

**REPORT OF PROCEEDINGS OF  
HOUSE OF KEYS**

**Douglas, Tuesday, 1st February 2000  
at 10.00 a.m.**

Present:

The Speaker (the Hon N Q Cringle) (Rushen); Mr L I Singer and Hon A R Bell (Ramsey); Mr R E Quine OBE (Ayre); Mr J D Q Cannan (Michael); Mrs H Hannan (Peel); Hon W A Gilbey (Glenfaba); Hon S C Rodan (Garff); Hon D North (Middle); Mr P Karran, Hon R K Corkill and Mr G T Cannell (Onchan); Messrs J R Houghton and R W Henderson (Douglas North); Hon D C Cretney and Mr A C Duggan (Douglas South); Mr R P Braidwood and Mrs B J Cannell (Douglas East); Mr J P Shimmin and Hon A F Downie (Douglas West); Hon J A Brown (Castletown); Hon D J Gelling (Malew and Santon); Sir Miles Walker CBE LLD (hc) and Mrs P M Crowe (Rushen); with Prof T StJ N Bates, Secretary of the House.

*The Chaplain took the prayers.*

**Commission of Inquiry into Legal Services – Evidence – Question by Mr Cannan**

**The Speaker:** Hon. members, we turn then to our order paper and I call upon the hon. member for Michael.

**Mr Cannan:** Mr Speaker, I ask the Chief Minister:

*Will you give an unequivocal assurance that the Commission of Inquiry into Legal Services will take evidence, both written and oral, in accordance with the Tynwald Proceedings Act 1876, section 3?*

**The Speaker:** I call upon the Chief Minister to reply.

**Mr Gelling:** Mr Speaker, the Commission of Inquiry into Legal Services, as the hon. member for Michael has termed the commission, is not a committee of Tynwald Court, nor is it a committee of either House and therefore the Tynwald Proceedings Act of 1876 cannot therefore apply.

**Mr Cannan:** Mr Speaker, as this Chief Minister is not establishing this court of inquiry in terms of the House of Keys and the Court of Tynwald, does he realise therefore that any evidence given to the inquiry, either orally or written, will not have that immunity, nor will witnesses be able to summons, nor evidence be properly obtained and therefore what value will this inquiry have?

**Mr Gelling:** Mr Speaker, as I have already said, the commission of inquiry which has been established was actually established under the remit of the Council of Ministers appoint a commission under the chairmanship of a person with legal qualifications who does not practise and has not practised in the Island and I must repeat that it is not therefore a committee, it is a commission.

We are still awaiting the recommendation from the Lord Chancellor's office as to the chairman, which again was something that we took out of the debate. It was suggested that that would be the thing to do, so we await that chairman to be appointed and obviously he will

decide with his fellow commission members how they take evidence, whether it be oral, in confidence, behind closed doors or in public, sir.

**Mr Cannan:** Mr Speaker, the Chief Minister has not answered the question. The question is, will the commission now have the powers to give to witnesses and people who give evidence, both oral and written, either in private or in public, immunity?

**Mr Gelling:** Mr Speaker, and I will repeat that the Tynwald Proceedings Act of 1876, section 3 will not apply, sir.

**Mr Quine:** Can the Chief Minister then make it quite clear that this commission, which is proposed by the Council of Ministers, cannot have recourse to enabling legislation that would provide cover, provide security for those witnesses giving evidence? Alternatively, will he advise us of legislation which exists that he can invoke, or which the commission could invoke perhaps, to provide that comfort for witnesses?

**Mr Gelling:** Mr Speaker, as I have said, the chairman has not as yet been appointed. I would hope that the discussion with the chairman would give us some idea as to how they will conduct their enquiries. If it is in confidence behind closed doors and they take information on the understanding that information has been given in confidence, I would suggest that that is how it will be taken, but if the hon. member is saying that the evidence that they wish to be given should be in public and then those people who make those statements in public are then protected, I would say again the answer is that that would not be the case, sir.

**Mr Cannan:** How then, therefore, through you, Mr Speaker, can the Chief Minister say that this commission will serve the purposes for which members of Tynwald thought it was being established, that people would be able to appear before the chairman and give evidence without fear of prosecution or civil proceedings against them afterwards?

**Mr Gelling:** Mr Speaker, I am sorry, but it has been set up quite clearly under the remit that we have in front of us. I do not see this commission sitting purely and simply to hear complaints by people or to ask for their cases to be reheard once again. They have been set up to investigate and report on the regulatory and disciplinary procedures which apply to those practising law in the Isle of Man. That is what it has been set up for and I would say that the chairman and his fellow members will conduct it in that way, sir.

### **Ombudsman – Introduction of Legislation – Question by Mrs Cannell**

**The Speaker:** We go on to question 2, hon. members, and I call upon the hon. member for Douglas East, Mrs Cannell.

**Mrs Cannell:** Mr Speaker, I beg leave to ask the Chief Minister:

*Will you give fresh consideration to introducing legislation to establish an ombudsman with jurisdiction to consider and report on allegations of maladministration received directly from the general public?*

**The Speaker:** Again I call upon the Chief Minister to reply.

**Mr Gelling:** Mr Speaker, the last time there was a substantial review of whether the Island should appoint an ombudsman was more than 10 years ago and the Select Committee of Tynwald on the Appointment of an Ombudsman reported in November of 1989 and Tynwald adopted the select committee's recommendations. The select committee concluded

there was insufficient evidence to determine whether an ombudsman could be justified and recommended two interim measures. Now, these were firstly the introduction of a standardised complaints procedure within government and secondly that there be an annual report to Tynwald based on records of complaints received during the previous year.

Now, these recommendations were implemented. However, it is perhaps time for there to be a review of the evidence of the last 10 years to see whether a case for an ombudsman has been established and I will certainly raise this issue with my colleagues on the Council of Ministers, sir.

**Mrs Cannell:** Mr Speaker, given the population of the Island, does the Chief Minister not agree with me that it would be prudent, whilst he and his colleagues are reviewing the position with respect to engaging an ombudsman, that such an appointment should have a wide jurisdiction encompassing government departments, local authorities, health, police, other agencies both private and public, as reported in the select committee to which he referred in 1989 and that that kind of ombudsman with a wide remit would benefit us in the Island?

**Mr Gelling:** Yes, Mr Speaker, in the report it said quite clearly that that was one of the reasons why they did not suggest an ombudsman at that time, because of the expense and the wide administration that this ombudsman would have to have. So therefore, as I have already said in my original answer to the hon. member, yes, we will look at this and obviously we will be basing it on the views of that original committee which was set up at that time, sir.

**Mr Karran:** Vainstyr Loayreyder, would the Chief Minister not agree that the reason why we ended up with the report, as chairman of that select committee, was the fact that the previous administration put a block on any moves as far as an ombudsman is concerned and can he give an assurance to this hon. House that his administration will not do the same exercise of blocking it, and would he also not agree that the issue of the annual complaints report is a joke and is a waste of public money and a waste of the paper and the trees that have to be destroyed for it?

**Mr Gelling:** Mr Speaker, well certainly when I read the report and refresh my mind that 10 years ago the report does not say that the administration of the day blocked it. However, I have read with great interest the reasons why the chairman and his colleague of the day came to their conclusions, but the reports that have been coming out of course are from that select committee's suggestion, and those annual reports have come out on a regular basis and it is interesting to see the way in which some departments have no complaints whatsoever during the year, but it certainly has given us an idea of whether or not the complaints are increasing or they are dropping off. So the hon. member saying it is, well I cannot remember the words exactly, but nothing worse than useless or something to that effect, I would not agree with, sir.

**Mr Singer:** Mr Speaker, could I ask the Chief Minister, do you not agree that starting as a basis and using a report of 10 years ago is rather out of date and that the whole aspect should be looked at from the beginning, because would you not agree that many people nowadays feel they have a genuine complaint, but they come up against a wall of bureaucracy now which they feel they cannot overcome and so they drop their complaint and they themselves become a victim of the system?

**The Speaker:** I think the Chief Minister has answered that question. He said he would relook at it. Chief Minister.

**Mr Gelling:** Yes, Mr Speaker, what I am saying is that what was suggested by the select committee 10 years ago was implemented. We now have 10 years of what they suggested behind us and I would suggest that we will look at whether or not that select committee's suggestions were successful over 10 years, but certainly we will take all the evidence we can on board as to what the position is as of this day, sir.

**Mr Quine:** Will the Chief Minister confirm that his review as to the needs for an ombudsman will take into account public input, in other words that he will invite from the public a view as to the need for an ombudsman and not base his decision or not base government's review and the decision that flows from that on what is broadly accepted as being an impotent and unfair government complaints procedure?

**The Speaker:** A similar question but, Chief Minister.

**Mr Gelling:** Yes, Mr Speaker, it is always a danger to say 'Yes, I will raise this with my hon. ministers in the Council' and now we are already on the way to having a review, but certainly these are the areas that I would suggest that we would cover and if there is going to be consultation I would say that will mean what it really says and that is consultation, not just with one side, but with people that possibly have had problems, sir.

**The Speaker:** I return to the original questioner for the final supplementary: Mrs Cannell.

**Mrs Cannell:** Thank you, Mr Speaker. With respect to the review that the Chief Minister has referred to, can he advise when the review might take place, how it will be proceeded with and can assure me and hon. members here today that he will regard this particular issue as a priority?

**Mr Gelling:** Mr Speaker, we will obviously raise this at the earliest opportunity with the Council of Ministers and then we will move on from there, sir.

#### **Petition by Jean Noreen Thompson – Report – Question by Mr Henderson**

**The Speaker:** Item 3, hon. members, on the order paper and I call upon the hon. member for Douglas North, Mr Henderson.

**Mr Henderson:** Thank you, Mr Speaker. I beg leave to ask the Minister for Local Government and the Environment:

*When will you be able to honour your commitment made at the December 1999 sitting of Tynwald to furnish a report early in the New Year, following a petition to Tynwald by Jean Noreen Thompson in 1995?*

**The Speaker:** I call upon the Minister for Local Government and the Environment, the hon. member Mr Gilbey, to reply.

**Mr Gilbey:** Mr Speaker, I shall start off by making it absolutely clear I did not give a commitment in Tynwald Court in December 1999 to furnish a report early in the New Year in relation to this matter. I have checked with *Hansard* most carefully and what I said was, 'It was hoped that the department would be able to report back early in the New Year', but the issues raised in the petition of Jean Noreen Thompson were extremely complicated.

I explained that whilst appreciating the importance of reporting back as soon as possible, it was even more important to get it right. The department does not believe it would be wise for

the Island to launch out on its own in relation to the subject of commonhold in particular and the experience of the adjacent isles needed to be studied carefully.

The department's estates and housing division is finalising its report on this subject and this should be considered by the department during February of this year. Shortly thereafter I should therefore be in a position to report back to Tynwald Court.

**Mr Henderson:** Mr Speaker, I thank the hon. minister for that response, but could he please indicate, when he says he will be in a position to report back to Tynwald Court, is he indicating the report that my question is referring to in the first place? If so, what is the estimated date of reporting back to Tynwald Court, please?

**Mr Gilbey:** It is regarding the report that we shall be reporting back, Mr Speaker. I am not going to give a firm date because I am not going to make promises when I am not absolutely certain they can be honoured and I did not make a promise before and I have no intention of giving one now, Mr Speaker.

**Mr Karran:** Vainstyr Loayreyder, does the minister not agree that he is letting down this section of the community as far as this housing issue is concerned, as he has let down the other sections of the community as far as the lack of first time-buyers houses is concerned, and does he not agree that maybe it is time for his department to quit whilst they are still in seeing distance as far as the housing issue is concerned and let us have a minister for housing who will sort this issue out and all the other issues out which have been left in a complete mess at the present time?

**Mr Gilbey:** I do not agree we are letting down anyone on any of the fronts that the hon. member referred to. First of all regarding the petition in question, it actually only effects a relatively small number of people, but obviously it is important to those that it does affect, and that is not denied and it is being dealt with, but I should have thought in view of the second part of the remarks by the hon. member for Onchan, Mr Speaker, that he would have preferred that the department should do what it is doing, which is to give the maximum emphasis to the problem of providing more housing, and again it is ridiculous to say that I have let down anyone regarding housing. I have only been in post for about six months and the hon. member should know very well that it takes longer than six months to produce houses.

**Mr Karran:** I have been on about it for years.

**Mr Gilbey:** In fact if he had fully read the report on housing he would well know the vast amount that the department is doing and I can tell him that we have plans to do even more.

**Mr Henderson:** Mr Speaker, would the hon. minister not agree, with his reluctance to give any form of commitment to a date of production for this report, that this is nothing more than his department's total intransigence and system-playing and issue-dodging of something that is extremely important, that is nearly four years down the pipeline now, and would he not further agree that all it is doing is causing extreme stress to the family concerned and that his department should be giving a commitment here today and should be getting on with it as fast as possible?

**Mr Gilbey:** Mr Speaker, I am not going to be bullied into giving dates by anyone or by wild remarks and I am surprised that the hon. member should say what he has, considering

that it is the hon. member for Ayre, my colleague Mr Quine, who is dealing with this matter and dealing with it most efficiently.

**Mr Karran:** Vainstyr Loayreyder, is the minister aware of the fact that the petitioner has had this problem for the last 15 years and would he do a survey of the number of people that this sort of accommodation affects? Has he got the figures, as there are an awful lot more people that are affected and he is misleading the house if he believes that there are not that many, and would he give an assurance to the hon. member for Douglas North that there would be no moves as far as the dead hand of government stopping an individual member from bringing a private member's Bill in order to try and resolve this nonsense, as it is a growing problem, especially with the amount of flats that are being developed at the present time in Douglas in particular?

**Mr Gilbey:** If any hon. member wants to bring a Bill, Mr Speaker, before this hon. House they are more than welcome to do so, but what I would say is that the complexities of this commonhold are such that it would take a very considerable time for anyone to draft such a Bill and it is far better to study exactly what they are doing in the adjacent isles.

Now, it is interesting that the hon. member for Onchan has virtually repeated the question he raised in another place when he talked about the 14 or 15 years since this problem has arisen. I am very sorry if it arose 14 or 15 years ago, but you can hardly blame me for that when, as I pointed out, I have only been in office for some six months.

#### **Road Racing Events – Road Closures – Access for Residents – Question by Mr Henderson**

**The Speaker:** We turn to item 4, hon. members, and I call upon the hon. member for Douglas North, Mr Henderson.

**Mr Henderson:** Thank you, Mr Speaker. I beg leave to ask the Minister for Transport:

*Can you confirm -*

- (a) that there will be regular continuing consultation between the Road Traffic Liaison Group and other relevant parties in relation to improving access for residents during road closures for practising and racing of bicycle and motorised sports events in the Island; and*
- (b) that your department, in conjunction with all other relevant agencies, will endeavour to have as many road crossing corridors as practical during the periods in which there is no practising or racing, with special reference to -*
  - (i) St Ninian's crossroads,*
  - (ii) Bedstead to Signpost Corner,*
  - (iii) Glencrutchery Road Avenues to Victoria Road, and*
  - (iv) Governor's Road to Victoria Road?*

**The Speaker:** I call on the Minister for Transport to reply.

**Mr Brown:** Mr Speaker, in answer to part (a) of the question, I can confirm that my department will continue to consult as and when necessary all relevant parties in relation to any event which requires a road closure and as normal we will, in conjunction with such parties, continue to endeavour to, where practical, identify and improve access for residents affected by such events.

In answer to the second part of the question, my department has, as usual, been in consultation with both the police and the TT organisers about the arrangements for this year's TT races. I can confirm that the police have agreed to deploy additional police officers for this year's TT races, subject of course to the approval of the clerk of the course, to enable additional road crossing corridors to be opened at Governor's Hill and Second Avenue between races. The existing arrangements for St. Ninian's and Governor's Road will continue to be implemented. Thank you.

**Mr Henderson:** I thank the hon. minister for that firm positive response, Mr Speaker, (**Mr Houghton:** Hear, hear.) and I am sure all those affected by road closures will be very pleased with his announcement.

#### **Mobile Telephones – Use while Driving – Question by Mr Braidwood**

**The Speaker:** On to item 5, hon. members, and I call upon the hon. member for Douglas East, Mr Braidwood.

**Mr Braidwood:** Thank you, Mr Speaker. I beg leave to ask the Minister for Transport:

*Has your department decided whether to insert in the Road Vehicles (Maintenance and Use) Regulations 1998 the proposed regulation 63A, which would make it illegal to use mobile telephones or similar apparatus while driving?*

**The Speaker:** Again I call upon the Minister for Transport, the hon. member Mr Brown.

**Mr Brown:** Mr Speaker, I thank the hon. member for his question, as it enables me to update members on the latest situation. My department invited comment in August of last year on a proposal to introduce a new regulation within the Road Vehicles (Maintenance and Use) Regulations 1998 to make it illegal in respect of road safety for a person to use a mobile telephone or similar apparatus while he or she is driving a vehicle. There was a most constructive response to the consultation and, subject to receiving comments from a number of sources on our modified proposal, I intend to bring the regulation to Tynwald very shortly for approval.

For the information of members, it is proposed that the restriction should now only relate to hand-held mobile cellular telephones and not to a two-way radio or hands-free mobile telephones. If the department's proposals are approved by Tynwald, then I shall ensure that an advertising campaign is undertaken to advise the public of the new law. Thank you.

**Mr Braidwood:** Again, Mr Speaker, I thank the minister for a most constructive answer.

#### **National Health Service Bill – Question by Mr Singer**

**The Speaker:** We turn to item 6, hon. members, and I call upon the hon. member for Ramsey, Mr Singer.

**Mr Singer:** Thank you, Mr Speaker. I beg leave to ask a member of the Department of Health and Social Security:

*When does your department intend to introduce a National Health Service Bill into the House?*

**The Speaker:** I call upon a member for the Department of Health and Social Security to reply.

**Mr Karran:** Vainstyr Loayreyder, as indicated in the 1999 government policy review document, my department intends to introduce into the branches a National Health Services Bill to consolidate, update, simplify the existing primary legislation governing the provisions of the National Health Service, during the present legislative session.

**Mr Singer:** Can I just press the hon. member just a bit closer? Have you any idea of a date when this might be introduced and do you still stand by your statement of November 3rd 1999 that a new patient complaints procedure would be in place before the NHS Bill is introduced?

**Mr Karran:** Vainstyr Loayreyder, I am hoping we should have something by April. I am hoping we should have something ready to go by April as far as the Bill is concerned.

As far as the very valid point of the hon. member about the complaints procedure, we actually sent it out for consultation in September last year to the different professional organisations. I have still not received a response from certain professional organisations, who will then start more likely complaining to the hon. member when I do draft the complaints procedure.

The situation is that I have gone along with a couple of amendments that have been brought to our attention from the other bodies, but bodies like the Medical Society who sought the information from the British Medical Association we still have not received a response from September of last year. We are going ahead with the complaints procedure with the amendments that are there, which will come to the meeting on Thursday, but it is very difficult when you have one of the more important professional organisations that do not seem to want to respond in particular, and with some of the other organisations it has been like trying to draw teeth out trying to get them to respond, because I think the hon. member's point is very valid, we do need a complaints procedure, but I need to try and bring the medical establishment along with me.

**The Speaker:** Now, hon. members, I do not want to get into a debate on the complaints procedure: it is not relevant to the question. The hon. member for Ramsey, Mr Singer.

**Mr Singer:** If I can return then to the National Health Service Bill, have all your consultation procedures on the National Health Service Bill been completed and can you tell me which community groups have been consulted as well as the consultations with the medical profession?

**Mr Karran:** The list of organisations that have been consulted are the Health Services Advisory Council, the Noble's Medical Staff Committee, the Ballamona Medical Staff Committee, the hospital managers and appropriate staff, the primary care manager and appropriate staff, the Isle of Man Medical Society, the Isle of Man GP Subcommittee, the Isle of Man Dental Association, the Association for Opticians, the Manx Chemists Association, the

Senior Nurse Advisory Group who have all been consulted with as far as this Bill is concerned, and of course these things do delay getting these things through and getting them to the House where they should be.

**Mr Singer:** I thank the hon. member for that reply, but as we have been told that the National Health Service Bill will include support for the patients of the NHS, why have no lay bodies been consulted as to the way they feel that the National Health Service Bill should proceed and the possible support that might be in it for them?

**Mr Karran:** Vainstyr Loayreyder, I think in an indirect way you will find that that has happened as far as other persons are concerned. At the end of the day everyone in this hon. House is a lay person as far as health service matters are concerned and I think you will find that that is the case.

Whilst this is not as important, unfortunately to have to say it again, Vainstyr Loayreyder, as the complaints procedure, I think that you will find that the consultation has been quite thorough as far as this is concerned. We have talked to a lot of the friends organisations to the different hospitals as far as the aspects of the Bill that affect them as well.

#### **Police Officers – Assaults – Question by Mr Houghton**

**The Speaker:** We turn to item 7 on the order paper, hon. members, and I call upon the hon. member for Douglas North, Mr Houghton.

**Mr Houghton:** Thank you, Mr Speaker. I beg leave to ask the Minister for Home Affairs:

*In the calendar years 1998, 1999 and 2000 to date -*

*(1) how many police officers -*

*(a) were assaulted on duty; and*

*(b) as a result of the assaults, required medical treatment; and*

*(2) how many days' sick leave were taken in consequence of the assaults?*

**The Speaker:** I turn to the Minister for Home Affairs, the hon. member for Ramsey, Mr Bell, to reply.

**Mr Bell:** Thank you, Mr Speaker. The crime management unit records show that in the calendar year for 1998 30 police officers were assaulted on duty, eight injury reports or medical certificates were received and seven assaults required medical treatment. Five days' sick leave were taken as a consequence.

In the calendar year 1999, 34 officers, including one special constable, were assaulted on duty, seven injury reports or medical certificates were received and five assaults required medical treatment. Seven days' sick leave were taken as a consequence.

In the calendar year 2000, that is, up to 26th January, five police officers have been assaulted on duty, three injury reports or medical certificates have been received and two assaults have been identified as requiring medical treatment. In the year 2000, 58 sick days have been taken as a consequence of assaults, 52 days of which relate to two assaults which took place towards the end of December 1999.

**Mr Houghton:** Thank you, Mr Speaker, and I thank the hon. member for his answers, but in the interests of safety concerning officers of the Isle of Man Constabulary, does the hon. minister not agree that those persons who cowardly attack and harm police officers should be given or should be made to serve long prison sentences, and does he not further agree that freeing such offenders after they have served just 10 per cent of their original sentence is sending the wrong message out to other potential offenders, sir?

**The Speaker:** I am sure, hon. member, that may be an opinion, but I do not think it was really a supplementary question.

### **New Bus Routes – Question by Mr Houghton**

**The Speaker:** We turn then to item 8 on the order paper and I call upon the hon. member for Douglas North, Mr Houghton.

