

**REPORT OF PROCEEDINGS OF  
HOUSE OF KEYS**

**Douglas, Tuesday, 18th April 2000  
at 10.00 a.m.**

Present:

The Speaker (the Hon N Q Cringle) (Rushen), (the Hon J D Q Cannan) (Michael), and the Acting Speaker (Hon A R Bell); Mr L I Singer (Ramsey); Mr R E Quine OBE (Ayre); 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); 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.*

**Leave of Absence**

**The Speaker:** Hon. members, the member for Douglas West, Mr Shimmin, has leave of absence this morning.

**European Union – Unfair Tax Competition – Question by Mr Henderson**

**The Speaker:** We turn then to our order paper and item 1 and I call upon the member for Douglas North, Mr Henderson.

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

*Are you entirely satisfied with the answer given in the House of Lords on Wednesday 5th April 2000 by the Parliamentary Under-Secretary of State in the Home Office to the question tabled by Lord Waddington asking “whether Her Majesty’s Government propose to make the Channel Islands modify or dismantle their tax arrangements to comply with the demands of the European Union’s Code of Conduct on ‘unfair tax competition’ and, if so, how.”*

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

**Mr Gelling:** Yes, Mr Speaker, the answer referred to contains nothing new and is entirely what we would have expected, sir.

**Mr Henderson:** Mr Speaker, is the Chief Minister satisfied, though, in the interests of this Island that when the Parliamentary Under-Secretary of State in the Home Office, Lord Bassam, refers to ‘working closely and proceeding with discussion and negotiation with the Channel Islands and the Isle of Man’, he is referring to just that and this will not be a way to interfere with our current constitutional arrangement or be interpreted as an aspect under the term ‘good government’ under which the United Kingdom can interfere in our internal affairs?

**Mr Gelling:** Well, Mr Speaker, in answer to the hon. member’s very succinct question basically I would say that the answers given by Lord Bassam were as we expected and I

thought he answered the supplementaries quite well in as much as he confirmed that the conduct is a voluntary one, it is a non-legally binding one, and basically he went on to say that it would be encouraging within the constitutional position of the islands, and I think that just was confirming what we have already got on record and basically I can assure hon. members that no approach has been made to the Isle of Man to open discussions on that particular subject at this moment.

**Mr Quine:** Does the Chief Minister see our Achilles heel as lying in the area of our constitutional relationship or does it rest with the fiscal agreements that we have, with the United Kingdom, of course?

**Mr Gelling:** Yes, Mr Speaker, again can I repeat that of course this went to the Helsinki European summit and of course it went no further, so not only is it not binding upon us but it is something that has not been agreed amongst the members at that summit. However, taking the hon. member for Ayre's question, it is very important that our constitutional position, as it is not laid down in writing, often benefits ourselves and it is true to say that in answer to one of the questions Lord Bassam said the ambiguity of it sometimes is a help, and basically I think we operate on exactly that situation, that Kilbrandon is still there, we can argue our points, but repeatedly it has been said by lords in the Lords and the Home Secretary that the constitutional position of this Island and the Channel Islands is extremely important and it is unprecedented for them to interfere in the tax provisions within this Island.

**Mr Karran:** Eaghtrane, would the Chief Minister not agree that the greatest danger to the constitutional position of this Island is in this hon. House and the attitudes within this hon. House as far as acting like a national government and not as some sort of county council of the United Kingdom and will he make further progress to make sure that members act more like a national government?

**Mr Gelling:** Mr Speaker, in a parliamentary setting it is up to members to act as they feel fit and therefore I have no control over how members act or what the hon. member is referring to, but what I can say is this, that it is amazing how certain questions in the Lords are interpreted in different islands and I would suggest that if hon. members were to care to pick up the Jersey papers they would find that out of that questioning came an extremely positive note, that they had been reassured by the answers of Lord Bassam, and I think what I am trying to say to hon. members here today is that we got what we expected from Lord Bassam and in the supplementaries I think again he did extremely well in making quite clear the position of the Home Office and the United Kingdom Government in respect to the Crown dependencies, sir.

**Mr Quine:** Accepting that our constitutional position is perhaps unclear or subject to different interpretation, the issue I was putting to the Chief Minister is, does he see pressure being applied from the point of view of our constitutional position or is it more realistic to look towards agreements which we have in place with the UK in regard to fiscal arrangements which could apply the pressure?

**The Speaker:** The Chief Minister, a similar question.

**Mr Gelling:** Yes, we are getting rather wide now, Mr Speaker, in as much as the hon. member is perhaps moving away from what is a non-binding, non-legal situation to something that we have agreements on in the United Kingdom. Now, it is fair to say that the United

Kingdom have made it quite clear that they would like an exchange of information with the Isle of Man and the Channel Islands and we have said quite clearly that it depends on what that exchange means, because there is a certain amount of exchange at the moment if there is criminal activity involved. However, we have said quite clearly that we are open to discuss our situation with agreements we have, but certainly we would rather look at existing agreements and perhaps have a look at those rather than open a discussion which is going to request us to be totally transparent in the affairs of our Island, sir.

**The Speaker:** We return to the original questioner for a final supplementary, the hon. member for Douglas North.

**Mr Henderson:** Thank you, Mr Speaker. Would the Chief Minister agree with me that a question placed in our national legislature on the constitutional arrangements between our Island and the adjacent isles is of the highest importance and is not belittling the work of this good House?

**Mr Gelling:** Yes, I would agree with the hon. questioner that the question tabled is right and proper and one to which I hope I have given the hon. member the answer in respect of Lord Bassam's answer to the questions put. However, the member is probably now responding to another questioner and perhaps if the two of them got together they could sort out their differences, Mr Speaker.

#### **St Thomas School – Safety Fencing – Question by Mr Henderson**

**The Speaker:** Item 2, hon. members, and I call on the hon. member for Douglas East, Mr Braidwood.

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

*Does your department intend to fence off those areas of Chester Street car park which overlook St Thomas School playground and pupil pick-up point?*

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

**Mr Gilbey:** Mr Speaker, the department is aware of the problems which are being experienced at this location and, subject to a cost evaluation which is currently under way and the necessary planning approvals, the department is prepared to consider the early erection of safety fencing so as to prevent the vandals and hooligans from throwing missiles down into the St Thomas School playground area and the pupil pick-up points on Finch Road.

**Mr Braidwood:** I thank the minister for his very positive response and I am glad he has taken on board the concerns of myself and the parents to protect the children and I hope the fence will be erected as soon as possible. Thank you, Mr Speaker.

#### **Non-Urgent Surgery – Question by Mr Henderson**

**The Speaker:** Item 3, hon. members, the hon. member for Douglas North, Mr Henderson.

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

- (1) *With respect to patients requiring non-urgent surgery -*
  - (i) *are they advised of the period that they are likely to have to wait for their operation;*
  - (ii) *if not, what are the difficulties of so advising them; and*
- (2) *with respect to patients requiring non-urgent orthopaedic surgery, in what circumstances would your department seek to have their operations performed in the United Kingdom?*

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

**Mr Karran:** Vainstyr Loayreyder, whilst it is not always possible to give patients precise information on the period of time they are likely to have to wait for their operations. Indications in terms of average waiting times in various specialties should be possible, either by an out-patients clinic or by the general practitioner, who are provided with waiting-list information on a regular basis.

The difficulty in providing more specific information is due to the high incidence of unpredictable emergency work, particularly with orthopaedic surgery. The hon. member will appreciate that emergency works take precedence and this is why consultants are reluctant to provide firm indications in respect of waiting times for an appointment for an operation, especially if they are some time in the future.

The department is, however, sympathetic to the concerns being raised by the hon. member in this regard and the hospital managers are currently discussing with the medical staff ways of improving the information to patients waiting for operations.

In relation to the second part of the question the department has, from time to time in the past, arranged for waiting-list initiatives to take place in the United Kingdom. Whilst this option remains, it does present a number of disadvantages, particularly in regard of inconvenience to patients and their families and the high cost involved and in addition where post-operative complications arise they have to be dealt with locally, which introduces an element of questionable care, which is undesirable as far as good practice is concerned.

Instead the department has been concentrating on on-Island initiatives where the work is undertaken outside normal working hours as an indication that the department has not ruled out off-Island contracts but at the present time believes that local initiatives are a far better deal for patients and for the taxpayer.

**Mr Henderson:** Mr Speaker, I thank the hon. member for his assurances that the department are looking into my concerns, but could he advise why certain departments within his remit are not even giving a guesstimate to patients of the waiting times, which leaves them under considerable stress of not knowing what is happening?

**Mr Karran:** Vainstyr Loayreyder, I think that the hon. member needs to realise that he is not the only one that is concerned about this issue. In fact I looked back to another place 1992 where the House was rebuking me for the situation as far as waiting-lists were concerned.

We are working within the constraints that are put on Crookall House between Markwell House and of course the medical establishment and I am sure the hon. member or any

member that had any experience of the nursing profession would know the constraints that are put on us as far as the problems are concerned, and can I also say if the hon. member would give us the specific places where he has concerns I shall make sure he has the information.

**Mr Quine:** Is it not manifestly clear that the orthopaedics department at Noble's Hospital cannot cope, that the current waiting-lists are wholly unacceptable and why have we not, once again, arranged for cases to be dealt with off-Island? It was done before successfully. Why are we not doing it again?

**Mr Karran:** Vainstyr Loayreyder, the hon. member will remember when it was done the last time that one was more likely more supportive to the hon. member who was member for Health at that time as far as that is concerned, when everybody was running for cover. I welcome those sorts of initiatives; as far as I am concerned those initiatives are a good way.

The fact of the matter is at the moment there is an initiative going on within the Island. The only argument that could be put up is whether the situation has been manoeuvred by certain people in the Island who now are being paid extra for doing so, but there is the argument, and a very legitimate argument, that people who are distressed, ill are having to be forced to go off the Island and their families to see them, which is not always the best thing, especially when they are getting a bit of age on them.

Personally speaking as the member for Health I would have gone for off-Island, (**Mr Quine:** Hear, hear.) but to be fair, the situation is it would not have speeded up the position we have got at the present time. It is just the moral issue that I believe that it would have been better to have gone off-Island, but it was decided by the department to do the initiatives on-Island, but it had no effect as far as patient care is concerned.

**Mr Houghton:** Mr Speaker, may I ask if the hon. member for Health and Social Security could advise why certain of his surgeons failed to respond to requests for information by GPs with regard to making arrangements that were meant to be made for patients? Could he elaborate on that, please.

**Mr Karran:** Vainstyr Loayreyder, I would have to have information. It is a bit like pinning down jelly in this House when we hear these statements from some members. The fact is that you have to have facts. We are dealing with the best closed shop in any union movement in any walk of life throughout the Island. Even the lawyers would maybe be amateurs compared to the medical profession as far as being a closed shop is concerned. (*Laughter*)

**Mr Henderson:** Mr Speaker, could the hon. member for the Department of Health confirm that the reason I have raised this issue this morning is because I have been through the spiral of bureaucracy that he has told me to be through all ready. I have done that. Could he confirm that and that this issue is now more of a national issue? (**Mr Houghton:** Hear, hear.) Could he also explain why, if he has known about this since 1992, it has got worse and also why people cannot be told anything because some of them, being government employees, are in breach of the government's attendance of work policy by not being able to tell the employers when they can return to work?

**Mr Karran:** Vainstyr Loayreyder, I sometimes wonder whether some in this hon. House have lost the plot completely. I have told the hon. member that if he has a problem as far as this is concerned I want details. I cannot shadow-box as far as -

**Mr Henderson:** I have given you the details.

**Mr Karran:** - these issues are concerned. I have not received any communications from the hon. member as far as this issue is concerned. I would like to see the two members for North Douglas come up with their complaints and let us go through the procedure as far as that is concerned.

I think it is wrong for this hon. House to say that nothing has been done. We are going down a way of trying to make an organisation which has had little or no accountability in the past have some accountability. It is extremely difficult, and I find it absolutely appalling in this hon. House that once again this hon. member is being misrepresented and misquoted as far as that is concerned. We are committed to trying to make sure that old people in particular do not have to suffer in their twilight years any longer than possible (**Mr Henderson:** Hear, hear.) as far as getting these things sorted.

**Mr Cannell:** Mr Speaker, a supplementary if I may. Would the hon. member for Health, for the DHSS, not agree with me that the likelihood is that there will be a considerable resolution of this sort of problem once the new hospital comes on stream?

**Mr Henderson:** But when will that be?

**Mr Cannell:** Many of the difficulties are because of the limited theatre provisions at the existing hospital and what we should be doing is to actually encourage that facility.

**Mr Karran:** Vainstyr Loayreyder, that is very true and that will be an important facet as far as getting this sorted out as far as the issues that have been raised by the hon. questioner, but that is part of the package that needs to be done and even with that part of the package some will not be happy unless we fall flat on our face and end up with everybody out there in the street suffering.

### **Orthopaedic Surgery – Waiting Times – Question by Mr Singer**

**The Speaker:** I think we will move on to item 4, 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 member for the Department of Health and Social Security:

*What (a) is the period in April 2000 and (b) was the period in April 1999 that a patient with a non-threatening medical condition was required to wait -*

- (i) between being referred to an orthopaedic surgeon by a general practitioner and having an initial consultation with the surgeon; and*
- (ii) between such consultation and having an operation where that was advised?*

**The Speaker:** Again I call on the hon. member for Onchan, Mr Karran, to reply.

**Mr Karran:** Vainstyr Loayreyder, the hospital patient information data does not record waiting time information in the manner sought by the hon. member. Monthly waiting list data records the number of patients waiting either for an out-patient appointment or admission, which is sub-divided to identify the average lengths of times patients have been waiting. It does not provide precise information on the period of time a patient is or was required to wait.

The information recorded does, however, give a general guidance how long a patient would be expected to wait and I can advise the hon. member that in respect of orthopaedic patients with non-treatable medical conditions requiring an initial consultation the average waiting time is between six and nine months. In 1999 the waiting time was between three and six months.

**Mr Singer:** Understanding that the hon. member will say that he is never satisfied with the service, would he like to indicate perhaps in detail what, if any, initiatives have taken place in the health service during the last 12 months to reduce the orthopaedic waiting-lists and does he consider from the figures he has given us today, which show the length of time has increased, that those have been successful?

**Mr Karran:** We have had orthopaedics, ENT, dermatology, oral surgery, orthodontics, chiropody, general surgery and medicine as far as rheumatics are concerned. These are all initiatives that we have brought in in order to try and help the waiting-list system at the present time.

The problem we have is that in the United Kingdom it is very easy to gerrymander the waiting-lists, so you get meaningless information as far as the waiting-lists are concerned. I am not interested in that game. We need to get this sorted and as far as I am concerned that is something that we are doing.

We have started initiatives and personally speaking I would have gone for initiatives off-Island because I think we have to sort that out, even though the situation is that we have not got the operating theatre space at the present time, which aggravates the whole affair.

**Mr Singer:** Mr Speaker, I did ask, and perhaps I could just repeat what I asked him, could he describe what the initiatives were, not where he tried to take initiatives. I would like to know some more detail of these initiatives, and what words of comfort would the hon. member advise me to convey to a constituent of mine who saw here GP last January and has been told that despite her pain she will not see the orthopaedic specialist until at least January 2001? Would his advice be that we expect our specialist to undertake more sessions per week in order to shorten the lists or on the other hand advise her to get a bank loan and see the same specialist privately next week?

**Mr Karran:** Vainstyr Loayreyder, the position is quite simple. There have been extra out-patient clinics, even in his own constituency, which I am surprised about, in Ramsey, as far as that is concerned.

The hon. member is aware that there are initiatives. We have other issues that have to be addressed as far as the Island is concerned, as far as population is concerned, something which I have been very keen on and very few in this hon. House have been prepared to get off the fence over. The position is that we are doing more now than we have ever done within Noble's Hospital and I find it rather annoying that we have a situation where certain people want to try and push their favourite through to be pushed up the list at the expense of others who are prepared to wait, which is wrong in my opinion, and I must say that the throughput through Noble's Hospital has increased tremendously, which is a great sign and should be recognised by our staff. Our staff are working harder than they were in the past.

**Mr Henderson:** Mr Speaker, could the hon. member for Health confirm that this is not an issue of the hard work of the staff? Could he also confirm that the basic waiting-lists for large surgery operations, orthopaedic operations, have not moved on and could he confirm that the only gerrymandering that is going on is shuffling between private and NHS patients?

**The Speaker:** Hon. member, we are moving away totally from the question on the question paper. The hon. member for Onchan.

**Mr Karran:** Vainstyr Loayreyder, I need no lessons as far as the situation of the private lists and the state lists are concerned. I find it quite amazing that somebody is trying to tell us how he was a health professional. He knows the score as far as that is concerned -

**Mr Henderson:** Exactly.

**Mr Karran:** - and he knows the position that we are in and I think that with this idea you have to have firm facts and firm complaints and not just a bit of political banter that needs to resolve this issue.

We have created a number of initiatives on several fronts in recent times and no matter how much people want to rubbish the situation as far as the DHSS is concerned the fact is there is far more throughput now than there has ever been and the fact is that some of them that seem to be hell-bent in this hon. House to destroy the health services and the new hospital as well will only make the situation worse.

**Mr Bell:** Mr Speaker, the hon. member has stated that part of the reason for the growing waiting-list is the shortage of available theatre time. If that is the case, could the hon. member investigate ways of ensuring that the brand-new state of the art operating theatre which is currently in Ramsey Cottage Hospital is more frequently used than it is at present and ensure that the prejudices of the various consultants against coming to Ramsey to use this theatre are overruled by his department to make more effective use of what is a very, very effective facility?

**Mr Karran:** Vainstyr Loayreyder, I think the question is a very good question, but in these days of litigation issues the problem we have is of course the medical staff are unwilling to do major surgery as far as Ramsey is concerned because they claim that there is a lack of adequate support services, particularly in ITU and CCU and pathology being on board, and at the end of the day it is their professional credibility that would be at stake if anything went wrong and whilst I would have liked to have seen the new operating theatre used at Ramsey, and I believe that strategically it is important that we always keep it if there was ever a dire emergency as far as Noble's is concerned, the fact of the matter is the medical profession, who make their guidelines up, are not prepared to use it at the present time because they believe that they have not got sufficient back-up as far as intensive care and the likes.

**Mr North:** Mr Speaker, would the hon. member for Health please confirm that if he does get genuine complaints where people in pain are having to wait or being told to wait for one to two years, he will act and that they do not have to go privately?

**Mr Karran:** Vainstyr Loayreyder, that is why we have done this initial exercise to try cut down the waiting-list, because we are concerned about that. I believe it is like private education and if you want to do it for snobbery or whatever, that is fair enough, but you should not have to do it for necessity, you should be able to have your kids educated well in the state

system and you should be able to have a good health service (**Mr Henderson:** Hear, hear.) which you can provide within the health service, but if you want to go private, then it should be something that you do not out of necessity.

**The Speaker:** I will return to the original questioner for a final supplementary. Mr Singer.

**Mr Singer:** Thank you, Mr Speaker. In view of the hon. member's and therefore his department's less than complimentary comments on the medical profession, does he not think it is time for an independent and searching audit of consultants' work and training in modern techniques to ensure that the taxpayer is getting value for money?

**Mr Karran:** Vainstyr Loayreyder, I do find it amazing, another person who is involved in the profession, the medical profession. It would be all right if it was somebody out on the street who had nothing to do with the medical profession. I find it crass hypocrisy of some members in this House. We have been trying to get some sort of order and some sort of accountability for the last couple of years as far as this is concerned. The hon. member knows the problem and the problem now is the fact that, because we have had to say this in public, we have the great divide where both sides go in the trenches and the people outside will suffer. We are doing what we can because I am not happy and I think the things that have been said only last week would not be able to be repeated in this hon. House as far as this is concerned because there are certain people bringing the medical profession into disrepute, but it does not help my position having to say that in here and it disappoints me when people who know what the score is are just interested in political banter.

### **Procedural**

**The Speaker:** Hon. members, I am aware that the House clock says half past ten. The hon. member for Douglas East.

**Mrs Cannell:** Thank you, Mr Speaker. I would like 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 Braidwood:** I beg to second, Mr Speaker.

**The Speaker:** Are you agreed, hon. members?

**Members:** Agreed.

### **Planning Applications – DoT Objections – Question by Mrs Cannell**

**The Speaker:** We will continue. We have but two questions for oral answer so I will call on the hon. member for Douglas East to deal with item 5.

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

*Under what authority does your department submit objections to planning applications?*

**The Speaker:** I call on the Minister for Transport, the hon. member for Castletown, to reply.

**Mr Brown:** Thank you, Mr Speaker. It is my department's public duty to advise the planning authority in relation to any of our responsibilities of the implications of a planning application to ensure we safeguard the Island's infrastructure.

