion then before the Council is that the Bill be read a second time. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Hon. members, do I take it that the Council are happy to go to a committee of the full Council at this stage?

**Mr Delaney:** That is a difficult question to ask. We can go into committee and go through the clauses but I believe, because of the interpretation of this, we should have it clearer, or any amendments before we get to those particular clauses should be drafted, so members can see what we are doing. I believe the conflict in the interpretation should be made clear and if amendments are necessary, it should be done now rather than wait for new regulations to come in or otherwise.

**The President:** I think, hon. members, you are perfectly entitled to move any amendment as you so wish as we go through at clauses stage.

**Mr Delaney:** With due respect to members, what I was told on Friday to what I got on the fax only this morning, I tore up my amendments because I thought it was clear. Now, after seeing this, I believe this Bill needs clarifying and needs amending and I have just not had the time to do it. Sorry, Mr Attorney, but with it being a bank holiday, I -

**The Attorney-General:** No, indeed.

**The President:** Are you suggesting an adjournment, Mr Delaney, or are we continuing the way we are? Because if we are continuing, my understanding is that I take this Bill now through a full committee of the House, clause by clause.

**Mr Delaney:** I believe we should go for adjournment until we get this differential cleared.

**The President:** Well somewhere in here I assume that I have an adjournment, if it is seconded. Do we need a seconder for adjournment? Mr Delaney is proposing that the Council now adjourn at this particular stage to allow time for -

**Mr Delaney:** An amendment to be tabled to sort out the points being made.

**The President:** Do I have a seconder for that proposal?

**Dr Mann:** Yes, I will second it.

**The President:** In that case, hon. members, unless Mr Radcliffe wishes to comment on anything - do you wish, sir?

**Mr Radcliffe:** Well, it is one of those difficult ones, the question that is being raised. I would have much preferred to have gone through the clauses stage today but if there is going to be any doubt with the clarity of what we are doing here today, I would have to defer and say, 'Well, let us get the thing right, anyway.'

**Mr Lowey:** I thought could we not, as a compromise, amend - if the amendments are necessary - at the third reading?

**The President:** They can be amended at the third reading, yes.

**Mr Lowey:** I do think that the mover of the Bill has stressed our competitors are moving on. I think we really could move on with this and amend at a third reading because I do think the point that Mr Delaney has raised is a very valid one.

**Mr Delaney:** Could I have an opportunity to speak to my colleague the Attorney-General just outside the chamber, please?

**The President:** If you so wish. It is a good deal of compromise I assume, hon. members. I feel my way - you could give me guidance on this one - is that in fact we could deal with the clauses stage and the third reading at the one sitting rather than delay at that stage, if adjournment comes now. But if the hon. member and Mr Attorney wish to have a few moments, I am quite happy to allow that to take place. I will allow Mr Delaney and Mr Attorney to have a few moments on their own and then when they come back we will decide whether or not we are going for an adjournment in total this morning.

*The Attorney-General and Mr Delaney left the chamber.*

**The President:** Mr Attorney and Mr Delaney have returned to Council. Mr Radcliffe, did you wish to make a point in relation to the adjournment debate?

**Mr Radcliffe:** Well, purely in relation to the adjournment, if an amendment is to be moved it cannot reach the other place in actual fact until the end of October. That is the point I was making.

**Mr Delaney:** If it would suit everybody - I think it would, after speaking to the learned Attorney - I am quite happy to move through the clauses on the understanding that I may have an amendment which will come to the relevant clause and part of the schedule. Carry on with it please, Mr President. I just needed time; my brain does not work as quickly as everybody else's.

**The President:** In that case, with the approval of your seconder, who is prepared to withdraw as well in relation to the adjournment to the debate, we will move forward with the corporate services Bill on the normal procedures. My understanding therefore is that I turn to the hon. member for Council to take clause 1.

**Mr Radcliffe:** Thank you, Mr President. Clause 1 defines a corporate service provider as a person who, by way of business, engages in any regulated activity and the regulated activities are as described in schedule 1 part I. Schedule 1 part II enables the commission by regulation, after consulting with the Treasury, to add to, amend, or repeal the regulated activities. I am obliged to the learned Attorney for the explanation that he has already given on that particular one. All such regulations - and this is quite firm - require Tynwald approval. I beg to move, sir, that clause 1 stand part of the Bill.

