

**REPORT OF PROCEEDINGS OF
HOUSE OF KEYS**

**Douglas, Tuesday, 23rd May 2000
at 10.00 a.m.**

Present:

The Speaker (Hon J D Q Cannan) (Michael); Mr L I Singer and Hon A R Bell (Ramsey); Mrs H Hannan (Peel); Hon W A Gilbey (Glenfaba); Hon S C Rodan (Garff); Hon D North (Middle); Messrs P Karran and 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.

Apologies for Absence

The Speaker: Hon. members, I have apologies for absence today from the Treasury minister, the Hon. Richard Corkill, who is off the Island on government business and also I have apologies for absence for the next two weeks from the hon. member for Ayre, Mr Quine. He is at Noble's Hospital having a routine operation, so on behalf of all members of the House I wish him a full and speedy recovery and after a suitable convalescence will welcome him back amongst us.

Members: Hear, hear.

Prescribed Medicines – Wastage – Question by Mr Singer

The Speaker: Hon. members, we now turn to the question paper and for the first question I ask 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:

- (1) *What further action is your department taking to reduce the wastage of prescribed medicines; and*
- (2) *what estimated savings have been made during the last 12 months as a result of previous action taken by the department on this matter?*

The Speaker: The member for the Department of Health and Social Security .

Mr Karran: Vainstyr Loayreyder, the purpose behind the ongoing actions by the department in relation to drugs wastage is aimed at a reduction of inappropriate prescribing so that only drugs that a patient is prescribed under the National Health Service are those that are entirely necessary.

The hon. member will be aware of various initiatives undertaken over recent years, including patient education linked to the return of unwanted medicines campaign, the appointment of a pharmaceutical adviser to work with the professionals in relation to

prescribing practices, the encouragement of generic prescribing and with effect from February 1999 the introduction of self-certification of prescriptions.

More recently, guidance has been issued to GPs on repeat prescribing, which has identified a significant factor in the influencing of prescribing patterns. A follow-up at each practice has been arranged.

In addition the department's prescribing therapeutics forum is developing guidelines in areas such as pain relief and hormone replacement therapy, and work is also being undertaken on the prescribing of antibiotics. Again, follow-ups will be carried out with each practice.

Turning to the second part of the question, I should make it clear that the continuous upward pressure in demand and, importantly, the price of drugs mean that actual savings in costs are not practical. However, there has been evidence in recent years to suggest that the rate of growth in drugs expenditure has slowed. Unfortunately during the last 12 months the reliability of the indicator has been affected by two factors, one of which is outside the department's control and that is the delay in the proceeding of the prescriptions by the Prescription Pricing Authority. Notwithstanding this I am confident that work being undertaken by the department's professional advisers continues to address the major concerns in relation to these areas as far as the National Health Service costs.

The Speaker: A supplementary, the hon. member for Ramsey.

Mr Singer: Thank you, Mr Speaker. May I thank the hon. member for his detailed answer. Could I ask him, has his department yet agreed an Isle of Man formulary with the medical profession which would enable the general practitioners to agree a restricted list of medicines to be prescribed, whilst not of course reducing the GPs' ability to use a suitable treatment, and also the greater use of generics rather than proprietary medicines where those generics are available?

Mr Karran: The department has, some time ago, tried to encourage generic prescribing and at the present time hopefully it is round about 50 per cent. Maybe that can be increased. The hon. member has a valid point. There is somewhat of a difference in the cost between those and the brand-names.

Mr Henderson: Mr Speaker, would the hon. member not agree with me that one of the most obvious ways to reduce the wastage of prescribed medicines is to have proper discharge planning from patients leaving hospital, which is subject to scrutiny from time to time, and proper co-ordinated care from GP surgeries so that crossover prescriptions are not prescribed?

Mr Karran: Vainstyr Loayreyder, the position is that obviously that would be a factor, but I think more of a major factor is repeat prescriptions of people taking several drugs and just leaving them in the cupboards when they do not use the stuff but just keep on taking it out of politeness. This is something which obviously needs to be hammered away at and that really comes down to patient education, that it is important that they realise that this is an important resource and the pressure is on the vote. The vote for last year was somewhere in the region of £10 million, which is a considerable amount of money.

Mr Singer: Mr Speaker, the hon. member uses, when discussing with the medical profession, the words 'encourage' and 'guidance', but has your department considered my previous request which was made, I think, in 1997 or maybe early 1998 that the pharmaceutical adviser should have more powers to direct where savings must be made rather than to advise and therefore the adviser herself should have a target of the reduction in the amount of drugs being used, because whilst understanding that the cost of drugs is going up, it is the quantity of drugs that are being used which could be reduced? Would the hon. member comment on that, please?

Mr Karran: Vainstyr Loayreyder, everything that can be done is being done at the present time. The hon. member is aware of the situation, with being a pharmacist, of the problems one has when one tries to inflict restrictions on the medical profession. We saw only a couple of weeks ago in this hon. House when I made statements about other things that we had letters demanding an apology for daring to criticise the medical profession, and I think that the hon. member knows the position as far as this is concerned.

We are trying to do what can be done. We have got a pharmaceutical adviser. We do limit certain drugs, we have done in the past and we will do, but at the end of the day I would think the hon. member would be screaming in this hon. House if we were to restrict drugs of certain brands that were affecting his constituents. So we cannot really win, whichever way we go, on this subject.

Mr Shimmin: Mr Speaker, would the member confirm that he is aware that a subcommittee of the Public Accounts is actually looking into the issue of the pharmaceutical drugs bill and is soon to be drafting a report on that very issue and once that is published it will be of benefit both to his department and also members to discuss this very complex issue?

A Member: Hear, hear.

Mr Karran: I am aware, Vainstyr Loayreyder. The minister, I believe, and her representatives have made input into that committee, so these issues are not new, these issues are ongoing. We have to not just bring the horse to water, we have to make it drink, and I am afraid the medical profession will drink when it decides it want to do so.

The Speaker: I will take two more supplementaries. The hon. member for Douglas East, Mr Braidwood.

Mr Braidwood: Thank you, Mr Speaker. Would the member with responsibility for health confirm that the guidance notes issued to GPs will limit the prescribed time for prescriptions to 28 days and short courses will be limited to five or seven days, as I believe the pharmacy at Noble's Hospital limits the time to seven days?

Mr Karran: These initiatives have been brought in, as we have seen over the last decade the cost of drugs double to nearly £10 million. It is an important factor for the health services. We are not asleep as far as this issue is concerned. We have to work with the health professionals. We have to recognise the fact that many in this hon. House would then be criticising us if we were not giving the sort of medicines that the doctors felt, as the professionals, for their patients and your constituents.

The Speaker: A final supplementary, the member for Douglas North, Mr Henderson.

Mr Henderson: Thank you, Mr Speaker. Would the hon. member not agree with me still that a practical approach to reducing prescribed medication is to ensure that there are correct systems in place to prevent GPs from supplying duplicate prescriptions?

Mr Karran: Obviously I would support the hon. member, that is a very good issue, but the point is there are several other issues that have to be addressed as well, and I think you will find that most of these issues should have been taken on board with the fact that we do have officers in the health services who are supposed to look into these issues.

Heavy Goods Vehicles – Speed Limit – Question by Mr Singer

The Speaker: Question number 2, the hon. member for Ramsey, Mr Singer.

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

Will your department introduce legislation to limit the maximum speed of heavy goods vehicles using Manx roads to 30 mph?

The Speaker: The Minister for Transport to reply.

Mr Brown: Thank you, Mr Speaker. As the hon. member is aware, heavy goods vehicles on the Island's roads are already limited to a maximum speed of 40 miles an hour. I am happy for my department to give consideration to the introduction of a lower maximum speed limit of 30 miles an hour. However, I am not sure that such a reduction would be practical or of any real benefit. I can say, however, that I am concerned, as I believe many people are, at the speed which some drivers of heavy goods vehicles drive at.

In our considerations of this matter I will also ask my department's highways and traffic division to consider whether there is a need to make the penalties in relation to exceeding the maximum speed limit which applies to heavy goods vehicles more effective.

The Speaker: A supplementary, the member for Ramsey, Mr Singer.

Mr Singer: In thanking the minister for his encouraging reply, could I say to him that in view of his well-known views that lorries now on our roads are too large for the conditions that they are travelling in, does he not agree that to restrict the permitted speed of heavy goods vehicles to 30 miles an hour would make a contribution to road safety, as do his department's proposals to reduce traffic speed past schools and in urban housing estates to 20 miles an hour?

Mr Brown: Mr Speaker, I am unable to confirm the point made by the hon. member because I really do not have that sort of information, as we have not yet assessed whether or not a reduction of speed down to 30 miles an hour will achieve the objective that the hon. member hopes it would achieve. However, we are happy to look at this issue.

I would make the point that there is a balance between slowing traffic down on the main highways, which we are talking about, and causing what could potentially be frustration for other motorists who can then not overtake such vehicles. So I think we have to get that balance right and certainly we are quite happy to look at that.

But I do believe that where offences are committed by wagons travelling at what are, we understand, concerns about excessive speed, in fact maybe the penalties need to be more effective and that is an issue that I will certainly ask them to look at.

Mr Cannell: Mr Speaker, would the hon. Minister for Transport undertake to give the fullest possible consideration to consultations with the public transport element of the Isle of Man before introducing any such regulation?

Mr Brown: Yes, Mr Speaker, I am quite happy to consult with the Department of Tourism and Leisure, public transport section. I am not sure that the suggestion would directly affect the operation of the bus services, but certainly there is no problem in asking the department to undertake consultation.

Mr Houghton: Mr Speaker, is the minister aware of certain accidents involving the larger type of HGV vehicle whereby the driver may have been at fault due to the fact that he was actually unfamiliar with the vehicle, sir?

Mr Brown: Well, I am not, Mr Speaker. I am not sure how a driver being unfamiliar with a vehicle would cause a situation that would be a problem on the highway, except I would hope that anybody getting into any new vehicle, whether it is a car or a wagon or a bus or a coach, would familiarise themselves with the controls and ensure that before they drive the vehicle they are satisfied they are able to do so in safe conditions.

The Speaker: A final supplementary, the member for Ramsey, Mr Singer.

Mr Singer: Thank you, Mr Speaker. In considering the reply given by the minister that he will consider through the department this possibility of reducing the speed of lorries, can he give me a positive indication that this investigation will take place in a fairly short time, not be put to the end of a long list which I know he has, so that if it is felt necessary, the dangers of speeding lorries can be reduced?

Mr Brown: Mr Speaker, I would not want to give any undertaking I could not adhere to. I think what is more important is to ensure that if we are looking to reduce the speed limit that already applies to heavy goods vehicles of 40 miles an hour down to 30 miles an hour, I think it is more important if we are satisfied that such a move is going to be effective, that it is practical and is not going to create other problems such as congestion on our highways. All I can say to the hon. member is that certainly I will ensure that my highways and traffic division look at this issue in as reasonable a time as possible and hopefully come to a conclusion in the not-too-distant future, after consulting the police and of course the public transport section of the Department of Tourism and Leisure.

Mrs Brenda Cannell MHK – Discharge of DTI Duties – Question by Mr Henderson

The Speaker: Question number 3. In the absence of the hon. member for Ayre, Mr Quine, the question will be asked by Mr Henderson, the member for Douglas North.

Mr Henderson: Thank you, Mr Speaker. I beg leave to ask the Minister for Trade and Industry:

- (1) *Have you had occasion to express to Mrs Brenda Cannell MHK any dissatisfaction with the manner in which she has discharged her duties as a member of your department; and*
- (2) *can you confirm that Mrs Cannell has, inter alia, had delegated responsibility for the construction industry, and that the manner in which she has discharged her responsibilities has found favour with the industry's representatives?*

The Speaker: The Minister for Trade and Industry to reply.

Mr North: Thank you, Mr Speaker. The question asks whether I had occasion to express to the hon. member for East Douglas, Mrs Cannell, any dissatisfaction with the manner in which she discharged her duties as a member of the department. In seeking to reply it may help if I were to explain that within the DTI when I delegate responsibility to a member I would not expect to interfere in the way in which that delegation is carried out, preferring to trust the member to use the powers responsibly and in accordance with established department and government policy. As far as I am able to recall, the only concern I expressed to Mrs Cannell in relation to her delegated authority was to remind her that in carrying out the remit her role was to act and speak on behalf of the department and thus government and in accordance with our stated policy.

With regard to the second part of the question, Mrs Cannell did indeed have delegated responsibility for the construction industry. I do not feel, however, that it is appropriate for me to speak on behalf of the industry's representatives, who I am sure are perfectly capable of speaking for themselves.

The Speaker: A supplementary, the member for Douglas North, Mr Henderson.

Mr Henderson: Thank you, Mr Speaker. Could the hon. minister answer this for me: did he recommend to the Council of Ministers the removal of Mrs Cannell from the DTI, and if so, when was this recommendation made and what evidence did he offer in support of it?

Mr North: Mr Speaker, I did not recommend the removal of Mrs Cannell from the DTI.

Mr Braidwood: Mr Speaker, would the minister agree with me that with hindsight and knowing Mrs Cannell's views over the problems associated with the hospital construction, it would have been more appropriate to request the Chief Minister to transfer Mrs Cannell to another department, which would have then not restricted her views and her freedom of speech over the hospital construction?

Mr North: Mr Speaker, hindsight is a wonderful thing and as far as I am concerned that decision was not, as far as I am concerned, necessary until such time as Mrs Cannell issued a statement calling for the withdrawal of the design team and the management contractors.

Mr Singer: Can I ask the hon. minister, as he has said that he did not recommend the removal of Mrs Cannell from the Department of Trade and Industry, can he tell me why on April 18th he said in public that Mrs Cannell would not be sacked, yet the Chief Minister's letter of dismissal was written probably less than 24 hours later and delivered by hand on April 20th? So as the minister did not change his mind in that short time, was he surprised at Mrs Cannell's removal and does he not think that it was his responsibility as minister to recommend Mrs Cannell's removal and nobody else's and therefore does he agree that Mrs Cannell was dismissed incorrectly and does he regret that?

Mr North: Mr Speaker, it was a unanimous decision of the Council of Ministers to remove Mrs Cannell. It was not my place to remove her. As far as I am concerned, at the meeting of the Council of Ministers on, I think from memory it was 16th March, the day following that and at that meeting I was still happy to have Mrs Cannell at the DTI. Unfortunately, on the following day, Friday, a statement was issued which I think at the time I said made Mrs Cannell's position untenable, and I think in the interview, if I remember rightly,

she actually expressed some thoughts that she might get fired, or whatever the expression was, for making it, and I find it very sad that she found it necessary to make a statement demanding the removal of the design team and the management contractor and the DTI they are part of the construction industry and I am afraid that that course of action would have cost government, in my opinion, many millions of pounds.

Mr Houghton: Mr Speaker, can the hon. minister confirm whether or not he received any request from the Employers Federation requesting the removal of Mrs Cannell, and bearing in mind, is he aware that the Employers Federation have actually written to Mrs Cannell by letter dated 27th April, expressing sincere regret at her removal and expressing their satisfaction and thanks for all the work that she did while she was in his department, sir?

Mr North: Yes, Mr Speaker, I am not aware, I have not seen letters from the Employers Federation to Mrs Cannell. I have indicated to the Employers Federation that I intend to take on responsibility for liaison with them personally, at least for the time being and I met the federation for the first time in this capacity yesterday. As far as I know, Mrs Cannell had a good working relationship with the Employers Federation.

The Speaker: I will take two more supplementaries. The hon. member for Ramsey, Mr Singer.

Mr Singer: Thank you, Mr Speaker. If I can pick up the minister's statement that it was a unanimous decision of the Council of Ministers to remove Mrs Cannell, can he tell me was he at a meeting where this unanimous decision was taken or has he been told that it was a unanimous decision, and is he sure that every member of the Council of Ministers was of the opinion that Mrs Cannell should be removed as he has said or was it a majority decision?

Mr North: Mr Speaker, no, it was not at a meeting. I was contacted and I do not know at what stage I was contacted, in what order. I was contacted by the Chief Minister and I agreed that after the statement that Mrs Cannell had made her position certainly had become untenable. As far as I know, and certainly I have no doubt to question this, it was and is recorded as a unanimous decision of the Council of Ministers.

The Speaker: Allowing one extra supplementary, the hon. member for Douglas South, Mr Cretney.

Mr Cretney: Thank you, Mr Speaker. Could I ask the minister, was he surprised at the coincidence of the timing of Mrs Cannell's press statement so soon after the matter had been discussed in private by the Council of Ministers?

Mr North: Yes, Mr Speaker. The answer to that is obviously, yes. I found it a little surprising after the Council of Ministers meeting on the Thursday, at which time I left the meeting and Mrs Cannell was staying at the DTI and other things were to be progressed, but as far as I am concerned, to have published a statement on the following day, as she did, was most surprising.

The Speaker: A final supplementary, the hon. member for Douglas North, Mr Henderson.

Mr Henderson: Thank you, Mr Speaker. Given the hon. minister for the DTI was satisfied with Mrs Cannell's performance, has he ever asked for her reinstatement, and would he further agree with me, rather than Mrs Cannell costing the taxpayer millions, could he

confirm to me that if there is something wrong with the present system, that would cost the taxpayer even more millions because it is not operating effectively?

Mr North: No, Mr Speaker, it is up to the Council of Ministers to appoint members to departments and I should reiterate that there is a management contractor and a design team appointed to build what I believe will be a wonderful new hospital for the Isle of Man (**Members:** Hear, hear.) and I just dread to think and I hope that with hindsight or retrospectively Mrs Cannell would realise that the statement that she made at the time to remove the design team and the management contractor really would have ended up in years of litigation, (**Several Members:** Hear, hear.) delay, millions of pounds and I am just sorry that she made that statement. (*Mrs Cannell interjecting*)

NUT Survey – Question by Mr Shimmin

The Speaker: Question number 4, the hon. member for Douglas West, Mr Shimmin.

Mr Shimmin: Thank you, Mr Speaker. I beg leave to ask the Minister for Education:

In the light of the National Union of Teachers survey on workload and bureaucracy do you have any plans to carry out an independent survey of such issues affecting the teachers of the Isle of Man?

The Speaker: The Minister for Education to reply.

Mr Rodan: Mr Speaker, I thank the hon. member for his question. The National Union of Teachers survey referred to in the question was limited to primary schools and to the introduction of literacy and numeracy strategies. That survey did not, therefore, address all the current issues, nor did it engage the views of all the Island teaching staff.

As the member is aware, the department does have well-trying and tested systems for regularly consulting with teachers, including termly meetings between representatives of the six teaching associations and myself, when issues of concern can be and indeed are raised.

Notwithstanding that I am minded to have the department appraise the opportunity that a carefully constructed, professional, independent to the Island, quantitative and confidential survey would bring in order to really obtain a full and true picture of issues concerning teachers if it is felt that the current systems are inadequate. Indeed if regularly carried out it may well do away with the need for the majority of the current meeting systems and take the pressure off the staff to attend meetings in school time.

The Speaker: A supplementary, the hon. member for Douglas West, Mr Shimmin.

Mr Shimmin: Thank you, Mr Speaker. When the minister uses the term 'appraise the opportunity' could I point out that both to himself and his predecessor this issue has been raised for some years now and that from his own comments does he not feel it would be beneficial if they were to introduce this all-Island, all-issues discussion to draw a line under the current position regarding teachers' workload and morale? Would he not agree that to fail to do so is going to allow further surveys to be done which are then left to individual interpretation? Furthermore, if he is to go down this road, would he allow full consultation with the joint associations in order to confirm an appropriate series of questions to gain the most information, ultimately for the benefit of the children of the Isle of Man?

Mr Rodan: My main concern, Mr Speaker, of course is educational standards in the Isle of Man. That is the bottom line: the maintenance and the raising of standards towards excellence. If, to achieve that, we can mobilise our greatest asset, which is the teaching force, in pursuit of that excellence, if we can reappraise our systems to ensure that excellence is brought about, I will consider every proposal on its merits.

In my original answer I believe I did consider that the proposal had merit. I have already, before this question was tabled in fact, asked officers of the department to evaluate the merits of an independent survey, which would have to be independent from an agency outside the Island if it is truly to have value, and to advise me as to how this can supplement the present system of consultation that we have and have had for some time.

I am quite open-minded about the benefits of this and I believe in my answer I indicated that I am minded to say yes to this when the advantages have been clearly identified.

Mr Karran: Vainstyr Loayreyder, would the Minister for Education not agree with me that the problem that we have got with workload with the present situation has allowed serious effects on certain schools? Can the minister come back to this hon. House with the amount of staff changes that have been in one of my schools in my constituency of Ashley Hill, simply because of the madness that seems to have taken over education at the present time, the Department of Education?

Mr Rodan: Mr Speaker, I am not quite sure what form this madness takes that the hon. member refers to.

Mr Karran: Go and find out how many teachers have gone.