**Mrs Cannell:** Mr Speaker, a very interesting comment: 'public duty to advise'. Can he advise me and hon. members here today whether or not there is any consistency within objections or observations that are submitted by his department and further to that, is he aware of letters sent by his department to the Planning Committee where there is a variance in relation to the observations given in the same residential area, and namely the area is Derby Square in Douglas? Is he aware of that?

**Mr Brown:** Mr Speaker, the consistency my department will give is to ensure that we examine every application on its own merits, taking into account the Douglas local plan and taking into account all the options available to us to come up with a practical and sensible solution and certainly regarding the matter in Derby Square, that I suspect the hon. member is referring to, I am satisfied my department has given the correct advice to the planning authority.

**Mrs Cannell:** Mr Speaker, further to the minister's response here this morning, how can he concur with the view that was submitted by his department that stated that 53, 54 and 55 Derby Square were to be converted into 10 apartments, thereby taking up 10 more car parking spaces in an area which another letter from his department describes as 'would worsen an already difficult parking situation. The applicant would introduce significant demand for parking in an area where there is disk parking and parking is at a premium'? How can he then explain the actions of his department that says, 'Yes, you can have 10 more car parking spaces potentially' and across the road in exactly the same area 'No, you cannot have a doctor's waiting surgery because parking is at a premium'? Where is the consistency in that?

**Mr Brown:** The consistency, Mr Speaker, is the hon. member is good at distorting the facts. Can I say to the hon. member that the application that she is talking about provides seven car parking spaces on land at the rear of the property off the highway -

**Mrs Cannell:** Five, not seven.

**Mr Brown:** Again the hon. member is distorting the facts. Seven parking spaces on land off the rear of the property and also there is the availability of three parking spaces on the highway in front of the property, which of course are available to the general public.

I would also refer the hon. member to the Douglas town plan and, like all town plans, when we are dealing with the old parts of towns, whether it be Douglas, Peel, Ramsey, Castletown, a practical solution is endeavoured to be identified by the planners and I quote: 'Within the town centre a provision of one space per residential unit may be appropriate. Consideration should, in any case, be given to the particular situation applying to the individual situations.' That is the decision my department has taken.

**Mrs Cannell:** Mr Speaker, is the minister saying then that he is quite happy with the actions of his department when looking at its public duty to advise the Planning Committee on such proposals? Is he satisfied?

**The Speaker:** I think he will be satisfied but I will let him reply and we are not getting into a debate on Derby Square.

**Mr Brown:** Mr Speaker, I am delighted that the officers of my department are taking a practical and sensible point of view and not a pragmatic one.

### **Disc Parking in Douglas Areas – Question by Mrs Cannell**

**The Speaker:** We turn to item 6, hon. members, and again I call upon the hon. member for Douglas East, Mrs Cannell.

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

*Will you consider introducing disc parking on Castle Mona Avenue, Woodville Terrace and Little Switzerland, Douglas?*

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

**Mr Brown:** Thank you, Mr Speaker. The answer to the question is yes.

**Mrs Cannell:** Mr Speaker, a very pleasing response from the minister this morning to close today's Question Time but can I ask him, when will he actually be introducing it? If he is to consider, as he has said in the affirmative, when is he to introduce this particular disc parking into these areas and has he identified, of the three that are in the original question, which one is to be the main priority for his department?

**The Speaker:** The answer may be after he has considered it. The hon. member the transport minister.

**Mr Brown:** Mr Speaker, my department has a considerable amount of requests in terms of on-highway parking and trying to deal with congestion. What I can advise the hon. member is that we are presently progressing the Albany scheme, which is quite a large area of Douglas, to try and bring that to a conclusion and considerable amount of consultation is undertaken with residents and with the members for the area. Once that is done, then we will give consideration as to whether the area that the hon. member has asked about in her question should be provided with a similar scheme.

**Mrs Cannell:** Mr Speaker, my final supplementary. Can I ask the minister whether or not he can advise as to whether or not he has resolved the issue of the parking controllers? This was the area of concern for him a year ago in his explanation for not introducing or extending the disc parking any further within Douglas. Has he resolved that issue now and will the area presently covered by disc parking be adequately policed?

**The Speaker:** Now, hon. members, controllers are not within the question. The minister to reply.

**Mr Brown:** Yes, Mr Speaker, I would like to respond when points are made. Myself and the Minister for Home Affairs are very well aware of the situation and are actively endeavouring the deal with the situation to ensure that we can adequately enforce disc zones throughout the Island.

**The Speaker:** Hon. members, that concludes the oral part of the order paper. For written answer is item 7 and I understand that in fact the answer has been circulated to members and is on your desks this morning.

### **Adoption – Question by Mr Singer for Written Answer**

## Question 7

The hon. member for Ramsey, Mr Singer, to ask the member for the Department of Health and Social Security:

- (1)
  - (a) *How many children resident on the Island were considered for adoption by adoptive parents who live on the Island, during the last 12 months;*
  - (b) *how many of the natural parents of the children have opposed adoption; and*
  - (c) *does your department make every effort to maintain the natural family ties, even when such a strategy may require the child to be fostered long term, and only consider adoption as a last resort; and*
- (2) *as a matter of practice, are the natural parents of children being considered for adoption:*
  - (a) *offered the services of a social worker to advise them during the period in which adoption is under consideration;*
  - (b) *advised to consult an advocate to represent their interests;*
  - (c) *invited to all meetings where the future of their child is discussed, and provided with the minutes of all such meetings; and*
  - (d) *consulted by your department, prior to the decision being taken to approve the adoption of the child; and*
- (3) *are you satisfied that your department's adoption policies and procedures*
  - (a) *are consistent with natural justice; and*
  - (b) *give appropriate emphasis to the rights and wishes of the children and their natural parents?*

## Answer

- (1)
  - (a) In the last 12 months four children resident on the Island were considered for adoption by adoptive parents who live on the Island. This figure excludes those children who were considered for adoption who were living on the Island with one natural parent where their natural parent's partner had applied to adopt them.
  - (b) of the four children referred to in (1)(a) two of the natural parents opposed adoption.
  - (c) The department's policy is to work in partnership with parents and to seek to maintain families in all cases where this is seen as being in the best interest of the child.
- (2)
  - (a) The natural parents of children being considered for adoption are offered social work advice during the period in which adoption is under consideration for their child.
  - (b) The natural parents of children being considered for adoption are advised of their right to legal advice in relation to adoption proceedings.

- (c) The natural parents of children being considered for adoption would normally be invited to attend meetings where their child's future is discussed and provided with minutes in relation to their attendance at such meetings. Exceptionally there may be situations where advice from third parties is not available to parents or where a parent's attendance at a meeting is seen as being actively against the best interests of the child, in which case they may not be invited to all or part of a meeting.
  - (d) The natural parents of a child being considered for adoption would be consulted by the department prior to a decision being taken to make an application to the Court for the adoption of their child.
- (3) (a) The department's adoption policies and procedures are consistent with natural justice.
- (b) The department's policies and procedures give appropriate emphasis to the rights and wishes of the child and to the rights and wishes of their natural parents. However, the welfare of the child is paramount.

### **Bills for First Reading**

**The Speaker:** So we therefore turn to items 8 and 9 on the order paper and I call on the learned Secretary.

**The Secretary:** The Human Rights Bill, Mr Brown; the Criminal Justice Bill, Mr Bell.

### **Corporate Service Providers Bill – Clauses Considered**

**The Speaker:** We therefore reach, hon. members, item 10 on the order paper which is the Corporate Service Providers Bill in the hands of Mr Braidwood. I ask him to start with clause 1 and schedule 1, sir.

**Mr Braidwood:** Thank you, Mr Speaker. Before I start on clause 1 and schedule 1 I would like to just give a brief summary of what has transpired over the last three weeks.

Members will recall that immediately prior to the second reading of the Bill, further comments of the Association of Corporate Service Providers and of the Isle of Man Society of Chartered Accountants were circulated. These reiterated concerns about exemptions from licensing, including exemptions for persons carrying out work for domestic companies, the proposed statutory indemnity for the commission and the appeals procedure. The Association of Corporate Service Providers also raised concerns about the future of the CSP industry as a whole.

As a result of the above, I delayed the clauses stage of the Bill for three weeks to allow time for further discussions. During this period the committee has met both with the society and the association, as well as continuing its dialogue with the Isle of Man Chamber of Commerce and other interested parties.

The commission has circulated a letter to members in response to the concerns of the CSP Association. It transpires that much of the concern expressed in the first part of their letter relates generally to the competitiveness of the Island as a provider of corporate services. The association has confirmed that it does not see anything in the Bill on its own to cause the

problems previously suggested. It has also said that it accepts the need for regulation of the industry.

There does remain a difference of view between the commission and the association on the matter of statutory indemnity. This is something which the commission has revisited with the Attorney-General and which I will be covering shortly under the relevant clause.

The association also said that it would like a right of appeal to the court against decisions of the commission. As members will recall, an independent appeals process is already included in the Bill and we do not believe that it would be appropriate to have this appeal decision then reviewed again by the court. However, there is of course a right of appeal to the court on a matter of law or the procedure by which a decision was arrived at.

The commission has also used the intervening period to draw up a new paragraph 5 of schedule 2, dealing with the exemption of domestic companies. This has been agreed with the Isle of Man Society of Chartered Accountants and is specifically designed to make the category of exemption clearer and more workable. Members may wish to remember that, when applicable, this exemption applies to all regulated activities including directorship services and the preparation of annual returns.

In considering further the matter of directorship services the commission is mindful of the fact that it does not want to discourage good corporate governance by deterring people from using their experience as non-executive directors. At the same time the Council of Ministers saw a clear need to include such services within the scope of the legislation because of the potential damage which abuse in this area can cause. The report of Mr Andrew Edwards also made a clear suggestion on the matter. Members will see later, therefore, that the commission has tried to strike the right balance with a new de minimis threshold for someone only holding a small number of directorships.

The commission is conscious that, no matter how clear its guidance may be, doubt or a difference of view may arise on whether a person is carrying out a regulated activity by way of business, qualifies for exemption as providing a domestic service or is carrying out a directorship service. It seems cumbersome that any such cases of doubt can only be resolved by the court in the first instance. You will note that we have therefore now included a right of appeal to the Council of Ministers review committee on these three issues.

At the end of last week hon. members will have received a letter from the Institute of Chartered Secretaries and Administrators, making a number of comments. Members will have noticed that most of the comments made were similar to those advanced previously by other parties. The commission responded in detail to the institute's letter yesterday and a copy has been sent to hon. members for information.

I would advise hon. members that many of the practical aspects of the new regime for corporate service providers are still being discussed with the industry in the form of the underlying codes as secondary legislation. This Bill provides the enabling framework and it is vital that we progress on time. The greatest enemy for the industry is uncertainty, which we should not prolong. I will now have leave to introduce clause 1 and schedule 1.

Clause 1, corporate service providers and regulated activities, defines a corporate service provider, or CSP, as a person who, by way of business, engages in any regulated activity. The regulated activities are described in schedule 1, part I and include the following.

Paragraphs 1 and 2 refer to provisions of services with respect to the formation of companies and the sale, transfer or disposal of companies. A company is defined as a body corporate, whether constituted under laws of the Island or elsewhere, and includes limited liability companies constituted under the Limited Liability Companies Act 1996.

Paragraphs 3 and 4 refer to the provisions of premises for use as a registered office and the provision of accommodation address facilities.

Under paragraph 5 the provision of premises for use as a registered office or accommodation address for an Isle of Man non-resident company will be deemed as acting by way of business. The effect of paragraph 5 is that a non-resident company will have to have a licensed CSP to provide its registered office address, thus making a CSP licence holder accountable for that company to the extent required by the regulatory codes made under this Bill.

Paragraph 6 makes it a regulated activity to act as a director or alternate director by way of business which includes a de facto and shadow director and the company's manager and registered agent of a limited liability company constituted under the Limited Liability Companies Act 1996.

Paragraph 6 also refers to the activities of arranging for others to be a director or company secretary. The regulatory codes made under this Bill will place some responsibility on the CSP for ensuring that the persons concerned are capable of fulfilling their duties.

Paragraph 7 refers to acting as or arranging for others to act as nominee shareholders or nominee members of companies. In earlier drafts of the Bill company administration work was defined as performing the functions of a director or company secretary.

In response to earlier comments, paragraph 8 now covers provisions of company administration services by listing the specific functions of directors and company secretaries, which include keeping a company's register, its accounting records, making its statutory returns, preparing minutes and convening general meetings.

Schedule 1, part II enables the commission by regulation, after consulting with the Treasury, to add to, amend or appeal the regulated activities. All such regulations require Tynwald's approval.

As I explained at the second reading of this Bill, the need for this legislation was first identified in the First Deemster's report to the Council of Ministers in 1991 which stated that to prevent of Isle of Man companies anyone engaged in the business of company formation and administration should be regulated. When the commission was asked to put forward proposals for such regulations it became apparent that many CSPs were also engaged in company work for foreign incorporated companies. Companies incorporated in other jurisdictions which are administered from the Island can also bring disrepute to the Island. The scope of the regulation was therefore broadened to include such companies in order to protect the Island's international reputation.

I would draw your attention to the fact that advocates and accountants frequently undertake corporate service activities as an adjunct to their profession, legal or accountancy, with appropriate exemptions for their professional work. Their activities have therefore been included. I believe that the definitions of the regulated activities cover the company formation and company administration services which CSPs would generally acknowledge to be the type of activities they perform. I do not believe that any of the defined activities could be omitted without creating a loophole and giving the opportunity for the legislation to be avoided.

The activity of acting as a director was included on the instructions of the Council of Ministers, acting on the Attorney-General's advice. It should be remembered that, as with other regulated activities, the words 'by way of business' are a key determinant. Acting as a director of a charity, for example, may therefore not be by way of business. Members will have seen from the new clause to be moved by the Minister for the Treasury that decisions on whether or not someone is carrying on by way of business may now be subject to review by the Council of Ministers review committee.

I beg to move that clause 1 and schedule 1 stand part of the Bill.

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

**The Speaker:** Hon. members, the motion is that clause 1 and schedule 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 and schedule 2, hon. member for Douglas East.

**Mr Braidwood:** Thank you, Mr Speaker. Clause 2 makes it an offence to act as or hold oneself out as a corporate service provider in or from within the Island unless licensed to do so or exempted. This clause also requires a company incorporated in the Island which acts as or holds itself out to be a CSP outside the Island to be licensed. An Isle of Man company is required to show its country of incorporation on its letterhead and its association with the Island is thus clear to the world.

An unregulated CSP operating abroad may by its activities bring the Island's name into disrepute. As the definition of the activities of CSPs may draw in persons who would be outside the spirit of the legislation, a number of very important and wide-ranging exemptions are set out in schedule 2.

Paragraphs 1, 2, 3 and 4 of schedule 2 exempt professional services provided by an accountant, an advocate or registered legal practitioner in respect of any advice given in their professional capacity.

Paragraph 2 specifically refers to the preparation of minutes by such persons when acting in their professional capacity. The definition of 'company administration' includes the activity of keeping accounting records and the preparation of accounts.

Because it is not the intention to regulate accountants and auditors in respect of their accountancy and audit work, they have been specifically exempted in respect of those activities in paragraphs 3 and 4 of schedule 2.

Paragraphs 5 and 6 exempt CSP services of a specified domestic or licensed nature. The domestic services exemption has been the subject of much discussion with the industry, not so much in terms of a difference of view on what we felt should be eligible for exemption, but more how such an exemption should be expressed in a workable manner. Those

members of the Isle of Man Society of Chartered Accountants whose trade or business is carried on primarily with local businesses in the Island were especially concerned.

The justification for exempting this relatively small amount of CSP work, such as filling out an annual return for local traders and businesses, is that these businesses have a real presence here and full accountability locally for their activities. Off-Island clients, on the other hand, give rise to different considerations which are more relevant to the regulations being proposed.

I am pleased to say that the new amendment being moved by the Minister for the Treasury fully addresses the concerns expressed. Briefly, it is proposed that activity undertaken in relation to a company which is resident in the Island for income tax purposes, has a permanent establishment in the Island and carries on as its sole or principal trade or business the holding of assets beneficially owned by Island residents or the holding of goods or services in the Island will be exempted from the need for a licence. This exemption will also embrace goods or services being made or supplied here for services.

May I also at the present time say that the definition includes buying and selling of assets and also the supply of goods and services made in the Island and embraces export of those goods which are manufactured in the Island. This means that all regulated activity undertaken for such domestic service companies will be exempted. Local charitable companies, clubs and so on can fall under the exemption. The commission will be willing to devise a simple application form to speed the process, to be filled in by the organisation and returned to the commission.

Hon. members will also note that the power for the commission to rule on other genuine domestic cases has been retained and is now included in the new clause being moved by the Minister for the Treasury, to be inserted before existing clause 17.

Finally, it should be noted that the domestic services exemption applies to any regulated activity provided to such companies. This would include completing an annual return or anyone acting as a director for domestic business covered by an exemption in paragraph 5.

I am advised that as a result of these amendments the principal concern of the Isle of Man Society of Chartered Accountants, expressed just prior to the second reading of the Bill, has now been removed and they are content.

Paragraph 7 of schedule 2 exempts inter-group activities where one company within a group carries out any of the regulated activities for another company in the group. Specifically excluded from this exemption is where the activity is carried out for a third party, that is to say, for someone who is not a member of the group.

Paragraph 8 exempts joint ventures or joint enterprises where the regulated activity is wholly incidental to the joint enterprise. The exemption in paragraph 9 for the introduction of business to a licensed CSP was necessary because some of the regulated activities contain the words 'arranging for others', for example, to act as a director, secretary or nominee shareholder of a company.

Paragraph 10 exempts the holders of investment business licences or banking licences who act as nominee shareholders for their clients as part of their investment or banking business services. In such circumstances the activity of nominee shareholding, which is wholly

incidental to their licensed business, will already be regulated under the Investment Business Acts 1991 to 93 or Banking Act 1998 as applicable.

Paragraph 11 exempts employment agencies who may arrange for others to act as a director or secretary but whose business is recruitment and not providing corporate services to clients.

Paragraph 12 refers specifically to those who act as a director and exempts the directors of quoted companies listed on recognised stock exchanges and their subsidiaries, family-owned companies, employees of the CSP licence-holder where they are acting as a director in the course of their employment or those who are sub-contracted to act as directors by the CSP, that is to say, where the CSP arranges for that person to act as a director of the CSP client's companies and the CSP has some responsibility for the arrangement.

As mentioned earlier, the director of any company covered by a domestic services exemption under paragraph 5 of schedule 2 would also not need to be licensed as a CSP.

At this stage I would draw attention to an amendment to this paragraph being moved by the Minister for the Treasury.

**The Speaker:** Well, hon. member, the amendment will take its own course. Your job is to move the Bill.

**Mr Braidwood:** I apologise, Mr Speaker. Paragraph 11 exempts the official receiver, an insurance manager registered under the Insurance Act 1986, the liquidator or provisional liquidator or receiver of a company or the personal representative appointed in respect of a deceased person's estate who are carrying out any regulated activity as part of the function of their office.

Part II of schedule 2 allows the commission to add to, amend or repeal the exemptions by regulation and such regulations may provide for the conditions subject to which exemptions shall operate and the circumstances in which the commission may withdraw exemptions from a person. Part II also allows the commission to undertake enforcement action if a person contravenes a condition.

I beg to move that clause 2 and schedule 2 stand part of the Bill.

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

**The Speaker:** Seconded. I call on the hon. member for Onchan, Mr Corkill.

**Mr Corkill:** Thank you, Mr Speaker. As the mover of the clause has indicated, I do wish to move a certain number of amendments which have been produced as a result of the consultative period with the industry that has occurred since the second reading and I think the three-week period has been most usefully utilised by the Financial Supervision Commission in coming forward with a number of changes. It falls upon me to move these amendments and I am pleased to do so. These, as hon. members will see, include a new clause which I am advised might well best be inserted into the Bill before clause 17. But as we are dealing with clause 2, there are changes also to this clause, in particular to schedule 2. The amendments do have page references as well for ease of reference through the Bill.

I think it would be appropriate before dealing with the changes to schedule 2 if I say that there is as a consequence a need to make reference to the proposed new clause also

because there are connected matters between the two issues. The new clause has come about after representation to the Financial Supervision Commission.

It has been said to the commission that doubt or a difference of view may arise on whether a person is carrying out a regulated activity by way of business, whether a person is or is not carrying out a domestic service and therefore qualifies for exemption and whether a person is carrying out a directorship service. It does seem undesirable that any such cases of doubt can only be resolved by the court in the first instance, so the effect of the new clause, when we get to it, will be to provide for a right of appeal to the Council of Ministers review committee on these issues when this follows a commission decision.