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

**The President:** Council agreed?

**Members:** Agreed.

**The President:** I turn then to ask Mr Radcliffe to take part 2, clauses 2 to 5.

**Mr Radcliffe:** Yes, sir. Clause 2 makes it an offence to act as, or hold oneself out as, a corporate service provider in or from within the Island unless licensed to do so, or is exempted.

Clause 2 also requires a company incorporated in the Island, which acts or holds itself out to be a CSP outside the Island, to be licensed. An Isle of Man company is required to show its country of incorporation on its letterhead and its association with the Island, so it is clear to the world that an unregulated CSP operating abroad may thus by its activities bring the whole Island's name into disrepute. The definition of the activities of CSPs may draw in persons who it would be outside the spirit of the legislation to regulate, but schedule 2 of the Bill contains a number of important exceptions.

If I can deal with schedule 2, paragraphs 1, 2, 3 and 4 of schedule 2, exempt professional services are provided by the accountant, advocate or registered legal practitioner in respect of any advice given in their professional capacity. Paragraph 2 specifically refers to the preparation of minutes by such persons when acting in their professional capacity and with the affirmation of company administration encourage the activity of keeping accounting records in the preparation of accounts, because it is not the intention to regulate accountants and auditors in respect of their accountancy and audit work. They have been specially exempted in respect of these activities.

Paragraph 5 is as amended in the other place. It exempts CSP services which are provided to local businesses whose trade or business is carried on in the Isle of Man. This exemption was introduced at the request of the general practitioners' group of the Society of Chartered Accountants who, in addition to carrying out accountancy work for the local farmer or retailer or other business person, perform some of the regulated activities such as completing the annual returns for their local clients.

Paragraph 6 was amended in the other place and exempts any regulatory activity carried out for any licence holder which is itself a regulated business.

Paragraph 7 of schedule 2 exempts inter-group activities.

Paragraph 8 exempts certain joint ventures and joint enterprises.

The exemption in paragraph 9 for the introduction of business to a licensed CSP was necessary because some of the regulated activities contain, in words, arranging for others to act - for example as a director's secretary or a nominee share holder.

Paragraph 10 of schedule 2 exempts the holders of investment business licences or banking licences who act as a nominee share holder for their clients as part of their investment or bank investment service.

Paragraph 11 of schedule 2 exempts employment agencies who may arrange for others to act as a director or secretary.

Paragraph 12, schedule 2, as amended again in the other place, refers specifically to those who act as a director and exempts the directors of certain companies. The amendment made in the other place allows a person to act as a director of 10 companies without being required to hold a CSP licence for that regulated activity. The paragraph clarifies that the 10 directorships do not include those exempted under the other head, such as the domestic services exemption. Ten is felt to be a reasonable number which turns an activity into a business or not - and once you get over 10, they are starting to move into a business then.

Paragraph 13 of schedule 2 exempts the official receiver, an insurance manager registered under the Insurance Act, the liquidator or provisional liquidator, a receiver of a

company or the personal representative appointed, who are carrying out any regulated activity as part of the function of their office.

This new clause 16A, introduced by a member from the floor, is also relevant here as it allows the commission to declare in doubtful cases whether a company falls within the domestic services exemption of paragraph 5(l) or whether a person does or does not fall within the exemption of acting as a director in paragraph 12.

Part II of schedule 2 allows the commission to add to, amend or repeal the exemptions by regulation - and again I make it quite clear that all regulations must be laid before Tynwald for approval. Part II also allows the commission to undertake enforcement action if a person contravenes a condition. I beg to move, sir, clause 2.

Clause 3 requires that every application for a CSP licence shall be made to the FSC, and the commission may specify the form of application and any other document.

Under sub-clause (3) the commission will not issue a licence unless it is satisfied that the persons are fit and proper.

Sub-clause (4) provides the commission shall in respect of every application for a CSP licence either issue the licence or issue the licence subject to conditions or totally refuse the application.

Sub-clause (5) allows the commission after the issue of a licence to impose conditions and sub-clause (6) allows the commission to make a conditional licence subject to further conditions or to vary or revoke. The commission is required to give notice in writing, stating the reasons for its decision when it imposes, varies or revokes conditions. That is clause 3.