Mr Rodan: As the hon. member well knows, I am very happy, as are my officers, to discuss with him and indeed all members of this hon. House, at any time, issues affecting their schools in their own constituency and indeed have done so.

If I may say, we have systems in place. I believe that issues of staff turnover, as I indicated in this House some months ago, are running at a current level that is no higher in practice than would be expected for the number of staff we employ, but I can assure him that we are continually monitoring the situation and the reasons for staff turnover.

The Speaker: Two more supplementaries. The hon. member for Onchan, Mr Cannell.

Mr Cannell: Thank you, Mr Speaker. Would not the hon. minister agree with me that to have an independent investigation carried out by people who already are proponents of systems which are not always suitable for the Isle of Man is to further perpetrate the difficulties his department has faced in introducing some of these schemes which clearly are patently outside of the remit of the education of children in the Isle of Man?

Would he not further agree with me that literacy and numeracy hours are definitely not a requirement? That is the very basis of education for every moment of every day.

Mr Rodan: Mr Speaker, I think the member must be careful not to confuse Ofsted inspections, which are initiated off-Island, with the sort of survey that is the subject of this question. The survey would not be carried out by Ofsted inspectors but by agencies who professionally conduct surveys.

As to the second point about the value of literacy and numeracy hours, all I can say is that the inspections that have taken place have demonstrated very, very clearly that there are enhanced educational standards as a result of the introduction of these two initiatives. The Island, I think, is fortunate (a) to have had staff, teaching staff, who have responded by and large well with the changes demanded of them in increasing educational standards, and (b) I believe that we, as public representatives and parents, can be proud of the standards being achieved in our schools by our children. If I thought for one moment that there was no merit in literacy and numeracy strategies, we would not have them in the Isle of Man just simply because they have them in the adjacent island, but Ofsted inspectors have highlighted in the results of almost half the primary schools inspected now the value of these strategies in enhancing standards and the results are coming through in the key stage testing for all to see.

The Speaker: A final supplementary, the member for West Douglas, Mr Shimmin.

Mr Shimmin: Thank you, Mr Speaker. I would draw the attention of the minister to the question which did point out an independent survey, and that is certainly something which I have proposed to the department for some time: it is required to be an independent survey. Would he agree that the joint association meetings, of which he makes mention, for some years now have been raising the very issues of workload pressure and morale within the service and therefore the frustration is growing that, as much as listening to the comments, there does not appear to be any substantial effort by the department to reconcile those issues which are rightly raised in the appropriate forum?

Furthermore, would he agree that many members of the teaching profession would like to see a higher profile given to their problems, but I and other members have deliberately tried to use the normal vehicle, which is the department working with the joint associations, and unless there is progress I believe the pressure from the teachers will grow and grow until something is done?

Mr Rodan: I am a little disappointed, Mr Speaker, that the hon. member does not acknowledge the work that has been done in consultation with the teachers' associations, whom I am meeting again in three weeks' time, working with them to address the concerns that are raised regularly over issues of concern such as workloads associated with new initiatives.

I believe that if the hon. member acknowledged the facts he would acknowledge that earlier in this year in fact the department set up working parties with representatives, with classroom teachers nominated by the teachers' associations themselves, to devise guidelines that would enable the workload issues to be handled better with these new strategies. Those guidelines have been published in conjunction with the teachers and have been implemented and are helping teachers carry out their professional duties.

Could I ask the hon. member to repeat the latter part of his question, please?

Mr Shimmin: Mr Speaker, accepting what the minister has said, the issue is one whereby the individual professional teachers -

The Speaker: With respect, hon. member, the question, not a comment on his reply.

Mr Shimmin: The individual professional teachers, Mr Speaker, are growing impatient and will the minister not accept that if there is not some tangible action, then the frustration will grow? That was the final part of the question.

Mr Rodan: Mr Speaker, I believe I have answered the question. I have every confidence that the professional teaching teachers on the Island will act professionally and within the systems that we currently employ. If there is an opportunity to improve on consultation and working together I will certainly take it.

**Department of Education – Inspection of Administration and Support Services –
Question by Mr Shimmin**

The Speaker: Question number 5, the hon. member for Douglas West, Mr Shimmin.

Mr Shimmin: I beg leave to ask the Minister for Education, sir:

As the Department of Education has adopted a policy of Ofsted-style inspections of all the Island schools, when do you intend to carry out a similar inspection of the central administration and support services of the department?

The Speaker: The Minister for Education to reply.

Mr Rodan: Mr Speaker, I have no difficulty at all with an external inspection being carried out on the Department of Education's central administration and support services along the style of inspections applied to local education authority central support and services in England and Wales. Such inspections are carried out according to an English Ofsted framework specifically devised for LEA education department services in England and Wales.

The hon. member will appreciate that the nature and work of the Department of Education is very much wider than that of a local education authority in England and any such inspection would need to take account of these differences.

It is normal practice in England that the local education authorities' services are inspected on completion of the cycle of school inspections in the area. This is to measure the effectiveness of the LEA in supporting schools with targets and funding. Accordingly, the time for this to occur in the Isle of Man would be autumn 2002 when all Island schools will have been inspected and had the benefits of the reports. However, I would not be averse to an external, Ofsted, local authority-style inspection being carried out prior to this date, depending of course on the availability of Ofsted.

The Speaker: A supplementary, the hon. member for Douglas West, Mr Shimmin.

Mr Shimmin: Thank you, Mr Speaker. Welcoming the acceptance of the minister that this could be done and would be beneficial, would he accept it would be more useful were it to be done during his term of office, as he has just made the comments he has done, and also that the role of the central administration and any inspection thereof needs to have consultation with the schools in order to evaluate the service that the central administration offers to those schools?

Mr Rodan: Mr Speaker, not only would the Ofsted inspectors have to have consultation with the schools, they would have to have extensive consultation to ensure that the tests to be applied were appropriate ones for the Isle of Man situation.

Mr Cannell: Mr Speaker, would not the hon. minister agree with me that with any inspections of the sort which are proposed, either of the office or further Ofsted inspections of schools, place incredible pressures upon those who have to face complying with them but do definitely suffer from the pre-knowledge that they are to be carried out, whereas in fact what is required is a snap inspection (**Mrs Hannan:** Hear, hear.) where the regular situation of teaching and of the officers can be ascertained, because there always remains otherwise the suggestion that the services might be artificially enhanced to comply with the inspecting officer's requirements?

Mr Rodan: Mr Speaker, any system of evaluation of people or systems does have implications, does have its own pressures. There is no question about that. Arguments are made as to whether periods of notice should be longer than they are or that they should be shorter. The arguments are well made on both sides. We believe that we have got the balance just about right, acknowledging the importance of being fair to schools and to ensure that we have a proper appraisal of what is actually taking place.

The Speaker: I will take two more supplementaries. The member for Onchan, Mr Karran.

Mr Karran: Vainstyr Loayreyder, can the Minister for Education inform us what sort of costs have been involved as far as having Ofsted facilities provided by his department, what sort of costs there were?

Could he also inform this hon. House, allowing for the fact that we always believe that education is better in the Isle of Man than in the UK, when did education on the Island suddenly start going on the rocks so that we needed to go down the road that we are doing and have a situation where we have so much unpleasantness at the present time and concern within the teaching profession and the loss of goodwill that we have had there for so long that we knew about?

Mr Cannell: Hear, hear.

Mr Rodan: Mr Speaker, I will be pleased to advise the hon. member as to the costs. I do not wish to give a figure off the cuff that may not be accurate. Suffice it to say that the costs that have been identified have been identified as representing good value for money. The costs of not having inspections of course are immeasurable. If those inspections are in fact the creation of management tools to enhance education standards, to assist head teachers and teaching staff to teach better, the cost of not having that, I suggest, is the wider educational cost to the Island.

I am a little disappointed when I hear remarks about education in the Isle of Man being on the rocks. I do not believe that is the case at all. There are issues of change in practice and change in theory in education and the department evaluates these before bringing them in, but we have an awful lot of professionalism out there amongst our teachers and I would wish to pay tribute to them and I think it is slightly insulting to them to be portraying constantly, it would appear, for whatever reason, the idea that they are unable to acknowledge and respond to change and the professional demands that are made of them.

Of course when we have change there is always going to be the question of managing change from the point of view of ensuring there is sufficient resource and sufficient support and sufficient acknowledgement of the human issues involved in change, but I believe the

department does acknowledge these issues and I just wish we would support our teachers publicly a little bit more than we do.

The Speaker: A final supplementary, the member for Douglas West, Mr Shimmin.

Mr Shimmin: I wonder if the minister would like to reconsider his word 'constantly' because I do not believe that this issue is constantly drawn to the attention of this House. It is a serious issue and those of us who try to deal with it work with the department.

Would he be aware of the issues responding to the Ofsted inspection of Ashley Hill where his department had to shuffle members of staff around the Island in order to satisfy staffing levels at that school? Would he consider that that is schools responding to a shortage and the department only increasing their levels in order to satisfy an Ofsted inspection?

Furthermore, would he accept that all of the good schools on the Isle of Man are serviced centrally by one department and therefore that one department has the power to be of great benefit or disadvantage to all of the schools on the Island?

Mr Rodan: Mr Speaker, I am not prepared to discuss Ofsted inspections of a particular school, particularly when the results and the report have not been published. The hon. member is making allegations and suggestions about a particular school's inspections -

Mr Karran: Two hon. members.

Mr Rodan: - and the information in that report is not yet in the public domain and I am not prepared to comment upon it.

As to the second part of the question, of course the Department of Education has a central role in ensuring that services are delivered where they are needed and if that means moving staff around to ensure that children receive education to which they are entitled, we have and we will continue to do so.

Elderly and Disabled – Call Monitoring System – Question by Mr Singer

The Speaker: Question number 6, the hon. member for Ramsey, Mr Singer.

Mr Singer: Thank you, Mr Speaker. I beg leave to ask the Chairman of the Office of Fair Trading:

Are you considering introducing regulations to control the service and standards of companies providing a 24-hour call monitoring system for the elderly and disabled?

The Speaker: The Chairman of the Office of Fair Trading to reply.

Mrs Crowe: Thank you, Mr Speaker. The Isle of Man Office of Fair Trading is not presently considering introducing regulations to control the service and standards of companies providing a 24-hour monitoring system for the elderly and disabled. However, the Department of Health and Social Security are currently considering this matter and hope to introduce regulations at the earliest possible date.

The office is very conscious of the vulnerability of those requiring the services of a 24-hour call monitoring system and in November, after receiving complaints, trading standards officers instigated an extensive investigation. We successfully prosecuted a company providing such services on the Island under the Consumer Protection (Trade Descriptions) Act 1997. The offence concerned recklessly made statements by the company in the course of its

advertising, the help that was constantly available at the press of a button, which we knew to be untrue. The fine for the offence was £2,000 plus £500 costs.

This abuse of trust is clearly unacceptable and the Office of Fair Trading would have no hesitation in pursuing a prosecution against any individual or company behaving in this manner.

In advance of the introduction of regulations, any consumers approaching the office for advice would be advised to use the companies which are members of the Association of Social and Community Alarm Providers. This association operates a code of practice which, although voluntary, is thorough and sets standards for the level of service and procedures which include response times for the calls, dealing with emergencies, and the maintenance and inspection of the equipment and back-up systems. The association accepts complaints in writing against their members and would expel any members should complaints be substantiated.

People's lives depend upon such systems and I thank the hon. member for raising this vitally important issue and look forward to his support when the necessary regulations are brought forward. Thank you, Mr Speaker.

The Speaker: A supplementary, the member for Ramsey, Mr Singer.

Mr Singer: In offering my support to the hon. member can I ask her is the company which was prosecuted still in fact in business, are they a member of this association and can you name the company that was prosecuted by your department?

Mrs Crowe: Yes, Mr Speaker, the company is still trading, the company is not a member of the association I have mentioned, and the company which we prosecuted is T S L Careline Limited of Ramsey. Could I just repeat that name, as there is a company trading with a similar name, and the company we prosecuted was T S L Careline of Ramsey.

Mr Singer: Can I ask practically speaking, if a person telephones your office, which they are likely to do, on the provision of a 24-hour call-monitoring service, do your officers, whilst not making any specific recommendations, inform the enquirer of known and proven shortcomings such as successful prosecutions, to enable the customer to make a sound personal judgement as to the level of the service they require?

Mrs Crowe: Mr Speaker, I do believe I answered that part in my original answer when I said the office, when approached by consumers, will give advice which will include that the company they choose should be a member of the Association of Social and Community Alarm Providers.

The Speaker: I will take two final supplementaries. The member for Onchan, Mr Karran.

Mr Karran: Vainstyr Loayreyder, would the Chairman of the Office of Fair Trading not agree that the position is that it is really quite a scandal that neither her department nor the hon. member is trying to use the facilities of the likes of the Criminal Justice Bill in order to change the law as far as this vital service to a very vulnerable section of the community? Surely someone should have been trying, if they are so concerned, to do so and using the parliamentary system in this hon. House. Would she also not agree that the reason why this has not been done is that far too many in this hon. House just leave it to now to the executive and are allowing themselves to be nodding dogs for the executive instead of doing their

parliamentary duty by trying to change the law, as the hon. questioner should have been doing under the Criminal Justice Bill?

Mrs Crowe: No is the short answer to that, Mr Speaker, I would not. It is a far more complex proposition to introduce legislation that needs enforcement and it would not be appropriate. We have already discussed with the Minister for Home Affairs whether it would be appropriate in the Criminal Justice Bill that is coming before us and we have decided that it would not. However, there is an appropriate Bill under way and I am sure regulations will be introduced and they will be quite complex and I will be looking for the support of the hon. member for Onchan.

The Speaker: A final supplementary, the member for Ramsey, Mr Singer.

Mr Singer: Thank you. Can I ask the hon. chairman, because of the considerable public interest and importance, can you finally name that company who you successfully prosecuted so as not to confuse that company with any other company on this Island?

A Member: She said it twice.

Mrs Crowe: The company is T S L Careline Limited of Ramsey.

Storage of Fireworks – Safety Standards Review – Question by Mr Henderson

The Speaker: Question number 7, the member for Douglas North, Mr Henderson.

Mr Henderson: Thank you, Mr Speaker. I beg leave to ask the Chairman of the Office of Fair Trading:

Will your office be reviewing safety standards for the storage of fireworks in the Isle of Man?

The Speaker: The Chairman of the Office of Fair Trading to reply.

Mrs Crowe: Thank you, Mr Speaker. Under the Dangerous Goods Acts 1928 and 1954, as scheduled under the Health and Safety at Work Act 1977, the Office of Fair Trading is only responsible for the licensing and storage of fireworks at retail premises. The conditions applied to such licences cover the safety and security of the storage and the amount in weight of the fireworks which can be stored and are based on safety standards issued by the Health and Safety Executive which are followed throughout the British Isles.

The Office of Fair Trading, on receipt of a licence application, would inspect each store for safety and security. Checks include the provision of metal storage cabinets, the proximity of fire extinguishers and the general construction of the storeroom. No licence will be issued unless the storage complies with safety conditions laid down. Following the issue of a licence, targeted checks are made on stores to ensure that there are no breaches of these conditions.

Copies of the licence are also sent to the fire service to ensure that in the event of an incident in a retail premises they are aware that fireworks may be stored there.

The licensing of explosives and fireworks at premises other than retail premises is the responsibility of the police.

We are continually monitoring safety standards in relation to the vast array of legislation which we enforce. We regularly benchmark our requirements against those found in other similar jurisdictions and I believe our safety standards for the storage of fireworks at retail

premises are appropriate and there is no intention to carry out anything other than our normal monitoring process of those standards at this time.

Mr Henderson: Mr Speaker, I thank the hon. member for that comprehensive answer but given recent tragic events in Holland and that the storage requirement for export to this Island and the storage requirement of fireworks at retail premises in metal cupboards, I believe, are minimal, does she not agree really that a review other than the standard assessments that are ongoing is well overdue?

Mrs Crowe: Mr Speaker, no, I would not suggest that our requirements are minimal. As I have just said, they comply with all the Health and Safety Executive's requirements and I would say that it is uppermost in the Office of Fair Trading that consumer protection is the mainstay of the office on a daily basis and if we thought that our checks were anything other than most thorough we would do something about it.

Chlorination of Water – Complaints – Question by Mr Houghton

The Speaker: Question number 8, in order to finish within the approved time I call upon the member for Douglas North, Mr Houghton.

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

Has your authority received complaints of excessive chlorination of water from residents of properties adjacent to the Greenfield Road filtration plant?

The Speaker: The Chairman of the Water Authority to reply.

Mr Karran: Vainstyr Loayreyder, I thank the hon. member for Douglas North for his question. The process of adding chlorine is a continuous one which is carefully and regularly monitored, not only at the treatment works, but by sampling the water at the service reservoirs and at the consumers' taps.

In recent weeks the water from Glencrutchery filtration plant has been coming from West Baldwin reservoir, as both Clypse and Kerrowdhoo have been filling after being empty this winter.

Only this week we have started to draw water from Kerrowdhoo. The water is passed through the filtration and treatment process at Glencrutchery in order to improve and remove the impurities and then finally the appropriate amount of dosage of chlorine is added to ensure that the water is safe to consume. Typically, the amount of chlorine in the drinking water is at 0.5 parts per million. This level of chlorine will not have any detrimental effect on health.

Some consumers who receive a supply shortly after leaving the water treatment works may find that there is a stronger smell and taste of chlorine in their water, whereas those at the end of the supply will notice no chlorine at all because it has been absorbed into the mains system. Our records for Glencrutchery show that the level of chlorine throughout the winter and spring has varied between 0.4 and 0.6 per million but it did peak at 0.7 in the last couple of weeks.

We have not recorded any particular increase in the number of complaints about the chlorine taste from consumers in the immediate vicinity of the Greenfield Road works in the last two weeks. The fact is that we have only received two.

We do intend to increase the amount of equipment to make sure that we get a proper level as far as this is concerned.

The Speaker: A supplementary, the hon. member for Douglas North, Mr Houghton.

Mr Houghton: Thank you, Mr Speaker. I thank the hon. Chairman of the Water Authority but may I ask if he could confirm that his authority was indeed aware of this particular problem extending as far back as the New Year and if he was, why has the problem not been rectified and when are the residents of the area likely to see an improvement of their supply?

Mr Karran: The situation is there is on order equipment that will improve the present arrangements as far as chlorine testing for water but the answer to the hon. member is that we have only had two complaints recently from this area in total for everything and I do think that the hon. member has to realise that we have to make sure that we provide water that is safe to consume.

The Speaker: Thank you, hon. members. That brings Question Time to a close and it brings it to a close within the prescribed time.

Procedural

The Speaker: We now move to the main body of the agenda and as a matter of procedure I call upon the hon. member for Ramsey, Mr Bell.

Mr Bell: Thank you, Mr Speaker. The Protection from Harassment Bill is a very short but very important Bill which both my department and the police would like to see progressed as urgently as possible through this hon. House.

According to the order paper today the second reading is down following the clauses stage of the Human Rights Bill and the Criminal Justice Bill. As members obviously are aware, both these Bills are very long and complex Bills and almost certainly will take the full day at least before we complete that passage. As the Protection from Harassment Bill is actually a very short Bill I would beg the indulgence of the House to enable me to move:

That, in accordance with standing order 37(2), the House resolves that the motion for second reading of the Protection from Harassment Bill be considered immediately following the first reading of the National Health Service Bill.

This, hon. members, is simply to enable us to save a week in the passage of this Bill and I beg to move and hope hon. members will support it.

Mr Duggan: I beg to second, sir.

The Speaker: Thank you. The hon. member for Onchan, Mr Karran.

Mr Karran: Vainstyr Loayreyder, I am very concerned within this House. We only saw last week the issue of making it much harder for Members of the House of Keys to do their job as Members of the House of Keys, and what concerns me is the fact that this House is becoming a convenience for the executive as far as I am concerned and I am deeply concerned that this House is losing its independence from the executive, and I appreciate that we have three or maybe four sittings before the summer recess, but it does concern me somewhat that we have a situation now where we saw last week that members have to have eight days' notice to move amendments and move new clauses, as the executive will have to

have no time because they will just suspend standing orders, with the block vote within this hon. House -

Mr Cretney: Two block votes.

Mr Karran: - and I do hope that members realise in this House that it is very, very concerning that we are allowing a situation where the independence of this legislature, the thing that I shouted about when we brought the ministerial system in, about reducing this House to a bunch of nodding dogs for the executive, is in danger of happening. I want to know why. They have the resources and the ability to be able to put this on the right part of the agenda. Why have they allowed this situation to arise as far as that is concerned?

Mr Singer: Mr Speaker, as neither member of the Department of Home Affairs nor a member of the executive I think that I would support fully this resolution (**Mr Houghton:** Hear, hear.) because it is a most important Bill, this Bill, and it is very relevant at this time and I hope that the House will support this resolution.

