

**REPORT OF PROCEEDINGS OF
HOUSE OF KEYS**

**Douglas, Tuesday, 7th March 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.

Control of Monopolies – Review – Question by Mr Quine

The Speaker: Hon. members, we turn then to our order paper, item 1, and I call upon the hon. member for Ayre, Mr Quine.

Mr Quine: Thank you, Mr Speaker. I beg leave, sir, to ask the Chief Minister:

Has the position regarding the control of monopolies yet been reviewed by your government and, if so, what are the findings and recommendations?

The Speaker: I call on the Chief Minister to reply.

Mr Gelling: Mr Speaker, following on from the policy debate the Council of Ministers identified a number of concerns raised by members in respect of monopolies legislation and as a result the report which was published in October of 1996 by the monopolies and mergers sub-committee was recirculated to Council members. However, having reviewed the report, the Council had agreed that no further action was required at that time, Mr Speaker.

Mr Quine: Does the Chief Minister accept that the Fair Trading Act does not protect the general public from the worst manifestations of some of the monopolies which operate on the Island, and does he appreciate that the sum of the powers available to address excessive prices under the Fair Trading Act is the publication of a report?

Mr Gelling: Yes, Mr Speaker, as I have said, we recirculated that report from the monopolies legislation committee and of course there were three recommendations in that. One was the public sector bodies, which is covered of course by existing legislation, and then the recommendation on cartels, and that was included in the Fair Trading (Amendment) Bill which will be coming before this House very, very, shortly. Then we had recommendation (c) which was investigating authorities and at that time it was deemed unnecessary and the sub-committee were prepared to wait for the United Kingdom legislation to come forward. Now, little did we think that it would take so long to come forward, in fact it has just recently come forward, and I understand that it is already in disarray and it would appear that it does not work

as they had anticipated. So therefore we are looking to have a look at that particular piece of legislation and actually see how it does operate in the United Kingdom.

But then the hon. member states about the powers, but we do have powers. Of course just recently the Council of Ministers have supported the department of trading standards to look at the gas prices. So we do have powers to look into situations like that to find out are the prices being charged reasonable and fair to our consumers.

Mr Quine: Does the Chief Minister not appreciate that, having looked at these prices which he has referred to, at the end of the day as the legislation stands he can do nothing about it and indeed one must assume that that is the intent of the Council of Ministers, to do nothing about it?

But I would further ask him, sir, will he not look at legislation which is in being elsewhere and which extends to enforcing private companies providing utility services to achieve greater efficiency to the benefit of the consumer by reducing prices? Now, that is in existence elsewhere where they can look at a utility company and require it to bring about greater efficiencies and reduce prices and give an order that the prices will be reduced. Surely here on the Island, where we have to a certain extent to live with monopolies, we must have that legislation.

Mr Gelling: More of a statement, I would suggest, Mr Speaker, but nevertheless taking on board what the hon. member is saying, but of course it is only as good as the report will come forward and suggest that perhaps prices can be lowered and I would suggest in the case that we are facing now we are being told that oil resources are becoming scarce, the earth's resources itself are becoming scarce and if there is no way that anywhere in the world these prices can be reduced, I could not say that the Isle of Man would be effective in that particular case, sir, but nevertheless I have already said that since this has now been implemented in the UK, this piece of legislation, we will be looking at that to see whether it could apply or might apply in the Isle of Man, to give us a situation that perhaps would address some of the problems that the hon. member has said do exist. However, I still maintain that you cannot order people to reduce prices if in fact the raw materials dictate that the price is as has been already stated.

Mrs Cannell: Mr Speaker, given the ambivalent position of the government in relation to monopolies and excessive prices, will the Council of Ministers promote the creation of a consumer council to afford a degree of self-help for the public?

Mrs Crowe: We are the consumer council.

Mr Gelling: I would suggest we have a department already which exists that does just that and if the hon. member has anyone, any of her constituents that require that help, I would suggest that they make contact with that department, sir.

Mr Henderson: Mr Speaker, does the Chief Minister then accept that the existing provisions of the Fair Trading Act are limited and in as much from that would he accept there is an unacceptable position that companies such as the gas company should levy a set call-out charge equating to half the standard retirement pension?

Mr Gelling: Again it is a case of the hon. member suggesting that it is limited. Well, I think everything is limited, it is limited to what actually you can achieve, and I certainly would

not be prepared to agree that we should introduce legislation that is impossible to be able to apply or that it does not mean anything, and certainly, as I have already suggested, we will be looking at the Bill which has now been implemented in the UK to see if we can learn anything from it, sir.

Mr Karran: Vainstyr Loayreyder, would the Chief Minister not agree that when talking about monopolies in gas, if there is a serious problem there we have a Department of Trade and Industry who are supposed to be looking after energy requirements for the Isle of Man and why have they not come up with some alternatives in order that we can get a better deal for the consumers of the Isle of Man as far as the government is concerned?

Mr Cannan: What about the water consumers?

Mr Karran: They are doing well, mate.

Mr Gelling: Mr Speaker, first of all let me say again that the Office of Fair Trading is able to carry out an investigation into any major price or public concern under section 19 of the Fair Trading Act. They can do that. We have already got that legislation on the statute. Now, the hon. member for Onchan is now suggesting that perhaps there are alternatives and there possibly might be alternatives because we have been told in recent times that our gas prices are at the level they are because of the LPG gas that we use. Now, if there are other gases available that come into the European sector of the pricing, that makes a difference, I am told, so therefore the hon. member is right, there might be alternatives, but we await for that report.

The Speaker: A final supplementary from the original questioner.

Mr Quine: Thank you, Mr Speaker. Can the Chief Minister confirm that during the four-year period of the life of this Bill from 1996 to 1999 no investigation has been directed either by the Council of Ministers or taken on on the initiative of the Office of Fair Trading under sections 9 and 10 of the Fair Trading Act?

Mr Gelling: I can confirm, Mr Speaker, that from the report of October 1996, the recommendations therein, two of them have been implemented. The third is the one we have been waiting for which I have now stated has been implemented in the UK and that is the one I am saying now we will consider, that particular piece of legislation, to see if there is anything further we can do, sir.

Mr Quine: Any investigations? None.

Millennium Overtime Payments – Approval – Question by Mr Houghton

The Speaker: We move on to item 2, hon. members, and I call on the hon. member for Douglas North, Mr Houghton.

Mr Houghton: Thank you, Mr Speaker. I beg leave to ask the Chief Minister:

- (1) *Were the arrangements for the millennium overtime payments approved by the Council of Ministers;*
- (2) *will the Council of Ministers consider taking action against those departments and boards which failed to exercise prudent control over such payments?*

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

Mr Gelling: Mr Speaker, I do very much welcome the hon. member's question on this matter, as it does give me an opportunity to correct a great deal of misinformation which has been circulating around the subject of the so-called millennium overtime payments.

Now, first of all can I make it clear that no overtime as such was paid to government staff for the 48-hour period from 12 noon on 31st December 1999 to 12 noon on 2nd January 2000. All normal pay provisions were suspended for the period and any staff required to work were paid five times their normal plain time rate. Now, anybody who was on duty, who would normally have been paid an enhanced rate of pay, would only have received this special pay arrangement. They would not have received an enhanced rate on top.

Now, the purpose of providing this special pay arrangement was to compensate those who would be unable to spend the time with their family and friends and who would be unable to celebrate the millennium festivities. Now, it was also to ensure that government would be able to put in place the necessary contingency arrangements in terms of staffing in case anything went wrong during the period in question.

Now, the level of special pay was approved by the Council of Ministers following consultation with representatives of the various trade unions and staff organisations but the period to which it should apply was left for resolution under established mechanisms.

Now, it is fair to say also that the Council of Ministers was not overjoyed at having to agree to pay staff five times plain time. However, this was the level that was set by the Whitley Council and in its negotiations with Whitley Council staff the period of 48 hours was agreed. Now, for the sake of consistency the principles of remuneration were also applied to certain other public service staff, including the civil service. Now, in regard to those hours outside the 48-hour period normal pay and overtime provisions applied as per the existing agreements.

I would also like to correct another factual inaccuracy and that is the conclusion that the level of overtime payments over the millennium period was significantly higher than for the same period 1997-98 and 1998-99. As I have already explained, the special payment for 1999-2000 was not an overtime payment but instead was a payment to anyone who was scheduled to work during that 48-hour period. Now, as a result, therefore, it was not possible, in fact would be grossly misleading, to compare the figures for 1999-2000 with the previous two Christmas - New Year periods.

There has also been the suggestion that senior management took advantage of the special pay package for this period and went to work unnecessarily to take advantage of the enhanced payments available. Now, again I would suggest to the hon. member who is questioning me this morning that senior managers were in work during the period for reasons of sound, prudent management. There had been many predictions of all sorts of problems arising over the New Year period, but on the other hand no-one could accurately predict what these problems would be. Now, it may well have been the case that management decisions regarding the handling of a crisis or a problem would have been necessary and for operational decisions to be taken at a high level.

Now, another very important point is the fact that Government was not alone in this particular situation. Other governments around the world had to make similar contingency plans, as had the private sector. Now, I have spoken to representatives from a number of private sector organisations and they have also informed me that senior management teams

were in place to varying degrees and at varying levels over the Christmas millennium period to be on hand to manage any crisis or disruptive occurrence that may have arisen.

Now, hindsight is indeed a fine thing, and as I have already said in the written answer to the hon. member's question set down at the January sitting of Tynwald, fortunately the millennium transition was largely uneventful and the insurance of holding staff available was not called upon in any great extent. Now, had the more dire consequences predicted by some analysts occurred, the various departments of government would have been in a position to respond promptly and effectively. Indeed I would suggest that had these contingency plans not been put in place and had some of those dire consequences predicted by many actually materialised, members would now quite rightly be pressing me for an explanation as to why contingency plans had not been drawn up -

Mr Karran: Too true.

Mr Gelling: - with appropriate staff available for the period in question, Mr Speaker.

Several Members: Hear, hear.

Mr Houghton: Mr Speaker, I thank the hon. Chief Minister for his reply, but bearing in mind what he said, why then did his government fail to budget for the payments or gain Treasury concurrence or seek Tynwald approval for such a significant sum of money and does he personally approve of this uncontrolled expenditure when many private businesses could not afford to remain open during the same period, sir?

The Speaker: Very loosely connected to the question and I would ask hon. members to make their supplementaries relevant to what is on the order paper, please. Chief Minister.

Mr Gelling: Mr Speaker, just about 12 months ago I was being questioned by hon. members as to what government were doing about the millennium which was fast approaching and were we taking the proper actions and were we being prepared and so on, and we gave assurances at that time that we were, sir. Now, we did that and I am only too delighted that in fact those dire consequences did not come upon us and it was like paying an insurance policy and then your house does not burn down, and I am quite sure that I would rather that, sir, and I was delighted, as I have said before, to get the phone call from a senior officer of government to tell me that there had been no incidents and all systems were working. I was delighted, sir.

Mr Singer: Could I ask the Chief Minister, when one takes out an insurance policy one knows what the premium is going to be (**Mr Houghton:** Hear, hear.) when one takes it out. Was the Chief Minister aware that the premium was going to be about three quarters of a million pounds?

Mr Gelling: Well, if the hon. member is telling me now that he knew exactly what was going to happen at the millennium - (*Interjections*)

Mr Cretney: He's got crystal balls!

Mr Gelling: - I would say he would be a very, very wealthy man today because governments throughout the world were not aware of what might happen, and as I have said, we spent a lot of money running up to the millennium to make sure as far as we could that nothing would happen and I was delighted that that was the case.

Mr Singer: Is the Chief Minister therefore saying to this hon. House that he and his Council of Ministers had no idea how many people were going to be paid during this time who were employed by government and that it was a 'suck it and see' situation?

Mr Gelling: Again it is good to refer back, Mr Speaker, to *Hansard* and see that I was being questioned as to why one certain department of government had actually asked its staff not to take any holidays whatsoever during the period over Christmas and New Year and we were being criticised for actually telling the staff that they might not have time off with their families. It is perfectly true to say that we did not know what might very well happen, but we took the precaution of putting people in place in case something did happen, and thankfully it did not, sir.

A Member: Hear, hear.

Lady of Mann – SOLAS Specification – Question by Mr Singer

The Speaker: Item 3, hon. members, and I call on the hon. member for Ramsey, Mr Singer.

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

- (1) *Does the Isle of Man Steam Packet Company Ltd intend to upgrade the Lady of Mann to safety of life at sea (SOLAS) specification, and*
- (2) *if not, what plans does the company have to provide a suitable back-up conventional vessel for the year 2001?*

The Speaker: I call on the Minister for Transport, the hon. member for Castletown, Mr Brown.

Mr Brown: Mr Speaker, my department understands that the Isle of Man Steam Packet Company is at present carefully assessing the SOLAS compliance work required to the M V *Lady of Mann* in conjunction with the relevant authorities. As such no decision has yet been taken by the company with regard to the possible upgrade of the M V *Lady of Mann* to safety of life at sea (SOLAS) specification. My department understands that the Isle of Man Steam Packet Company Ltd is hopeful that it will be able to justify completing the SOLAS works on the M V *Lady of Mann* subject to commercial realities and changes in future requirements.

The question of back-up vessels for the year 2001 will be a matter for the company to determine once they have made a decision with regard to the *Lady of Mann* and determined their schedules and fleet dispositions for that year. Thank you.

Mr Singer: May I thank the hon. minister for his answer. Can the hon. minister tell me, under the terms of the user agreement what information is the Isle of Man Steam Packet Company obliged to give to the department regarding its future plans and the vessels it intends to use? How much advance notice of these plans is required?

Mr Brown: The user agreement is a very comprehensive document, Mr Speaker, but my understanding is that the only requirement on the Steam Packet Company is in fact to provide services from certain ports in the north-west or from a port in the north-west and other places to the Isle of Man.

Mr Singer: Could I therefore ask the minister, is there, therefore, no obligation for the Isle of Man Steam Packet Company to provide a conventional vessel under the user agreement, as has been experienced recently when there was no conventional vessel, and what action can the government take to insist on the provision of a vessel in service that can provide a regular service in seas where there is perhaps a wind force greater than force 5 or 6?

Mr Brown: Mr Speaker, the requirement of the type of vessel is, as my understanding, not part of the actual user agreement. However, as the hon. member will be aware, the Steam Packet Company have the vessel *Ben my Chree* which certainly is a conventional sailing ship and of course would meet their requirements under the user agreement.

The provision that I understand the hon. member is indicating of course is over and above provision that the company is actually providing to attract more people to use ferries to and from the Isle of Man and I think their record to date has shown they have been quite successful.

Millennium Overtime Payments – DoT – Question by Mr Houghton

The Speaker: Item 4, hon. members, I call on the hon. member for Douglas North, Mr Houghton.

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

In respect of overtime payments made by your department for the period 31st December 1999 to 3rd January 2000 -

- (1) how much was paid to each category of employee by rank or grade;*
- (2) how much was estimated for this expenditure in the vote of the department;*
- (3) will your department be seeking a supplementary vote from Tynwald to meet the expenditure beyond that estimated; and*
- (4) if so, for how much?*

The Speaker: Again it is for the Minister for Transport, the hon. member for Castletown, to reply.

Mr Brown: Mr Speaker, during 1999 government employees, through their union representatives, negotiated a special pay agreement to apply from 12 noon on 31st December 1999 until 12 noon on 2nd January 2000. The agreement reached suspended all normal pay agreements during this period and the special millennium pay agreement, a pay at five times the normal basic pay rate applied. Therefore during the period no overtime rate applied, only the millennium pay agreement.

I am not in a position to provide the information requested in the question regarding payment of each employee by rank or grade. That being said, I can advise the House that the payments made to the staff of my department by category during the period specified in the question are as follows: air traffic control, £3,488,47; air traffic engineers, £1,175,81; meteorological staff, £2,252,54; airport fire officers, £779,39; airport fire crew, £2,425,44; airport information, £248,35; airfield operations, £687,74; airport administration, £42,00; airport security, £3,682,38; airport electrical and maintenance staff, £1,014,41; airport cleaners,

£287.91; airport baggage handlers, £1,766,45; engineering works, £3,585,25; Sea Terminal cleaning, £157,54; harbour operations, £5,990,30; Isle of Man Coastguard, £2,509,37; building works, £1,075,91; Douglas harbour port services, £2,443,88, and the animal waste section, £942,25.

In answer to part (2) of the question, my department had made an allowance of £15,000 to cover general overtime which was estimated for the period. However, at the time of making that decision the department was, as with all departments, unaware of any new pay agreement to cover the period. All estimates were based on the usual requirements that normally apply over the New Year period.

The answers to parts (3) and (4) of the question is, yes, via the Treasury, as is normal practice, and we will be seeking a supplementary provision of £19,500. Thank you.

Mr Houghton: Mr Speaker, I thank the hon. member for his reply and in respect of his airports division does the hon. minister fully support the enormous costs of overtime expenditure even though the airport was actually closed on New Year's Day?

Mr Brown: Yes, Mr Speaker, as I am sure the hon. member is only too well aware, the airport is a secure area and therefore security officers were on duty 24 hours a day, whether or not there was a millennium, and therefore the pay rates applied to them. Also whilst the airport was shut for commercial traffic and passenger traffic, in fact the airport was used by the airlines and by the airport authority to ensure that all the computer systems worked, that all the safety equipment worked and in fact there were test runs to ensure that it was safe the next day for the aircraft to be used for passenger services. I therefore believe it was a good investment for passenger safety.

Millennium Overtime Payments – DHSS – Question by Mr Houghton

The Speaker: Item 5, again I call on the hon. member for Douglas North, Mr Houghton.

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

In respect of overtime payments made by your department for the period 31st December 1999 to 3rd January 2000 -

- (1) how much was paid to each category of employee by rank or grade;*
- (2) how much was estimated for this expenditure in the vote of the department;*
- (3) will your department be seeking a supplementary vote from Tynwald to meet the expenditure beyond that estimated; and*
- (4) if so, for how much?*

The Speaker: I call upon the hon. member for Onchan, Mr Karran, a member of the Department of Health and Social Security.

Mr Karran: Vainstyr Loayreyder, the question gives me an opportunity to explain certain fundamental aspects of the make-up of the figures given to the substantive written response to the Chief Minister's question 15 in January's Tynwald question paper.

The hon. member's question here in the question put to the Chief Minister refers to overtime payments, but I want to make it absolutely clear that the total of £461,756 attributed

to the Department of Health and Social Security in the written answer for the Chief Minister embraces more than the payments for overtime.