I move on to clause 4 in the little cluster. Clause 4 gives the commission powers to revoke or suspend a licence, if it has reasonable grounds for believing that the licence holder has contravened any provisions of the Act or codes made under the Act. The review panel is mentioned: if a review is applied for, it will be effective when either the applicant abandons the review or when the review committee confirms the commission's decision. The review committee may revoke the commission's decision and in such an event the revocation or suspension will not come into effect at all. Therefore, if the commission says, 'No, you can't operate' but the review says, 'You can', the revocation which is issued by the FSC shall have no effect whatsoever.

Clause 5 allows the commission to keep a register of CSP licence holders.

I beg to move, sir, that clauses 2 to 5 inclusive stand part of the Bill.

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

**Mr Lowey:** Could I ask the mover of the Bill, it says in many of the clauses we have just dealt with that if they contravene, enforcement action shall be taken. Could he illustrate what 'enforcement action' means? Publicity?

**Mr Radcliffe:** The hon. member, could I ask, is he thinking of name and shame? That is mentioned later on in the Bill.

**Mr Lowey:** Yes, but it just says enforcement action will be taken. What does that mean?

**Mr Radcliffe:** Well, the commission has power to revoke the licence, vary the licence - whatever the commission deems necessary as an enforcement action.

**Mr Lowey:** Okay.

**The President:** Now, hon. members, the motion before Council is that clauses 2, 3, 4 and 5 along with schedule 2 stand part of the Bill. Will those in favour please say aye -

**The Attorney-General:** Sorry, Mr President. I perhaps should have just noted before, in fairness to the hon. member Mr Delaney and the conversation I have had with him, I think it is probable that the amendment to deal with company secretaries will come in within those clauses, and I think it is likely to be in clause 12(2) of schedule 2. So in other words - if we see 12(2): sections 2(1) and 2(2) shall not apply in respect of any regulated activity specified in paragraph 6(1) of schedule 1 if the person in question does not act as a director, alternate director or secretary in respect of more than 10 companies. I envisage that that is what will happen.

**The President:** Well, maybe, but at the present time we have simply in front of us clauses 2, 3, 4 and 5 as printed in the Bill along with schedule 2 as printed in the Bill. Whilst I accept that a conversation with Mr Delaney and yourself may bring forward an amendment, at this stage we are taking it as we agreed, step by step.

Again, hon. members, for the purposes of clarification, clauses 2, 3, 4 and 5 and schedule 2 stand part of the Bill. Agreed?

**Members:** Agreed.

**The President:** We turn then, Mr Radcliffe, to clauses 6 to 8, please.

**Mr Radcliffe:** Clause 6, Mr President, is an enabling power allowing the commission to make regulatory codes concerning the conduct of a CSP's business and related matters. To give hon. members an idea of the nature of the underlying codes the draft codes, as circulated for consultative powers cover: 'know your customer' which adopts anti-money laundering; client agreements and/or the terms of business, and this is a customer protection part. The CSP will have to provide a customer with an idea of how much that customer is going to have to pay for the services he is going to receive. The key staff appointments and the fit and proper requirements for anyone fulfilling that function is encompassed in clause 6. The dual control and the four-eyes principle is encompassed in clause 6. Compliance systems and procedures which would be expected to be appropriate to the level and the scope of the CSP's business, again in clause 6. And if a CSP is providing directors, directly or indirectly, the CSP must ensure that those firms are suitable and competent for that office and are able to confirm that they understand the duties and responsibilities of directors. For customer protection adverts, advertising must not be misleading or damaging to the Island's good image and, again, to protect clients a separate client money code sets out the rules for holding clients' money. That deals with clause 6, Mr President.

Clause 7 allows the commission to make recommendations and directions which are critical for effective supervision. Confidentiality of a client's affairs is protected as the commission may only make a recommendation in relation to the affairs of a particular customer of the CSP, in respect of the conduct of the CSP business, if it is necessary in order to protect the interest of the CSP's other customers. To give comfort to the CSP's customers

that the confidentiality of their affairs will not be abused by the regulator of the corporate service providers, other clauses in the Bill also refer to the restriction of enquiries into the affairs of a CSP customer. And that deals with clause 7.

Clause 8 deals with civil penalties and allows the commission to require a CSP who contravenes any provisions of the Act to pay a penalty. It should be noted that in order to give effect to the clause the commission is required to make regulations and these regulations again must be approved by Tynwald. There is no intention to make any such regulations for the time being and the clause requires the commission to consult before making any such regulations - that the consultation process is already in hand.

I beg to move, sir, that clauses 6, 7 and 8 stand part of the Bill.