**Mr Houghton:** Thank you, Mr Speaker. I beg leave to ask the Minister for Tourism and Leisure:

*When will the proposed new bus routes be brought into effect?*

**The Speaker:** I call upon the Minister for Tourism and Leisure to reply.

**Mr Cretney:** Mr Speaker, since the appointment of the new director of public transport it has been necessary for my department to re-evaluate various elements of our local bus service. As a result of this process the school service was clearly felt to be a priority and a number of issues have been identified which require to be dealt with in order to deliver a proper and reliable service, none less so than the bus replacement programme itself because of capacity constraints at certain peak periods. I am therefore pleased to report that this work has progressed to the extent that of the 12 second-hand double-deckers from England three are already in service on the Island. The remaining balance, whilst delivered, await certification prior to use. Furthermore an order has been placed for six new double-deckers, with an anticipated delivery date of June 2000, the aim being to deliver a much improved and efficient service which meets the needs of our customers, young or old.

With regard to the introduction of new bus routes, it is envisaged that certain timetable changes to bus services will be introduced with the proposed opening of the new transport headquarters which is due for completion at the end of March. In conjunction with this my department is also working hard to implement the bus shelter programme, for which more resources than ever before have been identified to encourage more use of our services. I am sure in the not-too-distant future real improvements will be visible in this regard.

**Mr Houghton:** Mr Speaker, I thank the hon. member for his involved reply. I do concur with him as regards the school services. The school bus services are ailing at the moment and they do require further attention. But can the hon. minister inform this House how much time by way of preparation by the new director of transport has actually been spent on this scheme to date?

**Mr Cretney:** Mr Speaker, I am not sure which scheme the hon. member is referring to.

**Mr Houghton:** As per the question, this scheme, the new bus service.

**Mr Cretney:** It says, 'when will the proposed new bus routes be brought into effect?' I have already told you, before you read out your written answer, that the new bus routes are

going to be introduced. A number of new bus routes will be introduced at the same time as the headquarters are opened at Railway Station Yard.

**Mr Rodan:** Mr Speaker, can I ask my hon. friend, on behalf of my constituents who live in old Laxey, that the review of bus routes includes the Ramsey to Douglas route going via old Laxey where residents have been calling for some time for a regular service to Douglas?

**Mr Cretney:** Mr Speaker, I am pleased to confirm that old Laxey, which has been raised with the department not only by representatives of the people but also by residents who live in that area for an extended period of time, is one which is being subject to this review and if at all possible I would like to see services as soon as possible in that area.

**Mr Singer:** Mr Speaker, could I ask the hon. minister, am I right then, from listening to his answer, that the policy actually of the type of buses needed has changed in that there is now a recognition that we need double-decker buses rather than the previous policy of getting rid of the double-decker buses and only introducing single-decker buses? Can I also ask him whilst I am on my feet, do I also understand then that any new system will be introduced in part rather than trying to introduce a complete new bus system in order that we can minimise any teething problems that may occur?

**Mr Cretney:** I think I indicated in the earlier answer, Mr Speaker, that the new director of public transport, Mr Howard, when he came to the Island, was allowed free reign to examine all areas which were coming under his responsibility. He has identified that there needed to be more emphasis towards double-decker buses. Clearly, though, there will still need to be single-decker buses to serve certain communities and we are anxious that we should do whatever we can for our customers wherever they are. However, it was readily apparent, particularly for certain times of the day such as the school services where 36 double-deckers are required, that there needed to be more work in that regard.

With regard to the introduction of services, yes, what has happened is that the new director considers, in his professional opinion, that the way forward is to introduce services as and when we can within the resources available.

**Mr Quine:** Mr Speaker, could the hon. minister just make it quite clear? We were circulated almost two years ago with particulars of an expansive rearrangement of services. Is he now saying that that has been pushed to one side and are we now talking of individual adjustments to services as opposed to a major restructuring?

**Mr Cretney:** It is a lot longer than two years ago you were circulated with that information, Mr Speaker, a lot longer than I have been in office. Yes, I am making it quite clear here and now today, as I have previously - this is not a new announcement: I have made it clear - that the new director of public transport was given the free opportunity, once he took up his post, to review all areas of policy within the department and his view is that instead of the extensive all-Island bus network it is preferable in his opinion to introduce services as and when the customer need is identified.

**Mrs Hannan:** Vainstyr Loayreyder, I wonder if I could ask the minister if, in looking at new bus routes, he will consider treating each area in exactly the same way and maybe my area could have a skipper bus the same as Ramsey?

**Mr Cretney:** One of the most successful elements which were introduced under the management of Mr Smith in the past was the skipper service to Ramsey. It has been acknowledged, I think, in other communities around the Island - Castletown, Peel, Douglas - that they would like to see similar types of services. I know that the director of public transport is aware of that view and I am sure that if he can meet such objectives he would wish to do so and I would wish to encourage him in so doing.

### **Bill for First Reading**

**The Speaker:** We turn then, hon. members, to item 9 on our order paper and I call upon the Secretary of the House.

**The Secretary:** The European Communities (Amendment) Bill, Mr Brown.

### **Income Tax Bill – Clauses Considered**

**The Speaker:** Item 10, hon. members, the Income Tax Bill, for consideration of clauses. I call upon the hon. member for Onchan, Mr Corkill, to take clause 1, sir.

**Mr Corkill:** Thank you, Mr Speaker. Perhaps I could just remind hon. members that the Income Tax Bill, as stated at the second reading, contains all the measures which were announced in the 1999 budget and which in the main are already in force by way of temporary taxation orders. Only one clause, clause 11, is entirely new and that relates to an anomaly associated with benefits in kind.

The Bill is in two parts with one schedule and part 1 contains four chapters which replace and confirm the temporary taxation orders already in force. Then we get to part 2 which contains four clauses with two new measures. The schedule makes three consequential amendments to existing legislation.

Chapter I refers to the residence of companies and prevents the formation on or after 6th April 1999 of any new Isle of Man incorporated non-resident companies. It contains a provision set out in the Income Tax (Companies Residence) (Temporary Taxation) Order 1999 which was approved at the April 1999 sitting of Tynwald.

Clause 1 makes three changes to the Income Tax Act 1970 and I will refer to it throughout the reading of the clauses as the 1970 Act. It makes three changes by repealing existing legislation and inserting three new sections and a definition. Clause 1(1)(a) sets out the first of those measures by repealing sections 2D and 2E of the 1970 Act. This existing legislation states that all Isle of Man incorporated companies are resident for income tax purposes unless a non-resident declaration has been filed under section 2 of the Non-Resident Company Duty Act 1986. It also caters for situations where a company may change its status during the year. This is no longer to be permitted in that a newly incorporated Isle of Man company no longer has the option to be non-resident.

Clause 1(1)(b) inserts the replacement legislation into the 1970 Act. It is contained in three new sections, 2N, 2O and 2P.

Section 2N(1) deems all companies incorporated after 5th April 1999 and any existing company which at 5th April 1999 had not filed a non-resident declaration to be resident for income tax purposes. This means that any existing non-resident company will remain so unless it rescinds its non-resident status or it becomes managed and controlled from within the

Island. It is the Council of Ministers' decision that this position will be reviewed in the light of the international initiatives currently being pursued by the OECD and the EU.

Subsection (2) provides for consistency by adopting an existing definition of 'company'.

Subsection (3) sets the parameters for companies which are considered non-resident before 6th April 1999, that is, the 1986 Act companies, being companies which had a current non-resident declaration filed with the registrar of companies and were managed and controlled from outside the Island.

Section 20(1) retains the ability for the assessor to assess an existing 1986 Act company if it is resident or is in receipt of taxable income, and subsection (2) provides that if a 1986 Act company goes into liquidation and appoints a resident liquidator it will not by itself result in the company being resident. This enables such companies to have its affairs wound up in an orderly manner in the Island rather than outside.

Subsection (3) covers the situation where, for the reasons previously stated, a 1986 Act company is assessed to income tax by the assessor. It provides for the duty paid to be set off against the income tax due or possibly a refund given if the income tax has been paid. One exception to this rule is where the company changes its status part-way through a year by filing a recision of its non-resident status.

Section 2P(1) enables a company to be non-resident for part of an income tax year and not be assessed for that part, all other factors being satisfactory, and subsection (2) of this section 2P sets down the date from which residence in the Island is considered to have commenced.

Finally, clause 1(c) inserts the required definition of '1986 Act company' into the definitions section of the 1970 Act.

I beg to move clause 1 stand part of the Bill, Mr Speaker.

**Sir Miles Walker:** I would be pleased to second, Mr Speaker, and reserve my remarks.

**The Speaker:** Hon. members, the motion is that clause 1 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Now, hon. member, perhaps we could take clauses 2 and 3, thus completing chapter I.

**Mr Corkill:** Thank you, Mr Speaker, clause 2. Continuing with the residence of companies, clause 2 makes the necessary amendments to the Non-Resident Company Duty Act 1986. Clause 2(1)(a) modifies section 2 of that Act by first of all replacing subsection (1) and then repealing subsection (3).

Sub-paragraph (1) substitutes the new subsection (1) which brings about three changes. Firstly, it modifies the definition of 'non-resident company' to cater for the moratorium which has been imposed from 6th April 1999. Secondly, it makes clear that a company which is found to have its central management and control in the Island will lose its non-resident status from the first date of the period for which it is assessed as resident. Thirdly, where the company is assessed because of a local source of income, its non-resident status ceases from the date the income first arose or accrued to the company.

Sub-paragraph (2) repeals subsection (3) of section 2 which contains the manner in which a non-resident declaration is to be made. As such, a declaration will no longer be allowed. The subsection is being repealed.

Clause 2(1)(b) and (c) also contain consequential repeals, whilst (d) introduces an amendment of the Non-Resident Company Duty Act 1986 to confirm that an existing non-resident company will remain so provided it does not subsequently file a recision notice.

Clause 3 sets out the last of the measures relating to residence of companies by deeming the changes to have applied from 6th April 1999, being the date from which Tynwald approved the operation of the temporary taxation order.

I beg to move clauses 2 and 3 stand part of the Bill.

**Sir Miles Walker:** I beg to second, Mr Speaker, and reserve my remarks.

**Mr Cannan:** Will the Treasury minister, Mr Speaker, give some indication that he may introduce positive fiscal measures to discourage existing non-resident companies - that is, those that were established before April 1999 - to wind up their affairs and start to come on board as resident duty companies?

**The Speaker:** The hon. member for Onchan, Mr Corkill.

**Mr Corkill:** There are a couple of points there from that, Mr Speaker, which relates to future taxation which really is a matter for future budgets with regard to what incentives those taxation rates may or may not indicate, but on the issue of non-resident duty companies, I think it is quite clear that many of these companies are short-lived and therefore there is a natural decline in the numbers of these companies in any event and the moratorium of course is preventing new registrations. But the moratorium also of course allows the many bona fide people involved in non-resident duty companies to make alternative arrangements and I believe that that is probably already happening in many cases. So whether the fiscal incentives that the hon. member for Michael alludes to will be necessary is really still a matter for the future, I believe. I beg to move.

**The Speaker:** Hon. members, the motion is that both clauses 2 and 3 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 4, hon. member for Onchan, Mr Corkill.

**Mr Corkill:** Clause 4 inserts into the 1970 Act a new section 1A providing for a lower tax rate for companies. Section 1A has eight subsections.

Subsection (1) contains the basic requirements. The company must derive the whole of its profits from a trade carried on in the Island. This is not to say that the trading activities have to be confined to the Island, only that all the profits from the company's activities have to be taxable in the Island. For example, this rules out branches of companies managed and controlled elsewhere. The first £100,000 of taxable income is charged at the lower rate of 15 per cent and the balance at the higher rate of 20 per cent. Both these rates are capable of being varied by resolution of Tynwald.

Subsection (2) provides for an apportionment of the £100,000 on a monthly basis where under other provisions a company's activities either commence or cease part-way through an income tax year.

Subsection (3) requires the lower-rate band to be apportioned out equally amongst any associated companies. The intention is to alleviate the avoidance of income tax by the simple process of dividing up activities through one or more other companies. The principle of disaggregation is not new and extensive measures are taken to avoid it happening both for VAT purposes and in other countries which have a lower-rate band.

Subsections (4) and (5) arose out of the consultation process and provide an alternative to subsection (3) in that the associated companies may decide themselves as to how the allocation of the £100,000 is to be made. In practice it has been found that many will allocate the full amount to one company. Any such allocation has to be the subject of a written claim.

Subsections (6) and (7) set out what is meant by the term 'associated company' but exclude from the definition any company which is dormant or has no traded in that year.

Subsection (8) adopts some standard definitions for the purpose of this section.

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

**Sir Miles Walker:** I beg to second, Mr Speaker.

**The Speaker:** The motion, hon. members, is that clause 4 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Again, hon. member, perhaps we could take clauses 5 and 6 and complete chapter II.

**Mr Corkill:** Thank you, Mr Speaker. Clause 5 inserts a new section 13A into the 1970 Act to cater for situations where an individual seeks to avoid a personal tax liability by the accumulation of profits within a company. In the exceptional case where it is believed that the profits are being accumulated to bring about a reduction in the tax liability of an individual or individuals, the assessor will be able to apply the provisions of sections 12 and 13 of the Income Tax Act 1970 to deem that a distribution has taken place. Subsequent actual distribution would then be treated as a payment of capital and not income.

Clause 16 of the Companies Act deems the company's tax rate provisions to have applied from 18th May 1999, being the date the temporary taxation order was approved by Tynwald. It has already been stated that the Treasury has agreed to a concession covering the earlier period of the income tax year from 6th April 1999.

I beg to move clauses 5 and 6 stand part of the Bill.

**Sir Miles Walker:** I beg to second, Mr Speaker.

**The Speaker:** The motion, hon. members, is that clauses 5 and 6 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Chapter III, hon. member, clauses 7 and 8.

**Mr Corkill:** Thank you, Mr Speaker. These clauses refer to the new allowance for disabled persons introduced by the last of the temporary taxation orders. Once again, there have been no changes to the provisions set out in the order. So clause 7 inserts a new section 35B into the Income Tax Act 1970.

Section 35B(1) sets out the basic condition for the new allowance by requiring the individual to be in receipt of attendance allowance or disability living allowance from the Department of Health and Social Security. Attaching it to the payment of such benefits avoids

the individual having to prove to yet another government department that he or she is genuinely disabled. The deduction is the same as the amount allowed to an individual claiming blind person's allowance.

Subsection (2) provides for a claim or claims in the case of a married couple who are living together as man and wife, and subsection (3) prevents a claim under both this provision and section 35A which refers to blind persons.

Subsection (4) applies to this section the definition of when a married couple will be treated as living together.

I beg to move clause 7 stand part of the Bill.

**The Speaker:** And 8, hon. member.

**Mr Corkill:** Sorry, Mr Speaker, we can deal with clause 8 and this deems the section to have applied from 6th April 1999, being the date Tynwald approved the temporary taxation order, so I beg to move clauses 7 and 8.

**Sir Miles Walker:** I beg to second, Mr Speaker.

**Mr Karran:** Vainstyr Loayreyder, it is nice to see where there is a will there is a way of being able to help different sections of the community and I am quite happy with this clause and I will not be voting against it. But it does annoy me, as a member of the Department of Health and Social Security, that we cannot have this link as far as tax information is concerned to the DHSS more freely available if the person concerned agreed with the Treasury that that information can be supplied to the DHSS for certain benefits, as I have said for the last 10 years that I believe that the TV licence and the heating allowance should be based on income tax levels and not on social security levels, and whilst I have run out of time since last week and the minister has not replied to the points that I raised at the second reading stage, unless we can see some action on this front I will use the possibility of being able to suspend standing orders at the third reading stage to amend the Income Tax Act of 1970 in order that this information, with the consultation of the individual concerned, can be passed over to the DHSS so that we can get a lot of these benefits which should be not at social security level but at income tax level, and I just hope that the hon. minister can look into the situation for the third reading stage to see whether I will need to have an amendment drawn up or whether some sort of agreement can be done as far as this issue is concerned because it is not a major issue. It was no more of a major issue than when we tried to get the low paid out of paying income tax and the moon was going to fall out of the sky. It did not fall out of the sky, it works very well and I do hope that the minister will be able to say in this clause whether he would support such a move so that we do not need to just change the law anyways.

**The Speaker:** I call upon the hon. Treasury minister to reply.

**Mr Corkill:** Yes, the hon. member, my colleague for Onchan, did make reference to some of these issues at the second reading and I do apologise to the hon. member because in winding up my reply at that time I think I possibly did not address his particular question and it got left out when I was addressing other people's points. So I apologise for that.

I have been wondering, as the week has gone on, whether the hon. member was thinking in terms of an amendment to this legislation, but I can inform him that there is already provision in social security legislation for information to be passed over to the Department of

Health and Social Security from income tax. But I would like to point out that there are some really big practical problems too. For instance, I would point out that by bringing people back into the system, as it were, that may well impose perhaps as many as 2,500 people. It would mean putting them back into the income tax system when they have no need to be there as things stand at the moment just in order to channel a route of information to the Department of Health and Social Security. So these are not simple issues.

But certainly in the United Kingdom one has seen great attempts there to actually produce a more seamless DHSS/income tax scenario and a lot of work has been done in that area. I think as time goes by there will be closer working co-operation between the two bodies, but I would say that the progress in the United Kingdom has been extremely slow and awkward and difficult and so I think these sorts of changes we need to look at in a very measured way. As laudable as they may well be, the practical fall-out may well not justify what is being attempted.

I will undertake to discuss the issue with the hon. member, my colleague from Onchan, Mr Karran, before the next reading of the Bill but at this stage I am pleased that he says he is going to vote for this clause and I beg to move.

**The Speaker:** Hon. members, the motion then is that clauses 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, hon. member, to clause 9. The hon. member for Onchan.

**Mr Corkill:** Mr Speaker, chapter IV, which is clause 9, contains the necessary confirmation required by the Income Tax Act 1995 that a Bill confirming or amending the temporary taxation orders has been read a second time by the House of Keys. I beg to move clause 9.

**Sir Miles Walker:** I beg to second, Mr Speaker.

**The Speaker:** 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 turn then to part 2 of the Bill, clause 10. I call upon the hon. Treasury minister.

**Mr Corkill:** Thank you, Mr Speaker. Part 2 contains four clauses, two of which are consequential and two of which contain the new provisions. Clause 10 sets out the provisions which both maintain and extend the additional relief for single persons with children. Prior to this change, an additional relief was only available to a single person who is entitled to one-parent benefit from the Department of Health and Social Security. Entitlement was conditional upon the person being single and in receipt of child benefit. If the person was cohabiting, the benefit was withdrawn, as was the additional tax relief. As was explained to hon. members at the second reading, changes in the benefits system meant a new formula had to be found. In doing so, the opportunity was taken to extend the relief to make it available in limited circumstances to cohabiting couples but in a way which did not disadvantage married couples.

Clause 10(1) achieves the changes by substituting for section 39A in the 1970 Act a new section 39A and three additional sections.

Section 39A refers to the first of the qualifying claimants. Subsection (1) applies the section to any person who as defined is genuinely single for the income tax year.

Subsections (2), (3) and (4) entitle the single person within subsection (1) to one additional deduction of £5,035 provided a qualifying child is resident with the claimant for the whole or part of the income tax year and the supplementary provisions set out later in section 39D are met.

Section 39B refers to the second category of claimant. Subsection (1) applies the section to two people who as defined are living together as though they were man and wife for the whole of an income tax year.

Subsection (2) entitles one of the individuals within that relationship to make a claim for an additional deduction in respect of a qualifying child resident with that individual for the whole or part of the income tax year. This is subject to the other individual within the relationship making an irrevocable agreement to the claim.

Subsection (3) provides that the amount of the additional deduction shall be either £5,035 or, if lower, the amount of the unutilised personal allowance of the other individual. In other words, if one of the individuals within the relationship has an unutilised personal allowance of, say, £6,000 the amount of the additional allowance will be restricted to £5,035. If the unutilised personal allowance was only £2,000, say, the additional deduction will be restricted to £2,000.

The reasoning behind the limit is to seek to maintain parity between persons who are single parents, cohabiting or not, whilst at the same time recognising that a cohabiting couple are not married and therefore not entitled to the full transferability of allowances to which a married couple are entitled. It should be recognised that this is a vast improvement on the previous system which not only deprived a cohabiting couple of one-parent benefit but also of any right to claim an additional deduction as a single parent. The fact that the deduction is governed by the amount of the unutilised personal allowance of one of the individuals explains the need for the written agreement of that person.

Subsection (4) limits the entitlement to only one amount irrespective of the number of qualifying children, and subsection (5) makes the claim subject to the supplementary provisions set out later in section 39D.

Section 39D covers the third situation in which an additional deduction may be claimed. It caters for part-year claims. Subsection (1) is intended to cater for two situations: paragraph (a), where a married couple living together as man and wife cease to do so, and this can arise where one of them dies or where they become separated and divorced; paragraph (b), where a genuine single parent as defined married part-way through an income tax year. In either scenario there is a period within an income tax year during which one of the parties may be a single parent.

Subsection (2) enables a claim to be made for an additional deduction provided a qualifying child is resident with the claimant for the whole or part of the income tax year.

Subsection (3), by way of a formula, restricts the amount of the additional deduction to that part of the income tax year during which the claimant is a single parent as defined.

Subsection (4) limits the entitlement to only one amount irrespective of the number of qualifying children, and subsection (5) makes the claim subject to the supplementary provisions set out later in section 39D.

That section 39D contains supplementary provisions, and subsection (1) applies the section to each of the situations in which a claim may be made.

Subsection (2) restricts the additional deduction to the period during which the child is both a qualifying child and resident with the claimant. For example, if a child spent part of the time with one parent and part with the other, the relief to each parent, if each qualified, would be restricted accordingly, and subsection (3) defines a qualifying child and is in keeping with the child benefit provisions adopted by the DHSS.

Subsection (4) extends full-time instruction to include full-time training by an employer for a period which covers at least two years.

Subsection (5) sets out what evidence or guidance may be called for in settling any dispute as to whether the child is undergoing full-time instruction or training.

Subsection (6) extends the definition of 'child of the claimant' to include other situations where a person is normally considered to have accepted full responsibility for a child, and subsection (7) caters for a situation where a claimant has more than one qualifying child and one of these children is the subject of a dual claim. This sub-clause enables that claimant to make the claim in respect of the other child who is not the subject of the dual claim. This maximises the relief and avoids any unnecessary apportionment.

In clause 10, sub-clause (2), this inserts a new subsection (6A) into the 1970 Act to provide for the situation where one of the cohabiting individuals has agreed to forego an amount of unutilised personal allowance. The new subsection makes the necessary amendment to the personal allowance section to make it clear that the amount of a personal allowance is to be restricted by the amount of the additional deduction which is being allowed.

Sub-clause (3) brings the new provisions into effect from 6 April 2000. For the reasons outlined at the second reading the Treasury has instructed the assessor to concessionally backdate the measure to 6th April 1999.

Mr Speaker, I beg to move that clause 10 stand part of the Bill.

**Sir Miles Walker:** Mr Speaker, I am pleased to second and reserve my remarks.

**Mr Cannell:** Mr Speaker, a very minor point on clause 10, section 39D(3)(b). I just wondered if the hon. mover could tell us why the age of 19 was selected for 'is of over that age but is under the age of 19 years and is receiving full-time instruction at any university, college, school or other educational establishment' because I would have thought that it would be possibly after that for a considerable period that children could be still receiving such full-time instruction.

**Mrs Hannan:** Vainstyr Loayreyder, I know a lot of people will welcome the introduction of this legislation but I turn to my amendment which is before the House, and I am grateful to the Treasury minister and the work that the Treasury has put into this, along with the draftsman and along with help that I received from Mr Bawden.

