

**REPORT OF PROCEEDINGS OF
HOUSE OF KEYS**

**Douglas, Tuesday, 22nd February 2000
at 10.00 a.m.**

Present:

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

The Chaplain took the prayers.

Disability Discrimination Bill – Introduction – Question by Mr Singer

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

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

When does your government intend to introduce a disability discrimination Bill?

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

Mr Gelling: Yes, Mr Speaker, the Department of Health and Social Security has received a report into discrimination against disabled people and also a report on the needs of disabled people on the Island. Now, both of these reports are currently being evaluated by the social services division of the Department of Health and Social Security and I can confirm that one of these reports recommends the introduction of a disability discrimination Bill. As the hon. member will know, however, such a Bill is not at present included in the three-year legislative programme.

Mr Singer: May I thank the Chief Minister for his answer. Can I ask the Chief Minister, is the report that you referred to the one that was promised initially by the DHSS for last August and then for October, and will that report be available to members of this hon. Court?

Mr Gelling: Yes, one of those reports, Mr Speaker, is indeed the report that was I think the answer given in another place in October by the minister, and I understand that that will be made public as soon as they have considered it, sir.

Mr Singer: Thank you.

Government Staff – Overtime Payments – Question by Mr Houghton

The Speaker: We will continue, hon. members, with item 2 on the order paper. I call upon the hon. member for Douglas North, Mr Houghton.

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

Are you yet in a position to answer in full the question for written answer, relating to overtime payments during the New Year period, which was tabled for the January 2000 sitting of Tynwald?

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

Mr Gelling: Yes, Mr Speaker, I understand that the final returns were received from government departments yesterday and as a result the information will be circulated to members very shortly, sir.

Mr Houghton: Mr Speaker, may I ask if the hon. Chief Minister could advise this House today just how much was budgeted for this measure and who was responsible for deciding the five times basic pay award, sir?

Mr Gelling: Well, first of all on the first part of the question I have not got the information to hand. I do not know indeed what was budgeted for that. That was within the department's budgets, but basically this was something that was arbitrated and discussed with the civil service representative, sir.

Ramsey Courthouse – Transfer of Judicial Proceedings – Question by Mr Braidwood

The Speaker: We turn then to item 3 on the order paper, 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 Chief Minister:

Does your government intend to transfer judicial proceedings from the courthouse in Ramsey to the courthouse in Douglas?

The Speaker: The Chief Minister.

Mr Gelling: Mr Speaker, the future use of the Ramsey courthouse is the subject of ongoing discussion between the Department of Local Government and the Environment and the Department of Home Affairs and the judiciary. I am not party to those discussions; I am not, therefore, in a position to comment on the outcome at this stage. However, I and those involved in the discussions recognise the need to provide facilities that are sufficient to allow the judiciary to discharge their responsibilities effectively and the need to make full use of all the property at our disposal. In the meantime the Ramsey courthouse is no longer regularly used by the High Court. However, the High Bailiff holds his monthly Ramsey court there and Ramsey is occasionally used for other cases when overflow situations arise, Mr Speaker.

Mr Braidwood: Mr Speaker, I thank the Chief Minister for his answer, but is he aware that the Ramsey courthouse was only used for 48 days, a figure of nine per cent, in the period October 1997 to February 1999?

Mr Gelling: Yes, indeed I am aware that the Ramsey courthouse is not used, obviously, as much as it used to be, Mr Speaker, since the new courtrooms in the courthouse next door have been in use and obviously this was going to happen but, as I have said in my original answer, it is used as an overflow and also the High Bailiff uses it, I understand, at weekends, sir.

Mr Karran: Vainstyr Loayreyder, would the Chief Minister not agree that, allowing for legal aid - the figures are £340,000 for criminal legal aid - he does not allow a situation where

the advocates dictate where the courts are to take place and that it will not be used as an excuse to close down Ramsey courthouse in order that advocates do not have to travel to Ramsey in order to use the courthouse?

Mr Gelling: No, I understand, Mr Speaker, that obviously when the new courthouse was built next door it would be used extensively for all-Island court proceedings, and therefore I understand that the Ramsey courthouse, is used, as I have already said, purely as an overflow and at weekends for the convenience of those perhaps in the north to use that courthouse if it is only for a very short session. So that is its use at the moment and I am not surprised at the hon. member for East Douglas's comment that it is only used, I think it was, nine per cent of the time because it is understood that it would run down.

Mr Braidwood: Mr Speaker, would the Chief Minister agree with me from the evidence that there is little justification for continuing to use Ramsey as a courthouse (**Mr Gilbey:** Hear, hear.) and it would be better utilised converting the premises for police use considering the present police station is inadequate for its current compliment of 18 staff?

Several Members: Hear, hear.

Mr Gelling: Yes, indeed, that is one of the arguments, Mr Speaker, that was put forward, that the police station does need to be larger in Ramsey and it would lend itself for that use but, as I have already said, the Department of Local Government and the Environment and the Home Affairs Department and the judiciary are actually discussing the whole issue at the moment and we will have to await the outcome of those discussions.

Mr Karran: Vainstyr Loayreyder, would the Chief Minister not agree that some in this hon. House need to be consistent? They complain about centralisation and wanting things done outside Douglas, and would he not agree that this is just another excuse for centralising everything, bringing more activity into Douglas and that is not what we want to do in the long term?

Mr Gelling: Yes, Mr Speaker, that is exactly the other side, of course, of the argument and that no doubt is what the two departments and the judiciary are discussing, sir.