So, specifically in relation to clause 2 and schedule 2 regarding the domestic services exemption that the mover of the clause has already alluded to, the commission has received considerable comment from, in particular, the small chartered accountants - I should really rephrase that and perhaps rather than say small chartered accountants, chartered accountants with small levels of business. - that the present exemption procedure in paragraph 5 of schedule 2 would give rise to uncertainties and be cumbersome to work effectively. So the commission looked again at this and a broader exemption is now proposed in the new paragraph 5.

The Financial Supervision Commission do not believe that they can go any further without undermining the actual scope of this intended regulation and I hope hon. members will agree with that stance.

The power of the commission previously set out in paragraph 5(2) of schedule 2 as it is in the green Bill is now contained in the new sub-clauses (2), (3) and (5) and the new review procedure which I have just referred to in relation to the new clause is in sub-clause (4).

Regarding directorship services, there is a new power set out in the new sub-clause (1)(c) for the commission to determine in individual cases whether someone is or is not carrying on directorship services. This is to address the fact that cases will not always be clear-cut. At the same time we have also introduced a right of review of that decision to the Council of Ministers review committee. Both these changes do add to people's rights and are in response to the industry comment.

As a further move to allay concerns that the 'innocent' persons holding only a few directorships should not be caught, it is now proposed that a new de minimis threshold of 10 directorships in an amendment to paragraph 12 of schedule 1 come into effect and this, I hope, puts certainty into the definition by way of business.

I hope that explains the motives behind the amendment. We are content, I think, in Treasury, in the Financial Supervision Commission, that this is the way that the industry expects the domestic services exemption to be expanded and the determination of this expression by way of business and the de minimis of 10 will be useful in excluding a great number of areas of concern where people are by their way of life generally involved in certain directorships.

I beg to move the amendment to clause 2 and schedule 2 standing in my name, Mr Speaker:

*Pages 30 and 31 - for paragraph 5 substitute -*

*“5. (1) Section 2(1) and (2) shall not apply in respect of any regulated activity which is undertaken in the Island by a person who is resident in the Island if the company which is the subject of the activity -*

- (a) is resident in the Island; and*
- (b) has a permanent establishment in the Island; and*
- (c) carries on as its sole or principal trade or business -*
  - (i) the holding of assets which are beneficially owned by persons who are resident in the Island; or*
  - (ii) the supply of any goods or services made in the Island; or*
  - (iii) the manufacture in the Island of any goods.*

*(2) In sub-paragraph (l) -*

*“beneficially owned” includes ultimate ownership through a trust or company or a series of trusts or companies;*

*“permanent establishment” means a fixed place of business through which the business of the company is wholly or partly carried on;*

*“resident” means resident in the Island for the purposes of income tax:*

*“supply” means all forms of supply.”.*

*Page 31; in paragraph 6 -*

*(a) after sub-paragraph (f) insert -*

*“(g) a collective investment scheme the*

*manager of which is the holder of an investment business licence under the Investment Business Act 1991;”;*

*(b) re-number the subsequent sub-paragraph;*

*(c) in sub-paragraph (g) [as originally numbered] for “(f)” substitute “(g)”.*

*Page 33; in paragraph 12 -*

*(a) at the beginning insert “(1)”;*

*(b) at the end add -*

*“(2) Sections 2(1) and (2) shall not apply*

*in respect of any regulated activity specified in paragraph 6(1) of Schedule 1 if the person in question does not act as a director or alternate director in respect of more than 10 companies.*

*(3) For the purposes of sub-paragraph (2), in determining the number of companies in respect of which a person is a director, no account shall be taken of -*

- (a) a directorship of a company which falls within heads (a) to (c) of paragraph 5(1);*

- (b) *a directorship of a company which falls within any of heads (a) to (g) of paragraph 6; or*
- (c) *a directorship which falls within sub paragraph (1) of this paragraph.*
- (4) *In sub-paragraphs (2) and (3), "director" has the same meaning as in paragraph 6(1) of Schedule 1."*

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

**Mr Henderson:** Mr Speaker, it gives me some pleasure to rise and support the amendments and issues that the hon. Treasury minister has put forward this morning and I am very pleased at the outcome.

I would just like to reflect back three weeks ago when I raised many of the issues that are contained in the new amendment and so on that has been moved this morning because I believed in sincerity I had my feet firmly planted in the ground and in the reality of the small businesses of this Island, but it was with some distaste that it felt like I was standing in front of Mount Vesuvius at the time, with the amount of ash that was flying behind me and the rubbishing I took in raising my concerns in this hon. House.

Now, the issues I raised were quite simple and straightforward, fundamental points. I recognised the amount of consultation that had gone on, the amount of time that this Bill had taken to get this far and my point was quite simple: let us try and get it as right as we can and what is wrong with a couple more weeks of consultation? Pretty straightforward stuff, I would have thought: why don't we reserve our votes till we have a little bit more background to some of the concerns that were being raised? Now, I took some flak for that, I can tell you, and the glances that were exchanged round here across the Bar were quite tremendous.

Notwithstanding that I stuck to my guns and am very pleased at the work Mr Braidwood has put into this, (**Mr Houghton:** Hear, hear.) the hon. member for East Douglas, because he has taken on board my concerns, he has taken on board the concerns of the small businesses in this Island, not just one or two people, but it affects quite a few people, and we are now in the pleasurable position this morning of having these amendments before us which are acceptable and recognise the importance of the small local business of this Island, and as I say, I am pleased that I stuck to my guns over it and I am pleased it is here and I am pleased to support these new amendments.

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

**Mr Corkill:** Thank you, Mr Speaker. I thank the hon. member for Douglas North, Mr Henderson, for his support for this amendment. I do not think anyone has actually considered or believed that this was an easy Bill. It has been a long-drawn-out consultation process and it was clear at the second reading, I think, that there were still one or two things in the system to be clarified and so I am sure it was not a problem for the hon. mover of the Bill to declare it for two or three weeks. In fact I think there was a general agreement that that was useful time.

With regard to looks across the House, Mr Henderson, Mr Speaker, sir, hopefully it is all smiles this morning with regard to progressing this Bill and progressing this particular clause. It is not easy at times when you think you are right and somebody else thinks you are not. (**Mr Henderson:** Hear, hear.) It is the nature of business in this hon. House.

Hopefully this amendment, which is not perfect but it goes a long, long way, I believe, to plugging a gap, as it were, from a lot of different people's points of view, will get general support. I thank the hon. member for his support this morning and I think that is all I need to say on this clause. Mr Speaker, I beg to move.

**The Speaker:** The hon. member Mr Braidwood?

**Mr Braidwood:** No comment, Mr Speaker. I thank Mr Henderson for his positive comments.

**The Speaker:** In that case, hon. members, the motion relates to clause 2 and schedule 2 along with the amendment. We will put the amendment first, the amendment moved by Mr Corkill. Will those in favour of the amendment as proposed by the hon. member for Onchan, Mr Corkill, and circulated to you on your white paper, which is three pages long, please say aye; against, no. The ayes have it. The ayes have it.

So clause 2 and schedule 2 as amended, hon. members. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. We turn then, hon. members, to clause 3. The hon. member for Douglas East, Mr Braidwood.

**Mr Braidwood:** Thank you, Mr Speaker. Clause 3 requires that every application for a CSP licence shall be made to the Financial Supervision Commission. The commission may specify the form of application and any other document and information it requires.

Under sub-clause (3) the commission shall not issue a licence unless it is satisfied the applicant, any controller, director, chief executive or manager of the applicant or the partners in a partnership application and any other person in the applicant's business who, in the commission's view, has significant powers or responsibilities for any regulated activity is a fit and proper person.

To carry on the business as a CSP or to act in a key employee position sub-clause (8) allows the commission to publish guidance notes on how an individual's fitness and properness will be assessed by the commission. This has already been done in a draft issued to the industry for comment.

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

Sub-clause (5) allows the commission, after issue of a licence, to impose conditions, and sub-clause (6) allows for the Commission to make a conditional licence subject to further conditions or to vary or revoke conditions. The commission may take enforcement action in the event of a contravention of a condition. Conditions may include the requirement that the licence holder complies with rules, regulations, codes, guidance or standards.

The commission is required to give notice in writing stating the reasons for its decision when it imposes, varies or revokes conditions on a licence and when it refuses an application for a licence. There is a right to make an application to the Chief Secretary for such a decision to be reviewed by the independent review committee comprising three persons who have appropriate experience to assess such matters and who are appointed by the Council of Ministers.

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

**Mr Corkill:** I beg to second and reserve my remarks.

**The Speaker:** The motion, hon. members, 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. And clause 4.

**Mr Braidwood:** Thank you, Mr Speaker. Clause 4 gives the commission power to revoke or suspend a licence if it has reasonable grounds for believing that the licence holder has contravened any provisions of the Act or codes made under the Act, has supplied the commission with false or misleading information or has contravened any prohibition or requirement imposed under the Act. Importantly, however, the commission is required, upon exercising such a power, to give written notice and an explanation and the person concerned has a right under clause 17 to seek an independent review of the commission's decision. The date on which the notice of revocation or suspension shall take effect will be determined by the review procedure under clause 17. If there is no application for a review, the notice will be effective at the end of a period of time allowing for an application for a review to be made. Otherwise if a review is applied for it will be effective when either the applicant abandons a review or when the review committee confirms the commission's decision or if the decision is varied, on the date that the review committee directs. The review committee may revoke the commission's decision and in such an event the revocation or suspension will not come into effect.

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

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

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

**Mr Braidwood:** Thank you, Mr Speaker. Clause 5 allows the commission to keep a register of CSP licence holders. The form of the register shall be prescribed by regulations and will be open to public inspection. The public register will not contain any commercially sensitive information, mainly just details of name, address and contact details. Mr Speaker, I beg to move that clause 5 stand part of the Bill.

**Mr Corkill:** I beg to second and reserve my remarks.

**The Speaker:** Hon. members, the motion is that clause 5 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Part 3, clause 6, sir.

**Mr Braidwood:** Thank you, Mr Speaker. Clause 6 is an enabling power allowing the commission to make regulatory codes concerning the conduct of a CSP's business and related matters. Drafts of two such codes covering the following areas have already been issued to the industry for comment. Some of the key areas are: the 'know your customer' principle, which also embraces the anti-money-laundering code 1998 and amendment code 1999, client agreements and/or terms of business, to ensure that a CSP client is aware of the basis on which the services are provided, with particular reference to a CSP's arrangement for charging its fees; key staff and fit and proper requirements for anyone fulfilling that function; adequate e-systems and procedures appropriate to the level and scope of the CSP's business; if providing directors directly or indirectly the CSP must ensure that they are suitable and competent for the office and are able to confirm that they understand the duties and responsibilities of directors; financial resources requiring that the CSP must be able to

demonstrate that it is a going concern; advertising; professional indemnity insurance cover, which we have left flexible so that the cover can be varied according to the nature of the individual CSP's business; and segregation of clients' money.

Considerable consultation has taken place on the draft regulatory codes and a second consultation paper including the devised draft codes was issued last month.

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

**Mr Corkill:** I beg to second and reserve my remarks.

**Mr Singer:** Mr Speaker, I would like to make some general comments on the proposed draft regulations and the document that has been sent out and been referred to by the hon. member, the documents out to consultation, because over the last few weeks and particularly in most recent weeks we have all been recipients of correspondence in relation to this Bill, and the question I think we have to ask is why is there this worry and a certain amount of mistrust from within the finance sector that something perhaps is wrong? The Financial Supervision Commission, as we have heard, are of the opinion that the consultation process which has resulted in quite dramatic changes to this Bill before us makes this Bill now acceptable to all parties. Therefore we come back to my original question: why is there this worry?

I suppose it is because this Bill, first of all, is untried legislation and the Bill dare not go wrong. The finance sectors in other jurisdictions are closely watching what we are doing. They are waiting to cash in if we make any errors and there are people both here and away who are questioning why we have chosen to introduce this legislation when even the United Kingdom do not deem it necessary to do so. Therefore in introducing untried legislation to inform the world that we are determined to have a financial regime which is better regulated and controlled than anywhere else we have to be absolutely sure that we are not making mistakes that will be both embarrassing and so officious and over-regulating as to destroy a large proportion of a business, with all its consequential ramifications on the economy.

Because of the focus being put on us by the OECD, the FATF, the European Union, the United Nations Offshore Forum, the Financial Stability Forum and the UK request for exchange for information, the general utility of existing core Manx CSP products is being eroded, although it is our belief here that many of these investigations are ill informed and politically not factually motivated. In saying that, however, the majority of corporate service providers support legislation, certainly this primary legislation, except for one or two contentious clauses such as the indemnity section.

Of course the crunch of the Bill is not in the primary legislation but the regulatory codes that will follow and there is great concern amongst the small and the big players on this Island that the present consultation paper which is out to the finance sector, if kept in its present form without quite extensive changes, will be the Armageddon of the CSP industry.

One of the major international players on the Island, after calculating the action they would have to take as far as protecting their customers and their business viability, have described those calculations as the 'Domesday figures'. We would, I believe, be wise to listen to what they are saying. They have no reason to magnify the problem. They are in a position where companies they administer can be transferred to amenable and reputable jurisdictions where their customers would be equally protected and the company would not lose its income.

The main point of CSP regulation is to prevent further third party questioning of Manx affairs. This contrasts with regulations in banking, insurance and investment business sectors where the main purpose is investor protection. This hon. House, I believe, must be concerned that the codes do not drive CSP business off the Island.

The concerns relating to the latest draft set of codes are considerable and the consultation comments must be closely scrutinised, considered and changed if necessary to at least give our providers a fighting chance of survival in the market. If this does not happen the Domesday impact would certainly include a large reduction in Manx entities due to excessive regulation and cheaper alternatives, the requirement for accounts are a general industry and client impression that the Isle of Man is not the place to do offshore CSP business. The professional opinion is that the number of Manx registered companies could reduce therefore by 30 per cent or more if things are not right.

What would be lost to the Island would firstly be the income to Treasury of each company's annual fee, say on average £550 per company per year, a large reduction in staff employed at the registry, the consequent impact on other government departments such as the tax office, less business for Manx-based CSP providers, banks, advocates and accountants, job losses and Manx-based CSPs moving 50 per cent of their business from the Isle of Man.

The run-on of revenue losses to government and the economy from unemployment is difficult to estimate but would run into many millions of pounds which will not be replaceable. In my constituency there are at least 150 people employed by CSPs, multinationals whose first loyalty must be to their customers and if the pressures become oppressive Manx registered companies will without doubt be moved elsewhere; the CSPs themselves will have no choice. I am not prepared to see many of those jobs disappear, particularly from Ramsey but also from the Island. The FSC must listen and act in such a manner as to regulate on a fair basis to enable our sector to remain equally competitive.

I apologise for having spoken so long on this clause dealing with future regulations which will be attached to this Bill but I believe it of the most vital importance that everyone, and particularly Treasury and the Financial Supervision Commission, recognises the importance of getting this right first time.

The speed at which this Bill passes through the House is not the primary factor but it is the contents, particularly the regulations, which are the focus of criticism in the current consultative document and must be made acceptable.

The regulations consultation process closes shortly and because of the effect the final decisions will have on a major part of our economy I would ask the Chairman of the Financial Supervision Commission to give an undertaking to this House that he will arrange a presentation to hon. members before placing the regulations before this hon. House because at that stage the regulations cannot be amended, only accepted or rejected. The credibility of the Bill and its powers will rely on the government and the CSP providers going forward together and that is a position for which we must aim. Thank you.

**Mr North:** Mr Speaker, I was not going to speak but the previous speaker has brought me to my feet in that I do not disagree with him about the regulations but I think the spin that has been put on this Bill is somewhat jaded.

As far as I am concerned I think that the regulations and the consultation that has now taken place and has produced what to me is an acceptable Bill belie the fact that when we started this Bill CSPs need to be regulated, and as far as I am concerned I have always accepted that there will be thousands of companies leaving the Isle of Man and personally, regarding those that leave, I am not unhappy that they are leaving, I want to see them leave, and I thought we had accepted that when we decided to have this Bill in the first place. Let us not kid ourselves as to what this is all about.

I understand the hon. member protecting jobs and everything else but the CSPs and those that we know have not done this Island any favours. They might bring in some finance. Do we want to keep that finance coming in? Let it go, which it is already doing, let it go to the Caribbean. Let it go. We know the countries it is going to. Do we want those companies here even if they are regulated? And the answer is no, we do not.

So I understand where the hon. member is coming from and the regulations have to be right and they have to be understood by everybody and I think really the FSC, certainly, and the Treasury are to be congratulated in the end for the amount of work that they have actually put in on this Bill and I think we have improved it dramatically, but do not let us kid ourselves that just because we are bringing in a Bill and we are going to lose some business on the Isle of Man there is anything wrong with this Bill. This Bill is very important to us internationally on the path that we are going to go on, not the path we have come from. The fact that we are going to lose whatever, thousands of companies, so be it, let them go, because if they do not want to be regulated here, I suggest we do not want them.

**Mr Corkill:** Mr Speaker, I would just wish to contribute and say that I agree with quite a number of the comments of the previous two speakers but I would also say that it is very easy to be negative with regard to the impact of this particular Bill and perhaps this particular clause, but the hon. member for Ramsey, Mr Singer, talked about the reduction in numbers, companies. That is not just to do with this Bill. In another place, not so very long ago, I actually had to defend a situation with regard to non-resident duty companies where a great number of members of that hon. Court, Tynwald, actually wanted to do away with them completely, straightaway. Treasury fought a middle ground position to say we would have a moratorium and that seemed to win the day in the end. That is one of the reasons why there is a change going on in this particular sector. But looking on the positive side, in the last quarter of 1999 there were actually more companies registered than there were in the last quarter of the previous year.

So you can put different spins on this, as the hon. member for Middle, Mr North has said. It depends how you look at the situation, and I would concur completely with the hon. member for Middle where there is a small element, and I would dispute that it is thousands because I do not believe it is, but there is an element of business which is likely to and can bring the Isle of Man's reputation right down, down to the level of the Turks and Caicos that we saw on the television the other evening. We do not want that. It is unfortunate. So the regulated environment is the answer.

But the other point I would like to point out is that this is the lightest of touches of regulation. If the business that we are worried about losing cannot live with this amount of regulation, which is the light touch, then one has to ask the question, why?

So I think all these points are all very valid and obviously we are very concerned about the employment of people in the corporate service providers industry and I think it is a testament to the Financial Supervision Commission that they have consulted so long and so hard with all the elements of that industry, but at the end of the day I think our experience tells us that the regulated financial services products, if you would like to call them that, that the Isle of Man offers, whether it is banking or insurance and now hopefully corporate service providers, taking the experience that we have had over the last 20 years or so would, I hope, give us optimism in terms of what this Bill will do to the industry.

So all the points are valid but it is how you feel about them, having discussed them, and I would hope members will be able to support this clause, and I am sure with regard to the actual consultation, with the actual regulations which obviously go to Tynwald in due course, the hon. mover's clause is fully in charge of all that situation, but certainly I see this as positive not negative.

The comments we have received from the industry, I believe, is from a small element who do not want that regulated environment and they are lobbying extremely effectively to prevent it. I think it is short-sighted for them to do so because the vast majority of the industry accept that a light touch of regulation is probably the best way forward.

**Mr Quine:** Thank you, Mr Speaker. I think the contributions from the hon. member for Middle may have given the wrong message here this morning. The hon. member for Middle has said that CSPs can go out even if regulated. Now, that is not the message that I understand that government is trying to put across here. It is my understanding that there is perfectly legitimate and proper business to be conducted in this area and the object of this Bill is to provide a form of regulation that ensures that there is no abuse or misuse of that business, (**Mr Corkill:** Hear, hear.) but to make a statement that CSPs can go out even if regulated I think is not the message that government is trying to convey, I hope it is not the message that this hon. House is trying to convey. As the hon. member for the Treasury has said, what we are trying to do is to apply a degree of regulation that represents the lightest touch necessary to enable legitimate CSP business to continue, and I do feel that that does bear repeating because I would hate to think that a message goes out from this House that behind all that has been said by the mover, who has very effectively dealt with this Bill, and the hon. member for the Treasury is some move or manoeuvre to do away with the CSP business. That is not the case and I think it is unfortunate if the contribution by the hon. member for Middle has created that impression.

I have no difficulty and I am sure members of this hon. House as a whole have no difficulty with regulation 6, an enabling regulation that provides for regulations to be made. The point that has been made by the hon. member for Ramsey, Mr Singer, is simply to ask the hon. mover to undertake that now the consultation on the provision of the regulations is at least largely completed, would he be so good as to give us a commitment that he would provide us with a detailed briefing, because it is important, I think, that members have an opportunity to digest what has come out of this consultation process rather than have something appear by way of regulations, with little opportunity to get involved in it at an earlier stage. That, I think, is all that has been asked for.