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

**The President:** The motion then, hon. members, is that clauses 6, 7 and 8 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. We turn then to clause 9.

**Mr Radcliffe:** Thank you, sir. Clause 9 refers to the requirement for any director, chief executive, manager or controller of a CSP business, or any 'key employee' - and this is defined as a person employed by the CSP in a position with significant power or responsibilities for any regulated activity. This requires these people to meet the fit and proper criteria. A CSP may not make any such appointment without the commission's consent and the principle in clause 3, which requires an applicant for a CSP licence's key employees to be fit and proper persons, is thus extended by this clause to ongoing regulations. I would point out that a decision by the commission to refuse to allow such an appointment may be referred to the review committee which is dealt with under clause 17. I beg to move, sir, that clause 9 stand part of the Bill.

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

**Mr Delaney:** This actually, I believe, is the clause that gets to the crux of the problem this Island and other jurisdictions have suffered, unsavoury characters getting involved in businesses. I would just like to clear, because it is not listed as such - the schedule carries some of them - the sort of activities that would be used against a person. Is it, for instance, bankruptcies of companies? There is no limit, as I understand. There is no law to say that a person who has been bankrupt several times cannot still carry on being a director of a company. What sort of character no-go areas are we looking at here for persons? Obviously, previously having a criminal conviction and having been in gaol, they are. What sort of things would be the disallows, the no-nos - because we have not seen the regulations, you see.

**Mr Lowey:** Just as a follow-on -

**The President:** Mr Radcliffe to reply.

**Mr Radcliffe:** I defer to Mr Lowey on that one.

**Mr Lowey:** No, it is very much on the lines of people who may not be bankrupt, who may not be caught yet in the trap, who have moved on from one jurisdiction to another but who are known to the Financial Supervision Commissions within the jurisdictions. Not actually convicted but known to be involved in, doesn't that make them an unfit person to actually

operate from within our jurisdiction? In other words, do they have to be convicted or is it what I would call the inside information?

**Mr Radcliffe:** Well, could I say, Mr President, that the commission will be making the decision, which is open to review. The commission may in unusual circumstances make a decision saying that Eddie Lowey is not fit to be a CSP and we all know he is very fit and proper to be a CSP.

**Mr Lowey:** Today.

**Mr Radcliffe:** And if they said that, the person can go to the review panel, send his case there. I would suggest that the inside information, or the information which the commission has, will enable them to veto any person who they think is undesirable. That person, as I say, has the right to go to review but there is no automatic exclusion, as I understand it, because you have been handling bankrupt companies or whatever. The commission will use its own knowledge and the person, if they feel sadly aggrieved, can go to the review committee.

**Mr Delaney:** Yes. So we really do not know, or we are not clear as yet, what sort of persons we think are unsavoury or unsuitable to hold directorships or service providers' licences. Is that correct? We are not sure at the moment.

**Mr Radcliffe:** It is certainly not set out in the Bill as such but I think you have to say again that the commission has a lot of information to hand which would enable it to make the proper decision and if a person is totally aggrieved, he can go to the review committee.

**Mr Waft:** Well, Mr President, as there is no Rehabilitation of Offenders Act in the Isle of Man, you would come to your conclusions as to the time spent for a conviction by the applicant in the past. You would have to take a valued judgement on that.

**Mr Radcliffe:** We are going into a different field here. I wonder if the learned Attorney has any -

**The President:** Well, we are going round in circles again.

**Mr Delaney:** He is a popular man this morning!

**The Attorney-General:** Mr President, I think, by way of analogy, could I refer to the action which has been taken recently by the Financial Supervision Commission under the Companies Act. I think it is section 26 of the Companies Act 1992, where the commission has brought proceedings in the Chancery Court for declarations that a particular person is not a fit and proper person to act. Generally speaking there, the commission brings evidence as to the past misdeeds of the individual in terms of compliance with company law. He or she might for example have acted as a director of an insolvent company not once but twice or many times. He or she may have been guilty of professional misconduct as an accountant, as a lawyer, for example. He or she may have been found guilty of offences in the UK which the commission feels makes that particular person unfit or improper to act. So, I think, although there is no definition, there is a very wide scope for bringing in people who are, as we would all understand it, not fit and proper to act.

**The President:** The motion, hon. members, is that clause 9 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. We move then, hon. members, to clauses 10, 12 and 13.