The amendment really is to take out the reference under 39D(6)(b) which relates to an illegitimate child. When I saw that in the Bill I immediately remembered clauses in another Bill which had caused concern many years ago - I am saying many years ago, about 10 years ago - and I think it was Mr Lowey in another place who moved an amendment on this and

eventually we came up with the amendment that is before the House. So if I could just draw members' attention to sub-clause (6) on page 11 and the substitution is before members: instead of 'illegitimate' it takes out all of those areas and it replaces, under (6), the amendment that is before the House. It removes 'illegitimate' and it relates to a child who is a marital child of the claimant, a stepchild of the claimant and a child who is wholly maintained by the claimant at the claimant's own expense. That covers my concern and so I am grateful to everyone who has taken part in the initiative to try and remove what I see as an unacceptable term in modern-day legislation for one which does not stigmatise anyone. And I hope that members of the House will support the amendment that is before the Court.

If I could just say in relation to the comments made by the member for Onchan who expressed his concern with regard to the age of 19 receiving full-time instruction at any university, college, school or other educational establishment, maybe Treasury could also look at that for next year because a child when at university is considered a child and a dependant until, I think, they reach the age of 26. So I think in those instances I would hope that Treasury would look at it maybe for the next budget, which is coming up very shortly, and maybe that could be addressed because it might relate to people having covenants or whatever, but certainly they would be paying tax unless they were receiving a grant from the Department of Education, and I know it is of a great deal of concern to a lot of people, so I am grateful to the hon. member for Onchan for raising that.

But I would hope that members will support the amendment that is before you in my name, but I welcome the other aspects of this legislation because I feel that it is something that will be supported by a great many people. I beg to move:

*Page 11, lines 15 to 24; for subsection (6) substitute -*

*'(6) In subsection (4) and the sections the reference to a child of the claimant means -*

*(a) a child who is a marital child of the claimant;*

*(b) a stepchild of the claimant; and*

*(c) a child who is wholly maintained by the claimant at the claimant's own expense.'*

**Mr Braidwood:** Mr Speaker, I beg to second the amendment standing in the name of Mrs Hannan, the hon. member for Peel.

**Mr Singer:** I have no objection to the amendment, though I am not quite sure why the hon. member for Peel should object to the English word 'illegitimate' any more than she might object to the word 'legitimate' in its proper context, but in supporting the amendment could I have the assurance of the hon. Minister for the Treasury that the amendment does not in its changes introduce any anomalies or interpretation difficulties for the future application of this clause.

**Mr Quine:** Just on the tail of that, sir, this term 'marital child', I am just wondering how that is going to be interpreted. Is there a definition going to be attached to it somewhere or does a definition exist? Marital child: what is it?

**Mr Gelling:** Mr Speaker, that was the very area that I was looking at and of course 'marital child' covers actually adopted as well because that was the very thing I was looking at, that we had (a), (b), (c) and (d) and then they were replaced by (a), (b) and (c) and adopted

was missing but actually in the Family Law Act of 1991 'marital child' does actually cover that as well because that was the concern I had, sir, but I would support the amendment.

**The Speaker:** Now, hon. member for Peel, do you wish to make any comment?

**Mrs Hannan:** No, I think the concerns expressed by the member for Onchan have been answered by the Chief Minister. It is in previous legislation and that is why I brought it to members' attention that there were other words that we have used in the past to get away from such terms as this. They may be English but to my mind they are unacceptable in this day and age and we should not stigmatise people and therefore I move the amendment in my name.

**The Speaker:** I call upon the hon. Treasury minister, the hon. member for Onchan, Mr Corkill, to reply to the debate.

**Mr Corkill:** Thank you, Mr Speaker, and I thank all hon. members who have made comment.

The hon. member, my colleague for Onchan, Mr Cannell, has mentioned the issue of 19 years in this 39D(3)(b). Now, it is my understanding that this age is really because of an existing definition and it really relates to DHSS legislation as well, this age of 19. What I would point out to all hon. members and in particular to Mr Cannell is that educational covenants are available to children - I think that point has already surfaced - and there is also the problem of married children, which also can complicate this type of legislation. Certainly I will come back at the third reading stage and just clarify these issues a bit more lucidly because I think they are interesting points, but really the issue on 19 is an issue of an accepted existing definition, particularly, I think, with regard to child benefit, for instance. So I hope that answers the point for now and I will come back with a more detailed explanation.

Now, the hon. member for Peel, Mrs Hannan, and the Treasury have been liaising over this issue over the last week and so I apologise to hon. members in a way that this amendment only surfaced just this morning, but in fact it is one of three amendments that we have looked at over the past few days and it was certainly my hope that it would be included at the clauses stage as the House looks at this issue rather than perhaps having another place to amend it later on. I can see Mr Speaker smiling as I say that but I certainly agree with him that we should let legislation go away from this House in the way that we want to see it finalised. So I apologise perhaps on behalf of Mrs Hannan because we have done a lot of background to this.

We looked at the Family Law Act of 1991 but there is a problem with that in the way that I think Mr Singer, the member for Ramsey's, queries are in the way that the Act is then interpreted at a later date. So the legislative draftsman in the end suggested this particular way forward and the amendment is a substitution for section 39D(6) rather than an amendment. It is a simpler measure than some of the other things we looked at and it is a measure which does not require 'marital child' to be defined, and this is the point the hon. member for Ayre, Mr Quine, and others have mentioned, because section 5 of the Family Law Act 1991 applies the definition to any enactment passed after that Act. So I think we have the definition covered in legislation. There will no debate as to there are any loopholes, and so I think the amendment before hon. members is the most straightforward way of dealing with the issue that the hon. member for Peel raised at the second reading stage and I see no reason why we

cannot try to improve the terminology. Sometimes it is not the word so much as people who introduce stigma into a situation but then we have to live with the word that that stigma is attached to, so I see no reason why we cannot find another way forward and so I think it is Treasury's view that we should certainly support this amendment and the sentiment behind it.

Just in response to the hon. member for Ramsey, Mr Singer, we are quite sure that it will not technically affect the way that the Bill is applied.

Therefore I think on that note, Mr Speaker, I beg to move.

**The Speaker:** Hon. members, the motion is that clause 10 stand part of the Bill. To that we have the amendment circulated on the white paper in the name of Mrs Hannan. Will those in favour of the amendment please say aye; against, no. The ayes have it. The ayes have it. Clause 10 then, hon. members, as amended. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Turning then to clause 11, again I call upon the Treasury minister, Mr Corkill.

**Mr Corkill:** Thank you, Mr Speaker. Clause 11 seeks to correct any uncertainty or inconsistency regarding the charge to income tax on any benefit in kind.

Sub-clause (1) inserts a new section 2KA into the 1970 Act to clarify a problem which has arisen over the taxation of benefits in kind on the holders of an office. Put simply, it treats the holder of an office as an employee for the purposes of the benefits in kind legislation and ensures a consistent approach for taxation purposes.

Sub-clause (2) adopts for this clause the existing definition of 'benefit'.

I beg to move clause 11 stand part of the Bill, Mr Speaker.

**Sir Miles Walker:** Mr Speaker, I beg to second, sir, and reserve my remarks.

**The Speaker:** Hon. members, the motion is that clause 11 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Hon. member for Onchan, perhaps we could take clause 12, the schedule and clause 13, sir, to complete the Bill.

**Mr Corkill:** Yes, thank you, Mr Speaker. Clause 12 provides for the amendment set out in the schedule to apply from 6 April 1999. The amendments are consequential to the provisions relating to the lower rate of tax for companies and the residence of companies.

Paragraph (1) makes a minor amendment to permit income tax to be charged on companies at a rate other than the higher rate, that is, the 15 per cent lower tax rate, and paragraph (2) and (3) relate to sections 2D and 2E in the 1970 Act dealing with company residence and which are to be repealed, thereby making these provisions redundant, and clause 13 does in fact contain the title of the Act. So I beg to move clause 12 and the schedule and clause 13 become part of the Act.

**Sir Miles Walker:** Mr Speaker, I beg to second, sir.

**The Speaker:** Hon. members, the motion is that clause 12 and the schedule along with clause 13 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. That concludes our consideration of the clauses of the Income Tax Bill.

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

**The Speaker:** We turn then to item 11 on your order paper, the Electronic Transactions Bill, again for the consideration of clauses, and I call upon the hon. member for Middle, Mr North. Clause 1.

**Mr North:** Thank you, Mr Speaker. This clause lays down the general rule that any transaction may normally be carried out by means of an electronic communication.

Sub-clause (1) sets out the rule that a transaction is not invalidated simply because it is carried out wholly or in part by means of an electronic communication, for example by fax or e-mail. The transaction may be invalid for some other reason of course, it is just that it is not invalid for that reason. So a contract effected by exchange of e-mails may still be invalid, for example because one of the parties is under age or suffering from a mental disorder, but the fact that it is effected by e-mail instead of by writing or word of mouth is irrelevant.

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

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

Mr Speaker, I beg to move that clause 1 stand part of the Bill.

**Mrs Crowe:** Mr Speaker, I beg to second.

**The Speaker:** The motion, hon. members, is that clause 1 stand part of the Electronic Transactions Bill. Will those in favour please say aye, against, no. The ayes have it. The ayes have it. Clause 2, hon. member Mr North.

**Mr North:** Mr Speaker, this clause recognises that it is important for many purposes to determine when and where information is sent and received, for example in relation to the formation of a contract or compliance with a statutory requirement to provide information. It lays down general rules which will apply where the parties to a transaction have not agreed otherwise.

Sub-clause (1) is introductory and it makes clear that the rules in (2) to (8) apply for the purpose of any rule of statute or common law.

Sub-clause (2) lays down the first half of the general rule for determining when an electronic communication is to be treated as sent: where it goes into a single information system, on leaving the originator. When a person keys a message into a bank's ATM, it is treated as being sent when it enters that system.

Sub-clause (3) lays down the second half of the rule. Where an electronic communication goes into a series of information systems on leaving the originator it is treated as being sent when it enters the first system outside his control. For example where an e-mail is sent via the internet, which consists of multiple systems, it is treated as being sent when it reaches the server of the original ISP, which is the internet service provider.

Sub-clause (4) sets out the first half of the rule to determine when an electronic communication is to be treated as having been received.

Sub-clause (5) sets out the second half of the rule, and sub-clause (6) deals with the question of where an electronic communication is to be treated as having been sent or received. The originator or recipient may be located in a different place from his place of business or his information system and without some rule great confusion may result. For example, A sends a message by e-mail while he is travelling in the US or Canada. His place of business is in England and his ISP, internet service provider, is in the Isle of Man. Where is the message treated as having been dispatched? This may be important, for example if it relates to the formation of a contract. The solution is to ignore for this purpose both the location of the party himself and the location of the information system he is using and to concentrate on his place of business. As a general rule, but not where the parties have agreed otherwise, an electronic communication is treated as sent from the originator's place of business and received at the recipient's place of business, and this is designed both to achieve a degree of certainty which would be missing if it depended on the party's actual location at the particular moment and to minimise artificial avoidance measures.

Sub-clause (7) explains the rule in (6) for certain cases, and sub-clause (8) enables regulations made by the Department of Trade and Industry or the Treasury, subject to Tynwald approval, to exclude the above rules in a particular case either by reference to the time of transaction or to the provision or rule of law in question. For example, if it were found that the rules in (6) and (7) above operated to the detriment of consumers in certain electronic mail order transactions, they could be excluded in such cases.

Mr Speaker, I beg to move that clause 2 stand part of the Bill.

**Mrs Crowe:** Mr Speaker, I beg to second.

**Mr Quine:** Just one point, sir, if he could clarify this. In sub-clause (4) and indeed in sub-clause (5) there is a reference there to the designation of an information system between the parties who are one sending and one receiving the information. Does that designation amount to a prior agreement between the two parties or does the designation refer to a general designation or a general identification of the various parties' receiving numbers? It is not clear whether this refers to a prior agreement between two parties to exchange information or whether it applies to a general publication of information which one seizes upon and sends the document, because the latter seems to me to be somewhat uncertain as to whether or not it would be received. I am just wondering if the minister could comment on that.

**The Speaker:** Perhaps, hon. member for Middle, you could just help myself in relation to your explanation of the gentleman who is in America, A I think you referred to him as, who has a place of business in England and his server is in the Isle of Man. Your comment was that the address would become the place of the business. On the document which is being used for contract purposes would the address of the business be published on that document or the address of the server? The hon. member for Middle.

**Mr North:** First, Mr Speaker, the address of the business would be on there. The ISP of course is the internet service provider where the e-mails come in and the business picks up from that ISP and he would have his address on that not the address of the internet service provider. It is just purely an electronic communication coming through into the ISP, let us say

on the Isle of Man here, and the place of business on the Isle of Man would pick that up and that would be his place of business, not the ISP.

The point made by the hon. member for Ayre in clause 2(4) - if the recipient of an electronic communication has designated an information system for the purpose of receiving electronic transactions, then unless otherwise agreed between the originator and the recipient of the electronic communication the time of receipt of the electronic communication is the time when the electronic communication enters that information system, the designated information system. There are several types of information system and some handle it differently to others, and it is just purely if the recipient of an electronic communication is coming through an ISP it would again, as I say, be to the place of business. Mr Speaker, I beg to move that clause 2 stand part of the Bill.

**The Speaker:** Hon. member, I am sorry to be pedantic but I want to be sure in my own mind, whether or not members are interested or not, that an electronic communication which is being used for contract purposes by a sender in America or Canada, as you referred to, with a server on the Isle of Man, that that document refers to the address as being in England which is the place of business. That is what you referred to, sir.

**Mr North:** Yes, it would, Mr Speaker. That would refer to the address as the place of business. The solution, as I said, is to ignore for this purpose both the location of the party himself and the location of the information system he is using and to concentrate on his place of business and as a general rule, as I have said, but not where the parties have agreed otherwise. Under sub-clause (7) which explains the rule in (6) above for certain cases, for instance where a party has more than one place of business, which could come up, the communication is treated as sent from or received at the place which has the closest connection with the transaction or, if there is none, his principal place of business, and also if he has no place of business, then this place of ordinary residence is treated as his place of business.

**The Speaker:** Hon. members, the motion is that clause 2 stand part of the Bill. Will those in favour please say aye, against, no. The ayes have it. The ayes have it. Clause 3, hon. member.

**Mr North:** Mr Speaker, this clause makes it clear in relation to electronic communications that normally a communication which appears to be from a person is only treated as sent by him if it was actually sent by him or by his authority.

Sub-clause (1) restates in relation to electronic communications the common law rule that normally a communication which appears to be from a person is only treated as sent by him if it was actually sent by him or by his authority. This recognises that a written or oral communication may not really originate from the person who apparently made it, because of forgery or impersonation or because he did not authorise it to be sent by an employee or an agent, and that of its nature this applies even more to an electronic communication. This rule can be varied by agreement and is subject to sub-clauses (2) and (4).

Sub-clause (2) is a saving for the ordinary law of agency under which a person who is held out as being authorised by a person to act as his agent can bind that person even if he goes beyond the terms of his authorisation and this evidently is known as ostensible authority.

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

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

Mr Speaker, I beg to move that clause 3 stand part of the Bill.

**Mrs Crowe:** Mr Speaker, I beg to second.

**Mr Shimmin:** Mr Speaker, could I take your advice as to whether I can make a general question of the minister at this stage which is non-specific to this clause?

**The Speaker:** Just keep going, Mr Shimmin, I think, at this particular stage.

**Mr Shimmin:** Mr Speaker, in this Bill, which for myself and many others I believe is fairly new type of legislation, much of the legislation we deal with tends to be building upon previous legislation and we have something to hang a hat upon. With the complexity of this and some of the explanations being given by the minister, I would urge him once again before the third reading to consider actually having a seminar to discuss this in more detail with the members.

I believe that with my involvement in the Post Office we have looked closely at electronic transactions and therefore I am in a position of knowing somewhat about this Bill and I have had it evaluated by others. I still fail to understand some of the explanations I am receiving this morning and therefore I do believe that it is important that we get this legislation through. I do believe that it is appropriate from the advice and information I have been given but I do feel it is incumbent upon the department and the minister to actually elaborate in more detail as to the practicalities of this legislation before expecting the House to pass it through the third reading, otherwise I believe that many members will still be unsure as to what type of legislation it is that they are passing.

**The Speaker:** I call upon the hon. member Mr North to reply.

**Mr North:** Yes. Mr Speaker, in relation to that point I understand fully, hon. member, it is new legislation and if hon. members would like a seminar on this I am quite happy to organise that, but I would like to stress that the whole idea of this Bill is to make it media and technology neutral. In other words it does not really change anything, we are just making sure that it can apply to electronic transactions; that is the important part. But if hon. members would like a seminar - I am no expert on this at all, but I have had a little bit to do with it - I am quite happy to lay on a seminar which will hopefully not make it even more muddied, the waters, than it is now. But I would stress that point again: the Bill is basically to make the electronic transactions media and technology neutral. So I beg to move clause 3.

**The Speaker:** Hon. members, the motion is that clause 3 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Part 2 and clause 4. The hon. member for Middle, Mr North.

**Mr North:** Mr Speaker, would it be in order to just give a general outline on this particular part 2 before I actually do clause 4?

**The Speaker:** Yes, sir.

**Mr North:** This part, which is clauses 4 to 8, makes provision for the application to electronic communications of legal powers and duties to provide information to sign documents, to produce or keep documents and to record information. In line with the general principle that electronic communications are to be put on an equal footing with written documents, it provides that as a general rule such powers can be exercised and such duties can be fulfilled by means of electronic communications as well as by written documents. This rule is subject to appropriate safeguards to ensure the reliability and safekeeping of information in electronic form.

Private and commercial persons are treated differently from public authorities in certain respects. A private or commercial person is not obliged to give or receive electronic communications made in the exercise of a legal power or the performance of a legal duty on the principle that the Bill is to facilitate, not to enforce the use of electronic communications. But a public authority is required to accept such communications made for such a purpose provided that they comply with technical requirements laid down by the authority.

Clause 4 allows a person, subject to certain safeguards, to use electronic communication in any case where he is required or permitted by law to provide information in writing. It is purely permissive. No-one is required by this clause to use any form of electronic communication except that, subject to compliance with technical requirements, a public authority is obliged to accept electronic communications in place of documents.

Sub-clause (1) enables a person who is required to provide information in writing to comply with a requirement by using some kind of electronic communication, for example e-mail, if he wishes. The condition in (3) must be fulfilled.

Sub-clause (2) makes similar provision where a person is permitted to provide information in writing and sub-clause (3) sets out the conditions which must be fulfilled if a person is to take advantage. (a) It must be reasonable at the time to expect that the information in the form supplied is readily accessible, for example readable and capable of being interpreted. This applies to communications to private recipients as well as those to public authorities and officials, so, for example, pension trustees could not rely on this clause to send information to pensioners by e-mail in an electronic form which can only be read using special software. Part (b) - in the case of communication to public authorities and their officials, where the authority has specified that information must be in a particular form or verified in a particular way, that must be complied with. So, for example, a tax authority could insist that tax returns, if sent by e-mail, be sent in Microsoft word or Excel, a particular form of software. (c) In the case of communications to persons other than public authorities and their officials, the recipient must have consented to the information being given, communicated electronically. Such consent may be implied, for example by giving an e-mail address.

Sub-clause (4) saves any enactment which may require information to be supplied in a particular medium, for instance on a floppy disk or in a particular way by e-mail.

Sub-clause (5) makes it clear that the above rules apply whatever may be the terms of the law requiring or allowing information to be given, for example they cover a requirement that a notice in writing be served.

Sub-clause (6) sets out various kinds of legal action which are covered by the term 'give information'. It covers practically any kind of communication having some legal significance.

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

**Mrs Crowe:** Mr Speaker, I beg to second.

**The Speaker:** Hon. members, the motion is that clause 4 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 5, hon. member.

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

Sub-clause (1) provides that in general where a signature is required for any document, that requirement is satisfied in the case of an electronic communication by any suitable device. This recognises the basic function of a signature of a written document identifying the maker of the document and indicating that he adopts it as his own. In the case of an electronic communication, (a) the signature must be by a method which clearly identifies the person concerned and shows that he approves the contents. (b) The signature must be as reliable as is appropriate. No firm rule is laid down as to this. For example, there is no requirement for a signature to be a digital signature, and this is covered in clause 9, and the need for authentication will vary according to the circumstances in the same way as a manual signature in most cases may or may not be witnessed. This is also covered under clause 9 as to certification service providers. Under (c) - in the case of a communication to a public authority which lays down particular technical requirements, the signature must comply with those requirements, for example it may require certification by an approved CSP, which also is in clause 9, or an image of a manual signature. Under (d) - in the case of a communication to a person other than a public authority that person must have agreed to receiving a signature in the form in question.

Sub-clause (2) saves the effect of any statutory provision which may in the future require an electronic signature or require a particular kind of authentication of a communication.

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

**Mrs Crowe:** I beg to second, Mr Speaker.

**Mr Cannell:** Mr Speaker, I hope everybody is following this with intense interest and are on the pace as I am, ha ha. But I have to say this is the most disturbing element of it that we are going to sanction here, although I do not doubt our hon. minister's assurances last week that we are leading the field here in this and if we do not do it someone else will grab this opportunity, and so be it, but I would not like it to pass without me saying I am extremely worried that we are going to rely on electronic signatures for authenticity of documents. For years now, many hundreds of years, the final arbiter of whether a document was served or received has been by the personal signature of a person. It has been tested, calligraphy experts have been brought in to have a look at signatures and as recently as yesterday in the trial of Dr Harold Shipman one of the main charges of the falsification of a will of one of his victims rested on an analysis of his signature.

I remain to be assured and I am sure that I am miles behind the time that electronic methods can cover this. Perhaps they can, I have not seen them yet, but the thought of

someone saying, 'Didn't you see the three dots in the corner' or whatever it is that is going to make this legal instead of the hand signature, and I have heard reference by the hon. minister to the fact that that could be done by a transfer of a signature, it would still not be exactly the same thing, it would really be only like a glorified photocopy, and I remain to be convinced, I am afraid, that the identification of authentic documents from one person to another has yet been served by the methods that they have so far managed to hatch.

**Mr Shimmin:** Mr Speaker, to speak in favour of this clause I do believe it is necessary to realise that this is enabling legislation and that the regulations which will come in afterwards will only be introduced as and when there are sufficient safeguards actually put in place. There are many people within this chamber and also outside who are actively looking at the mechanisms which will give the safeguards I believe Mr Cannell is quite rightly looking for. It is something where this legislation should not be delayed at this stage. However, the concerns he raised are ones which are being grappled with by not only our jurisdiction but others, and the technology is there, any technology can always be abused, as can the signature be forged of any person on any documentation.

The electronic world does mean that the ability to falsify documents is one which is going to cause businesses problems. Our task is to enable legislation which allows businesses to transact but also to have the safeguards in place and I do believe the department is looking actively in finding those safeguards and I believe it will take some time to reassure the hon. member for Onchan, but I can assure him that it is not the department working alone: there are many people actively trying to find this technology and get the safeguards required.

**Mr Braidwood:** Just one point, Mr Speaker, if the minister could clarify it. Under this clause we have got 'public authority' but if we turn to clause 11 in the interpretation, 'public authority' does not include Tynwald in this, so as signatures are required for Tynwald, surely Tynwald should be under 'public authority' as well, if we are giving any government department to the United Kingdom.