The clause 5, no problem with that, just can we have effective and early consultation on the product of the consultation on the regulations, and secondly, please let us avoid putting

out a message that legitimate CSP business is not welcome here on the Island. It is welcome provided it is conducted properly and it is regulated in a manner which the Minister for the Treasury has indicated, that is, by the lightest possible touch.

**The Speaker:** I call upon the hon. member for Douglas East, Mr Braidwood, to reply.

**Mr Braidwood:** Thank you, Mr Speaker. First of all may I thank the hon. member for Middle, Mr North, the hon. member for Ayre, Mr Quine, and the hon. Treasury minister for their support, and as it was succinctly put, this is for a regulatory framework with the lightest touch. I also thank Mr Singer, the hon. member for Ramsey, for his positive comments in that I know he supports the CSP Bill but his concerns were the regulatory codes.

Now, the regulatory codes are still out for consultation and we are awaiting the industry's comments for the 5th May, but I can give an assurance to the hon. member for Ramsey that once the comments are received we are still having more consultation with the industry and also naturally I will offer the opportunity to all members in this hon. House to a presentation when we have the regulatory codes, which is secondary legislation, ready for proposal and to be laid because the point is, which I must express again, that the regulations and codes must have Tynwald approval as under clause 22. I beg to move, sir.

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

**Mr Braidwood:** Thank you, Mr Speaker. Clause 7 allows the commission to make recommendations and directions which are critical for effective supervision. The commission may only make a recommendation in relation to the affairs of a particular customer of the CSP in respect of the conduct of the CSP's business if it is necessary in order to protect the interests of the CSP's other customers. I beg to move that clause 7 stand part of the Bill.

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

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

**Mr Braidwood:** Thank you, Mr Speaker. Clause 8 allows the commission to require a CSP who contravenes any provisions of the Act et cetera to pay a penalty.

It should be noted that in order to give effect to this clause the commission is required to make regulations on which it undertakes to consult. Such regulations must be approved by Tynwald. There is no intention to make any such regulations for the time being. Penalties will only be introduced if persistent lack of co-operation makes this regulatory method of enforcement necessary.

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

**Mr Corkill:** I beg to second and reserve my remarks.

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

**Mr Braidwood:** Thank you, Mr Speaker. Clause 9 refers to the requirement for anyone in a CSP organisation who falls within the definition of key employee, which would include any

director, chief executive, manager, controller or other employee with significant responsibilities, to meet the fit and proper criteria. No such key employee appointment may be made without the commission's consent. This clause extends to ongoing regulation. The principle in clause 3 in connection with the issue of a CSP licence requires the applicant and its key employees to be fit and proper persons.

The commission's licensing policy guidelines set out the criteria used to assess the key areas of fitness and properness, namely competence, integrity and solvency. A decision by the commission to refuse such an appointment may be referred to the review committee under clause 17.

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

**Mr Corkill:** I beg to second and reserve my remarks.

**The Speaker:** The motion, hon. members, is that clause 9 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 10.

**Mr Braidwood:** Thank you, Mr Speaker. Clause 10 refers to the commission's supervisory investigative powers. These are critical if the commission's supervision is to be effective and includes the power to inspect the books, accounts and documents and to investigate the transactions of a CSP or former CSP, to enter the premises of a CSP during reasonable hours and to take possession of or copies of books, accounts and documents. Obstructing the commission in the performance of its functions is an offence.

Sub-clause (6) provides a control mechanism whereby the Treasury may give the commission directions with respect to the exercise of its powers under sub-clauses (1), (2) and (3). Any enquiry into the affairs of a particular customer of a CSP may only be made if it is necessary for the purpose of an inspection and investigation into the conduct of a CSP's business.

Sub-clause (10) allows the commission to exercise the powers under clause 10 where it has reasonable grounds to suspect that a person is carrying on CSP business without a licence.

Under sub-clause (11) there shall be no obligation to disclose information to the commission where legal privilege within the meaning of the Police Powers and Procedures Act 1998 applies.

The powers under this clause are fundamental to a credible regulatory regime. This is necessary for normal supervisory work carried out with the co-operation of the CSP and with care being taken by the commission to cause a minimum amount of disruption to the CSP's business, as well as for preventing breaches of the Bill and the regulatory codes which set out the codes of conduct of CSP business.

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

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

**Mrs Hannan:** Thank you, Vainstyr Loayreyder. I rise to move the amendment standing in my name:

*Page 11, line 14; after 'access' insert -*

*'to the office or place of business of the CSP or former CSP.'*

The reason I am doing this is that if members refer to clause 10(2) it says, 'The Commission shall have every such power of entry and access as may be necessary for the purposes of subsection (1)' and that is to inspect the books, accounts and documents and investigate the transactions of CSPs or former CSPs. My amendment is, after 'The Commission shall have every such power of entry and access', to limit this to the office or place of business of the CSP or former CSP as may be necessary for the purposes of subsection (1) and it may take possession of all such books, accounts, documents as and for as long as may be necessary for those purposes.

Now, the Treasury minister has said that this legislation is a light touch and if we are looking at a light touch and reasonableness when it comes to legislation we should be looking at the powers of entry of the Financial Supervision Commission being to the place of business of that person, and if I could refer to clause 12 where it says about the power of the commission to require information, that application has to be made by the commission to the justice of the peace.

In clause 13 it refers to information on oath laid by the commission and a deemster has to be satisfied in relation to any documents that are there for reasonable grounds for believing that it has failed to comply and the rest of clause 13.

Now, from the reply to a constituent of mine in the pink pages yesterday by the Financial Supervision Commission chief executive the comment is that the commission has not abused the powers conferred upon it in other legislation, and I accept that this provision is in the banking and investment legislation of 1991 and 1999, and he goes on, 'and this must surely be a strong indication that it will continue to act in a responsible way.' So that is where the reasonableness of legislation comes in. There is no question of the commission just moving into anyone's property in the Island in a random way, he implies, and therefore I would suggest this amendment to this legislation is very reasonable. The commission will have every such power of entry and access to the office or place of business. If the commission needs and requires to enter the home or any other property, then I would suggest that the commission should make an application to the justice of the peace or to the deemster and satisfy either the justice of the peace or the deemster that access to someone's home is necessary for the purposes of sub-clause (1) of clause 10.

Now, in a response also from the chief executive of the Financial Supervision Commission he states, 'Clauses 10 to 14 of the Bill are central to the Commission's ability to supervise effectively.' So he is looking at clauses 10, 11, 12, 13 and 14 as the commission's ability to supervise effectively and therefore clause 10 forms only one part of that. The other provisions of the justice of the peace and the deemster fall within these particular powers under those future clauses. 'Without these powers', he goes on, 'which broadly reflect those powers already available to the Commission in connection with banking and investment business, the Commission could not supervise effectively.' Now, I am suggesting that clauses 10 to 14 form the commission's ability to supervise effectively, not just clause 10. 'In answering comments', he goes on, 'I would mention that you omit to note that some of these powers are subject to the prior satisfaction of the justice of the peace or deemster as appropriate. Moreover, consequential action of the Commission as a result of exercising these powers is subject to independent review in clause 17 by the Council of Ministers Review Committee.'

Now, I would hope that members today will support this small amendment to allow the commission to enter the office or place of business of the CSP or former CSP with every such power and access as may be necessary for the purpose of subsection (1) and when it enters the office or place of business it may take possession of any such books, accounts and documents as and for as long as may be necessary for those purposes, and I think this is being reasonable and I think if we are looking at the light touch, as the Minister for the Treasury suggests, then I would put it to this hon. House that this will in actual fact improve the legislation. It actually sets out where the Financial Supervision Commission can enter, but if they wish to enter someone's own home they would have to make an application to the justice of the peace or the deemster, as the chief executive of the Financial Supervision Commission states in his letter dated 17th April. I rest my case, Vainstyr Loayreyder.

**Mr Corkill:** Mr Speaker, obviously a very important and interesting -

**The Speaker:** Now, hon. member, are you seconding the amendment?

**Mr Corkill:** No, sorry, I thought that it had been seconded.

**The Speaker:** It has not been. Hon. member for Douglas East, Mrs Cannell.

**Mrs Cannell:** Mr Speaker, I am happy to second the amendment to get the issue debated properly.

**The Speaker:** Hon. member for Onchan, do you wish to speak now?

**Mr Corkill:** Yes, just a few comments if I may, Mr Speaker. Obviously the rights of the individual and their privacy at home are an important issue, I am sure, to most members if not all members. What I would wish to point out is that there are issues of practicality with regard to the way the clause is drafted in the Bill and obviously when one talks of a former CSP or a former place of business, those business premises, for instance, may no longer exist in reality: they could even be demolished or occupied by another business. To allude that only from a practical point of view there is the need to access quickly in particular circumstances the place of business I think is perhaps a little naive in the real situation where the regulator is trying to track down a particular serious issue. Now, it seems to me also that by the time a deemster has given permission, then in fact evidence which may be very pertinent could be spirited away in a briefcase and there is a very serious, I believe, practical consideration for members to consider when looking at the impact of the hon. mover's amendment.

It is a very fine balance, in my view, to strike but I do fear that if the balance goes the way the mover of the amendment has put it, then in fact it will hamper the very nature of this legislation which is to deal with the difficult items. We all know that 99.9 per cent of all people obey the law and do things as they should. It is the small minority whom we try to catch.

We do have similar provision in other legislation. We have comparable legislation with regard to customs and excise and I, on balance, feel that the Bill as drafted is in line with what is already acceptable. I hope my comments are useful, Mr Speaker.

**The Speaker:** Hon. member for Douglas East, speaking to the amendment, sir.

**Mr Braidwood:** Against the amendment, yes, Mr Speaker. I think I concur with the sentiments expressed by the Treasury minister and because we are talking about former CSPs it could be that they have the documents on domestic premises.

This clause is fundamental to the FSC. It needs this to carry out its supervision speedily and effectively. As the Treasury minister said, we will not have the time first of all to obtain a deemster's warrant every time we want to make such a visit to a licensed entity, and if we do not have these powers, which are fundamental to our ability to supervise effectively, then we have no authority to look at matters whenever a visit is made. Such a position would be totally inconsistent with a concept of effective supervision and therefore I beg the hon. members to oppose this amendment.

**Mr Quine:** Mr Speaker, I feel I cannot support the amendment. I am not sure that it would provide either a working arrangement in terms of the requirement and indeed I am a bit concerned about some of the definitions as to what is an office and what is a place of business, but that apart, I feel that the Financial Supervision Commission does need to have a fairly wide right of access to premises to cover the various contingencies where evidence could be placed and really that could be almost anywhere these days, it could indeed be offshore somewhere, it could even be in a harbour on board a vessel or something, so I think you have got to give them the widest possible definition to cover that contingency.

I am a little unhappy about the fact that this power of entry is not exercised subject to the warrant or authorisation of a JP. I think it is difficult to say that circumstances can arise where you could not, in a very short period of time, get an authorisation from a JP. After all, police forces and other enforcement bodies have to do just that. But I do not think that is so fundamental, I would suggest, to require us to vote against this particular clause.

So taken in the round, I think it warrants support as it stands, although I do have some uneasiness about the fact that the power of entry, given that it is wide in terms of the places you may enter, given that you have got that breadth of description, is not subject to a JP's authorisation but, as I say, I do not think I would suggest that that is so fatal as to vote against this particular clause.

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

**Mrs Hannan:** Thank you, Vainstyr Loayreyder. I do not suppose I am altogether surprised by the reaction of the House to my amendment. I was moving it because, while the legislation is already in being in various areas - and I am not sure who mentioned it, I think it was mentioned by the Minister for the Treasury about privacy - I think privacy is important and I think someone's home is important even if someone has documents. I think if the police wished a right of entry to my home, unless they thought I was being held against my will or something, they would actually go to a justice of the peace to gain entry to my property to do whatever they wished to do, gain access to documents, arrest me or whatever, and therefore I think if we are giving an organisation such as the FSC, which they have at the moment and I do not deny that fact, what I am saying is that when we are moving legislation which is in the year 2000 we should in actual fact take recognition of the rights of the individual, even if they do come under a CSP or a former CSP, with regard to privacy.

Now, all I am suggesting is that someone in the FSC supervising the corporate service providers should make application before entering someone's property, their home, to gain access to information which they say is there. I have no objection to anyone entering someone's home if they think that documents are being held with regard to corporate service providers, and the chief executive himself states, and this is why I cannot understand it, that

clauses 10 to 14 of the Bill are central. That is not saying that clause 10 is central. Clauses 10 to 14 are central. We have got down there a protection for the individual of the justice of the peace and the deemster, and I think that we should move forward from the legislation which we have at the moment and which the chief executive himself states absolutely has not been abused in the past, and if they have not abused their powers in the past which have been conferred in other legislation, this must surely be the strong indication that clauses 10 to 14 serve the purpose of supervision and not just clause 10 alone.

Therefore I would hope that members will respect the freedom of the individual and that their home - it does not depend on what they do - is safeguarded, that the commission shall have every such power of entry and access as may be necessary for the purposes.

**Mr Downie:** If they are running a business from it.

**Mrs Hannan:** That does not say that they are running a business from it, Vainstyr Loayreyder, it does not say they are running a business from this place. My amendment satisfies the fact that it is an office or place of business of a CSP. Now, if a CSP chooses to run a business from their home, that is a different matter altogether, absolutely totally different. The FSC would have a right of entry at any such time and could take away any such document with my amendment. I am talking about somebody's home. I am talking about the FSC having a right of entry to the office or place of business. All I am asking of hon. members is that the home of that particular person is safeguarded and it is safeguarded by application to the justice of the peace or the deemster. I do hope members will consider what I have said today and support the amendment as I have moved it.

**The Speaker:** Hon. member for Douglas East, reply to the debate, sir.

**Mr Braidwood:** Thank you, Mr Speaker. Basically the debate has been on the amendment, sir, and I think the majority of the hon. members support clause 10 and therefore I beg to move.

**The Speaker:** Hon. members, the motion is that clause 10 stand part of the Bill and to that we have the amendment circulated to you on the white paper in the name of the hon. member for Peel, Mrs Hannan. 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: Mrs Cannell, Mrs Hannan and the Speaker - 3*

*Against: Messrs Gilbey, Cannan, Quine, Rodan, North, Sir Miles Walker, Mrs Crowe, Messrs Brown, Henderson, Duggan, Braidwood, Downie, Singer, Bell, Corkill, Cannell and Gelling - 17*

**The Speaker:** Hon. members, the amendment fails to carry with 17 votes cast against and 3 votes cast for.

We therefore, hon. members, put to the House clause 10 as amended, against clause 10 on its own. The fact that I may wish to support the hon. member for Peel has nothing to with my observation. (*Laughter*) Hon. members, the motion is that clause 10 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. We turn then, hon. members, to clause 11. Hon. member for Douglas East.

**Mr Braidwood:** Thank you, Mr Speaker. Under Clause 11 the commission has further powers to request information from a CSP or former CSP, including information concerning a holding, subsidiary or related company et cetera of the CSP. This clause also stipulates that the commission may not request information about the affairs of a particular customer of the CSP unless it has relevance in connection with the conduct of the CSP's business.

Sub-clause (5) states that no request or direction may be made in respect of a former CSP after that person's liability or obligation for that former business has ceased.

Sub-clause (6) states that the commission may take enforcement action in respect of a request for information. The other circumstances which may necessitate enforcement action will be referred to in the appropriate clauses. As this is the first reference to enforcement action, it is relevant to state the definition contained in clause 26(3) as follows: 'enforcement action' means the exercise of any one or more of the following powers - the issue of a recommendation, request or direction under clauses 7 or 11; the exercise of powers in relation to a CSP; the revocation or suspension of a licence; the withdrawal of an exemption; the imposition of a penalty; the issue of a public statement. The taking of any of the aforementioned enforcement action does not preclude the exercising of any other power or remedy under the Act, nor shall it prevent the commencement of proceedings for an offence.

Sub-clause (7) protects the person who gives information under this clause from the information being used in evidence against him in respect of any criminal proceedings, except those alleging contravention of clause 19. Clause 19 makes it an offence to knowingly or recklessly make statements or furnish information to the commission which is known to be false or misleading.

I beg to move that clause 11 stand part of the Bill.

**Mr Corkill:** I beg to second and reserve my remarks.

**The Speaker:** The motion, hon. members, is that clause 11 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 12.

**Mr Braidwood:** Thank you, Mr Speaker. The commission may, under the authority of a justice of the peace, require information from the CSP or from any other person who may have relevant information in connection with an investigation into the affairs of any person as far as is relevant to any business of the CSP. The commission may require the person to attend at a specified time and place in order to answer questions. Such a power may be used if a CSP does not cooperate with the regulator and the provision of information required under this Bill or in an investigation of illegal CSP business, normal supervisory work would not require a justice of the peace's authority. I beg to move that clause 12 stand part of the Bill.

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

**The Speaker:** The motion, hon. members, is that clause 12 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 13.

**Mr Braidwood:** Thank you, Mr Speaker. Clause 13. The commission may obtain a deemster's warrant which allows the person named in the warrant to enter and search the premises and take possession of documents. Because the terms of the deemster's search warrant may be limited to investigation of specific matters relating to CSP business, sub-clause (3) allows the person acting under that warrant to take possession of documents or

take such steps as may be necessary to prevent those documents from being tampered with or destroyed. If in the course of the search he becomes aware of any contravention of this Bill, the Banking Act 1998 or the Investment Business Act 1991, a constable must accompany the person acting on behalf of the commission under a deemster's search warrant. As in previous clauses where information is sought, legal privilege applies.

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

**Mr Corkill:** I beg to second and reserve my remarks.

**Mrs Hannan:** Vainstyr Loayreyder, I think the mover has made the point that, with the authorisation of the deemster, a police officer needs to attend to claim some of the documents that they think are being withheld from them - this is the FSC - that a police officer attends with the warrant of the deemster. But the FSC can enter anywhere to gain documents under clause 10, so the police have not got the right to enter without the say - so of the deemster or the justice of the peace, and therefore it seems strange, and prior to this these points have not just been pointed out by me but they have been pointed out by other people to the Financial Supervision Commission and I am surprised that this particular piece of legislation is still in being and I am disappointed when, on the say - so of a deemster, the police have to also attend. That has been accepted by the mover. This is into someone's home or someone's place of business, and I would hope that Treasury and the mover will look at the provision under clause 10 and give serious consideration to the privacy and the rights of individuals before entering their homes. Thank you.

**The Speaker:** Would you like to reply, sir?

**Mr Braidwood:** Mr Speaker, under clause 10, as mentioned by the hon. member for Peel, that is a supervisory power. This clause is where the documents are identified for possession, and that is where the difference is between clause 10 and clause 13, sir. I beg to move.

**The Speaker:** Hon. members, the motion is that clause 13 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. We turn then to clause 14.

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

The circumstances in which the commission may issue a public statement are that there are reasonable grounds for believing that the person concerned is acting as, or holding himself out as, a CSP without a licence in contravention of clause 2, or has contravened any regulatory code or any condition on his licence, or any direction that a person shall not be appointed to a key employee position under clause 9, or any direction relating to a request for information by the commission under clause 11. The commission may only make such a public statement if it appears to the commission to be necessary for the protection of a person or class of persons, that is to say, that it is in the public interest and if the commission believes that immediate action is necessary, it may make the statement without giving the minimum of

seven days' notice. Naming and shaming is considered by regulators to be an important tool to bring a recalcitrant and unco-operative person of the compliance regime to order and one which the commission would not use without very careful consideration and unless other avenues were exhausted. The commission considers this a necessary power where a warning not to do business with that person may be required in order to protect the public.

There is no right of referral to the review committee, as is the case with a number of other decisions of the commission because the timeframe in the circumstances where a public statement may be necessary would not allow the delay. However, the notice period is a minimum of seven days and may be longer, depending on the circumstances. As I said before, the notice period before the public statement may be issued is long enough to allow the person concerned to make their case to the commission or to petition the courts for an injunction to stop the commission from proceeding, for example if the facts are perceived to be wrong. Bearing in mind that the only time a need to invoke this power may arise would be in the public's interest, the power under this clause is both necessary and equitable to all parties.

I beg to move that clause 14 stand part of the Bill.

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

**Mrs Hannan:** Vainstyr Loayreyder, I note this is the section related to 10 to 14 under the regulation where the mover suggests that the notice would be made, a public statement would be made under clause (1) and that would be sent to the person concerned at his address in the Island, stated in the register kept under section 5, written notice of the proposed statement and of the reasons for which it intends to act. Presumably that is a business address? I ask that question because clause 10 relates to any property occupied by the CSP or the former CSP. I hope the mover gets the gist of my question.

Now, is this notice by recorded delivery so that the FSC knows that this has been received by the person so named? It is to presumably the business address and not the home address of the person because it is the address stated in the register.