Mr Shimmin: Mr Speaker, only briefly, I can understand the first speaker, the hon. member for Onchan, and his concerns. However, I would urge people to support this. If one looks at the order paper one would realise that we will have a very busy day today but we could, in view of next week's order paper, have a very brief sitting. It would be seem to be to the betterment of the Isle of Man were we to progress this (**Mr Houghton:** Hear, hear.) so that next week when the order paper is less full we could actually deal with the clauses of this important piece of legislation, Mr Speaker.

A Member: Hear, hear.

Mr Braidwood: Mr Speaker, I also rise to offer my support to the Minister for Home Affairs. It may be a short Bill but it is a very important piece of legislation and should not be held up for even one week.

Mr Cretney: Vote!

Mr Henderson: I fully support the hon. Minister for Home Affairs on this issue.

Mrs Crowe: We all do.

A Member: Let us get on with it.

The Speaker: Hon. members, the motion before the House is that item 14 comes immediately after item 11 on your agenda. Will those in favour say aye; those against say no. The ayes have it.

A division was called for and voting resulted as follows:

For: Messrs Gilbey, Rodan, North, Sir Miles Walker, Mrs Crowe, Messrs Brown, Houghton, Henderson, Cretney, Duggan, Mrs Cannell, Messrs Braidwood, Shimmin, Downie, Mrs Hannan, Messrs Singer, Bell, Cannell, Gelling and the Speaker - 20

Against: Mr Karran - 1

The Speaker: Hon. members, the motion carries in the House with 20 votes in favour, 1 vote against.

Statutory Minimum Wage Bill – Statement by the Minister for Trade and Industry

The Speaker: I now move on to item 9 on the agenda, the Statutory Minimum Wage Bill, a statement by the Minister for Trade and Industry.

Mr North: Mr Speaker, I am grateful to you for granting permission for me to make a statement today on the progress of the Statutory Minimum Wage Bill. A resolution was passed at the October 1999 of Tynwald sitting that the Council of Ministers Report on a Statutory Minimum Wage be received and that a Statutory Minimum Wage Bill be introduced in the Keys no later than the 23rd May 2000 sitting.

This timescale was always going to be tight and considerable effort was put into drafting the Bill. A Bill was produced and submitted to the Council of Ministers on 27th April in accordance with standard procedures. However, one further amendment and clarification of certain aspects of the Bill were requested by the Council and this has delayed progress of the measure. The measure has been approved by the Council of Ministers and the amendment is being dealt with by the learned Attorney-General.

I very much regret that these delays have led to our failure to introduce the Bill in the Keys today. I am conscious that this Bill is important to many members and I shall do all I can to ensure that the Bill as amended is introduced without further unreasonable delay.

Mrs Cannell: Mr Speaker, can I ask the minister why then, when a question was asked in the Legislative Council by the hon. member of the Council, Mr Lowey, to the health minister on this particular question in relation to the statutory minimum wage, was he informed that it would be coming forward today for first reading?

Mr North: Because I think at that stage that was the intention, Mr Speaker.

Mr Karran: Vainstyr Loayreyder, can the minister inform this hon. House have we come to some realistic level as far as what a minimum wage will be and I hope it is not going to be an insult of anything less than at least a fiver?

The Speaker: Hon. member, that question is irrelevant. *(Mr Karran interjecting)*

Bills for First Reading

The Speaker: Hon. members, we now move to item 14 on your agenda, the Protection from Harrassment Bill. Apologies. The Secretary to read the first readings.

The Secretary: The Contracts (Rights of Third Parties) Bill, Mr Cannell; the National Health Service Bill, Mr Karran.

Protection form Harassment Bill – Second Reading Approved

The Speaker: Now we move, as I said, to item 14 on your order paper, the Protection from Harassment Bill, for second reading. The member for Ramsey, Mr Bell.

Mr Bell: Thank you, Mr Speaker, and to begin with can I thank hon. members for supporting this move up the agenda today.

Harassment, or stalking as it is perhaps better known, has become a growing phenomenon in our society over the past few years and indeed it has become the fastest-growing crime in the UK where last year alone there were over 4,000 prosecutions for the offence. Regrettably we are now seeing its appearance in the Isle of Man with in particular one well publicised case in recent months.

It is a fundamental human right to be allowed to go about your everyday life without fear of intimidation, and to enable the speed of introduction into Manx law this Bill largely replicates UK legislation. If approved, though, we intend to monitor its success and will if necessary introduce further amendments in the future to refine its effectiveness in dealing with this problem.

The Bill itself will make it an offence to pursue a course of action which amounts to harassment of another person or which causes that person to fear that violence will be used against him.

It also provides the victims of offences of harassment to take civil proceedings and provides the courts with a power to grant an injunction or issue restraining orders.

Certain safeguards are built into the Bill, such as conduct considered to put someone in fear of violence by a reasonable person must have been committed on at least two occasions.

Sentencing options are made available to the courts of custody not exceeding six months or a fine not exceeding £5,000 on summary conviction and up to five years' custody or a fine for a breach of a court injunction.

This is only a short Bill but nevertheless an important one. One of the major policy goals of this government for many years has always been a desire to improve the quality of life of our people. Freedom from crime and in particular freedom from the pernicious crime of personal harassment, especially of the vulnerable and isolated in our society, has to be fundamental to our quality of life. I hope that this Bill will go some way to give those people the reassurance that the law will protect them and act as a deterrent to those who attempt to commit what can be for the victims a truly terrifying and debilitating experience.

Mr Speaker, I beg to move the second reading of the Protection from Harassment Bill.

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

Mr Singer: Mr Speaker, can I offer my full support to this Bill and if there is any proof for the need of this Bill it is the case that the hon. minister referred to in our constituency, and members will be aware of the correspondence that they have received and I hope that that correspondence does cause them genuine concern.

Everyone here is aware of the events related in that letter and the prosecutions that have occurred since then, but I must tell members that I personally was aware of this before any assault happened, I was aware of the harassment of that particular victim beforehand and in fact I spoke with the police and asked for various measures if they could take them, but because there was no law they could not take those necessary measures. So what happened in the end was that the harassment culminated in the outcome as described in the letter that members received, and as I say, we know that that particular person, the accused, has in fact been found further guilty of further offences against that person. So there was a case that if there had been a harassment Bill in earlier on we could have saved the victim from the ordeal and what she sees, as you know from that letter, as the ruination of her future.

The one question I would ask the minister to explain if he could do would be this, that the offence can only be committed at the second harassment, and I would ask the minister to explain if this is the second occasion of the harassment of a particular person or the second harassment but it could be of different people because if it is not of different people, then of

course somebody can harass a person until they are warned and it could almost become a game of then going on to harass another person until they are warned again. So I do think that this is an important point, that the harassment, if it occurs twice, even if it is against different people, should be liable to prosecution.

So I would welcome the minister's answer to that particular point, but overall I think it is a very, very important Bill, this, to become before this House. I think it will help a lot of people, people who now we do not know are being harassed but in fact are being harassed and there is very little that can be done to help them. Thank you, Mr Speaker.

Mr Cretney: Mr Speaker, obviously I am fully in support of the legislation. I just ask the minister in moving. One of the things that has offended me in the last period of time has been where late at night people, females in particular, may attend late-night establishments and they may, because of a lack of taxis, be required to walk home. There have been announcements made how inadvisable it is for females to walk home unaccompanied. I find that offensive in as much as the female or the male, whoever, should be able to walk home and the person who commits any offence or who offends against such individuals are the people who are in the wrong. Will this measure in any way strengthen the hand of the police in terms of combating that? Obviously there are certain times when we require to have more taxis to meet the practical need there, but will this measure in any way go some way to support the police in their battle against males who may seek to take it upon themselves to take action against innocent females who in my view should be entirely free to walk home without let or hindrance.

Mr Duggan: Get a bus.

Mr Cretney: There is no bus at that time of night.

Mr Duggan: Well, do something about it.

Mrs Cannell: I rise in support, for obvious reasons, for this particular Bill which is equivalent to that of stalking legislation. I would have liked to have seen it, however, incorporated within the Criminal Justice Bill, but I appreciate that the Criminal Justice Bill was getting larger and larger as it was being prepared and so I fully appreciate the position of the minister.

What I would ask really is in relation to the wording of this particular Bill because all the way throughout the Bill it is referred to as anything which he is prohibited, anything which he is, he is guilty of an offence, violence will be used against him - him, himself and he is all the way through the Bill, and I just wonder whether or not the minister is going to propose some changes himself possibly at the clauses stage because it seems to me that in an era of equality we should be looking to word legislation so it encompasses both he or she or whatever gender and not just deal with the male side of things because, however, you could have a female harassing a male. It is more usually the male harassing a female but there have been cases of women harassing men and so I wonder under the present wording would it lend itself to bringing a prosecution against a woman who was actually harassing a man. Are we looking to change this at the next stage or it is going to sit as it is?

But other than that I welcome the Bill. I hope it has a speedy passage so that we can actually get it on the statute books quickly. Thank you.

Mr Houghton: Mr Speaker, I overwhelmingly support this Bill, and as I say, wish it a very, very quick passage through both branches and that is fine, it is very, very good and it does tailor very well with the needs of the particular offence that was committed on numerous occasions in Ramsey. That is fine. But for lesser offences that would be attracted by issues with this Bill I have a problem as to whether there may be difficulties with the police proving such cases, and I do know an awful lot of cases have floundered in the UK in their similar legislation because of this, and to that end I just really ask whether the minister has any initiatives in mind to deal with that issue. It is obviously very, very difficult in view of the difficulties of proving previous occasions. It is extremely hard to prove people who intimidate, say, from the opposite sides of a place of entertainment or a High Street or what have you. Those difficulties need to be overcome whereby they need to be documented and proved and so on, and that is going to be, quite possibly, the problem with this Act when it comes in, notwithstanding that it requires to be in, it is the proof of the previous issues, and I would welcome the comments from the hon. minister on this. Thank you.

Mr Henderson: Mr Speaker, I certainly rise to support this Protection from Harassment Bill. I think I am on record as saying it has been a long time coming and should have possibly been here sooner. It encompasses some very important principles and certainly from a professional background one of the principles I recognise is the type of criminal element this is aimed at and the devious nature from which they tend to work.

Stalking is a phenomenon and it has become highlighted more so in the last couple of years and I am certainly well aware of some of the types of people who resort to this kind of behaviour and the extreme distress it can cause in the victims. With the people who resort to this type of behaviour, and certainly some of them I have come across, we are not talking about normal pranksters, somebody who is just trying to get their own back because a relationship has failed or trying to frighten somebody as a one-off occurrence. We are talking about something so devious and planned here that these people are in fact a danger to society. They have got a dangerous way of plotting their life's moves out and a dangerous way of executing them. As I say, we have got to be perfectly clear here what we are talking about and what we are dealing with and these kinds of, I do not know what you call them, deviants or psychopaths or whatever is the only way I can describe some of the behaviour because there is no learning that takes place, no amount of telling, no amount of cautions will ever cease some of this behaviour and we need something more solid, such as that presented to us this morning, to give our police the powers that they need to restore some sanity into these kinds of situations. I am very aware of the literature that has been circulated to all members of this hon. House in regard to one particular instance which I find totally, totally, unacceptable, that it should ever have arisen really, and I am glad that this is here now and we can address it.

I am also aware of other situations and I have heard it said that maybe this has been applied for one single example. There are other examples and I have given other examples to the police and I am very glad it is here.

The other side of the coin, and the hon. minister has alluded to it, is I have had professional experience of picking up the pieces for somebody on the other side of this who suffered from this kind of harassment and some people say, 'Oh, it was just a one-off. You'll get over it and you'll be all right in a week's time.' That is not the case at all and sometimes people are so traumatised from this kind of horrendous behaviour that has been meted out to

them that they lose their confidence, their self-esteem, their motivation for ever, not just a week or a couple of weeks or a couple of months: this can have lasting effects.

So I applaud the minister for bringing this here and I am sure every hon. member will vote for it, but it does show the underlying serious implications of our society today.

Mr Brown: Mr Speaker, naturally, like everybody else, I welcome the Bill before us today and say that this is really quite a delicate piece of legislation in terms of ensuring there are provisions to deal with people who offend against other persons and I think we should not lose sight of the issue of trying to make sure that the balance in the law is right, and I think, based on my reading of the Bill, that is the case.

The important bit really to me, as well as other provisions in the Bill, is actually clause 1 and I think that that is a very important in terms of harassment, and I think it has to be understood, the potential implications right across the board, because harassment, certainly based on what the provisions of clause 1 state, can be quite considerable and can, I presume, based on my reading of the legislation, potentially affect organisations and groups and types of businesses in the Island where proper control is not kept and neighbours may well feel that they are being harassed, and I think that this is going to be an important provision to give the police some sort of strength.

There are also threats in our society. One of the most common I find is threats by partners or a partner where a previous common law relationship has broken down and the partner is endeavouring to ensure that that relationship does not break down, one of them, by threatening behaviour, and at the moment there is very little that can be done, and hopefully this will also do for that.

The main reason that I got on my feet actually was in relation to progressing this Bill. With our standing orders as they are now applying, my understanding is that we actually will not get to the clauses stage of this Bill, unless the House decides to take further action, until 27th June which is five weeks away, and that means then that this Bill will not get its readings or is unlikely to get its readings in another place and therefore even if it was able to get to the July Tynwald for Royal Assent, and I think it would be helpful if the minister, who I am sure is conscious of that, could maybe advise whether or not he is going to seek the House's support at the next sitting to allow the Bill to go to clauses which then has an impact on members' ability, if they so wish, to move amendments, and if not at that stage, whether or not he is going to be of the view to seek the House's support to take the third reading after the clauses on the 27th, and the reason I raise this is because I think it is only right that if the minister is endeavouring to pursue this through in the way he is, and I think with the support of the House, members are advised as early as possible of his intention of how he hopes to see the Bill proceed. Otherwise the Bill will not make its third reading until after the summer recess, which I am sure is not the intention of the House.

Mrs Hannan: Vainstyr Loayreyder, I would like to congratulate the Department of Home Affairs because it seems this is a Bill that everyone wants. Very few people have been pushing for it but now it is before us it is of great interest to everyone.

I would just to like to comment that there are different types of harassment. There are male on female, there are female on male, I am aware of cases such as that, and also, and I do not know whether it involves harassment of police or not, I know of one case of harassment

of the police and you have only got to read the letters column in some of the newspapers when the editor says, 'This correspondence is now at an end' because the harassment has gone on over the years by someone who feels very strongly about a situation. I am sure that that probably does not cover that sort of instance, but it does cover the male on female, female on male harassment, but I just wonder does it have to be personal harassment? Is there enough protection for, say, tenants of properties or is it just a personal relationship that is involved in this, when a person is harassed by maybe a landlord trying to get that person out of their property or whatever? Is that included or is it just a personal relationship?

But I welcome the legislation and again I congratulate the Department of Home Affairs on bringing it forward.

Mr Karran: Vainstyr Loayreyder, I have no problems with this piece of legislation. I just have the problem when this House is being used as a convenience by the executive. That is what concerns me and I think it is a very dangerous precedent that we now seem to be slipping further and further into a situation where this House is being used as a convenience.

As far as this Bill is concerned it does concern me when I see some other members in this hon. House who had not this Bill in front of them as far as this piece of legislation because there was no likelihood of this Bill being debated today if we had gone through all the clauses of both the Bills if we had carried on with the agenda as it is, and that is why I will find it difficult to give the hon. member the ability to get notice before he gets amendments from myself, even though now it seems a bit of a crime if members use their right to propose amendment to Bills, that they are somehow wrong in this hon. House and will fail to get any support for them.

But what concerns me, not the point by the hon. member for Castletown as far as this second reading is concerned, is some of the input from different members that we seem to have a situation where we have the two members for North Douglas, one saying it is not hard enough and inflexible enough and the other saying you have got to have flexibility about the ones who are in a domestic situation.

I will support the second reading of this Bill but I think it is important that members realise that we have to get it right as far as this piece of legislation is concerned because there is many a person who has been in a relationship who then sees blood when they are rejected, and it has been members of this hon. House in the past that have had problems as far as that is concerned. So it is not something that is unique and you suddenly turn into some sort of thug, and I am sure many in this hon. House have had problems with crime constituents, with bad mail, with threats and all sorts of things as far as that is concerned as well. So I think it is important that we do know from the mover how are we going to distinguish as far as what is just upset and what is actual criminal deviousness?

I do think that it is a great reflection on this House that we have moved from when we first got in this House and trying to get the law changed so that we could protect common law wives, and that has actually changed in the time that I have been a member of this House, that we actually had a situation where we could not actually protect common law wives from violent, criminal ex-partners and so we have moved a long way and that is to be applauded as far as the mover is concerned.

I think that the points that the hon. member for East Douglas has raised as far as the male thing are true, that one of the proudest things I was glad to see in this Island was a

refuge for battered women because for long enough it was never recognised as a problem in this country when it was a major problem in this country, and I was glad to see an individual actually put up the money and social services which we set up actually started funding it so that we could do something for that section of the community.

So I am not unsympathetic as far as this piece of legislation is concerned, I am very sympathetic for it, but I am concerned that we make sure that when we are passing legislation we have standing orders in this hon. House for safeguards, because there are so many in this hon. House that will misquote, misrepresent myself and yet we have a situation where we can move things around and members may not give the study to the particular piece of legislation. That was my only concern as far as this piece of legislation, not having the suspension of standing orders, not the intent of the Bill. But I do hope the hon. mover does not come along if I find something before the next sitting as far as amendments are concerned and he will not then whinge on about the situation that one member is prepared to do it.

One issue I would like to ask as far as the mover is concerned is this clause 6 as far as this limitation of six years. Is this six years as far as after the offence or is this to do with the individual? I think members should be aware of that because I would have thought the statute of limitations and the six-year ruling would rule anyway, and I just wondered whether there was a particular reason why he did this.

The other point will be obviously with it being a criminal offence the mover will tell us that it will be a police matter as far as this harassment is concerned, so it will not be a matter of the individual having to go through the civil courts in order to stop this sort of abuse.

It raises the issue of personal injuries. Will we have a situation where this could be covered by the Criminal Injuries Board or will it be a matter of the person having to sue through the civil courts for personal injuries and will they be entitled to legal aid as far as this issue is concerned? There will be no thing as far as this Bill.

Whilst I support this Bill, I think it is important that we are clear about what we are trying to achieve, and I think we are highlighted between the two members of North Douglas where the situation was that you could have somebody who has come out of a horrendously erroneous relationship, who loses the plot for a short time, who is as honest and as decent as any of us in this hon. House, who will end up becoming a criminal under one member's sort of idea and yet the other member sees well we have got to have a bit of leeway. I think it is important.

Whilst I support this Bill, and I totally sympathise with the cases that have been raised in this hon. House and I could give a list more likely as long as an arm over the last 15 years of dealing with people myself as far as this situation is concerned, I am concerned that we do not get ourselves in some sort of state of just throwing this through and then finding ourselves in the position where innocent people, people who have come out of a situation end up with this being used as a ploy as far as a messy divorce is concerned.

Can I also ask how far this will happen? If we have a situation, the likes of a pressure group who keep on harassing me, does that mean that they are then in trouble? I know my hon. colleague might be saying that he could then maybe have one of his associations that might be able to be done as far as this piece of legislation, as far as harassment is concerned. It sounds silly, but many inexperienced members in this House need to realise that we are

dealing about laws in the land and we are talking about a situation where lawyers make a lot of money as far as arguing cases within the court, and I am concerned about this.

I expect not to get much of a reply, I never do as far as anything in this hon. House, but maybe one day the issues will not have to come along and hit this hon. House at a later date because I do think the likes of the last issue in particular is a very very dangerous precedent. Where does harassment start and where does harassment stop as far as an issue is concerned? And I do think that we need to make sure that we are not wrapping ourselves up in enthusiasm for the innocent poor woman who suffers from domestic violence or threats of domestic violence. We have to make sure that this legislation will make sure it is not open to be abused by unscrupulous people.

Mr Downie: Mr Speaker, I was not going to get up on my feet today but I think from the tone of debate thus far it seems that everyone is in favour of this Bill progressing as quickly as possible. My view of hearing what people have got to say is that there is a requirement for it and we should be progressing it and surely that is what our system of parliament is all about, having the flexibility, having the opportunity to bring issues forward, and where it is in the national interest and for the good of the people, that is what we should be doing: bringing these things forward.

A previous speaker, I think it was the hon. member for Peel, mentioned people living in rented accommodation. Members will know we have a very, very good Landlord and Tenant Act. All right there are some areas in it which need to be fine-tuned and I think that in some of the other legislation that is coming before us we can firm up certain areas, but this protection from harassment I think is well supported throughout the House and I would fully support any amendment to have it being read and passed on to the other branch as soon as possible.