**The Speaker:** I call upon the hon. member for Middle to reply.

**Mr North:** Mr Speaker, the first thing - could I thank the hon. member for West Douglas, Mr Shimmin, for his help in this matter, and to answer the hon. member for Onchan, Mr Cannell, I can fully understand the problem that he has and to wrestle with the basics of encryption involved in this is not easy, and I have to say that it is not a case of us leading the way, we are trying to keep up with others, those who have already got their legislation in, and it is very noticeable that certainly in the Irish Republic the headline just a few weeks ago was that everything is being prioritised to get through their electronic transactions legislation. The EU has done the same thing and I think it was a headline last week, and where we have to be careful, and again hopefully a seminar will allay some of the concerns, is that we make sure that we have legislation when people want to come and locate to the Isle of Man or existing businesses on the Isle of Man want to retain their e-commerce on the Isle of Man rather than moving off to Jersey which is claiming to be one of the leaders in e-commerce, and they are now rushing their legislation through because they have realised, as have many others, that in Singapore and Australia this is already in as legislation, and we have to be very careful.

I am sorry that it is complicated because it is an electronic business, I am afraid, is going to be the future. It is not going to be the be-all and end-all but most businesses are

going to be involved, business to business or business to the public, in e-business and we need to be able to handle that business, and I am sorry, but I cannot wait until everybody in this hon. House fully understands electronic transactions. I hate to keep stressing it but this basically is trying to keep electronic transactions neutral.

The electronic signature, to try and understand for the hon. member for Onchan - yes, the ordinary manual signature has been in for many, many years, and for some people it has to be a cross or a footprint or a thumbprint, but the electronic transactions, when handled properly, and this is a major consideration with the encryption, is protected and very much more so, and I think I mentioned this last week, that if somebody sends a document and it has an electronic signature and it is accepted by the other party wherever they are in the world, that is confirmed back to the person at the other end and the person, wherever they are in the world, can not alter that document without the other person, say on the Isle of Man, knowing that. Provided the encryption has been done correctly, that document can not be altered without the encryption key here on the Isle of Man, so it is very secure, extremely secure. All right, I accept that you can forge manual signatures and I am sure that has been done and will continue to be done, but this certification, if we are going to function as a modern mini-state, this legislation, which is really the first part of e-business and e-commerce, we need to be able to help the existing major part of our economy.

Mr Speaker, I beg to move clause 5.

**The Speaker:** Hon. members, the motion is that clause 5 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 hon. members to clause 6. Hon. member for Middle, Mr North.

**Mr North:** Clause 6, Mr Speaker. This clause makes provision corresponding to clause 4 allowing a person, subject to certain safeguards, to use an electronic communication in any case where he is required or permitted by law to produce a document. Again it is purely permissive.

Sub-clause (1) enables a person who is required to produce a document to comply with the requirements by sending an electronic copy using some kind of electronic communication, for instance e-mail. The conditions in (3) below must be fulfilled.

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

Sub-clause (3) sets out the conditions which must be fulfilled if a person is to take advantage of (1) and (2) above. The method of generating the electronic copy must be such as to show at the time it is made that it is a reliable copy of the original. For example, a document produced by wordprocessing may incorporate a code showing when it was last edited. It must be reasonable as at that time to expect the document in the form supplied is readily accessible: again readable and capable of being interpreted. In the case of documents sent to public authorities and their officials, where the authority has specified that a document must be in a particular form or verified in a particular way, that must be complied with. In the case of documents sent to persons other than public authorities and officials the person concerned must have agreed to the document being produced in an electronic form.

Sub-clause (4) defines what is meant in (3)(a) by maintaining the integrity of a document and the information in it must be shown as complete and unaltered apart from any endorsement, for example routing details added by an internet server when forwarding an e-mail, and any normal changes, for example loss of formatting in transit or in conversion to some other wordprocessing form. One means of maintaining the integrity of an electronic document is to make an encrypted copy which can not be tampered with. The copy can be decrypted later and compared with the original to see if the latter has been altered.

Sub-clause (5) saves any legal requirement that a document be applied in a particular medium, again on a floppy disk or in a particular way by e-mail.

Sub-clause (6) provides a new exemption from copyright law. To produce or transmit an electronic form of a document for these purposes does not constitute a breach of copyright in the document and technically to make or transmit an electronic copy of a document would be a breach of the author's copyright in it.

Mr Speaker, if I could just answer the point raised in the last one, which I must apologise I omitted, on the use by Tynwald of public authorities, the clear answer is I was just looking for the definition of that, which I think is clause 11, and a public authority means any person holding office under the Crown, whether in right of the Isle of Man, any department or statutory board, any government department of the United Kingdom, and any local authority or joint board. So that does not include Tynwald at that stage, but all regulations have to be approved by Tynwald, and I will find out for the hon. member for the third reading, just the implications of that if there are any.

Mr Speaker, I beg to move that clause 6 stand part of the Bill.

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

**Mr Cannell:** Mr Speaker, taking up the point made by the hon. member for East Douglas on the potentiality of Tynwald being excluded, rather more disturbing is not Tynwald being excluded, although that is serious enough in itself, but if you cross the reference from clause 6(3)(c) - 'if the document is required or permitted to be produced to a public authority or to a person on behalf of a public authority' and then go to the clause which the hon. minister has just referred to which will forthcome, clause 11, the definition of public authority quite disturbingly says, 'any person holding office under the Crown (whether in right of the Isle of Man' - which is all right - 'or in right of the United Kingdom)', which I humbly suggest is not all right.

**Mr Quine:** Mr Speaker, the further we go along is the more concerned I get. Of course at the second reading it was a different issue, we were debating something in principle, and of course that was fine. He made his case and I think we were quite content with that, and indeed there was a pressing case for to follow this path. But being a layman it seems to me that there are at least four basic aspects of this whole scenario.

If parties are going to use this electronic communication, then there seems to be a requirement first and foremost that they agree to use that system, and I think that appears to be covered. If they are going to use it and they agree to use it, there has to be certainty as to where it is going, in other words the addresses at either end have got to be firm, otherwise you

have got a problem with that, and there has to be a process which can determine a receipt and a dispatch date and time, and I think we have gone beyond that.

The issue that I think is taxing me is the fourth issue and that is what I would call validation or the authenticity of these documents which are being dispatched and I think that that is really the issue which the minister needs to provide us with, I forget the expression, further and better information on. For example, in clause 5 (2) there is a reference there to, 'electronic signature (however described)', there is a reference to 'unique identification in an electronic form', and there is a reference to 'a particular method to be used in relation to an electronic communication to identify the originator of the communication and to indicate the originator's approval of the information communicated.' It is my gut feeling that if the minister could address us on the mechanics of that, then I think I would have greater comfort of mind, because it is this validation, this authenticity of documents which gives me the greatest concern. I can follow through how the rest of it is going to be but unless we can satisfy ourselves that there is a proper means by which we can have that validation, we can have that authenticity verified, then I will be deeply concerned that we are getting ourselves into a process where we will go in over our heads and end up with all sorts of unanticipated problems.

Reference has been made to the secondary legislation to support this, but as I understand it, the secondary legislation is on two sides of paper at the moment. It is one or two sheets of paper at the most. I am not sure whether that is going to provide us with the underwriting of the primary legislation that we are looking for.

But I would ask the minister to try to address us in a meaningful way on this issue of validation and authenticity.

**Mrs Crowe:** Mr Speaker, in order to be of some little help to the minister and to make it, I think, a simple explanation of a unique electronic signature, in the same way as every day we use our plastic cards in an ATM machine and put in our own PIN number, that in effect is a verification of what would be your signature if you were in a bank signing a cheque. It is a personal identification that you are the person transacting that business. That, I think, is the simplest way I can put forward that explanation. I am sure the minister will elaborate but I know it is difficult to grasp. It could be a code, it could be a personal code, it would almost certainly be a code agreed between the two parties who were transacting confidential business, but by whatever means it is a simple validation of your own signature.

The point that was made about public authority' by Mr Cannell - as I read it, and I am sure Mr Speaker will correct me, 'any person holding office under the Crown (whether in right of the Isle of Man or in right of the United Kingdom)', surely that would cover the Attorney-General and judges and deemsters on the Island who would be Crown Office appointments. That was my simple reading of the legislation. I am sure the minister may or may not confirm that. Thank you.

**The Speaker:** And anybody in the UK too, Mrs Crowe.

**Mrs Crowe:** Oh, right. I thought you would, Mr Speaker.

**The Speaker:** I am concerned, hon. members, at the way the debate is moving. I would remind this hon. House that we have accepted clause 5 and the hon. member for Ayre has

raised a point on clause 5 which has just been referred to by the hon. member Mrs Crowe in reference to the validation of signatures. We have actually passed clause 5 and I am concerned at the way in which the House is moving currently in relation to discussion on clause 6. Nevertheless, hon. member for Douglas West, Mr Shimmin.

**Mr Shimmin:** Thank you, Mr Speaker. When we talk about communications and documentation, at present any communication traditionally carried out in business involves two parties where they agree a negotiation, a contract and then that is signed and often delivered by letter from one party to the other. That transaction, that communication, currently is entrusted to an organisation such as the Isle of Man Post Office where one party will actually sign a contract, send it through the mail of whatever description and it is then received by the other party as having been a true and legitimate transaction. So what we are talking about is a communication taking part between two places, and for hundreds of years the Isle of Man Post Office or the Royal Mail has been that trusted party who will actually deliver that communication in hard copy.

At current times there are discussions taking place and as the rest of the world inevitably will be moving towards electronic transactions, therefore the Post Office will continue to look at their role to continue to play a major role within the communications structure, but there is no point us sitting in here trying to say we can hold this back when the rest of the world is going to be dealing in this type of documentation electronically, is doing so now and will continue to do so in the future. (**Mr Henderson:** Hear, hear.)

We must be aware that we have concerns, but all we are talking about is a transaction taking place in a different style. Now, that is something which is already taking place via telecommunications, via fax machines, via the internet and all we are doing is extending the technology to another level of legality.

The part of the concern regarding whether it is trusted - I would argue that we already trust certain external bodies, whether it be the Post Office, the telephone, the fax machine, to transact certain business. We are extending that and I believe there is a role for the trusted third party of the Post Office to be the validation that the hon. member for Ayre, who is not listening, is looking for. Thank you, Mr Speaker.

**The Speaker:** Does any other hon. member wish to speak to clause 6? In that case I call upon the hon. member for Middle.

**Mr North:** Thank you, Mr Speaker, and if I could, under this production of document, try and slip in the validation issue which again has been raised, and I thank the hon. member again, the Chairman of the Post Office Authority, Mr Shimmin, for his contribution and of course the Post Office will be a major player within the use of e-business. The thing that is concerning the hon. member for Ayre on the validation of the documents - I can assure him that if you are dealing with one lawyer to another, which is where the contract is normally carried out, then there is provision in e-commerce and various software encryption, some of which we have on the Island, that does validate that document and provides for witnesses to that document and it is a part of modern-day e-business that that is done and many, many countries throughout the world are already handling it. What we want in the Isle of Man is to be recognised as a jurisdiction with legislation that can be relied upon by lawyers and that they will use it, or be able to use it, in the future, and a lot of lawyers, certainly on the Isle of Man,

advocates, contributed to the consultation of this Bill when it went out for consultation and as far as the lawyers are concerned, they certainly have methods of validation electronically, and the hon. member for Ayre wants to know how it is validated from one to the other. Well, I am afraid that that is a technical issue, as we said in the previous clause, that if it does contain an electronic communication it has to contain a unique identification, and there are unique identifications that are as secure as a manual signature and that is done now. We have a very state-of-the-art, I suppose you would call it, encryption company actually based here on the Isle of Man and producing some very secure encryption for the validation of documents and in particular for e-mails, and I have seen write-ups on this particular legislation that show in America it has been given some of the highest ratings anywhere of any piece of software ever.

Now, yes, the people handling the contracts or authorities are going to have to make sure that their encryption and validation software is satisfactory and it again is a case of using the old principle, no different to when you are dealing face to face or anything else, of know your customer, and the whole problem with the internet is that you are flying around receiving information all over the world and, as has been exemplified by the Financial Supervision Commission who registered the first offshore bank, FsharpBank.com., which is part of the Bank of Ireland, here on the Island, they regulate that internet bank exactly as they do any other bank and they have to check that the validation is correct, and in clause 6 this, as I have said, enables any legal requirements that documents or communications be recorded or retained to be satisfied by recording or retaining them in electronic form, and there are many ways of doing that. All we are doing is making sure that the technology and the forms of media are neutral to what is actually happening now.

I beg to move that clause 6 stand part of the Bill.

**The Speaker:** Hon. members, the motion is that clause 6 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 7, hon. member.

**Mr North:** Mr Speaker, this clause enables any legal requirement that documents or communications be recorded or retained to be satisfied by recording or retaining them in electronic form.

Sub-clause (1) enables a legal requirement to record information in writing to be satisfied by recording it in electronic form.

Sub-clause (2) enables a legal requirement to retain a document to be satisfied by retaining an electronic copy.

Sub-clause (3) enables a legal requirement to retain information to be satisfied, in the case of information in an electronic communication, by retaining or arranging for a third party to retain the information in electronic form.

Sub-clause (4) defines what is meant in sub-clauses (2) and (3) by maintaining the integrity of information or a document. The information must be shown as complete and unaltered.

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

Sub-clause (6) provides a further exemption from copyright law. To produce an electronic form of a document for these purposes does not constitute a breach of copyright in the document.

I beg to move that clause 7 stand part of the Bill.

**Mrs Crowe:** Mr Speaker, I beg to second.

**The Speaker:** Hon. members, the motion is that clause 7 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 8, hon. member for Middle, Mr North.

**Mr North:** Mr Speaker, clause 8. This clause enables regulations to exclude the general rules in clauses 4 to 7 in particular cases and makes an exception for court and tribunal procedures.

Sub-clause (1) enables regulations to exclude the general rules in clauses 4 to 7 in relation to particular requirements or permission or to a particular enactment or common law rule. Regulations made by the Department of Trade and Industry are all subject to Tynwald approval.

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

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

I beg to move that clause 8 stand part of the Bill.

**Mrs Crowe:** Mr Speaker, I beg to second.

**The Speaker:** The motion, hon. members, is that clause 8 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 9, hon. member for Middle.

**Mr North:** Mr Speaker, this clause enables a voluntary system for approval of certification service providers, what are known as CSPs, to be set up. The function of the CSP is to provide a service whereby a digital signature, which is a coded message which purports to identify the person by whom an electronic communication is sent, can be verified, thus making electronic commerce more secure and increasing consumer confidence.

Where such signatures are desirable - they are not essential - there may be a need for one or more independent trusted bodies which can provide such verification. This is usually achieved by a public key encryption. These are methods of encrypting electronic data using two specially generated strings of data: a public key and a private key.

A digital signature is created using the sender's private key, his public key being made available to the recipient who can use it to decode the signature and verify that the communication came from the sender. The weak point is to ensure that the public key which the recipient has is really that of the sender. The role of the CSP is to hold public keys and

make them publicly available and to certify that a particular public key belongs to a named person.

The clause enables a voluntary system for approval of CSPs to be set up. Compulsory approval is generally accepted as likely to stifle electronic commerce rather than encourage it. If such a system is found to be desirable it will be set up by regulations made by the Department of Trade and Industry. It may provide for approval to be given by the department or by a third party, for example a trade body. The procedures and criteria for approval have yet to be determined.

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

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

Sub-clause (3) defines various terms used in this clause.

I beg to move that clause 9 stand part of the Bill.

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

**Mrs Cannell:** Mr Speaker, I understand that all hon. members have been circulated with an amendment to clause 9 affecting line 6, sub-clause (3). The amendment does not fundamentally affect the principles of the Bill. It is designed simply to replace the use of the term 'digital signature' with that of 'electronic signature'.

Now, this is necessary, as it has come to the Department of Trade and Industry's attention that the current definition of 'digital signature', which was based on draft uniform rules on electronic signatures developed by the UN Commission on International Trade Law in 1996, is limited to a particular model for signatures and will not necessarily apply to the new forms of electronic signature which are now being developed. The new definition of 'electronic signature' which is replacing 'digital' is much wider and is taken from the latest draft of the EC directive on electronic signatures issued by the EC commission in November of last year. It also complies with the need to ensure technology neutrality.

Hon. members, I believe that the amendment is important and I hope that it will be accepted. It updates the Bill in line with legislation and technical developments taking place elsewhere in the world internationally. I think the amendment is fairly self-explanatory to members. It merely replaces the term, as I previously stated, 'digital' with that of 'electronic'. I beg to move that the amendment to substitute clause 9(3) be accepted as part of this Bill:

*Page 11, line 6; for subsection (3) substitute -*

*'(3) In this section -*

*"certificate" means a communication which purports to confirm the identity of the originator of an electronic communication, by reference to an electronic signature attached to or logically associated with the latter communication;*

*“certification service provider” means a person who, in the course of his business, issues certificates in relation to electronic signatures;*

*“electronic signature” means data in electronic form which are attached to or logically associated with other electronic data and serve as a means of authentication;*

*“register” means the register of certification service providers established by regulations, and “registration” has a corresponding meaning.’*

**Mr Henderson:** Mr Speaker, I beg to second and would just like to add to the comments of the hon. member for East Douglas that it seems a sensible way forward and makes the whole thing more flexible.

**Mr Quine:** Sub-clauses (2), (3) and (4), sir - the impact of these sub-clauses is to exempt the service provider from virtually any responsibility for transactions which pass through his hands. I am just wondering why we are making this exceptional provision for a service provider when it is a day-to-day occurrence for to have middlemen, have other parties involved in the transactions, and they are ordinarily liable to be coupled with any other party in relation to any liability or damage. If we look at sub-clause (2), a service provider is not subject to any civil liability in respect of electronic -

**The Speaker:** Hon. member, I am a little concerned. Sorry, hon. member. I think you referred to sub-clauses (2), (3) and (4) and I can only find sub-clauses (1), (2) and (3) in clause 9. I think we are still dealing with clause 9.

**Mr Quine:** Sorry, sir. I have jumped a clause.

**The Speaker:** I think you have moved on to clause 10, sir.

**Mr Quine:** I was so absorbed, sir, I just could not hold it back.

**The Speaker:** Thank you, hon. member. We are dealing with clause 9 and to that we have the amendment as moved by the hon. member for Douglas East. Does any other hon. member wish to speak to clause 9? In that case I call upon the hon. member for Middle, Mr North, to reply. I do not think, hon. member for Douglas East, there was anything with reference to your amendment.

**Mr North:** Mr Speaker, I would first like to thank the hon. member for East Douglas for bringing forward this amendment and the hon. member for North Douglas for seconding it and also thank a local gentleman, Damien Fozard, who is an encryption expert who actually went down to talk to our legal draftsman on this particular point and after the Bill had actually gone to print. So I would thank him for his time spent on explaining this and trying to keep us as far up to date as possible with this type of legislation. I beg to move, Mr Speaker.

**The Speaker:** Hon. members, the motion is that clause 9 stand part of the Bill. To that we have the amendment as moved by the hon. member for Douglas East, Mrs Cannell, and circulated to you on a white paper. Will those in favour of the amendment moved by Mrs Cannell please say aye; against, no. The ayes have it. The ayes have it. So clause 9 as amended, hon. members. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 10, hon. member for Middle.

**Mr North:** Thank you, Mr Speaker. This clause clarifies the position of internet service providers, ISPs, and telecommunication system operators with regard to electronic communications sent through them: (a) they are not to be subject to criminal or civil liability in respect of such communications, for example pornographic images or defamatory messages, provided that they take appropriate action if the communications are brought to their notice; (b) they are not required to monitor the content of communications sent through them.

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

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

Sub-clause (3) provides that the ISPs and telecom operators are not subject to any civil liability to their customers for any reasonable steps they take in good faith to avoid liability under sub-clauses (1) or (2). For example, an ISP is not liable for breach of contract if he removes the defamatory material from his customer's website.

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

Sub-clause (5) is a saving for any obligation to comply with a court order and for any contractual liability to the ISP's or operator's customers except where this liability is removed under sub-clause (3).

Sub-clause (6) defines terms used in this clause.

I beg to move that clause 10 stand part of the Bill.

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

**Mr Quine:** Mr Speaker, basically I am asking why we are making this what I believe to be exceptional provision for service providers because, as I said, there are many middle parties, third parties involved in different commercial transactions and it is not ordinarily the case that we make specific provision for to exempt them from liability. The normal provision is that if they can show that they could not reasonably have known about it or done something about it, then that would suffice, but here we are saying that there is not going to be any civil liability in respect of an electronic communication which is handled by means of a system if he is not the originator and he did not know and had no reasonable cause to suspect that the handling would give rise to liability, or as soon as practical he knew or had reasonable cause to suspect that the handling of the communication would give rise to liability, and then it does not stop there even. It then goes on in sub-clause (4) and says a service provider is not required to monitor any electronic handling by means of a system. So I think it is entirely the wrong message.

We already know the problems that can and have arisen in relation to these service providers and I would like the minister to explain to me why we have to make this exceptional provision for service providers which literally is giving them an opportunity to indulge in this business, make a great profit from this business but wipe their hands of any responsibility for what goes through their service.

I would ask the minister why other parties who are involved in business transactions are not given this exceptional provision. Why do we not make this exceptional provision for them? There must be a reason. There must have been a study, there must have been some case made to give them this exceptional treatment.

**Mr Singer:** If I may continue on the same point, Mr Speaker, it is a matter I raised last week and I did not really get an answer to it. Under sub-clause (3) here it talks about the action that a provider takes in good faith. That is a real cop-out, good faith. That is a very easy excuse: 'I allowed it to go through the internet that I am providing in good faith.' We need more than good faith. That is an excuse. Because at the present time, if one surfs the internet as such one can take action on behalf of young people if you do not want them to see certain items, pornographic items or whatever, offensive items that are on the internet. You can take action individually. Now, why therefore, if it can be taken individually by the viewer, cannot that action be taken by the internet service provider in the first place so that the actual item does not get published or supplied at all? Unless I can get a good answer to this from the minister I cannot support this particular clause 10.

The other item I would like to ask the minister about is for an explanation on the first line on page 13, sub-clause (b), which says 'such authority if any'. Would he like to tell me what is the meaning of 'such authority'? I can understand what is meant by a constable but I am not quite sure what is meant by 'such authority', so perhaps he would like to explain that to me.

But I do believe that we should be seriously considering the problem that is faced here, as described by the hon. member for Ayre, because we are responsible here to take every effort in this House to make sure that the people of the Island are protected and I do not think that in accepting this particular clause we are doing everything we can to ensure that the people of the Island are protected and that the provider is made to take the necessary steps to ensure that protection.

**Mrs Hannan:** Vainstyr Loayreyder, I think we are all aware of some of the material that is floating around in the ether that people can draw into their personal computers if they are lined up to that and it is not just pornography, it can be malicious, it can be very destructive material that is flying around, and the mover stated that we are not in the forefront of this type of legislation and therefore I wonder if he could demonstrate that this opt-out, it would seem, for internet providers is available everywhere else, and if so, how do these other places where this sort of material arises from deal with this sort of situation? Because once it has been on the internet it can flash round the world in a matter of seconds. It can be very destructive to people. It can carry all sorts of information such as bomb-making, such as any sort of material, and therefore if we are saying that the provider is not responsible, and the provider might not necessarily be here, who does that person turn to to get this what might be deemed to be malicious material taken off? The internet provider might not be here, so that therefore it might not come under any authority that is here and therefore this information can, it would seem, just continue on the web and be available to anyone and everyone.