The Speaker: A final supplementary. The hon. member for Douglas East.

Mr Braidwood: Thank you, Mr Speaker. As it is the police policy to decentralise, would the Chief Minister agree with me from a cost perspective to that of new build that to expand Ramsey police station into the whole of the court/police station complex, considering through decentralisation that the staffing is going to rise to 29 and this expansion would then be able to incorporate adequate washing facilities for the police and also to upgrade cell accommodation to dispel the criticism levied by the European Committee on the Prevention of Torture and Inhumane or Degrading Punishment?

Mr Gelling: Yes, Mr Speaker, I can agree that there are much needed areas in Ramsey for the police. The police have already indicated that this would help them to provide a better service in Ramsey to have this building made available to them, but we must also consider the other point, and that is that it is in Island terms a long way to go from Port St Mary to Ramsey for someone who has to appear or has been called to appear at a court in Ramsey. So these are the areas that are being discussed and, as I say, it is a bit premature at the moment for me to say what the outcome of those discussions is.

National Health Service – Beds Available – Question by Mrs Cannell

The Speaker: We turn then, hon. members, to item 4 on your order paper and I call on the hon. member for Douglas East, Mrs Cannell.

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

- (1) *How many National Health Service beds and private beds are available in Noble's Hospital; and*
- (2) *how many equivalent beds will be available in the new hospital?*

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

Mr Karran: Vainstyr Loayreyder, I can confirm that currently Noble's Hospital is operating with a bed compliment of 230 National Health Service beds and 12 private patient beds. In addition, there are six cots in the special care baby unit, accommodation for nine patients in the ITU/CCU unit and six stations at the renal unit. In comparison, the new hospital has been planned on a basis of a total of 237 National Health Service beds, 15 private patient beds together with nine cots in special care baby unit and 12 ITU/CCU beds.

Mrs Cannell: Mr Speaker, due to the department's difficulties of recruiting and retaining nursing staff, can the hon. member for the department confirm whether there is any truth in the rumour, the public perception, that the operation of the new hospital will be undergone by a private operator such as BUPA?

Members: Oh!

Mr Karran: Vainstyr Loayreyder, I can assure the hon. member that there are no moves as far as having BUPA run the new hospital. I would like to say that one of the advantages of the budget is hopefully now, with our conversion of bludgeoning the Council of Ministers into supporting the reintroduction of nurse training, I would hope that we will not have any problems as far as nurse training is concerned and I believe that we will have no problem as far as nurses are concerned.

Mr Singer: Mr Speaker, can I ask the hon. member, his indication is that there will be overall 10 extra beds in the new hospital compared to Noble's; can he tell me, whilst there are 10 extra in the new hospital, how many beds will remain at what will be the Noble's Community Hospital and the Jane Crookall and, taking into account, therefore, the overall increase, how many extra staff does he see being needed to fully staff both hospitals to accepted good levels of care?

Mr Karran: Vainstyr Loayreyder, I would say that the community hospital in Douglas will not duplicate the services that are provided in the new hospital, so there should be no duplication of what is there at the present time. The battle that will be will be whether we have an ESMI unit on the existing hospital site in the future, but that will be something which is already being provided.

Mr Downie: Mr Speaker, I would like to ask the member for Health, could he inform this House today how many amenity beds will be available in the new hospital development and

whether patients can actually be admitted under the DHSS scheme but have the opportunity to pay for a separate room on an individual basis as part of their treatment?

Mr Karran: Vainstyr Loayreyder, I would have to say that I am not aware of how many beds would be available as amenity beds. This is an issue that obviously the minister needs to take up with my minister in the Council of Ministers.

Mrs Cannell: Mr Speaker, can the hon. member advise the House, in view of the fact that we presently have 230 beds in Noble's Hospital whether or not that number will be retained in the community hospital and, if so, what will their use be put to?

Mr Karran: Vainstyr Loayreyder, as a member of the Department of Health and Social Security at the end of the 1980s this individual member was very much against community hospitals because I did not want to have the new plaque, new syndrome situation where we build public buildings which were not there primarily for the best interests of the patients in order that I would not want to see such things as stroke victims having three units throughout the Island and dissipating the quality staff and intervention that we need. This is an argument that is still ongoing within the department and it is something that is dear to my heart, that I do not want to see buildings being built that will not provide the first-class health service that we all want to be proud of as a government. The issue of the community hospitals is still being debated but that will be more on the issues of long-term nursing care and not on about hospital intervention.

Mr Singer: Mr Speaker, can I ask the hon. member: in view of his answers, does he know how many beds are going to be retained at Noble's Hospital as this is the third time the question has been asked and he seems to be ignoring it?

Mr Karran: Vainstyr Loayreyder, if the hon. member asked me what type of beds he is on about, I could maybe tell him. I can get him the answer from my division faxed to him by the end of the sitting. Is he on about ESMI units? Is he on about hospital beds? If he is on about hospital beds then I would hope there would be no hospital beds on the site; it is long-term care these provisions will be provided for. It would be about recuperation. It will not be about a hospital bed in the sense of first-hand medical intervention, and I think members in this House need to be clear on what they are talking about more than the hon. member responsible for health.

Mr Singer: The hon. member seems to be saying that because you are in a long-term bed or an ESMI unit you do not need a nurse. My original question was to ask him how many nurses would still have to be retained at Noble's in order to look after the patients, whatever was the problem and the need to be looked after. So does he know how many nursing staff will be retained at Noble's Hospital?