Mr Braidwood: Mr Speaker, as another member in favour of this Bill I would like to offer my full support. What the hon. member for Peel has mentioned female, male. I have a case at the present time, of female and female and it is a case where the lady is at the end of her tether, she is being intimidated at the present time. I met with her yesterday and with the police. Unfortunately at the present time the police cannot prove anything because there are no witnesses, but it is just intimidation. The only point the police have made is to bring out a civil injunction, which would be very expensive for the lady to proceed with, and hopefully once this Bill is in force the lady in question has the opportunity to go to court and once an injunction is in place, from what I know it can be just one person's comment which will cause the police to act on that injunction, and on that point I would like to offer again my full support for the introduction of this Bill.

Sir Miles Walker: Mr Speaker, I have been brought to my feet really by the comments made by the hon. member for Peel firstly and then by the hon. member for Onchan, Mr Karran. It seemed to me that there were two interesting issues raised during their contributions. If we are thinking about stalking, then I assume that that is one person stalking another. If we are talking about harassment, then perhaps that could be construed as something different and you could have a group of people harassing one individual or one individual harassing a group of people or in fact a group of people harassing another group of people, and I wonder whether this legislation is in fact written or constructed in such a way that those particular situations can be brought into question or is it written very much for an individual who is committing an offence by stalking and by harassing another? It seems to me

there may also be a problem where you have an individual who has a grudge perhaps against a small shop or a small business where there could be just two people working there, which is perhaps under a company name rather than the individual's name, and an individual could in fact make himself or herself a great nuisance to the employers or the employees of that particular establishment, and I just wonder whether under this legislation steps could be taken to prevent the sad sort of abuse continuing.

So I think there are a number of interesting questions there which I would like the hon. member who is in charge of the Bill to move forward.

Just another point, if I may, on the way we go about our business. The hon. member for Onchan made the point that because we have two long Bills in front of this one he did not think we were going to get to this one and so have not perhaps paid as much attention as if it had been up front on the agenda. Just two points. I do not think any of us can be certain that a long Bill like the Human Rights Bill will not go off to a committee at the very beginning of the clauses stage and we suddenly move something up the agenda which we had not considered it likely we get to. And there is a note on the bottom of the agenda which says, 'Unless the House otherwise determines, the above business will be considered in the order shown.' The House has determined in this instance in fact to move the situation, which seems to me to be a sensible thing to do. I support that move and I support the Bill, Mr Speaker.

The Speaker: Can I ask the mover to reply?

Members: Agreed.

The Speaker: Mr Bell.

Mr Bell: Thank you, Mr Speaker, and first of all can I thank sincerely those members who have spoken in support of the Bill. As I say, it is an important Bill and one which both the police and my department are anxious to see brought in as quickly as possible.

If I could try and work quickly through the comments, the hon. member, my colleague, Mr Singer supports the Bill and has commented on the limited ability of the police at present to protect the individual and has made reference to the case in Ramsey which naturally I was involved with for quite some time as well.

The purpose of the Bill, as I understand it, is that it is to protect one individual from multiple harassment, if you want to describe it that way, rather than one individual harassing a range of people. It is not necessarily a stalking Bill but it is to give the individual protection rather than, as I say, a blanket coverage.

The hon. member for South Douglas, Mr Cretney, has made reference to individuals who are harassed on the way home from social activities from clubs or pubs or whatever, and occasionally there are obviously problems, particularly in the Douglas area, where this has happened. There is of course law available at the moment to give these people protection in a general sense, but this Bill would give an individual who was harassed on a number of occasions by another individual more protection and they would be able to take some court action against that individual, and this has happened, I think, on a number of occasions where perhaps a girl has been followed - stalking might not be quite the right description - but has certainly been followed on a number of occasions home from a pub or from a club and has been distressed by that experience, so this Bill will give protection to someone in that situation.

The hon. member for East Douglas, Mrs Cannell, commented that it should have been in the Criminal Justice Bill. Really, our concern is to get this Bill through as quickly as possible. The Criminal Justice Bill has been on the go now for the best part of two years, we have been taking on more and more issues that members have raised with us, and I felt, because of the urgency to get this through, it would be inappropriate to include this with the Criminal Justice Bill because that in fact may well delay it still further.

The comment she makes as to why the wording of the Bill refers to 'he' rather than 'she' - I think that is quite common in legislation; it does mean either. If in fact she believes that it is to protect the Council of Ministers from harassment from the member for East Douglas, she can rest assured that is not really the intention behind this Bill.

Mr Houghton: Can that be written into the Bill? (*Laughter*)

Mr Bell: But it is, unfortunately, a fact of life these days that men can be harassed by women just as much as women harassed by men. This does reflect the era of equality and in fact will give protection to either sex.

Mr Houghton again has supported, and I thank him for that, but comments on the problem police will have proving that harassment has taken place. I fully accept that and I have said on a number of occasions outside of this hon. place that the Bill is not perfect, there are difficulties with it and that is why I said in my introductory remarks that we will be monitoring the Bill carefully over the next few months or 12 months or so to see whether in fact there is a problem, whether or not there is another form of words we can use to tighten up the Bill further, but my concern was to bring the Bill in as quickly as possible and that is really why we have more or less straight lifted the Bill from the United Kingdom where I am aware there have been these difficulties. I accept those shortcomings and I give the member the assurance we will be doing our best, if we can find a way forward, to tighten the Bill still further: we will be doing just that. But it is a difficult thing to prove, and as I think the hon. member for Castletown mentioned, the important thing in the Bill, even though I know members are fully supportive behind it, is to achieve a balance because there are often people who falsely claim to be harassed as well as people who are doing the harassing, and we have to make sure that the law is fair on both sides of that particular argument.

The hon. member also for North Douglas, Mr Henderson - again I thank him for his support. He comments that the Bill should have been here sooner. That is fine, but I would just point out that in my department I have one individual dealing with legislation. We are currently in the process of bringing in some seven or eight Bills, some of them quite heavy, and it is a very, very heavy workload for one individual to carry forward, and likewise we are dealing with one legal draftsman for my criminal justice legislation and his workload has been very heavy too. Sometimes, although we wish to see these Bills through very, very quickly, it is not always possible to move them forward at the pace we would like, but we are now trying to bring it forward as quickly as we possibly can.

He also comments that this Bill should not be brought forward just for one case. I have highlighted in my introduction that there is one current quite horrendous case which obviously highlights the issue, but we are fully aware that there are other instances on the Island where this has taken place and has done for quite some considerable time, so we are not bringing it

in specifically for this case but obviously it will help in this particular instance, but it will obviously be applied to everybody who suffers from this.

He comments again also on the long-term trauma generated by this action and again I fully agree with him and it is something which we are very, very conscious of.

The hon. member for Castletown also mentions the shortage of time that we have to take this Bill through. It was my intention, if the Bill found approval with members, to try and move a suspension of standing orders to enable the clauses and the third reading stage to take place at the next sitting. Now, that really is very much in the hands of members. If they wish to support that course of action I would be very grateful but really it is entirely for the decision of the House as to whether that course is taken.

The hon. member for Peel - again I thank her for her support. She does mention whether or not this Bill applies to harassment of the police. Now, again if it is police in a general sense I do not think this Bill will apply, but there have been instances, I know, where individual policemen have been harassed by certain individuals who have a grudge against them for actions perhaps they have taken in the past and they certainly will be covered by this legislation.

She also asks whether in fact this would protect tenants. I am not quite sure in what context she is talking about tenants but in the Criminal Justice Bill we will be bringing forward, which again I hope members will support, a clause introducing antisocial behaviour orders which will give some control to tenants who have disorderly neighbours.

Mr Downie: Landlord and Tenant Act.

Mr Bell: Sorry, yes, also landlords she has referred to. We have a Landlord and Tenant Act, and I have to check this. I do not think this Bill will apply to that situation but if the hon. member would bear with me I will just check out that particular aspect of it and give her an answer before next week.

Then we come to the hon. member for Onchan and I want to say right at the outset that I take the strongest exception to the comments by the hon. member for Onchan stating that this House is being abused by the executive. It is arrant nonsense and the sooner we end this line of attack constantly week after week after week the better the integrity of this House will be. (**Several Members:** Hear, hear.) All I have simply asked hon. members is that the second reading be brought up the agenda. We have not asked for anything earth-shattering. This Bill has been in the hands of members for at least two or three weeks, I think they have had plenty of time to read it, and if there were concerns there was plenty of time for the hon. member for Onchan to come to me, to come to the department, go to the legal draftsman if needs be and get explanations or indeed get amendments prepared. To turn round now and say that I am abusing the House simply by moving an item, which I believe is absolutely essential to protect our community, further up the agenda I think is quite outrageous. It is simply empty posturing and I do not think it does this House any credit whatsoever.

There are, I think, only two or three points that the hon. member has raised. One relates to the need to differentiate between relationship problems and harassment within that situation and what might be deemed external stalking. I take the point, but harassment is harassment and if you happen to be on the receiving end of it it is an extremely unpleasant and in some

cases terrifying experience, whether you are coming out of a relationship or whether you are simply being stalked by a stranger altogether, and this Bill will give blanket protection to everyone who sees themselves as being a victim of this particular crime.

He has questioned clause 6 which is the extension of limitation to six years. As I understand it, it is six years from when the action took place rather than when the conviction took place.

He also refers to the criminal injuries compensation scheme and whether in fact legal aid is involved with that. This is outwith the criminal injuries scheme and I understand legal aid is available for that.

Finally, Mr Downie - again I thank him for his support, and as I say, if the House feels that they are prepared to support it I would like to bring the Bill forward for the clauses stage and third reading next week.

The hon. Mr Braidwood - again I thank him for his support. He comments about his own case in his constituency where there is a female on female harassment and this really just highlights how extensive this particular crime is invading our society now, that anyone is a potential stalker.

Sir Miles Walker, the hon. member for Rushen - I thank him for putting the sting in the tail. My understanding of this Bill is that it is designed for one on one stalking, not group stalking. I am pretty sure of my ground on that but I will double-check for him and let him know before next week what that position is, and he makes one final comment about where an individual perhaps might be causing a nuisance and harassing shop assistants in a small premises. I think this Bill would apply there but obviously it would be for the individual shop assistant to make a complaint and then the Bill would click in on that. So I think this Bill does cover that instance. I am pretty sure that the multiple or the sort of group harassment does not come under this Bill but, as I say, I will confirm that.

So, Mr Speaker, I do thank members for their forbearance today in bringing this forward slightly, it is a very important issue, and I would beg to move that the second reading of the Protection from Harassment Bill 2000 is moved.

The Speaker: Hon. members, the motion is that the Protection from Harassment Bill 2000 be moved. Will those in favour please say aye; against, no. Hon. members, the Protection from Harassment Bill 2000 has now been read a second time.

Mr Cretney: What about 'The ayes have it'?

The Speaker: The ayes have it. Hon. member for Ramsey, Mr Bell.

Mr Bell: Thank you, Mr Speaker. Bearing in mind the supportive comments I have had from hon. members today, notwithstanding the voice of caution, could I move at this stage that standing order 153 and 154 be suspended to enable the clauses stage of the Protection from Harassment Bill and the third reading to take place at the next sitting.

The Speaker: Do I have a seconder?

Mr Houghton: I beg to second, sir.

The Speaker: Hon. members, I have a seconder that standing orders be suspended so that this Bill, the Protection from Harassment Bill, the clauses stage be taken at the next sitting of the House of Keys. We cannot suspend standing orders for the third reading until the clauses stage has been completed so hon. members, it has been proposed, it has been seconded. Hon. member for Onchan, Mr Karran.

Mr Karran: Vainstyr Loayreyder, no matter how much personal assassination and abuse I will receive from this hon. House, I will be voting against this. I think it is wrong, we have procedures as far as our standing orders are concerned and I believe that you demean this House, you demean this national assembly that is supposed to be the parliament of this country by just willy-nilly suspending standing orders.

I appreciate the concerns as far as this hon. House is concerned, as far as this piece of legislation, I support this piece of legislation. I support the principles of this piece of legislation, but there are safeguards, and as is usual, we did not really get a reply to my legitimate questions.

I will not support this principle unless he can prove that it is of national importance and no matter how much abuse and how much character assassination will happen to the likes of myself, I hope it does embarrass this House that somebody has to stand alone as far as protecting the dignity of this hon. House.

Sir Miles Walker: Mr Speaker, I have no problem in supporting the standing order which will allow the clauses stage to be taken next week. My comment really is a question: does the suspension of that standing order then allow for a person to move an amendment -

Mr Karran: No, there is a different law for different people.

Sir Miles Walker: - which will now be outside our amendment of standing orders and if it does not then, perhaps a further amendment to standing orders ought to be proposed at this stage. If you could help me, Mr Speaker.

The Speaker: I have taken the advice of the Secretary, hon. member, and the suspension of this standing order suspends the eight-day rule and therefore the clauses stage will carry on as normal.

Sir Miles Walker: And amendments can be proposed without the eight days' notice?

The Speaker: Amendments will be treated in the normal way.

Sir Miles Walker: Thank you, Mr Speaker.

The Speaker: Hon. member for Douglas South, Mr Cretney.

Mr Cretney: Yes, I would just like to address the point which has been raised, legitimately in my opinion, by the hon. member for Onchan in relation to standing orders. Standing orders do exist for a reason. However, balanced against that, in my opinion, is something about which we boast from time to time and that is that the size of this legislature can on occasions facilitate the quicker movement to get on the statute books laws which are deemed to be necessary. That normally applies, in my experience, to laws which will assist, for example, the finance industry or other such measures. This is a piece of social legislation and for that reason I think that the hon. member is worthy of support.

Mr Brown: Mr Speaker, I really just want to follow up the point of the hon. member and just make the point that whatever happens in this House is in the hands of the members of the House, the majority, and there are occasions, as the hon. member for South Douglas has mentioned, where the House will determine that it wishes to suspend its standing orders for what they believe to be in the best interests of the people of the Isle of Man, and I think it is just a matter for members to determine whether or not this legislation should be advanced with our procedures being suspended as proposed by the mover in the way it is, and if it does not, so be it. That really is the matter I would like to make, and I was just going to cover the point that the hon. member for Rushen made about the point of members being able to progress amendments then which of course now you have clarified which is, yes, based on the request for suspension.

Mrs Hannan: Vainstyr Loayreyder. While the mover of this legislation did not support the changes in standing orders, I understand the position that he is coming from, but I also understand because I feel as strongly as the member for Onchan with regard to the changes in standing orders that have been introduced that really make it very easy, for want of a better expression, the executive to get legislation through than members who would wish to amend legislation, having to have amendments in eight days beforehand and all the rest of that, and now we have had this Bill being brought forward by the mover simply because it is an exceptional case. Now, that was not recognised when the movement of the standing orders was made a fortnight ago in this hon. House and a number of us felt very strongly that the standing orders, while it might have been very necessary to move the clauses stage to give a gap of a week in between the second and clauses stages of reading, then put an impediment in to ordinary members to amend legislation.

Now, I accept the suspension of standing orders allows amendments to come forward, but what concerns me is that we have just changed the rules and now immediately a piece of legislation, because it is protection from harassment, you would think it is a piece of legislation that everyone has been shouting for for a number of years, and that has not been brought forward and now there is a vehicle to do it in. My understanding is that there has not been a great hoo-ha about harassment or stalking or the like. Yes, it has been going on, but there has not been a great hoo-ha of wanting it brought forward urgently or anything like that, and it does concern me that as the member for Onchan is suggesting, it is being done in this case, but would it be done in another case, especially a private member's Bill? And I think it probably would not be brought forward or would not be supported in the same way, and so it does concern me that we have just changed the standing orders so that legislation is taken forward in a reasonable way and now, just the next sitting of the House, we are changing it again, so it does give me concern.

The Speaker: Can I ask the mover to reply. Mr Bell.

Mr Bell: Thank you, Mr Speaker. There is very little really that I can add. I can only emphasise once again that there is no attempt on my part, on what is alleged as the executive part or my department's part, to steamroller legislation through. We consider this a very important and very necessary piece of legislation which up until this morning I had understood to attract the full support of this hon. Court. It really is in the hands of hon. members as to whether we pursue this course of action or not.

The hon. member for Peel has referred to the changes which took place in standing orders last week. I opposed them, and I still think we have made the wrong decision because it is going to slow down legislation, but nevertheless I accept that that decision has been taken. This move today has got nothing to do with that at all, and when the hon. member for Onchan talks about the need for proper scrutiny and the time to consider the legislation I would simply point out to hon. members that the Bill which will be coming up later today, the Criminal Justice Bill, has been in members' hands for some 12 months for consultation and yet the hon. member for Onchan brings, one week beforehand to our attention, a whole range of issues by way of amendments and new clauses which none of us had been aware of before, so I just have to say to hon. members, who is doing the abusing?

But, hon. members, it really is in the hands of this hon. House whether they follow my recommendation or not. I would ask, though, members to give me the support to do this, if only to add more quickly to the protection of our community, perhaps not all of them suffering from this, but there are some instances which are going on currently where this legislation would be extremely beneficial and I would just ask hon. members to consider that.

The Speaker: Hon. members, the motion is that standing orders be suspended to enable the clauses stage of the Protection from Harassment Bill to be taken at our next sitting of this House. Those in favour say aye; against, no. The ayes have it. The ayes have it. The ayes have it.

Human Rights Bill – Consideration of Clauses Commenced

The Speaker: Hon. members, we now move on to the Human Rights Bill for consideration of clauses and I call upon the hon. member for Castletown, Mr Brown.

Mr Brown: Thank you, Mr Speaker. Mr Speaker, just prior to going into the detail of clause 1, if I may, there were two specific points raised at the second reading where I responded to the members concerned but indicated that I would in fact ensure that my comments were correct.

The first one was in relation to a point raised by the hon. member for Onchan, Mr Karran, who asked whether or not legal aid would be available for matters in relation to this legislation. The Attorney-General's Chambers have confirmed what my response was in that I can advise the hon. House that all civil and criminal proceedings before the High Court, on appeal to the Privy Council, attract legal aid in accordance with the Legal Aid Act 1986 and the Act will apply in respect of proceedings under the Human Rights Bill. There is a system of legal aid available in respect of the applications to the European Court of Human Rights and that system is administered by the court itself under its own rules of court, so I hope that responds to the hon. member for Onchan.

The next point was raised by the hon. member Mrs Hannan, member for Peel, who raised the point about prevention of terrorism and whether or not the derogation that was identified in the Bill in schedule 2 did anything in relation to our own Prevention of Terrorism Act 1990. Again I indicated that I did not think so but I have had it confirmed by the Attorney-General's Chambers that the derogation does not amend nor modify the effect of the provisions of the Prevention of Terrorism Act 1990 which is an Isle of Man Act. In fact under the Prevention of Terrorism (Temporary Provisions) 1984 of the UK Parliament a suspect shall not be detained for more than 48 hours after his arrest but the secretary of state may, in any

particular case, extend the period of 48 hours by a period or periods specified by him. Any such further period or periods shall not exceed five days in all. In so far as the Prevention of Terrorism Act 1990 of the Island is concerned, section 12 provides that a suspect shall not be detained for more than 48 hours after his arrest, but the Governor, after consultation with the Chief Minister or the Minister for Home Affairs, may in any particular case extend the period of 48 hours by a period or periods specified by him, but any such further period or periods shall not exceed three days in all.

I hope that responds to those important points that were raised at the second readings stage, the two issues that were outstanding, and I thank for your indulgence in allowing me to respond to the important points raised by those two members. Clause 1 -

The Speaker: And schedule 1.

Mr Brown: - and Schedule 1 deal with the convention and the first protocol. Clause 1 specifies which rights, that is the convention rights, are to be given further effect in Manx law through the provisions of this Bill. It also provides that the convention rights may be amended by order to reflect the effect of a protocol to the convention which is extended to the Isle of Man.

Sub-clause (1) explains the term 'the Convention rights'. These are articles 2 to 12 and 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms and articles 1 and 2 of the sixth protocol, as read with articles 16 to 18 of the convention. These articles confer substantial rights or freedoms.

Sub-clause (2) provides that the convention rights are to have effect for the purposes of the Bill, subject to any designated derogation or reservation, and these are dealt with in clauses 13 to 15. This reflects the international obligations under the convention which are similarly subject to any derogation or reservation that is in place in respect of the convention or any of its associated protocols.

Sub-clause (3) introduces schedule 1 which sets out the convention rights. The schedule reproduces the text of the articles.

Sub-clause (4) provides that the Council of Ministers may by order amend the Act to reflect the effect in relation to the Island of a protocol. This order-making power has been included to enable the convention rights to be updated as appropriate to keep them in line with any further obligations which the Island may be assumed under the convention.

Sub-clause (5) states that 'protocol' as used in sub-clause (4) means a protocol to the convention which the United Kingdom has ratified on behalf of the Island or signed with a view to ratification on behalf of the Island.

Sub-clause (6) provides that an amendment made by order under sub-clause (4) cannot come into force before the protocol concerned is in force in relation to the Isle of Man. The purpose of this provision is to ensure that the convention rights under the Bill keep in line with the obligations under the convention.