So can the minister explain how this material can be removed and is the internet provider expected to log or whatever what sort of material is available? How can we as legislators be satisfied that this sort of information, if it emanates from here, is being scrutinised in any way or is it, if anybody feels aggrieved by it, just raising it with the provider and if the provider does not remove it, then taking it to such authority? But that is only if it is here and it could be that this information arises from somewhere else, but it can be from here but through some other provider such as BT, such as another internet provider. They set up quite regularly. So I would like the mover to explain to me, who is not really terribly versed with the web and all of that, how this can be dealt with?

**Mr Cannell:** Mr Speaker, I would not like it to be thought that I am trying to get on any bandwagon, but it is said that what we are doing here is moving old-time communication into the modern area, so if that is so I parallel the situation of the service providers probably with that of the Post Office. Now, I think we would have to be pretty naive to think that the Post Office do not monitor their business. Surely they do.

**Mrs Hannan:** Ah, but that is different.

**Mr Cannell:** Well, we will have the official reply. *(Laughter)* If you have a number of offensive materials passing through the Post Office, surely the Post Office are morally obliged, even if not legally obliged, to keep an eye on it and there are many examples where videos or magazines passing through the Post Office are intercepted. It is not a chance visit by someone coming along as a regulator. It is not the police just coincidentally happening to call and saying 'May we have access to your passing mail?' It is the Post Office themselves surely who look to see what material is going through, because even if they are not legally responsible for it they are honour-bound surely to alert the prosecuting authorities to the possibility of offences being committed. So that being so, why are we allowing those who apparently are just transmitting this onwards to have exemption?

**Mr Shimmin:** Mr Speaker, firstly we can just look at the analogy to the Isle of Man Post Office. If you were to make that comparison, then the Isle of Man Post Office would be opening every letter to make sure it did not contain the offensive material. **(Mr Henderson:** Hear, hear.) That is inappropriate as a comparison. We are talking about an issue where, if the Post Office or others became aware that offensive publications were being communicated via the Post Office, there would be a mechanism through Customs and Excise, I believe, whereby that could be intercepted, but that does not mean that every transaction is intercepted in case it might be offensive. The responsibility is between the person sending and receiving and the means of communication is the Post Office, but I think that is a side issue. The main points being raised by some of those people are understandably concerns that all of us as parents, as reasonable people would have regarding the types of information which would be available through the service providers on the Isle of Man.

I would try and emphasise to hon. members to actually turn on their televisions, to actually turn on their satellite systems, to already see what is now available legally which years ago would have been outrageous, to now connect to the internet and actually see what is already available and we are going to potentially restrict the Isle of Man's ability to operate with due diligence as a means of protecting or attempting to protect the people of the Island and the reputation of the Island from allowing any of these types of materials to be transmitted via or through the Isle of Man. We would all wish that to be the case, but let us put it into the

context. The amount of information which is already available to the young people and the adults of the Isle of Man through our schools, through our home computers is already way beyond some of the issues which have been raised here this morning.

This is an opportunity to actually allow people to do decent business, to make money for the Isle of Man and for themselves and, yes, with it goes a risk and all that the regulations which would be attempted to put in would be to minimise that risk, but we cannot turn back the tide, we can not restrict the Isle of Man's opportunity to be involved in this business by imposing a level of restriction which is unworkable.

Now, the opportunity for the service providers to monitor everything that they are doing is one which the minister, I am sure, will comment upon, but let us not lose sight of the purpose of this. This is not the Isle of Man Government or the Department of Trade and Industry attempting to open the doorways to inappropriate materials going out on the internet. The purpose of this is to enable the businesses, which I am sure every member of this House is in regular contact with, to actually find out how they transact business and those people are crying out to make sure that the Isle of Man is a modern jurisdiction with appropriate communications to do their business, and in anything there will always be a potential for a downside. Let us concentrate on the purpose is positive, there is a risk and the responsibility for us as legislators is to minimise that risk to the greatest level so that the Isle of Man's reputation is not lost, but let us not believe that if we introduce any restriction on the Isle of Man, that will benefit anyone: it will merely stranglehold the Isle of Man's businesses and they will move away. This is not a green light for deviants or inappropriate material to come on, this is a green light for business people to do business.

**The Speaker:** I call upon the hon. member for Middle, Mr North, to reply to the debate.

**Mr North:** Thank you, Mr Speaker, and can I thank all members, even the hon. member for Ayre and the hon. member for Ramsey, because this is a difficult question and I would thank the hon. member for West Douglas for his assistance on this because, yes, it is not foolproof at all and those information service providers that operate on the Island, and I think there are only four at the moment, do have to carry out due diligence the same as any other people setting up bank accounts, for instance, to make sure we do not get money laundering, but the problem is a practical one, and I think the hon. member for West Douglas, Mr Shimmin, alluded to it. When you are an information service provider, even on the Isle of Man, some of those information service providers have got several thousand clients on their system and each client could be handling 100, 200, 300, thousands in fact, some of them, per day, of transactions. The problem comes that if you were to say to an information service provider that he was liable for anything that appeared on his system, then all the information service providers on the Island would move off the Island. One has already actually moved off quite recently, but that is for a different reason, and it is this attempt to try and make sure that we are facilitating and encouraging e-business on the Island.

Now, other developments are taking place. For instance, a service provider, and the hon. member for Ayre questioned, is not required to monitor any electronic communication handling by means of his system in order to ascertain whether it would give rise to an offence. Now, a lot of the encryption companies are publishing software which is being used by information service providers and certainly that software is being used in schools as well to prevent the majority of pornographic material that appears on there, and you can actually build into your

system, you can choose any words that you want, and the information service provider will be able to prevent any of that material from arriving at his server on the Isle of Man, so that can get rid of the majority of the Web sites and the same thing applies to the schools. I am sure the Minister for Education is aware of that and I am sure children will be finding other ways round and we will have to keep very much up to date on this one, and I hope the hon. member for Ramsey will accept that, yes, this is not a perfect world, but to actually not have this in would make sure that we did not have any information service providers on the Island. We are trying to attract them, and we have got very few at the moment, and we will not attract them if we do not cover for them.

The hon. member for Peel - I am sorry I do not know the answer to that in the States, what the legislation is on this, and this is one of the difficulties on the internet on some Web sites where I read the other day where somebody put an e-mail on that a company was going to be taken over. The shares shot up because a few people read it, and it was a load of nonsense for the people who had obviously bought some of that. Now, that is a very difficult situation and it was totally false, it was a hoax, and that sort of thing does happen now in the press, and I think again it is down to those two words, with the information service providers, 'due diligence' and they have to be careful who they allow on their Web site and again it is exactly the same as a bank that has thousands and thousands of accounts and they are checking far more than they ever used to now. I mean, to open a bank account on the Isle of Man is far more difficult than opening it in London. It is far easier to open a bank account in London than it is in the Isle of Man now, for all the reasons that we know and we are very supportive of, and I think we need to make sure that the information service providers that are operating on the Island are carrying out due diligence.

The point was raised about such authority, I think, from the hon. member for Ramsey. The only one that comes to mind is, for instance the Office of Fair Trading in fact who would be such an authority because they enforce the sale of goods and services on the internet, so they are involved at this stage.

I thank the hon. member for Onchan. I hope I have answered the point about exception on that one.

Mr Speaker, I beg to move that clause 10 stand part of the Bill.

**The Speaker:** Hon. members, the motion is that clause 10 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 11, sir.

**Mr North:** Mr Speaker, this clause defines terms used in the Bill. The definition of 'telecommunication system' used in the definition of electronic communications comes under a different note and, if I can just find it, it is defined in clause 10. It comes under the Telecommunications Act of 1984: 'In this Act "telecommunication system" means a system for the conveyance, through the agency of electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy, of - (a) speech, music and other sounds' et cetera, et cetera. I beg to move that clause 11 stand part of the Bill.

**Mrs Crowe:** Mr Speaker, I beg to second.

**Mr Braidwood:** Mr Speaker, I think this might be an appropriate time to move an amendment on 'public authority' to insert 'Tynwald Court'. So we would have, say, '(a) Tynwald Court' and then renumber the other sections.

**The Speaker:** I would like to have the hon. member, if he would, just make sure that we have that in writing. You are suggesting that in fact we have '(a)' which would be Tynwald Court and then we would renumber the remaining interpretation sections. Is that right?

**Mr Braidwood:** That is quite right, Mr Speaker.

**Mr Duggan:** I will second that, sir.

**The Speaker:** Does any other hon. member wish to speak? The hon. member for Glenfaba.

**Mr Gilbey:** I would have thought, Mr Speaker, it was much wiser to leave this and if necessary have a specially approved amendment at the third reading. After all, we talk about Tynwald Court: what about this hon. House, what about another place? I think we are rushing at an amendment to a highly complex Bill without giving it due thought of all the consequences, just what Tynwald Court would want this for, and if they want it, why shouldn't the Keys have it and why shouldn't another place have it? I think it needs much more thought and I would have thought we should ask for a full report for the third reading and then if there seem good reasons for this we should suspend standing orders and pass the necessary amendment.

**Mr Braidwood:** Mr Speaker, I would be quite agreeable to that proposition.

**The Speaker:** We have not as yet, sir, had it in writing, your amendment, so I am accepting that the amendment was to come in front of us. I assume that you are withdrawing, sir.

**Mr Duggan:** I agree with that, Mr Speaker.

**The Speaker:** And the seconder would agree. In that case there is no amendment before the House. Does any hon. member wish to speak to clause 11? In that case, hon. members, the motion is that clause 11 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clauses 12 and 13, hon. member.

**Mr North:** Thank you, Mr Speaker. This clause deals with Tynwald control over regulations under the Bill, for example regulations made by, as I have said, the Department of Trade and Industry and/or Treasury.

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

Sub-clause (2) makes special provision for certain regulations made by the Treasury which may have to be brought in at once, for example where they make special provision relating to VAT, and if this sub-clause is quoted, the regulations can come into force before Tynwald approval, but they must be laid before Tynwald and must be approved by Tynwald at the next or next but one sitting after they are made or else they will lapse.

Clause 13 - this clause gives the Bill its short title and provides for its commencement on a day or days to be appointed.

I beg to move clause 12 and 13 stand part of the Bill.

**Mrs Crowe:** Mr Speaker, I beg to second.

**Mr Cannell:** Mr Speaker, I wonder if we are a word or a term short in clause 12 (b):' they shall be laid before Tynwald as soon as may be after they are made'. As soon as they may be what? As soon as practicable I would have thought.

**Mrs Crowe:** As soon as may be.

**Mr Gelling:** As soon as they can be.

**Sir Miles Walker:** Mr Speaker, I am supportive of this legislation and supportive of this reading and I believe the sort of debate we have had is a good debate and it is right that questions which have been asked be asked in this hon. Court and responded to by the member in charge of the Bill. It is, though, difficult legislation for some of us to get our minds round and I wonder would the mover of the Bill assure this Court that he would look for an opportunity to have a seminar where this Bill can be further discussed before the third reading.

**Mrs Cannell:** Already been asked.

**Sir Miles Walker:** I know it has been asked, I am just trying to make the point again, Mr Speaker, and underline it and would like the minister to indicate clearly that he would be prepared to do that within the next week, which may not be easy bearing in mind other people's time commitments and all of that, but I do think the gesture would be appreciated and I certainly, for one, would do my best to attend, sir.

**The Speaker:** I call upon the hon. member for Middle to reply.

**Mr North:** Thank you, Mr Speaker. First of all, to answer the hon. member for Onchan's point about 2(b), that is standard legislative language, however inelegant it may be, and I also would like to confirm - and I think I did allude to it last week as far as hon. members are concerned, particularly on the internet - that I will, I think, as we said earlier on, try and organise before the third reading next week a seminar for those who would like to come along because it is very technical legislation. I have had great difficulty getting round some of it and understanding some of the finer details and I will try and organise that to try and ease the concerns of some hon. members.

But I would like to thank all those members, those with legitimate concerns and those supporting it, because this is legislation. The private sector on the Isle of Man is watching very carefully the efficiency and speed with which this hon. House can progress legislation that they require and I hope that we can have this up and running in the not-too-distant future and I thank all those members for their help. Thank you, Mr Speaker.

**The Speaker:** Hon. members, the motion is that clause 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.

Hon. members, having passed the clauses stage of this particular piece of legislation I think it is evident that the House wishes to progress with what is in effect permissive legislation anyway. However, I too have sensed that there is an element of unease maybe about the unknown. The question of signature validation, the acceptance of UK legislation and the exceptional provision for service providers I think are all points which are relevant. Now, picking up the comment which has been made by the hon. member for Douglas West and my hon. colleague for Rushen, Sir Miles, if the hon. member in charge wishes to hold back on the

third reading instead of having it next week, if that is the wish of the hon. member, I can assure the House that the office will certainly concur with any arrangements which he would wish to make.

Having said that, hon. members, I think it is appropriate at this stage to adjourn and the House will stand adjourned until 2.30 this afternoon when we will deal with the second reading of the Constitution Bill. Thank you, hon. members.

*The House adjourned at 1.03 p.m.*

### **Constitution Bill – Second Reading Lost**

**The Speaker:** Hon. members, we turn now to item 12 on our order paper, the Constitution Bill for second reading. I call upon the hon. member for Onchan, Mr Cannell.

**Mr Cannell:** Thank you, Mr Speaker. Hon. members will be more than aware of my personal views on the requirement for reform of the Island's Legislative Council. From my manifesto pledges given at the time of election in May 1998 right through to the present date, I have not wavered in my resolve to try to achieve this aim. However, I am equally aware that there have been many previous similar attempts, none of which fully succeeded though not for want of trying.

In general, I think it is fair to say that there has not really been much willingness by the Legislative Council to seriously consider the recognition of the inevitability of reform until extremely recently, and this hon. House has also not quite found itself able to summon up the full resolve to impose its will upon the subject. However, this time it does appear as if things are different. The Bill before us for second reading today is one which has come down from the Legislative Council itself, albeit regarded by many as a political tactic to try to lessen the effects of the recommendations of this House's own select committee. Indeed, so concerned was the Council that it took the comparatively rare step of producing a Bill and setting down an opening debate on it immediately prior to the scheduled continuing debate on a Tynwald resolution calling for reform to be endorsed, and hon. members will recall that the hon. President of Tynwald subsequently ruled that consideration of a reform Bill by the Council placed the Tynwald resolution in a state of suspension, where it remains to the present.

So, to sum up, we have the Council's Bill on today's order paper, we have the House of Keys select committee's report awaiting possible production of legislation and we have a Tynwald resolution awaiting the clearance of the Bill before restoration to a forthcoming agenda. You might say it is not clear cut. Regarding the Bill itself, I am under little illusion that it will appear to be set for a rough ride.

Hon. members will, I presume, prefer to back the House's own select committee's recommendations, which are, of course, very different to those contained in this Constitution Bill. In acknowledging the requirement for reform, though, the Keys select committee said effectively that in a modern democracy legislative appointments must be solely directly elected by the people. This is a chance to do that; it is a halfway house.

In essence the Bill, promoted on behalf of the Legislative Council originally, as I have said, is to rename the Council 'the Senate', and to provide for the popular election of its members. May I urge, please, that the title of 'the Senate' does not knock out the main object of the exercise: to provide for the popular election of its members, admitted by the Legislative

Council and passed down to us by their own number - quite a large step, I am sure you would agree. It advocates reforming the Council positions to include direct election via the Isle of Man Constitution Act of 1919, sections 6 to 26; the Constitution Act 1969 in whole; the Constitution Act (Elections to Council) Act 1971 in whole; the Constitution (Amendment) Act 1975 in whole and the Interpretation Act 1976 by a new section 3, 'Definition of the Council' - they did that themselves.

The select committee was set up on April 22nd 1997 to consider the role, constitution and election of the Council and the implications for the remuneration of members of the Council of any recommendations made thereof. The select committee's final report was published in June 1999 and advocated a number of principal recommendations mainly based on the principle of direct election by the people. The Legislative Council have recognised they should be popularly elected. The House of Keys select committee has also concurred that there should be election by the people. At paragraph 7.3 of the select committee's report and I am aware that is not before the Court today but it is perhaps pertinent to reveal their views, it states that 'if the elected members of the Legislative Council were to be directly elected it is recommended that the most appropriate form would be for the Council to be an element of a directly elected Tynwald Court', and of course goes on to detail how that might be achieved. The recommendations of that select committee, as I have said, are not for consideration on the floor here today but they further recognise the inevitability of the desire of the public, through its elected representatives, to end the election of Legislative Council members outside their direct control.

Hon. members might say it would have been far better for me to have picked up on the select committee's recommendations and produced a Bill containing the majority of those. I concede that might be so, but the way I saw it was that by bringing the Legislative Council's Bill before this hon. House today is to keep the subject immediately alive. Shortly we shall be called upon to consider the election of four positions within the Legislative Council. I hope that they will be the last four which this hon. House will be called upon to nominate. (**Messrs Quine and Cannan:** Hear, hear.) By doing that we shall naturally be operating perfectly legally and within all the constraints which are imposed upon us, but I suggest that when we come to that, be it on the 7th March or on subsequent occasions, we shall not be doing so morally, for while we are doing it we shall, every one of us know, it is a process no longer endorsed by the majority of the people of the Isle of Man. The condemnation which resulted from the fiasco of the election of the preceding Legislative Council vacancies must have left no-one in any doubt that democracy can only be served if direct election is accommodated by whichever method. (**Several Members:** Hear, hear.)

What I am anxious about today is that the baby is not thrown out with the bathwater. (**Mr Corkill:** Hear, hear.) As I see it, the danger is this hon. Court will become bogged down by the method of election or the title of a body, formerly the Legislative Council, and thus lose a glorious chance today to grab reform in principle once and for all. What we have in this Bill is the Legislative Council for the first time demonstrating it acknowledges its time is up in its present undemocratically elected form - truly turkeys voting early for Christmas.

Putting to one side the natural tendency to question the motives by which a Bill was hatched up at a moment's notice to try to thwart a legitimate Tynwald resolution continuing and the subsequent overruling of this hon. House's wishes that the resolution should proceed,

what we have here today is a Bill the terms of which volunteers to achieve some of what its own House's select committee has recommended. The select committee may suggest direct election by a different method, a fully elected 33-member Tynwald Court, but there is absolutely no denying its remit of examining future Council election comes out overwhelmingly in favour of election by the people.

Hon. members, please let us not shy away from the unique opportunity presented to us today. If this Bill is ultimately passed, it will achieve the irresistible object of direct election. Hon. members may not care for the way in which the Council advocates doing it but there is no question whatever that they have firmly conceded the principle. Hon. members may say that if a Bill containing the recommendations of the select committee was to pass, then it too would achieve it and probably by a method more acceptable to this hon. Court. That is the test we have today, but the two measures are different: in this Bill the Council agrees it should be directly elected; the select committee's report, of course, has yet to be addressed by this hon. Court.

Today is the day we can firmly demonstrate that this hon. House has the resolve to face up to an issue which forever condemns the outdated practice of a branch of Tynwald being elected without mandate from the people. At the clauses stages of the Bill, members will, of course, enjoy the right to produce any amendments to assimilate the aspirations of the select committee. It would be difficult to marry the two up, I concede, but possible. I was taught a salutary lesson with a Bill which ended up, I think, with only one word remaining from its original resolution which passed. I have not forgotten it; the hon. Mr Speaker said he would knock the rough edges of the new members and I am one of them, and quite happy to concede that I learnt a lesson that day.

Hon. members may say that this Bill is not the vehicle to achieve what I desire. Trying to match up the two, you may say, is not the answer. If that proves to be so, I shall not be personally disappointed because I shall be among those either making the legislation or endorsing others' production of the legislation to be framed to bring forth the recommendation of the House's own select committee. We owe it to the public, members, to satisfy a manifest demand.

Finally, may I urge hon. members not to reject the Bill at today's second reading. Rather let us permit it to take its course onward to the clauses, secure in the knowledge that we we would be entertaining the wishes of the Legislative Council. This is their promoted Bill, they put it up and they have to stand or fall by it, but let us not do it for a reason of trying to call the Council's bluff; let us do it honourably; let us take it forward to give the opportunity for further debate. Talk of senates and regional constituencies are for another time. Today let us say, hon. members, we did not flinch. The need for reform is patently demonstrated and, although I see it has now been reset, unlike the clock in the hon. House this morning, time is not standing still - although in fact that clock I notice frequently actually tells the time correctly at least twice a day! We are now in the 21st century. Let us not flinch this challenge. The need for reform of the Legislative Council is demonstrated; this Bill can do it. Let us take the halfway stage, face up to the Council and take their Bill through, and then we can refine it to anything we may care to have, but this opportunity, if rejected, will be an opportunity lost.

**Mr Downie:** Mr Speaker, I rise to second the hon. member for Onchan, Mr Cannell, who has just resumed his seat, but I do not rise to second to support; I rise to speak against this particular Bill.

**A Member:** Can you do that?

**Mr Downie:** Yes, I can do that. What I am very concerned about is that this Bill, however well the intentions of the Legislative Council may appear to be, in my opinion is not the best way to bring about a reform of the Legislative Council. Let us be quite clear about this, hon. members: we are looking at a reform of the Legislative Council that is putting them out to the public for popular election, which I fully support, and I am glad to see that they themselves now fully support this principle and that will also be looked on by the public and be publicly applauded. So we have a well-established principle now that we are going to have a popularly elected Legislative Council.

The other issue that concerns me, hon. members, is, what is going to be their new role in this new policy-making organisation of ours? What is to be their job description? In having them popularly elected, do they therefore have the same status as a member of the House of Keys or do they have an even larger status or a larger power base than us? If you look at the way the Bill is laid out, I would suggest that proportionally they represent a lot more people than we do in the Keys here, and some of the more forceful amongst them - and we know we have forceful characters in here - will feel they are entitled to a bigger slice of the cherry, (**Mr Gilbey:** Hear, hear.) and a bigger say.

Now, before we go marching off into this Bill and not realise what it is that we are trying to do, I think what we have got to do is establish exactly what we want to happen.

The other issue that I think is very important is that there has to be, in my opinion, some sort of a boundary commission brought in to bear so that, if we are going to have a system which deals with proportional representation, we have got to make sure that the people who are selected to the Legislative Council are representing the proper proportion of the populace.

To do what the hon. member for Onchan was suggesting, that we should approve this today and members should just bring forward amendments as they feel fit, in my opinion is a recipe for complete and utter disaster. (**Several Members:** Hear, hear.) I think what we have got to do, like it or not, the principle is well established now for popular election; we have got to throw this out, we have got to re-enact our select committee and we have got to look at exactly what we want and introduce legislation at our pace and under our control. This is the power house of Manx politics, not the Legislative Council. (**Members:** Hear, hear.) Let us get on with the job, let us give this Bill the justness it deserves - give it the welly, in other words, and get on with the doing the job properly. We have got a good committee there and between us now we know what we want. I would not divorce the Legislative Council from this. I think, if they have a role to play, they need to be involved and we need to come up with a policy that works and one that is going to stand us in good stead for many years to come but based on the fact that the Legislative Council are democratically elected. Thank you, Mr Speaker.