During the 48-hour period from noon 31st December 1999 to noon 2nd January 2000, the period during which across the whole of the public sector in the Island the normal pay provisions were suspended and replaced by a millennium pay formula, there were essentially four categories of staff to which the formula applied.

The first and main category were those staff who carried out duties within the normal rostered working week. They were not working overtime, they were simply attending for work within their normal contracted weekly hours. The hon. member will appreciate that the bulk of the services provided by my department, certainly in fields of health and social services, requires that these services be staffed seven days a week, 24 hours a day and staff such as nurses, doctors, residential care workers, hospital auxiliary staff and professional support staff have their normal working time rostered so as to cover the seven-day, 24-hour requirement.

The second category was those staff who attended for duties outside their normal rostered commitments in order to meet the requirements of the contingency risks and business continuity plans which were identified and developed for the potential special risks of the millennium period.

The third category covered by the amount refers to in the Chief Minister's answer were the staff who during the 48-hour period were not on duty but nevertheless discharged rostered on-call commitments during all or part of the period. Again the hon. member will appreciate that in order to ensure the appropriate cover throughout the year for this type of services which my department has to deliver there has to be a need for certain groups of staff to fulfil commitments to be on call in accordance with agreed rosters.

The fourth category of staff to whom part of the moneys referred in the Chief Minister's answer will have been paid were those who undertook to be on-call over all or part of the period outside any rostered or on-call commitments, in order to provide additional cover to meet the perceived requirements of the contingency risks and business continuity plans which had been identified and developed for potential special risks for the millennium.

In relation to those staff who were working simply as part of their normal working week, the amount included in the £461,756 figure given by the Chief Minister's written answer was the difference between their usual rate, including any bank holiday premium, and the millennium pay rate. It should be noted, however, that, with 36 hours of the 48 hours being bank holidays, many of the staff would have been entitled under the normal pay provisions to time off in lieu for their bank holiday hours worked in addition to their bank holiday pay premium, but the time off in lieu provisions were not applicable as part of the millennium pay formula.

Now, having given this background information and clarification, I have to say that the staff and time resources which would have to be devoted in order to analyse pay records, duty periods, roster lists, et cetera for the 48-hour period in order to give any meaningful data, regardless of whether it was overtime data or in the purest sense of millennium pay data, which the hon. member is seeking simply would not be justified and therefore I am unable to provide any further information of that sort of detail as part (1) of the question.

In answer to part (2) of the question no particular provisions were incorporated in the preparation of the estimates for 1999-2000 to cover what were the settlements which were eventually reached on the claims from the unions for the ex gratia payments for the millennium period. Indeed Treasury budget procedures expressly provide for the department not to anticipate changes to pay which may occur in the year of the budget.

In answer to parts (3) and (4), the matters will be subject to discussions between the department and the Treasury.

Mr Houghton: Mr Speaker, but did you discuss the forecasted costs of those millennium payments first in your division and then at departmental level in the run-up to Christmas and New Year, and if you did, were any decisions taken with regard to controlling costs, sir?

Mr Karran: Vainstyr Loayreyder, obviously we are conscious of costs because I can spend money five different ways as far as the health service is concerned.

What I can say is the only information that I could give to the hon. member, which I received late last night, in order to try and see whether this will give the hon. member any more information is that £370,405.21 was attributed to the health services, of which £787.78 was attributed to the central administration, and £338,928.05 was attributed to the hospital and specialist services, and £30,689.38 was attributed to the community health services, social services was £84,186.95, social security was £3,883.63, and the estates was £3,281.65. I think that that shows that the bulk of the money was not given to faceless bureaucrats that the hon. member is on about, and I do find it rather impossible in this House at times where I would wonder whether the hon. member would be screaming for blood now if we had told everybody to go home and we had not worried about the millennium and then there had been a crisis. What would be the actions of this hon. member and many other hon. members, especially if any one of their family had had a heart attack or something else over that period?

Mr Houghton: Mr Speaker, I bear in mind what the hon. member is saying, but turning to his managers, can he confirm that there were as many as 63 managers who are not clinicians on duty in the health services who never ever do bank holiday work normally?

Mr Karran: Vainstyr Loayreyder, as far as the hon. member is aware, managers are on an on-call basis throughout the year as far as this is concerned. The question of whether there was 63 managers on - I am unaware of how many managers were on at that time.

I do know that I did provide free lunches because I actually think it was an imposition on the staff to have to stay sober over the millennium period and I have to be honest with you, I think we should be grateful to the staff for being prepared to give up their millennium time for the payments because I feel it seems to have been sadly missed that a lot of them were up in arms that we were wanting them to work, and I think some in this hon. House have forgotten that situation.

Procedural

The Speaker: Now, hon. members, I am aware that the House clock has gone past its time and I call on the hon. member for Douglas North.

Mr Houghton: Thank you, Mr Speaker. I beg to move:

That standing order 43(2) be suspended to enable the remaining questions tabled for oral answer at this sitting to be put.

Mr Singer: I beg to second, Mr Speaker.

The Speaker: Are you agreed, hon. members?

A division was called for and voting resulted as follows:

For: Messrs Gilbey, Cannan, Quine, Rodan, North, Sir Miles Walker, Mrs Crowe, Messrs Houghton, Henderson, Cretney, Duggan, Braidwood, Mrs Cannell, Messrs Shimmin, Downie, Singer, Bell, Karran, Corkill, Cannell, Gelling and the Speaker - 22

Against: Mr Brown and Mrs Hannan - 2

Crowe EPH Ltd – Question by Mrs Cannell

The Speaker: Hon. members, we therefore will turn, with two votes being cast against, to item 6 on the order paper and I call on the hon. member for Douglas East, Mrs Cannell.

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

- (1) On what date was Crowe EPH Ltd incorporated;*
- (2) when did Crowe EPH Ltd sign the contract as a main contractor for the new hospital; and*
- (3) does, or did, Crowe EPH Ltd have any contractual arrangement with Bovis plc, or any of its subsidiary or associated companies?*

The Speaker: I call on a member of the Department of Health and Social Security, the hon. member for Onchan, Mr Karran.

Mr Karran: Vainstyr Loayreyder, part (1) is 27th November 1998.

In answer to parts (2) and (3), I am aware that two contracts in relation to the work on the new hospital project existed between Crowe EPH Ltd and the management contractors, Bovis Construction, now Bovis Lend Lease. I am advised that the articles of agreement between the management contractor and the works contractor in each of these contracts was signed on 19th April 1999 in the first contract and the 3rd September 1999 in the second one. I am unaware of any other contracts held by Crowe EPH Ltd.

Mrs Cannell: Mr Speaker, can the hon. member confirm that two bonds were issued in relation to Crowe EPH by a South African company and can he further advise as to why a South African company was sought to provide the bonds in relation to this project other than the normal course of events when one uses an on-Island bond company or local bankers?

The Speaker: I am not sure whether the hon. member will have that information to hand but nevertheless if he has.

Mr Karran: Vainstyr Loayreyder, I have not got that to hand; I will find out for the hon. member. But the only thing that we would be interested in is making sure that that bond was honoured and where the bond is what-d' you-call-it, it would be a commercial matter which obviously the management contractors must have looked into.

Mrs Cannell: Mr Speaker, further can the hon. member confirm that one of the firms invited to tender by his department to finish the works left by Crowe EPH has a nominal shareholding of 2,000 £1 shares and three directors -

The Speaker: Hon. member, make the question relevant to what is on the order paper, please.

Mrs Cannell: - three directors, Mr Speaker, in Sark and the Channel Islands? Can I ask the hon. member is this not a repeat performance of the Crowe EPH saga?

Mr Karran: Vainstyr Loayreyder, I would like the hon. member to put specific questions down on these points and I could give her the right that she should have as an hon. member in this hon. House. I cannot answer things about that subject because I have not got the briefing information in front of me on that subject.

But I must say that the Department of Trade and Industry is supposed to be responsible for the building industry in the Island and I do think that the hon. member has some sort of responsibility within the Department of Trade and Industry and is on the same pay as me who has to run the health services, try and keep rick on the new hospital, who is supposed to be responsible for the building trade.

Mr Quine: In respect of the £6.3 million paid to Crowe EPH, or said to be paid to Crowe EPH, were those payments made directly to Crowe EPH on the Island or to or through EPH (Stockport)?

Mr Karran: Vainstyr Loayreyder, I have not got that information in front of me but I would be surprised if it had not gone through our management contractor who is managing the project in the first place, but I do not have the information. I would be very surprised if it did not go to the company that was supposed to be in charge of the project.

Mrs Cannell: Mr Speaker, my final supplementary. When will the hon. member be briefed by his department and when will his department have answers -

Mrs Hannan: Oh, come on!

Mr Cretney: The question is irrelevant!

Mrs Cannell: - to these very important questions, and further to that can the hon. member confirm that the firm who seemingly has the lowest tender, which has now been invited to finish the work that Crowe EPH started, has substantial outstanding debts in the Isle of Man and was the subject of a court summons issued in the Isle of Man on February 24th of this year?

Mrs Crowe: Dear, dear! (*Interjections*)

The Speaker: Not relevant, hon. members, to the question in any regard.

Millennium Overtime Payments – Department of Home Affairs – Question by Mr Houghton

The Speaker: So we will move on to item 7 on the order paper and I call on 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 respect of overtime payments made by your department for the period 31st December 1999 to 3rd January 2000 -

- (1) how much was paid to each category of employee by rank or grade;*
- (2) how much was estimated for this expenditure in the vote of the department;*
- (3) will your department be seeking a supplementary vote from Tynwald to meet the expenditure beyond that estimated; and*
- (4) if so, for how much?*

The Speaker: I call on the Minister for Home Affairs, the hon. member for Ramsey.

Mr Bell: Mr Speaker, before I give the breakdown of figures requested by the hon. member I would like to stress that my department is responsible for the vast majority of the emergency services. As such the majority of employees are rostered to cover 24 hours a day, 365 days a year. They have no choice in that: it is part of their terms and conditions of service. It is equally part of their duty to roster up on the basis of risk assessment and stand down when risk is passed. That is precisely what my department did at the millennium. The police rostered up to staffing levels agreed by the Association of Chief Police Officers throughout the United Kingdom. The prison and fire brigade rostered on the basis of risk assessments which had been carried out throughout the previous 12 months.

Therefore the answer to part (1) of the question, based on the breakdown provided by Treasury, is, for the police service: superintendent grades, £965; chief inspector grades, £992; inspector grades, £7,692; sergeant grades, £33,769; constable grades, £121,206; and parking controllers, £301. For civilian support staff: higher executive officer grades, £976; executive officer grades, £543; administrative officer grades, £16; support grade 2 staff, £243; Whitley Council support grade 4 staff, £139; and craftsmen, £429, giving a total for the police service of £167,541.

For the fire and rescue service: divisional officer grades, £754; station officer grades, £1,391; sub-officer grades, £2,151; leading fire-fighter grades, £1,889; fire-fighter grades, £12,256; and retained fire-fighters, £3,942, giving a total for the fire and rescue service of £22,383.

For the prison service: governor grades, £1,644; principal officer grades, £2,043; senior officer grades, £7,486; officer grades, £29,989; night duty officer grades, £1,425; operational support grades, £1,456; and prison chaplains, £136, giving a total for the prison of £44,179.

For the emergency planning and civil defence division: higher executive officer grades, £1,375; executive officer grades, £1,264; volunteers, £2,400, giving a total for the emergency planning and civil defence of £5,039.

So far as part (2) of the question is concerned, the amount which was estimated for this by my department would be the amount expended had there been no decision by the Council of Ministers that additional pay should be available for the millennium and that all employees be treated fairly and consistently across government. No additional provision was made for millennium payments.

Parts (3) and (4) of the question are more problematical to answer. My department will seek to absorb as much of the additional cost as possible in line with our normal good

practice. However, there have a number of high-profile operations this year which have put considerable strains on our budget already. Operation Safe, Operation Raven, the *Solway Harvester* tragedy and others have all been costly. It is likely, therefore, that I will be seeking a supplementary vote from Tynwald but it is simplistic to say that it will be solely as a result of the millennium. It will be as a result of a combination of factors. As yet I am unable to estimate how much will be required.

I would like to make one further point. A huge amount of planning went into this millennium. Officers spent many hours assessing risks, modifying and modernising equipment, making rosters, motivating and cajoling staff to work on a night when, like the rest of us, they would much rather not have been working. They did this in addition to their normal workloads and received no recompense.

In the event we were fortunate to have a quiet millennium eve without major incident. However, if that were not the case and something had gone wrong, then the staff of my department would have been in the front line protecting the people of this Island.

Finally, the hon. member has made a number of serious allegations in the media suggesting that my officers have abused their positions with regard to the millennium payments. I would ask the hon. member, if he has evidence of specific instances of abuse, that he inform me immediately to enable them to be properly investigated. If he does not have evidence, then I would suggest that the allegations be publicly withdrawn to remove the slur against the integrity of my staff.

Mr Houghton: Mr Speaker, I thank the hon. member, notwithstanding his final comments, for his reply, his detailed response, but can he produce documents describing agreements reached with unions and staff side representatives for the five times pay arrangements, and if so, would he circulate those documents amongst members, please?

The Speaker: Hon. members, I think the Chief Minister answered that question very early on this morning.

Millennium Overtime Payments – Water Authority – Question by Mr Houghton

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

Mr Houghton: Thank you, Mr Speaker. I beg leave to ask the Chairman of the Water Authority:

In respect of overtime payments made by the Water Authority for the period 31st December 1999 to 3rd January 2000 -

- (1) how much was paid to each category of employee by rank or grade;*
- (2) how much was estimated for this expenditure in the vote of the authority;*
- (3) will your board be seeking a supplementary vote from Tynwald to meet the expenditure beyond that estimated; and*
- (4) if so, for how much?*

The Speaker: The hon. member for Onchan, the Chairman of the Water Authority.

Mr Karran: Vainstyr Loayreyder, I thank the hon. member for his question. To answer part (1), it is split according to categories of workers as follows. Water treatment workers: Whitley Council staff, £2,513; civil servants, £302. Distribution staff: Whitley Council, £4,916; civil servants, £3,078. Mechanical and electrical services: Whitley Council, £1,338; civil servants, £430. Water quality customer service and control room: civil servants, £1,580.

In answer to part (2) of the question, the total estimated budget for the overtime for the year is £100,000. The actual amount spent so far this year is £75,000, including the millennium payments. I do not expect the budget to be overspent at the end of the year even though no specific amounts were included at the start of the year to cover the millennium period other than allowances for normal overtime rates.

In response to parts (3) and (4) of the question, the authority does not need to seek a vote from Tynwald since it raises its own income through water rates and other sources.

I would like to just put on record that I think it would be wrong of the hon. member to think that everybody who is in the civil service is actually a pen-pusher. There are a lot in the civil service, especially in the Water Authority, who do very strategically important, hands-on work who are a credit to the service to keep the water and the aging infrastructure going until we get the renewal that is needed.

Mr Houghton: Mr Speaker, can the hon. member, though, tell me whether he is indeed satisfied with the amount of £5,390 charged to those civil servants and other type of category worker? Is he personally satisfied with that?

Mr Karran: Vainstyr Loayreyder, as you will see in a further response, we were tied in with the agreement with government. Obviously the MEA was not tied in with the agreement with government and did not go on the five times salary, plus the fact they allowed for the situation where they have not included what would normally be overtime payments paid, which is obviously a different accountancy exercise.

To answer the hon. member, the important thing to remember is the fact that we were dealing with something that was unknown. We did have, as I say, with the MEA where there was a problem in the west of the Island which caused problems as far as the water supply was concerned because of the MEA. So I think that we were right to take the decision we did.

It is always very easy to be wise with hindsight, but if it had gone the other way and we had not made contingencies and said we had to have the staff in, and many of the staff did not want to be in, then this House would be calling for blood, as member responsible for Health and also as Chairman of the Water Authority.

Mr Cannell: Mr Speaker, would not the hon. member agree with me that the chances are that the cost of extrapolating all this information for various departments including his own (**Several Members:** Hear, hear.) probably far exceeds the cost of paying the payments?

Mr Houghton: Over a million pounds?

Mr Karran: Vainstyr Loayreyder, I think it is wrong. I think there would be a substantial amount of cost in getting the answer, but I think it is wrong and we hear this thing about a million pounds all the time. You cannot turn around and say on New Year's Eve, 'I'm sorry, love, you can't have your heart attack: we're closing down the intensive care beds for two days.' And I do think that some hon. members in this hon. House have to start living in the real

world. (**A Member:** Hear, hear.) These services have to be provided. There is a question between that and the ones that were brought on for insurance purposes because of the millennium thing, but there was not the large amount that the hon. member is seen to be giving out at the present time.

The Speaker: Hon. members, items 9, 10 and 11 are on the order paper for written answer.

MEA Workers – Millennium Overtime Payments – Question by Mr Houghton for Written Answer

Question 9

The hon. member for Douglas North, Mr Houghton, to ask the Minister for Trade and Industry:

Was there any expenditure in respect of overtime payments during the period 31st December 1999 to 3rd January 2000 to Manx Electricity Authority workers, and, if so -

- (1) what was the total amount paid;*
- (2) how much was paid to each category of employee by rank or grade;*
- (3) what was the estimated amount to be paid; and*
- (4) who authorised the payments?*

Answer

- (1) The total amount paid to staff in respect of overtime for the period was £507.86.
- (2) The payments were made to nine members of distribution staff at an average of £56.43 per person.
- (3) The costs were incurred due to an unexpected outage in the Peel area during the early hours of New Year's Day. The costs were met out of normal budgetary provisions for overtime.
- (4) The payments were authorised by the board of the authority.

In addition to the above figures a millennium payment of £75.00 per shift had been agreed for each member of staff required to work over the crossover millennium period. The estimated amount for these payments was £2,850.00 (19 generation staff at £150.00 each,) while the actual cost was £3,525.00 including an additional payment of £75.00 paid to nine distribution staff members in respect of the unexpected outage.