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

The Speaker: Clause 1 and schedule 1.

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

Mr Singer: Mr Speaker, clause 1 indicates the overall aim of the Bill, that is, the convention and the sixth protocol, and certainly there is a great deal to understand in the large amount of material in the articles of schedule 1 and over the last two weeks since the second reading of the Bill I have considered what took place during that debate and I have listened to comments since made by some hon. members and people with knowledge of European law and the conclusion I have come to is that the original presentation, explanation and summing up of this Bill made this Bill out to be straightforward, almost simplistic in nature, and of no threat to the independence of the Island or to the nature and conduct of Tynwald, the highest Court in the land, and what the hon. member appeared to me to imply was that we should accept the Bill and when the problems arose, leave it to the judiciary to sort out. What he did not say was that the judiciary would be totally bound by Europe, they would have no leeway in a judgment and the highest Court in the land would become powerless, in fact it appears Europe would be our masters, and I think that the general comment of the hon. member for Ayre that we would be exploited by pressure groups in this Court will be proven correct and the judiciary may well be making decisions which they believe is in line with European law but is totally against the views of the Manx people, and is this really what we need or what we want? That is why I do not believe we can sit back in self-satisfaction that this Bill is straightforward and is the best for the Island because the UK think it is right for them.

The Speaker: With respect, hon. member, we are dealing with clauses, not the second reading.

Mr Singer: Mr Speaker, the overall effect of this clause in bringing this forward and the schedule does mean that we are being pushed into something where we do not know where we are going, and what I am trying to say is that whilst I do not oppose the Bill, I do think perhaps we should be sitting back and seeing how it works in the UK. We know how it has been working in Scotland and I think we should be sitting back and taking as an example perhaps the one that was made by the hon. member for Douglas West last week when he withdrew an item because it was being considered in the UK to see how it worked then.

I am very disturbed that this Bill is not straightforward and uncomplicated and I think that as clause 1 is indicating the general overall principle of the Bill I do not think that we have taken into account the serious effect on the independence and sovereignty of this Island. So, as I say, I support the principle of a Human Rights Bill but it is not as though we do not have a Bill in law at the moment and I have severe reservations at the practical workings in view of experiences elsewhere and I still believe it would be correct to actually stand back for a while and observe how it was working elsewhere before we brought it into our law. Thank you, Mr Speaker.

Mr Henderson: Mr Speaker, in listening to clause 1 here and taking cognisance of the hon. mover's information prior to introduction of the first clause I am still concerned if he could answer me in as much as if an individual is progressing the convention rights under schedule 1 of this clause - and excuse my limited understanding perhaps - are those persons in the Isle of Man who may be progressing their human rights entitled to legal aid in a Manx court in progressing these convention rights? That is all, Mr Speaker, otherwise I am happy enough.

Mr Karran: Vainstyr Loayreyder, I get to my feet not to criticise the hon. mover, which might be a pleasant surprise, or the executive, but I get to my feet to have the contrary viewpoint as far as the hon. member for Ramsey. I am disappointed that we did not lead when

we had the opportunity in another place, when we tried to get us to bring this sort of legislation in earlier, which would have given the standing of this nation an awful lot of prestige, it would have shown the people who give us terrible bad publicity at every angle.

So as far as this clause is concerned I would say that the hon. member for Ramsey is wrong in my opinion. We should have had this in years ago and we should have been in the vanguard, as what we will be seen to be doing, our enemies will be seen to be doing, is once again we are being dragged screaming into the 21st century, when that is not the case: there are a number of members in this hon. House who are as committed to human rights and justice and fairness as anybody else in this hon. House, and I appreciate that.

I think the point, which I raised at the second reading stage and the point that was being made over this clause by the hon. member for Douglas North, is the issue of legal aid. The fact is when we talk about this clause and we talk about the legal aid aspects of it it is like being described the same as fish and fowl, they are two totally different concepts, and we are talking about things that are totally different, and I do think that the hon. member is quite right when he asks the question that there will have to be higher and better criteria as far as legal aid is concerned because the amounts will be so horrendous in order to pursue a case as far as this is concerned, if it is to have the meaning that is intended.

But as far as the clause is concerned, I support the clause. I think the important thing is the fact that our judiciary will be able to put its interpretation onto human rights, not somebody who cannot speak English being able to put an interpretation on the basis of human rights.

So I think the hon. member is right and I think that the government should be applauded for getting on with this job as far as this and I think this clause should be supported. The only problem is it should have been done when we tried to get it done in another place 18 months, two years ago when I was ignored.

Mrs Hannan: Vainstyr Loayreyder, I just comment on the previous speaker when he says 18 months ago. Some 20-odd years ago there was a move in another place to bring forward this legislation and place it on the statute book in the Isle of Man. A select committee was set up and reported that it should not be introduced, so it is not something as recent ago as 18 months.

However, I would like to ask the mover why sub-clause (2) appears in this legislation. It relates to articles 2 to 12 and 14 of the convention and articles 1 and 2 of the sixth protocol, as read with articles 16 to 18 of the convention, and then clause sub-clause (2) says, 'Those articles are to have effect for the purposes of this Act subject to any designated derogation or reservation (as to which see sections 13 and 15).' Now, presumably that just corresponds with the sections of this Bill but as it happens it relates to article 13 and article 15 of the convention which we have ignored and left out of the legislation. Presumably this is because the UK have done that also. But it relates to anyone's rights and freedoms - this is article 13 - 'Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity', and article 15 relates to three sections of that: 'In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent

with its other obligations under international law.’ 2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4. . . and 7 shall be made under this provision. 3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.’

Now, I would like clarification on that as to why these articles have been left out and with regard to section 13, derogations and reservations, where does the mover see a derogation and reservation being made? And under 15, the review of, and I noticed it is going to be reported to Tynwald but he mentioned in his comments prior to the moving of article 1 about the derogation which appears in here which does not relate to the Isle of Man as he quite clearly read out, and I just wonder why it has to appear in our legislation which could give the effect, somebody reading this legislation in total could be under the impression, that we also have a derogation under the legislation that the UK has when we clearly do not have.

I will be supporting it but I would like clarification of those points, Vainstyr Loayreyder.

The Speaker: Can I call upon Mr Brown to reply.

Mr Brown: Thank you, Mr Speaker. I will endeavour to respond as best I can. I think really, just to try again to put at ease the concerns of the hon. member for Ramsey, Mr Singer, who has again this morning really expressed what he sees as a considerable concern about the change that we are promoting here in the legislation, I have to say that I find it difficult to understand how a member of a legislature here in the Isle of Man finds it difficult to enact legislation that already applies to the Isle of Man in our own law as against relying on a convention because that convention and those laws already apply and by enacting this legislation we actually bring it into our domestic law which enables our domestic courts to deal with anybody who makes a complaint against infringement, as they see it, of their human rights. As the hon. member for Onchan said, surely that is preferable than a person’s only option at the moment which is to seek to go to a European court to seek justice, whether or not they are proved right or wrong at the next stage, but at least to have the ability to seek justice and all the implications of that: dealing with judges who may be unable to speak English, interpretation and how things can be lost in interpretation between different languages, and then waiting for a court that is already dealing with cases from other jurisdictions throughout the whole of Europe, which in itself can cause considerable delays for an individual resident here in the Isle of Man. I would have thought that if you take the view that the European Convention on Human Rights applies to the Isle of Man, as it has done since 1953, then enacting it in our legislation has got to be a big step forward to making it more accessible to our own people, whoever they may be, and one day it may be one of us who has a view that our human rights are being offended against and therefore I would have thought members would be happy to support that, because the principle has to be right that our courts are available to our people to deal with our own laws and not rely on a foreign court. So I hope again I can help put the member at ease on that.

As far as the judiciary totally bound by Europe - that is a distortion, I am afraid, of the reality. Already the convention applies. At the moment our judiciary are unable to take part in it except if something happens and they can take a view that this could be an infringement, but

then the only option is for it to go to judges who are French, Italian, German, maybe an Englishman there or whatever, but a mixture of people who are not Manx-related or under our courts. So again it is not right.

The judges in the Isle of Man and the courts in the Isle of Man will be bound by our legislation which is here and will have to apply our human rights legislation to any court rulings or decisions they make in relation to whether or not a person is being offended against in terms of the protection of their human rights. So again I have to say I believe that is the right step forward.

The hon. member made the point, which I know there is a concern about, that we should be sitting back and seeing how it works in the UK, we know there are problems in Scotland, et cetera, et cetera, et cetera. When I get to it clause 23 gives us that ability, clause 23 allows the government to bring this Bill in when it is appropriate. We have already made the point, and I made it at the second reading, there is a considerable amount of training to be undertaken by the deemsters, by the JPs, by the government itself, by local authorities, by everybody to understand that this will focus attention far more closely here at home on what people's rights are, and if you look at the rights that are embodied in the convention and are in here in schedule 1, as the hon. member for Onchan, Mr Cannell, said at the last sitting, how on earth can you argue against those basic principles of the rights that we are trying to give our people? And if you start from that premise, you should not have a problem with the Bill, and, yes, there will be occasions where court judgments will go against government, but if they have it is because government has not done what it should do, but again, and I will come to it later, it will still be a matter for Tynwald, it will still be a matter for the House of Keys, and it will still be a matter for the Legislative Council whether or not they change the law to comply with the convention, and if they do not, then a person can go to the next step which of course is to go to the European Court.

So I hope I have responded in a way that the hon. member is clear on what it is we are about and the advantages of Isle of Man residents being able to take what they see as an infringement on their human rights to a court here in Douglas and not have to go to a court in Strasbourg in Europe.

I thank Mr Karran, the hon. member for Onchan, for his support and again just really I think I have covered it with the importance of the Isle of Man courts and the ability of our people to have access to that.

Mrs Hannan raised the issue about sub-clause (2) and why articles 13 and 15 are left out. In terms of our article 13 I think it is quite clear that the view is taken quite unambiguously that article 13 is met by the passage of the Bill itself, so the answer is quite straightforward: the Bill is in fact bringing that forward.

As far as article 1 is concerned, the Bill gives effect to article 1 by securing for the people in the Isle of Man the rights and freedoms of the convention, and it gives effect to article 13 by establishing a scheme under which the convention rights can be raised in our domestic courts. So in fact although it is not in the Bill, in other words that article is not there, it is because the Bill is actually bringing that forward in its whole ability of how the Bill is set up and therefore we believe, as the UK do, because it is no different in the UK, that this is the right way forward.

As far as the issue of article 15 is concerned, it does not incorporate this article, as it is not a substantive right. That is my understanding of it. So in other words it is about a derogation and therefore it is covered in terms of the rest of the Bill, and the schedule which the hon. member refers to in about clause 13 is there because that is the fact of life at the moment and if those derogations are amended and changed, then we will have to be advised, there is a procedure to advise of that, they have to be reassessed, again which I will come to as we go through the legislation, and the hon. member for Peel did mention anyway about our ability to do that, and at the end of the day the one that does affect us, which is the prevention of terrorism, is in fact that we have our own legislation that differs from the UK but again is potentially open to challenge. What the derogation does is say that in fact because we have our own legislation the issue of the days that we have in there, my understanding is that they cannot be challenged because we already have domestic law in that area based on compliance with the convention.

So I hope that responds to the issue the hon. member raises. Quite a lot of consideration went into whether or not 13 and 15 should be left out. Again the questions the hon. member and others are asking we did examine and it was quite clear that it was unnecessary to include those articles in the legislation because our Bill in fact brings those rights forward and they are incorporated in an appropriate way through the legislation.

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

The Speaker: Hon. members, you have before you clause 1 and schedule 1. Will those in favour say aye; those against, no. The ayes have it. The ayes have it. Clause 2, Mr Brown.

Mr Brown: Thank you, Mr Speaker. Clause 2 deals with interpretation of convention rights and clause 2 requires Isle of Man courts and tribunals to take account of the judgments, decisions, declarations or opinions of the institutions established by the convention when determining a question which has arisen in connection with a convention right. It makes provision for how evidence of them is to be given in relevant proceedings.

Sub-clause (1) requires that a court or tribunal determining a question in connection with a convention right must take into account any (a) judgments, decisions, declaration or advisory opinion of the European Court of Human Rights; (b) opinion of the commission given in a report adopted under article 31 of the convention; (c) decisions of the commission in connection with article 26 or 27(2) of the convention, these are decisions on the admissibility of complaints; or (d) decision of the Committee of Ministers taken under article 46 of the convention, whenever made or given, so far as is relevant to the proceedings.

The Bill requires United Kingdom courts and tribunals to take these judgments, decisions, declarations and opinions into account in relevant proceedings because they are potentially relevant to the correct interpretation of the convention rights and of course therefore that applies to Isle of Man courts.

Sub-clause (2) states that rules made by the deemsters may provide for how evidence of the judgment, decisions, declarations and opinions is to be given in relevant proceedings. These rules might, for example, cover arrangements for authenticating the documents relating to such a judgment et cetera.

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

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

The Speaker: Hon. members, you have clause 2 of the Human Rights Bill. Will those in favour please say aye; those against, no. The ayes have it. Clause 3, Mr Brown.

Mr Brown: Mr Speaker, clause 3 deals with legislation and clause 3 deals with the relationship between the convention rights and the Isle of Man legislation. It requires legislation to be interpreted compatibly with the convention rights. So far as possible clause 3 is one of the main ways in which further domestic effect is given to the convention rights.

Sub-clause (1) states that, so far as it is possible to do so, Acts both Manx and UK and subordinate legislation including UK subordinate legislation, which has effect in the Isle of Man, must be read and given effect in a way which is compatible with the convention rights. All courts and tribunals will be required to interpret legislation in this way where it is relevant to all cases before them.

Sub-clause (2)(a) makes various further provision. The intention is to underline that, although it is expected that it will normally be possible for legislation to be construed in such a manner, there comes a point where an interpretation must yield to the intention of parliament, notwithstanding that in the result the legislation is incompatible with the convention rights. In particular and as read with clause 4, the interpretative rule does not empower courts to strike down or ignore Acts, whether enacted before or after the Bill comes into operation.

Clause 3 (2)(b) provides that it is not possible to read and give effect to an article in a way which is compatible with the convention rights. This does not affect its validity, continuing operation or enforcement. The intention is that if there is found to be an irreconcilable conflict between an Act and a convention right the Act will nevertheless remain valid legislation which can continue to be relied upon or enforced.

Sub-clause (2)(c) makes the same provision as sub-clause (2)(b) but in respect of subordinate legislation which is incompatible with convention rights and where, disregarding any possibility of revocation, an Act prevents the removal of the incompatibility. The consequence is that should the terms of the Act be such that any subordinate legislation made under it in relation to the matter in question will inevitably be incompatible with the convention, the subordinate legislation will not cease to be valid, nor will its continuing operation or enforcement be affected by virtue of it being incompatible if an Act does not prevent subordinate legislation from taking a form which is compatible with the convention rights as under sub-clause (2)(c) and does not apply, and under clause 6 (1) the courts will be able to set aside the subordinate legislation to the extent that it is incompatible. This sub-clause is consistent with the principles of 3(2)(b) that incompatible Acts should continue to remain valid in its existing form until or unless amended by Tynwald or Westminster.

Both 3(2)(b) and (c) apply whether or not the incompatible legislation has been subject to a form of declaration under the provisions of clause 4.

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

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

The Speaker: Hon. members, we have clause 3 of the Human Rights Bill. Will those in favour say aye; those against, no. The ayes have it. The ayes have it. Clause 4, Mr Brown.

Mr Brown: Mr Speaker, clause 4 deals with a declaration of incompatibility. The purpose of this clause is to provide a mechanism for bringing to the attention of government any provision of an Act which cannot be read and given effect in a way which is compatible with the convention rights, or of subordinate legislation where the incompatibility cannot be removed because of the term of the relevant Act. It sets out the circumstances where the higher courts can make a declaration of incompatibility specifying which courts may make such a declaration and make some provisions relating to the effects of such a declaration on the legislation in respect of which it is given.

Sub-clauses (1) and (3) deal with the proceedings to which the provisions in the clause apply and in which the courts may make declarations of incompatibility. This will be possible only where a person already has a right of action under the Bill or the general law. The clause does not give a separate right to institute proceedings solely for the purpose of seeking a declaration.

Sub-clause (2) is concerned with primary legislation and provides that if the court is satisfied that the provision is incompatible with a convention right it may make a declaration to that effect. The court has a discretion as to whether it makes a declaration, as it has when exercising its jurisdiction.

Sub-clause (4) is concerned with subordinate legislation and provides that if the court is satisfied that the provision is incompatible with the convention right and that, disregarding any possibility of revocation the primary legislation under which it is made prevents removal of that incompatibility, it may make a declaration of incompatibility.

Sub-clause (5) specifies that the courts which may make a declaration of incompatibility under this clause are the Judicial Committee of the Privy Council and the High Court. The power to make a declaration is confined to the High Court because it will be a very important statement.

Sub-clause (6) provides that a declaration of incompatibility does not affect the validity, continual operation or enforcement of the provision in respect of which it is given and is not binding on the parties to the proceedings in which it is given.

The same principle underlies this sub-clause as underlies clause 3(2)(b) and (c), namely that primary legislation which is found to be incompatible should not cease to be valid or effective unless and until it is amended by a decision of Tynwald. The legislation will continue to apply until such time as it may be amended or withdrawn. Making the declaration not binding enables government to continue to argue, for example, in Tynwald or in Strasbourg that the legislative provision is not incompatible.

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

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

The Speaker: Hon. members, we have clause 4 of the Human Rights Bill. Will those in - oh, sorry. Member for Rushen, Sir Miles Walker.

Sir Miles Walker: Thank you, Mr Speaker. In clause 4 it says a court may make a declaration - and maybe the hon. mover has covered this point on occasion or more than one occasion. Perhaps he could clarify it for me. Does a court have the ability to use its own initiative to look at legislation and come to a conclusion or does a court have to have an issue

referred to it by an individual before the court can look at it and make a declaration, if that is what it so decides? I am sorry, perhaps I should know but I am not clear.

The Speaker: Anybody else? The mover to reply.

Mr Brown: Yes, thank you, Mr Speaker. Clearly the courts cannot initiate anything, that is not the job of a court. What they can do, of course, is consider it when an issue is before them and therefore the matter must be before them - or a matter must be before them - which may then highlight a case of incompatibility with the convention, in our terms now, if this Bill is passed with the Bill.

The Speaker: Right, hon. members. We now have clause 4. Will those in favour say aye; against, no. The ayes have it. The ayes have it. Clause 5, Mr Brown.

Mr Brown: Yes, thank you, Mr Speaker. Clause 5, right of intervention. The purpose of clause 5 is to give the Attorney-General the right to intervene in any proceedings where the court is considering making a declaration of incompatibility under the provisions of clause 4. The need for the Attorney-General to be given this right flows from the importance of such a declaration and the wish to ensure that the government, which will have the responsibility for considering whether to propose to Tynwald the amendment of the legislation in respect of which a declaration is made, has the opportunity to put any relevant arguments to the court before it decides whether to make a declaration.

Sub-clause (1) provides that where a court is considering whether to make a declaration of incompatibility, the Attorney-General is entitled to notice in accordance with the rules of court.

Sub-clause (2) provides that where sub-clause (1) applies, the Attorney-General is entitled to be joined as a party to the proceedings. Whilst there is a requirement for the Attorney-General to be notified, there is no requirement for the Attorney-General to intervene, following such a notification. This sub-clause also provides that the Attorney-General's application to be joined will be made in accordance with the rules of court.

Sub-clause (3) provides that an application by the Attorney-General under sub-clause (2) may be made at any time during the proceedings. This gives some flexibility about deciding whether an intervention is necessary, something which may not immediately be apparent when the notification is first received.

Sub-clause (4) ensures that where the Attorney-General has intervened, he enjoys the same rights of appeal in respect of making a declaration as do the other parties to the proceedings. It provides that a person who has been made a party to criminal proceedings, as the result of an application under this clause, may appeal against any declaration of incompatibility made in the proceedings. This sub-clause refers only to criminal proceedings because in civil proceedings any person joined as a party in the court appealed from becomes a full party to the action and is able to exercise any rights of appeal available to the original parties. As matters stand, there are no appeal rights for a person joined as a party to criminal proceedings. This sub-clause therefore provides for the Attorney-General, if he has exercised his entitlement to be joined as a party to the lower court, to appeal to challenge the making of the declaration of incompatibility and not to appeal against any other decision. This provision does not affect the existing rights of appeal held by the defendant or the prosecutor.

Sub-clause (5) applies in all cases where a court has made a declaration of incompatibility. The court is under a duty to ensure that a copy of the declaration is served on the Attorney-General. This will ensure that the government will receive notice of the declaration of incompatibility, as the Attorney-General will be able to there so advise.

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

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

The Speaker: Hon. members, we have clause 5 of the Human Rights Bill. Will those in favour say aye; against, no. The ayes have it. The ayes have it. Clause 6, Mr Brown.