I also refer back again to clause 10. Does clause 10(2) relate to the address in the Island stated in the register kept under section 5? When the member responds, I wonder when it says, 'shall be sent. . . 7 days', is it by hand or is it by recorded delivery so that the FSC knows? Because it is very damaging if a person is named in a public statement, especially under legislation such as this. It would be difficult for that person to challenge the FSC in a situation such as this when they have already been named. Thank you, Vainstyr Loayreyder.

**The Speaker:** The hon. member to reply to the debate.

**Mr Braidwood:** Thank you, Mr Speaker. The address will be that which is, as the hon. member for Peel has pointed out under clause 5, in the register. That is the register which will be held by the FSC. The letter will be sent - which would be better than recorded delivery because with recorded delivery anybody can sign for it - and I presume it would be by registered delivery to the address which is contained in the register by the FSC.

**The Speaker:** Hon. members, the motion is that clause 14 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 15, hon. member for Douglas East.

**Mr Braidwood:** Thank you, Mr Speaker. Clause 15 allows the commission to apply to the high court for an injunction in particular circumstances. I beg to move that clause 15 stand part of the Bill.

**Mr Corkill:** I beg to second and reserve my remarks.

**The Speaker:** Hon. members, the motion is that clause 15 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 16.

**Mr Braidwood:** Thank you, Mr Speaker. Clause 16 allows the commission to petition the high court for the appointment of a receiver or manager in respect of the affairs, business and property of a CSP or former CSP if such an appointment is in the public interest or necessary to protect the interests of customers or creditors, or necessary for the orderly winding up of a CSP business, or to ensure that the business is settled or disposed of in an orderly manner.

The court may appoint a suitable person as receiver and manager or dismiss the petition, or adjourn the hearing, or make an interim order. An interim order may restrict the exercise of any powers of the person or the directors of a body corporate.

This clause is without prejudice to the generality of section 42 of the High Court Act 1991 which refers to the powers of the high court with respect to injunctions and receivers.

I beg to move that clause 16 stand part of the Bill.

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

**The Speaker:** Hon. members, the motion is that clause 16 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Now, hon. members, on the white paper circulated to you, headed 'New Clause', the suggestion is made that the new clause be inserted before clause 17. So at this stage, with your agreement, I will call on the hon. member for Onchan to move the new clause.

**Mr Corkill:** Thank you, Mr Speaker. In moving the previous amendment I made reference to this new clause and the fact that it is considered that its the most appropriate part of the Bill is to insert it before we get to clause 17.

This new clause is as a result of further consultation which occurred since the second reading. It refers to 'Application in doubtful cases.' It has been said to the commission that doubt or a difference of view may arise on whether a person is carrying out a regulated activity by way of business, whether a person is or is not carrying out a domestic service and therefore qualifies for exemption, and whether a person is carrying out a directorship service. It does seem undesirable that any such cases of doubt can only be resolved by the court in the first instance. This new clause provides for a right of appeal to the Council of Ministers review committee on these three issues and of course this is the review committee which has already been discussed in the passage of the Bill.

I beg to move that the new clause stand part of the Bill:

*That the following new clause be agreed in principle -*

*NEW CLAUSE (It is suggested that the new clause be inserted before clause 17)*

*"Application in doubtful cases.*

- [ ].(1) *Where the Commission is satisfied that there is real doubt as to whether -*
- (a) a person engaging in a regulated activity is doing so by way of business; or*
  - (b) a company falls within heads (a) to (c) of paragraph 5(1) of Schedule 2; or*
  - (c) a person falls within paragraph 12 of Schedule 2, it may make a declaration under this section.*
- (2) A declaration under this section is a declaration in writing that -*
- (a) a person engaging in a regulated activity is or is not doing so by way of business; or*
  - (b) a company does or does not fall within heads (a) to (c) of paragraph 5(1) of Schedule 2; or*
  - (c) a person does or does not fall within paragraph 12 of Schedule 2.*
- (3) Where a declaration is made under this section, the person or company concerned shall, for the purposes of this Act, be treated accordingly.*
- (4) Any person who is directly affected by a declaration under this section may, within 28 days of the making of the declaration, apply for a review of it in accordance with section [17 - Review of Commission decisions].*
- (5) Without prejudice to section 26 of the Interpretation Act 1976, the powers conferred on the Commission by this section may be exercised in relation to specified cases, persons or companies or in relation to classes of case, persons or companies.”*

**The Speaker:** We deal with it in principle first, sir, the principle of the clause first. Hon. member for Rushen, Sir Miles.

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

**The Speaker:** Right, hon. members, dealing then with the principle, in other words what we would refer to as a second reading of what is suggested as a new clause, those in favour please say aye; against, no. The ayes have it. The ayes have it. Now, hon. member for Onchan, if you would move your clause we can pick it up from there.

**Mr Corkill:** Well, I formally wish to move it, Mr Speaker.

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

**Mr Quine:** A very short comment indeed, sir. I am happy to support this new clause. It certainly assists, I think, in providing some additional rights. My concern remains with section 17, but that is a matter of course which we will be moving on to later.

**The Speaker:** Hon. member for Onchan, do you wish to comment on that?

**Mr Corkill:** No, I have no comment, Mr Speaker.

**The Speaker:** In that case, hon. members, the motion is that the new clause circulated to you on your white sheet in the name of Mr Corkill stand part of the Bill, following section 16. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Now, hon. members, we then reach part 4 which is general and supplementary and I am assuming that the clauses hereafter will be renumbered so we can stay with it as it is at the present time. So I call upon the hon. member for Douglas East to move clause 17.

**Mr Braidwood:** As printed, Mr Speaker?

**The Speaker:** As printed, sir.

**Mr Braidwood:** I have referred to clause 17 as printed, Mr Speaker, on a number of occasions previously. This allows for an aggrieved party to refer a decision of the commission to the Chief Secretary for review by a Council of Ministers - appointed review committee to review any such decision. Three persons with appropriate experience who are independent of both the commission and the applicant will be appointed by the Council of Ministers. The nature of the decisions which may be referred for a review are: refusal to issue a licence; revocation or suspension of a licence; placing conditions on a licence or varying conditions; refusal on the grounds of lack of fitness and properness to allow a CSP to appoint a person in a key employee position; withdrawal of an exemption or imposition of any penalty.

Decisions of the commission may be confirmed, varied or revoked by the review committee whose decision shall be binding on both parties. There is, nevertheless, the right of recourse to the high court which could review, based on the law, the facts presented in the case and how the review committee arrived at its decision.

The Attorney-General advises that the high court will not have the power to act as an appellate tribunal of a decision of the review committee but it will be able to exercise its inherent powers to supervise the procedures and decisions of the committee to ensure fairness, reasonableness and propriety by way of judicial review.

At the second reading the hon. member for Ayre, Mr Quine, asked whether the prescribed procedures in clause 17 allow for an independent and impartial determination of the issues. He saw the relationship between the Council of Ministers and the review committee as 'somewhat incestuous'. He highlighted the executive function of the Council of Ministers to whom the application for review is addressed. He stated that the application has to be in the form and subject to conditions determined by the executive and that the persons who constitute the review committee are appointed by the executive. The regulations to provide for the practice and procedure of the review committee and the proceedings before the review committee are also, Mr Quine stated, determined by the executive.

The Attorney-General advises that he does not consider the fact that the Council of Ministers represent the executive arm of government on the Island creates any human rights problems in the context of the review committee. He advises that the sole function of the Council of Ministers, on notification of the application for a review, is to appoint three persons to form the review committee. The duty of the Council of Ministers is no doubt to ensure that the members of the committee have the appropriate experience and are independent of both the commission and the applicant. If the Council of Ministers were to fail to comply with its duties in this regard the applicant would be entitled to apply for a judicial review by a petition of dolence.

The commission itself has also received advice from a leading UK barrister on human rights law. He states that the legislature is entitled to set a ceiling on the right of appeal against

a factual decision of any tribunal or else there would be no end to the times that a decision could be challenged and reviewed. He goes on to say that the provisions of the Bill are not in breach of article 6(1) of the European Convention because 'Although they cannot place a ceiling on the review of a factual decision, they cannot preclude or restrict the right of appeal which anyone would have to the court if the Review Committee can be shown to have acted unlawfully or its decision can be described as unreasonable.'

Members will recall that the House, having heard the hon. member for Ayre's arguments against the Council of Ministers to appoint a review committee, and without the benefit at the time of the opinion of the Attorney-General, and the independent advice of a leading expert on European human rights law, were able to approve a similar provision for the review of the decisions of the Insurance and Pensions Authority in respect of the Retirement Benefits Schemes Bill. In view of the additional advice which has also now been provided I urge the House to approve the provisions of clause 17.

Finally, I would also point out that for consistency across all the Island's legislation schedule 3 to the Bill contains a similar change to the provisions relating to a review of the commission's decision in respect of its regulation of investment and banking business.

I beg to move that clause 17 stand part of the bill.

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

**Mr Quine:** Mr Speaker, I thank the hon. mover of the Bill, Mr Braidwood, for the fact that he has, once again, gone over the ground with his legal advisers. It would be wrong if I did not say I have some little greater assurance, but I am afraid my fundamental concerns remain unaltered.

I have to ask myself, once again, does this procedure in totality set down in clause 17 allow for an independent and impartial determination of the issues? I am afraid I remain minded to the view that these procedures do not.

At risk of restating some of the views which were attributed to me by the hon. mover I feel obligated to repeat them because I believe they are the nub of the issue. It is a fact that the application for review is to the executive. It is a fact that the application has to be in the form and subject to conditions determined by the executive. The person or persons constituting the review committee are appointed on the basis of the executive and he has not addressed an important issue which I did raise with him and that is that we still have a review committee which has no determinate tenure: they can be removed as and when the executive determine. That fact alone to my mind makes this procedure not an impartial and fair one. The regulations to provide for the practice and procedure of the review committee are determined by the executive, as are the proceedings of the committee.

So I am afraid there is nothing new here today other than what the hon. mover has referred to in terms of the further legal advice that he has got. The Attorney-General seems to be happy with it and at least regarding the advice obtained by the Treasury council, whoever that person may be, they seem to be happy with it. For my part I remain distinctly unhappy with this procedure and all the more so when I take on board the fact that through this clause we are in effect not simply following suit with a procedure that was debated and opposed, albeit approved, in discussing the retirement and pensions Bill but we are in this case taking it

now further, we are taking it into the Investment Business Act 1991 and into the Banking Act 1998.

I do not see the distinction which the hon. mover has sought to draw between the Council of Ministers and the executive. As far as I am concerned, and certainly in relation to the functions which are identified here, we are talking about the same people taking these decisions.

I am afraid I must go down on record as opposing this clause. I feel it is wrong and I shall wish to have my vote recorded as being against this procedure. It is not an impartial and fair procedure and nothing that has been said here today changes my view in that respect.

**The Speaker:** Hon. member for Onchan, do you wish to respond?

**Mr Corkill:** Just briefly, a couple of points, Mr Speaker. The hon. member who has just resumed his seat talked of Treasury council and I can say to this hon. Court that in fact the FSC, in producing this Bill and in its advice that it has received on this Bill, that advice has not come through Treasury, and I wanted to put that on record because I think it is important that the separation is acknowledged as we consider this clause, the separation which is also acknowledged in the way that this appeals procedure is also cast in this particular clause, and, as the hon. member rightly said, it was debated during the Retirement Benefits Schemes Bill and I acknowledge that there is no amendment before us as there was in that particular debate, and so I am sorry that the hon. member feels as though he has to vote against this particular clause because I was hoping we would be able to assure him that in fact the impartiality and independence is sufficient for the purposes of the functions. So there is no amendment before us as an alternative.

It is a complex area, but I wanted to make it clear that this is not Treasury council that has been advising the Financial Supervision Commission, Mr Speaker.

**The Speaker:** Do you wish to reply, sir?

**Mr Braidwood:** Thank you, Mr Speaker and I thank the Treasury minister for his comments, particularly as we discussed the similar clause in the Retirement Benefits Schemes Bill, and I thought with giving a little bit more insight the hon. member for Ayre would support this clause because I can understand his concerns, I know his change as well for human rights from what it used to be a couple of years ago which was hang, draw and quarter.

**Mr Quine:** Don't put any money on it! *(Laughter)*

**Mr Braidwood:** And I can understand, but what I have been trying to say in this clause, Mr Speaker, is that the applicant has the choice eventually of going for a judicial review by the petition of doleance.

I do not want to go over old ground and I therefore beg to move that clause 17 stand part of the Bill.

**The Speaker:** Hon. members, the motion is that clause 17 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: Messrs Gilbey, Cannan, Rodan, North, Sir Miles Walker, Mrs Crowe, Messrs Brown, Cretney, Braidwood, Downie, Mrs Hannan, Messrs Bell, Corkill, Cannell, Gelling and the Speaker - 16*

*Against: Messrs Quine, Houghton, Henderson, Duggan, Mrs Cannell and Mr Singer - 6*

**The Speaker:** Hon. members, with 16 votes cast for and 6 votes cast against, the clause therefore carries. We turn then, hon. members, to clause 18.

**Mr Braidwood:** Thank you, Mr Speaker. Clause 18 of the Bill provides a statutory indemnity against damages for the Treasury and the Financial Supervision Commission and any of their staff or any persons authorised to act on their behalf. Those persons shall not be liable in damages for any action performed in connection with performance of their functions under the Act or their failure to act so long as it can be shown that it was not done in bad faith.

A number of commentators have argued for the removal of the statutory indemnity or its qualification by adding to the concept of bad faith gross negligence or recklessness. As I said at the second reading of the Bill, the legal advice the commission received on what is meant by 'bad faith' refers to the fact that any exercise of a statutory power is invalid unless the repository of the power acts honestly and in good faith.

It is quite clear that the English courts have also found bad faith to include deliberate or reckless use of powers for legal purposes - *Crown v Liverpool City Council 1955*; reckless indifference to the lawfulness of actions taken - *Smith v Skinner 1986*; deliberate disregard of known statutory duties - *Lloyd v McMahon 1987*. Thus the courts have already interpreted 'bad faith' to include grossly negligent or reckless.

The Attorney-General's Chambers have further advised that it would be unwise to alter a term which is recognised by the courts, as this would require fresh interpretation and the commission may, as a possible consequence, find itself drawn into a matter of dispute between the CSP and its client.

The regulation of CSPs aims to encourage high standards of conduct but does not give the regulator control over CSPs' commercial decisions and it would be quite wrong to expose the regulator to such a challenge. Meanwhile the Insurance and Pensions Authority have a statutory indemnity in similar terms to that contained in clause 18 of the Bill which was debated and approved by the House at the clauses stage of the Retirement Benefits Schemes Bill 2000.

Members may wish to note that the Financial Services and Markets Bill in the UK in clause 19 currently would exempt the Financial Services Authority and its employees from liability and damages if the act or omission is shown to have been in bad faith. I acknowledge that the position may change further in the final enactment which is passed. However, this indemnity does not prevent an award of damages made if the act or omission was unlawful as a result of section 6(1) of the Human Rights Act 1998 of the British Parliament. Lord McIntosh of Haringey declared under the Human Rights Act on the face of that Bill that the provisions of the Bill are compatible with the European Convention on Human Rights. I understand that the legislative draftsman referred closely to the Financial Services and Markets Bill in his wording for clause 18.

Both Jersey's and Guernsey's Financial Supervision Commissions are currently indemnified against liability and damages in respect of regulation of investment and banking business and we understand they are proposing to extend this indemnity for their regulation of corporate and trust service providers.

The existing statutory indemnity for the commission contained in the banking and investment legislation will be similarly framed as set out in schedule 3 to this Bill.

As I said previously, the Association of Corporate Service Providers remains in disagreement with the commission, notwithstanding that the commission has moved considerably in response to their original comments with the indemnity now limited to damages only. Their argument is that if the commission were to act against a CSP this could result in an immediate financial loss to that CSP. However, we believe that unless the commission were to suspend or revoke a licence which would first be subject to review, there is no reason why, for example, any preliminary investigation should cause financial damage to the CSP. Moreover, consequential decisions taken by the commission are subject to review.

I would mention that in respect of investment business the commission has in the past carried out investigations unknown to anyone but the person being investigated and there has been no financial effect on that person's business. The commission therefore refutes any implication that it would behave and act without foundation, causing a legitimate operator to go out of business.

The Society of Chartered Accountants, in their recent correspondence and discussions with the commission, suggested that clause 18 of the Bill be allowed to stand as currently drafted but that the general issue of statutory indemnity as afforded to regulators in the Isle of Man be referred to a select committee of Tynwald for review. As a matter of public policy and in the light of issues raised in the UK under the Financial Services and Markets Bill and of European Union human rights concerns it will be important to ensure that the Isle of Man is not out of step in relation to international movement in this area. However, the commission believes that referring the matter to a select committee is premature at the present time. In particular, the Isle of Man would not want to be ahead of the field on this issue and any review of its legislation should first await the outcome of the Financial Services and Markets Bill in the UK and wider developments generally. In summary, therefore, the commission has not proposed any change to this clause and I seek your agreement.

I beg to move that clause 18 stand part of the Bill.

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

**Mr Quine:** Mr Speaker, I think I would have been more reassured if no mention had been made of the Financial Services and Markets Bill. The simple fact is that that Bill at this point in time is subject to, as I understand it, hundreds of amendments and so I do not think we can draw any comfort from that. We do not know whether it will pass, we do not know in what form it will pass and we certainly do not know what position will be taken in relation to this issue.

I come at this from the position I started with and that is I have asked them to explain to me why the Financial Supervision Commission or their agents require this form of immunity when the police force, dealing with complicated frauds and many other matters that are equally sensitive, do not require it and I have had no satisfactory answer to that whatsoever. It

has been suggested to me that one of the reasons of course is that the work being carried out by the Financial Supervision Commission is kind of a watchdog role, that in some way that dictates that they should have greater immunity than the police who are in a front-line role. I think that works the other way round, frankly, but putting that aside, why should the Financial Supervision Commission require this form of immunity when we do not offer it to the primary enforcement agency dealing with the great bulk of crime and criminal investigations? And the short answer is there is no good answer to that. The reason we have it in this form is because the Financial Supervision Commission feel that they need this protection. If they feel that they need this protection, then they must be somewhat unsure about their own procedures and their own investigating capabilities.

To my mind this is an overkill, it is unneeded, it cannot be justified by drawing a parallel with such as the police force and it clearly is the main issue causing concern in relation to those parties that have been consulted in this matter. It is this issue which is the principal concern with those parties, and I can understand that.

Yes, I accept and draw some comfort from the fact that the hon. mover has said that we should read into 'bad faith', we should extend that and we should look towards it in terms of gross negligence and recklessness based on case law, and that, I am sure, is correct, otherwise the hon. member would not have put that to us this morning, and there is some comfort to be drawn from that, but the fundamental position and my fundamental objection to this form of immunity, this all-embracing form of immunity, remains and once again I am afraid I must go on record as not supporting this particular clause.

**The Speaker:** The hon. member to reply.

**Mr Braidwood:** Thank you, Mr Speaker. Again, I can understand the hon. member for Ayre, Mr Quine's concerns, but we have changed the statutory indemnity that they are only liable for damages, and this was in response to concerns and a recognition of the trend towards a greater recognition of human rights in legislation and it was changed from any action, suit or proceedings and the commission's indemnity is now only in respect of liability for damages.

The hon. member for Ayre did raise objections to the IPA's statutory indemnity and the commission sought the Attorney-General's advice on Mr Quine's specific points which were raised at the second reading of this Bill. Mr Quine compared the regulator's position to that of the police when they conduct an investigation. The Attorney-General confirms that a police officer may be liable in damages for his acts and omissions whilst carrying out his duties, subject to a very limited form of indemnity under the Police Powers and Procedures Act 1998 as follows: a failure on the part of a police officer to comply with any time limit imposed by the Act shall not be liable in the absence of bad faith to any civil proceedings; a police officer who is in breach of the provisions of a code or practice will be liable to disciplinary proceedings. The position of the commission is different. Unlike the police, the commission will have power to make decisions such as refusing to issue a CSP licence or suspending or revoking an existing licence. The police, on the other hand, investigate and present a case for prosecution, but the courts make the decision. It is not therefore the police but the courts which must take a decision having financial consequences for the subject of the investigation and prosecution. I beg to move that clause 18 stand part of the Bill.

**The Speaker:** The motion then, hon. members, is that clause 18 stand part of the Bill. Will those in favour please say aye; against, no. The noes have it.

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

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

*Against: Messrs Quine, Houghton, Henderson, Duggan, Mrs Cannell and Mr Singer - 6*

**The Speaker:** Hon. members, the voting is 16 for, 6 against. The motion therefore carries. Hon. members, we turn now to clause 19. The hon. member for Douglas East.

**Mr Braidwood:** Thank you, Mr Speaker. Clause 19 makes it an offence to furnish the commission with any false or misleading material or to make false or misleading statements. Members will recall it is also an offence under clause 2 to act as a CSP without a licence. I beg to move that clause 19 stand part of the Bill.