Statutory Boards – Standing and Set Charges – Question by Mr Quine for Written Answer

Question 10

The hon. member for Ayre, Mr Quine, to ask the Chairman of the Office of Fair Trading:

- (1) What standing and set charges, in respect of goods and services provided, are levied by -*
 - (a) statutory boards, and*

(2) *what, if any, control does your office have over the purpose for which such charges may be levied and over the level of such charges?*

Answer

(1) (a) **Statutory Boards**

Manx Electricity Authority:

domestic supply:	
daily standing charge	11.51
domestic supply: (offpeak) daily standing charge	1.64
repair call-out charges:	£39 for first 40 minutes
workshop charges:	£24 for first 40 minutes
connection charge:	£480

Water Authority

connection charge - varies between £164.50 and £565 depending upon reinstatement necessary.

disconnection charge - (where debtor refuses to pay bill) £75.

(b) **Private Sector companies**

Manx Gas domestic use:

standing charge A tariff - none but £2 minimum charge on nil use

B tariff - 4.10p per day

C tariff - 8.21p per day

star saver - 11.5p per day

connection charge (including testing): £23.75

connection charge if previously disconnected for non-payment: £58.75

repair call-out charges:

minimum first hour £38.81 including VAT

maintenance charge on tanks: £13.00 per quarter.

Manx Telecom

landline rental: £23.50 per quarter

connection charges:

new line - new customer: £111.63

new line - existing customer £94.00

Oil Suppliers

no charges other than for oil delivered

(2) Whilst this office does not have any controls over the purpose for which such charges may be levied or over the level of such charges, it is coincidental that the board agreed at its last meeting that a survey should be undertaken of charges with a view to seeking co-operation from both public and private organisations to give more clarity of information for consumers.

Aggregate and Sand – Cost – Question by Mr Quine for Written Answer

Question 11

The hon. member for Ayre, Mr Quine, to ask the Chairman of the Office of Fair Trading:

- (1) *What is the cost per cubic metre of (a) aggregate and (b) sand ex Point of Ayre purchased from Island Aggregates; and*
- (2) *how do these prices compare with similar building materials ex source of excavation in the north-west of England?*

Answer

In response to the questions concerning the price of aggregate and sand, the chart below shows self-collect prices obtained on 1st March 2000. The prices are per tonne, not per cubic metre, as these materials are sold by weight, not volume.

Comparison of Aggregate and Sand Prices Ex Quarry per Tonne

	Sand	Aggregate (20 mm)
Island Aggregates	£9.68	£9.48

There is a wide variation in the prices for sand and aggregate in the north-west, as we have already established in earlier surveys we have carried out.

Four quarries were selected at random from the Yellow Pages and the prices obtained clearly illustrate this variation in price.

	Sand	Aggregate (20 mm)
quarry 1 (Cumbria)	£9.00	£9.00
quarry 2 (Lancashire)	£8.05	£7.90
quarry 3 (North West)	£6.00	£4.60
quarry 4 (North West)	£8.00	£13.00

Legislative Council – Election of Members

The Speaker: We turn then to item 12 on our order paper and I call upon the hon. member for Douglas East, Mr Braidwood.

Mr Braidwood: Thank you, Mr Speaker. It gives me the greatest of pleasure to nominate Dominic Francis Kevin Delaney for a further term on the Legislative Council. It is not my intention to give a full biographical account of the life of Dominic Delaney. (*Laughter and interjections*) This has already been achieved with the circulation of his CV.

Dominic Delaney was elected to this hon. House in 1976 until his elevation to the Legislative Council in 1995. Dominic Delaney is not a person who will sit idly by if he sees an injustice and will speak out on any subject which he believes passionately in. This has not endeared him to some hon. members, but that is what politics is all about, differences of opinion which are debated and voted on so that the people of the Isle of Man have the best representation possible.

Since the last general election in 1996 Dominic Delaney has been a member of the Department of Tourism and Leisure with delegated responsibility for the tourism industry, a position which he has particularly enjoyed, having formed a close bond with hoteliers whilst representing Douglas East.

Dominic Delaney has the knowledge and experience of political life in the Island and if he is re-elected this will once again stand him in good stead to be a fair adjudicator of legislation and proposals for the benefit of the people in the Isle of Man. Mr Speaker, I therefore have no hesitation in recommending Dominic Francis Kevin Delaney as a candidate for election to the Legislative Council.

Mr Downie: Mr Speaker, I have much pleasure in seconding that nomination.

The Speaker: Does any hon. member wish to speak to the nomination? In that case, hon. members, I call upon the hon. member for Garff, Mr Rodan.

Mr Rodan: Mr Speaker, it is a great honour to propose to this House the name of Dr Edgar Mann as a candidate in this election. Dr Mann has a distinguished record of public service in government and in Tynwald, stretching back to 1976 when he was first elected as member for Garff.

Before the introduction of ministerial government in 1986, a development which he enthusiastically helped to bring about, he served as Chairman of the Finance Board and then as Chairman of the Executive Council, the most senior government positions at a time when the Isle of Man was going through a difficult period and had to make far-reaching decisions and those fundamental changes in structure and policy which have undoubtedly helped lay the foundations for today's economic success as a nation.

Most lately, as Minister for Education from 1996 to 1999, he was still pursuing innovative policies, showing enthusiasm and providing inspired leadership in that particular department.

Dr Mann combines extensive experience with an intellectual grasp of detail, in often complex areas of policy, which are most readily seen by us in his reasoned and wise contributions to debate in Tynwald, which are listened to with respect from all sides of that chamber.

All these qualities are vital to the Member of the Legislative Council who seeks to carry out effectively the role of revising legislation and developing Tynwald policy for the national good.

Dr Mann has served on the Legislative Council since 1995 and he still has much to contribute to parliamentary life in the Isle of Man.

It is not for me to speak of his record of public service because it speaks for itself and Dr Mann's other qualities which will recommend him as a candidate are widely known. Mr Speaker, it is with much pleasure that I nominate Dr Mann for election to the Legislative Council.

Mr Cannan: I beg to second, sir, and reiterate the remarks of the Minister for Education.

The Speaker: I call then, hon. members, on the hon. member for Douglas West, Mr Shimmin.

Mr Shimmin: Thank you, Mr Speaker. This morning I am pleased to nominate Mr David North MHK as a candidate for the election to the Legislative Council. As members are well aware, Mr North was first elected to the House of Keys as a member for Middle in 1988. Since that time he has served periods on the Departments of Education, Agriculture Forestry and Fisheries and Department of Transport.

It is seen in his CV that in recent times he has held down senior posts within the government, including the minister of the Department of Agriculture, Fisheries and Forestry, minister of the Department of Transport and he currently holds the ministry of Trade and Industry.

Throughout his time in politics his responsibilities have not been restricted to local affairs and his work has involved the shipping industry and the maritime sector and is well known to all members. In this responsibility he has included chairmanship of important international committees on these affairs, doing great credit to the Island. He has continued the good work previously started on the Film Commission and in recent times his involvement in the advancement of e-commerce on the Isle of Man has played an important position in getting the Island to where it is currently hoping to be one of the forefront islands dealing with e-commerce.

I believe the range of experiences and the enthusiasm he holds towards all government positions make him a most suitable candidate and, Mr Speaker, I am pleased to commend his nomination to the Legislative Council.

Mr Gelling: Mr Speaker, I rise to second the nomination of the member for Middle, Mr David North. He was elected only three years ago for the third occasion from his sheading and he has been a member, as has been said, for over 12 years. He has been a minister for 10 years and I can say most definitely that his is a portfolio always carried forward with enthusiasm and drive. He must also qualify as the most travelled member, due to the shipping and film industries being part of his work at the Department of Trade and Industry, and as the mover has already said, no matter where you go in the world, if it is someone in the Isle of Man and a member of the parliament, anyone will know it will be the name of David North, because his networking is something that has to be seen to be believed.

If successful, it will require myself to address the position in respect of the ministerial position he holds at the present time, that being Trade and Industry.

I believe that he has served this House well to date and certainly represents the Island with, as I have already said, great enthusiasm when he is required to do so.

I support the hon. member's nomination for the election to the Legislative Council as someone who is well equipped to do so and I am sure he would serve the Council well.

The Speaker: Hon. members, I then turn to the hon. member for Ayre, Mr Quine.

Mr Quine: Thank you, Mr Speaker. It is my pleasure to nominate Mr John Norman Radcliffe as a candidate for election to the Legislative Council. Mr Radcliffe was born and educated in the north of the Island. He is well known and respected, having served for 24 years in the legislature. He served as an Andreas Parish Commissioner for a number of years and has had the honour of being chairman of that body. In 1976 he was elected to the House

of Keys as the member for Ayre and in 1995 he was elevated to the Legislative Council and has remained a member until this time.

Mr Radcliffe has been Chairman of the Highway and Transport Board, Chairman of the Board of Agriculture and Fisheries, Chairman of the Planning Appeals Tribunal, member for Health, of the health services, member of the Forestry, Mines and Lands Board and a member of the Assessment Board and indeed a member of the Water and Gas Authority as it was, plus the Manx Museum. He has served on numerous committees of Tynwald, looking at various subjects. For the past 13 years Mr Radcliffe has been a member of the Treasury, where his duties have included Chairman of the Insurance Authority and chairman of the Value for Money Committee.

Both prior to and during his time in the legislature Mr Radcliffe has been very much involved in social and charity work. He is a member and trustee of the Andreas Benevolent Society and Chairman of the Endowments Committee and also Chairman of the Ramsey Cottage Hospital Welfare Committee and numerous other welfare and recreational organisations.

Without question Mr Radcliffe has a long and creditable record of public service, both inside and outside the legislature. His very wide knowledge of the working of the legislature and government is beyond dispute. His common sense, mature judgement and unflappability are significant assets.

The future of the Legislative Council is quite properly a matter under debate and the members of the hon. House hold various views as to the way ahead. However, I would suggest there is common ground in so far that the membership of that Council should include elder statesmen and in Mr Radcliffe we have such a person. Mr Speaker, I commend Mr Radcliffe to this house as a candidate for the Legislative Council.

Sir Miles Walker: Mr Speaker, I am pleased to second and support the nomination of Mr Radcliffe for the Legislative Council. I do believe that I have little to add in detail to what has been said by the hon. member for Ayre in his introduction. But it is, I think, the personal approach of Mr Radcliffe that endears him to us as members and to his constituents over many years. He keeps his feet very firmly on the ground. He has a very open and honest attitude. He has a plain, common-sense approach to problems and he has what is, I believe, a very typical Manx sense of humour - all attributes which I think are worthy of a member of Tynwald. I am very pleased to second his nomination.

The Speaker: Hon. members, I call on the hon. member for Onchan, Mr Corkill.

Mr Corkill: Thank you, Mr Speaker. I would like to propose Mr George Waff to be a Member of the Legislative Council. He has been a Member of Tynwald for the past eight years and he was elected to the House of Keys in 1991 and was elected as a member of Council in 1994, filling the seat left by the untimely death of Mr Quirk. He was subsequently re-elected to the Council in 1995.

As members will see from Mr Waff's CV, he has fulfilled many roles within this parliamentary assembly, working in the Department of Local Government and the Environment, the Department of Transport, the Department of Trade and Industry and for the past three years has been Chairman of the Whitley Council and Civil Service Commission. He

has also fulfilled the role as Chairman of the Overseas Aid Committee and the Chronically Sick and Disabled Committee and member of the Office of Fair Trading.

He has been a member of many select committees, including being the chairman of the Steam Packet committee, also the chairman of the Illiam Dhone committee and he served on the minimum wage committee, the Jill Dugdale committee on residential accommodation for those with learning difficulties, the transportation of live animals, the Kurt Sharp and many other select committees. He has been a member of the Public Accounts Committee ever since his election to this House in 1991.

He has proved to be a most able, independent politician, shouldering a large work portfolio, fulfilling the role to the best of his ability and voting as his conscience dictates.

His time as a member of the Onchan Commissioners, twice as chairman, being continually re-elected by the people of Onchan over a period of 20 years, has enabled him to gain essential experience in local authority matters, an experience which I was privileged to share during my time as an Onchan Commissioner and since then in Tynwald.

His experience as the hospital night superintendent has given him the understanding to stand up for those who are less fortunate in our society. This has led him to become a founder member and chairman of the Association of Mental Health and executive member of Manx Mencap and trustee of the Friends of Chernobyl Children. He is also secretary and treasurer of the Onchan Endowments Committee.

Mr Speaker, hon. members will know as well as I the work that Mr Waft has undertaken and which he continues to undertake. He has the appetite and the commitment to do even more for our Island and on behalf of others. Mr Speaker, I now formally move the motion that Mr George Waft by a Member of the Legislative Council and I would ask hon. members to support this nomination.

Mr Braidwood: Mr Speaker, I am pleased to second the nomination of George Henry Waft. I first met George Waft when I was elected to Onchan Village Commissioners in 1983 and George immediately made me feel at home and was a great help during my first tentative steps in local politics and this is something I will not forget and we have remained friends ever since.

George Waft is a hardworking individual, not only in his work in government, but also in his private capacity, as can be seen from the number of committees and associations he is a member of. At the same time he managed to study for an Open University degree, which once again shows his determination and commitment. Mr Speaker, it gives me great pleasure to second the nomination of George Henry Waft.

The Speaker: Hon. members, we have now reached the position where we have the five nominations, as printed at item 12 on your order paper, in alphabetical order: Mr Delaney, Dr Mann, Mr North, Mr Radcliffe and Mr Waft. Now, hon. members, I have had prepared a special ballot paper. Is the House in agreement that we should in fact use the ballot paper with those five names printed upon it?

Members: Agreed.

The Speaker: Thank you, hon. members.

Now, hon. members, before embarking on the election can I remind the House that there has been considerable notice given and ample time for members to nominate their preferred candidates. The House has a statutory duty to elect members to the Council and today those nominated are well known to all members. Whilst I acknowledge that members may vote for any number of candidates up to the number of vacancies to be filled, I would ask that members endeavour to use all their votes when making their choice and we should then be able to complete our task today.

Hon. members, the voting papers will be distributed. Now, hon. members, on receipt of your ballot paper you can vote for up to four candidates. Hon. members, when the ballot papers have been collected I would nominate the hon. member for Ramsey, Mr Bell, and the hon. member for Douglas South, Mr Duggan, to act as our tellers, please.

A ballot took place.

The Speaker: Hon. members, the result of the ballot is that Mr Delaney received 13 votes, Dr Mann received 12 votes, Mr North received 12 votes, Mr Radcliffe received 14 votes and Mr Waft received 20 votes. Hon. members, therefore Mr Delaney, Mr Radcliffe and Mr Waft have been elected to the Legislative Council and it remains for us to re-ballot on Dr Mann and Mr North. Hon. members, ballot papers will be again circulated and you will be required to vote for one candidate.

A second ballot took place.

The Speaker: Hon. members, the result of that ballot is that Dr Mann received 12 votes and the hon. member for Middle, Mr North, received 10 votes. Neither candidate has been elected to the Legislative Council, hon. members. There has been no changing in the voting pattern, and therefore I will call for new nominations and they will be called for Friday, 10th March, new nominations called for to fill the one vacancy in the Legislative Council.

Bill for First Reading

The Speaker: We turn then, hon. members, to item 13 on the order paper, the Body-Piercing of Minors Bill. I call upon the Secretary to.

The Secretary: The Body Piercing of Minors Bill, Mr Singer.

Retirement Benefits Schemes Bill – Consideration of Clauses Concluded

The Speaker: We turn then, hon. members, to item 14 on the order paper which takes us to the Retirement Benefits Schemes Bill in the hands of the hon. member for Onchan, Mr Corkill. As we are aware, hon. members, we reached I think it was clause 37. I call on the hon. member for Onchan, clause 37 and schedule 1.

Mr Corkill: I would just ask for some guidance, Mr Speaker, in as much as I did speak to the clause and we adjourned the proceedings of this House halfway through the clause -

The Speaker: We did.

Mr Corkill: - but if Mr Speaker is content that I speak at this moment I think it would be useful.

The Speaker: Yes, sir.

Mr Corkill: Thank you, sir. Mr Speaker, it is about three weeks ago since we started this clause and I hope hon. members may forgive me for reiterating some of the effects of this clause which lays down the constitution of the Insurance and Pensions Authority. It actually introduces schedule 1 to the Bill which deals with the constitution of the authority. At the last sitting where we considered this Bill the hon. member for Ayre, Mr Quine, said that the schedule was hidden away, but in fact I have consulted since then and what we have in the Bill is a standard drafting procedure and so the schedule is there quite clearly as standing part of the Bill.

The existing provisions relating to the authority are to be consolidated into that schedule. The majority of these provisions are minor and inconsequential in nature. However, I would particularly like to draw hon. members' attention to sub-paragraph 1(3) of schedule 1 and this sub-paragraph makes possible the appointment of a non-political chairman of the authority, whereas previously the requirement was that the chairman must be a member of Tynwald. This change is in accordance with Tynwald's approval of the Council of Ministers' response to the Edwards review.

Also, the hon. member for Ayre, Mr Quine, did raise an issue with regard to paragraph 7 of the schedule to which I would also like to respond, the statutory indemnity. The statutory indemnity as currently in operation exempts the authority from any court proceedings but only in respect of any good faith action carried out within its powers. However, in recent years it has become open to question whether a statutory indemnity of such breadth is consistent with the European Convention on Human Rights. In addition, the old indemnity could have prevented all judicial review and even the commencement of any proceedings. This is no longer an acceptable position.

So following review of that position and appropriate legal advice from the Attorney-General's Chambers, that indemnity has now been upgraded in order to ensure that it is in keeping with and is not liable to be subjected to a declaration of incompatibility with relevant articles of the Convention on Human Rights.

Potential plaintiffs against the authority will now be in a much stronger position than was previously the case. This is a positive and right-enhancing development. However, the hon. member for Ayre did appear to want more than this and he has suggested that the circumstances upon which the statutory indemnity would not apply should be extended to include acting incompetently but in good faith. I would point out that in regulatory terms there is simply no precedent for this.

It is clear from recent United Kingdom legislation that it is far from clear exactly what the European Convention on Human Rights really does say on this matter and of course we ourselves will soon be grappling with such similar legislation.

Recent Westminster legislation has granted similar indemnities to United Kingdom regulators in the same way as this Bill. The one difference is that the United Kingdom provision takes account of the Human Rights Act 1998 of the UK by limiting the operation of the indemnity to the extent permitted by that Act. This Act of course is not applied in the Isle of Man. It has to be said that the UK authorities are not entirely certain of the precise extent of the convention in this field and there is still considerable debate and doubts which are still to be resolved.