Mr Karran: Vainstyr Loayreyder, the situation is that nursing homes are different to a hospital, and basically the community hospital will not be a community hospital in the sense of it being the first approach for somebody who takes ill; it will be a matter of providing the sort of facilities that Ramsey Cottage Hospital provides. The majority is not for first-hand medical intervention.

The Speaker: Well, hon. members, we turn then to item 5 on your order paper, which is for written answer.

Noble's Hospital – Operations Performed – Question by Mr Houghton for Written Answer

The hon. member for Douglas North (Mr Houghton) to ask a member of the Department of Health and Social Security:

Question

By category of operation performed at Noble's Hospital, in each of the years 1998 and 1999 -

- (a) *what was the total number of operations performed;*
- (b) *what were the (i) average and (ii) median number of post-operative days that patients remained in hospital before discharge; and*
- (c) *how many patients attended as out-patients, or were re-admitted, for the treatment of:*
 - (i) *re-opened operation incisions; or*
 - (ii) *post-operative infection?*

Answer

In response to the hon. member's questions, parts (a) and (b) are answered in the following tables:-

NOBLE'S HOSPITAL ACTIVITY DATA 1998

SPECIALTY	TOTAL NUMBER OF OPERATIONS•	AVERAGE LENGTH OF STAY*	MEDIAN LENGTH OF STAY*
Electro-Convulsive Therapy	41	—	—
E.N.T.	685	1.2	5.0
Gastroenterology	334	—	—
General Surgery	3,235	5.1	40.0
Gynaecology	923	3.3	13.0
Ophthalmology	414	1.5	3.5
Oral Surgery	605	1.5	3.5
Thoracic Surgery	64	1.8	3.5
Trauma			

Orthopaedics	1,618	5.2	38.5
TOTAL	7,919		

- includes both in-patient and day case operations

* relates to total length of stay from admission to discharge in respect of in-patient activity only

NOBLE'S HOSPITAL ACTIVITY DATA 1999

SPECIALTY	TOTAL NUMBER OF OPERATIONS•	AVERAGE LENGTH OF STAY*	MEDIAN LENGTH OF STAY*
Electro- Convulsive Therapy	58	—	—
Gastroenterology	320	—	—
General Surgery	3,637	4.8	50.5
Gynaecology	985	2.2	15.5
Ophthalmology	621	1.9	7.0
Oral Surgery	654	2.2	1.5
Thoracic Surgery	54	1.1	3.0
Trauma Orthopaedics	1,534	5.1	31.0
TOTAL	8,526		

- Includes both In-Patient and Day Case operations

* Relates to total length of stay from admission to discharge in relation to In-Patient activity only

(c) Hospital data currently does not provide this detailed level of information without an extensive manual examination of all individual patient files.

Bills for First Reading

The Speaker: I call on the Secretary of the House for items 6 and 7.

The Secretary: The Police (Amendment) Bill, Mr Shimmin; the Agriculture (Miscellaneous Provisions) Bill, Mr Downie.

Shops Bill – Council Amendments Agreed

The Speaker: We then reach item 8 on the order paper, hon. members, the Shops Bill, for consideration of the Council amendments, and I call on the hon. member for Rushen, Mrs Crowe.

Mrs Crowe: Thank you, Mr Speaker. In this House at the clauses stage an amendment was successfully moved to clause 8 which reduced the period of notice required to be given by an employee once he has given notice that he no longer wished to work on Sundays. This notice period was reduced from three months to one month. This was an amendment successfully moved by the hon. member for North Douglas, Mr Henderson.

Clause 13 requires that all employees are provided with a statutory notice advising them of their rights to opt out of Sunday working. Failure to provide the statutory notice results in the employee having to give a reduced notice period. The original draft reduced from three months to one month. The Council amendment on page 10, line 22, takes into account the Keys' amendment to clause 8, where the maximum notice period is now one month and further reduces the period of notice to 14 days, where an employer fails to provide the statutory statement to his employee, so that is advantageous to the employees. The employer is going to be expected to be penalised if he does not give the statutory notice. In addition, the statutory statement on page 10, line 29 to page 11, line 19 of the green Bill has been redrafted to make it absolutely clear to employees that they may also opt out of working on Good Friday and Christmas Day in the same way as they can for Sunday working.

The Council amendment was supported by the Office of Fair Trading and I urge hon. members to give it their support today. Mr Speaker, I beg to move that the Council amendment to clause 13 be agreed.

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

Mr Corkill: Mr Speaker, I hope the mover could just clarify a point for me: in the Bill as it now stands, having gone through the amendments here in this House and also in another place, the situation with regard to employment protection is firstly now quite out of step with other areas of commerce within the Island, and I wonder whether the hon. mover could answer a question for me: The way I understand the Bill as it is drafted now, a situation I am about to describe could now occur, and that is that an employer could quite genuinely place an advertisement for staff being required for Sunday working, making it quite clear that the job advertised in retail required Sunday working. That is fine; somebody is successful in gaining that employment, but then this Bill gives that person a right, by informing the employer and bearing in mind the one-month periods that are now in train where a letter of notice can be given by the employee saying that they no longer wish to work Sundays and that the employer can actually not do anything about that, to refuse Sunday working, and after the periods of notice as now in the Bill are worked through, that person could then procure a situation where, even although they applied for a Sunday working job, they at the end of that period would be in a position where they did not have to work Sundays, and that is the point I would like some clarification on, because I think that that could be very much a loophole from an employer's point of view and would certainly affect working relationships in the workplace, particularly in small businesses, and of course in the Isle of Man a lot of our retailers are small and employ just a few people.