**Mr Corkill:** I beg to second and reserve my remarks.

**The Speaker:** The motion, hon. members, is that clause 19 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 20.

**Mr Braidwood:** Thank you, Mr Speaker. Clause 20 sets out the penalty for an offence which is, on summary conviction, a fine not exceeding £5,000 or a term of custody not exceeding six months or both, on conviction on information, a fine or a term of custody not exceeding two years or both. I beg to move that clause 20 stand part of the Bill.

**Mr Corkill:** I beg to second and reserve my remarks.

**The Speaker:** The motion, hon. members, is that clause 20 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Dealing with the public documents section, perhaps we could take clauses 21 and 22, sir.

**Mr Braidwood:** Certainly, Mr Speaker. Thank you. Clause 21 relates to the making of regulations under the Bill.

Clause 22 requires that regulations may be made by the Council of Ministers, and regulatory codes made by the commission must be laid before Tynwald. The exception is regulations made by the commission under clause 8 which refers to civil penalties. Regulations under clause 8 have a different procedure and are required to be approved by Tynwald.

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

**Mr Corkill:** I beg to second and reserve my remarks.

**The Speaker:** The motion, hon. members, is that clauses 21 and 22 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Perhaps we could take clauses 23 and 24 together, sir.

**Mr Braidwood:** Certainly, Mr Speaker. Clause 23 refers to the obligations of an auditor to report any contravention of the Act or regulatory codes et cetera which come to light in the course of their audit work.

Clause 24 - the commission may require a CSP to appoint an accountant or a similar professional to report on any aspects or matter relating to the affairs of a CSP. This allows for a review of a particular aspect of a CSP's affairs which may be causing the commission concern.

I beg to move that clauses 23 and 24 stand part of the Bill.

**Mr Corkill:** I beg to second and reserve my remarks.

**Mr Henderson:** Mr Speaker, in relation to clause 23 I would ask the hon. mover for some clarification and certainly, if not today, on the next reading if possible because there seems to be a scenario here with clause 23 that it could be possible that there may be a requirement that every CSP is to be a limited company perhaps, as this clause 23 requires the auditor of a CSP to report to the commission. However, if the CSP is a sole practitioner or a small partnership, then the CSP will not have an auditor. It will only have an auditor if it is a limited company. So I would be grateful for some clarification there or in fact do we have some exemption for the smaller companies in this respect? How do we go on? Thank you, Mr Speaker.

**The Speaker:** With no other hon. member wishing to speak, I call upon the hon. member for Douglas East to reply.

**Mr Braidwood:** No, in response to the hon. member for North Douglas, Mr Henderson, it does not mean it is just a limited liability company but I will check and report back for the third reading. I beg to move.

**The Speaker:** Hon. members, the motion then is that clauses 23 and 24 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 25.

**Mr Braidwood:** Thank you, Mr Speaker. Clause 25 allows the commission, after consulting with the Treasury, to prescribe fees to be paid on the application for the issue of a licence and for the annual licence fee. I beg to move that clause 25 stand part of the Bill.

**Mr Corkill:** I beg to second and reserve my remarks.

**The Speaker:** The motion, hon. members, is that clause 25 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 26.

**Mr Braidwood:** Thank you, Mr Speaker. Clause 26 contains a glossary of terms used in the Act and their interpretation. I beg to move that clause 26 stand part of the Bill.

**Mr Corkill:** I beg to second and reserve my remarks.

**The Speaker:** The motion, hon. members, is that clause 26 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 27 and schedule 3, sir.

**Mr Braidwood:** Thank you, Mr Speaker. Clause 27 amends other enactments as specified in schedule 3. The majority of these amendments are consequential upon this Act or have been referred to in relation to specific clauses. The only additional points to which I would like to draw your attention are amendments to the Companies Act 1931 which allow the annual return of a company not having a share capital and any company limited by guarantee

and having a share capital to contain such other particulars as may be prescribed. This is in line with the wording relating to the annual return of a company limited by shares, and the amendment to the Companies Act 1931 has had to be made in order for the change to be made for the form of annual return. This annual requirement was in response to the Edwards review announced by the Council of Ministers, namely to include a declaration that a company has prepared accounts. Amendment to the Companies Act 1982, section 20(1) which will require that the statement of first directors and secretary delivered on the application of registration of a company may only be presented by a person who is resident in the Island.

I beg to move that clause 27 and schedule 3 stand part of the Bill.

**Mr Corkill:** I beg to second and reserve my remarks.

**Mr Quine:** Just one point I would like to make, sir. Schedule 3 of course is a schedule embracing certain amendments and I have no problem with that, I have no problem with the clauses, but I think I would want to go on record as saying that I am unhappy when matters as fundamental as a substitution of review procedures for other Acts, matters which really go to the heart of the rights of the individual, are effected through a schedule to another Bill.

Now, we have here paragraph 7 of schedule 3, an amendment to the Investment Business Act which of course puts in a new review procedure of the commission's decisions, and again we have the same thing at paragraph 14 of schedule 3 in relation to the Banking Act, a substitution of a new review procedure which takes on board some pretty fundamental issues and yet it is tucked away in a schedule.

Now, I accept of course that what we have debated in the body of this Act in relation to corporate services is essentially one and the same, that the principles are essentially one and the same thing, but to express a personal point of view, I think it is wrong that matters as fundamental as that, affecting other enactments, should be tucked away in a schedule that ordinarily deals with consequential amendments.

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

**Mr Braidwood:** Thank you, Mr Speaker. In response to the hon. member for Ayre, Mr Quine, the amendments to the Investment Business and the Banking Acts were put into schedule 3 so that we could have uniformity throughout our legislation (**Mr Corkill:** Hear, hear.), particularly for the review procedure, which as far as I am concerned is a lighter touch and it is better to have a review procedure by the Council of Ministers than the Treasury and also a lighter touch, I would think -

**Mr Quine:** Can you explain the difference?

**Mr Braidwood:** - on the statutory indemnity which we have already said would only be liable to damages whilst acting in bad faith. I beg to move.

**The Speaker:** Hon. members, the motion is that clause 27 and schedule 3 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Finally, sir, clause 28.

**Mr Braidwood:** Thank you, Mr Speaker. This clause provides for the short title of the Act and for its commencement. It is planned that the coming into operation of clause 2 of the Bill would initially be set at a later date than that for the rest of the Bill to allow for a period in which

the commission can process the majority of licence applications. I beg to move that clause 28 stand part of the Bill.

**Mr Corkill:** I am very pleased to second and reserve my remarks, Mr Speaker.

**The Speaker:** The motion, hon. members, is that the short title and commencement at clause 28 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 Corporate Service Providers Bill for this morning.

Now, hon. members, aware of the clock but realising that maybe with two items left on our agenda, with co-operation we may be able to clear the agenda, if you say so, hon. members, would you agree to give it a try?

**Members:** Agreed.

### **Electronic Transactions Bill – Council Amendments Considered**

**The Speaker:** I therefore call upon the hon. member for Middle to move item 11 on our order paper.

**Mr North:** Thank you, Mr Speaker. The Electronic Transactions Bill went to the Council and after leaving this House it was found that regarding a particular section referring to evidence it was desirable, rather than bringing it as an amendment Bill at a later date, that it would be expeditious to bring it up into the Legislative Council and they have done that, and the effect of this new clause is to give the courts a wider discretion than they have at present to allow evidence which is in an electronic form. I have circulated all the details to members of that and I beg to move that the clause stand part of the Bill.

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

**The Speaker:** Hon. members, the motion is that the House accepts the new clause inserted by the Council to the Electronic Transactions Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

### **Employment (Sex Discrimination) Bill – Council Amendments – Consideration Commenced**

**The Speaker:** We turn then, hon. members, to item 12 on the order paper, which is the Employment (Sex Discrimination) Bill and this time I call again for consideration of Council amendments and I call upon the hon. member for Rushen, Mrs Crowe.

**Mrs Crowe:** Thank you, Mr Speaker. The Employment (Sex Discrimination) Bill is before us today for consideration of three amendments which were made by the Legislative Council.

One of these amendments is to clause 51 which ensures that changes relating to insolvency take immediate effect. This was an amendment moved by the learned Attorney-General and I would support it, as this was our original intention.

The next amendment was concerned with the way the Bill would treat small employers. The Bill originally proposed in clause 8 to exempt employers from having to comply with part 2 of the Bill if and only if they could justify discrimination on grounds of their organisation's size and resources to the Employment Tribunal. The clause was not and, as has been wrongly portrayed, a licence for employers to discriminate. We believe that it was a fair compromise. The department was aware that the issue of pregnancy and maternity in the workforce can

place a heavier burden on small employers rather than larger employers. Where there are small numbers of employees it is more difficult to manage without key workers and to accommodate lengthy absences or periods of incapacity. The amendment completely removes any defence of justification relating to size or the resources of an establishment.

It is to be noted that the Attorney-General spoke against clause 8(7) as originally drafted on the grounds that it could dilute the Bill and would be difficult to justify to experts at the United Nations.

Now, this did come as a surprise to the department as our position regarding this clause had been explicit at all times and the certificate confirming that the Bill was correct as to its legal form and was not likely to be in breach of the Island's international obligations had been received from the Attorney before the Bill had entered the branches.

However, the department accepts that the arguments for and against the amendment are finely balanced and it is also to be noted that in respect of indirect discrimination the Bill will still give employers the potential for arguing justification and this in itself would give the Employment Tribunal the opportunity to consider any special arguments in respect of the size of the employer. The department will not go against the Attorney-General's advice in this matter and therefore will not oppose the amendment.

I would like now to turn to the final amendment moved in the other place. Members will recall that the Bill as originally drafted specified a three-year deferral period to operate before the Bill was to come into force, with the exception of certain provisions such as the creation of a new discrimination officer. The amendment will reduce the three-year deferral period on the Act coming into force to only one year.

We took the view that there were valid arguments for delaying the implementation of legislation. The department sees education and awareness-raising as being key to the successful implementation of this legislation and this will take time. Some potential applications of the provisions, particularly regarding pregnancy and sexual harassment, are not apparent, whilst the full implications of some concepts of the Bill, such as indirect discrimination, are difficult to master. The Bill does have the capacity to cause confusion and expose employers to liability unless it is preceded by an increase in employers' awareness and opportunities for them to adopt appropriate practices where necessary.

Ideally the department would have wished to amend the Employment Act in order to strengthen maternity rights before this Bill came into force, because less favourable treatment on the grounds of an employee's pregnancy or for other maternity-related reasons is direct discrimination contrary to the Bill. A strengthening of individual rights would have helped to minimise any sex discrimination claims relating to maternity and to smooth the introduction of the Bill.

However, I am aware that the legislation is long overdue, ironically not least because of the failure of the past mover of these latter two amendments to move it on when he had the opportunity. I am also aware that there is public expectation that the legislation will be introduced as soon as possible and at the end of the day it is a matter of judgement, but the department firmly believes in the principle of equality and accepts that we could accomplish much within a single year, especially as we will be getting the discrimination officer in place as speedily as possible.

In order to bring this matter to a speedy conclusion and to avoid the Bill being further delayed I will be supporting the Bill as amended and have pleasure in recommending it to this House.

I would also like to thank hon. members for their support shown during the passage of this Bill. I was delighted to be entrusted by the minister with this Bill and to play my part in helping to overcome discrimination in the Isle of Man in bringing about greater equality of opportunities between the sexes and in enabling people on this Island to be able to reach their true potential on grounds of their merit and not on grounds of their gender. Mr Speaker, I beg to move.

**Mr Henderson:** Thank you, Mr Speaker, I beg to second, sir, and reserve my comments.

**Mr North:** Mr Speaker, just briefly, as hon. members will realise, it was a very difficult one, this, for the department and I fully understand that some members in this House, particularly the hon. member for Glenfaba and I think the Treasury minister, were very concerned and compromised their situation to a certain extent when the Bill came through this House and I fully understand their position on this.

As far as I am concerned I congratulate the hon. mover of this Bill and thank her for all the work that she put into this. We understand that people like a second bite at the cherry in another place and it will create difficulties for us in terms of implementation. I think we can do it (**Messrs Cretney and Henderson:** Hear, hear.) and I hope that hon. members will support the amendments from the Council.

**Mr Gilbey:** Mr Speaker, as the hon. minister who has resumed his seat has just said, he accepts that I can speak against this proposal, as does the hon. Chief Minister, and I have two reasons to most strongly oppose these amendments, both on points of major principle.

The first major principle is that I have always regarded the Legislative Council as a delaying and revising chamber, not a chamber to change major policies decided by this hon. House which has been elected by the people, and there is no doubt that two of the amendments here are major policy changes, those regarding small employers and the one regarding one year instead of three, and I regard it as totally wrong as a matter of principle, whatever it is, that the Legislative Council should completely reverse the decisions of this hon. House which were passed by a considerable majority on such fundamental matters. That is the start.

The second general principle is that, as the hon. Minister for Trade and Industry, Mr North, has very kindly said, this and the mover of the Bill has agreed that this Bill was a balance between conflicting views and a lot of people who had views either way accepted it as a balance between conflicting views and what you might call a fair compromise and it was on that basis that many people agreed it and I am sure that it went through this House by a substantial majority. However, now that balance has been changed in what I regard as a totally unacceptable way.

The hon. mover clearly explained the reasons why, as originally drafted, the Bill excluded small employers who are so important to our economy and I think there is no reason to change this except that the Attorney-General has changed his mind. It was his department that agreed to the drafting of this Bill and approved this Bill and it is totally wrong to change it

on the grounds that what he thought was right a couple of months ago has now suddenly become wrong. I think one should remember that lawyers, whoever they are, are not always right (**Mr Houghton:** Hear, hear.) and furthermore -

**Mr Cretney:** Neither are politicians.

**Mr Gilbey:** No, neither are they - I think it is totally wrong to change and that it is the politicians who should decide these matters, not the Attorney-General.

The second point is the introduction under clause 51 of one year instead of five years. The hon. mover has explained the difficulties that this will cause. It is not what was recommended initially, it is not what this hon. House agreed initially and I think it is totally wrong on such a controversial and difficult matter to rush it in without proper time for education and explanation, and therefore I shall certainly, even if I am the only person in this House who does so, be opposing these amendments.

**Mr Singer:** Mr Speaker, I can assure the last speaker that there will be two people opposing these amendments. I think that this House got it right last time (**Mr Gilbey:** Hear, hear.) particularly in the exemption for small businesses with less than five people. We have to recognise that these businesses do have difficulties and that losing one member of staff, if you only have four members of staff, is a 25 per cent reduction in your staff and you have got to make further arrangements.

Now, there are difficulties for such businesses and I spoke certainly to the draftsman yesterday and put two cases to him, two scenarios, and his comments were 'Mm, yes, very interesting.' For example, two people come for a job, a man and a woman, and both have equal qualifications and one says, 'That's fine, I'd like this full-time job, but I must have the school holidays off.' Now, that could be either the man or the woman. Now, if one is then chosen against the other, the one who does not ask for the time off, that is discrimination or certainly can be described as indirect discrimination and that can drag the employer through the tribunal. Secondly, there are certain jobs, even in shop work, where it is the customer's preference that a man will deal with a man or a woman will deal with a woman, particularly when physical contact is concerned and I think that we are making a rod for our back here by the fact that we are going to drag the employer of a small business through the tribunals in order to establish the case law. I think this is wrong. I think the decision this House made was right. I think this time that the Attorney-General is wrong and I think we should stick by our guns and go with our first decision.

**Mr Gilbey:** Hear, hear.

**The Speaker:** Hon. members, I am somewhat concerned that it is now reaching quarter past one. I have the indication already that there are two further members who wish to speak on the subject and I feel I may have misled the House into thinking that we could actually clear this item off the agenda. It appears, hon. members, as if it is now becoming a matter of principle. In that case I am reluctant to continue too long and I am aware, hon. members, that the clock has gone past, but it seems a bit unfortunate to have to adjourn this particular debate, but I mean to say I am currently in your hands and I know that there are now three members who have indicated they wish to speak.

**Mr Singer:** May I suggest that we go on till half past and see where we are?

**Members:** No.

**Mr Karran:** Vainstyr Loayreyder, I propose we adjourn now. I am sorry about this. Some of us are a lot busier than others and if we can come back this afternoon, the rest of them can come back.

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

**The Speaker:** Well, hon. members, I apologise to the House for carrying you through to quarter past one, but I think the House is suggesting that we should adjourn. In that case, hon. members, the debate on the Employment (Sex Discrimination) Bill is adjourned. We stand adjourned until half past two in Tynwald Court, hon. members.

*The House adjourned at 1.15 p.m.*

### **Procedural**

*(In Tynwald chamber after the election of the Speaker as President of Tynwald)*

**The Deputy Speaker (Mr J D Q Cannan):** Hon. members, the Representation of the People Act 1995, section 9, places a general obligation on this House to forthwith proceed to elect one of their number to be Speaker when the office is vacated. Hon. members, I seek your guidance and I am in your hands. The House may wish to proceed to elect a Speaker today. Alternatively, it may be your wish to have the election as the first item of business after Question Time at our next meeting, which is on Tuesday, 9th May. Therefore, I call for a motion on this matter. May I suggest that if we are to proceed to election today we should do so in our own chamber at 3 o'clock. (**Members:** Hear, hear.) This would allow members to consider guidance notes on the election which have been prepared by the learned Secretary and are placed on the desks in the Keys chamber. I call on the hon. member for Douglas West, Mr Downie.

**Mr Downie:** Yes, I move, Mr Deputy Speaker:

*That the House adjourn to its chamber to elect a Speaker.*

**The Deputy Speaker:** Do I have a seconder?

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

**Mr Karran:** Lhiass-loayreyder, I propose that we go to the 9th. We have one of our members not here today and there should be an opportunity for every member of the House of Keys that is eligible to vote to be here. I propose that we go to the next sitting of the House. I think that is the right way we should do it, and I think that is the way it should be. The hon. member is unable to be here today. That is 4 per cent of the vote that should be here and he should be able to use his vote. There is no pressing reason why we should go back to our chamber today to elect a Speaker, in my opinion.

**The Deputy Speaker:** Hon. member, may I suggest before you finish that as we have a motion before the House which has been properly seconded you can either amend the motion or alternatively you can vote against the motion but I cannot have two motions running at the same time. So what would you like to do, hon. member?

**Mr Karran:** I would like to put the amendment to this proposal. I think it is wrong. The people of West Douglas should be able to have their two representatives in this hon. House. I beg to move:

*For the words after 'House' substitute 'elect a Speaker at its sitting on 9th May.'*

**The Deputy Speaker:** Do I have a seconder to the amendment?

**Mrs Hannan:** Yes, I will second that.

**The Deputy Speaker:** Does anybody wish to speak to the motion or to the amendment?

**Mr Downie:** Mr Deputy Speaker, I must give apologies in advance because I will be missing on the 9th. I will be on government business with the Scottish Office on that day and I will not be available for the sitting.

**The Deputy Speaker:** Does anybody else wish to speak? The member for Ayre.

**Mr Quine:** Yes, if I may, Mr Deputy Speaker. The position as I see it is that no matter whether it is today or whether it is the 9th or whether it is another day, there is always going to be the distinct possibility that some member is going to be absent. I think what is important is that the post of Speaker is vacant and we should seek to fill it at the earliest opportunity.

**A Member:** Hear, hear.

**Mr Downie:** As per standing orders.

**The Deputy Speaker:** Does anybody else wish to speak? I ask the hon. member for Onchan, Mr Karran, to reply.

**Mr Karran:** Lhiass-loayreyder, I believe the opportunity is for Mr Downie, the hon. member, to make a decision whether he wants to be here or he does not want to be here for that sitting. I think it is quite wrong for this hon. House. I believe it is quite right that there should be plenty of notice. People know under no uncertain terms that if they do not get there. . . This is the most important office within the parliamentary system in this country. I think it is wrong, and if the hon. member chooses to be off on some jolly with the Scottish Parliament, that is up to him.

**The Deputy Speaker:** Can I ask the mover of the motion to respond?

**Mr Downie:** Yes, Mr Deputy Speaker. Standing orders in this regard are quite clear: the position of Speaker is to be filled as soon as practically possible and my understanding is that as we have elected a President today, there is a vacancy for the position of Speaker in the House of Keys and it is my view that as the Keys are sitting this afternoon we get on and do the job and carry on with the normal business instead of all this filibustering that is being proposed by the hon. member for Onchan, Mr Karran. *(Mr Karran interjecting)*

**The Deputy Speaker:** Hon. members, we now have a motion before us and an amendment. The motion is that we adjourn to our own chamber to elect a Speaker. The amendment is that it be deferred until Tuesday, 9th May. I will put to members the amendment. Will those in favour of the amendment please say aye; against, no. The noes have it.