Despite this element of uncertainty there is one subject, however, which I am sure we are all agreed upon and that is the reputation of the Isle of Man, and the protection of the interests of residents and investors of course are of paramount importance. This is evidenced in many ways, not only by virtue of this Bill, but also throughout the rest of our regulatory framework, one that has teeth and has been recognised by others internationally as being very strong.

It is likely that without the indemnity as detailed in paragraph 7 of schedule 1 the authority would inevitably feel obliged to act in an unduly conservative manner and I would not wish to see the very teeth that we seek to have be weakened. The Insurance and Pensions Authority might be reluctant to take enforcement action otherwise than on only the strongest or possibly incontrovertible evidence. To do otherwise might invite a claim for damages. In the meantime unscrupulous activity could continue. This inertia of regulatory authority would harm the good name of the Isle of Man and consequently the protection of investors.

I would like to assure hon. members that since the sitting when we adjourned the debate on this particular clause the significance of paragraph 7 of schedule 1 has been gone over with a fine-tooth comb and it is the opinion of the Treasury, the Council of Ministers and the Insurance and Pensions Authority, backed up with advice from the Attorney-General's Chambers, that the inclusion of statutory indemnity in this particular way as drafted should stand part of the Bill and I beg to move, Mr Speaker.

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

Mr Quine: Mr Speaker, I appreciate that I have made a contribution to this but as we are starting again I just want to recap on two or three things here first of all.

I hear the explanation offered by the Minister for the Treasury and I can understand, I can follow all of that, but what I would ask him to answer for me is this. I do not see that the insurance body that we are referring to here is in any different position than the police in terms of their fraud squad and the investigations that they carry out and therefore I think the nub of this matter must be that if what is represented here constitutes a greater form of indemnity than what is available to the police in the context of their investigations into fraud - because after all there is no material difference between the two bodies - then quite clearly there is something wrong with what we are proposing to include in this schedule. So I would ask the hon. mover of the Bill if he could speak to the comparative positions of the police in relation to their position and the position of the Insurance Authority supervisor.

I accept, of course, what the hon. minister submits, which is of course that it is vitally important that we afford a credible protection for investors. I have no problem with that at all. But at the same time we cannot do that in an arbitrary fashion. We cannot do that in a way which precludes legitimate rights of those persons who could be prejudiced by actions taken by the Insurance Authority and therefore, notwithstanding that strong consumer interest which clearly is there, there must be a balance struck to ensure the rights of the individuals who could be very substantially and injuriously affected by an action taken by the Insurance Authority officers which proved to be inappropriate, should we say. But if there is an assurance provided to me that these powers are an absolute match for what the police function under in dealing with serious fraud, then of course I am open to be persuaded on that line. Thank you, sir.

The Speaker: The hon. member for Onchan to reply to the debate.

Mr Corkill: Thank you, Mr Speaker. I thank the hon. member for Ayre for his comments and I thank him also for his time that he spent in discussing this particular clause and other issues in the Bill in the period since we last considered the Bill. It has been most useful from the mover's point of view of the Bill and clarified quite a number of issues as we have gone along.

Now, the comparison the hon. member is making is with the police situation and I can understand, obviously from the background of the hon. member, his knowledge of that is obviously much greater than mine, but I think we are not dealing like with like in this situation because what we have here - and this is the latest manifestation of it - is an environment of regulation of financial services and I would say that that is not quite the same as straightforward hard facts which the police deal with with regard to fraud, as the hon. member's example has been put forward. There is a difference in the balance in this sort of area and the Island's environment of regulation has been growing over the last 10 years or so around this type of framework, but what I would say is that the climate is changing because of the introduction of the human rights legislation in another place and the impending introduction of it to this Island and there are certainly rights issues with regard to appeals of certain decisions which we will be coming to later in the Bill. What I hope I can say to hon. members is that we are not dealing like with like and in the police scenario they are dealing with hard facts and hard certainty, whereas with a regulatory regime the Insurance and Pensions Authority and the officers of that body have a slightly different role in terms of ensuring that investors' funds are being dealt with in a proper day-to-day manner. It is a more ongoing supervision rather than an investigation into a particular situation. I think there is a difference.

But the hon. member is quite right that we have to strike a balance, but I am also keen that we produce a Bill, the Retirement Benefits Schemes Bill, which is consistent with other regulatory frameworks and does not stand separate. So I hope hon. members will accept those comments that we have struck the balance pretty well right with this clause.

Statutory indemnity is very important not just from the IPA but also from the FSC's point of view because it gives them the confidence to do the job properly and I think that is what this hon. House expects the members of the authorities to do, bearing in mind that obviously we have to protect the rights of individuals and I believe other parts of the Bill actually do that. So I beg to move clause 37 be part of the Bill, Mr Speaker.

The Speaker: Hon. members, the motion then is that clause 37 and schedule 1 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it.

A division was called for and voting resulted as follows:

For: Mr Gilbey, Sir Miles Walker, Mrs Crowe, Messrs Braidwood, Shimmin, Downie, Mrs Hannan, Messrs Corkill, Cannell, Gelling and the Speaker - 11

Against: Messrs Quine, Henderson, Duggan and Singer - 4

The Speaker: Hon. members, 11 votes have been cast for and 4 votes against. The motion therefore carries. We turn therefore to clause 38, the hon. member for Onchan, Mr Corkill.

Mr Corkill: Mr Speaker, clause 38 deals with the review of the supervisor's decisions, provides for the right to and process of appeal for parties aggrieved by a decision of the

supervisor. In practice, the supervisor will be required to obtain the consent of the authority prior to making any decision of consequence, for example in the case of revocation of authorisation as provided for in clause 4. Therefore it is fair to say that any particular case will have been reviewed thoroughly prior to a formal decision.

Earlier drafts of this Bill vested the management and power of appointment of a Review Committee in the Treasury. However, the proposals contained within clause 38 now require a more arm's-length approach. Upon instigation of an appeal the application shall be made to the Chief Secretary who shall notify the Council of Ministers. The Council of Ministers shall thereupon, in the absence of the Treasury minister, appoint a Review Committee comprised of persons wholly independent of both parties to the appeal.

The scope of the regulations made under this Bill is very wide and therefore the expertise that might need to be available on such a Review Committee is also very wide and we believe this is best achieved by selection of committee members at the time of the appeal. This will ensure that the relevant expertise is available and will also avoid a conflict of interest. In a small jurisdiction like the Isle of Man this is of course of particular importance.

The regulations to be made by the Council of Ministers in relation to the procedures of the Review Committee must be laid before and approved by Tynwald. The Review Committee will have the right to confirm, vary or revoke the supervisor's decision. The decision arrived at by the independent Review Committee shall be binding on all parties. However, as always, this does not block the right to a judicial review.

The authority is concerned and keen that the appeals procedure should be in accord with the European Convention on Human Rights and therefore the authority has obtained confirmation from the Attorney-General that the appeal structure in this Bill is compatible with the appropriate articles of the European Convention on Human Rights.

I beg to move clause 38 be part of the Bill.

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

Mr Quine: Mr Speaker, following the adjournment of this Bill at the initial hearing of the clauses, I raised with the Treasury minister, as indeed he has intimated this morning, my concerns that the review procedures in clause 38 may be in breach of article 6 of the European Convention on Human Rights and I hear what he says this morning in terms of the Attorney-General's view on this matter, but I have a quite different view also from a legal source and therefore I feel it is right and proper that I should put that case before this hon. House so that the decision rests with them.

The concern that I have is that the procedures which are currently embraced by the Bill do not meet the requirement for determination of civil rights and obligations by an independent and impartial process. Now, my reasoning for submitting that to this hon. House is that if you analyse the procedure which is embraced by the Bill you will readily recognise that the following facets literally speak for themselves, I would suggest.

First of all, the procedure requires that an application for review is to the Chief Secretary. Clearly, that is the executive. It provides that the form of the application for review and the conditions should be determined by the Council of Ministers: again the executive. It provides that three persons to form the Review Committee are appointed and on an indefinite tenure by

the Council of Ministers: again the executive. It provides that the Council of Ministers shall make regulations to provide for the practice and procedure of the Review Committee, again an executive function, and while there is, as the hon. mover has intimated, recourse to the high court, presumably by a petition of doleance, it is limited to review on point or points of law, not on the substance of the case.

If I could now provide some further information in support of my contention that clause 38 does not provide for an impartial and independent determination of the issue, firstly article 6(1) of the European Convention on Human Rights provides, 'In the determination of his civil rights and obligations . . . everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal. . .'

The European convention has been extended to the Isle of Man and, as I am sure we are all aware, any person or company within the Island is entitled to seek to enforce this right before the European Court of Human Rights, provided of course that they have exhausted their domestic remedies. Now, it is possible that the government will shortly introduce legislation which will allow those persons to enforce convention rights directly before the Manx court. That is something which we have yet to decide upon. But be that as it may, it is to my mind, and more importantly to those who are versed in this law, it is to their mind quite clear that this convention not only can be enforced now but in all probability it will be more easily enforced in the future.

Referring to clause 38, as I said, this clause establishes a review procedure and I believe the first question therefore to be asked has to be does the procedure comply with the convention? I think that is a self-evident statement but I think it is a very important one and on my analysis and on the advice that I have received, I do not believe that it does.

The second issue is whether clause 38 relates to the sort of civil rights which, under article 6 of the convention, are to be determined by an independent and impartial tribunal. Now, the advice which I have received is that this clause certainly does embrace those rights and in a decision of the European Court of Human Rights reported in 1995 - *Stran Greek Refineries and Stratis Andreadis v Greece (1995)* - it was stated in that case by the court that 'Article 6(1) applies irrespective of the state of the parties, of the nature of the legislation which governs the matter in which the dispute is to be determined and of the character of the authority which has jurisdiction in the matter; it is enough that the outcome of the proceedings should be decisive for private rights and obligations.' So quite clearly if you look at the list of rights which are in clause 38(1) they are embraced by that. So, for example, article 6, civil rights, which is what we are talking about here, disputes about withdrawal of a licence in an economic activity, obviously applicable to clause 38, I think is a parallel to be drawn. So I have no doubt in my own mind about that at all. These civil rights which are embraced by article 6 do impact upon the list of rights which are in clause 38(1).

The third issue is surely whether a Review Committee established under section 38 would be an independent and impartial tribunal for the purposes of the convention, and if not, of course it would be flawed and it would be vulnerable in terms of any access to the higher court, the European Court. Again, in a judgment, in *Findlay v United Kingdom (1997)*, the European Court of Human Rights stated, 'In order to establish whether a tribunal is to be considered as independent, regard must be had, inter alia, to the manner of appointment of its members and their term of office, the existence of guarantees against outside pressures' -

hence the issue of appointment - 'and the question of whether the body represents an appearance of independence. As to the question of impartiality, there are two aspects to this requirement. First, the tribunal must be subjectively free of personal prejudice or bias. Secondly, it must also be impartial from an objective viewpoint, that is, it must offer sufficient guarantees to exclude legitimate doubt in this respect', and the European Court of Human Rights has quoted its own analysis as recently as its judgment of the 8th of February 2000 in the case of *McGonnill v United Kingdom*, a case involving the various constitutional roles of the Bailiff of Guernsey.

An example of its application of this analysis in a UK context is a 1996 case, and that is *Bryan v United Kingdom (1996)*, where the European Court of Human Rights held that planning inspectors do not possess the requisite appearance of independence. Although required to decide a case in a quasi-judicial, independent, impartial and fair manner, an inspector is appointed by the secretary of state who can revoke his appointment at any time, and that again is this issue of who appoints these people, and so the planning inspector, it was held, was not independent for the purposes of article 6.

It may be of particular significance to the House to know that the High Court of Justiciary, sitting as an appeal court in Scotland, has taken a similar approach in applying the UK Human Rights Act 1998 for the purposes of determining the competence of the Scottish executive. As this case is not to be appealed, it represents the most authoritative judicial view to date in the United Kingdom on this matter.

The essential point of the case, which is *Starrs and Chalmers v Procurator Fiscal, Linlithgow* of November 1999, was whether a Scottish judge, a sheriff, who was appointed on a renewable one-year commission by the government was independent, and the High Court of Justiciary unanimously found that a sheriff appointed on this temporary basis was not an independent and impartial tribunal for the purposes of article 6.

To my mind this case law, and there is a considerable amount of case law, casts considerable doubt on whether clause 38 is compatible with article 6 of the European Convention. As we have seen, it does concern civil rights; those matters embraced by 38(1) do include civil rights. The application has to be to the Chief Secretary: it is the executive. Reform and conditions of application to the Council of Ministers: the executive. Selection of committee members by the Council of Ministers without firm tenure: an executive function. Members are not independent of the executive and the practice and procedure is determined by the executive.

Now, no doubt the hon. member promoting the Bill will point of course to clause 38(9) which provides, 'Without prejudice to any right of recourse to the High Court, a decision of the Review Committee on a review under this section shall be binding on the IPA and the applicant', and no doubt the argument will be made that this provides that a decision of the Review Committee is subject to a petition of dolence in the High Court. That is true as far as that goes, but this does not make the Review Committee an independent and impartial tribunal for the purposes of article 6, and in a petition to the high court the decision of the Review Committee would be reviewable but only on a point of law; it would not be reviewable in the sense of reassessing the facts which were before the Review Committee. Consequently I have tabled an amendment:

Page 38; for clause 38 substitute -

“Review of Supervisor’s decisions.

38. (1) *Any person who is aggrieved by a decision of the Supervisor to -*
- (a) refuse to register a scheme under section 3;*
 - (b) register a scheme subject to conditions under section 3(3);*
 - (c) make an authorisation subject to new conditions under section 3(3)(a);*
 - (d) vary any existing conditions under section 3(3)(b);*
 - (e) revoke an authorisation under section 4;*
 - (f) refuse to extend (or further extend) a period under section 9(7), 13(7) or 14(5);*
 - (g) issue a direction under section 14(2);*
 - (h) refuse to give approval under section 18(3);*
 - (i) issue a direction under section 19(1) or (2);*
 - (j) vary or revoke a consent under section 19(4)(b) or (c);*
 - (k) issue a direction under section 22(1);*
 - (l) issue a notice or direction under section 23(2) or (3);*
 - (m) issue a direction under section 31;*
 - (n) refuse to withdraw or vary a direction under section 31(1);*
 - (o) refuse to register an administrator under section 36(4)(a);*
 - (p) cancel the registration of an administrator under section 36(4)(b);*
 - (q) disqualify a person under section 41; or*
 - (r) refuse to revoke a disqualification order under section 41,*
may apply for a review of the decision.
- (2) *A Review Committee shall be established under Schedule 2 to conduct reviews of decisions of the Supervisor in accordance with that Schedule and regulations under paragraph 8 of that Schedule.”.*

Page 57, insert the following new Schedule -

“section 38(2) **SCHEDULE 2**

REVIEW OF SUPERVISOR’S DECISIONS

Review Committee.

1. (1) *There shall be a panel of 6 persons (in this paragraph and paragraphs 2 and 4 referred to as "the Panel") from whom the members of every Review Committee established under paragraph 2 shall be appointed.*

(2) *Appointments to the Panel shall be made by resolution of Tynwald on the nomination of the Council of Ministers.*

(3) *The Council of Ministers shall nominate a person for appointment to the panel only if the Council of Ministers is satisfied that the nominee is a person who has appropriate experience.*

(4) *A person appointed to the Panel -*

(a) *must be appointed (or re-appointed) for a fixed period not exceeding 5 years, but*

(b) *may be removed from office by resolution of Tynwald on the ground of incapacity or misbehaviour,*

and subject to that, shall hold and vacate office in accordance with the terms of his appointment.

(5) *The members of the Panel shall appoint one of their number to be Chairman of the Panel.*

(6) *The members of the Panel shall appoint one of their number to be deputy chairman to exercise the powers of the Chairman of the Panel in the event of his absence, incapacity or inability to act (for whatever reason).*

(7) *The Treasury may determine the fees and expenses to be paid to the Chairman and members of the Panel and a Review Committee, and any other expenses of the Panel or a committee which are to be defrayed.*

Initiation of a review.

2. (1) *In the first instance an application for a review shall be delivered to the Chief Secretary who, on receiving the application, shall without delay pass the application to the Chairman of the Panel.*

(2) *On receiving the application, the Chairman shall assign two other members of the Panel who, together with the Chairman of the Panel shall form the Review Committee in respect of that particular application.*

(3) *The Chairman of the Panel shall assign persons for membership of a Review Committee only if he is satisfied that the person is independent of both the Supervisor and the applicant.*

(4) *The Chairman of the Panel shall be the chairman of all review committees.*

Determination of the review.

3. (1) *On the determination of a review under this Schedule a Review Committee shall confirm, vary or revoke the decision in question.*

(2) Any variation or revocation by a Review Committee of a decision of the Supervisor shall not affect the previous operation of that decision or anything duly done or suffered under it.

(3) Without prejudice to any right of recourse to the High Court, a decision of a Review Committee shall be binding on the Supervisor and the applicant.

Costs and expenses.

4. (1) A review committee may make an order awarding costs to or against the applicant or the Supervisor.

(2) A Review Committee must, unless it is satisfied that it would not be just to do so, make an order under paragraph (1) against the applicant where the review has been decided against him and a notice was issued to him under sub-paragraph (6).

(3) An order under paragraph (1) may require the party against whom it is made to pay to the other party either -

- (a) a specified sum not exceeding the relevant costs incurred by that other party, or
- (b) the whole or part of those costs as assessed (if not otherwise agreed), and, in determining how much the party is required to pay, the committee must take account of the conduct of both parties in relation to the review.

(4) The relevant costs of a party are the costs incurred by the party in -

- (a) attending the hearing, including loss of income,
- (b) reimbursing the expenses of witnesses attending the hearing on his behalf, or
- (c) being represented at the hearing, where the committee consider that it was desirable for him to be represented and that the costs so incurred were reasonable.

(5) Any costs required by an order under this rule to be assessed are to be assessed by the Chief Registrar in the same manner as the assessment of costs in the High Court in accordance with rules of court made under the High Court Act 1991.

(6) Where an application for a review has been received by the Chairman of the Panel and he is of the opinion -

- (a) that it is so unlikely that the review will succeed on the basis of the application and any additional material supplied with the application that to proceed with it would be unfair to the Supervisor, or
- (b) that the application and any additional material supplied reveal no valid grounds for the review, or that the application for the review is otherwise wholly misconceived,

he may, before assigning two members of the Panel under paragraph 2(2), serve a notice to that effect on the applicant.