**Mr Shimmin:** Mr Speaker, I too certainly will not be supporting the second reading of this Bill. However, at the risk of making myself open to be misrepresented I would like to explain some of my reasons. I will also not, I believe at this stage, be supporting the recommendations of the select committee of this House on the reorganisation of the Legislative Council.

I believe fundamentally that we have been sidelined from a priority area of reform politically on this Island into the soft target of the Legislative Council, and I would defy anybody to believe that they feel as strongly or more strongly than I do about the need to reform the Legislative Council and the fact that they should be popularly elected. However, if we go down the route of spending the next five years reorganising the Legislative Council, their definition of roles, the boundary commission to change the boundary electoral areas, which inevitably will be the consequence of going down a road of reorganising the Legislative Council at this stage it will not be smooth; it will constitute a major reform of the political structure of the Isle of Man. I have no problem with that other than the fact I do not believe it is the first target. I believe we have now established a select committee on the reform of local government which, in my way of thinking, is the fundamental base on which we must develop the political structure on the Island.

If we fail to reform the local government before we go down the road of reforming the Legislative Council I believe both politically and publicly that once we get to the conclusion of the changes to the Legislative Council there will be no stomach to take the difficult battles of the local government. I would prefer to see our time concentrated more towards the reform of local government now as the priority area in the sure knowledge, as the previous speaker has just said, that there is unmistakably the resolve now to reform the Legislative Council, but please do not be mistaken to think that this is going to be the solution; this is one part of it and it should not be the start of the reform that I believe politically we require on the Isle of Man.

I fundamentally believe the Legislative Council needs to be reformed. I fundamentally believe that local government reform should be reformed earlier, and I will be moving every opportunity to try and get the House to concentrate on that as the first step, but once we have established a genuine role for local authorities - and goodness knows, there is going to be enough work involved in that - once we have got that and a clear definition between what is the working role of a local government authority and the national government of the House of Keys and Tynwald, then is the time to resolve the details of the Legislative Council.

I think this is a side issue. It is one which will come, but I hope that the hon. members will throw out this Bill and then seriously consider, when looking at the select committee on legislative reforms report, that they consider the time would be more appropriate to wait for reform of local government and then revisit the Legislative Council.

**Mr Rodan:** Mr Speaker, this Bill before us surely takes the prize for getting so much radical change into so few words. I wish to congratulate the Legislative Council for the imaginative flair they have displayed in cramming into just five short clauses such a major and far-reaching overhaul of the constitution, and it is the shortness of this Bill, not to mention the ease with which it sailed through the other place with minimal debate and lack of controversy, that gives us the first clue as to what is really going on here, and the hon. mover, Mr Cannell, has explained very well.

First of all, by narrowly focusing upon one and only one aspect of reform - namely, the issue of popular election - and in concentrating that single issue into a Bill along with the mechanics of the elections but without reference to anything else, they have hit upon the one sure-fire way of how not to reform the Legislative Council, and this will not come as any surprise to this House. The only surprise I see is the sudden enthusiasm the members of the Legislative Council have discovered to present themselves before the electorate for direct

election at all. If the Legislative Council were genuinely interested in reinventing themselves as a democratically accountable elected body they would not have come at this by proposing the one alternative to the present system almost guaranteed not to work.

The report of the select committee on the Legislative Council sets out the issue, the fundamental objection to this legislation very, very well and it just bears repeating for the record. In the report, paragraph 3.2 it is stated, 'There is. . . an alternative to the Legislative Council being elected by an electoral college of the Keys' - the present set-up. 'The Council, other than its *ex officio* Members, could be directly elected by the people of the Isle of Man. There is, of course, a well-rehearsed argument that if the two Branches of Tynwald were to be independently and directly elected that this would create a tension between the Branches which has not been seen for many years. . .' 'an independently and directly elected Legislative Council would be extremely likely to assert and seek at least an equal parliamentary competence with the Keys and that this would indeed create undesirable tension.' And if we accept that premise, and I believe most of us do, then this deliberate creation of a parliamentary structure with guaranteed in-built tension, friction and the potential for lasting damage to our system of democratic government should be seen as grossly irresponsible. Of course, as it is not meant to be taken seriously, we may more charitably regard it as no more than the cynical ploy it is intended to be.

In my opinion there is only way way forward and that is the one outlined in the next paragraph of the select committee report following the one I just quoted: 'These concerns could be addressed by the direct election of the members of Tynwald Court, other than the *ex officio* Members, as one body by the people of the Isle of Man at regular general elections. This too would have its advantages and disadvantages. It would enhance the rôle of Tynwald as a democratically elected parliamentary assembly; and, in doing so, would develop a meaningful rôle for both the Keys and the Council. It would provide an opportunity to meet modern democratic standards without creating conflicts of interest between the two Branches of Tynwald yet still enable the branches, to continue to provide constitutional checks and balances in particular with respect to the consideration of primary legislation.' And the report, this section concludes by saying, 'No doubt for some this may be viewed as rather too radical a solution.' And yet it was this option which at the end of the day however narrowly, passed in this hon. House, and it passed surely for the logical reason that direct election of the Legislative Council will only work if such election is a component part of the direct election of all members of Tynwald Court simultaneously as one single body. What we have here today - and Mr Cannell, the hon. member for Onchan, is to be commended for at least letting us debate it - is a dangerous proposal, in my view, and therefore the Bill should be thrown out to give the opportunity for a completely new Constitution Bill ideally promoted by the Council of Ministers but reflecting the wishes of this place and the findings of the select committee report as passed by this House to come forward.

**Mr Gelling:** Mr Speaker, following on from the last speaker, the hon. member Mr Rodan, basically again taking the situation that we have before us, and that is the Bill from the upper House, I immediately again refer to the Keys Report of the Select Committee on the Legislative Council which was presented to this House in October and its recommendations were approved. But again I would like to draw members' attention to the narrowness of the margin; we cannot therefore say that even the House was unanimous in everything that was in

that report or in fact that they were strongly in support of the report itself, but of course it did have the one common denominator, which was that the Legislative Council should be elected by the people.

I think also I would like just to point to a different paragraph within the report, 6.2.3, and I quote, 'Obviously the lead time for replacing the present arrangements by the election of an all-elected Members of Tynwald at a general election would be considerable. It will be important to have careful and extensive consultation on the necessary primary legislation, which would no doubt include interim arrangements. In our view, this consideration takes the urgency out of addressing the question of whether the general election to Tynwald Court should be from single member, multi-member or Island-wide constituencies. This is a matter which would be best considered separately from the future of the Legislative Council as it raises rather different, and broader, issues. The same is true of establishing the constituencies from which Members would be elected, and indeed the procedure for their election. Similarly, we do not comment at this stage on the most appropriate procedure for the elected Members of Tynwald to elect the Members to the Legislative Council. We would expect that in due course this would be the subject of a report from the Standing Orders Committee of Tynwald.'

I think basically what I am trying to say is that there is clearly much work still to be done before anything tangible can come out of that report, and I suppose, if I was being really cynical, I might even say that the committee ducked the difficult issues, and certainly the inheritance that we have been left with is an incomplete one. So what I am just trying to demonstrate is that there are a lot of other areas that require to be addressed.

Now, the question for the Council of Ministers was, what should the Council do in the wake of the House of Keys support for this report? We could have taken the view that the committee's proposals had secured only slender approval and had not been tested in Tynwald and that we should do nothing about the report. But alternatively, we had the option of taking up the issue to see if it could be carried forward, and that is what we are proposing. We have done nothing with the report to date because of the other parallel initiatives which have been clouding, I would suggest, the issues since the House of Keys decision in October. There has, as we have already been reminded, been the motion on the future of the Legislative Council proposed by the hon. member for Onchan, Mr Cannell, who has got this Bill today, which has been carried forward on to the Tynwald order paper, and there has been more recently the appearance of this particular Bill which we have before us today. No, so long as these other alternative means of addressing the future of the Legislative Council have been on the table it has not been realistic, I would suggest, for us to progress the House of Keys report recommendations. Clearly, either the - if I can suggest - Cannell motion or this Bill might have sent us off an entirely different course. So therefore it would appear, to me anyway and the Council of Ministers, to clear the decks of this particular Bill, to discharge it from the House and then we, the Council of Ministers and the committee that has been appointed and is waiting in the wings, could begin looking at the House of Keys report to see if a set of tangible and workable proposals can be developed for further consideration.

Therefore I would propose that, as I think every member that has spoken so far has said, we do not give this particular Bill a second reading and that it be discharged so that the Council of Ministers committee could then begin its considerations of the Keys committee recommendations unencumbered by alternative and competing initiatives. I can say that the

sub-committee is there waiting to see what happens in the House of Keys here today. I have certainly had a long afternoon session with one of our past speakers (**Members:** Oh!) and basically there is already a Bill in draft form awaiting consideration by the Council of Ministers committee who, I would suggest, can address all the issues in respect of the information that is in here given by persons orally or in writing. We can consider, as has already been suggested, the contents of this Constitution Bill but at the end of the day I think it has to be a far more in-depth look at this to come out with answers to an awful lot of the questions that actually still remain to be answered in this report. So I would join with the others that have spoken and say the best way we can go forward is to discharge this particular Bill and then we can start our work - or the sub-committee can - on basically the report that came from the House, sir.

**Mr Brown:** Mr Speaker, I think, like all or most of the members who have spoken, I will not be supporting the second reading of this Bill. The reason is because quite honestly the only bit of the Bill that I can even indicate any support for is that they be elected by the people. Outside that, everything else, I find, is a recipe for conflict and disaster. (**A Member:** Hear, hear.)

My view has been straightforward on the future of the Legislative Council in terms that I believe firstly we should endeavour to find a procedure where they are first elected by the people of the Isle of Man; and secondly and very importantly, which is totally missing from this legislation, is to identify quite clearly what we expect them to do, their responsibilities, their powers, and have a clear definition in law what their job is. If we do not - and by 'we' I mean the people of the Isle of Man - do that, then we will have a parliamentary system which will create two Houses with the same powers which will fight, and that cannot be good for the Isle of Man or democracy. One hint of that is they have called themselves the Senate. Why call yourselves the Senate? What do you see your role as? No thinking behind that except it sounds like a good idea. (*Interjection*) It does not make much sense anyway, certainly. As for the system, my view is quite clear: we should have specific aims on this, and that is that, if we are going to have a Legislative Council, we should then make them purely legislators. Why do we need them to be part of government? Why do they need to have executive powers? Also limited powers within Tynwald. It depends how far you want to go, and my views on the report that the hon. member for Malew and Santon, the Chief Minister, read out were made quite clear at that stage: I think that select committee failed to identify what we had asked them to do, which was the job of the Legislative Council, and the point us all going out, all 33, to the polls at the same time and then 'Let us split the jobs up, lads, and you can go up that way and you can go off that way' is again another recipe for disaster because anyone elected at the polls with the powers to take motions to Tynwald, make legislation, be in government, will then cause conflict.

So we need to identify what we want a Legislative Council, a second chamber, to do. My view is they should be elected by the people, they should have limited powers and they should be first and foremost, if not only, a legislature who reads the legislation after the Keys has passed the legislation. Why do we need them to be further than that? I just do not believe it is necessary.

This Bill takes us nowhere at all. I think it is unfortunate we did not just let this Bill die, because I think that would have demonstrated to the Legislative Council that the House of

Keys was not even interested (**Mr Houghton:** Hear, hear.) in their Bill, which quite clearly has been put forward to side-track, to distract, to cause debate, to send us off down another road to confuse the whole issue, and as far as that is concerned I am sure the public will be very confused as to what is going on (**Mr Houghton:** Hear, hear.) and, as I say, I have to say to the hon. member for Onchan, who I know has picked it up for a genuine reason, that I think it would have been preferable to have let the Bill just die - full stop.

**Members:** Hear, hear.

**Mrs Hannan:** Vainstyr Loayreyder, I shall be supporting the second reading of this Bill. So from the comments made by the previous speaker, the Bill would have had further discussion anyway if there was someone to support it. My main reason for supporting it is because there is nothing else. (**A Member:** Hear, hear.) The popular election of the Legislative Council is something that I support; I have always supported that, and my colleague here moved the select committee to look at the Legislative Council just prior to my doing that. So the issue was being looked at, was being addressed. So I support that principle and I think it is an important principle to hang on to.

I also support some of the comments he made with regard to giving them a job description - changing the name by all means, but having their main job description as legislation. Now, the seconder of this motion before this House today suggested that if they were elected like this, they are going to be political. Well, we make them political. We elect them mainly from this House, so what else are they going to be but political? They have got more and more political in recent times but we still elect members from this hon. House. We still put them up there and they have become more political. The committee that looked at this particular issue, that has been quoted by the member for Malew and Santon, suggested that they should indeed continue to be political members, that the Legislative Council and the Keys be elected as members of Tynwald at a general election and then the more senior ones would become Legislative Councillors and the junior ones would become House of Keys. There is still the political content there of representing the people, fighting a political election and continuing to be political. So the suggestion put forward by the seconder, that if we did this they should overnight become political, is not an argument that can hold water at all. I consider that we do expect them to be political by electing them from the House and then we complain when they are political.

I actually support one person, one vote, so I do have a little bit of difficulty with this legislation because it virtually says that people should be elected in exactly the same way, and I will spell it out again: democracy to me means one person, one vote. (**Mr Cannan:** Hear, hear.) At the moment this House is not democratically elected. (**Mr Cannan:** Hear, hear.) If somebody in Ramsey can have two votes -

**Mr Cannan:** And Onchan three votes -

**Mrs Hannan:** - three votes for Rushen and one vote for my constituency, I consider that to be undemocratic.

**Members:** Hear, hear.

**Mr Singer:** It is not.

**Mrs Hannan:** I expect the member for Ramsey to say that -

**Mr Singer:** Good.

**Mrs Hannan:** - because he is going to hang on as long as possible to his two votes. Come what may, democracy does not matter when it comes to Ramsey. *(Laughter)*

**Mr Cannell:** Or anything else! *(Laughter)*

**Mr Houghton:** Poor old Ramsey!

**Mrs Hannan:** I accept absolutely that the committee members that looked at the Legislative Council will continue to put forward their proposals for electing the Legislative Council, but it did not get the support of this hon. House. It is still alive. That is all it is, because Mr Speaker cast a vote to keep it alive, but it needs legislation to come back and the representative of this House now with responsibility for seeing it through has suggested that does not hold water and that that raises more questions.

I would have hoped today that we could have supported this piece of legislation moved by a member of this House for no other reason than that the whole issue could be looked at, even if it meant amendments on the floor of this House, not necessarily sending it to committee but having a committee on the floor of this House and moving it so that we would get something - job descriptions, one person, one vote - and we would move forward and in the next millennium *(Laughter)* when it comes in 2001 *(Interjections)* we would actually be able to progress proper representation of both Houses - this House with one person, one vote, the other place one person, one vote.

Therefore I will be supporting the second reading and I would urge members to do that, because I feel that what we have got at the moment, that the Chief Minister has been given the job to sort out, will not do that, will not get the support of this hon. House and therefore the actual reorganisation and accountability of the Legislative Council will not come with the select committee report, not because we are wanting to cock a snook at the Legislative Council in another place - not at all. I would suggest that members actually support this so that it can continue and so that we can get proper reform of the other House, the Legislative Council, and that we can be really mature about it in bringing this about through this legislation. So I support it, Vainstyr Loayreyder.

**Mr Cannan:** Mr Speaker, I have come here today not to praise the Legislative Council but to bury them. **(Some Members:** Hear, hear.) *(Laughter)* I have a problem this afternoon -

**A Member:** You've got a problem? *(Laughter)*

**Mr Cretney:** He has got one every afternoon!

**Mr Cannan:** - a bigger problem, and my bigger problem is that I can support most of the remarks of the hon. lady for Peel.

**Members:** Oh!

**Mrs Hannan:** I have got a problem then! *(Laughter)*

**A Member:** Definitely!

**Mr Cannan:** Mr Speaker, just let us look at what we are talking about: the Constitution Bill, reform of the Legislative Council. Now, this started in April 1997, almost three years ago, and the select committee talked about it for a year and produced an interim report in March

1998 and then they talked about it for another 18 months and produced a final report in November 1999 and then nothing has been done, masterly inactivity - we have that from the Chief Minister - and that is a great policy of this Manx Government, masterly inactivity. If you have got a problem, put it in the pending tray.

**Mr Brown:** Give it to Edgar! (*Laughter*)

**Mr Cannan:** And we gave it to the hon. member for Ayre (*Laughter*), and so it has been in his pending tray and the Chief Minister's pending tray, and the Chief Minister today said he has done nothing about it.

Now, I have to tell you, hon. members, in about a year in July it will be the end of the sitting of the House of Keys, about 16 months' time, and that is the end and we go to a general election. What makes you think, hon. members, on the track record of this interim report, the original resolution, that in about 16 months' meetings of the House of Keys, less Easter recession, summer recession, Christmas recession and next Easter recession, that we will ever get anywhere? We will still be talking about it. After nearly 18 years in this hon. House I have seen Bills talked out, and I cannot believe, however much the good intentions are, that a Bill will come to this House (**Mr Cretney:** Hear, hear.) that it will go through and find support without going again to another committee, without being amended -

**Mr Cretney:** The 'do nothing' strategy.

**Mr Cannan:** Absolutely. (*Interjection and laughter*) And then suddenly in June next year all Bills fall because, as you know, sir, and I know, when the general election comes, you cannot carry a Bill forward. So if it falls next June, what chance after the election in November next year? We start again: a motion to the House for reform of the Legislative Council, a year later an interim report; two years later we will be talking again. It is will go on and on and on.

**Mr Corkill:** Like the member for Michael!

**Mr Cannan:** Well, at least I do go on. I see members come and I see members go (*Laughter and interjections*), and I hope I continue to come here, yes, sir.

We have before you a Constitution Bill and that is what we are talking about, and I believe, like the hon. member for Peel, that using this as a base at least we have got something. From the Chief Minister we have been promised nothing but jam tomorrow. We might get a Bill - six months, committee, another committee, sub-committee of the Council of Ministers - my goodness me! - consultation with the Legislative Council. Oh dear, oh dear! We have got a Bill, like the member for Peel said. Some of this Bill is nonsense. They want to call them senators. Well, they have got delusions of grandeur to start with! Senators - my goodness me!

Things like 'senator' and the type of voting in constituencies can all be resolved by deciding what you want, but if we are only going to check this out and hope that something will come from the Council of Ministers it is like hoping that with their report on ministerial government they will actually produce a Bill to have themselves voted ministers approved by Tynwald. It is like asking turkeys to vote for Christmas. Of course that Bill will never come unless a private member does it. It will all be committee. It will all be time-expired.

I believe in one man, one vote.

**Mr Cretney:** Person!

**Mr Cannan:** I have fought and brought into this House in 1992 a Bill for one man, one vote. Unfortunately it fell on the Speaker's casting vote, but that would have had single-seat constituencies in 1992.

**Mrs Hannan:** One person!

**Mr Cretney:** Hear, hear.

**The Speaker:** Hon. members, the hon. member for Michael has the floor.

**Mr Cannan:** Mr Speaker, I stand corrected - 'one person'. One person, one vote, one constituency, and it went to a 12-12 vote. Unfortunately it has never again been approved because again there is a vested interest for people to have a constituency with three votes and the option of being voted by people on that vote, and I think that is all wrong.

Anyway, I shall support this purely so that we have something actually that we can amend and move and change, because we have nothing before us to indicate that we will ever get anything else.

**Mr Karran:** Vainstyr Loayreyder, I find this piece of legislation a bit difficult to support as a whole piece of legislation. What I do find very difficult is the fact that I think it would be wrong not to give it a second reading, even though I do not agree with the principle of the Bill myself after many years of being in this hon. House. The only thing I would do with the Legislative Council is have them done away with. I think that there is no need for it and I think that the people outside are not crowing for them to be democratically elected. I think a lot of people see it as a waste of taxpayers' money having a revising chamber and I think that the situation is that what worries me more than anything is when the opener was on about turkeys - it was a bit like the previous speaker with his 'recession' - or whether it is regression the hon. member has got? The situation with the mover on about turkeys calling for an early Christmas - being the MLC, I would say it is us that would be the turkeys, not the upper House, because if you look at my area we have a situation where you have got three MHKs for Onchan, one MHK for Middle and one senator, or whatever they call themselves, for this area. Obviously it is absolute lunacy.

**Some Members:** Two.

**Mr Karran:** No, not in my area.

**Mr Cannan:** There are five members for Onchan at the moment.

**A Member:** George and Ray.

**Mr Karran:** No, if you read the legislation East Mann will have one MLC for four MHKs. Now, if anybody is talking about turkeys calling for an early Christmas it should be this House that would be talking about that, because I just cannot believe members at times with this idea that they are going to stand for election and then be subservient to us - absolute naive crass as far as that is concerned, and any idea that somehow they are going to then allow themselves not to get into the political forum I just cannot believe, and obviously there are an awful lot of naive people in this hon. House.

When I hear the Minister for Education on about his input, if only for the fact that non-Tynwald members do not get a very good turnout it would be very difficult for him to overrule them, but only the fact that they can generally rely on about a 10 or 15 per cent turnout for that they have been able to be sidelined as much as they have done, but if the situation ever arose where the non-Tynwald members were getting the same sort of turnout of 60 per cent, it would be very, very difficult for a minister to then go against that non-Tynwald. . . It is only the fact of apathy and that there are such low turnouts there that you even get away with it now. So if you are going to have a situation with a Senate being elected, or whatever you want to call them, they are going to do as they are told. I think we have got to start living in the real world. I think one of the problems we have is our disease again from the adjacent isle. Some of the members in this hon. House's mainland have just reformed their upper House, so somehow we have got to do the same and I do feel this is a certain element as far as that is concerned, this colonial thing with the Brits, but the difference is admittedly they have changed the situation in the UK's upper House from a situation where they were the offspring or the descendants of the whores and the likes of the Crowns from previous years -

**Mr Corkill:** We have changed the legislation.

**Mr Karran:** The fact of the matter is most of them were there through patronage and the same with the situation now that they have got with life peers. The majority of the life peers now are at the behest of the Prime Minister.

**Mr Cannan:** All labour.

**Mr Karran:** Yes, quite. And it would be the same if it was the Tory party in the adjacent island, and this is the point that I am trying to raise.

Now, what do we have in the Isle of Man? We have a situation where it is nice when we have an MLC election. I get them talking to me because I have four per cent of the vote. The Prime Minister of this country can maybe whip a few of the boys in for a few Smarties to vote the right way (*Laughter*) with the patronage system, into voting for whoever they want to put up for the MLCs but at the end of the day the MLCs are elected democratically by each and every one in this hon. House. It is not a matter of 'I have put £20,000 or £200,000 into the Tory Party' or into the Labour Party (*Interjections*) or I have been into a situation in the adjacent isle, and I do think people should stop trying to intervene in my conversation; I sat quietly in theirs. And I am not doing this as a political gimmick; I am doing this to try and say, well, if they want to look at the adjacent island let us look at the reality of the adjacent island and their second chamber, and their second chamber is no more democratic now than it was. All they now is the fact that it is a matter of the boys who happen to be with the right people at the right time in power. So the point is that when we talk about the MLCs (*Interjections*) now, what we are talking about is that the Chief Minister does not make a list and say 'Well, I have these in here'; you have got to get 13 members out of this hon. House. So I do think when we talk about the adjacent island and their system, their system is far more undemocratic than this system that we have.