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

*For: Messrs Gilbey, North, Sir Miles Walker, Mrs Crowe, Messrs Brown, Cretney, Mrs Hannan, Messrs Karran, Corkill and Gelling - 10*

*Against: Messrs Quine, Rodan, Houghton, Henderson, Duggan, Braidwood, Mrs Cannell, Messrs Downie, Singer, Bell, Cannell and the Deputy Speaker - 12*

**The Deputy Speaker:** Hon. members, the amendment fails to carry; there are 10 votes for and 12 against. I will now put the motion as it stands, that this House adjourn to its own chamber at 3 o'clock for the purpose of electing a Speaker and completing the business of today. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. The motion carries. Therefore, hon. members, we will adjourn to our own chamber at 3 o'clock to carry out the business.

*The House adjourned at 2.53 p.m. to its own chamber.*

### **Election of the Speaker**

**The Deputy Speaker (Mr J D Q Cannan):** Hon. members, as I mentioned when we were in the Tynwald chamber, what we agreed by ballot, the first item of business for this sitting would be election of the Speaker.

The election is governed by standing orders 9 and 10 of this House. Standing order 10 provides that if there is more than one candidate there must be a ballot of the members present, the presiding officer declares the result of the ballot, the candidate who receives the highest number of votes in that ballot shall be Speaker of this House.

Hon. members, I will proceed as follows. When a member has been nominated I will seek a seconder for that nomination before calling for any further nominations. Hon. members nominating and seconding a candidate will be permitted to make short speeches in support of their nominee. If more than one member is nominated and seconded, in accordance with standing order 10, we will proceed by ballot and the member receiving the highest number of votes will be elected. Is that clear, hon. members? I will now call for nominations. The hon. member for Ayre.

**Mr Quine:** Mr Deputy Speaker, sir, I would like to nominate your good self for the post of Speaker.

**Mr Cannan:** Hon. member, I must stop you there. If I am to be proposed it is necessary for me to leave the chair, and I call upon the hon. member for Peel, Mrs Hannan.

**Mrs Hannan:** Vainstyr Lhiass-loayreyder, I move:

*That the hon. member for Ramsey, Mr Bell, take the chair for the election of Speaker.*

**The Deputy Speaker:** May I have a seconder?

**Mrs Cannell:** I am happy to second, sir.

**Mr Downie:** As long as he does not have to put a wig on! *(Laughter)*

**The Deputy Speaker:** Hon. members, I put the motion that the hon. member for Ramsey, Mr Bell, take the chair for the election of Speaker. Is that agreed?

**Members:** Agreed.

**The Deputy Speaker:** Thank you. The hon. member for Ramsey.

*Mr Cannan vacated the chair, which was taken by Mr Bell.*

**The Acting Speaker (Hon A R Bell):** Thank you, hon. members. Hon. members, we have had one nomination, the hon. member for Ayre.

**Mr Quine:** Thank you, Mr Acting Speaker. The hon. member for Michael, sir, who I wish to nominate for the post of Speaker, was first elected to this hon. House in October 1982 and has been re-elected in 1986, 1991 and 1996. With 17<sup>1</sup>/<sub>2</sub> years' service in the legislature and government he has acquired a very considerable knowledge and wide experience. He is, I am sure as we are all aware, very well versed in the procedures of this hon. House.

From December 1986 to December 1989 the hon. member for Michael was both the Minister for Treasury and Chairman of the Financial Supervision Commission. He has served on the former Local Government Board, the Tourist Board, Health Services and Social Security and he is presently a member of the Department of Education. He has, of course, served on many committees of Tynwald and is presently Vice-Chairman of the Public Accounts Committee and Chairman of the Standing Committee on Constitutional Matters. As hon. members are, of course, well aware, the hon. member for Michael is currently the Deputy Speaker. I have pleasure in nominating the hon. member for Michael.

**Mr Duggan:** I rise to second, sir.

**The Acting Speaker:** Any further nominations?

**Mr Cretney:** Mr Acting Speaker, the qualities the holder of office of Speaker must possess should in my view include impartiality, fairness, and a good knowledge of the standing orders and procedures of both this House and Tynwald - a person who has the interests of the Isle of Man firstly and foremost in their mind. The Speaker should protect with vigour the rights of hon. members and act at all times with integrity.

I believe the hon. member for Castletown, Tony Brown, closely meets my criteria for this position. He has served as a member for Castletown since 1981, being returned as the choice of Castletown on each subsequent occasion. A glance at the many responsibilities taken on willingly by Tony Brown over the years both on a parliamentary and constituency basis illustrate a commitment to public service which I suggest is second to none.

Of particular relevance in nominating Tony Brown to the position of Speaker of the House of Keys is his commitment for 10 years on the House of Keys Consultative Committee, 5 years on the Standing Orders Committee, 3 years on the Tynwald Ceremony Arrangements Committee and service on the Declaration of Members' Interests Committee amongst other duties carried out to serve fellow members on a parliamentary basis.

From a government point of view, positions of relevance include chairing the Council of Ministers' Administration Committee and over considerable periods membership of the Legislative Scrutiny Committee.

I have known Tony Brown for many years. I know his strengths and recognise his shortcomings. After all, only one person was perfect, and he did not serve as a member of the House of Keys. Tony can be single-minded and stubborn in pursuit of what he believes in on behalf of those he represents, but his record shows he can deliver. Therefore I have no

hesitation in recommending him in the light of my previous comments. After all, he shares those qualities with Speakers Kerruish, Kneale and Cringle, all of whom have served the Island with distinction. Indeed, it could be that such determination channelled in the direction of the supremacy of the House of Keys and members' interests may be seen by members as a positive strength. History dictates that this has generally been the case in respect of those I have already mentioned.

I believe Tony, who is well known on the broader stage via government and the Commonwealth Parliamentary Association contacts, has the ability to serve the House, Tynwald and our Island with distinction. He would be a very worthy holder of the historic position as Speaker of the House of Keys, the history of which he is so very proud of and which he would seek to take forward to the opportunities and challenges ahead. I beg to move.

**The Acting Speaker:** Do I have a seconder, please?

**Mrs Crowe:** I beg to second, Mr Acting Speaker, and in doing so I know the *Tynwald Companion* lists all the work that the hon. member for Castletown has done in this legislature. I know as Minister for Tourism, Minister for DoLGE, Minister for Health and Social Security and now Minister for Transport that he has been hard-working and fair, a minister respected by the members who worked for him but also respected by all the officers that have worked alongside him.

I first met Tony when, as a newly elected member of this House, we came in for a seminar that had been arranged by the learned Secretary. Now, for two days the hon. member for Castletown came in and explained to the newly elected members procedures of the House, standing orders, all the things that we just did not know about, and for that I will always be grateful to the member for Castletown.

I think the member for Castletown will make a most suitable candidate for Speaker. In his 19 years in this House he has gained an outstanding knowledge of the passage of legislation, the procedures of this House, and his knowledge of standing orders cannot be rivalled. These attributes, I feel, would make him not only a most knowledgeable Speaker but, as we know from the members and officers who work with him, a hard-working but above all a fair and honest Speaker.

**The Acting Speaker:** Hon. members, do I have any further nominations? In that case, hon. members, I call upon the learned Secretary of the House to distribute ballot papers. Once they have been distributed I will ask the hon. learned Secretary once again to read the names of the nominated members in alphabetical order.

**The Secretary:** Mr Acting Speaker, the names of the candidates nominated and seconded are Mr Brown and Mr Cannan.

**The Acting Speaker:** Hon. members, could I nominate Mr Houghton, the hon. member for North Douglas, and Mr Singer, the hon. member for Ramsey, to scrutinise the ballot papers.

*A ballot took place.*

**The Acting Speaker:** Hon. members, the result of the ballot is as follows: Mr Brown has 10 votes and Mr Cannan has 11 votes. The hon. member for Michael, Mr Cannan, having

received the highest number of votes, in accordance with standing order 10 I declare duly elected as Speaker of the House. I therefore invite the hon. member for Michael to take the chair.

**Mr Quine:** Hear, hear. (*Applause*)

*Mr Bell vacated the chair, which was taken by Mr Cannan.*

**The Speaker (Mr J D Q Cannan):** Hon. members, I am deeply conscious of the ballot, its result, and the trust that has been placed in me today. It is a privilege and an honour to be Speaker of this ancient House and I give an undertaking to members that I will do my best and utmost to preserve the dignity of this House, the rights and privileges of hon. members. Thank you, hon. members.

I now seek a motion that we move to return to complete the business on our agenda paper. There is only one item left.

**Mr Henderson:** I beg to move, sir:

*That the agenda for the sitting this day be completed.*

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

#### **Employment (Sex Discrimination) Bill – Council Amendments Agreed**

**The Speaker:** In which case I call upon the hon. member for Onchan.

**Mr Corkill:** Thank you, Mr Speaker, and may I, in my comments with regard to this Bill that is before us, take the opportunity to congratulate you, sir, on your election to Speaker. (**Mr Quine:** Hear, hear.)

The issue before us with regard to this Employment (Sex Discrimination) legislation has brought a number of issues before us. The fact that another place has sought to change policy with a simple amendment or series of amendments has perhaps taken some members by surprise, but of course the powers of the Legislative Council are such that they are well able to do this. Just imagine, if they become an elected body by the public, the force of that policy-making power that they would wield, and this is perhaps a little example of things to come if we go down that route, - but that is an aside.

I am concerned on behalf of a small employer's situation on the Island. I think every sane person understands that it is quite wrong to proactively discriminate between the sexes. It is fundamentally wrong to do that and I do not believe that the majority of people in their business activity seek that type of situation. But inevitably there are social pressures which arise, and the point I would like to make is that in a small business situation and the type of business with less than five employees those pressures have to be handled in a different way. The large corporates have that flexibility to deal with things. They expect every year a certain number of their employees to be expecting children. They expect a certain amount of time off for a number of issues. They can manage their business to accommodate all these issues, but in my own experience of employing small numbers of employees in relative terms - I think the most I ever got up to was employing 12 people at one time, but generally round about five people - the pressures are very much different, but they are, I can assure you, in most small businesses managed in a very personal and human sort of way; they are managed in a way

that does not require the level of rules and regulations which we tend to put on the big corporates.

So I was rather surprised when a Bill which had left this House in its balanced way - balanced in the way that the hon. member for Glenfaba has stated this morning - that balance has now been disrupted, and I think it opens up the whole principle of this particular legislation. I have to say that I came here to the House of Keys today wanting to know why the change had occurred. Was it due to a particular representation from a particular area in the passage of the Bill, or was it simply the views of an individual because during the process of the Bill, as far as the House of Keys situation, the consultation that had occurred that the Department of Trade and Industry, government, had actually entered into with a cross-section of the Isle of Man community had actually produced the Bill that we gave to the upper chamber for scrutiny, and so I feel let down, in a way, that things have changed. So I came to the House of Keys today willing to hear the arguments as to why the change had occurred, and I have not heard that argument yet as to why the legislation which we sent on its way with a firm endorsement should be back here with a completely different principle involved in it.

The other point I would like to make is that so often government is criticised for not doing enough for small business. The big march of the corporate is seen as a threat to small business, and yet here we are with an amendment which helps that very process, and that concerns me. Over 70 per cent of the businesses on the Isle of Man employ less than five people. We have a different structure of economy here compared to the United Kingdom. That is not to say we should not import the good ideas on discrimination from the United Kingdom, but we did have a Bill which was balanced and I believe the balance has gone. (**A Member:** Hear, hear.) I will listen to the arguments and I will vote accordingly. I feel free to vote the way my heart tells me to vote on this because the policy seems to be changing. That is the point I wanted to make, Mr Speaker.

**Mrs Hannan:** Vainstyr Loayreyder, in rising to speak to this debate on discrimination I wonder if I could congratulate you and if I could also congratulate you, Vainstyr Loayreyder, for taking the seat and not wearing a wig and gown, and I hope that that will prevail.

**The Speaker:** I am not sure, hon. member, whether the dignity of the House will be improved or less improved without a gown.

**Mrs Hannan:** I assure you, Vainstyr Loayreyder, it would be a great improvement if you did not wear a wig and a gown. (*Interjections*) To take the comment of the hon. member for Onchan who quite often tells us that we should not be colonial and we should not defer to anyone, I would hope that it will continue.

The member of Onchan who has just resumed his seat stated that he was not aware that there should not be discrimination with regard to small businesses, but the European Convention on Human Rights, the United Nations Convention on Human Rights does not discriminate one against another, and therefore I do not believe our legislation should discriminate one against another. If someone is employed, no matter if they are one or 4,000, they should have rights and those rights should be protected by this hon. House.

We have waited a very long time for this legislation. I have been in the House 13 years and it is something that I have pursued with a number of ministers during that time, and I congratulate Minister North in the Department of Trade and Industry and the mover of this

legislation, Mrs Crowe, for bringing this legislation forward. It is not before its time. As I have said, we have waited a long time. The revising chamber is just that, and I think that it protected our interests in moving the amendment to this legislation and therefore today, with a new Speaker, a new Mainstyr Loayreyder without a wig and without a gown, I hope that will go on and I think we should support this as a new way forward. Thank you, Vainstyr Loayreyder.

**Mr Henderson:** Mr Speaker, in rising to address the amendments that are before us today as put by the hon. member for Rushen, Mrs Crowe, I must first, sir, congratulate you on your election to the Speaker of the Keys, sir.

**The Speaker:** Thank you.

**Mr Henderson:** In progressing my contribution to this debate, Mr Speaker, I must say, as others have done in the past, that the time has come for many things, and one of those many things is my time now, sir, because I find it very strange that the amendment before us now which has bumped downstairs from the Legislative Council originally set out on its rocky course as my amendment to the original legislation to this Bill many weeks ago when I was concerned with the Employment (Sex Discrimination) Bill and equalisation for both men and women. The fundamental principle of any employment sex discrimination is surely a Bill which provides effective sex discrimination. That is the whole building block of this legislation. This House at that time decided not to vote for my amendment, which defined what small businesses were a little bit more than the nebulosity of the original definitions, in my naive attempts to try and put a little more teeth to the Bill and make it a little more realistic. I was soundly rubbished in my attempt to bring a little more clarity to this in my efforts to produce the goods. This is, as I said at the time, show-piece legislation for the Isle of Man; there is no getting away from that. We are under the focus of the UK with what we are doing with our human rights, we are under the focus of the European Union with our progression of human rights and, by golly, we are under the focus of the United Nations with where we are going with our human rights, and certainly that is very true in recent weeks when the Attorney-General and the Chief Secretary of the Isle of Man had to report to UN headquarters and let the United Nations officials know just exactly where we were going with human rights.

Now then, at that time, if I can just point out, those were the fundamental issues I was concerned with. What we were going to do was pass legislation which allowed for 70 to 80 per cent of employers in this Island who could possibly have an exemption and legally discriminate. That was my concern and I think it is a just concern, it is a fair concern, and I cannot say I was impressed with sitting in front of a volcano that was erupting behind me at the time (*Laughter and interjections*), but I progressed and, in doing so, I have to say it was drawn to my attention by the hon. Mr Lowey, who will back me up - I have no question of that whatsoever - in pointing out he had seen my amendment and presented it to the Legislative Council. The Attorney-General then went on and gave some clarification of human rights issues - and it is all here in the *Hansard* of the Legislative Council - which is exactly what this amendment is proposing to do now, that in presenting any form of sex discrimination legislation we cannot have a Bill really that is going to actively achieve legalised discrimination in any way, so you either have it or you do not have it.

Now, when the Chief Secretary and the learned Attorney-General went away to the United Nations, to the head office in New York, it is quoted in their media releases and reports here, 'John Corlett, Attorney-General, Isle of Man, said that the government of the Island

recognised its increasing international responsibility especially in the area of human rights.' That commitment has been given and delivered to the Supreme Council of the United Nations in New York. And, further to that, in their further lengthy submissions regarding sexual discrimination assurances were further given to the Council.

Now, that leaves us in somewhat of a quandary because we have some members who feel a little uncertain with this amendment. Some members like me think we have to go with it. If we are going to progress onwards into the new millennium with any sense of international standing we do not want to be in the wings of the stage; we want to be on the stage shoulder to shoulder, partnerships with other countries, not in the back or behind the curtains. That is no use. We have not got any choice as far as I can see it, really. We had the CSP Bill this morning and the same sort of arguments were progressed for that in lots of ways inasmuch as very important legislation, the international spotlight is on it; we have got to have the credibility of the Isle of Man at heart when we are progressing issues such as these.

The Employment (Sex Discrimination) Bill is equally as important. The international spotlight is on this House and on this Island with regards to our human rights record. I drew this out last time and endeavoured to illustrate to all hon. members the different facets of this debate and why it was important to look at it and look at the big picture even but, as I say, 'rubbished' would be the best way to describe it, and yet now we have a legal definition, we have the United Nations saying the same thing and some of the Euro conventions are saying the same thing.

I was happy to second this amendment this morning when I saw it coming back to our tables for scrutiny because it does exactly what I was hoping to try and achieve all those weeks ago: it puts some definition into the Bill and puts the fundamental principle of sex discrimination firmly on course for this Island and hopefully, then, onwards to be able to report to the UN in future that our piece of show-piece legislation is there for all to see and something to be proud of.

**Mr Downie:** Mr Speaker, could I too be associated with those remarks made earlier and congratulate you, and could I also put on record my commiserations to the unsuccessful candidate, the hon. member for Castletown, Mr Brown, and I think that, given the way that the election was conducted, both would have made equally good Speakers and I sincerely hope that in years to come Mr Brown's nomination will perhaps one day be before this House on another occasion.

Listening to the debate thus far, I have to come to the conclusion that this House is very deeply divided and, rather than throw the baby out with the bath water today by accepting or refusing the Council's amendments, I would draw members' attention to standing order 160. Now, standing order 160 states that if the Council pass with amendments a Bill which has been introduced into the House, the amended Bill shall again come before the House. The House may (a) agree with the Council's amendments, or (b) disagree with the Council's amendments, or (c) amend the Council's amendments, or (d) disagree with the Council's amendments with a view to a conference. Now, I would like to have this opportunity, for the time being, to urge members to have some sort of a conference and see if, between our House and the Legislative Council, there is an opportunity then to try and find out where their feelings lie.

I do not see this as a clear-cut situation today. There are small businesses who will be affected by this and I think an opportunity should be taken for some further discussion. We are not in desperate need of this legislation. It is not something that people are revolting on the streets about and I think it is very, very important that we get the balance right. Therefore I would move, Mr Speaker, that under Standing Order 160. this House agrees to a conference with a view to seeking clarification on the Council's amendment. I beg to move:

*For the words after "amendments" substitute "be disagreed with a view to a conference."*

**The Speaker:** Hon. members, we now have the motion before the House that in accordance with Standing Order 160 this House disagree with the Council's amendments with a view to a conference. Do I have a seconder?

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

**The Speaker:** So we now have, to the original motion, this amendment moved by the hon. member for West Douglas, seconded by the hon. member for South Douglas. Does anybody wish to speak to the amendment? Hon. member for Douglas South, Mr Cretney.

**Mr Cretney:** Mr Speaker, I wish to disagree with what has been said by the hon. member for West Douglas. I am somewhat alarmed at the way we are going here, this afternoon. I should not be surprised because the same thing happens every time we come to make a little bit of social progress, (**Members:** Hear, hear.) a little bit of social legislation. Every time the same thing happens. We had our doors battered down when we came to the Redundancy Payments Bill, which was years and years after its equivalent across the water. When we came to the employment legislation the whole world was going to fall about us because we were conferring on employees for the first time some decent employment rights. That has not been the case, and I suggest, if we were to take forward, as the department with responsibility for this wishes us to . . . because I have got a memorandum in front of me, so I am a little bit surprised about what some people are saying in here; I have got a memorandum from David North MHK, Minister for Trade and Industry, saying, 'I have now reviewed the arguments for accepting or opposing the two amendments which were successfully moved to the Bill by Mr E Lowey MLC during the third reading of the Bill in the Legislative Council. Having discussed the matter both with Mrs Crowe MHK, the member who is taking the Bill, and with others of the department, I would inform you that the department recommends, albeit with some reservations, that ministers vote to support the two Council amendments moved in respect of clause 8 and clause 51.'

Now, it might be that my post comes before some other people in here, but I do not think it does. I just think that once again, when we are seeking to confer something on our people which has been recognised for years elsewhere, we are backing away. It always happens and we should resist it. This will cause no problem in the work place. This is something which is, in my opinion, long overdue and we should be supporting what the Legislative Council did in terms of the revision when it was up there.

If I could just have one final remark, that is that if we do take on board what the Legislative Council has proposed and do take a small step forward today, we will still be discriminating against persons with a disability and others in employment, and the sooner we get that sorted out the better as well.