(7) A notice under sub-paragraph (6) must state the Chairman's reasons for his opinion and inform the applicant -

- (a) that the review will not proceed unless the applicant informs the Chairman in writing within 14 days of the date of the notice that he wishes it to proceed, and
- (b) that if he makes such a statement, and the review is subsequently withdrawn or decided against him, he may be liable, subject to the limitations imposed by this paragraph, to pay the costs incurred by the Supervisor in connection with the review.

(8) Where a notice is given under sub-paragraph (6) in relation to an application, unless the applicant informs the Chairman in writing before the end of the period of 14 days starting with the date of the notice, that he wishes to proceed with the review no further proceedings shall be taken in relation to the review.

(9) Without prejudice to the generality of section 52, costs awarded against the Supervisor under this paragraph shall, for the purposes of that section, be an expense incurred under this Act by the Supervisor.

Power to regulate own procedure.

5. Subject to the provisions of section 38, this Schedule and regulations under paragraph 8, a review committee may regulate its own procedure.

Irregularities.

6. (1) Any irregularity resulting from failure to comply with any provision of section 38, this Schedule or regulations under paragraph 8 before a Review Committee has reached its decision shall not of itself render the proceedings void.

(2) Where any such irregularity comes to the attention of a Review Committee, it may, and must if it considers any person may have been prejudiced by the irregularity, give such directions as it thinks just, before reaching its decision, to cure or waive the irregularity.

(3) Clerical mistakes in any document recording a direction, order or decision of a Review Committee, or errors arising in such a document from an accidental slip or omission, may be corrected by the Chairman by certificate under his hand.

Appeals to the High Court.

7. (1) The applicant or the Supervisor may, at any time during the period of 6 weeks beginning with the day on which the decision is made, bring an appeal on any question of law or fact arising from the determination of a review by a Review Committee.

(2) An appeal under this paragraph must be made to the High Court.

(3) The High Court may confirm, vary, revoke or remit the decision of a Review Committee, and may make any order the committee could have made.

(4) Any decision of the High Court in respect of a determination of a Review Committee shall not affect the previous operation of the decision of the Supervisor which

was the subject of the determination nor anything duly done or suffered under it unless the High Court specifically orders to the contrary.

Practice and procedure.

8. (1) *An application for a review shall be in such form, made within such time, and be subject to such conditions, as may be prescribed by regulations made by the Council of Ministers.*

(2) *The Council of Ministers may make regulations to provide for the practice and procedure of Review Committees and for proceedings before them.”,*

and re-number the subsequent Schedules.

I believe that this amendment provides for a manner which is still a course of action that is swift and inexpensive in terms of the review decision of the supervisor. In substance it follows the basic approach which the Treasury has clearly been endeavouring to pursue. The review procedure embraced by the amendment I have put before you I honestly believe does address the concerns which I have identified in a manner which should be acceptable to the Treasury. It retains the concept of a Review Committee. It provides for a panel of six suitable persons, nominated by the Council of Ministers and approved by Tynwald, which gets over another problem. Persons appointed to the panel shall have a fixed period of tenure, which gets over another difficulty, and their tenure would be of course put by resolution to Tynwald, so routed away from the executive, and the panel shall appoint one of their number to be chairman and another as deputy chairman. Again the selection of the individual to deal with a particular case is removed from the executive. And while the chief secretary would receive an application for review, he would be passing it on to the chairman of the panel, he would be moving it away from the executive to the independent chairman of the panel, and the chairman or the deputy chairman would then have the responsibility and the duty to assign members of the panel to deal with the particular case, and because there are six members, that allows for to cover a contingency where there may be an interest of some sort within the panel in its totality: one member may have a vested interest. And the applicant or the supervisor would be able to bring an appeal before the high court, not only on a point of law, but on issues of fact. In other words there would be a facility for the facts on which the insurance association, the insurance authority, had made their finding, to be reviewed by the high court, not just having a point of law tested by the high court.

I believe that the procedure embraced by my amendment addresses substantial and legitimate concerns relating to clause 38 in relation to article 6 of the convention. In doing so, thanks to the assistance I have received from the law draftsman, I believe it does no more and no less than is required to meet our obligations under section 6. I have not gone completely the other way at all, I have sought to keep as close as possible to the preferred procedure that the Treasury wish to apply in this particular piece of legislation, and I believe that if there is a doubt, and unquestionably there is a doubt, as to whether this particular clause meets the requirements of article 6, and I believe that is beyond question, then if there is an alternative, viable, practical procedure available - and there is one available: it is embraced by my amendment - then I would recommend to this hon. House that we should accept that procedure by supporting the amendment I have moved. Thank you, Mr Speaker.

Mr Henderson: Mr Speaker, I beg to second and reserve my remarks.

Mr Braidwood: Mr Speaker, speaking against the amendment, I think the major flaw in the amendment is the fixed tenure of the panel of six members. To be able to get six members with the experience in different financial sectors which might arise when there is an appeal procedure would be very difficult and I do believe in the procedure adopted at the present time in clause 38 where you will have three persons appointed to form the committee who will then be chosen on their expertise. I believe that the clause as printed, the procedure is for natural justice, the review panel is independent of the IPA, and I must urge members to vote against the amendment and support the clause as printed.

Mr Henderson: Mr Speaker, I think it has been fairly clearly demonstrated by use of legal illustrations from case law that there are problems here and that being so, we have got a chance this morning to give this particular clause a little more scrutiny. I would also draw the House's attention to the fact that there already are in existence in other areas what we term quangos and other tribunals which from time to time have also had their shortcomings drawn up and quite vociferously and vehemently at times because there are problems with those particular bodies.

This morning we are debating an issue where particular problems have been highlighted by the hon. member for Ayre and by way of illustration through the legal case law he has shown the potentiality of those problems, and I find the manner of his debate fairly clear and concise in doing so and we have a chance, before we form yet another body or party, to actually examine the problems before they arise, and I think that is a very fair and valid point made by the member for Ayre and that is something I would urge this House this morning to consider very seriously before we go ahead and approve the substantive clause. I think we should very fairly and squarely consider the amendment being moved because I believe that is the right way forward under these circumstances.

Mrs Hannan: I am slightly alarmed that we have got this amendment just before us today and so it is difficult to speak to it, just seeing it on the table, seeing that it is a number of pages in length, but I have just got one or two comments to make about this review panel.

It says, 'In the first instance an application for a review shall be delivered to the Chief Secretary who, on receiving the application, shall without delay pass the application to the Chairman of the Panel', and then it seems the chairman of the panel decides who are going to be the members, if that is right: 'On receiving application, the Chairman shall assign two other members of the Panel who, together with the Chairman of the Panel, shall form the review committee in respect of that particular application. The chairman of the Panel shall assign persons for membership of a review committee only if he is satisfied that the person is independent of both the Supervisor and the applicant. The Chairman of the Panel shall be the chairman of all review committees.'

Now, it just concerns me that the case that has been made by the mover of this amendment is saying that it should be independent and, yes, obviously somebody has got to appoint this person initially, so it is the Council of Ministers that appoints this person and it is one person that is going to chair this particular panel and pick who is going to sit on this panel, and I would have thought that if the mover of this amendment is seeking to be totally independent, - and I do not know how you would do this - but if you are looking for something like that it would be something like the land - I cannot think of the title of it - tribunal that has different people sitting on it and some people can be picked from either side - the Land Court,

I am advised - and so whoever does feel aggrieved can pick maybe somebody who has strengths on one side or the other, and then also the Insurance and Pensions Authority could pick somebody to look at it under an independent chair. I do not know how that would work, but it seems to me that the amendment that is being suggested leaves one person in control and who is to say, although Tynwald approves that person, that that person remains independent throughout the tenure of the appointment of this particular role?

As I said, Vainstyr Loayreyder, it concerns me that we have had a case made on one side that the Bill itself conforms to human rights, we have had another case supposedly putting forward alternative views and also naming the cases. We do not know, by the research that has been carried out, whether these cases bear any relationship to the way in which they are being used at the moment and therefore it concerns me and I would want to hear more both on the Bill and the amendment before I would make up my mind that what is being put forward is superior to what we have already got in the Bill.

It does concern me that we are still going to have executive decisions, and I think somebody has got to make a decision initially and I think you have got to have executive decisions initially to put before Tynwald. Tynwald is not a body which puts forward names off the top of their heads, or has not got a head to put the names off, but some body has to do that and the body we have decided is the executive which is the Council of Ministers. Even in this legislation with the amendment that is put forward it is still down to the Council of Ministers to call the shots as to who sits on this particular body, and therefore it concerns me that a case has been made but although this Bill has been out of this House for some time, we have not had this particular amendment before us until a few minutes ago. So that does concern me.

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

Mr Quine: Thank you, Mr Speaker. The hon. member for East Douglas, Mr Braidwood, feels that a flaw in the proposition that is embraced by my amendment is the fact that a fixed tenure is somehow going to create a problem, and secondly, that there would be some difficulty in finding six persons to constitute this panel. I cannot see either of his points, to be quite honest. As I spelt out quite clearly when I referred to at least two references I think it was in the case law, the fixed tenure is a basic requirement to address the question of that independent and impartial process and the weakness or the flaw, if we are going to use that term, is embodied in the clause as presently included in the Bill in the sense that it does not provide for a fixed tenure and that is where it comes into conflict with article 6.

As to where you would get the panel of six, I do not see any difficulty there because we construct panels for different purposes and we also have the right of access to specialists from off-Island and we use specialists from off-Island to constitute panels. I see no difficulty with that whatsoever.

But I think the bottom line in terms of my response to Mr Braidwood is this, that if there is a flaw, it is not a flaw in relation to the amendment which is before this House, the flaw is inherent in the drafting of clause 38 as it stands because that does not provide for fixed tenure and consequently an important plank in establishing that a process is independent and impartial goes out of the window.

I thank Mr Henderson for his support and I think his comments bring to mind a statement that was made by the Minister for the Treasury, and I believe it was early on in relation to this Bill, when he said that if we have difficulties with any Bill that we are dealing with, then he is minded, as indeed I am minded, to ensure that it is put right in this House and not left to another place and that may be another place in the context of the second chamber, or worse still, another place in the context of an appeal to the European Court of Human Rights. So I think it is right that we should address this issue now, we should address it carefully and make sure that it is right.

Now, I accept the position from which Mr Corkill is coming and that is the Attorney-General says that he believes this is not in conflict with article 6. I believe on the strength of my advice that it is in conflict with article 6 and that is why, at some considerable length, I spelt out the references and the case law when I moved my amendment because I want that to be a matter of record because I am sure if we do not go along with this amendment today we will be revisiting this area in the not-too-distant future.

The hon. member for Peel voiced a number of concerns and some of those concerns are what drove me in the first instance to consult with the Treasury minister and to consult with the law draftsman. I think the first point she was making was that, although there is a facility within the panel for to change the membership because you have got six on the panel, the chairman is going to be there in each and every case. Well, that of course is not what the amendment says because the amendment provides for a deputy chairman so if the chairman himself is put in a position where he has a conflict of interest, then there is a deputy chairman who will perform his functions for that particular case. So we can ensure an independent chairman to deal with each case that would be referred to the panel.

The question of the independence of the members of the panel - it is quite right that the members of the panel would be nominated by the executive, by the Council of Ministers. That is true: somebody has to nominate them, as the hon. member said. But the important thing is it does not rest there, the important thing is that they are only nominations and it is Tynwald Court that appoints them and it would be Tynwald Court to remove them.

The question of the chairman being one person in control of this entire scenario - I know that, in truth, is not what my amendment embraces at all. The amendment that I have got provides that there will be three people looking at each of these cases, but the important addition provided for by my amendment is that if you are unhappy with the judgment of the panel either in the context of a point of law or in the context of an interpretation of the facts, facts and law, you can take it to the court and have the court examine both aspects. What you have got at the moment in clause 38 is access to the high court but only in relation to contesting, examining a point of law.

I think the way that members will go on this amendment to a large extent will depend upon what you feel today, in terms of what has been presented to you represents the more authoritative, the more particular, the more specific interpretation of the law in relation to whether we are infringing article 6 or not. I have taken great care to spell that all out for you so that it is a matter of record and it is there. Members will therefore have to decide ultimately whether they accept that what I have said is right or whether they take the more generalist approach that has been adopted by the Minister for Treasury in promoting his clause, and I hope that will be the nub or the most important factor in influencing the voting pattern here

today. I have gone into this with great care and in great depth and I would not be standing on my feet advocating a change if I did not honestly believe that it is essential to have that change, and having discussed it with the minister, I do not think the minister would even suggest that there is any question about my bona fides in what I am seeking to do through this amendment. Thank you, sir.

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

Mr Corkill: Mr Speaker, there were some interesting points during the discussions on this clause and I thank the hon. member for Ayre for the way that he has put forward the points from his point of view. I am encouraged that he is championing the cause of human rights in this House -

Mr Bell: For the first time.

Mr Corkill: - and I do not wish to make light of the matter because I think that the whole issue of these rights judgments will have a greater bearing on the work of this House in the months and years to come and I suspect that the debate we are having today may well be replicated and repeated Bill after Bill after Bill as we grapple with our obligations on human rights. So it is only right, I think, that I reply specifically to the amendment and ask hon. members to vote against it and I hope I can give the reasons, in eloquent fashion, as to why and as to the benefit of actually voting for the clause as printed in the Bill.

Of course the hon. mover of the amendment has the upper ground, as it were, in terms of battle, knowing where my legal advice has come from, which is obviously the Attorney-General's Chambers, and I have expanded on the background information to some extent in the time that this Bill has been away from this House. I do not know, although the hon. member for Ayre has mentioned a number of case law aspects, where that opinion has come from, so there is a certain amount of uncertainty as to where that view has come from. One thing for sure that I have learnt in life is that if you ask two lawyers the same question you tend to get two different answers and the politicians are then left to deal with the issues that fall from that position and I suspect today is one of those situations.

But there are two issues, I believe, here. One of them, the key issue, which I think the Bill already addresses, is whether there is sufficient independence in the way the appeal is dealt with, and that is why, as I said in the initial brief, the opening comments, the Treasury plays no part in the appointment of the committee and in fact the Treasury minister would be absent from the Council of Ministers whilst they chose the members of the panel for the particular purpose of an appeal, and this is where I have some problem with the hon. member's view on the panel of six, which is in his amendment, which is very inflexible. It is a standing scenario which also enshrines within it potential conflict of interest situations which would then, because of the inflexibility, be difficult to work around for that type of tribunal, and I think the hon. member for Peel, Mrs Hannan, alluded to the problems, and she saw that having only just seen the amendment, but she immediately has spotted the difficulties that such tribunals run into, and she also made the point that at the end of the day someone has to make a decision, and I do not see that it is wrong that the Council of Ministers are the body to make that decision for the persons to serve on that committee, bearing in mind they will have to dig deep and find relevant people for relevant appeals who have got the detailed knowledge, and I doubt whether a standing tribunal of six would have that breadth of knowledge.

Now, I understand where the hon. member for Ayre is coming from: he wants to make the situation as completely independent as possible in the eyes of the European Convention on Human Rights. But my advice is that there is nothing unusual about this type of situation, in fact what article 6 of the convention guarantees is the right to a fair and public hearing in the determination of a person's civil rights and obligations, and my advice is that there is no doubt that this type of review settles that aspect positively, and this is where, I think, Mr Quine and myself differ with our views, backed up with our legal advice.

The European Court has in the past held that article 6(1), which is what we are talking about, does apply to proceedings before professional associations, appeals boards, health insurance allowances and social courts where pensions are obtained, so there is a precedent already, and we talked about case law, the hon. member mentioned case law, so there is already a precedent to suggest that there is no contravention at all in the way that this clause is already drafted.

In fact although the hon. member's amendment appears long, it is half a dozen pages or so, it does really address these two issues, and I thank the hon. member for letting me have sight of the amendment in time to consider what was in it.

I think the hon. member, the chairman of the FSC, Mr Braidwood, the hon. member for Douglas East, because of his involvement as chairman of a regulatory authority, can immediately see the inflexibility problem with the six-person tribunal, but also in terms of what the amendment is trying to achieve I think it actually fails in what the hon. member is trying to achieve in certain respects because it still refers to the Chief Secretary and the Council of Ministers. What is being done is the extra stage of Tynwald approval, but the cost of that is the inflexibility and I would ask the question why it was not drafted in such a way whereby appeals went straight to the chairman of the tribunal rather than to the Chief Secretary and the Council of Ministers. It seems to be trying to be all things to all people when in fact, as other members have said, what is required is a decision at the time to get on with a particular appeal situation, and I think the element I would like to bring out is that our scale of things in the Isle of Man is such that we cannot always afford to have these grand structures because of the inflexibility I have spoken about, and if we look at the history of regulation in the Isle of Man it has been quite successful in many respects and I do not think we have a track record of too many difficulties with appeal situations with other types of legislation, so I hope hon. members will bear that in mind when considering which way to vote.

Certain comparisons were made with the case law which I will not reiterate, and I understand the hon. member's intent to put it on the record that there is this legal and political debate about these rights issues.

As I mentioned before, I am keen that this House produces legislation which is consistent and which does not need amending shortly thereafter and so I think the time taken out to reconsider the situation has been useful. Certainly the Council of Ministers and the Treasury and the members of the regulatory authorities are in favour of this particular clause as it stands and they, after all, are the people who have to deal with situations and have the knowledge.

There is also the issue that this amendment tends to drive people towards the courts, and the hon. member for Ayre may say, well that is a good thing because that is where justice

has to be done, but in fact with the type of issues that the supervisor has to make and the decisions and judgments, I would actually say that the court is no better placed to undertake that function than anyone else and this is where, there again, we have a difference of opinion. What I would say is that the supervisor can not make these sorts of decisions in a dictatorial sort of way, they are board decisions effectively, and you would then end up of course with far more courtroom time, you would have long delays, particularly with heavy costs, and I would suggest that this amendment would actually start to undermine the regulatory role of our Insurance and Pensions Authority, which I think would be unfortunate when this Bill is actually designed to construct a new framework of regulation in an area of commerce which is increasingly important to the Island and I would hesitate to say that the high court was any better place to adjudicate on the actual regulatory codes, but obviously there is still the right to the high court for judicial appeal and that is protected in the clause as it stands.

I know the hon. member is trying to make the situation as independent as possible but I do believe that it actually does not in reality achieve that any more than the existing clause but what it does do is increase the inflexibility, potentially create delays and costs and it will cause an undermining potentially of the regulatory role, which is contrary to government policy.