I personally would not want to throw out this Bill at the present time. I personally think that I am worried to hear that the Chief Minister has got some crazy new Bill. If he is not going to inflict my constituents with a system of paying for excrement to be pumped up mountains or having the settlement from an incinerator over my constituents in Onchan, now we are going

to have a system where we have the most sublime naivete that in my area we are going to elect maybe four people to represent my constituency and one of them -

**Mr Corkill:** Our constituency.

**Mr Karran:** Yes, yes. *(Laughter)* I do remember waiting for you to be re-elected.

**Member:** Oh, oh! *(Laughter)*

**Mr Karran:** I would say, Vainstyr Loayreyder, that the situation is that somehow we are going to sit there and say 'Oh, I want to be just in a revising chamber and I will not get political'. In five years' time everybody has forgotten who you are because you have sat up there. . . I mean, it is just nonsense, absolute nonsense. To bring some sort of legislation from the Council of Ministers like that is nonsense.

**Mr Houghton:** Absolutely.

**Mr Cannan:** Hear, hear.

**Mr Karran:** The idea that somehow people are just going to get elected and then just disappear to the dizzy heights of the bench above us and sit there for five years and then come back to their constituents and say, 'Oh, I am sorry, love, I wasn't allowed to get controversial. I was upstairs in the upper House.' *(Laughter)*

**Mr Houghton:** It is like that now!

**Mr Karran:** The Chief Minister really is surprisingly naive if he thinks that that system is going to work.

**Mr Corkill:** We do not want the Bill.

**Mr Karran:** Anyway, the point is this, Vainstyr Loayreyder: I must agree with the remarks about a 'Senate' or 'Snard' or whatever it is. Shee bannee mee! It is the craziest idea for a name, and if ever it smacked of colonialism and power they are quite right. I will support the second reading of this Bill, not because I particularly think that the upper House needs to be elected in this way, but if this Bill gets a second reading and in the clauses I shall be trying to do three things: one is that I want to see the years in the House for the Senate should be at 7<sup>1</sup>/<sub>2</sub> years. I think it was the biggest mistake they ever made bringing it down to five years. All right, 18 months before an election, but 18 months after an election and we have got problems getting people to stand.

**Mr Cannan:** Not a problem when they want to run for cover!

**Mr Karran:** Yes, but the point is, that is the only reason why I will support this. The second reason I will support this piece of legislation is because I do believe, because he does not get a popular mandate, that an MLC should not be allowed to seek re-election over the age of 70. I think it is quite unreasonable. That is why it gets such a bad name as an old boys' club, is because of that situation. But I have to say I would never support that proposal in the lower House. If they wanted to put somebody that is 80-odd as the member for Onchan to replace me, then that is democracy, but I would do those two things, and if this Bill goes further and gets into more detail I would like to see the situation of the constituencies which just reinforces the very valid points of the hon. member for Peel: I have three votes, she has one vote, the people for Ramsey have two votes, and that is wrong. It should be one vote, one

person. I do not agree with single seats because you would end up with estate representatives and there is enough parish pump, local authority work done in this House that is supposed to be a national assembly anyway. But I would be moving amendments, if it does get a second reading, that it is elected on an all-Island franchise and STV if it gets - and I think it should get - a second reading, because I do feel that if it does not get a second reading today we will see nothing before the next general election and I have to admit that listening to the Chief Minister's proposals put the fear of God in me.

**Mr Quine:** Mr Speaker, I was under the impression that a Constitution Bill was something that was of considerable importance, but if there are any members of the public sitting here today listening to some of the comments, I think they could be forgiven for thinking that there is no serious intent within this House to reform the Legislative Council - it is all a bit of a joke. I do not believe that a Bill of this nature is a bit of a joke and perhaps if we could come to terms with the importance of the Bill and move away from the comedy acts and the asides that have been staged, we may be a little nearer to a solution.

It is a matter of record that the Legislative Council had and has no inclination to indulge in reform. Indeed, when they appeared before the select committee of this House to give evidence they made it quite clear that they felt that the present arrangement was wholly satisfactory but, if the Keys were minded to pursue reform, then they would be amenable to subjecting themselves to popular election. So I think we start from the premise that there is no serious intent within the Legislative Council to pursue reform on their own account.

What we have from the Legislative Council, firstly, is largely a product of deliberations in private, not deliberations in public. We have what quite, I am sure, most people will have concluded is simply a mechanism to delay reform of the Legislative Council, and for reasons that have been spelt out by a number of hon. members here today, if you look at the component parts of the Bill I do not think any of them can be taken very seriously. If there is one common denominator it is the tongue-in-cheek manner in which they have approached popular election, but if you look at the rest of the Bill it does not change anything, basically, apart from giving them a very fancy handle.

So to my way of looking at this Bill I think there are two conclusions which emerge; firstly, it is not a serious solution and clearly, as far as I am concerned, it is unacceptable as a way forward. It is, if anything, simply a device to delay and defeat reform, and if we cannot take that on board then I do not think we can be very astute. But, putting that aside, if you look at the components parts of the Bill it is not and does not offer a workable solution. The charter or the task which they have set for themselves is one that is not only equal to that of the House of Keys in terms of the exercise of power, it is one which would give them a superior position to that of this House, and that is a complete change in relation to what I have always understood to be the requirement for a second, revising chamber.

I think the very idea that we should put any credence on a solution offered by the elected chamber itself really is one to be rejected. We are into an area of self-diagnosis, if there has been any diagnosis - it is quite clear that there has not been any great effort in that respect - and certainly self-prescription, and neither of those have any merit.

It would be a retrograde step to go anywhere along the line that is advocated in this Bill. We would certainly have our bicameral or, if you wish, our tricameral arrangement; that would

still be in place, but we would have a dual chamber running. We would have chambers which would be competing with each other and that, as other members have said, is not a workable proposition; it would be a recipe for disaster. What you have in this Bill makes no pretence about maintaining the relationship that currently exists between the Keys and the Legislative Council in terms of their respective roles. The idea that they would be a scrutinising chamber or a revising chamber is out of the window in this Bill. They are there to be at least equal partners and indeed they would have a greater say, greater democratic legitimacy than the members of this hon. House.

They have not addressed in any serious way their functions at all and, because they are omitted from the Bill, the only conclusion that we can arrive at is that they see them continuing undiminished and indeed with a stronger position for them to promote.

Now, it has been suggested that the select committee report offers no job description for the Legislative Council. That is far from the truth, because what has happened within the select committee report is that the select committee have identified all the component parts normally attributable to a second chamber and we have analysed each of those and come down with reasons for or against carrying them forward to the final job description which is in and is recommended in the report.

I believe that what we need to do has already essentially been decided by this hon. House. This hon. House set up the select committee; you tasked the select committee to produce their views as to the way forward in relation to reform. Your committee did that, having afforded, partway along the route that we took, an opportunity for individual members of this House to come forward with their ideas, and they were few and far between. But from an objective perspective your select committee produced a solution, one which found majority support in this House. It matters not whether it was 17 against - what? The numbers do not matter. It found support in this House and, if we are to move forward, we need to translate that in so far as primary legislation is concerned into a Bill and get that before this House. But any thought that you could take what is recommended in the select committee report and try to dovetail it into the provisions of this Bill would be absolutely foolish. You would have to strike out everything, perhaps, except the title, and what purpose is served by that?

No, we know the way forward. We need a Bill to carry it forward and let us decide then on the floor of this House in the normal way. But to suggest that we decide the way forward by a Bill that has been promoted and designed and engineered by the Legislative Council really, to me, is unbelievable. We have at least got to start from a position which reflects the majority position of this House as manifest in the select committee report which was endorsed by this House.

I have no doubt at all in my mind that we could have a Bill before this House in a very short period of time if we were minded to do it. The concern that I have is - and I am sure other members harbour this concern, certainly the public harbour this concern - is there any sincere wish by many of those in this House to really see a change of this situation? I suspect not. I suspect that quite a number of members are trying to give the impression that they support reform but they would rather do this first; they support reform but they do not believe that that is the way forward. I believe in truth what we have there is people who wish to be seen to have their money on the horse of reform because that is going to be an issue at the general election, but they are not really wishing to see reform.

So I think members really have an opportunity now; throw this out, get a Bill based on what we have endorsed before this hon. House, and from there we can amend it as we see fit.

**Several Members:** Hear, hear.

**Sir Miles Walker:** Mr Speaker, it has been a good debate even if there have been some jocular points raised, and I do not think that has demeaned the importance of the debate that is in front of us. (**Mr Cannan:** Hear, hear.) It is my belief that whatever the method of popular election that could be devised to elect a Legislative Council, they will always then be vying with the House of Keys for the exercise of power and responsibility. I believe that very sincerely, and that is why I think we are crackers in talking about substantial reform of the situation we have. I believe we have got the powers, the responsibilities, the balances in Tynwald about right. To turn the whole lot on its head because there is some thought that it would be more democratic seems to me to be crazy.

Now, again I am on record as saying this before; I am going to say it again: I do not think there is anything wrong in the House of Keys acting as an electoral college to vote for and produce a Legislative Council and upper House. I am one who believes that a second chamber is useful and I think this Island is somewhat unique in having its tripartite chamber, and again I do not believe there is anything wrong in that at all. Why shouldn't we be unique? Why do we have to look at the United Kingdom? God bless us, the way they have gone about the reform of the upper House, I think, does not bring any enchantment to my view at all.

So I think we can do something unique in this Island. We are unique. Let us be proud of our institutions. As I said before, I do not believe that there is a lot wrong with the balance and I think in my opening remarks that whatever the method of popular election, there will then be two Houses vying for responsibility, which is the paramount body? - all of that stuff which we have heard, which is spelt out in this select committee report, which Mr Kneale spelt out to this House probably eight years ago. We have heard it all before. It is spelt out in the report and that is why the select committee, I believe, decided that a popularly elected Legislative Council was probably not on. That is why they recommended a system which will destroy this House of Keys, which will destroy the Legislative Council as we know it - and perhaps that is not important to us as members of the House of Keys, but the destruction of this House is important to me and I certainly will not vote for any legislation which brings about the end of this House (**A Member:** Hear, hear.). The House of Keys is something I believe that is very dear to the members who sit here, certainly to some of us, and it is very dear to many of our constituents out there and I do not believe they recognise what is being recommended.

So I think the hon. member for Onchan, Mr Cannell, has done us a favour by bringing this legislation forward. He has given us another alternative, and if I am in the position of having to decide which system I prefer, a wholly elected Tynwald and then some sort of device to split it off into two committees, with all the ramifications that may have, or some system of putting the Legislative Council out to simple popular election, then I would go for the latter. The status quo with some tinkering - and that is all I would do to it personally - will serve this Island much much better.

I was interested in this call for one person, one vote. I am a member of a three-seat constituency and I do not want to see that change. I do not mind at all if there were seven

other three-seat constituencies, that is fine, but why reduce - and this is what they call for - the three seats down to three single seats?

**Mrs Hannan:** I am not suggesting that.

**Sir Miles Walker:** You are not suggesting it, hon. member for Peel, but it has been suggested. I hear the hon. member for Michael calling for one man, one vote; I would just remind hon. members that the hon. member led the charge against one man, one vote (**Mr Brown:** Hear, hear.) when he proposed a resolution in the House of Keys following a general election that STV should be done away with. If I am wrong on that, hon. member. I can remember the hon. member supporting, anyway, very vociferously the end of the single transferable vote.

**Mr Cannan:** And the two-part Bill and the institution of one vote. (*Interjections*)

**The Speaker:** Hon. member, the hon. member for Rushen has the floor.

**Sir Miles Walker:** I am sure, Mr Speaker, the hon. member is absolutely right. It may be the two-part Bill or however many parts, but we had one person, one vote in this Island (**A Member:** Hear, hear.) not very long ago, and the members of this hon. House decided to discount it and passed legislation to do away with it.

**Mr Cannan:** Not me, sir.

**Sir Miles Walker:** I believe that that was a mistake. So what do we do with this Bill? I have to say it is not very often I leave home and come into this chamber without a good idea in my mind of how I am going to vote on each resolution as it comes up after listening to the debate. I have not a clue what to do with this, I can tell you that, and I suppose it does not matter very much anyway because I rather guess that it is destined for the dustbin. (**A Member:** Hear, hear.) But I do believe that the message the Chief Minister may receive, albeit he is considering the select committee's report, quite rightly so as is his responsibility - for those of us that are unhappy with that select committee report maybe it would be of interest to him to know how many are supportive of the sort of principles, not the detail, that are established in this Bill, and I think for that reason I will vote for this second reading today and await the outcome. I have no doubt that if it were to pass its second reading there would be substantial amendments and it would probably be a committee job and all the rest of it, but so be it.

**Mr Cannan:** But it would be on the floor.

**Sir Miles Walker:** It may be, Mr Speaker, a better outcome than the conclusion of the last select committee (**A Member:** Hear, hear.) that this House of Keys set up to consider this particular issue. I am, I have to say, substantially for the status quo and I am not for the destruction of this House of Keys as we know it and as our people know it. Thank you.

**Mrs Cannell:** Mr Speaker, it has been an interesting debate and we have had comments from every quarter of the Isle of Man from its representatives. I have to say that the only principal element contained within this Bill is preservation of the status quo. That is how it reads to me other than going out for an election to the people, but if you look at the Bill that is not going to be for years. That is years away anyway.

Looking at clause 5, which is the short title and commencement of this particular Bill, they talk about clause 4(1) and (2) coming into operation on 28th February 2003 - so that is three years away, almost - and that is the position in relation to those who will come up for re-election in the meantime. So (1) and (2) under clause 4 is 'We shall remain'. That is what this section should be entitled, 'We shall remain, we shall stand firm,' whereas we have to consider an election of the Legislative Council in February this year - well, March or whatever. If this Bill were to be supported and the principal elements we are being asked to consider today were supported, then that would be our last opportunity to have a say in the election and selection of members of the Legislative Council.

**Mr Cannan:** Quite right, too.

**Mrs Cannell:** After that, under this particular Bill there would be no requirement until following 1st May 2004. So those members who would normally come to the end of their term of office following this year in March would have the enjoyment of an extended office, an extended stay in position, and I find that quite unacceptable. The Bill is suggesting to me, 'We shall remain, we shall stand firm and you shall not alter us one jot unless we want to be, and the only change we want is we want to be regarded as senators, we want to select the time in which we feel able and ready and willing to go out and ask the public for their endorsement' - all of this is total disregard for the elected House, which is the House of Keys. That is the point I am trying to make. I believe it is this House that should be considering and putting together legislation and it is the role of the Legislative Council to scrutinise that which is born in this chamber, not in the other chamber upstairs. So I take affront straightaway of being presented with a Bill that has not been presented to us here from a member within this hon. House.

Now, in all fairness, the Chief Minister - and he spoke much earlier on in the debate and there have been some 10, 11 members speak - did inform us - and I was quite intrigued - that he has a sub-committee standing by which is awaiting the outcome of today's consideration of this Bill. They are standing by, ready to look at the select committee report which was approved, albeit by the casting vote of the Speaker. The fact remains it was a democratic vote; the Speaker had to cast a vote because we were so divided and he cast his vote in favour. That is democracy. So that select committee was approved and, apart from that, that is the only common-sense approach, the only base that we have at this moment in time from which to build. It is the only base that the Chief Minister's sub-committee have to consider, change about a bit and to put together legislation for us to consider, and that is the right and proper way to move forward, I would suggest. The select committee members which were elected by this hon. House worked very hard on that report. It was not an occasional meeting that was taking place; they were continuous, so at the end we were going to a new meeting with what we had discussed still fresh in our minds into our following meeting and I have to say that that was down to the chairperson who kept us running, and we ran with the responsibility that was given to us by this hon. House.

In addition to that, I think unfair criticism has been bestowed upon this particular select committee today. Of course I would say that, I was a member on it, but you look at the other membership that was represented on that committee; it was a wide cross-section of political view. At the time of considering the motion calling for the review or reform of the Legislative Council it was said during that debate that the whole situation needed a fresh look, a fresh set of eyes, an uncompromised view in considering the present role of the Legislative Council

having regard to its history and how it had evolved and how it should go in the future if at all we were to retain it, and abolishing it, of course, was uppermost in at least two political minds of that committee at the start. So you had a fair, an unbiased membership within that committee looking at the situation, so I feel a little disappointed that that has been criticised.

There is a recipe in there for reform of the Legislative Council - quite a practical recipe. All that is required now is for the Council of Ministers' sub-committee to put those ingredients in the bowl, mix them up and let us have a look at the outcome. If we do not like it we amend it. That is the whole idea of this House considering legislation. If we do not like it we vote against it at the principle stage, which is second reading. If we like the principles but are not very keen on some of the components contained within it, we seek to change those at the clauses stage. That is the whole idea of the elected House. That is how we work. We all know that.

I have to say that the Bill really should be called 'The Conservation and Preservation of the Legislative Council and not indeed a Constitution Bill at all, because that is what this Bill is asking us to do. I cannot agree to the retention of the tricameral system that we have in being at the moment, as was stated by a previous speaker. If we were to retain that now that we are in the millennium - but not quite at the real millennium which, I agree with the hon. member for Peel, we have not celebrated yet, that is yet to come - we would, if we retain the present situation, become the laughing stock if not of the world at least the Commonwealth, because it is such an unusual, unbelievable situation to other jurisdictions. They cannot believe that we have a tricameral situation for such a small population. So I cannot support that.

What I would say to hon. members is, we have given this whole situation - another half hour and it will be two hours, and it is probably two hours too long. I do agree with the previous speaker that it is unfortunate, really, that the Bill was seconded, because I think we have fulfilled the expectation of the Legislative Council today because they expected us to debate, they expected all the other issues to come in - single transferable vote, the retention of the existing system, tricameral, unicameral and so on, and all of these components have all come in and we have all risen to the bait, which is most unfortunate. Yes, it is political, of course it is all political, but I can remember other occasions when members have come forward and there has been no debate and another occasion there was no seconder and the Bill fell flat. I think we have given this today far too much credibility. Let us boot it out now.

**Mr Quine:** Hear, hear.

**Mr Corkill:** I would certainly agree, Mr Speaker, with the last comment the hon. member has just made who has just resumed her seat. We should have just got rid of it. I think that is probably what is going to happen; that seems to be the tenor of the debate. But I just wonder with hon. members: this is an example of what will happen to this hon. chamber when the Legislative Council is a popularly elected body. They will exert influence in a direction which we are not used to - that is, up there to down here - and I have to say the debate that we have enjoyed this afternoon I have not enjoyed, because I know that that is what is behind this very Bill. The content of the Bill is irrelevant. It is a demonstration to us of what happens when a Legislative Council becomes more powerful, even if it is only equally powerful with the House of Keys, and I think, as the previous speaker has just said, they have actually got what they wanted with the purpose of this Bill and I find that rather sad that we have been manoeuvred

into that position (**A Member:** Hear, hear.) but let us make no mistake, hon. members, that is nothing to the manoeuvring that will go on if we popularly elect them.

In 1991, when I stood for the House of Keys, it was in my manifesto, 'popularly elect the Legislative Council'. It seems a very sensible, democratic process to go into. It feels good. It sounds right. Maybe it is right. I was on a select committee in that first session, from 1991 to 1996; the hon. Mr Speaker was on that committee. If the Chief Minister's sub-committee want another report to have a look at -

**Mrs Crowe:** Yes, give it to them.

**Mr Corkill:** - there is a report there with lots of detail in it, I can assure hon. members. Speaker Cain was the chairman of that committee and that hon. gentleman was certainly a man for exact detail. There is loads of detail if you want another detailed report. It was very interesting - shall we get rid of the Bishop's vote? All these sort of issues. To think that this has only been happening since 1997 for hon. members is really a bit of an illusion. It is always there in the background.

I really do feel very sorry that this hon. House is being manoeuvred into this situation. It is all about political power. We have heard all those comments. The political power comes out of the ballot box, and it is where that ballot box is that counts as far as I am concerned. So I very much reflect the views of the hon. member for Rushen, Sir Miles, when he said he supports the status quo.

That is the reason the Bill is so short. We issued a challenge. We have had a select committee, not in Tynwald but in this chamber. We issued a challenge to the Legislative Council. Do we really think that the hon. members in that chamber are just going to ignore us? They have thrown the gauntlet back at us, and here we are debating.

Now, the other curious thing I found in the debate is all those who are really very anti-Legislative Council who would have them done away with and those sort of comments; they are the members that are going to support this Bill. (**Members:** Hear, hear.) It is amazing. All those who perhaps would have less extreme solutions are going to kick the Bill out. There are so many different agendas going on here. I really think we should be honest with the general public of the Isle of Man (**Members:** Hear, hear.) because this subject is going nowhere in the life of this House. (**Members:** Hear, hear.) We know it is not.

**Mr Cannan:** That is right.

**Mr Corkill:** We all know it is not, and we may make noises to the electorate; well, let us be truthful about what is happening. It is not going to see the light of day for one reason or another.

Now, I support the status quo. I am going to do my best to make sure that happens. Other members support popularly elected. They are going to do what they can. This is not going to be resolved, and I really revert to the point that we have been manoeuvred, we should realise what it is like with a powerful Legislative Council and we should make sure we send them a very clear message back to say that this is not tolerated; we cannot tolerate this type of situation. This is one Bill which has come from the Legislative Council for us to view. Imagine what it is like when we get four or five a month, because that is what is going to happen. We are going to have two-way streams of legislation. Who is in charge then?

I just would hope that members would reconsider, those who wish to support this Bill, and really send a strong message back to the Legislative Council and vote against this second reading and finalise it.

**Members:** Vote!

**The Speaker:** I call upon the hon. member for Onchan, Mr Cannell, to reply.

**Mr Cannell:** Thank you, Mr Speaker. I take it that I can ring Peter Luis and cancel the togas. (*Laughter*) The first thing I would like to say concerns the final speaker, the hon. Treasury minister, who said that we had been manoeuvred. Well, he might have been and everybody else might have been but I certainly was not manoeuvred by anybody. (**Members:** Oh!) I picked the Bill up in an honest endeavour to try to keep the subject alive, and if you did not enjoy it I am sorry; I think it has been useful. For those who think it has been a waste of time, then I am sorry, but manoeuvred - no sir. But it has been a remarkable debate. The Treasury minister, the Chief Minister - all the big guns have been up and blasting.

**Mr Cretney:** And the Cannans! (*Laughter*)

**Mr Cannell:** We had the remarkable road show of Hannan and Cannan - a remarkable duo! I am so moved to think that there must have been some kind of electronic transmission between Kirk Michael and Peel that I am almost tempted to vote for some water for Little London and a roof for Peel Castle. (*Interjections*) One thing we also achieved was solving Manx Radio's light entertainment programmes for the next few weeks - thank you, hon. colleague for Onchan, Mr Karran, who put a slant on it amongst the humour that I think epitomised the debate. He said this dates back not quite to the Phoenicians, but this is an argument which has been going on since time immemorial. Now, we just heard the Treasury minister say that if we were honest this Bill and similar moves to it are going nowhere. I was told that. Not the proverbial cat's chance. Why bother? I was even told, 'What did you pick that up for? You will not get a seconder.' The same person who actually seconded it!