**Mr North:** Mr Speaker, could I just reiterate what I said earlier, that as far as my department is concerned and the hon. member taking this Bill, we have looked at this and I have to say that I do not agree with the hon. member for West Douglas, my colleague, that there is not an urgency for this legislation. There is. This legislation is long overdue. We have been at it since, I think it was, 1991, as this hon. House knows well. I know the problems. I do not think that the amendments that have come are shattering and I think they can be handled. We have agreed in the department with the officers that we can handle it, and I would urge members to accept the amendments of the Council.

**The Speaker:** The hon. member for North Douglas, Mr Houghton - no, Mr Henderson.

**Mr Henderson:** The handsome one, Mr Speaker.

**A Member:** He will get it right by next month!

**Mr Henderson:** Mr Speaker, in responding to the hon. member for West Douglas's request for a conference I would just say these few words. I cannot see what purpose that is going to serve, because we all know how we are going to vote now; we have debated the issue. It is a very important issue. We have the chance to give this Bill some teeth. A little more talk somewhere else is not going to resolve anything. The top and bottom of this is, we either have an Employment (Sex Discrimination) Bill which is going to work and offer the people of this Island some better conditions of employment or we have something which is not going to work, a half-baked fashion, so that really we are going to end up with egg on our faces, which would be unfortunate.

The other thing, of course, is that if this amendment is passed this afternoon, I have no hesitation that the Office of Fair Trading, in partnership perhaps with the Department of Trade and Industry, are going to implement this with such vigour and gusto that every small business is going to be bullied out of existence. I think that is far from it. I think what both departments and certainly the Office of Fair Trading are going to be doing - there is talk of an Employment Discrimination Officer, to help the small businesses, to assist where they can, and I think that is how it is going to be done: with consultation, help and assistance. If somebody repeatedly decides to break the legislation, then they are laying themselves open, but I am sure this is not going to be used as a hammer to smash a nut. It is going to be progressed in a proper, sensitive fashion with consultation, and I am sure the hon. member for Rushen will support those views when she comes back to answer this debate.

So with that in mind I think we should progress the issue. A conference will stall it, unfortunately, and we are still going to be left with coming back here to have some sort of a vote on it. All I can say to hon. members, if you did not hear me the first time round, is that the Attorney-General has presented our human rights cases to the United Nations supreme headquarters in New York and given an undertaking to the world that we are progressing our human rights issues, including sex discrimination. We must look at it properly and sensibly. Let us get on with it.

**Mr Karran:** I would just like to say that quite frankly I could not give a damn what the United Kingdom government's policy is. It is about something, whether it is right or it is wrong, and it is all right the likes of my colleague here with his Rotary hat on and the likes of that, pushing small business. We have done well for small business. We have put millions of

pounds into small business, and I think the hon. member does not need look very far.  
(Interjection)

I think my hon. colleague from South Douglas is quite right. Here we are, once again, excuses, excuses, excuses, when it comes to social legislation. The truth is that my hon. colleague for Onchan knows the reason why there has been a change because the Attorney-General has come clean: you cannot have a situation where you are talking about a discrimination Bill that discriminates against certain people and small businesses. Now, we understand in this hon. House that there will be the lobby factor and those that will be in here with their allegiances to whichever side they have and we have got to accept that. The issue is, do we accept it going to a conference? I believe not. I believe it is wrong to send it to a conference. It is hiding; it is running away from the situation; it is pandering to a false idea, which we have got down to an art form over here about vocal minorities, where we will try and keep them quiet. The bottom line is at the end of the day the reason why the Attorney-General came clean, and that was the reason why. How can you have a discrimination Bill that discriminates whether you are in a big firm or you are in a small firm? It just makes common-sense nonsense apart from any legal nonsense. So I hope hon. members will not support the conference and will support the Bill as it stands.

**Mrs Cannell:** In rising to my feet, I would also like to extend my very sincere congratulations to you, sir, for acquiring the position of Speaker.

I will be brief. I would like to say that I am not in agreement with the mover, who is suggesting that we go into conference with the Legislative Council, because I, unlike him, do not consider that this House is divided. I do consider, however, that there may be three or four, possibly even five members who are not happy with the amendment as being proposed, but I think other hon. members see the wisdom within the amendments and realise that we do have to go with it if this legislation is going to work at all. What I would say with the proposer that we go into conference, I think he is filibustering here today, and we heard the hon. member refer to the same term in another place not half an hour, 45 minutes ago when considering something else. Let us vote on it now.

**Mr Houghton:** Hear, hear.

**Mrs Cannell:** I would ask the hon. mover, though - I suppose it is really a plea, not only on my behalf but also other members' - I sincerely hope that she will be brief and let us get on with the business of today and let us vote these amendments through.

**Mr Houghton:** I would also join with my other hon. colleagues to congratulate you, sir, today, to your position and wish you very much for the future. I have very little to add on this, but I have been a small business person for well over 20 years now. I am just about to come out of business. When I do I will have a lot more to say about how small business people are being hammered by bureaucracy. (**Mr Gilbey:** Hear, hear.) and this legislation will also assist in hammering small business people who just cannot take any more, and where it was mentioned by one or two speakers ago that there are millions and millions of pounds being pumped into small businesses, I would like to see where, because I have not seen it in any of these industries, government run industries too, such as the Post Office. The Post Office is collapsing because of lack of investment by this House, so what people can say about small businesses being supported is absolute nonsense.

Now the hon. member, Mr Gilbey and the hon. member, Mr Corkill, have clearly set out, I quite believe, very credible arguments for this hon. House to vote. I think we really should vote on the amendment today and not necessarily support the hon. member Mr Downie's amendment to send it to discussion with the Legislative Council. But I would also caution this hon. House by saying that here we are once again, making legislation on the hoof. Where was the consultation for the Bill proper previously? There was a lot of consultation. There has been no consultation here, other than with the Legislative Council, for this Bill, for this amendment - none or very, very little. (*Interjection*) So, I would say let us make the decision today: vote for or against it, and I shall certainly be voting against the Council's amendment. Thank you.

**Mrs Crowe:** Just speaking to the motion, Mr Speaker -

**The Speaker:** To the amendment for a conference? Is that right?

**Mrs Crowe:** Indeed, speaking to the motion for Standing Order 160 seeking a conference with the Legislative Council, I would urge the House to vote against the amendment. This is the place that needs to make the decisions. We need to make the decisions today. I just do want to correct the hon. member for North Douglas on this occasion, thanking him for supporting me, but I am speaking today as a member of the Department of Trade and Industry with responsibility for employment and training. Now, the Office of Fair Trading, which you did mention, I just want to clarify, protects businesses and consumers on the Island but has nothing at all to do with employment legislation. But thank you, Mr Speaker. I urge the House to vote against sending this to a conference. Thank you.

**Mrs Hannan:** Speaking to the amendment, Vainstyr Loayreyder, the member for Douglas North spoke about small businesses and bureaucracy. But there are many areas of bureaucracy. Some would call it regulation; some would call it being officious; some would call it being non-discriminatory, and I would hope that using all of these words - yes, there does need to be regulation and bureaucracy, because people will abuse whatever, and we have had to bring in this sort of legislation to prevent people being abused by employers in employing a number of people and anyone; that is what the Legislative Council are saying.

I would suggest to the House, the mover of the amendment, that we should seek a conference. I would have thought there has been very little debate against what the Legislative Council are suggesting; very little has been said against what they are proposing. I cannot see that a conference would solve the thinking of this House. It might be able to suggest to Council that they have got it wrong, but I would suggest that the percentage of members speaking in favour of what the Council have suggested is quite a large percentage and an acceptance, really, of what the Legislative Council are suggesting. Even if it is not in line with what the original Bill was, it does actually bring into the legislation a non-discriminatory aspect which affects everyone, and therefore I do not think there is any need for a conference with Council. It has not been displayed by this House in discussing this proposed amendment that has been moved by the mover, accepted by the mover, who has also said that she accepts the thinking of the Attorney-General.

So, in making those comments, I am concerned about the comment made by the member for Douglas East, who suggested that the mover should be brief, and I do not know what that has got to do with discrimination, only if it means - (*Interjection*) So I would speak

and vote against the amendment moved by the member for Douglas West, suggesting a conference.

**Mr Gilbey:** Mr Speaker, again I would like to congratulate you on your appointment. Regarding this proposal by the hon. member for West Douglas, Mr Downie, I think it is very sensible because I, as I said before, believe that many people accepted this Bill as a compromise between different views. I am sure it is always better to try and get overall agreement and compromise than, as has been said by other members, to have a complete divide.

Now, there are really three amendments we talk about from Council. One, I think, no-one would disagree with, and that is about the money paid in regarding national insurance. The other one is whether what was going to be a three-year run-in should become a one-year run-in. Now, both the hon. minister and the hon. mover certainly made it clear that they felt it would be much easier with a three-year run-in, and I would have said that a compromise could be reached to, say, have two years or split the difference in that way.

Now, when you come to the actual business of the small companies, I think it is interesting, and I am surprised that the hon. member for North Douglas, Mr Henderson, has spoken against having a compromise, because in fact his amendment, which I have in my hand, which was actually lost here by 12 votes to 8, was much more of a compromise than what is now proposed, because what is now proposed by Council is that there should be no special treatment of any kind of small firm in any circumstances, whereas Mr Henderson made it quite clear that, in the circumstances specified in subsection 8, there should be a special situation and that was subsection 8, where the employment is or would be in an establishment in which five persons or less were employed and the discrimination is justified by reason of the administrative expenses, which would otherwise be incurred in the establishment, and that, I think, is a fair compromise between what is in the Bill and what the Council are now suggesting, that there should be no special provision at all, in any circumstances whatsoever, for small businesses. That is what Council are proposing, because Council are proposing that the whole of clause 8(7) should be taken out, and that is perfectly clear. Therefore I think that the hon. member for West Douglas's idea is a very good one to have a meeting with Council and to try and get a compromise again. Surely jaw, jaw, jaw is better than war, war, war.

**Mr Cannell:** Congratulations on your new office, Mr Speaker, and I hope that when it comes to the office of Deputy Speaker that perhaps a nomination might be favoured for the defeated candidate in today's vote.

On this move to have a conference with the Legislative Council, I just cannot understand why we are virtually going over the same ground. I am not going to say that one way or the other on the actual vote, because we are speaking to the hon. member for West Douglas's move to have a conference with the Legislative Council, but the original clause was accepted by a big majority. The elected House, this hon. House, pressed that forward to the Legislative Council, where the unelected House then said they did not care for some of the provisions for it and stick it back to us, where we change our minds completely - or those who voted in favour of the original - do we not have the courage of our convictions?

**Mrs Cannell:** Some of us do.

**Mr Cannell:** We are passing legislation and a few weeks later we are saying what we passed we should not have passed. (**Mr Houghton:** Yes.) That is what we are doing here today, because if we accept the Legislative Council's view on it. . . and that is not to say that they are not entitled to it; of course they are, for a little while until the legislation goes through to perhaps make that situation slightly different and in another place. It is only fairly recently where another place voted by, again, a large majority, to actually consider reform of the Legislative Council and charge the Council of Ministers to do just that, and I have already given notification of a private member's Bill. But on this item, to consider talking to the Legislative Council, all that will happen is that you will have them in one corner and us in another. So you will end up - it is black and white: you either go for this amendment by the Legislative Council or you stick to your guns as we did the first time. (**Mr Houghton:** Hear, hear.) Who is running this Isle of Man, the Legislative Council or the House of Keys? It is not only me who thinks that the elected members should have the majority of the vote. (*Interjections.*) Yes, the Council did it. Yes, the Attorney-General gave a further ruling on it, and amazingly the department has decided that they will go along with it. Did I hear that correctly, that the amendment was going to be accepted by the department - the very people who were moving something different, not long ago, with great conviction, panache, style and everything else that goes with it? But, a few weeks later, suddenly, because someone else has said something, they are going to change it all!

That is not the way I do business. I like to stick to my guns and go down. If I sink, I sink, but I do not change my mind within three or four weeks. So what we are going to do now is have the worst case scenario. We are going to have the Legislative Council seeing a victory here, and they will see a great grasp of the things so that they can turn over the House of Keys at the whim of a couple of senior members. Well, we are not going to have it, are we? I am not anyway.

Tynwald voted to reform, as I say. That matter will be coming up shortly. I just cannot accept - if this was years ago and we were bringing forward another reform Bill, to have a look at it again, in the light of developments, but it has not even got there. My opinion, to be frank, is that I do not think that we need the measure at all. I have got no evidence that people in the Isle of Man have got sex discrimination charges lying against them. Where is the evidence of all this? But the Bill is there now. It is too late to take it off the statute. We cannot chuck it out altogether. But we can certainly say in the first instance that we voted for the measure we thought fit, by a grand majority, and now we are saying do something different. I urge that we maintain our original position, Mr Speaker.

**Mr Houghton:** Hear, hear. (*Interjections*)

**The Speaker:** Hon. members, can I call upon the hon. member for West Douglas to respond to his amendment?

**Members:** Yes

**Mr Downie:** I think, Mr Speaker, the House will have to agree that we are still very much divided, and this is one of the reasons why I suggested the conference as a way out, but if members are not happy to support that, well, that is entirely up to them.

I would just like to take issue with a comment that was raised by the hon. member for Onchan, Mr Karran, who gave us a lecture on discrimination. I hope we are going to use the

same criteria when he sends his water rates out, because I have got a lot of elderly people living in single accommodation who are being discriminated against at the moment - (*Laughter and interjections*) So I will be looking to you, Mr Karran, to rectify that situation. I am quite prepared to put it to the House. I thought that by raising this we were being helpful and that it would give us an opportunity of trying to come to a satisfactory agreement with the other House but, Mr Speaker, I beg to move.

**The Speaker:** Thank you. Hon. member for Rushen, Mrs Crowe, if she would like to respond.

**Mr Cretney:** Just have the vote.

**Mrs Crowe:** Is this the response to the -?

**The Speaker:** Yes, the response to the motion to agree the Legislative Council amendments.

**Mrs Crowe:** Thank you, Mr Speaker, for your guidance. I was waiting for a vote on the amendment to go to. . .

**The Speaker:** After your speech, hon. member, we vote.

**Mrs Crowe:** Thank you, Mr Speaker. I accept that the hon. member for Glenfaba objects to the Bill as a matter of principle, and I would not argue with him in that respect. If he is against bringing equal opportunities between the sexes, thus enabling all people on the Island to reach their true potential on grounds of merit and not on gender, then so be it. We will have to beg to differ. I cannot argue that case with him. (**Members:** Hear, hear.) Now, the hon. member for Ramsey, Mr Singer, wanted to see the small business defence back in the Bill. As I said in my introduction, the Bill will give small employers the right to argue justification, and that right to argue justification will be on any special argument in respect of their businesses, either size, type of business, whatever, so there will be the right for small employers to argue justification. That is a most important point.

As I said to begin with, this Bill is finely balanced and at each clause at drafting we could have chosen a different route. I took the advice of my minister and tried with the help of the officers to present a balanced Bill. But I must say, that was no easy task and I do say it was finely balanced.

The hon. member for Onchan, Mr Corkill, once again mentioned small businesses. As I have just said - I will repeat - small businesses will have a justification. They can argue on any of the grounds: the size of their businesses, or whatever that might be. But you did mention that most of your employees you had, in general, a friendly, working relationship with, and that is the case with, I would suggest, the small businesses on this Island. Seventy per cent of businesses, we know, employ five people or less. They are not all going to rush out tomorrow and claim that they have been discriminated against. I think the fact that we have legislation in place is not going to be the start gun for people to rush against the employers that they have worked well with for many, many years. There will be negotiation, I am sure.

The hon. member for Peel, Mrs Hannan, was quite correct when mentioning the small business defence when she said that the European Court of Human Rights did rule against the United Kingdom when they had a similar clause in their legislation, which has now been removed.

Now, the hon. member for North Douglas, Mr Henderson - well, I do not know whether to be surprised or delighted by Mr Henderson's intervention.

**Mr Henderson:** Be delighted! *(Laughter)*

**Mrs Crowe:** I think he was feeling a little sensitive, so I think perhaps it might be better if I just said 'Thank you.'

**Mr Henderson:** Well said.

**Mrs Crowe:** The hon. member for Onchan, Mr Cannell - I did explain it is not a change of mind. The department has not suddenly decided that we will go against all the things we said before or deliberately change every view that we had. The Bill is finely balanced; it could tip either way. There could be a little adjustment on one side or an adjustment on the other. I was told that politics was the art of the possible by my minister and I tried to bring a Bill that I felt was going to be acceptable to the majority of employers as well as employees.

I think that will answer the queries that I have been asked at this stage and I do hope that members will feel that they can support the amendments from the upper House.

**The Speaker:** Thank you. Now, hon. members, we have to the amendments made by Council an amendment made by the hon. member for Douglas West, Mr Downie, that after the word 'amendments', substitute 'be disagreed with a view to a conference'. Will those in favour of that amendment say aye; against, no. The noes have it. The noes have it.

I now put the motion to you that the amendments made by Council be agreed. Will those in favour please say aye; against, no. The noes have it.

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

*For: Messrs Quine, Rodan, North, Sir Miles Walker, Mrs Crowe, Messrs Brown, Henderson, Cretney, Mrs Cannell, Mr Downie, Mrs Hannan, Messrs Bell, Karran, Gelling and the Speaker - 15*

*Against: Messrs Gilbey, Houghton, Duggan, Braidwood, Corkill and Cannell - 6*

**The Speaker:** Hon. members, the result of the motion is that the amendments by the Council be approved, 15 votes for, 6 votes against.

### **Procedural**

**The Speaker:** Hon. members, that completes the business of the House today. However, I am in your hands and seek your guidance. We now have a vacancy for a Deputy Speaker and it may be that the House would wish to ballot today, in which case it will require a suspension of standing orders, or alternatively it will be the first item of business when the House meets on the 9th May. I seek your guidance.

**Mr Karran:** Vainstyr Loareyder, I still maintain that West Douglas here is half-represented. There should be sufficient representation. Everybody should have sufficient notice so that this can be a full House here for the Deputy Speaker. I think it is wrong that this House does not do that. I think the hon. member is indisposed, he is not well and I think it is wrong that we go ahead.

**Mr Duggan:** He is away next month.

**Mr Karran:** Well, that can be changed. It gives sufficient notice and I think it is wrong.

**The Speaker:** Hon. member for Onchan, Mr Cannell.

**Mr Cannell:** Mr Speaker, I take the opposite point of view. We are going to be a member down now for Rushen, of course, with the election of the new hon. President of Tynwald. There could be any number of people away; I do not think that is sufficient validation. I think we have had a day of sorting our affairs out and I would urge that we complete that by electing the Deputy Speaker today.

**The Speaker:** Can I therefore, in that view Mr Cannell, have a motion to suspend standing orders and have the election for Deputy Speaker now.

**Mr Cannell:** Yes, Mr Speaker, I so move.

*That standing orders be suspended to elect the Deputy Speaker.*

**The Speaker:** Do I have a seconder?

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

**The Speaker:** Hon. members, the motion before the House is that standing orders be suspended and that an election take place for a Deputy Speaker. Anybody wish to speak to that motion? Therefore, I put the motion to the House. Will those in favour please say aye; against, no. The ayes have it.

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

*For: Messrs Gilbey, Quine, Rodan, North, Sir Miles Walker, Mrs Crowe, Messrs Brown, Houghton, Henderson, Duggan, Braidwood, Mrs Cannell, Messrs Downie, Corkill, Cannell, Gelling and the Speaker - 17*

*Against: Mr Cretney, Mrs Hannan, Messrs Bell and Karran - 4*

**The Speaker:** Hon. members, the motion to suspend standing orders, those in favour, 17 votes, those against 4; the motion carries.

### **Election of the Deputy Speaker**

**The Speaker:** Hon. members, can I now have nominations for Deputy Speaker? Hon. member for Onchan, Mr Cannell.

**Mr Cannell:** I propose the hon. member for Castletown, Mr Brown.

**Mr Duggan:** I second that, Mr Speaker.

**The Speaker:** Are there any other nominations?

**Mr Quine:** May I propose the hon. member for West Douglas, Mr Downie?

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

**The Speaker:** Are there any other nominations? There are no other nominations. I will put the two nominations to ballot. The names, hon. members, are the hon. member for Castletown, Mr Brown and the hon. member for Douglas West, Mr Downie. Can I have two tellers please? Can I have the hon. member for Onchan, Mr Karran and the hon. member for Douglas South, Mr Cretney?

*A ballot took place.*

**The Speaker:** Hon. members, the vote for the ballot for Deputy Speaker, there were 21 ballot papers. The hon. member for Castletown, Mr Brown, 13 votes. The hon. member for Douglas West, Mr Downie, 8 votes. Mr Brown is the Deputy Speaker and from the chair, sir, I offer you congratulations.

**Members:** Hear, hear.

**The Speaker:** Hon. members, the Keys will now stand adjourned to 10 a.m. on Tuesday 9th May in this chamber.

*The House adjourned at 4.18 p.m.*