Mr Brown: Mr Speaker, clause 6 deals with acts of public authorities. The purpose of clause 6 is to place a requirement on public authorities to act in a way which is compatible with convention rights. It makes it unlawful, except in specified circumstances, to act contrary to the convention rights, sets out circumstances in which it is not unlawful to act in a way which is incompatible with the convention, and makes provision as to who is to be regarded as a public authority for the purposes of the Bill.

Sub-clause (1) provides that it is unlawful for a public authority to act in a way which is incompatible with a convention right. The consequences of this, under the Bill appear in clauses 7, 8 and 9. An act covers anything a public authority does or fails to do, subject to the expectations in clause 6, sub-clauses (2) and (5) and includes making subordinate legislation.

Sub-clause (2) seeks to protect legislation under which a public authority acts and hence to preserve the parliamentary sovereignty of Tynwald. Thus the general effect is that where a public authority acts to give effect to a legislative provision, even if its actions would be incompatible with the convention right, its acts are not thereby unlawful. The first kind is that where, as a result of one or more provisions of an Act, the public authority could not have acted differently. This could be it is required by the legislation to take action in question. The second kind of act from which sub-clause (1) is disapplied are those which give effect to an Act which cannot be read or given effect in a way which is compatible with convention rights or to subordinate legislation made under such primary legislation. In other cases, however, for example where a department makes secondary legislation which is incompatible with the convention but could have made differently, or where the act could have been construed in a manner which is compatible with the convention but the public authority has wrongly - that is, incompatibly with the convention rights - exercised the discretion given to it, the bar does not apply.

Sub-clause (3) deals with the meaning of 'public authority' and makes it clear that those described in clause 6(3)(a) and (b) are included in the definition of public authority, that is a court or tribunal and any person, certain of whose functions are functions of a public nature. However, the sub-clause excludes from being a public authority Tynwald and either branch of Tynwald and a person exercising functions in connection with proceedings in Tynwald and the branches. Tynwald is excluded because it would be contrary to the principles of parliamentary sovereignty if the actions of Tynwald and its branches became subject to challenge in the courts.

Sub-clause (4) qualifies sub-clause (3) by providing that in relation to a particular act, a person is not a public authority by virtue only of clause 6(3)(b) if the nature of the act is private.

Sub-clause (5) provides that an act includes a failure to act but does not include a failure to introduce in, or lay before, Tynwald a proposal for legislation or make any Act. It is not intended, for example, that a decision of the government not to introduce legislation to correct an incompatibility should be capable of being challenged in the courts.

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

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

The Speaker: Hon. members, we have clause 6 of the Human Rights Bill. Will those in favour please say aye; those against, no. The ayes have it. The ayes have it. Clause 7, Mr Brown.

Mr Brown: Mr Speaker, clause 7 deals with proceedings. Clause 7 describes how a person who is or would be a victim of a proposed or unlawful act of a public authority is to be able to pursue his claim before the appropriate domestic court or tribunal. Under the clause, a person can use the convention rights to bring proceedings against the public authority or to rely on them in any proceedings brought by him to challenge the act or in any proceedings brought against him by a public authority.

Sub-clause (1) provides that a person who claims that a public authority has acted or proposes to act in a way which is made unlawful by clause 6 (1) may, if he is or would be a victim of that act, (a) bring proceedings against the authority in the appropriate court or tribunal or (b) rely on the convention right or rights concerned in any legal proceedings.

Sub-clause (2) provides that the meaning of 'appropriate court or tribunal' in sub-clause (1)(a) is to be determined in accordance with rules, and that proceedings against an authority include a counterclaim or similar proceedings. In most cases it is likely that an existing cause of action or other legal challenge - such as a judicial review - applicable to a person's claim, will be open to him and it is therefore also likely that convention points will be taken in court and tribunals which deal with such existing causes of action or challenge. However, under the Bill it will also be possible for a victim of an alleged unlawful act to initiate court proceedings against a public authority on convention grounds alone, although the expectation is that this is likely to happen only where no existing means of legal challenge is open to the individual.

Sub-clause (3) provides that an applicant can seek judicial review, by means of a petition of dolence, of the act of a public authority, on the grounds that the act is unlawful under the Bill, only if he is or would be a victim of that act. The ability to apply for judicial review on convention grounds will correspond to the standing or locus test under article 34 of the convention, as amended, for bringing complaints to the European Court of Human Rights.

Sub-clause (4) specifies time limits for the bringing of proceedings. They must be commenced within 12 months from the act complained of, or longer if authorised by the court or tribunal on grounds of fairness. The time limit is subject to stricter limits if applied to proceedings by other legislation in force.

Sub-clause (5) defines 'legal proceedings' in clause 7(1)(b). The term includes proceedings brought by or at the instigation of a public authority and an appeal against the decision of a court or tribunal. This will ensure that convention points can be raised in an appeal against the decision of a court or tribunal which it is claimed is itself unlawful, as being incompatible with a convention right.

Sub-clause (6) explains the term 'victim' used in this section. A person is a victim of an unlawful act only if he would be a victim for the purposes of article 34 of the convention, as amended, if proceedings were brought in the European Court of Human Rights in respect of that act. This attracts the convention jurisprudence on victim. A particular person must be directly affected by that act.

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

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

The Speaker: Hon. members, we have clause 7 of the Human Rights Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 8, Mr Brown.

Mr Brown: Mr Speaker, clause 8 deals with judicial remedies and the purpose of clause 8 is to enable a court or tribunal to grant appropriate remedies, when it finds that a public authority has acted or proposes to act in a way which is incompatible with a convention right and has therefore acted unlawfully under clause 6. It also links an award of damages for a convention breach to the level of award which the individual would expect to be granted if a violation of the convention had been found by the European Court of Human Rights. The clause is concerned with breaches of convention rights. Remedies otherwise available to the individual in connection with the act of the public authority are unaffected, and paragraph (b) of clause 10 makes clear these can still be claimed.

Sub-clause (1) provides that where a court finds that any act or proposed act of a public authority is or would be unlawful, it may grant such relief or remedy or make such order within its jurisdiction as it considers just and appropriate.

Sub-clause (2) provides that damages may be awarded only by a court which has power to award damages or to order the payment of compensation in civil proceedings. This means that the Court of General Gaol Delivery and the Court of Summary Jurisdiction will not be able to award damages or compensation for convention breaches.

Sub-clause (3) provides that no award of damages is to be made unless, taking account of all the circumstances of the case, including any other relief or remedy granted or order made in relation to that act and the consequences of any decision made in respect of that act, the court is satisfied that the award is necessary to afford just satisfaction to the person in whose favour it is made. An example where a court would need to take account of other relief granted is where a person is pursuing two claims in respect of an act of a public authority: one under this Bill - that is, as an unlawful act under clause 6 (1) - and one under an existing cause of action, for example unlawful arrest. Any damages awarded for the non-convention claim would be a relevant consideration for the court, in considering if there was also a need to compensate for the convention violation. There will be cases, however, where it will be sufficient for the court to quash a decision of a public authority or to make a declaration as to its unlawfulness.

Sub-clause (4) provides that in determining whether to award damages or the amount of an award, the court must take into account the principle applied by the European Court of Human Rights in relation to the award of compensation under article 41 of the convention. Such awards tend to range between £5,000 and £15,000 and do not follow automatically upon the finding of violation.

Sub-clause (5) enables a court to apportion liability in respect of a civil action between the public authority and the other party. For example, if the court determines that a plaintiff was partly responsible, the court may reduce damages by an appropriate proportion.

Sub-clause (6) defines the term 'court' to include a tribunal. 'Damages' and 'unlawful' for the purposes of this clause are also defined. This makes clear that the clause is only concerned with claims that a public authority's act is incompatible with the convention right.

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

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

Mr Karran: Vainstyr Loayreyder, as I say, I support the principle of this Bill and I support the Bill and this clause but what I am concerned about is the issue that we have raised before. The problem you have got is that when you have got a situation where you take the likes of a public authority, and you are an individual, they push up the anti and you have to follow the anti and then they push up the anti even further and you have got to follow the anti even further. What concerns me - obviously maybe not before the third reading stage - is the issue of legal aid, as it is a commonly-known fact that you either have to be very, very rich or very, very poor to be able to use the judicial system - and that goes for most countries in the world. I am concerned that here we are in this clause giving rights - but are we giving the rights? Because the situation is that when you are dealing with a public body, you know you can be 120 per cent right but you just have not got the ability to be able to take them to heel, simply because you have not got the resources - or the danger of losing so much if you cannot see it through to the nth degree.

I think this clause just highlights the issue that both myself and the member for Douglas North, Mr Henderson, raised as far as legal aid is concerned. The problem we have got is making sure that we do allow that there is a framework there, because we have all had - or most of us have had - constituents who have been brought to the line in order to try and discourage them from pursuing a claim. I just think that the hon. member needs to clarify this point as far as legal aid is concerned. I do think, more than likely because there is so much involved, there is so much expense that there should be separate rules for legal aid as far as this piece of legislation is concerned, in order to make the meaning right. It is difficult enough to sue an individual or to take an individual into court but to take a public authority, a public utility or whatever, is even harder because, the fact is, they have such resources there at every stage of the game and I just worry that if we do not look at this one issue, it might demean the very worthy and very worthwhile proposals within this piece of legislation.

Sir Miles Walker: Mr Speaker, I wonder if the mover could just explain a little bit more fully the sentence on lines 23 and 24 where it says, 'the court is satisfied that the award is necessary to afford just satisfaction to the person in whose favour it is made.' Earlier on it says that a court can grant an award within its powers as it considers 'just and appropriate', and I can understand that, I think, a court can decide what it believes is 'just and appropriate'. I find it difficult to accept that that will always be in the minds of the person in whose favour it is made, 'necessary to afford just satisfaction', and I am not certain how those issues fit together. If it said 'just and appropriate' that is fine. To afford 'just satisfaction' to the person in whose favour it is made, what happens if the person is not satisfied? Can he in fact go back to the

court for a further hearing, or whatever? If the hon. member could explain how those issues fit with one another, I would be obliged.

The Speaker: Mr Brown to reply.

Mr Brown: Thank you, Mr Speaker. Dealing, if I may, first with the issue raised by the hon. member for Onchan, Mr Karran. I think it is important not to mix up the provisions of this legislation, which clearly is to enact human rights within the Isle of Man in our domestic legislation, and the need for legal aid. They are two separate issues albeit that ultimately legal aid and law interlink because if you cannot get legal aid, you may not be able to challenge the law, and I understand that. But I would say to the hon. member that first and foremost, of course, the levels of legal aid are determined by Tynwald Court and those rules and the amounts applied are based on - as I understand it - a regular evaluation by the courts to see the level of support required and who they can help. I am sure we all find it difficult sometimes when somebody who has no resources can take a case all the way through and somebody with limited resources, whatever that limit may be - and limited, I think, is quite a high level in the Isle of Man as against the UK - in fact may find themselves in a position where they get so far and cannot afford to continue anymore, or feel that to be the case. All I can say is the Isle of Man legal aid provision is far more substantial, as I remember it and as I understand from our previous discussions, than is the case in the UK and that was done by Tynwald because they felt more people should be assisted. Therefore that issue, I think, I would have to leave with the hon. member to take up with the appropriate authority if he feels that for the legislation that we are enacting, there could be a problem because people cannot get legal aid.

I would take the other view that because it is actually going to be in our domestic courts, there is a greater chance of access by Isle of Man residents to be able to challenge and protect their human rights. Of course, it is not all one-sided. It may well also be, when the hon. member is talking about a public authority, that the individual just says, 'I am happy, I am not doing anything wrong', and it is the public authority who takes the person to court and of course the individual sits tight and when it comes to the appropriate part of it, because it is not really costing more - it does not necessarily have to cost him anything - he can say, 'Well, I'm sorry, but in my view the public authority is in contravention of my human rights under the Bill', and then it will be a matter for the courts to determine that. There are so many scenarios in this and I understand what the member is saying is that here is justice but people have to afford to be able to get that justice. But that is a matter, I have to say, outwith this Bill in terms of it being a matter for legal aid and the rules that apply.

Sir Miles raised the issue of lines 23 and 24. My understanding on that is, yes, there has to be justice. In other words the courts have to determine there is a need for compensation. And if I picked the hon. member up rightly, he talked about the terminology in the Bill where it says under clause 8, lines 23 to 25, 'the court is satisfied that the award is necessary to afford just satisfaction to the person in whose favour it is made.' Well, those words which have to be in a way incorporated into here actually come out of the actual instruments, the convention, under article 41 which is headed, 'just satisfaction.' And it says that if the court finds that there has been a violation of the convention or the protocols thereto and if the internal law of the high contracting party concerned allows only partial reparation to be made, the court shall, if necessary, afford just satisfaction to the injured party. So my understanding of that is that if there is, in certain circumstances, a potential limit on the amount that can be given under the

general legislation of the Isle of Man in terms of compensation, that in fact they can go one step further under the convention. That is why my understanding is that this wording is in there: so that, in other words, the person has had - in their terms - 'just satisfaction'. It has come from the convention and article 41 and therefore it is incorporated into our law or there could be a problem within our legislation, being slightly different to the convention right.

I do not know if that has fully answered it but it is all interlinked in terms of the complexity of this legislation - which I accept is complex in terms of securing people's rights, compensation and so on, whilst at the same time ensuring that they protect the other side of the coin. So that is the only explanation I am able to give the hon. member and I hope it responds to his point. I beg to move.

The Speaker: Hon. members, we have clause 8 of the Human Rights Bill. Those in favour say aye; against, no. The ayes have it. The ayes have it. Hon. members, I think this is an appropriate time to adjourn for lunch and we will adjourn until 2.30 p.m. in this chamber.

The House adjourned at 1.10 p.m.

Human Rights Bill – Consideration of Clauses Concluded

The Speaker: Hon. members, we resume consideration of the Human Rights Bill. Clause 9, the hon. member for Castletown, Mr Brown.

Mr Brown: Mr Speaker, clause 9 deals with judicial acts. The purpose of clause 9 is to provide that: (1) proceedings in respect of the judicial act of a court or tribunal under clause 7(1)(a) may be brought only by way of an appeal or on an application for judicial review or in a forum prescribed by rules; (2) the damages may not be awarded in proceedings under this Bill in respect of judicial acts otherwise than to compensate a person to the extent required by article 5(5) of the convention; and (3), any such award of damages is to be made against the Crown and (b) is to preserve judicial immunity. The clause preserves judicial immunity generally for judicial acts undertaken by judges, magistrates and tribunal members, and court staff performing judicial functions or acting on behalf of the judge or on instructions of the judge. It makes an exception in order to provide an enforceable right to compensation for breaches of article 5 by judicial acts to the extent required by article 5(5) of the convention as if the rights of action are unaffected. Clause 7 provides that a person who claims that a public authority has acted or proposes to act in a way which is unlawful because of its incompatibility with the convention rights may bring proceedings against the authority under the Bill or may rely on the convention right in any legal proceedings. Under clause 6(3) 'public authority' includes courts and tribunals.

Sub-clause (1) requires that proceedings under clause 7(1)(a) in respect of judicial acts may only be brought by way of an appeal on an application for judicial review, petition of dolance or in such other forum as may be prescribed by rules. A finding that an inferior court has acted unlawfully will most commonly be reached by way of appeal to the staff of government division - that is, the Court of Appeal, or by an application by way of judicial review to the High Court. The higher court will then be able to reach a decision of unlawfulness and, if it thinks it is right to do so, make an award of damages in the case of a breach of article 5. Clause 8(2) will enable the courts which already have power to award damages to do so in proceedings under this Bill. Staff of government division, as a single entity, has the power to award damages. The rules of court will provide as to the award of damages in criminal cases.

Sub-clause (2) provides that an application for judicial review may only be made if it is already available against a decision of a particular court or tribunal. Thus it will not be possible to try to mount judicial review proceedings against a superior court on the grounds that its decision was allegedly unlawful under clause 6(1). Recourse would have to be had to the rights of appeal that are available.

Sub-clause (3) has two purposes: it restates the current position under common law and statutory rules that there is no liability in respect of judicial acts and that judges and magistrates acting in good faith are immune from proceedings for damages, but it also makes provision that damages may be awarded to compensate a person to the extent required by article 5(5) of the convention in respect of a judicial act of a court. This gives effect to the obligations in article 5(5) that everyone who has been the victim of arrest or detention in contravention of the provisions of article 5 shall have an enforceable right to compensation.

Sub-clause (4) provides that an award of damages permitted by sub-clause (3) should be made against the Treasury rather than against the judge personally. It also ensures that the Attorney-General is joined to the proceedings, if not already a party. This is similar in effect to the provisions of clause 5, which provides that where a court is considering whether to make a declaration of incompatibility the Attorney-General is entitled to notice and, on an application to the court, to be joined as a party to the proceedings. Sub-clause (4) defines 'judicial act' to make it clear that judicial act means a judicial act of a court or tribunal. The sub-clause also defines 'court' to include tribunal and 'judge' to include members of a tribunal, JPs and other officers entitled to exercise the jurisdiction of a court - for example, the Chief Registrar. I beg to move clause 9 stand part of the Bill.

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

The Speaker: Hon. members, clause 9 of the Human Rights Bill. Will all those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 10, Mr Brown.

Mr Brown: Mr Speaker, clause 10 deals with safeguards for existing human rights. This clause saves more generous rights of individuals which are available apart from this Bill. Paragraph (a) provides that a person's reliance on a convention right does not restrict any other right or freedom conferred on him by or under any law having effect in the Island. It is a saving for existing, more generous provisions which an individual enjoys. Paragraph (b) provides that a person's reliance on a convention right does not restrict his right to make any claim or to bring any proceedings which he could make or bring apart from clauses 7 to 9. This confirms that the right to bring cases on convention grounds or to rely on convention rights in any legal proceedings is additional to any existing rights to bring proceedings and to claim damages and any other appropriate remedy, not a substitute for them. I beg to move that clause 10 stand part of the Bill.

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

The Speaker: Hon. members, clause 10 of the Human Rights Bill 2000. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 11, Mr Brown.

Mr Brown: Thank you, Mr Speaker. Clause 11 deals with freedom of expression, and the purpose of this clause is to safeguard the freedom of the press and to ensure that courts have particular regard to article 10 of the convention, which relates to the freedom of expression

when considering the grant of any relief which may affect such freedom. This clause will mainly affect injunctions.

Sub-clause (1) is widely drafted so that clause 11 applies wherever a court is considering granting any relief which might affect the freedom of expression. Relief is defined in sub-clause (5). This clause is not limited to the case where a public authority is a party but applies to any person whose right to freedom of expression may be affected by the relief which is sought.

Sub-clause (2) is where the person against whom the application for relief is made is not present or represented at the hearing. The court must not grant the relief unless it is satisfied that all practical steps have been taken to notify the other party or that there are compelling reasons why the other party should not be notified. Compelling reasons might be extremely rare but would, for example, be matters of national security.

Sub-clause (3) deals with courts which cannot grant relief to restrain publication before trial unless satisfied that the party seeking such relief would be likely to establish at trial that publication should not be allowed.

Sub-clause (4) deals with the courts, and the courts must have particular regard to article 10 and its associated jurisprudence. In practice, the decisions of the Court of Human Rights have generally upheld the freedom of the press. In respect of journalistic, literary or artistic material the courts must have particular regard to the extent to which such material is or is about to be available to the public and whether it is in the public interest for such material to be published. 'Public' is not defined or qualified in any way, and it will be a matter for the courts to interpret the term. Particular regard must also be given to any relevant privacy code such as the Press Complaints Commission and the Independent Television Commission code.

Sub-clause (5) defines 'relief' in wide terms and provides that the clause does not apply to criminal proceedings. I beg to move that clause 11 stand part of the Bill.

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

The Speaker: Hon. members, clause 11 of the Human Rights Bill 2000. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 12, Mr Brown.

Mr Brown: Mr Speaker, clause 12 deals with freedom of thought, conscience and religion. This clause provides that the courts must have particular regard to the right of freedom of thought, conscience and religion guaranteed by article 9 of the convention when considering any question under the Act which might affect such a right.

Sub-clause (1). Most of the acts of a religious organisation are in general private in nature and would not therefore be open to challenge under the provisions of the Act. However, where religious organisations carry out functions of a public nature, such as performing marriage ceremonies or running the church schools, the Act will apply as religious organisations would be a public authority. Where an act of a religious organisation is challenged under the Act the courts must have particular regard to article 9 and to the jurisprudence of convention institutions which have generally upheld the right of religious organisations to practise their genuinely held belief.

Sub-clause (2), I believe, is self-explanatory and I therefore beg to move clause 12 stand part of the Bill.

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

The Speaker: Hon. members, clause 12 of the Human Rights Bill 2000. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 13 and schedule 2, Mr Brown.