**Members:** Oh! (*Laughter*)

**Mr Cannell:** However, sir, I do know when I am beaten and I do know when it is time to get out and you will be immensely relieved to know that I will take the respect of the Speaker and the members without having to individually address every member's point, but Sir Miles Walker, no less a personage than he, said that I had done the House a favour by putting this on the floor.

**Several Members:** You have.

**Mr Cannell:** If every now and then we do some introspection, so what? My manifesto said the only time I would consider having anything to do with internal politics would be to address this issue. And we heard the hon. Treasury minister, when he set forth in his fledgling campaign in the wonderful constituency of Onchan, that he also naively believed that he should put that down on his manifesto. I will be putting it down if I stand again on any manifestos. I shall put it down until it happens. (**Members:** Hear, hear.) Probably the way things are going now I shall be long gone before it ever does happen, but I am sure that others will put it on their manifestos as well, and do you know why? Because they know it is right and it should happen. (**Mr Quine and Mrs Cannell:** Hear, hear.) Why it does not happen is not for me to say. I am not terribly good at this political game, where I read 16 situations in advance

and how it will all come about; what I think I am good about is being passionate about what I believe in.

Now, the Legislative Council has been decided as a body which has moved deliberately to dupe this Court into a debate and all with the move of self-perpetuating themselves. I do not read it like that at all. I do not know where you get all this intrigue from. Maybe calling it senators and that they knew would bring down the fun element of it and make people think it was some kind of Roman Colosseum debate. Maybe they did that. I do not think that they are quite as devious. (*Interjections and laughter*) Seriously I think they genuinely did think they were going to have to cave in on public election. Now, all the rest about constituencies and senates and everything else I do genuinely believe they saw as a threat, and they did finally recognise . . . All right, maybe they saw the time factor going over the election next month. Well, that was going to happen anyway, but what we have got now, if we have achieved nothing else this fine afternoon, is the hon. Chief Minister alleging that some kind of legislation will come forward and, if I heard it right, possibly even from the hon. Council of Ministers on the lines of the select committee's report which, as has had been said, did not go through the House honourably. People do not remember how it happened; they only remember it did happen and the fact remains it went through whether it was one vote or 20 votes. It still went through, but when you do hear the first cuckoo of spring you do wonder whether it is a little bit early on 1st February, and I remain to see whether the Council of Ministers will honour their pledge and come forward with some suitable legislation or it will be left to other mavericks in this House to come along and try and do something about it, but we certainly had the big guns out today. That is before, of course, the Thursday morning in-fighting starts.

We are not going to have anything to do with the Bill. I forecast a considerably longer tenure for the debate about producing legislation than the debate at the MEN Arena last Saturday night; four minutes that lasted.

But I do detect that there is, somewhere behind the scenes, though I will never get to it, an overall general support for the public election of the Legislative Council eventually. As the expression went, 'Eventually - why not now?' Well, it will not be now. I doubt that. But one day it may. There does seem to be a lack of correlation between the public election of the Legislative Council and all the rest of the shenanigans that go on behind the scenes, and I regret that, because that was all I was after. I was not bothered about the votes, the split, the regions, the constituencies, whether they come up as senators or treading or whatever they care to be. It did not matter to me but we have, hon. members, on 7th March a further election taking place which does not enjoy in its principle the support of the Manx public. We will have to go along with it but we will be knowing, as I said in my introduction, it is not morally right and never will be. The privilege of being elected to that House to receive similar benefits such as they are - salaries and everything else - for considerably less input is not right unless the public wish to put their input into it.

Now, the epithets which have been bestowed upon my beautiful Bill today I have got no option but to say probably will see it confined to the bin. They were 'retrograde steps', 'the wrong way forward', 'a recipe for disaster', 'grossly irresponsible' and 'a crazy action'. Well, none of those give me much hope of obtaining any votes from there. (*Laughter*) We might pick up one or two along the way and I am pleased about that, and I do thank those who have

supported it. All I say is, I hope it has been useful if only once every now and then we do address this one.

Now, Mr Karran, my hon. colleague for his constituency of Onchan (*Laughter*) wanted to go considerably further and, if I was honest, I would go further in saying the Legislative Council should go altogether too, but if we cannot win public election of it, we are not likely to get there. There are, however, some vacancies at Bulrhenny, I believe, so we may well get there, but I really believe, finally, that the chance is being lost this afternoon if this vote goes down. If this Bill is lost, the Legislative Council put it up, I thought I was taking it on the chin by doing a service of keeping it alive. I now await very eagerly the production of legislation to back the alternative report, which was the recommendations of the select committee, but I do not hold my breath.

**The Speaker:** Hon. members, the motion is that printed at item 12 on your order paper, that the Constitution Bill be now read a second time. Will those in favour please say aye; against, no. The noes have it.

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

*For: Mr Cannan, Sir Miles Walker, Mrs Hannan, Messrs Karran and Cannell - 5*

*Against: Messrs Gilbey, Quine, Rodan, North, Mrs Crowe, Messrs Brown, Houghton, Henderson, Cretney, Duggan, Braidwood, Mrs Cannell, Messrs Shimmin, Downie, Singer, Bell, Corkill, Gelling and the Speaker - 19*

**The Speaker:** Hon. members, the vote is 19 votes cast against, 5 votes cast for. It therefore fails.

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

**The Speaker:** We turn, hon. members, to item 13 on your order paper, the Retirement Benefits Schemes Bill, again for second reading, and I call upon the hon. member for Onchan, Mr Corkill.

**Mr Corkill:** Mr Speaker, firstly I would like to start with the overview that government policy is such that a new regulatory framework for domestic and international pensions should be developed. This Bill represents the final manifestation of all those deliberations. Responsibility for the development and subsequent management was delegated through the Treasury to the Insurance and Pensions Authority.

Treasury, the authority and all those who participated in the development stages took their terms of reference from the Pensions Law Review the Goode committee, the resultant 1995 Pensions Act and the many changes to pension provision around the world. However, the focus has always been to provide an effective, proactive but uniquely Manx framework to promote pensions provision and to protect members of Manx schemes.

The consultation upon the Bill has been very extensive. In 1996 a pensions task-force was assembled under the auspices of the authority to develop the proposals. The population of this working party was drawn from the Manx marketplace and included members of the authority, income tax division, the Department of Health and Social Security and the authority's external consultants, legal, financial and actuarial. Further discussion was conducted with interested parties, including insurance companies, schemes themselves and other potential

product providers on an ongoing basis. In 1997 in September a formal presentation of the proposals was given to an audience of some 225 people at the Manx Museum. This presentation heralded the first public airing of the proposals and marked the beginning of the first period of consultation. In all in excess of 1,000 consultation packs were issued and 20 responses were received. In consequence of this the authority made certain revisions to the initial proposals. In May 1999 the authority consulted again upon the revised proposals and this time issued in excess of 800 consultation packs and some 24 responses were received.

Prior to the introduction of the Bill to the political stages the authority assembled a review group drawn from the population of the consultative respondees. The review group assisted the authority with its final deliberations. There can be no doubt that consultation upon this Bill has been extensive, but nevertheless the authority does continue to have dialogue with the market.

In the current economic and political climate it is of vital importance that the integrity of the financial services industry in the Isle of Man is maintained and all measures are taken to preserve the excellent reputation that is enjoyed.

The amount of money invested in pension funds is constantly growing and it is therefore of paramount importance that the Isle of Man has a regulatory framework for pensions capable of withstanding the pressures that such growth will bring. This is important in order to provide adequate protection for members in the Island and elsewhere.

In this context it is important to note that the United Kingdom, with whom we are interdependent on the matter of pensions, requires the regulatory regime in the Island to be robust in order to preserve the valuable reciprocal agreement which exists. This reciprocal agreement facilitates the free transfer of pension funds between the two jurisdictions which in turn allows for a fluid jobs market.

Both in a domestic and an international context a robust but practical regulatory regime as envisaged by this Bill will consolidate and enhance the reputation of the Isle of Man and maintain our position in the premier league of international finance centres. Development of this legislation has already shown that the Isle of Man is a proactive rather than a reactive jurisdiction.

The Bill, once enacted, will bring significant economic advantages to the Island. Principally, those businesses involved in the pensions market, acting in the capacity of trustee and administrator, will enjoy a rise in fee income which will subsequently generate increased taxation revenue. Furthermore the creation of new schemes will encourage the establishment of new businesses on the Island, with the subsequent taxation revenue and employment implications. Indeed there is evidence that new products are already being developed in anticipation. It is also valid to state that further diversification of the Island's financial disciplines will help to safeguard economic stability and prosperity.

The competitive position of the Isle of Man in terms of pensions is only directly relevant in the context of international schemes, that is, schemes which do not have any Manx resident members. Jurisdictions such as Jersey and Guernsey as well as the Isle of man have legislation at the present time allowing for the establishment of international schemes. Such legislation allows for the tax recognition of international schemes, but I believe these provisions cannot be described as a regulatory regime providing proper member protection.

With the explosion of interest in the pensions market, the globalisation of the world economy and the general withdrawal of the state from pension provision, a huge new market is evolving. This new market cannot be satisfied by means of a simple tax statute but requires a proper, well-developed infrastructure such as that contained within this Bill.

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

In due course a further Bill will be introduced via the income tax division and this is at the third drafting stage at present. The new Income Tax Bill will set out measures for a fiscally attractive environment to encourage higher levels of pension contribution and to allow contributions from certain groups not currently permitted to make contributions. Furthermore the fiscal proposals will provide a welcome simplification of the pensions environment.

Ultimately it is envisaged that the buoyant market for pensions will encourage new providers to establish in the Isle of Man, which will create more competition and more choice for consumers. History has proved, however, that in such a buoyant market regulatory control is of paramount importance. The two Bills, therefore, although having separate objectives and able to exist in isolation, are mutually complementary and together will positively influence the development of the pensions market in and from the Isle of Man.

The Retirement Benefits Schemes Bill is far-reaching in its scope and at this time I would like to illustrate some of the key issues in order to give members a full flavour of its content.

The proposals contained within this Bill require that all pension schemes register with the authority. This will provide a useful centre of information. Subsequent to this, schemes will be classified as either authorised or recognised. Without such classification advisers to or providers of schemes will be prohibited from promotion.

Schemes must be constituted under trust and all relevant documentation must be submitted to the authority for vetting. An integral part of the application procedure will be the assessment of the fitness and propriety of the proposed trustees and the administrators. This is one of the cornerstones of the proposed legislation.

At clause 6 of the Bill this contains a series of enabling provisions which will allow the authority to make regulations governing, for example, investment record-keeping accounts and professional advisers. Where regulations are to be made the authority will subject these to a stringent and comprehensive consultative process, as it has done in developing the Bill.

Clauses 7 to 14 will introduce provisions for the monitoring of scheme funding. Once authorised a scheme may not be altered without the agreement of the authority.

Schemes can be classified as either authorised or recognised. Authorised schemes are schemes constituted in the Isle of Man, whereas recognised schemes are those schemes constituted in an alternative jurisdiction but providing membership in the Isle of Man.

Recognition in this context means recognition of the regulatory regime elsewhere. It is likely that the majority of these schemes will be UK schemes.

The Bill grants the authority a series of powers consistent with current regulatory standards, but it is important to note that these powers are counterbalanced with comprehensive rights of appeal should an aggrieved party believe that the authority has acted unfairly.

Clause 35 allows the authority to act on behalf of the income tax division and the Department of Health and Social Security. This is a desirable manifestation which allows the authority to act as a one-stop shop for pensions.

It is hoped that scheme members will be protected by the regulatory framework, but the Bill also perpetuates the role of the pensions ombudsman who may act on behalf of an aggrieved member at no charge to that member.

In time it is hoped that a compensation scheme may also be introduced. In this context the Bill does contain suitable provision to enable such a scheme to be introduced. At the present time the equitable funding of such a scheme has proved to be an obstacle. Again, and if proposals are developed, the authority will engage in a full consultation process.

The Bill also introduces extensive whistle-blowing provisions, introducing a duty upon the trustees, the administrators and professional advisers to report any suspicions to the authority at the earliest possible opportunity. This will act as an early warning alarm system. Failure to report such suspicions will constitute a criminal offence. Many other breaches carry criminal offences and others carry civil offences and the proposed legislation as a whole is designed to act as a deterrent to those who regard the pension scheme as an extension of their business finance and ultimately to protect the value of the fund for the benefit of the members.

In conclusion, this Bill, I believe, heralds a timely development in the pensions arena. The Bill represents a commercially sensitive and innovative solution to the problem of pensions regulation which is uniquely Manx in its approach. Enactment of this Bill will help to protect the interests of all those who participate in Manx pensions, whilst at the same time developing the infrastructure to facilitate a new market for international pensions. This will help the Isle of Man to cater for our domestic interests and diversify the finance industry still further, thereby maintaining our position in the top flight of international finance centres.

I beg to move the second reading of the Retirement Benefits Schemes Bill, Mr Speaker.

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

**Mr Karran:** Vainstyr Loayreyder, I would just like to ask because, whilst I think I understand this piece of legislation after the presentation the other week there, there are two issues that I would like to raise. One is that, whilst supporting the principle, because obviously we want as diverse a finance sector as possible and the Treasury should be applauded as far as that is concerned and we must look for new markets in order to keep the economic activity going within the Island and keep unemployment at the sort of levels that they are at the present time, what I am concerned about is, will this market be used as a way of getting out of individuals having to pay their national stamps in their own systems in other countries? I am concerned about that, if the hon. member can do that. We have seen how people have managed to worm out of their responsibilities by putting workmen domiciled outside the Island

as far as their employer's contributions are concerned to our scheme, and I would wonder whether there is a danger that this will be a vehicle used against other jurisdictions as far as their welfare state is concerned. I know that that has happened for certain things.

The second thing that I would like to raise is an issue that I have long promoted as a member of the Department of Health and Social Security and there is no political will to do that, but I would be interested to know whether the hon. mover would support any new clauses so that we could have some sort of scheme for Island residents having to pay into a scheme for their retirement for when they go into residential and nursing homes. I just feel that there should be something done now. Obviously most in this hon. House are past their sell-by date as far as paying into such a scheme for nursing home and residential home care, but there should be an ability to bring in some sort of scheme over and above what is in at the present time, that people born after a specific date are deemed to be able to put enough in to see themselves sorted out in residential and nursing homes at a later date.

Now, whilst I admit this piece of legislation is more to do with pure monetary gains as far as retirement is concerned, I just would like to flag this up, with this piece of legislation being in front of us today, whether the hon. member would be prepared to accept enabling legislation to be able to be brought forward in order to put some pressure from a different angle to get my department to do something on this issue, because it is going to be a major problem as the years go by, and this piece of legislation and retirement benefits are going to be of paramount concern as the years go by and the importance for citizens to make sure they have got sufficient put away for when they retire.

So I just would like the hon. member, if he could, to look at those two things. I am all for diversification, I am all for the idea of new markets, but I am a bit concerned that I would not like to see a situation where the Isle of Man could be like what the government in the United Kingdom or certain people were trying to make out about our shipping register, that somehow we are some sort of retirement benefit flag of convenience to get out of doing the job right, and I am just concerned about that. I appreciate that might not be the right way to put it, but as there are no media here it does not matter. So the point is that I do feel that we do need to know that, that this will not be used as some sort of loophole to get out of paying their contributions in other countries.

**Mr Rodan:** Mr Speaker, first of all I would like to commend the minister and the Treasury for clearly the great amount of work that has gone into preparing this legislation and clearly a good deal of consultation in drawing up what will be the correct regulatory framework for a new business opportunity for the Isle of Man in what is one of the major growth areas and that is pension provision, a major growth area, and with this the Isle of Man will be well placed to take advantage internationally of that growth, and the minister has referred to international schemes and also schemes which Manx residents would be entitled to participate in also.

I would just perhaps invite the minister to say a little more about the future and the fiscal framework that he referred to that is going to be required actually to bring particular benefit to Isle of Man residents, because he will know that it has been an issue for a number of years that Island residents who wish to make their own pension provision, who are not in company schemes but are self-employed, for example, have been severely restricted in the choice of pension provider available to them on the Island, and the reason for this the minister did touch upon, which was the existing Income Tax Acts and the requirement under them that there be a

resident administrator on the Island for these particular schemes and it is that requirement which has prevented a lot of companies and big companies making available to people in the Isle of Man some of the best schemes that are on the market in terms of projected growth for the pension pot that will eventually buy the annuity.

I think at the last count, the last time I checked this out, there were only some nine schemes in the Isle of Man available. Those nine included some of the big name companies, but I think the key thing was, certainly at that time, that in the UK league tables that are frequently published in the financial press, which show the growth and the best schemes, of those nine only a handful, two or three, were in fact in the top 30, so again Island residents have been disadvantaged in not being able to take advantage of the best products. Therefore it is very, very heartening to hear that a new Income Tax Bill is on its way to deal with this particular problem, and I would just invite the minister just to enlarge a little bit on how soon that could be expected and what anticipated benefits of that he expects to bring to people in the Island, in particular who are wanting to make their own pension provision in non-company schemes.

**Mr Quine:** Mr Speaker, again I am very happy to support the second reading of this Bill, but I would just ask the minister to, if he could, just expand a bit further on clause 40 which of course deals with the compensation scheme. I can understand of course that at this point in time you can hardly get a compensation scheme up and running when you have got maybe a handful of schemes, but I have a fear that with this Bill as it stands, unless there is some commitment to act at a fairly early date to bring in a compensation scheme, we could be passing legislation today and may not see a compensation scheme in being for several years if we are not very careful, in which case there could be quite a large void and a long period of exposure, which could result in embarrassment.

So I would like the minister, if he could, just to expand on that. I know it is difficult for him to say how quickly the number of schemes is going to take off et cetera, but I would like him to give us some idea of how quickly he hopes to address this question of the compensation schemes and get something up and running, because if there is a lengthy period between the two, then there is scope for embarrassment if something goes wrong.

**The Speaker:** I call upon the hon. member for Onchan, Mr Corkill, to reply to the debate.

**Mr Corkill:** Thank you, Mr Speaker. I thank the hon. members who have spoken and the general feeling I get from the presentation to members and conversations since that day is that there is a good deal of support for the purpose of this Bill. This is the second reading and as a result it is the principle that we obviously need to get approval for.

Now, the hon. member, my colleague for Onchan, colleague from my constituency, Mr Karran, (*Laughter*) applauded the work that had been done. I have to say it is the Insurance and Pensions Authority, which comes under the umbrella of Treasury, which has done all the work. As much as I would like to take the applause for that, it is the Insurance and Pensions Authority which have run with this and run with the consultation process and I also congratulate them on the thoroughness of what they have done.

Now, the hon. member Mr Karran was very concerned that in fact this may be a vehicle for people in other jurisdictions to avoid their dues. I think that was effectively the fundamental principle, that they would not pay their NI contributions or whatever the equivalent is. Now, the

reality of that is that the authority will, under the provisions of this Bill, retain the right to approve a scheme and so any scheme which proposed to avoid those local home jurisdictional fees or tax just would not be authorised, so there is a safety in that respect.

At the end of the day I think I should make the point that this Bill is targeted at the mobile world which we now live in. There are many people who perhaps are born in one jurisdiction, spend nearly all their working life in another jurisdiction. They may well have connections in a third jurisdiction. They may well go on holiday to a fourth jurisdiction. One of the things that they are obviously very keen to put in place, if they are wise, is pension provision for their later years and what they need for that pension is a well-regulated, stable, financial centre so that when they come to retirement time they know that pension is secure and in place in the way that they anticipate. So that international opportunity, through this legislation, is the main area that we are targeting.

So if I can assure the hon. member, schemes which were there to evade proper dues of people residing in a particular state would not be authorised by the authority, and I think that is a very fundamental safeguard and obviously it is something that the Island would wish to see in order to retain our standing within the international community.

Now, the other point the hon. member raised was in terms of the local scene and I think really the issue he was talking about was very much a DHSS issue and it really, I have to say straightaway, is outside of the remit of this Bill and so, although I am quite happy to talk to the hon. member in the ensuing days, I am not sure that, for what he is seeking, really this is the right vehicle for it.

My hon. colleague Mr Rodan is supportive of the Bill and I know from before he was a member of the Council of Ministers he took a great deal of interest in this situation, particularly in terms of consumer choice on the Island, and hence his comments for the future fiscal framework. Well, I can inform hon. members - I may have done that during the reading - that the Income Tax Bill which will create that fiscal structure will probably be out to consultation in July of this year, sooner if we can make it, and that of course will, hopefully, if approved, give people more options in terms of making provision for a pension in the future.

I would be the first to agree with the hon. member that the present climate is not a good one in terms of our own residents and that we should seek to improve that choice. At the end of the day, though, we cannot force companies to provide products to Isle of Man residents, but what we can do is provide the proper fiscal platform to encourage those decisions which may come in our favour and that is what we hope to do.

So I thank him for his support, and he also mentioned the hard work that has gone into the Bill, and I have to say again it is very much the Insurance and Pensions Authority that have done that work.

Right, the hon. member for Ayre, Mr Quine, I think was the one existing point that has come out of the contributions, clause 40 on the compensation. Certainly there has been quite a lot of debate about this as to whether it should be in the Bill at all. It is certainly the view that it should be in the Bill. I think if we are running a well-regulated environment there is no problem in having a compensation scheme and I think wrapped up with everything else that we do it actually makes the marketplace a healthier place and certainly a more confident place and that is what we are trying to provide with these pensions rules. Now, the problem is a

matter of scale. It is a matter of critical mass in as much as at this stage we do not know how many schemes there are going to be, so that is why it is a follow-on situation.

Now, I take on board the hon. member's view that perhaps we could have a black hole here which went on for a long time and all I can offer him is a commitment that this compensation issue will not be put on the back burner, that we will look at different ways of producing a scheme, but at the end of the day it has to be sensibly costed and costed in terms of those people's whose pensions we are trying to provide for, and of course if we compare things to our neighbours, the adjacent isles and to the UK, the reality is that they have approximately a thousand schemes. Well, I will not quote these figures because I am not definitely sure of them, but I think what I can do is perhaps report further, but the issue is you are talking about a completely different situation where, when you break down the costs per scheme, you are talking about pennies. We are not in that position at this stage, but hopefully we will be when the law is passed and we get the critical mass. That is the time to implement the compensation. There is obviously that concern that that decision may never be taken. My view is that whilst the clause is in the legislation there is that incentive for that to happen for the future, whoever that may be, and so I hope I can give the hon. member for Ayre that confidence with regard to that.

I think those are the points that have come. I thank hon. members for their consideration and I beg to move the second reading.

**The Speaker:** Hon. members, the motion before the House is that the Retirement Benefits Schemes Bill be now read for a second time. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

### **Procedural**

**The Speaker:** Hon. members, that concludes our order paper for today. The hon. member for Middle has asked that I should alert you, in advance of any formal invitation that you will get, that there will be a presentation on the Electronic Transactions Bill on Monday next at 1 p.m. in the Millennium Room.

Hon. members, having completed our business for today the House will now stand adjourned and will sit again on Tuesday next at 10 a.m. Thank you, hon. members.

*The House adjourned at 4.51 p.m.*