**Mr Radcliffe:** Clause 10, Mr President, refers to the commission's supervisory and investigative powers and these include: the power to inspect the books, accounts and documents and to investigate the transactions of a CSP or former CSP, to enter the premises of a CSP during reasonable hours and to take possession of all copies of books, accounts and documents. Obstructing the commission in the performance of its functions is an offence. As I pointed out, this clause 10 is inspection and the commission cannot bulldoze their way in on that particular visit, shall we say. It requires, under the following clauses, warrants to gain that admission. The powers under clause 10 are fundamental to a credible regulatory regime and are necessary for normal supervisory work. The powers contained in clause 10 are inspection only and do not allow permission to search and thus can be carried out with the co-operation of the CSP. It is only fair to say that care will always be taken to cause the minimum amount of disruption to a CSP's business.

Clause 11 gives the commission further powers to request information from a CSP or former CSP, and the clause stipulates that the Commission may not request information about the affairs of a particular customer of the CSP unless it is relevant to the conduct of the CSP's business. Sub-clause (6) states that the commission may take enforcement action in respect of a request for information. The other circumstances which may necessitate enforcement action will be referred to in the appropriate clauses but as this is the first reference to 'enforcement', it is relevant to refer here to the definition which is contained later on in clause 26(3). Enforcement action means the exercise of any one or more of the following powers: the issue of a recommendation request and direction under clause 7 or 11; the exercise of powers in relation to a CSP; the revocation or suspension of a licence; the withdrawal of an exemption; the imposition of a penalty.

The taking of any of the aforementioned enforcement actions does not preclude the exercising of any other power or remedy under the Act, nor shall it prevent the commencement of proceedings for an offence. As in clause 10, legal privilege applies to the commission's request for information. And that deals with clause 11, sir.

Clause 12 allows the commission under the authority of a Justice of the Peace to require information from the CSP or from any other person who may have relevant information. Sub-clause (3) permits the commission by notice in writing, accompanied by the instrument issued by the JP, to require persons to produce documents or copy documents. Sub-clause (4) requires that if a person does not comply with sub-clause (3), they inform the commission of the whereabouts of those documents. Sub-clause (5) allows the commission to take possession of any such documents or to require the person presenting the documents to provide an explanation about any of them. Sub-clause (6) provides the same protections as clause 11 for the person giving the information, which is that it may not be used in evidence against him except in respect of an offence under clause 19 and they are giving you false or misleading information. I move that clause 12 be part of that little group.

And 13. If a person who has failed to comply with a previous clause or it is not practicable to serve notice accompanied by a Justice of the Peace's warrant and there are reasonable grounds to believe there are documents on the premises, the commission may obtain a deemster's warrant to allow the person named in the warrant to enter and search the premises and take possession of various documents. A constable must accompany the person acting on behalf of the commission under a deemster's search warrant and as in

previous clauses where information is sought, legal privilege applies in the disclosure of that information.

I beg to move, sir, that clauses 10, 11, 12 and 13 stand part of the Bill.

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

**Mr Lowey:** Clause 10(6), without prejudice to the following provisions, the Treasury may give the commission what is the thinking behind introducing a third party to give the commission an overriding direction?

**Mr Radcliffe:** Well, the Financial Supervision Commission is an arm of Treasury; that is the reason I would suggest why that is there.

**Mr Lowey:** Then, with respect, the authority of the Treasury would be vested in the member of the Treasury - or is this a pre-emptive strike, if and when we do not have a member of the Treasury? That is not the reason, really. The real reason I am asking the query is why would the Treasury want to give directions to the Financial Supervision Commission in exercising its functions?

**Mr Radcliffe:** With due respect, Mr President, we cannot see what may or may not happen in the future and this is there just in case something goes sadly awry, perhaps, that the Treasury may either generally or with regard to a specific case give the commission directions. We have no idea what may or may not occur in the future. We may have a dud FSC and the Treasury will say, 'look, you have got to do something with this particular case. Get on with it.'

**The President:** Okay, hon. members, the motion before the Council is that clauses 10, 11, 12 and 13 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. We move then to clauses 14 and 15. Mr Radcliffe.

**Mr Radcliffe:** Thank you, sir. Clause 14 allows the commission to make a public statement, provided that seven days' written notice including the reasons for making such a statement have been issued to the person concerned. Such notice would allow the person concerned to make representations to the commission or to petition the court for an injunction to prevent the commission from making that public statement.