It has been very useful from a personal point of view to hear the arguments on the European Convention on Human Rights as put forward by different legal interpretation and I am sure that the same argument is likely to be rerun on another Bill which is shortly to come before this House and I do wonder, in the background of lobbying which as politicians we all expect and listen to, that in fact this may be a dry run for another Bill and that may be me just seeing reds under the beds, to quote an expression, but I do feel the same issues are likely to arise again. So I think hon. members should think carefully about how they vote today, not just in respect of this Bill, but in respect of other Bills, to keep that consistency as I spoke of before.

Mr Speaker, I would ask members to vote against the amendment in the name of Mr Quine but support the clause as written. I beg to move.

The Speaker: Hon. members, the motion is that clause 38 stand part of the Bill. To that we have the amendment circulated in the name of Mr Quine and moved by the hon. member for Ayre, that in pages 38 to 40 for clause 38 we substitute a complete revision of it and it also introduces schedule 2 at page 57, so there will be a new schedule along with a new clause to the Bill in effect; that would be the upshot of it. So hon. members, will those in favour of the amendment please say aye; against, no. The ayes have it.

A division was called for and voting resulted as follows:

For: Messrs Cannan, Quine, Houghton, Henderson, Duggan, Mrs Cannell and Mr Singer - 7

Against: Messrs Gilbey, Rodan, North, Sir Miles Walker, Mrs Crowe, Messrs Brown, Cretney, Braidwood, Downie, Mrs Hannan, Messrs Bell, Karran, Corkill, Cannell, Mr Gelling and the Speaker - 16

The Speaker: Hon. members, 7 votes are cast for the amendment, 16 votes against the amendment. The amendment therefore fails to carry. So I put the clause, clause 38 as it is moved by the hon. member for Onchan, Mr Corkill. Will those in favour of clause 38 please say aye; against, no. The ayes have it. The ayes have it.

That takes us then to clause 39. Again I call upon the hon. member for Onchan, Mr Corkill.

Mr Corkill: Mr Speaker, clause 39, retirement benefits schemes ombudsman, contains provisions for the purpose of continuing the present arrangements operated by the Department of Health and Social Security for the conduct of an ombudsman to investigate pensions complaints. Members no doubt will be aware of recent developments concerned with the creation of an Isle of Man Financial Services Ombudsman Office but I would suggest that until such time as these proposals are more fully developed I would ask hon. members to consider that the existing provisions continue in order to make sure that no black hole in terms of member protection will be created during the interim period. I beg to move that clause 39 stand part of the Bill.

Mr Gelling: I beg to second and reserve my remarks, Mr Speaker.

The Speaker: The motion, hon. members, is that clause 39 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 40, hon. member for Onchan.

Mr Corkill: Mr Speaker, clause 40, compensation scheme, amends section 21 of the Financial Supervision Act 1988 and provides a series of enabling provisions to give effect to a compensation scheme for retirement benefits schemes.

The authority has investigated various funding mechanisms to enable the introduction of such a scheme but at this juncture an equitable solution has not been found. This is fundamentally in consequence of the relatively small number and size of Isle of Man schemes. However, the principle of a compensation scheme is promoted as desirable and the authority will continue to strive to resolve this issue.

The enabling provisions will permit prompt and effective introduction once a practical solution has been found and I ask hon. members to support the concept and provide for a compensation scheme facility.

I beg to move clause 40 be part of the Bill.

Mr Gelling: I beg to second, Mr Speaker, and reserve my remarks.

The Speaker: The motion, hon. members, is that clause 40 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 41.

Mr Corkill: Mr Speaker, clause 41 imposes an obligation upon trustees, administrators, auditors, actuaries and investment managers of all schemes to give a written report to the supervisor in circumstances where they suspect a breach of the legislation and the breach is likely to be of material significance.

Sub-clauses (2) and (3) introduce statutory protection for the whistle-blower, whilst sub-clause (4) explains that failure to comply constitutes a criminal offence, and sub-clause (5) permits the authority to disqualify any such party.

I wish to mention to hon. members that the authority originally proposed that only the auditor and actuary to a scheme would be the statutory whistle-blowers. However, consultative feedback during the passage of the process was strongly in favour of extending the number of whistle-blowers to include trustees, administrators and investment advisers. It is interesting to

note that the experience of the United Kingdom pensions regulator is that 45 per cent of all whistle-blowing reports have derived from scheme trustees and administrators. It is therefore clear that this group is in a position to ensure the efficacy of the regulatory framework, hence the inclusion of trustees and administrators.

I beg to move clause 41.

Mr Gelling: I beg to second, Mr Speaker, and reserve my remarks.

The Speaker: The motion, hon. members, is that clause 41 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Perhaps, hon. member, we could take 42, 43 and 44.

Mr Corkill: Thank you, Mr Speaker. Clause 42 refers to publication of information and advice. It permits the authority to publish information in appropriate cases about schemes in general or in particular for the protection of members or others. Fundamentally these enabling provisions permit the authority to issue information for the education of practitioners and scheme members, in the first instance to create a culture of compliance and in the case of members to establish their rights and to assist informed choice. This clause enables the authority to publish guidance notes to provide for interpretation of policy.

Clause 43 stipulates that any parties concerned with the management of this legislation may not pass on any information obtained under the provisions of this Bill to any third party unless agreement has been obtained from the person to whom it relates. There are, however, a number of circumstances in which it is appropriate to pass on information and these are outlined in clause 44. Information that is already in the public domain is not restricted by this clause.

Sub-clause (5) specifies that contravention of this clause constitutes a criminal offence.

Clause 44 lays down the circumstances upon which the restrictions on disclosure detailed in clause 43 do not apply. These include amongst others the institution of criminal or civil proceedings, assisting the Treasury to discharge its functions in relation to legislation for which it has responsibility, assisting the Assessor of Income Tax, the Department of Health and Social Security, the Financial Supervision Commission and appropriately appointed officers in discharging their respective functions.

The bodies with whom and the circumstances upon which this clause permits that information may be disclosed are extensive but consistent with provisions contained within other financial legislation.

Mr Speaker, I beg to move that clauses 42, 43 and 44 be part of this Bill.

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

Mr Karran: Vainstyr Loayreyder, what will be the information to the general public about the likes of this information as far as advice and publications are concerned? Will this be freely known? Will there be an information pack? Will it be free? Will people have to pay for it? I just wonder whether the hon. member could clarify that point. It is all right having this in here but I think people need to know what information will be distributed, who it will be distributed to and will there be a cost?

The Speaker: The hon. member for Onchan, Mr Corkill, to reply.

Mr Corkill: Mr Speaker, obviously the purpose of this clause is to create a climate of education of information. It gives the ability to inform members of the public in the issues that are relevant particularly to them with regard to retirement benefits.

This is an enabling clause so it is rather early to actually speculate on the form of such process but obviously it is an issue which we would be very keen to deal with in due course and I take on board the hon. member's comments that there may be a cost to this and this would obviously be a cost that the authority would have to assess, but this is a permissive clause to allow the authority to publish information in appropriate cases about schemes in general or in particular for the protection of members. So it is all about making sure that people know what their rights are with regard to this type of legislation.

So I thank the hon. member but would ask members to support all the clauses.

The Speaker: Hon. members, the motion is that clause 42, clause 43 and clause 44 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 45, hon. member.

Mr Corkill: Mr Speaker, clause 45 refers to public registers and it requires the supervisor to keep public registers of authorised schemes, recognised schemes and registered scheme administrators. The information to be contained within the registers will be prescribed by regulations and access to view the registers will be permitted during normal office hours. Such information should prove useful for potential scheme members wishing to establish the status of their employers or potential employers' pension schemes and should also be of benefit to employers or trustees who wish to appoint a scheme administrator. I beg to move clause 45.

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

Mr Karran: Vainstyr Loayreyder, as in clause 42 where they can offer for sale copies for information, in 45 there is no mention of payment. Will there be any cost if I want to see any information? Can the hon. member assure us that there will not be any costs for persons wanting to see the public register as far as this is concerned. What sort of authority would an individual have to give? Can they see it ad hoc or would they have to say what they are looking for?

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

Mr Corkill: I do not envisage and I am not advised that there will be any cost. The purpose of this clause is to allow access so that people can assess their circumstances in their own privacy, as it were, so that they can actually assess, as I said in the original brief - if they have got a potential employer or an existing employer - and that they can work out what their pension means, Mr Speaker. I beg to move.

The Speaker: Hon. members, the motion is that clause 45 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 46, 47 and 48, hon. member for Onchan.

Mr Corkill: Mr Speaker, clause 46, false and misleading statements, makes it a criminal offence for any person to make a false or misleading statement in connection with any matter under this Bill.

Clause 47, the defence in criminal proceedings, clarifies that it will be a defence in law if a defendant can prove that he exercised all due diligence and exercised all reasonable precautions in order to avoid the offence.

Clause 48, criminal penalties, specifies the monetary and custodial limits in respect of an offence committed under this Bill. The Bill introduces a number of criminal penalties in recognition of the growing importance of pension schemes and the consequential need for the appropriate quality of management.

I beg to move that clauses 46, 47 and 48 be part of this Bill.

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

The Speaker; The motion, hon. members, is that clauses 46, 47 and 48 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 49.

Mr Corkill: Mr Speaker, clause 49, offences by bodies corporate, as drafted provides that where an offence is committed by a company the directors or others involved in the management of that company are accountable unless they can satisfy the court that the offence occurred without their consent or that they did all that they could to prevent it.

Mr Speaker, I am aware that my hon. colleague from Treasury, Sir Miles Walker, will be moving an amendment to this clause and I formally move clause 49.

Mr Braidwood: I beg to second, Mr Speaker.

Sir Miles Walker: Mr Speaker, as this Bill has progressed through this hon. House I think there has been a growing awareness for the need for a consistent approach between this piece of legislation and the proposed corporate service providers legislation, which, as hon. members know, has been the subject of a great deal of public consultation, and it is also true to say there has been a greater profile given to the emergence of the human rights issues with the proposed introduction of the European Convention on Human Rights into our own insular legislation, and that debate of course could be seen during the debate we had on clause 38.

The amendment which is in my name and has been circulated has been drawn up at the request of the mover of the Bill, the Treasury minister. The proposed changes to the green Bill that are in this amendment have been developed by discussion within the Treasury, discussion between Treasury and the supervision commissions. Advice has been received from the Attorney-General and the matter has had consideration, as I understand it, by the Council of Ministers.

My amendment makes a fundamental change to the burden of proof as far as directors of a company which has been found guilty of an offence are concerned. Clause 49 as written in the green Bill in sub-clause (1) states, 'Where an offence under this Act is committed by a body corporate, every director or other person concerned in the management of the body corporate is also guilty of that offence unless he satisfies the court that - (a) the offence was committed without his consent or connivance; and (b) he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances.' So that is how it is written at the moment in the green Bill, and hon. members will see from the amendment that has been circulated that sub-clause (1) of clause 49 now is substantially different or will be if the

amendment is approved, and we say in the amendment, 'Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, a director, manager, secretary or other similar officer to the body corporate or a person who was purporting to act in such a capacity, he, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.' So it makes it clear that where an offence under this Act is committed by a body corporate is proved to have been committed with the consent or connivance of, and that is a fundamental change.

That approach, if accepted by this hon. House, will then be consistent with what is proposed in the Corporate Service Providers Bill and as I understand it is entirely consistent with a number of pieces of UK legislation.

So, Mr Speaker, I am pleased to move the amendment that has been circulated in my name:

Page 47, line 15; for subsection (1) substitute -

“(1) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in such a capacity, he, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.”.

Mr Gelling: I beg to second the amendment, Mr Speaker.

The Speaker: With no hon. member wishing to speak to the amendment or clause, hon. member for Onchan, Mr Corkill, do you wish to reply, sir? Do you have any comment?

Mr Corkill: Just briefly, Mr Speaker, to reiterate something I said before which is with regard to these financial Bills that are coming through the House at the moment, that I believe that it is sensible to have a consistency of approach, and although we are, as a Council and as Treasury, accepting this amendment, I am very much aware that particularly in the regulatory bodies, the members who serve on those bodies, they do have a concern that life is changing for them in this respect because they have carried out their duties in the past with the ability, and I hope this will continue, and I see no reason why it should not with the new Bill, but there is a fear by them - and I think it is only right to put this point on the record, as I did expect perhaps another member might make the point - that they feel as though it could potentially hamper them because they are at the moment able to act very quickly and basically deal with delinquent directors before they actually have to prove the point. But of course what is enshrined in most law and I think enshrined in most people's hearts is the fact that people are innocent until proven guilty and this is the factor which is driving this and this is the factor which has produced this amendment.

I think when the Corporate Service Providers Bill comes forward there will indeed be amendments to a number of pieces of legislation to create this consistency, not just in the Retirement Benefits Schemes Bill or Corporate Service Providers Bill, but also other Bills like the Investment Business Act.

So I thank hon. members for their consideration of this clause. I hope the amendment finds support and I would ask hon. members to support the amendment and to support clause 49 as amended by the amendment moved in the name of Sir Miles.

The Speaker: Hon. members, the motion is that clause 49 stand part of the Bill. To that we have the amendment moved by Sir Miles which is on page 47, lines 15 to 24 we substitute sub-clause (1) of clause 49 with that printed on the white paper and circulated to you. Will those in favour of the amendment please say aye; against, no. The ayes have it. The ayes have it.

The clause as amended, hon. members. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 50, hon. member for Onchan.

Mr Corkill: Mr Speaker, clause 50 permits the authority to levy a summary fixed penalty upon the trustee, administrator, professional adviser or employer in circumstances of a breach of any prescribed provision of the Bill. The authority must first issue a written explanatory notice to the person concerned. The person specified in the notice has 14 days to either pay to the Treasury the penalty or to appeal to the High Bailiff for a review. The imposition of civil penalties is an effective method of regulatory enforcement when accompanied, as in this case, with the appropriate appeals procedure. This is in line with prevailing international standards and I beg to move that clause 50 be part of the Bill.

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

The Speaker: The motion, hon. members, is that clause 50 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 51.

Mr Corkill: Mr Speaker, clause 51, regulations and orders, empowers the Treasury to make regulations in order to give effect to the Bill. I beg to move clause 51.

Mr Braidwood: I beg to second, Mr Speaker.

The Speaker: The motion, hon. members, is that clause 51 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 52.

Mr Corkill: Mr Speaker, this clause states the position with regard to the financial effect of the Bill. Expenses of the Bill are to be defrayed out of moneys provided by Tynwald and fees shall form part of the general revenue of the Island. I beg to move clause 52.

Mr Braidwood: I beg to second, Mr Speaker.

Mr Karran: Vainstyr Loadreyder, can the hon. mover just clarify when he says in that provision? So where exactly is the money going to come from as far as the regulations are concerned?

The Speaker: The hon. member for Onchan, Mr Corkill, to reply.

Mr Corkill: Mr Speaker, that obviously is a policy issue which will vary as the years go by, potentially. But the situation as I understand it is that in fact the costs of these, where the money actually flows as it were, will be stated in these regulations which are still to come to Tynwald.

Now, certainly my view is that quite a lot of regulatory issues should be self-funding by the industry which it is regulating (**A Member:** Hear, hear.) and that certainly is the policy, but

we have to acknowledge from time to time that that does not actually happen and that the taxpayer does step in from time to time. We know that as the existing situation and I would guess that that policy is likely to continue. I beg to move clause 52.

The Speaker: The motion, hon. members, is that clause 52 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clauses 53 and 54, sir.

Mr Corkill: Mr Speaker, clause 53 provides definitions for the principal terms used in the Bill. Clause 54 provides further definitions of a number of terms used throughout the Bill. I beg to move that clauses 53 and 54 be part of the Bill.

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

The Speaker: Hon. members, the motion is that clauses 53 and 54 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 55, hon. member for Onchan.

Mr Corkill: Mr Speaker, clause 55, amendments and repeals, promulgates amendments and repeals the various pieces of legislation specified in schedules 2 and 3. Most changes are minor and inconsequential in nature but I would like to draw attention to the following paragraphs.

Schedule 2, paragraph 3 facilitates the publication of information by the authority in the context of the Insurance Act 1986.

Paragraph 5 provides for the payment of annual fees by insurance managers which was first announced to the market early in 1999 following consultation.

Paragraph 6 updates the statutory indemnity provisions in the context of the Insurance Act 1986.

Paragraph 8 updates the FSC Commission's disclosure gateway to the authority.

Paragraph 9 updates the statutory indemnity provisions in the context of the Insurance Intermediaries (General Business) Act 1996. I beg to move clause 55.

Mr Braidwood: I beg to second, Mr Speaker.

The Speaker: Hon. members, the motion is that clause 55 and schedules 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. And our final clause, hon. member for Onchan, Mr Corkill.

Mr Corkill: Mr Speaker, clause 56 clarifies that the short title of this legislation is the Retirement Benefits Schemes Act 2000. The term 'retirement benefits' has been used in the title rather than 'pensions' as retirement benefits is believed to be a more up-to-date description. This clause does also empower the Treasury to make appointed day orders and transitional provisions concerned with the operation of the Bill and that is normal, so I would thank hon. members for their consideration and beg to move clause 56.

Mr Braidwood: I beg to second, Mr Speaker.

The Speaker: Hon. members, the motion is that clause 56 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 Retirement Benefits Schemes Bill 2000, hon. members,

and I think it is an appropriate time at which to adjourn. The House will sit again at 2.30 this afternoon. Thank you.

The House adjourned at 1.05 p.m.

Police (Amendment) Bill – Clauses Considered

The Speaker: Hon. members, we have reached item 15 on our order paper, the Police (Amendment) Bill for consideration of clauses. Clause 1, I call upon the hon. member for West Douglas, Mr Shimmin.

Mr Shimmin: Thank you, Mr Speaker. At the second reading last week a number of members raised questions and queries, some of which were answered last week. I will attempt to clarify those positions during the reading of the clauses. However, much of the discussion last week focused upon the desirability of having a future Chief Constable coming through either through the ranks or from an Isle of Man background. I believe that enough has been said at the last reading that that is a desire which all of us would aspire to, and I believe this legislation does in no way damage the possibility or the prospects of that happening. (**A Member:** Hear, hear.)

Moving on then to clause 1, if I may, this clause replaces section 2 of the Police Act 1993, which deals with the appointment, tenure of office and removal of the Chief Constable.

Section 2(1) requires the department - that is, the Department of Home Affairs - to appoint a Chief Constable, and before doing so it must consult the Council of Ministers. This is no change to the existing legislation.