Mr Brown: Mr Speaker, clause 13 and schedule 2 deal with derogations and reservations. This clause defines a designated derogation and a designated reservation for the purposes of the Bill. The convention rights are, by virtue of clause 1(2), to have effect for the purposes of the Bill subject to such a derogation or reservation. The clause also makes provision in respect of designated derogation and designated reservation orders made under this clause.

Sub-clause (1) defines a designated derogation for the purposes of the Bill. This is (a) the existing derogation from article 5(3) of the convention and (b) any derogation from an article of the convention or of any protocol to the convention which is designated for the purposes of the Bill in an order made by the Council of Ministers. Schedule 2 sets out the derogation referred to in clause 13(1)(a) and the 1988 and 1989 notifications of the derogation made by the United Kingdom in respect of article 5(3) of the convention together with the 1998 notification which deals with the Isle of Man. The sub-clause introduces schedule 2, which I have explained.

Sub-clause (2) defines a designated reservation for the purpose of the Bill. This is any reservation to an article of the convention or of any protocol to the convention which is designated for the purposes of this Bill in an order made by the Council of Ministers. Article 64 of the convention allows the state to enter a reservation when signing or ratifying the convention or certain of its associated protocols when a law in force in that country is not in conformity with a convention provision. A reservation modifies the extent of the obligation which the state concerned undertakes for as long as it remains in place. The order-making power for a designated reservation relates to any reservation which might be made.

Sub-clause (3) provides that a designated order may be made in anticipation of the making of a proposed derogation. This is to make it easier to ensure that any derogation can take effect for the purposes of the Bill at the same time as it takes effect to modify the Island's international obligations under the convention.

Sub-clause (4) requires the Council of Ministers to make such amendments by order to the Bill as it considers appropriate to reflect any designated order. The object is to ensure that any designated derogation for the purposes of the Bill reflects the exact terms of any relevant derogation which is currently in place, and hence that the effect in the Isle of Man law of the particular convention right and the Isle of Man obligation with respect to the convention remain in step.

Sub-clause (5) makes it clear that the clause applies only to derogations and reservations that have effect in respect of the Isle of Man. I beg to move that clause 13 and schedule 2 stand part of the Bill.

Mr Gelling: I beg to second, Mr Speaker.

Sir Miles Walker: Mr Speaker, now we have got to schedule 2 mentioned in clause 13, the hon. member for Peel earlier on this morning mentioned schedule 2 and, I think,

questioned the need for it, and I would like the member in charge of the Bill, if you will, to go over the reasons why that schedule is required in the Isle of Man. My recollection is that it was required in the United Kingdom because they wished to detain people for longer than the minimum period within the convention. My recollection is that when we put through the Prevention of Terrorism Act in 1990 it was amended so that our legislation would comply with the Convention on Human Rights and again, if my recollection is right, it was the hon. member for Peel who moved that amendment. There was some debate about it and generally it was accepted that we should be complying with the Convention on Human Rights, and if that is the case and the Isle of Man legislation does comply, why do we need schedule 2, which sets out in our law the derogation that applies to the United Kingdom? If it is not necessary in our law it seems unfortunate that it was included in a piece of Isle of Man legislation, and I ask the mover of the Bill why it is here if I am right in my recollection that the Isle of Man legislation complies with the Convention on Human Rights.

The Speaker: The hon. member for Castletown to reply.

Mr Brown: Mr Speaker, the situation is, I am assured by the Attorney-General's Chambers after the issue was raised by the hon. member for Peel at the second-reading stage, that this notification is necessary to protect the Isle of Man's position vis-à-vis our own Prevention of Terrorism Act 1990 and that it ensures that there is no doubt in terms of our legislation. That is the basis of the understanding I have. It is necessary; that is why it is in this legislation. Our Act, whilst we amended our law to reflect the ruling of the European court - so as there is no doubt this is included here as a reservation so that our legislation applies.

Sir Miles Walker: Mr Speaker, is it possible to ask for further comment from the hon. mover of the Bill?

The Speaker: Is it a clarification that you are seeking?

Sir Miles Walker: Well, it could be clarification, Mr Speaker, yes. Does that mean we could alter our legislation from five back to seven days and still be within the derogation that applies to the United Kingdom if it was our desire? Is that the reason we are keeping it?

Mr Brown: Mr Speaker, the European court in a case that was taken about detention in terms of Northern Ireland, of which the law in the United Kingdom was extended to the Isle of Man, applied in the Island. When we moved our own Prevention of Terrorism Act of 1990, as the hon. member for Rushen, Sir Miles, says, the hon. member for Peel moved an amendment in an endeavour to comply with that ruling. My understanding is that whilst that change was made there was still a need for this notification to be in because our legislation was our own legislation and therefore this notification was put in to the UK convention extending to the Isle of Man to ensure there was no doubt between our legislation and their rights. My understanding is we cannot go against our own legislation but, as I explained, there is a power for the Governor, after consultation with the Chief Minister or the Minister for Home Affairs, to actually extend the period, and that in itself may well then potentially bring us into a conflict. Hence this is here to protect us.

The Speaker: Hon. members, we have clause 13 and schedule 2 of the Human Rights Bill 2000. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 14, hon. member for Castletown.

Mr Brown: Mr Speaker, clause 14 deals with periods for which designated derogations have effect. This clause provides that in view of the essential temporary and exceptional nature of any derogation its effect for the purposes of the Bill shall be time-limited and that a derogation should accordingly cease to be a designated derogation after a five-year period unless that period is extended by order with the approval of Parliament.

Sub-clause (1) provides that if an order designating a derogation or reservation has not already been revoked the designated derogation or designated reservation shall cease to be designated for the purposes of the Bill (a) in the case of a reservation when it is withdrawn in whole or part in the case of a derogation, and (b) in the case of a derogation when it is amended or replaced. This sub-clause only affects the position in the Isle of Man law under the Bill of the derogation or reservation. It does not remove the continuing effect of any derogation, whether designated or otherwise, on the Isle of Man's obligations under the convention.

Sub-clause (2) requires the Council of Ministers to make by order such amendments to this Bill as it considers are required to reflect the withdrawal of a designated reservation or the amendment to or replacement of a designated derogation.

Sub-clause (3) confirms that the fact that an earlier designation has ceased to have effect under sub-clause (1) of this clause does not prevent the Council of Ministers from exercising its powers under the sub-clause to make further designations. I beg to move clause 14 stand part of the Bill.

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

The Speaker: Hon. members, clause 14 of the Human Rights Bill 2000. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 15, Mr Brown.

Mr Brown: Clause 15 deals with periodic reviews of designated reservations. Clause 15 provides for the periodic review of all designated reservations and designated derogations. This reflects the expectation that countries should periodically review the continued need for a reservation to or derogation from any international instrument which applies to it.

Sub-clause (1) requires the Council of Ministers to review all designated reservations and derogations at least once in each five years, beginning with the date on which clause 13 comes into operation.

Sub-clause (2) requires the Council of Ministers to prepare a report on the review and lay a copy of it before Tynwald.

Sub-clause (3) must report to Tynwald where a designated reservation is withdrawn or a designated derogation is amended or replaced. I beg to move that clause 15 stand part of the Bill.

Mr Gelling: I beg to second, Mr Speaker.

Mrs Cannell: Mr Speaker, in relation to this particular clause I wonder why it was deemed appropriate that in sub-clause (2) the Council of Ministers must cause a report on the results of the review to be prepared and laid before Tynwald rather than that the report be laid before Tynwald. It is rather a curious term, 'cause a report to be laid'. I wonder whether or not this is actually going to give the right public impression out there that perhaps the Council of

Ministers may be moving away from some of their responsibility in relation to this. I would have thought it was a little bit more prudent to actually have a different type of wording that requires the Council of Ministers to lay a report before Tynwald rather than causing a report and I just wonder whether the mover can explain the reasons why it is to 'cause a report' as opposed to 'lay a report', which is the usual thing. What is worrying me here, of course, is that because we recently changed the provision of actually laying these changes on the agenda and a member then has to pick up on the fact that it has been laid on the agenda - it is not actually before Tynwald - and it can be brought up at a subsequent sitting, we made changes earlier on to that particular provision. This seems to be going against that provision. Equally, of course, I do not think it covers such an order that would be put together by the Council of Ministers in relation to this. So I am wondering why the formal periodic reports on designated derogations to and reservations from the convention are to be caused. There is a statutory obligation, I appreciate that, but I would prefer it if the reports were to be laid before Tynwald so that members are fully conversant with what is actually going on and what changes are going to be made. I wonder what comments the mover has in relation to that.

The Speaker: The hon. member for Castletown to reply.

Mr Brown: Yes, thank you, Mr Speaker. All I can advise the hon. member is that whilst it says 'must cause' I would not say that that should cause you any alarm. What is quite clear is it says here: 'The Council of Ministers must cause a report on the results of the review to be prepared and laid before Tynwald'. So the Council of Ministers have to prepare a report. They have a statutory responsibility to do that and to lay it before Tynwald. Quite straightforward - there is no way the Council of Ministers can get out of doing that. They have a statutory responsibility, after a period of five years, to advise Tynwald of the matters in relation to derogations and reservations and report whether or not they are still in being and whether or not they still apply. If, subsequently or within that period of five years at any time, a derogation or a reservation is actually removed or applied, then the Council of Ministers have a responsibility still to report to Tynwald on that issue.

The Speaker: Hon. members, clause 15 of the Human Rights Bill 2000. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 16, the member for Castletown.

Mr Brown: Mr Speaker, clause 16 deals with statements of compatibility. This clause places a new requirement for the explanatory memorandum of a Bill to make a statement concerning the compatibility of that Bill with the convention rights. Its purpose is to ensure that in the preparation of a Bill and its consideration by Parliament thorough consideration is given to any implications it may have in relation to the convention rights and to ensure that any relevant issues are identified at an early stage so they can be subject to informed debate by the House. The memorandum must include either (a) a statement to the effect that, in the view of the member moving the Bill, its provisions are compatible with the convention rights, a statement of compatibility; or (b) a statement to the effect that although the member is unable to make a statement of compatibility, the member nevertheless wishes to proceed with the Bill. The timing of the statement is designed to be sufficiently early to enable Parliament proceedings to take it into account. Paragraph (b) is included so as not to prejudice the right of the branches to make provision which appears in some respect to be contrary to the convention rights. There may also be occasion where a positive statement cannot be given

because of uncertainties about the exact implications of a Bill for the convention rights. If a Bill does proceed on the basis of paragraph (b) the statement will ensure that the human rights implications are identified and enable members to have a full debate about the issue. I beg to move that clause 16 stand part of the Bill.

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

The Speaker: Clause 16 of the Human Rights Bill. Will all those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 17, hon. member for Castletown.

Mr Brown: Mr Speaker, clause 17 deals with rules and orders. This clause makes provision in respect of rule and order-making powers contained in the Bill. This is supplemental to the specific procedures laid down elsewhere in the Bill for the making of designated orders under clause 13.

Sub-clause (1) defines the meaning of 'rules' for the purposes of the Bill as well as covering rules of court. The term covers rules made for the purposes of proceedings before tribunals.

Sub-clause (2) provides that in making rules regard must be had to clause 9 - that is, judicial acts - which limits proceedings under clause 7(1)(a) in respect of a judicial act of a court or tribunal to be brought forward by way of appeal or on judicial review or in such other forum as may be prescribed by rules.

Sub-clause (3) states that all orders and rules under the Bill must be laid before Tynwald and must receive Tynwald approval either at the sitting at which they are first laid or at the next sitting of Tynwald Court. I beg to move clause 17 of the Bill.

Mr Gelling: I beg to second, Mr Speaker.

Mrs Cannell: Mr Speaker, again with this particular clause, clause 17, I note there is a difference in relation to this clause and the provisions in the parallel UK legislation, and that is to say that we have a procedure where the things are laid before Tynwald as soon as practical after they are made and at the sitting at which any order or rule is laid or at the next following sitting it fails to be approved, the order or the rule, whichever, ceases to actually have effect - that is, in relation to such delegated legislation - whereas in the United Kingdom what happens is the parallel powers which require a draft of the delegated legislation to be laid before is required to be laid before each House of Parliament and approved before the order can be made. The exercise of these powers in the United Kingdom requires the order to be approved before it is made and comes into effect. Now, what the hon. mover is proposing here is something very, very different. Again, I wonder why it is different, why we have seen fit to actually go down this course when the UK provision in relation to this clause actually requires greater parliamentary scrutiny than is being provided for this parliament in the Isle of Man, in my view. So again I am wondering why we are taking an unusual step in relation to this particular provision which does not mirror the greater capacity for scrutinising by parliaments in the United Kingdom. I wonder what the mover has to say on that.

The Speaker: Mr Brown to reply.

Mr Brown: Mr Speaker, I think it is quite straightforward on that one. The United Kingdom Parliament has a completely different procedure than the Isle of Man parliament. For example, their Parliament, when it is in session, sits every day; their procedures are totally

different to ours. Within the Isle of Man, of course, Tynwald sits once a month. We have laid down procedures for putting items on the order paper, which are laid down by standing orders. That in itself gives notice to members of the matter before Tynwald Court, and what happens is, whilst the order is made, which is our normal procedure, so it is following exactly the procedures that we would normally make, what this does is introduce a slightly different procedure which we have in other Bills where we know members have concern about introducing legislation from elsewhere, when it gives the opportunity for members to assess and scrutinise that legislation with the potential that it may not be sought for approval for another month, but I think the most important issue is that if Tynwald does not approve the order, even though it has been made, the order will fall. So ultimately Tynwald will determine whether or not any such order under clause 17 is approved, and if it is not approved by Tynwald Court, regardless that the government has made it, it will fall. I hope that clarifies the position.

The Speaker: Hon. members, clause 17, the Human Rights Bill 2000. Will those in favour please say aye; those against, no. The ayes have it. The ayes have it. Clause 18, the hon. member for Castletown.

Mr Brown: Mr Speaker, clause 18 deals with extension of enabling powers. This clause enables rule-making authorities to make orders to extend the jurisdiction of tribunals to determine questions relating to convention rights.

Sub-clause (1) deals with cases where a tribunal does not have jurisdiction to hear cases which involve convention rights. The sub-clause enables the body with power to make rules in relation to such a tribunal to give the tribunal jurisdiction to determine such cases and to grant such relief or remedy as is within its power. This is done by order and the Tynwald procedure under clause 17(3) applies. That is where the order must be laid and may be moved at that sitting or the next sitting.

Sub-clause (2) specifically permits an order under this section to include incidentals, supplemental, consequential and transitional provisions. Mr Speaker, I beg to move clause 18 stand part of the Bill.

Mr Gelling: I beg to second, Mr Speaker.

Mrs Cannell: Mr Speaker, again with an observation in relation to this, particularly 18(1)(a) where they talk about the relief or remedies which the tribunal may grant. I wonder if the hon. mover is aware that the UK Human Rights Act 1998, section 10, provides powers for the UK Government to take remedial action by delegated legislation to address any declaration of incompatibility with a convention right in either primary or subordinate legislation made by a UK court. Now, it would appear to me that there is no parallel provision within this particular Bill and again I would ask the hon. mover, why?

The Speaker: Mr Brown to reply.

Mr Brown: Thank you, Mr Speaker. The answer is quite simple: because we are more democratic and it has to go to Tynwald Court for approval.

The Speaker: Hon. members, clause 18, the Human Rights Bill 2000. Will all those in favour please say aye; those against, no. The ayes have it. Clause 19, Mr Brown.

Mr Brown: Mr Speaker, clause 19 deals with interpretation et cetera. This clause defines various terms used in the Bill which are laid out in sub-clause (1).

Sub-clause (2) and sub-clause (3) explain how references in the Bill to articles of the convention are to be read before and after the coming into force of the 11th protocol to the convention.

Sub-clause (4) states that the reference in clause 2(1) to a report or decision of the commission or a decision of the Committee of Ministers include references to a report or decision made as provided by paragraphs 3, 4 and 6 of article 5 of the 11th protocol, which deals with transitional provisions. This is to allow for the period immediately following the coming into force of the 11th protocol, when some cases already in Strasbourg will be handled in accordance with transitional arrangements involving both bodies included in the protocol. Mr Speaker, I beg to move clause 19 stand part of the Bill.

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

The Speaker: Hon. members, clause 19, the Human Rights Bill 2000. Will all those in favour please say aye; against, no. The ayes have it. The ayes have it. I now call upon the hon. member for Castletown to move clauses 20, 21, 22 and 23.

Mr Brown: Thank you, Mr Speaker. Clause 20 deals with saving for criminal law. This clause makes it clear that no offence of breaching the convention is created.

Clause 21 deals with application to the Crown and makes it clear that the Bill will bind the Crown. Without this statement there would be doubts as to whether the Bill applies to the Crown.

Clause 22 is transitional and this clause provides that paragraph (b) of sub-clause (1) of section 7 applies to proceedings brought by or at the instigation of a public authority whenever the act in question took place, but that otherwise that subsection does not apply to an act committed before the coming into force of that clause. This means that it will be possible for an individual to rely on convention arguments after commencement in any civil or criminal action brought by a public authority irrespective of when the event took place or whether the proceedings had already started; otherwise, however, acts of public authorities committed before clause 7 which come into force will not be capable of challenge.

Clause 23, Mr Speaker, is the short title, commencement and application and extent. Clause 23 makes provision about the short title and commencement and extent of the Bill.

Sub-clause (1) provides that the Bill be sited as the Human Rights Act of 2000.

Sub-clause (2) provides that the provisions of the Bill come into force on such day as the Council of Ministers may by order appoint; and the different days may be appointed for different purposes of the Bill. Mr Speaker, I beg to move that clauses 20, 21, 22 and 23 stand part of the Bill.

Mr Gelling: I beg to second, Mr Speaker.

The Speaker: Hon. members, clauses 20, 21, 22 and 23 of the Human Rights Bill 2000. Will all those in favour please say aye; against, say no. The ayes have it. The ayes have it. And that completes the clauses stage of the Human Rights Bill.

Criminal Justice Bill – Consideration of Clauses Commenced

The Speaker: Hon. members, we now turn to the Criminal Justice Bill. Before we take the clauses I have before me a number of amendments, and one of those amendments requires a procedural motion that standing order 154(2)(b) be suspended to allow consideration of an amendment to clause 27. The hon. member for Garff, Mr Rodan.

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

That standing order 154(2)(b) be suspended to allow consideration of an amendment to clause 27 of the Criminal Justice Bill.

There is a need to suspend standing orders, of course, Mr Speaker, because of the newly introduced eight-day rule. I regret that the particular change being proposed in this amendment was not identified in sufficient time within the eight-day limit to permit it to be considered in the normal way. I therefore beg to move.

Mr Henderson: I beg to second, sir.

The Speaker: Hon. members, I put it to you that standing order 154(2)(b) be suspended to allow consideration of an amendment to clause 27 of the Criminal Justice Bill at the appropriate time. Will all those in favour please say aye; those against say no. The ayes have it. The ayes have it.

I now turn to the Bill itself and I say to the hon. member for Ramsey, Mr Bell, clause 1 and schedule 1.

Mr Bell: Thank you, Mr Speaker. This clause introduces schedule 1 which contains provisions for the registration with the police of certain sex offenders. Schedule 1 requires those convicted of or cautioned in respect of specific sex offences - that is, serious sex offences and certain offences relating to the importation of material - to notify the police of their names and addresses and any subsequent changes. The schedule describes the offenders who are subject to the requirements and specifies the duration of the requirements. It describes the information which offenders have to supply, how the information should be supplied and in what timescale. Failure to comply with the requirements is an offence, and special rules are included for young offenders.

The schedule also enables the department of Home Affairs to make orders apply in the schedule to similar offences committed outside the Island.

Paragraph 1 deals with sex offenders subject to notification requirements. The requirement to notify is intended to cover paedophiles and other sex offenders such as those involved in child prostitution or child pornography, but not consensual teenage sex. Paragraph 1 specifies the circumstances in which a person becomes subject to the notification requirements set out in the schedule. The schedule does not create a public register, but then nor does the Sex Offenders Act of 1997 of Parliament on which this is based.

Sub-paragraph (1) makes a person subject to the notification requirements where convicted of an offence specified in paragraph 2 of the schedule or a person who is found not guilty of one of those offences on the grounds of his insanity or the fact he is under a disability. In all cases the court must direct that a person is subject to the notification requirements.

Sub-paragraph (2) deals with cases where a person is cautioned by the police in respect of a scheduled offence but not prosecuted. If at the same time that the caution is given a prescribed notice is given to the individual, that person will be subject to the notification requirements.

Sub-paragraph (3) enables the court or the prescribed police notice to prescribe the period for which notification requirements will apply up to the maximum as set out in the table.

Sub-paragraphs (4) and (5) deal with cases where a person is dealt with in respect of two or more scheduled offences. For the purpose of determining the maximum for the purposes of paragraph (3), consecutive terms of custody are aggregated and concurrent terms are calculated on the basis of the longer sentence. For example, concurrent sentences of two and three years for scheduled offences shall be treated as a single sentence of three years.