I would like some clarification on this because that is of quite importance to me, having been an employer in this position over a number of years. As an employer I think I would find that a pretty intolerable situation to find myself in.

The other point which I opened with is this issue of other employment protection in other areas, because if this is establishing itself as a policy of the way that we treat people who are expected to work on a Sunday, I think the economic ramifications into the future are quite immense, bearing in mind the number of people who work in restaurants, in transport areas and who by the very nature of that job are expected to work on Sundays and mostly do so without complaint because they understand that is the job that they are applying for. Yet here in the Shops Bill we are creating a special situation which seems to me as if it is a position where you can have your cake and eat it, and I do not think that is particularly fair.

I have to say that I am seriously considering not voting in favour of this Bill, because I do believe, as unfair as the present legislation is from a human rights perspective, that that is better than what we are beginning to produce from the debate that has gone on within these chambers. I am very sympathetic and fully aware of those people who do not wish to work on Sundays. No-one is actually asking them to work on Sundays, and I think if people have Sunday as a special day I support them in those endeavours. I do believe by and large, particularly with shops, that is the current position and that may well be a better position for those workers, but I would hope that the mover could answer these questions because I really do feel that from one situation of unfairness we are moving into an even greater one now of discrimination between different types of workers within this Island and I really do not feel that we are producing something constructive. It starts to put into my mind that we would be better without any shops legislation whatsoever -

Members: Hear, hear.

Mrs Crowe: Exactly.

Mr Corkill: - because we are creating more and more anomalies the more we debate this subject.

Mr Singer: I think, Mr Speaker, we are coming back to the very original point of the Bill, taking into account what the last speaker just said, the definition of shop worker, and whilst there was a move to enlarge that at the various stages of the Shops Bill the decision of this hon. Court was to keep it as it was very limited. I am surprised the hon. minister for the Treasury has raised this point now, because there is no change now to what there was initially when we discussed the Bill. (**Mr Henderson:** Hear, hear.) So how he can suddenly see the light now - it might have been better if he had brought this point up when we were discussing the Bill at the various stages, because now he would be making a major change to the Bill which should have been made previously, and I do not see how he can suddenly say he is going to vote against this particular clause because of an item that is totally disconnected to these amendments.

These amendments here, as I read them, are just positions of clarification of the law for both the employer and the employee, and I have to say that it was pointed out by myself and Mr Henderson at the third reading that these anomalies were there, and so it has been left now to the Legislative Council just to clarify them, but they have not made any major changes to the Bill as such. Therefore I believe we should be voting on these now. We have got rid of

anomalies that were there but it has got nothing to do with the matter that the hon. minister has raised, which is totally disconnected to what is before us today.

Mr Brown: Mr Speaker, I am quite content to support page 10, line 22, because that is correcting an anomaly in the Bill because of changes that were made in this House that were made after that section had been passed, and I am quite content to support page 15, line 26, which is clause 20, but I would just echo the point that the Treasury minister has made, and may I make it clear after the comments of that last hon. member who spoke, the member for Ramsey, Mr Singer, that I made my views very clearly known on this and that I believe that we are likely, if we pass this legislation in its total, to have an employer challenge the Isle of Man Government via the European Court because it is discriminatory against what every other employer in the Isle of Man has to do. I certainly have made my mind up that I will not be signing this Bill when it comes before Tynwald. All we had to do was rescind the 1985 Shops Act, full stop, and let shops continue their business like any other business in the Isle of Man. I certainly will not be supporting the main part of this amendment and, if it is not split, then I will have to oppose all of it.

Mr Quine: I think this belated difference of views that is coming from members of the Council of Ministers is causing some confusion here.

Mr Brown: It is consistent.

Mr Quine: Well, you are consistent in many respects but I am just wondering where this leaves the rest of us. Listening to some of the debate this morning, it sounds as if this is more like a private member's Bill. We have at least two members of the Council of Ministers who appear to be opposed to it. I think it would be helpful if the Chief Minister could assure us that when this Bill went through the Council of Ministers it had the support of the Council of Ministers, but for whatever reason it appears to be that at least some members of the Council of Ministers seem to be backing away from this Bill, and this is causing confusion. Some clarification, I think, in respect of where the Council of Ministers as a whole stand in relation to this Bill would be helpful.

Mrs Hannan: Vainstyr Loayreyder, I think this always happens to legislation when it has been amended by the House, and it is not just the House that has amended it but the Legislative Council have also. This is why we have this back before us today. So it is that that actually changes the legislation from what was proposed in the first place to what we now have before us, and that is obviously after a long series of debates and obviously that is why we have the first and the last amendment on our papers before us.

But the other amendment on page 10 was obviously brought in by the Legislative Council, who see this as giving added protection to shop workers, and this is the debate that we have had all the way through. It is some people wanting more control, some people wanting less control and other people saying the controls that we have for employment are enough as it is at the moment and shops should not be looked at in a totally different way.

When this was first discussed, I went through the whole panoply of what people actually do on a Sunday, and even when people attend church, which seems to be the main bone of contention, that people need to go to church and need to keep Sunday special, they still do all the other things as well, such as going to cafés, going to garages, going to newspaper shops, doing all these other things which they wish to do on a Sunday, and these might be the very

people that are moving or at least seeking amendments in the other place. They are not the ones that are just purely walking to church on a Sunday, not doing anything else, but these are the people who do want to do the other things such as purchase a ready meal out or go to the pub or go to many many other places.