The circumstances in which the commission may issue a public statement are: if there are reasonable grounds for believing that the person concerned is acting as or holding himself out as a CSP without a licence or has contravened any regulatory code or contravened any conditions of his licence or any direction that a person shall not be appointed to a key employee position under clause 3 and the public statement issued on any direction relating to a request for information by the commission. The commission may only make such a public statement if it appears to the commission to be necessary for the protection of a person or class of persons, that is to say that it is in the public interest. If the commission believes that immediate action is necessary, it may make a statement without giving the minimum seven days' notice. 'Naming and shaming' is considered by regulators to be an important tool to bring a recalcitrant and uncooperative flouter of the compliance regime to order.

Clause 14, then, is dealing with naming and shaming and clause 15 allows the commission to apply to the High Court for all injunctions in certain circumstances. So I beg to move, sir, that clauses 14 and 15 stand part of the Bill.

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

**The President:** The motion, hon. members, is that clauses 14 and 15 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 16, then, hon. member.

**Mr Radcliffe:** Thank you, Mr President. Clause 16 allows the commission to petition the High Court for the appointment of a receiver or manager in respect of the affairs, business and property of the CSP or former CSP, if such an appointment is in the public interest or necessary to protect the interest of customers or creditors. The court may then appoint a suitable person as receiver and manager or dismiss the petition or adjourn the hearing or make an interim order. This clause is without prejudice to the generality of the jurisdiction of the High Court under section 42 of the High Court Order of 1991 which refers to the powers of the High Court with respect to injunctions and receivers.

**The President:** Would like to take clause 16A at the same time, Mr Radcliffe?

**Mr Radcliffe:** Yes, thank you, sir. Clause 16A has been introduced, incorporating the amendments made in the other place, and is referring to the commission's power to declare in cases where there is real doubt whether or not a person is engaging in a regulated activity via a business or whether the company falls within the exemptions under paragraph 5. Clause 16A is incorporating various amendments made in the other place, Mr President, and I beg to move, sir, that clauses 16 and 16A stand part of the Bill.

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

**The President:** The motion, hon. members, is that clauses 16 and 16A stand part of the Bill. Are we agreed, Council?

**Members:** Agreed. In agreement with that, we move on to clauses 17 and 18. The hon. member, Mr Radcliffe.

**Mr Radcliffe:** Sir, clause 17 allows for an aggrieved party to refer a decision of the commission to the Chief Secretary for review by a Council of Ministers - appointed review committee. Three persons with appropriate experience, who are independent of both the commission and the applicant, will be appointed by the Council of Ministers to review any such decision. There is a reasonable list of what may be referred for review, such as refusal to issue a licence, revocation or suspension of a licence, placing conditions on a licence, withdrawal of an exemption or imposition of any penalty. That deals with the clause 17, I think.

Clause 18 provides a statutory indemnity within the Treasury and the Financial Supervision Commission and any of their staff or any persons authorised to act on their behalf. Those persons shall not be liable in damages for any action performed in connection with their functions under the Act or their failure to act, so long as it can be sure they were not done in bad faith.

I beg to move, sir, that clauses 17 and 18 stand part of the Bill.

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

**Dr Mann:** Clause 17, where we are talking about members of the committee must be persons who are independent of both the commission and the applicant. Would that include members of the Treasury?

**Mr Radcliffe:** No, sir, the commission is seen to be an arm of Treasury, so Treasury would have no involvement whatsoever in the review committee.

**Mr Lowey:** Could I just again, on clause 17, clear it up? There is no timescale for the appointment of a review panel. If the person is allowed to continue to practise, that is bad for the punters. But equally, if it is allowed to continue where he is not allowed to practise - if that is going to be the rule - then it could very well be detrimental to him and his business, there would be no business to come back to. So should there be a timescale there or is it -

**Mr Radcliffe:** Well, through you, Mr President, no timescale is mentioned, but I would suggest that the review committee would be formed pretty quickly and get on with things, both in the interests of protecting the CSP or protecting its clients.

**Mr Lowey:** That would be the intention.

**Mr Radcliffe:** You would not be left to hang around. The review panel, as I understand it, will consist of seven or eight persons. So there should be no great delay in forming the review committee.

**The President:** Right, hon. members, the motion is then that clause 17 and 18 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. With that agreement, then, we turn to clauses 19 and 20.