Section 2(2) further requires the department to advertise the job, to interview selected applicants, having consulted the Council of Ministers on the short list, and to consider the views of the Council of Ministers before making an appointment. Once again, this is no change.

A new provision is appearing in section 2(3), which enables the department to make an appointment for a fixed term.

Section 2(4) is also a new provision which enables the department to make an appointment of a person seconded by a UK police force. The terms of such a secondment must be agreed with the UK police authority and the person concerned, and approved by the Council of Ministers and/or in any case subject to subsections (5) to (9) below.

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

Section 2(6) requires the department, before enacting under subsection (5), to give him or her an opportunity to make representations and consider those representations. If it does decide to dismiss him or her or to require them to resign it must give 28 days' advance notice. Apart from this reference to requirement to resign there is no change.

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

Subsection (8) requires the Council of Ministers, in the case of an appeal, to appoint a person to hold an inquiry, which is no change; and indeed in subsection (9) it requires Council to consider the report of the inquiry before giving its consent under subsection (7), which is no change.

There was some discussion at the second reading regarding the reason for requiring the Chief Constable to resign. We believe in the department this is a useful piece of enabling legislation to allow for all eventualities. This is seen as being useful and we would ask hon. members to support it.

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

Mr Bell: I beg to second and reserve my remarks, Mr Speaker.

Mr Karran: Vainstyr Loayreyder, I have got two points. One point is that, talking to the clause in general, I am glad to see this here today. As a former member of the Department of Home Affairs I am disappointed that it took so long to resolve the issue as far as the previous incumbent as far as the Chief Constable is concerned. What does sadden me is that it did take so long. When I think of the scandalous way that the department was left impotent, as a former member of the Home Affairs Department I do hope that this clause will resolve the issue in future and maybe we will never see the sort of situation that we saw up to recent times in the police force.

The second point: I am quite happy to have gone into more details now that the press are not here, but I do think that it is sad that this was not brought about a lot sooner. As a person whose demise from the Department of Home Affairs was because of this and the lack of accountability of the person in that thing, I shall support the clause and I hope that it is watertight that we will never end up as we were when I was on the Department of Home Affairs as a member of the department with the minister at that time.

On the issue of subsection (4), I do not see why we need to have it in primary law that we have to second a member from the police force of the United Kingdom. I cannot understand the logic. If ever there is the mainland mentality, then this is it, in my opinion. Fortunately there is an amendment with you, Vainstyr Loayreyder, as I believe that this is wrong. I would like the hon. mover to clarify in his summing up why we have to put in primary law that we have to be tied to a police force of the United Kingdom. I just think it demeans this House; it demeans the nation that somehow we have got to get a policeman on secondment and it has to be from a real force in the United Kingdom, and I do think that that is wrong. I think that that has been put in by the adjacent isle at the Home Office and not by the department concerned, and I believe that when we are talking about sensible and responsible government primary law should be there to give the maximum flexibility. We had a situation in this hon. House where there was an ex-Manx individual who did not serve in the United Kingdom, but could have been well suited, 20 years ago (*Laughter*), to be seconded and I just think that legislation should be as flexible as possible. I understand the safeguards, but I do think that this House should not support that it has to be a member from a police force in the United Kingdom. Our arrangements might change.

But on the whole I support this clause. I am glad to see it is here; I am delighted. Some of us have acted responsibly by keeping our mouths shut for a long time over this affair, but I do feel that we should not be putting in primary law that we have to second a Chief Constable

from the United Kingdom. I think that is wrong and I hope this House has got the maturity to say that they agree that it should not be in primary law. Obviously, if they decide they want to do it, then that is up to the Department of Home Affairs. I beg to move:

The Speaker: Hon. members, in order to make it quite plain, I have an amendment signed by the hon. member, Mr Karran, which is to omit (4) and it reads:

'In the substituted section 2 of the Police Act 1993, omit subsection (4) and renumber subsequent subsections and the consequential cross-references within them.'

Mr Brown: Is he formally moving that?

The Speaker: He has formally moved; it has not been seconded yet. I just read it out so that the hon. House knows what the situation is. Does any other hon. member wish to speak? The hon. member for Peel.

Mrs Hannan: Thank you, Vainstyr Loayreyder. I am not absolutely sure that it would have much meaning without this in; however, I will second it to allow a vote to be taken on it.

I have a concern, but my concern is that it does not state what particular standing someone appointed as a Chief Constable should be. 'The Department may,' - this is subsection (3) - 'with the approval of the Council of Ministers, appoint a person to be Chief Constable for a fixed term.' And then it goes on to say '... appoint as Chief Constable a member of a police force in the United Kingdom seconded for the purpose. . .'

Now, obviously the department and the Council of Ministers knows what particular standard that person is going to be, but it concerns me that we have it implicit within the legislation that that person can be seconded for a time, but not the standard of person that the force here or the government here would be looking to head the force, and therefore I would not agree with some of the comments made by the member for Onchan.

I can understand his concern that it would appear - and I only say 'appear', because it says 'Without prejudice to subsection (3), the Department may appoint as Chief Constable a member of a police force. . . ' so they do not have to. I think the mover of this legislation suggested that we can have our own Chief Constable in the future and that it does not prevent that, but it does have an inference within the legislation that it has to be somebody . . . It does not have to be, but it is just a suggestion that it has to be somebody from the United Kingdom, and that is the part that concerns me. I think in the primary legislation we should be saying, 'of this particular standard' and then we can say that our own people can aspire to that particular standard to be considered, not that they would get it automatically or anything like that, but they could at least apply.

I believe at the moment that none of our existing officers are to that standard that they can apply, and I think this is the point that concerns me, and for bringing in legislation I think we should make it quite clear that we are aspiring to the standards whereby someone in our police force can get to the standard of and to be considered for interview for a Chief Constable. To my mind it does not actually say that, although the mover says nothing in this is going to prevent that. It is then left to the Department of Home Affairs to provide courses and to provide everything, but it would still be the feeling, I would have thought, by future politicians even, as the member for Onchan mentioned, that there will be this preconceived idea that they

must be from the UK to be Chief Constables, and I think that is rather sad when we are bringing forward this legislation and we have waited some time for it.

I support the fixed period of time because I think that for the fixed period of time we are not taking on someone to give us five or ten years' service and then find that they are staying on and we cannot get rid of them, so from that point of view I think the legislation is helpful, but it just concerns me that it gives the perception that somebody works through the service in the UK and then we will consider them, even if it is secondment for a short term.

Mr Gilbey: Mr Speaker, I honestly think the two hon. members who have just spoken are mistaken and misunderstood this. First of all, nowhere does it refer to any standards of efficiency or competence, quite rightly, and if you read 1(2) it says 'Upon any vacancy occurring in the office of Chief Constable, the Department shall. . .' - it does not say they may; it 'shall' means they have to - advertise the vacancy, interview applicants and consider the views of the Council of Ministers. So it is quite clear they have got to advertise the post and interview applicants and make an appointment, and (3) merely says that the appointment may be for a fixed term. It need not be, but it can be. And then it says under (4): 'Without prejudice to subsection (3),' - which is talking about a fixed term - they may appoint 'a member of a police force' seconded from the UK.' It only gives them power to have a seconded person, perhaps in some particular situation where they might even be waiting for a Manx person to get the right qualifications and have a temporary secondment from the adjacent isles. I can see nothing wrong in this at all, Chief Minister, and I honestly think that those who have fears are quite mistaken. I can assure them and you, Mr Speaker, that I strongly support the idea of training up a Manx person for this job and I see nothing in this Bill that would in any way be detrimental to that.

The Speaker: I call upon the hon. member for Onchan to reply to the amendment.

Mr Karran: Vainstyr Loayreyder, the point is that the way the subsection is drafted at the present time there is not the flexibility for the secondment of somebody; it has to be a member of a police force in the United Kingdom. I personally feel that that is wrong. When I tried to get the Attorney-General's department to look at this I was informed, 'Oh, it is the Home Office that wants this.' Now, as far as I am concerned, that is not good enough, and I would hope hon. members would not support the clause as printed at the present time, and if there has to be an amendment drawn up at a later date it should be with the flexibility to allow that we should be able to second from wherever the democratically elected government of the Isle of Man wants it to be. It is quite fundamentally wrong, in my opinion, that we should allow primary legislation to be tied up as far as this is concerned, and I hope that hon. members will support my amendment. With our standing orders, if something else needs to be done then there will be an opportunity, but at the present time I think this hon. House, if it does not support my amendment, apart from demeaning this House and demeaning the whole principle of primary legislation, is not putting in the flexibility that should be there in primary law. I so move and I hope this hon. House will support my amendment, because it should be supported.

The Speaker: Hon. member for Douglas West to reply to the debate.

Mr Shimmin: Thank you, Mr Speaker. Not surprisingly, hon. members, I would urge you not to support this amendment. It is somewhat difficult with not having it in front of us; however, as I understand it, to remove subsection (4) would restrict the powers of the

Department of Home Affairs to second under any circumstances. I believe that the member resuming his seat has clearly stated the problems in the past; he has been on record with some of those comments previously and is now blurring that issue with a false attempt to try and remove the United Kingdom from this piece of legislation.

It is a personal view of mine that parts of this clause will never be used. I would hope we are never in a position where we would have to force a Chief Constable to resign. I would hope that we are never in a position where we would have to second from the United Kingdom. However, it is enabling legislation to allow the department to operate successfully as a department running a police service with a Chief Constable.

I would urge members to consider: were any unforeseen eventuality to take place within the next few years, before we have had an opportunity to train up our own people and gain experience for those officers off-Island, we would be left in the position once again of not having adequately trained people in the most senior rank of the police service. I hope that this secondment will never be used, but it is necessary to have it in there in order to be able to quickly move to replace, if necessary.

I believe fundamentally that the whole drive within the police service, the police advisory groups, certainly the department at present, is to ensure the training goes into our own officers to facilitate them to take the senior posts in the future, but we are some years off that; therefore, in the interim period of time it would be negligent, I would suggest, of the department not to have this flexibility within the primary legislation. Therefore, Mr Speaker, I would urge members to reject the amendment and to support the motion as written.

The Speaker: Hon. members, the motion is that clause 1 stand part of the Bill. To that I have an amendment as moved by the hon. member for Onchan, Mr Karran. Before I put it to the vote, hon. members, I will again read the amendment to you so that you are plain and clear on what it is. 'In the substituted section 2 of the Police Act 1993 omit subsection (4) and renumber subsequent subsections and the consequential cross-references within them.' It omits subsection (4). Hon. members, the motion is that clause 1 stand part of the Bill. To that we have the amendment which I have just read out in the name of Mr Karran. Will those in favour of the amendment please say aye; against, no.

A division was called for and voting resulted as follows:

For: Mrs Hannan, Mr Karran and the Speaker - 3

Against: Messrs Gilbey, Cannan, Quine, Rodan, North, Sir Miles Walker, Mrs Crowe, Messrs Brown, Houghton, Henderson, Cretney, Duggan, Braidwood, Shimmin, Downie, Singer, Bell, Corkill, Cannell and Gelling - 20

The Speaker: With 20 votes having been cast against and 3 votes for, the amendment fails to carry.

I will therefore put clause 1 as printed on your green paper. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Clause 2, hon. member for West Douglas.

Mr Shimmin: Thank you, Mr Speaker. This clause amends section 3 of the Police Act 1993 so as to limit the Chief Constable's right of direct access to the Council of Ministers to

those matters of national security or public order, not matters affecting the police force. At present he has the right of direct access to both the department and the Council of Ministers on all those matters. I beg to move, sir.

Mr Duggan: I beg to second, sir.

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, the hon. member for West Douglas.

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

Sub-clause (1) provides that the department's general duty is to maintain an efficient and effective police force, and this replaces the previous wording of 'adequate and effective.'

Sub-clause (2) substitutes section 4 and inserts a new section 4A in the Police Act 1993. Section 4(1) gives the department a new duty to decide on the policies, objectives and priorities of the police and to produce an annual plan setting them out. It must consult the Chief Constable, the new Police Advisory Group and the Police Consultative Forum, which we will come to in clause 5, sir.

Section 4(2) gives the department powers to give directions to the Chief Constable and those bodies and to obtain information from them in order to decide on its policies and to secure their achievement. This is a new provision, although the department can at present require reports from the Chief Constable.

Section 4(3) limits the department's powers to give directions to the Chief Constable as to the exercise of his or her functions. It may not do so in respect of operational matters referred to as the discipline and disposition of the police force. It was at this stage last week where there was some discussion regarding the operational independence of the police service.

It is paramount within the existing department, we believe throughout this legislation, that the operational independence of the police is of paramount importance and must be safeguarded by all politicians. There was a suggestion which was looked at with regard to incorporating within the primary legislation words such as 'operational independence.' However, on taking legal advice from the legislative draftsman in the Attorney-General's Chambers it was stated by that legal advice that, rather than clarifying this position, it would actually make it more complicated for the legal interpretation. The department, therefore, has gone along with that legal advice; however, it is worth reassuring everybody at this stage that the operational independence still remains with the Chief Constable and nothing within this legislation will impose any provisions or powers upon him.

Moving, then, to section 4(4), it enables the Chief Constable, if he thinks it is unnecessary or not to be disclosed, to refuse to comply with a request by the department for information unless it is confirmed by the Council of Ministers. This is no change to the existing position. Section 4A requires the Chief Constable to give the department an annual report,

which is to be laid before Tynwald. Apart from altering the timing from the year 31st December to 31st March, there is no change. Mr Speaker, I beg to move clause 3 stand part of the Bill.

Mr Bell: Mr Speaker, I beg to second, and in doing so I would just like to take the opportunity to move a short amendment to clause 3. This Bill has been drafted as a result of work and research done by a sub-committee of the Council of Ministers and my department, the Department of Home Affairs. All through that, the view has been that the annual report by the Chief Constable should be not only laid before Tynwald but debated by Tynwald as well, or at least that Tynwald should have the opportunity to debate it if they wish to do so. As hon. members are aware, that is currently my policy, and the Chief Constable's report was for the first time debated, or at least laid before Tynwald for debate (*Interjection and laughter*) - it was your choice not to debate it - last year.

The amendment, though, simply alters the current wording and this, I have to apologise, was an oversight on our department's part when it was drafted. Whereby the Bill before you states that the Chief Constable's report should be laid before Tynwald, the amendment in effect states that the department shall cause a copy of the report to be laid before Tynwald and the Minister for Home Affairs shall, as soon as may be, move a resolution that the report be received by Tynwald. This, as I say, merely gives the members of Tynwald the opportunity, if they so wish, to make comment on the performance of the police and the priorities and targets of the police as reflected in the Chief Constables report annually and I believe it would not only be very beneficial, not only to members of the House to have this opportunity, but also it would be very helpful for my department and the police themselves to know what the political view is at any particular time on the performance of the police. So I beg to move this small amendment, Mr Speaker:

Page 4, line 27; for the new section 4A substitute -

"4A. Annual report by Chief Constable

(1) The Chief Constable shall, as soon as possible after the 31st March in each year, submit to the Department a general report in writing on the policing of the Island during the year ending on that date.

(2) The Department shall cause a copy of the report to be laid before Tynwald, and the Minister for Home Affairs shall, as soon as may be, move a resolution that the report be received by Tynwald."

Mr Duggan: I beg to second, Mr Speaker.

Mr Cretney: I would just like to support the amendment which has been proposed by the Minister for Home Affairs. It seems to me entirely logical because, for a period of time in the past, there was limited discussion on reports and inquiries which were carried out into the police because, for whatever reason, ministers of the day did not wish, it appeared, for there to be such open discussion. I believe it is very healthy and very important that there should be (**A Member:** Hear, hear.) and it is a matter which is of importance to us all, and so I am fully in support of this matter. I think possibly the reason it was not discussed in depth at this first opportunity which was provided by the Minister for Home Affairs and his department was that the new Chief Constable was newly in post. I think, come next year, come some of the things which have been spoken of since his appointment, it will provide an opportunity next year and

into the future, if this amendment is supported, for us to rightly have input via Tynwald into this important matter.

Mr Brown: Mr Speaker, I was on the committee the hon. member for Ramsey, the Minister for Home Affairs, was referring to, and certainly very much in our mind was this view that we should have the opportunity for Tynwald to positively debate the report from the Chief Constable. I think it is fair to say that we should not forget that it is only since about 1985, I think it is, that the Isle of Man Government has been appointing the Chief Constable of the Isle of Man. Prior to that date the circumstances were somewhat different and of course we have before us this Police (Amendment) Bill, which is amending the 1991 Act, which in itself was a major change in the powers and control and relationship between the Manx Government and the Chief Constable, and I think this Bill is actually tidying up some things we have learnt as time has gone on where we think we are deficient. I think that the Chief Constable's report has to some degree been allowed to be relatively politically dormant in that it was laid before Tynwald and it was just left, and what happened is, I think to some degree out of frustration, as the year has gone on, when things have come to light members have ended up coming to Tynwald either questioning or raising issues through a motion, and it really is not the right way forward. I think, on such an important issue where the Chief Constable (*A siren was heard.*) -

Mr Cannan: The constable is coming now! (*Laughter*)

Mr Brown: - rightly has independence in terms of his responsibilities, that they are covered under the legislation. Nevertheless, the Chief Constable and the performance of his force will always be a matter of considerable public interest, and I think it is only right that the Minister for Home Affairs now and in the future should have to actively raise the issue in Tynwald, and therefore I welcome the amendment which says that as soon as may be the minister will then move a resolution in Tynwald. I think that that is the right way because it will give the publicly elected representatives in the Keys and those who are in the Council the opportunity to raise issues that may be of concern, and I have to say that if during those debates there is very little response from members in terms of the debate that is put before them, then that may well be because people are content with the way the policing of the Isle of Man is going, but at least, if they have the opportunity to debate it, then it is there and I think putting it in statute is the right way forward and therefore I welcome the amendment and support it wholly.

Mr Karran: Vainstyr Loayreyder, I totally agree with the amendment from Mr Bell. I think it improves the situation greatly and I will have no problems with that or the clause, but on sub-clause (3), 'No direction may be given to the Chief Constable under subsection (2)(a) with respect to the discipline or the disposition of the police force' - really, it would be interesting to know what the legal interpretation is on this, because at the end of the day I think we will find that we have very little more accountability than we have. At least the other clauses now start to put us on the right footing, but with this sub-clause in I think that is going to be the biggest get-out for any sort of accountability with the Chief Constable. I know that my points will fall on deaf ears in this hon. House, but the only important thing is the fact the record will show, as it has shown in the past when I have raised these legitimate concerns and they have been ignored.