I think this is what has caused the problem before us today, that we have them bringing these other situations into it and so therefore I have not answered for the Council of Ministers to the member for Ayre but I have certainly, I hope, displayed the position of a number of members, the concerns that they have with regard to introducing amendments. I think this is what was sought by the very people that have introduced these amendments. The member for Ramsey says, 'Why wasn't this brought up at the time?'

A Member: It was.

Mrs Hannan: Yes, because his amendments were actually supported, which distorted the Bill which was the aim -

Mrs Crowe: That is right. Absolutely.

Mrs Hannan: - of the member for Ramsey trying to produce something that was unworkable, the same as the member for East Douglas who spoke on it and said 'This is unworkable,' and this was the very reason for amending the legislation: to make it unworkable, to then say 'Well, this is something which is unworkable.' It is unworkable because some of the amendments were actually supported by this hon. House.

Mrs Crowe: Quite correct.

Mrs Hannan: So if members said, 'Why isn't it being supported by the Council of Ministers?' I would say 'Because it is now out of line with existing employment legislation, and therefore it actually creates retail employment.' I know what the agenda is: the agenda is that you then come back with an amendment to the employment legislation to get it in line with existing legislation, which is the Shops Bill. So I think we all know what the agenda is. It is just whether this particular area is supported.

Like the member for Castletown, I will support the first and the last amendment but I will not be supporting, unless the mover of this amendment can convince me that it is something that is actually needed in this legislation. If we are going to oppose this particular substitution, then I would suggest that we have a conference with the Council over it or at least just send it back to the Council and say, 'No, we do not support it.' Vainstyr Loayreyder, I beg to move:

For the words after "That" substitute "the Council amendments be disallowed with a view to a conference".

Mrs Cannell: Mr Speaker, well, I actually rise in support of the amendments moved by the Council because I think, unlike the Bill as previously written, this actually clarifies the position for shop workers, for people who take employment in shops. It is quite easy to understand, it is in layman's language, which is pleasant to see. I cannot see anything wrong with this whatsoever. It clarifies exactly what the position is in relation to Sundays, Good Fridays and Christmas Day. It informs the shop worker that they must notify their employer in writing, it has to be signed and dated et cetera, but it also goes on to say that for the first month after submitting that notice in writing to the employer they may be called on to do work on the Sundays, Good Friday and Christmas Day, but further, of course, it then goes on to say

that after that one-month period has ended they have a right to complain to the Employment Tribunal if, because of the refusal, the notice that they submitted a month beforehand has caused the employer to dismiss them or the employer has failed to promote them in any way - in other words, if they have been victimised, I suppose.

So I think that is a good thing because it makes it very easy for someone to read and understand and know exactly what their rights are. I have to say this is the Council's job. It is a pity in some respects that the Legislative Council do not do more of this, because their role is to scrutinise legislation. If they see fundamental flaws in any legislation, whether it has been amended on the hoof in the House or not, which is the pattern of this House - this is what we are supposed to be doing when we get to the clauses stage - then I feel the Legislative Council have in this regard done a good job.

I have to take umbrage, though, with one of the comments made by the hon. member for Peel. Although she did not name the Bishop, she alluded to the fact that because somebody was up there representing or coming from a background of the Church and the faith, that had much to do with this particular clause. (*Mrs Hannan interjecting*) My understanding is that there is more than one member, the Bishop, on the Legislative Council and therefore all members who discussed this particular Bill and put together the amendment were all in agreement with it. It was not led, to my understanding, by one particular person.

I am in support of this but I would also echo the words from the hon. member for Ayre, Mr Quine. Can we have some clarification, please, from the Chief Minister in relation to this (*Interjections*) on what the Council of Ministers' standing is? This is a government Bill -

A Member: I was.

Mrs Cannell: - and I would have thought the Council of Ministers would have supported a government Bill, because surely that is their function, is it not?

Mrs Hannan: They amended it.

Mrs Cannell: Whether it has been amended or not, that is the role of the Legislative Council - to scrutinise and, where appropriate, amend legislation (*Interjections*) and pass it back to the House. They, in my view, have fulfilled their role, their obligation. The House is now discussing it.

What is contained within this amendment is going to help the people who work in shops, so how can members in the House disapprove of that? We are here to represent the people of the Isle of Man, all sorts of people in the Isle of Man, including shop workers. If this is going to give them more protection, and I believe it will, then we should and we are obliged, I would suggest, to support it, and those who do not support it are not voting in the interests of the nation, in my view. (*Interjections*)

Mr Karran: Vainstyr Loayreyder, I have to say I applaud my colleague for actually putting his viewpoint forward. That is what he is there for as one of the three members for Onchan. He is there to express what concerns he has, and any moves to make sure that we have full and frank debate in this hon. House are important. It is important that we do not have a situation where one gang says that the Earth is round and another gang says the Earth is flat, and if you are in the one gang that has it right, well, you are all right, but if you are in the other gang you have got a problem! This House is too small for that, in my opinion, and that is why I

welcome the intervention as far as my colleague is concerned. I might not be of his political persuasion but I think it should be something that should be encouraged in this House, and I think it is a little bit disappointing to hear others trying to score points at them. Just because certain members are demob-happy towards the next election I would hope that we would not have a situation where everybody starts bailing out. I think that is important, because many that have spoken here would be the sameones who would be arguing that the Earth is flat because the Council of Ministers have said so. So they cannot have it both ways.