**Mr Radcliffe:** Thank you, sir. Clause 19 makes it an offence to furnish the commission with any false or misleading material or to make false or misleading statements. Clause 19 deals with misleading material.

Clause 20 sets out the penalty for an offence which is on summary conviction to a fine not exceeding £5,000 or to a term of custody not exceeding six months or to both. Proceedings for an offence may only be commenced by either the commission or the Attorney-General.

I would beg to move, sir, that clauses 19 and 20 which deal with offences stand part of the Bill.

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

**Dr Mann:** A question: why no proceedings over an offence shall be commenced except by the commission or with the consent of the Attorney-General? Why is that particular sub-clause included?

**Mr Radcliffe:** No, the proceedings may be commenced by either the commission or by the Attorney-General. Perhaps I did not make that altogether clear.

**Dr Mann:** By either party.

**Mr Radcliffe:** Either party, yes. It is not only peculiar to the Attorney-General's office that a prosecution should go ahead.

**The President:** It is 'by or with', isn't it?

**Mr Radcliffe:** Yes.

**The President:** So, the motion then, hon. members, is that clauses 19 and 20 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. We turn then to clause 21 and 22.

**Mr Radcliffe:** Thank you, sir. Clause 21 relates to the making of regulations under the Bill and sub-clause (2) allows the commission to exempt any person or class of persons from any of the provisions of the Bill by regulations, and regulations may also place conditions on an exemption and state the circumstances in which the commission may withdraw that exemption. Contravention of any condition may lead to the commission taking enforcement action and the commission is required to consult with the Treasury before making any regulations at all. And that deals with clause 21, regulations.

Clause 22 requires that regulations made by the Council of Ministers and regulatory codes made by the commission must be laid before Tynwald, and that in any case Tynwald approval is required.

I beg to move, sir, that clauses 21 and 22 stand part of the Bill.

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

**The President:** The motion, hon. members, is that clauses 21 and 22 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Agreement reached on those two, we turn then to clauses 23, 24 and 25, Mr Radcliffe.

**Mr Radcliffe:** Thank you, sir. Clause 23 refers to the obligations of an auditor to report any contraventions to the Act or regulatory codes which come to light in the course of their audit work. So it is in effect a whistle-blowing clause.

Clause 24 deals with the fact that the commission may require a CSP to appoint an accountant or similar professional to report on any aspect of matters relating to the affairs of that CSP. This allows for a review of the particular aspect of a CSP's affairs which may be causing the commission some concern. That is clause 24.

Clause 25 allows the commission, after consulting with the Treasury, to prescribe fees to be paid on the application for an issue of a licence.

So I beg to move, sir, that clauses 23, 24 and 25 stand part of the Bill.

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

**The President:** The motion, hon. members, is that clauses 23, 24 and 25 be approved. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. We turn then to clauses 26, 27 and conclude at 28. Include the schedule 3, I think, also, hon. member.

**Mr Radcliffe:** Yes, sir. Clause 26 is the interpretation clause.

Clause 27 is the amendments of enactments and, as you rightly say, clause 27 introduces schedule 3.

Clause 28 deals with the short title and the commencement date of this particular Bill.

I beg to move, sir, that clauses 26, 27 and 28 stand part of the Bill.

**Mrs Christian:** I beg to second, Mr President, and schedule 3.

**The President:** Hon. members, the motion is that clauses 26, 27 - including schedule 3 - and 28 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Now, that concludes the clauses stage of the Corporate Service Providers Bill or committee stage.

**Mr Radcliffe:** If I was a very brave person, Mr President, I would be attempting to move that the Bill be read a third time today.

**The President:** I do not think you are going to be quite that brave.

**Mr Radcliffe:** I do not think I am going to be quite that brave, because I acknowledge the chances of total success on that one are a little limited. So I will just have to be content, sir, that we have reached the stage we have and await developments at the next sitting of this House.

**The President:** Okay, in that case, hon. members, that draws to a conclusion the business before Council this morning.

Before we do wind up, Mr Lowey indicated to me earlier that our understanding is that a former member, Katie Cowin, has died during the evening, so I am sure members will be sad to learn of that information.

Following that, the adjournment will be to the sitting of Tynwald commencing on 20th June and then one further sitting to take place on 27th June. Tynwald 20th June is our next sitting, hon. members. Thank you.

*The Council adjourned.*