The Speaker: I call upon the hon. member for Ramsey, if he wishes to reply to the amendment.

Mr Bell: No, I have nothing further to add, Mr Speaker.

The Speaker: Hon. member for Douglas West, Mr Shimmin.

Mr Shimmin: Thank you, Mr Speaker. Obviously I am strongly in support of this amendment as well. I believe it benefits and enhances the opportunity for us to debate such issues.

With regard to the legal interpretation, if I reiterate what was stated, I believe, at the second reading last week - this is from the legislative draftsman regarding the operational independence - it says, 'I must advise that the proposed addition to the new section 4(2)(a) would not make the legislation any clearer - quite the contrary, in fact, in view of section 4, sub-clause (3). The lack of any consensus as to what are and what are not operational matters has soured relations between police authorities and chief officers of police for many years. It therefore means that we are attempting to avoid any uncertainty with regard to where the operational independence remains. It is quite clearly in the hands of the Chief Constable and any politician would have to try and argue against that. I believe in primary legislation the legal advice is appropriate; it is in no way meant to try and give too great powers to the Chief Constable, nor is it to take those powers away.' We believe it is the right balance, sir.

The Speaker: Hon. members, the motion is that clause 3 stand part of the Bill. To that we have the amendment circulated to you on a white paper in the name of the member for Ramsey, Mr Bell. Will those in favour of the amendment please say aye; against, no. The ayes have it. The ayes have it.

Clause 3 as amended, hon. members. 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 Douglas West.

Mr Shimmin: Thank you, Mr Speaker. Clause 4 gives the department new powers to make regulations for the special constabulary.

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

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

There were some questions regarding special constables last week. I can assure the House that the department recognises the importance of these new regulations. The powers within this Bill give us the umbrella under which we can operate all regulations for the special constables.

The member for North Douglas, Mr Houghton, raised questions regarding types of insurance policies for special constables whilst injured on duty. I can assure him that this is

ongoing, it is in hand and we are very aware of the circumstances. He also asked about the training and the accoutrements being carried by special constables now being the same as the regular force. I can assure members that all special constables have the same training as the regular force and they do have full cover for issues of allegations of misuse and will be defended by the department.

The other issues regarding their employment legislation is another matter which is in hand, and under the new regulations we would bring in something to clarify that circumstance. This issue is being dealt with in another place across the water and we are looking towards gaining from their experience of looking at the whole issue of special constables, not then to imitate totally but to make sure that we have left no omissions, so it is an important issue and the force do recognise the value of the special constabulary. This clause, we believe, will help that process. Thank you, Mr Speaker. I beg to move.

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.

Mr Karran: Does it not need to be seconded?

Mr Brown: I beg to second and reserve my remarks.

The Speaker: We did need a seconder, you are quite right, hon. member. I was progressing quicker than I thought I was! That gives the opportunity for the hon. member for Onchan to speak to it if he wishes. The hon. member for Castletown has seconded.

Mr Karran: Vainstyr Loayreyder, what I would just like to ask is this: there have been a number of legitimate issues raised about insurance cover for special constables, and obviously you would not want that to be put into primary law. What I would be interested to know is, with the issue of health and safety, would special constables be covered by health and safety and the responsibility of health and safety legislation as far as the department is concerned? Would they be responsible for health and safety legislation as any other body that was dealing with them? That is the point I would like to ask because I think it is important. We are talking about volunteers who do get a nominal fee and I do think that it would be interesting to know what their legal standing is as far as health and safety is concerned. Also, hopefully there would be some sort of recognition that in these days of violent behaviour when they do do some regulations obviously they would be covered for insurance purposes, because I do think, whilst it should not be in the Bill, I think it should be highlighted, it is a very valid point and I think it would do us no good if we did have a situation where somebody got seriously injured, permanently disabled and then we find out there is no cover as far as that is concerned.

Mr Houghton: Mr Speaker, I would like to thank the hon. mover, Mr Shimmin, for his points of clarification, and I am quite sure that everything that is asked by the hon. member for Onchan will be answered in the hon. minister's moving of the secondary legislation in due course, sir. Thank you.

The Speaker: Now, hon. member for Douglas West, maybe you can reply to that debate.

Mr Shimmin: Thank you, Mr Speaker. I would need to impress upon the Court: let nobody go away from this House believing that the specials are not insured; the specials are covered under the Isle of Man Government insurance policy, which does cover bodily injury

caused by violence, accidentally and death, total permanent loss of sight - a whole raft because they are actually employees of the department, or at least covered by that under their payment of 10p an hour. They are also, therefore, obliged to comply with all health and safety legislation and regulation, and therefore the issue is one of in clarifying their role as specials, what cover they get insurance, they are already covered; we are looking at seeing whether that is adequate, but I do not wish anybody to feel that they are not actually covered at present. They already are, sir.

Mr Karran: What about health and safety?

The Speaker: Now hon. members, we put clause 4 to this hon. House. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 5, hon. member.

Mr Shimmin: Mr Speaker, this clause provides for the establishment of two new advisory bodies, a Police Advisory Group and a Police Consultative Forum, to replace the present Police Consultative Committee. It substitutes a new section 18 in the Police Act 1993. Section 18(1) requires the department to establish a Police Advisory Group, which will advise on the efficiency and effectiveness - that is, on the internal aspects of the police force - and a Police Consultative Forum, which will be a sounding board for public opinion on policing and crime prevention.

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

Section 18(3) requires the department to consult with those bodies where it thinks fit and requires it to have regard to their advice whether or not it is asked for that advice.

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

Mr Bell: I beg to second and reserve my remarks, Mr Speaker.

Mr Karran: Vainstyr Loayreyder, I move this amendment because I just feel that it is not healthy that the Council of Ministers shall consider appropriate persons and that it is important that there should be some sort of cross-section of representation throughout the community. I personally feel that this is the sort of way it should be going, in my opinion, as far as the advisory groups are concerned, because otherwise it can become very clandestine and very unhealthy. I am open to this hon. House suggesting other suitable organisations but I do feel that at the present time that we should be trying to make sure that we can guarantee to get people from different walks of life on this body, and I do hope that somebody will second this proposal, because otherwise what we are going to have is a very unhealthy situation where you have got to come from the Council of Ministers, and I do think that we are talking about something that we are very keen on not politicising, and this group, in my opinion, should have some representation from different walks of life. I would be interested to know what the hon. mover has to say on this point and I do hope that someone seconds it.

The Speaker: I call upon the hon. member for Douglas West.

Mr Shimmin: Yes, Mr Speaker. I understand the sincerity of the person who has just spoken although there is no amendment there. I do believe the amendment would have been unhelpful in being specific on those organisations, although I can understand there is merit in

trying to identify them. I believe that the department will take his comments on board and I shall refer to him in the future regarding the reasons for the establishment of the current set up. I beg to move, sir.

The Speaker: Hon. members, the motion is that clause 5 stand part of the Bill. Will those in favour please say aye; against, no.

A division was called for and voting resulted as follows:

For: Messrs Gilbey, Cannan, Quine, Rodan, North, Sir Miles Walker, Mrs Crowe, Messrs. Brown, Houghton, Henderson, Cretney, Duggan, Braidwood, Shimmin, Downie, Mrs Hannan, Messrs Singer, Bell, Corkill, Cannell, Gelling and the Speaker - 22

Against: Mr Karran - 1

The Speaker: Hon. members, 22 votes being cast for and 1 vote being cast against, the clause stands as printed in the green Bill. Clause 6, hon. member for Douglas West.

Mr Shimmin: Thank you, Mr Speaker. In moving the final clause of this Bill, I would thank hon. members for their contributions over the last two weeks. It was stated last week that this, although a short Bill, is a very important one, so I am grateful for the support hon. members have given thus far.

Clause 6 gives the Bill its short title and provides for its coming into force on a day or days to be appointed. I beg to move, sir.

Mr Bell: I beg to second, Mr Speaker.

The Speaker: The motion, hon. members, 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. That concludes the deliberations of the Police (Amendment) Bill.

Agriculture (Miscellaneous Provisions) Bill – Clauses Considered

The Speaker: We turn now to the Agriculture (Miscellaneous Provisions) Bill at item 16 on your order paper, again for consideration of clauses. I call upon the hon. member for Douglas West, this time Mr Downie, to move clause 1.

Mr Downie: Thank you, Mr Speaker, hon. members. The Agriculture (Miscellaneous Provisions) Bill 2000 introduces amendments which will affect 10 pieces of legislation in total in one way or another, the majority of them in very minor ways.

Clause 1 amends sections 2 and 3 and inserts a new section 3A in the Agricultural Holdings Act 1969. Section 3 of the 1969 Act gives considerable protection to tenants of agricultural holdings when a fixed term tenancy expires. In such case the effect is that the tenant normally stays in possession, although the terms and conditions of the tenancy are usually renegotiated or, in the absence of agreement, varied by the land court. The amendments and new section will have the effect of enabling a tenancy of bare agricultural land for a term of between one and five years to expire at the end of its term without giving the tenant further security of tenure.

The new provisions will apply only if certain conditions are complied with. Firstly, the arrangement must be agreed by the proposed tenant; secondly, the landlord and the tenant must jointly notify the Department of Agriculture, Fisheries and Forestry; and thirdly, the

department must acknowledge receipt of the notification. Because these conditions must be complied with before a tenancy is granted, they cannot apply to tenancies entered into before the commencement of this Bill. Where the new provisions are to apply to a tenancy the contract must contain some indication of that fact. It is important to stress that all of the present protection is retained for existing long-term tenancies. That was a long sought-for and much needed exercise and gives tenants the protection of statutory tenancies in relation to farms with all their dwellings and outbuildings. However, the short to mid-term problem has been recognised by the industry for a number of years and consultation has taken place with the Manx National Farmers Union - and I understand this has been supported by a letter which has been circulated by Mr Speaker - and the Isle of Man Agricultural Society also gives its support to arrive at this formula, which limits the non-statutory tenancy agreements to periods from one to five years and only in respect of bare agricultural land.

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

Mr Henderson: Mr Speaker, I beg to second and reserve my remarks.

Mr Cannan: Mr Speaker, as I said in the second reading, this particular clause is very well received in the agricultural community, and all I can say is that the sooner this legislation goes through the normal legislative channels and Royal Assent and appointed day order given, the better it is and more beneficial it will be to the agricultural community, and I hope the minister will see that its passage through to appointed day order will be expedited as soon as possible.

The Speaker: I call upon the hon. member for Douglas West to reply.

Mr Downie: Thank you, Mr Speaker. I would just like to thank Mr Cannan for his constructive remarks and beg to move that clause 1 stand part of the Bill.

The Speaker: The motion, then, hon. members, 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. Clause 2.

Mr Downie: Clause 2, hon. members, makes a number of amendments to the Wildlife Act 1990 and is intended to bring further protection to birds in areas of special protection. Consultation has taken place with the landowners associated with these areas of special protection.

There are three provisions for the protection of birds introduced by clause 2(a). The definition of species to be protected under orders made by the department in respect of an area of special protection is extended to game birds and poultry as well as other wild birds indicated in sub-paragraph (i). The definition of an authorised person who may kill birds at such site is made more stringent, depending on written authority from the department or the Isle of Man Water Authority, who may be the landowners, and this is indicated in sub-paragraph (ii). Any bird sanctuary set up under the Wild Birds Protection Act 1932 is brought within the protective provisions of the 1990 Act as an area of special protection for which the department may make orders, and this is indicated in sub-paragraph (iii). There is an existing requirement that any persons who keep or have in their possession any bird which is given in the list in schedule 4 of the Act have to be registered.

Clause 2(b) means that the department may charge a fee. The fee will be set under the Fees and Duties Act 1989 and in an order made by Tynwald, so members will have an

opportunity both to be aware of and to comment on the fees to be charged. Section 16 of the Wildlife Act provides that some sections of the Act do not apply in certain limited circumstances, and then only provided they are done under and in accordance with the terms of licence granted by the department. The present wording also provides a similar general derogation from orders made under section 3 of the Act in relation to areas of a special protection for birds. Such areas may only be designated with the full permission of all the owners and occupiers of the area.

Sub-clause (c) of clause 2 limits that derogation to anything which may be done by the owners or occupiers of land or a person authorised by them recognising their interest but again subject to the terms and conditions of a licence granted by the department.

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

Mr Henderson: I beg to second and reserve my remarks.

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 Downie: Clause 3, hon. members, deals with fees and charges. There are some pieces of primary legislation where fees and charges were included as part of the Act. This means that the primary legislation has to be amended every time, which is not appropriate for the minor nature of what is involved. It would be far less cumbersome to give the department to make orders subject to the approval of Tynwald, and that is exactly what clause 3 does. As in the case of a registration fee for keeping wild birds as provided in clause 2, hon. members would continue to exercise their power of approval and comment on such matters without its taking so much time which might usefully be given to other matters.

First of all, sub-clause (1) of clause 3, the Pinfolds Act 1963 - the amendment gives the department an enabling power to make an order setting fees for pinfolding animals subject to the approval of Tynwald; secondly, sub-clause (2) of clause 3, the Animal Boarding Establishments (Isle of Man) Act 1973 - the amendment provides that the fee, instead of being set within the primary legislation, would be set by an order of the Treasury under the Fees and Duties Act 1989, which again would be subject to Tynwald approval; thirdly, as the Fees and Duties Act 1989 is being used to amend the Animal Boarding Establishments Act, a similar provision is here made in sub-clause (3)(a) of clause 3 in respect of the Breeding of Cats and Dogs Act 1981. This means that the appropriate fees can be set under a Treasury order and once again subject to the approval of Tynwald Court.

Just to sum up, the department will make its own orders to set fees under the Pinfolds Act and the Treasury will make orders to set fees under the Animal Boarding Establishments Act and the Breeding of Dogs and Cats Act. All such orders once again are subject to Tynwald approval. In sub-clause (3)(b) and sub-clauses (4) and (5) the legislative draftsman includes consequential amendments in connection with the provisions already made. In sub-clause (4) there is a reference to the Riding Establishments (Inspections) Act 1968, which is not otherwise referred to in this clause. This has been the subject of lengthy discussions between the department and the Department of Local Government and the Environment, particularly with regard to the health and safety executive. Alternative arrangements are being made in regard to fees for inspection of riding establishments and removal of the particular reference

cited by the legislative draftsman is part of that ongoing process. Mr Speaker, I beg to move that clause 3 stand part of the Bill.

The Speaker: Hon. member for Douglas North - the hon. member for Ramsey, Mr Singer.

Mr Singer: It is a double act, Mr Speaker! I beg to second and reserve my remarks.

Mr Karran: Vainstyr Loayreyder, it is nice to see that there is a different departmental policy from this department than the previous department where we are talking about getting the flexibility not putting fees in primary law and having the situation where we are going to go for regulations in Tynwald, and I think that is a good idea. It is just a shame that we allowed ourselves to be tied up with primary law in a previous piece of legislation in the fact that we have got to second somebody from the United Kingdom police force. It would be nice to see some sort of consistency in this hon. House. This idea of just nodding things through does concern me.

The Speaker: Do you wish to reply, sir?

Mr Downie: Just to thank the hon. member for Onchan, Mr Karran, for his comments. Those of you who know me - I have always thought that any of these orders should be finally approved by Tynwald and I think it is a positive step and it gives the elected members of this House in Tynwald Court the opportunity to make comment as and when they feel fit. Mr Speaker, I beg to move.

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.

Clause 4.

Mr Downie: Clause 4, hon. members, deals with enforcement related to EU-derogated products. The Agricultural Marketing Act 1934 permits import restrictions to be imposed. In certain circumstances there are products which it is not permitted to import into the Island. Such restrictions would arise where they were approved under arrangements agreed with the European Community. However, there have been no powers of examination and entry by officers to ensure compliance with restrictions. Clause 4 is an amendment to provide powers of examination and entry and also provides an offence and penalty for obstructing an officer carrying out such duties. Where agricultural products are imported in breach of restrictions they will be liable to forfeiture. Members will see that the powers are fully circumscribed and are consistent with powers to enter and examine produce already embodied elsewhere under the Act in respect of other circumstances. It has been an anomaly that there were no such powers in respect of products which fall into this category.

Mr Speaker, I beg to move that clause 4 stands part of the Bill.

Mr Henderson: Mr Speaker, I beg to second and reserve my remarks.

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. Clauses 5 and 6, sir.

Mr Downie: Thank you, Mr Speaker. Clause 5 deals with the retention of catches on board a fishing vessel. Clause 5(1) clarifies the intention of the Sea-Fisheries Act 1971. The

present wording enables bye-laws to be made in relation to taking and killing sea fish. Some species which a fisherman does not intend to take may die before they can be returned to the sea, whilst other species such as scallops may live out of water for up to three days. Fishermen may take and kill fish which are not retained but it would not be appropriate to take legal action. On the other hand, a person may attempt to retain live on board undersized or unseasonable scallops. For the avoidance of doubt, clarification will underline the department's positive approach in dealing with scallops, which is the single most important commercial fishery prosecuted by the Isle of Man fleet. The amendment amplifies the wording concerning taking, killing, retention or carriage on board any vessel of catches as well as the landing, possession, sale, exposure of a sale or offer for sale about which bye-laws may be made. This will make it absolutely clear that taking includes the retention on board.

There is another consequential amendment in sub-clause (2), an earlier amendment to section 2(1)(b) of the Act by the Agriculture and Fisheries (Miscellaneous Provisions) Act 1998, and that is repealed as a consequential provision of the current amendment. Mr Speaker, I beg to move.

The Speaker: And clause 6, sir?

Mr Downie: Clause 6 provides for the short title and commencement and provides that the Act may be cited as the Agriculture (Miscellaneous Provisions) Act 2000.

Mr Singer: Mr Speaker, I beg to second clauses 5 and 6 and reserve my remarks.

The Speaker: Hon. members, the motion is that clauses 5 and 6 stand part of the Agriculture (Miscellaneous Provisions) Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Hon. members, that brings to a conclusion our order paper for today. I would remind the House that as a result of our deliberations this morning nominations are sought for the remaining vacancy to the Legislative Council before 5 p.m. on Friday next, the 10th March. The House will now stand adjourned until 14th March at 10 a.m. Thank you, hon. members.

The House adjourned at 3.35 p.m.