I personally think that it is sad that it has got down to trying to personalise it and just the cheap political scoring of the points on the issues, but I suppose that is the way it is going to be for the rest of this parliamentary term and the next one, and it is only going to get worse.

I do think that the hon. member for Peel is right. I would not like to see us being dragged up in front of the European Court of Human Rights and I do think that she is right to have a conference, and I am happy to second the proposal of the hon. member in order that this point can be clarified. I would not want to be seen to be here to protect the employers; I am here to protect the employees. But I am here also, more importantly, for fairness and justice and I do feel that the proposal by the hon. member for Peel should be seconded.

I would hope that we would have this conference and let us get this point clarified. I welcome the fact that we are not having things pushed through on a bum's rush simply because of whatever; I think that is not what we are here for and we do ourselves a disservice. So I do second the proposal by the hon. member that there is a conference and let us get these points clarified.

The Speaker: Now, hon. members, the hon. member for Rushen, Mrs Crowe, had moved that the amendment made by the Council be agreed, and to that we have the proposal made by the hon. member for Peel and seconded by the hon. member for Onchan that we revert to having a conference with the Legislative Council, in which case you would elect your members to go on conference. Now, hon. members, you may continue. We are speaking to the motion for a conference. Hon. member for Rushen, Mrs Crowe, are you anxious?

Mrs Crowe: Well, it was just to speak to the amendment for a conference. The amendments that were made in the Council were brought forward by a member of the board of the Office of Fair Trading and were actually fully supported by the Office of Fair Trading. They are only consequential and matters of clarification which I will explain when I sum up. Thank you, Mr Speaker.

Mr Gelling: Mr Speaker, to hear the hon. member for Ayre saying he is confused - I do not believe that for one moment.

Mrs Crowe: Oh, he is confused!

Mr Gelling: The hon. member knows exactly what the situation is, and that is that this is not the Bill that came forward to this House from the Council of Ministers, and when I hear the hon. member for East Douglas, Mrs Cannell, saying we are obliged to accept this, I just do not understand how and when that came into standing orders that we, the Keys, were obliged (**Mr Cretney:** Hear, hear.) to accept amendments from the Legislative Council. This is now different. It has lost its balance and it is quite obvious that in the Council of Ministers when these were considered - and we had to go and find them because we did not know until we got

the agenda that they were upon it - it has now lost the balance of the Bill that we originally entered into this House. So it is quite obvious that I was not able to obtain any consensus within the ministers to support this particular item on page 10, which is the Christmas Day and Good Friday. So it is quite simple what the situation is from the Council of Ministers: it is not the Bill that was entered into this House from the Council of Ministers, so therefore some ministers cannot support this amendment. That is the position.

The Speaker: The hon. member for Ramsey, Mr Singer, speaking to the conference.

Mr Singer: The amendment, yes, thank you, Mr Speaker. I see absolutely no need for the conference or to support the conference. I have listened to what the Chief Minister has just said, and he said that the balance has been changed in this Bill because of the amendments. There were a lot of amendments put to this House at the clauses stage but I think two were accepted, and two of those only were accepted and the anomalies are being straightened out today; that is all there is to it. So as far as saying the Council of Ministers' views have changed because the Bill has changed - the Bill has changed very little. The three months was down to one month and I think we included Good Friday. Now, I think that is a very poor excuse by the Chief Minister to allow his members a free vote. I think the basic Bill is exactly the same as it was, other than those two amendments.

The Speaker: I call on the hon. member for Rushen to reply to the debate.

Mrs Crowe: Thank you, Mr Speaker. I will reply first to Mr Karran and his mention of being a member of a gang. I have never felt more alone than Joan of Arc, actually, hon. member. *(Mr Karran interjecting) (Laughter)*

However, I will start to answer some of the comments made by the hon. member for Onchan, Mr Corkill. The reason that we have a problem, the reason that we now have superb employment protection for shop workers is because no other industry is regulated by government. If government wants to choose to regulate an industry, then one has to put forward various points, either protection for employer, not protecting the employee, but that was the problem all along, that government chose to interfere with the retail sector. Now, if an employee answers a specific advertisement to work on Sunday, the rules that you mentioned would not apply. In reality there is no problem employing staff on Sundays. In reality there is a problem employing staff to work Monday to Friday but people engaged in working on Sunday - there are queues of people waiting for employment on a Sunday.

The point has been made by a number of members, including the hon. member for Peel, Mrs Hannan, about human rights and the Court of Human Rights. One might find that retailers too would demand human rights. Why can large retailers be open on a Sunday when small Manx traders cannot? It is a nonsense. There should be equality for all. That is all the Office of *Fair* Trading have been trying to do, provide an equal trading arena for all traders on the Isle of Man.

Now, I refer to the specifics in the amendment mentioned by the hon. member for Castletown, Mr Brown. The first part of the amendment at page 10 he will support. Well, page 10, lines 29 to 39 are only the statutory prescribed form that alludes to that amendment. It is nothing more nor less than that. We have already agreed with the retail sector that we will print these forms so they are readily available. It is not a case of them having to go to the expense of printing them. It is just a case of someone giving a notice, and these consequential

additions in the prescribed form like Good Friday and Christmas Day to be treated as a Sunday are because of amendments that came forward from this House.

The first amendment, which reduced the period of notice from three months to one month, had consequential difficulties further on in the Bill because we had penalised an employer who did not give the notice. So when we talk about this Bill being substantially altered and when there is mention - I think it was the hon. member for Peel - that it is not substantially altered, she is quite correct. Two amendments were moved in this House. I successfully defended the other 24 but unfortunately the one that is causing the difficulty is the one where members thought they were helping other people. It has not been the case. However, what we have done is alter the Bill by a period of 14 days. That is all that has substantially altered this Bill. It is not a vast amendment; it just reduces the employer's time to give notice from one month to 14 days as a penalty if he has not already given notice.

I would also add, as I have previously explained, that when we got the notice of votes and proceedings we noted that this clause, which I missed at the third reading, did have consequential commitments and so we did fully support the amendments that were brought forward in the Legislative Council by a member of the board of the Office of Fair Trading, and I do hope that now you will understand that in this Bill, whilst it may have been slightly altered, the amendments are, as I say, specific to adding Christmas Day and Good Friday throughout the Bill and a reduction of 14 days. That is the only problem. It is superb employee protection but then that is because we chose to regulate an industry that did not need regulation. It is an industry that should stand alone and it is a shame that it was previous governments that chose to interfere in what, after all, is a private sector retail industry.

I beg to move that the House accept these amendments.

The Speaker: Now, hon. members, just so that we have it absolutely clear, I am proposing to take as a motion before the House that in the name of Mrs Crowe, that the amendments made by the Council be accepted. To that, hon. members, we have an amendment in the name of Mrs Hannan, that the Council amendments be disagreed with with a view to a conference. I propose to take the amendment. If the amendment loses we will of course vote on the motion. If it is approved we will then vote on the motion as amended. Are you happy, hon. members? In that case, hon. members, dealing with the amendment first in the name of Mrs Hannan that the Council amendments be disagreed with with a view to a conference, 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, Brown, Duggan, Mrs Hannan, Messrs Karran, Corkill, Cannell, Gelling and the Speaker - 9

Against: Messrs Cannan, Quine, Rodan, North, Sir Miles Walker, Mrs Crowe, Messrs Houghton, Henderson, Cretney, Braidwood, Mrs Cannell, Messrs Shimmin, Downie, Singer and Bell - 15

The Speaker: Hon. members, the amendment fails to carry, 15 votes being cast against and 9 votes cast for.

I will therefore, hon. members, put to the House the motion in the name of Mrs Crowe, that the amendments made by the Council be accepted. 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 Cannan, Quine, Rodan, North, Sir Miles Walker, Mrs Crowe, Messrs Houghton, Henderson, Cretney, Duggan, Braidwood, Mrs Cannell, Messrs Shimmin, Downie, Singer, Karran, Gelling and the Speaker - 18

Against: Messrs Gilbey, Brown, Mrs Hannan, Messrs Bell, Corkill and Cannell - 6

The Speaker: Hon. members, the motion carries with 18 votes being cast for and 6 votes against.

Retirement Benefits Schemes Bill – Further Consideration of Clauses Deferred

The Speaker: We turn, therefore, hon. members, to item 9 on the order paper and I understand, hon. members, that the hon. member in charge of the Bill is not at this stage prepared to carry it forward this week.

European Communities (Amendment) Bill – Clauses Considered

The Speaker: We move straight on to item 10 on the order paper, the European Communities (Amendment) Bill. I call upon the hon. member for Castletown, Mr Brown.

Mr Brown: Thank you, Mr Speaker. Clause 1 of the Bill amends section 2A of the European Communities (Isle of Man) Act 1973. Section 2A of the Act covers application to the Island of European Community instruments. Clause 1(a) of the Bill amends the Act by replacing in section 2A(1) the words the ‘Governor in Council’ with the ‘Council of Ministers’. This change will mean that the decision to recommend to Tynwald that an EC instrument be applied to the Island will in future be made by the Council of Ministers and not the Council of Ministers acting with the Governor. This is a small but important change in responsibility, putting the decision-making to recommend on the Chief Minister and his ministers, a move away from the old system of involving the Governor in such decision-making.

Clause 1(b) amends section 2A(4) of the Act to alter the procedure for making an order. Presently, section 2A(4) states, and I quote: ‘No order shall be made under section 2A unless a draft of the proposed order has been laid before a sitting of Tynwald and that draft has been approved at a subsequent sitting of Tynwald.’

Unfortunately, the present procedure has been identified as being deficient, in that recently, when we were dealing with the imposition of sanctions against the former Yugoslav Republic, due to our present procedures it resulted in a delay of one month before we could implement the EC instrument which brought about the power to impose sanctions. Clearly, such a procedure, whilst well-meaning, is not appropriate and could potentially cause the Island considerable embarrassment if our parliamentary system is deficient, in that such a delay could permit sanctions to be breached via the Isle of Man. Therefore it is proposed, through clause 1(c), to refine the procedure to ensure the Island can act more effectively.

Clause 1(c) amends section 2A of the Act by introducing a new section 4A into the Act to allow for a new procedure. Under the new section 4A, as proposed, a draft order shall be made and, as soon as practical after it is made by the Council of Ministers, it shall be laid

before Tynwald, and if at either the sitting at which it is laid or the next sitting the order is not approved by Tynwald, then it will cease to have effect - that is, it will fail.

Clause 1(c) also includes a restriction through a new section 4B in that the orders made under section 4A shall only apply Community instruments in relation to providing for embargoes, sanctions or any restrictive measure in relation to any country or territory or nationals, persons, business, property, ships, aircraft or vehicles in relation to any country or territory. Section 2A(4) of the Act will remain in force for implementing European Community instruments which are not imposing sanctions et cetera, as provided under the new section 4B. Therefore, when such orders are being progressed, the Tynwald procedures, as at presently existing under the 1973 Act, will remain in force.

In clause 1(c) the new section 4C provides transitional protection to orders applied.

Clause 1(d) substitutes 'Council of Ministers' for 'Governor in Council' in line with the changes proposed in clause 1(a). I beg to move that clause 1 stand part of the Bill.

The Speaker: Hon. member, I think in this case we could take clause 2 at the same time, could we not?

Mr Gilbey: Hear, hear.

Mr Brown: Yes, thank you, Mr Speaker. I am quite content. Clause 2 provides for the short title of the Act - that is that the Act shall be known as the European Communities (Amendment) Act 2000. I beg to move clause 1 and clause 2 stand part of the Bill.

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

Mr Karran: Vainstyr Loayreyder, the real issue is whether we need to have such a long summer recess. Maybe that is more important an issue than this Bill, and maybe if that had been looked at there would not have been a need for this Bill. Can he just assure this hon. House that any legislation that comes through will have to have the full input of debate as far as the hon. members are concerned and that we will not have a situation where we are lessening the powers of Tynwald members?

Mrs Hannan: Vainstyr Loayreyder, I am surprised by the comments made by the member for Onchan, because I would have thought that he would have welcomed at least clause 1(a) of the legislation proposed where it removes the Governor in Council and substitutes the Council of Ministers, an organisation which can be questioned in this House and in other places as to what they are proposing, and therefore I would have thought to remove the Governor from that particular place is to be welcomed and I welcome that.

I also welcome the provision of making orders and having them debated retrospectively, because I think if the Council of Ministers are going to be active they should take these sorts of measures, and not have to wait until the next sitting to implement them. So I welcome the provisions in this Act and I see that by doing this we are behaving responsibly.

The comment the member made about having long recesses – the recess is two months, and therefore I do not think it is a long recess. I think members of this hon. House and other places wish to make the point that we have a long recess which is four months or whatever. It is not; we do not sit during August and we do not sit during September, and during that time most of us in this House work solidly (**Members:** Hear, hear.) during that time and I think it is a

contempt of the House and a contempt of us to suggest that we do not and that we have long - and I am surprised at the member for Onchan, bringing that up as a red herring with regard to this legislation.

Mr Cannan: So am I.

Mr Quine: Yes, ridiculous. Absurd.

The Speaker: I now call upon the hon. member for Castletown to reply to the debate.

Mr Brown: Thank you, Mr Speaker. In response to the two points put by the hon. member for Onchan, firstly the summer recess of our parliament has no real implications on the reason for the change. As hon. members will be aware, unlike most parliaments, our parliament only sits once a month whereas most parliaments sit every day, and if we look at the UK that is the situation. They also have long summer recesses.

The other difference is, of course, because of the uniqueness of the Isle of Man situation. In other parliaments where they have a government which is in power because of party politics, then in fact the executive have these powers without reference back to parliament and the order is only laid for information. In the Isle of Man, this House - and I think rightly so - wishes to have an input through Tynwald Court when such orders are made so the provision is under the present arrangement that the orders are made in a draft form. That draft is then, when there is a sitting of Tynwald, put to Tynwald for approval.

The difficulty that has arisen is where - and it does not matter about the summer recess - it could be between one month and the next; we could have a situation where Tynwald has ceased sitting in the middle of January, three days later sanctions are brought in by the UK and the EC - and we of course are signatories to adopt those - we are in a position where three days later we cannot get the approval of Tynwald, we cannot implement sanctions until Tynwald has approved the order. This provision will mean that the Isle of Man Government can be effective in terms that if that situation arises an order can be made straightaway, it is effective straightaway and then, when that order reaches Tynwald, if members are not content with the order they can either reject it or they can approve it. They cannot amend orders, as hon. members will know, but they can reject them. Nothing is taken away on that; Tynwald will still be required to approve the order but there will be transitional protection from the date when the order was made to the date if Tynwald then rejected the order - in other words, anything undertaken by the police or anybody else in terms of sanctions is protected and I would have thought that we should welcome that. I am the member who suggested the procedure that we presently have in being when the European Communities Bill went through the House because members were concerned about orders being put without a proper way of dealing with them for members and, all I can say is, when we are dealing with sanctions and things like that where there could be terrorism included, there could be genocide included or whatever it may be, I am sure that the people of the Isle of Man want us to be effective by taking appropriate action so we cannot be used as a back door, and therefore I am sure the majority, if not all members, will support that. Mr Speaker, I thank members for their patience and I beg to move.

The Speaker: Hon. members, the motion is that printed at item 10 on your order paper, that the European Communities (Amendment) Bill have its first clause and second clause read and approved. 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, Quine, Rodan, North, Sir Miles Walker, Mrs Crowe, Messrs Brown, Henderson, Duggan, Braidwood, Mrs Cannell, Messrs Shimmin, Downie, Mrs Hannan, Messrs Singer, Bell, Corkill, Cannell, Gelling and the Speaker - 21

Against: Mr Karran - 1

The Speaker: Hon. members, the motion that clauses 1 and 2 be approved is carried, 1 vote being cast against.

Now, hon. members, I have had an indication from the Chief Minister that the meeting that he was proposing to call for members at 1.45 p.m. could now really take place at 11.30 a.m. Are hon. members happy with that?

Members: Agreed.

The Speaker: In that case, hon. members, we take that as your notice and the House will stand adjourned then until Tuesday next, 29th February, at 10 a.m. Thank you, hon. members.

The House adjourned at 11.09 a.m.