Sub-paragraph (6) deals with cases where a person who is under a disability is subsequently tried. This might occur where a person is found unfit to plead, but recovers and is subsequently tried. The finding of a disability is then disregarded for the purpose of the operation of this paragraph of the schedule.

Sub-paragraph (7) defines the relevant date which is used principally in the second column of the table.

Sub-paragraph (8) treats a direction by a court that a person is to be subject to the notification requirements as a sentence passed on conviction. This will enable appeal against the decision.

Sub-paragraphs (9) to (11) deal with the review of a direction by the police that a person is subject to a notification requirement when cautioned for a scheduled offence. There is an appeal to the High Bailiff and there is also a right of appeal against the decision of the High Bailiff.

Sub-paragraph (12) requires orders which prescribe the form of notice to be delivered by the police under sub-paragraph (2)(b) to be laid before Tynwald.

Paragraph 2 deals with serious offences which are scheduled offences. This paragraph itemises the offences which are to be scheduled offences and in respect of which notification requirements under the schedule will apply. The large category of offences are those in the list which are taken from the Sexual Offences Act of 1992. In addition, there are included offences under schedule 3 to this Bill which deals with indecent photographs of children, the importation of indecent photographs et cetera, offences for printing, selling et cetera indecent or obscene publications, burglary with intent to commit rape. In addition, conspiracy attempts and incitement to commit the specified offences will attract the notification requirements.

Sub-paragraph (2) qualifies the list of scheduled offences. The notification requirements will not apply in respect of offences involving intercourse with young people or incitement to commit incest if it is a first offence and the offender was under 18. In addition, the notification requirements will only apply to a prohibited importation in respect of indecent photographs or pseudo-photographs of a person which gives the impression or predominant impression that the person shown is a child.

Sub-paragraph (3) applies the definitions in schedule 3 to the Bill for the purposes of sub-paragraph (2)(b) of this paragraph - that is, the definition of pseudo-photograph is particularly important for this purpose.

Paragraph 3 sets out the information which must be supplied by offenders to the police and the manner and timescale in which that information is to be supplied in order to meet the notification requirements.

Sub-paragraph (1) specifies the details to be notified: name, address, nature and place of employment and name and business address of employer. Notification must be given within two days of the relevant date defined in paragraph 1, section (7), or, where the offence was committed before the schedule comes into operation, it must be notified within two days following the commencement of the schedule.

Sub-paragraph (2) requires notification of changes of those details within two days.

Sub-paragraph (3) requires the information passed to the police to include date of birth, name on the relevant date and home address on the relevant date.

Sub-paragraph (4) deals with the practical issues where a person is unable to notify the police because the person is in custody, in hospital or outside the Island. In such cases notification must be given within two days of release of custody, release from hospital or arrival in the Island.

Sub-paragraph (5) enables notification in person or in writing.

Sub-paragraph (6) obliges the police to give written acknowledgement of notification.

Sub-paragraph (7) defines 'home address' and 'qualifying period' for the purposes of this paragraph.

Paragraph 4 deals with offences. This paragraph makes it an offence to fail to notify the necessary details or any change of details without reasonable excuse. In addition, it will be an offence to notify information which is known to be false. The maximum penalty is £5,000 or/and a six-month custody. Proceedings for an offence will be before the summary courts - that is, the magistrates or High Bailiff. The offence of failing to notify is committed on the day of the first failure and the offence continues until there is compliance.

Paragraph 5 deals with young offenders, and this paragraph makes special provision for young sex offenders and reduces the maximum periods for which they may be subject to the notification requirements; it enables parents and guardians to comply with notification requirements on behalf of the young offender and limits the penalty for an offence under this schedule to a maximum of £5,000 fine without the option of custody. While accepting that some young offenders may have a greater chance of rehabilitation, the Bill includes young offenders within the notification requirements on the basis that the requirements are intended as a means to secure public protection from those who have committed serious sex offences and are not intended as a punishment.

Paragraph 6 deals with certificates for the purpose of schedule 1. This paragraph provides that a proof that a person is convicted of or cautioned in respect of schedule offence may be given by production of a certificate. In the case of a conviction the certificate will be given by the court and in the case of a caution by the police. The conviction will be given by

the constable who undertakes the caution. A certificate to be given by the police must be in a form prescribed by an order made by the Department of Home Affairs, which must be laid before Tynwald.

Paragraph 7 deals with offences committed outside the Island, and this paragraph enables the Department of Home Affairs to make orders applying the schedule to offences committed outside the Island. Such orders cannot come into operation unless approved by Tynwald. The provision will enable the mutual operation of a notification system principally with other parts of the British islands, but also with other countries or territories if specified in the order.

Paragraph 8 deals with interpretation of schedule 1. Sub-paragraph (1) provides definitions for certain expressions. Copies of the legislation referred to in the definitions is attached.

Sub-paragraph (3) is particularly important in respect of references in paragraph 1 of the schedule to persons who are under a disability.

Sub-paragraph (2) deals with cases where a court of summary jurisdiction is satisfied that a person did the act charged, but is suffering from a mental illness or severe mental impairment. In such cases the court may authorise the admission of the person and detention of that person in hospital. Mr Speaker, I beg to move clause 1 and schedule 1.

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

Mr Karran: Vainstyr Loayreyder, I have no problems with this clause in many respects, but I do wonder - we have heard about the sanctions in so far as if somebody falsifies that you are on the register. I just wonder how you find out whether you are on the register or you are not on the register. What mechanism is there there? It is all right saying there is a criminal offence for it; I think that I would like to know how you have a situation where you can actually protect our kids from people on different registers maybe in the Irish Republic and the UK. The main aim of this clause was a paedophile register originally to protect our kids; now it has ended up that anybody can be on the register, even somebody who is not safe to be left with sheep, and I do think that it is going to be very difficult to then have a register in the UK - and it is all right some people nodding their head and shaking their heads; the fact is, you have to have something on the same lines as what they have got in the UK, surely, and if they are having a paedophile list in the United Kingdom then surely they are not going to change that information for just a sex offenders list that would have anybody on it, which is at the present time on the list here.

I am concerned that, whilst it is very well meaning, the fact is it is a catch-all, a save-all, and I am just concerned that you will end up making the position weaker. The very people that you are want this piece of legislation in was to protect the youth, and I think they have come a sad second regarding the offences that are here. I would have been a lot happier to have a register purely for people who are not fit or not safe to be left with children. What we have here is a register that has all sorts of things in for just political compromise, in my opinion, and I think that is wrong. I shall support the clause 1 of the Bill, but it does concern me greatly.

Mrs Cannell: Mr Speaker, I welcome the provisions within this particular clause and, looking at the schedule, schedule 1, it does actually list under 2 'the following offences', which are scheduled offences. I would have said that is quite a comprehensive list, in answer to the hon. member for Onchan, but in relation to the schedule under clause 1 could I just ask the mover: on page 41 under (a) - it is about half-way down the page here - it refers to a first offence committed by an offender who, at the time of the offence, was under 18 years of age. This is in relation to, on page 40 at number 2, section 4, intercourse with young people, and an offence under section 8, which is incitement to commit incest. In relation to those particular offences, if it is a first offence for someone under the age of 18, then I take it that nothing is actually done about it. What I would ask the hon. mover is: if it is a second offence, what provision is there under schedule 1 for dealing with that? And equally, if it is a first offence, but it is a rather serious offence under those two provisions there, is it really satisfactory to let the youngster off? After all, at the time of the offence he or she may well have been under the age of 18, but they could have been 17 years and six months, 17 years and 11 months, which is practically an adult age, and it seems to me that if an offence is committed in relation to those two provisions involving young people or one of an incestuous nature, particularly with having intercourse with young people, it could involve a young child there. We have had cases, although I am happy to say they are quite rare, on the Isle of Man where youngsters who have been put in charge of baby-sitting, for instance, have abused that position and have interfered with very, very young children and I do recall one or two offences which occurred and on both occasions they were committed by somebody who was actually under the age of 18. How are we going to deal with that if there is the cut-off point of 18 years of age, given that it does and has occurred and probably, regrettably, will occur in the future?

The Speaker: The minister to reply.

Mr Bell: Thank you, Mr Speaker. It seems as usual we cannot win with Mr Karran, the hon. member for Onchan. A great deal of thought has gone into this Bill. We have given a number of presentations and the opportunity to members to come along and have the Bill, and particularly this section of the Bill, explained to them in some detail, and the opportunity was there, of course, at the policy seminar only a couple of weeks ago. We have done our best to word and structure the Bill and the sex offenders register to enable reciprocity with the United Kingdom, because there will be, or there may be on occasions, movement of people who should be on the register from the Isle of Man to the United Kingdom and indeed from the United Kingdom to the Isle of Man and therefore it is important we believe so that there can be a free flow of information between the two registers and that we make them as compatible as they possibly can, and this is what we hope we have achieved within the structure.

I have to say I am disappointed with his comments to say that once again our kids have come a poor second. That is really absolute nonsense. The whole purpose of the Bill is to provide for the first time real monitoring of people who are a danger to young children on the Island, to bring them permanently, or at least for a considerable period, under the scrutiny of the police, of probation and to make sure that society knows of their whereabouts, and if indeed a potential threat does appear the authorities will be able to move very, very quickly to ensure that the appropriate people are warned of a danger in that area and we will be able to prevent any harm coming to our children, so it is absolutely and utterly wrong to say that we

have not considered the children, and I have to say I am disappointed that that interpretation has been put on the Bill.

The hon. member for East Douglas - I thank her for her support. I know it is an issue that she has been interested in. The main issue, I think, she is referring to is the problem of juvenile offenders in various aspects. Now, first and foremost the Bill has been worded in such a way as not to include what might be considered offences where there has been consensual teenage sex. It is a recognition that this does happen and we would not wish to, or in fact we do not, see them as being long-term sex offenders; it is simply a response to their hormones at that age, so we have avoided in that situation putting them on any long-term sex offenders register. Likewise, I think the view has been that if they are under 18 and they commit one offence I guess the allowance is made for their immaturity and they will, of course, be punished for it, but it just means that they do not go on the sex offenders register. If there is a second offence, then they will go on the register, but, as the hon. member will read in the schedule, there is a reduced period of time where juveniles have to stay on the register. It, in effect, equates to about half of what the adult's term of registration will be. So there will, of course, I guess, always be the problem; whatever legislation we put together there is always that little grey area: what happens if they are 17 years and 11 months or 18 years and one month? It is difficult to actually be quite specific without catching one or two people potentially in that. I hope that will not be the case and we will be able to deal with people in that situation in a pragmatic way, but the Bill has been drawn up drawing 18 as the cut-off point. That is the situation in the UK, and again we are trying to follow the structure of the UK Bill to enable clear reciprocity of information.

There is one other point which Mr Karran, member for Onchan, mentioned - I just mention it to him again: how will they know they are on the register? I did explain that in the presentation: they will be notified, obviously, by the courts, they will be instructed by the courts or, if it is on a caution, they will be notified in writing by the police officers concerned, so there is no question that they will not know they are on the register.

This has been a very sensitive and, I think, in many areas a much sought-after provision which many people on the Island have been looking for us to introduce. It has taken some time to put this together and I thank hon. members for their support for this. I beg to move.

The Speaker: Hon. members, clause 1 and schedule 1 of the Criminal Justice Bill 2000. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 2 and schedule 2, the hon. member for Ramsey, Mr Bell.

Mr Bell: Thank you, Mr Speaker. Clause 2 introduces schedule 2, which makes provision for the prosecution in the Island of sexual offences committed outside the Island. Schedule 2 relates to sexual offences committed outside the Island, and schedule 2 makes it an offence for a resident of the Isle of Man to commit certain sexual acts abroad against children. The actions concerned are those which, if done on the Isle of Man, would amount to one of the sexual offences specified in paragraph 5 of the schedule. The actions leading to the prosecution must also amount to offences in the place where they were committed. Provision is also included in the schedule for conspiracy and incitement to commit sexual offences outside the Island.

Paragraph 1 deals with extension of jurisdiction. This paragraph and paragraph 5 of the schedule are based on provisions in the Sex Offenders Act 1977 of Parliament. This paragraph extends the jurisdiction of courts in the Isle of Man to deal with certain serious sexual offences which are committed outside the Isle of Man if the conditions in the paragraph are fulfilled. The normal rule of law is that the Isle of Man courts will not have jurisdiction in relation to crimes committed outside the territory of the Isle of Man. These provisions provide exceptional extension of jurisdiction which can be found only in very few other cases.

Sub-paragraph (1) declares an act done by a person outside the Isle of Man to be an offence under the law of the Isle of Man if it constituted an offence in that country and would also constitute an offence if it was done in the Isle of Man. There is therefore created dual criminality.

Sub-paragraph (2) limits proceedings for sexual offences committed outside the Island to persons who are or become resident in the Island.

Sub-paragraph (3) deals with cases which under the law in force in the other country or territory are not described as an offence but nevertheless attracts punishment. Such an act is to be treated as an offence for the purposes of sub-paragraph (1)(a).

Sub-paragraph (4) is intended to crystallise defence and prosecution submissions at an early stage. This will avoid delays when the hearing of the court is attempting to determine whether a foreign country or territory has a similar offence. The procedure will be that the court will assume that there is an equivalent offence in the other country or territory unless the defence serves a notice that the defence is of the opinion that there is no equivalent offence showing the grounds for the opinion and requiring the prosecution to show that there is an equivalent offence.

Sub-paragraph (5) commits the court to allow the defence to require the prosecution to show that there is an equivalent offence in the other country or territory even where a notice under sub-paragraph (4) has not been served. This gives the court sufficient discretion to waive the notice where justice demands.

Sub-paragraph (6). In the Court of General Gaol Delivery the question of whether there is an equivalent offence under the law of another country is to be decided by the judge alone. This is because it is a matter of law rather than a matter of fact and normally will be proved by evidence from lawyers who are experts in the law of the other country.

Paragraph 2 and paragraphs 3 and 4 are based on the provisions of the Sexual Offences (Conspiracy and Incitement) Act 1996 of parliament. This paragraph applies section 330 of the Criminal Code of 1872 so that it applies to an agreed course of conduct to commit acts which, if done in the Isle of Man, would amount to one of those sexual offences set out in paragraph 5 of this schedule. The offences must also be offences in the place where they are intended to be committed.

The paragraph sets out the conditions on which section 330 will apply. The problem against which this provision and paragraph 3 are directed is child sex tourism - for example, a person in the Isle of Man entering into arrangements with a person outside the Isle of Man to undertake the acts outside the Island. Section 330 of the Criminal Code of 1872 provides when two or more persons shall conspire to commit an offence or to commit any act injurious

to public morals such two or more persons are and shall be severally held to be guilty of misdemeanour and, being convicted thereof, shall be liable to imprisonment for any term not exceeding 10 years.

Subsection (1) applies that paragraph if the conditions set out in the subsequent sub-paragraphs are satisfied.

Sub-paragraph (2) requires the agreed force of conduct to involve an act or happening which is intended to take place outside the Island.

Sub-paragraph (3) requires the act or event to constitute an offence under the law of the other country or territory.

Sub-paragraph (4) requires the agreement to fall within section 330 of the Criminal Code if all the elements of the offence were committed in the Isle of Man.

Sub-paragraph (5) requires that a party to the agreement or his agent does something in the Island in relation to the agreement before its formation or a person became a party in the Island or a party active in pursuance of the agreement in the Island. One of these requirements is essential to give proper connection between the agreement, the parties and the Isle of Man.

Sub-paragraph (6) applies the offence of conspiracy under section 330 to the Criminal Code as if the sexual offence in the other country or territory is an offence under the law of the Island.

Paragraph 3 deals with the offence of incitement to commit an offence. Whereas conspiracy requires two or more co-conspirators, incitement can be committed by a single person. In general terms an incitement is influencing the mind of another to commit an offence. The offence itself will not have been committed at that stage. The offence arises under section 336 of the Criminal Code 1872 which reads, 'Whosoever shall solicit or endeavour to procure any other person to commit a felony or misdemeanour shall be guilty of a misdemeanour.' Felonies and misdemeanours are the more serious types of crimes, with felonies being the most serious. In addition to the general offence of incitement in section 336 of the Criminal Code, there are on the statute book a number of specific offences - for example, incitement to commit incest under section 8 of the Sexual Offences Act 1992. This paragraph applies to incitement to commit rape, have intercourse with young people, unnatural offences, assault with intent to commit buggery, indecent assault, indecency with children and an offence relating to indecent photographs or pseudo-photographs of children. The sub-paragraph sets out three criteria for the application of this paragraph: first, the act must amount to incitement to commit one of those sexual offences outside the Island, and the particular sexual offence is also an offence under the law of the other country. Sub-paragraph (2) declares that the charge of incitement to commit that sexual offence outside the Island is to be triable in the Island. Sub-paragraph (3) specifies where communications of any sort are to be treated as done. A message which is sent or received in the Island is treated as done in the Island for determining whether an incitement has taken place in the Island.

Paragraph 4 and sub-paragraphs (2) and (3) are supplementary. Sub-paragraph (1) is a similar provision to that in paragraph 1, sub-paragraph (3) of the schedule. Sub-paragraph (2) is similar to paragraph 1, sub-paragraph (4) of the schedule. Sub-paragraph (3) defines the

expression 'relevant conduct' by reference back to the agreed course of conduct in the case of a conspiracy and, in the case of incitement, what the accused had in view. Sub-paragraph (4) is similar to paragraph 1(5) of this schedule. Paragraph 5 is similar to paragraph 1(6) of this schedule and sub-paragraph (6) makes it clear that British citizenship is irrelevant for the purposes of guilt. Sub-paragraphs (7) to (9) provide interpretative provisions for references in other statutory provisions to conspiracy or incitement to commit a sexual offence to which schedule 2 applies. The effect is that references in other legislation to conspiracy or incitement to commit acts which amount to those offences in the Isle of Man are to be taken to include conspiracy to commit the same act out of the Isle of Man.

Paragraph 5 provides for interpretation, and sub-paragraph (1) specifies the sexual offences to which this schedule applies. Sub-paragraph (2) makes it clear that the schedule will only apply in respect of an act on or event occurring after the schedule comes into force. So, Mr Speaker, I beg to move clause 2 and schedule 2.

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

Mr Karran: Vainstyr Loayreyder, again I will be supporting this clause but I do still feel that it does demean the issue. When we were talking about this legislation originally we were talking about child abuse tourism. This has now been spread up; mercifully we have not, as in the first clause, got the situation of bestiality and somebody wanting. . . but it is still wrong. What was originally intended was that the particularly obnoxious trade of child sex tourism should have been affected; what we have here is not that, and I think it is important that it is recognised. It does not matter how many presentations of that hon. member's that I am too busy to go to and I appreciate the offer and the work that the department has done, but some of us have a harder and heavier workload than others as far as departments are concerned. We cannot fit all these things in.

Mr Henderson: Well said!

Mr Karran: That is no excuse for a member in this House - and it is all right people saying, 'shame' - to put down questions about legitimate points in this legislation. What I am concerned about is that it is a multitude of issues that this piece of legislation can be used for, and I think it is wrong to give the impression. The impression was we were going to hit the perverts who fed on the poverty in many of these countries in the Third World. I am concerned that we have got that, but we have also got the situation where it can go on for other issues as well, and that is wrong; it demeans the important factor that we wanted something done about the paedophiles.

I know I will be criticised but I do say that the original intention was to sort out the child sex trade, and what we have here is a situation where this can be admittedly not broadened as far as clause 1 is concerned but still far too much. If somebody causes the heinous crime of rape they should be taken back to the country where they have served the rape and they should be prosecuted for that. As far as kids are concerned we should be doing this, but I do think there is a question that has to be asked: this sub-clause (5) is too broad in my opinion and it can be used for the wrong reasons and is very dangerous, because it was originally proposed purely to stop the exploitation of children in the Third World.

I will support this proposal, I will have no problem with that, but I do believe that it is a catch-all situation, I think it is wrong and I think it may come back to haunt us at a later date, Vainstyr Loayreyder.

Mr Shimmin: Mr Speaker, we may have progressed to clause 2 but we appear to be hitting Catch 22 with the hon. member for Onchan. Certainly there was a public perception that this was going to be, as he states, some sort of paedophile register or to try and prevent the heinous crime of offences against children. However, as the department looked at this issue I believe it would have been remiss and would have been wide open to criticism both within this House and externally had we not introduced a sex offender register which looked towards sexual acts with subnormal persons, sexual acts with mental patients which would not have been covered in the original Bill. Therefore the progression of this Bill, which has taken many months into years to get to this stage, is a genuine attempt to try and ensure the long-term safety and security of the children and the people on the Isle of Man, all the adults of the people of the Isle of Man and to avoid anybody using the Isle of Man as a haven for these crimes elsewhere. This Bill does that. The fact that it goes beyond what the hon. member would have actually wanted, I find, is purely . . . It appears more complex but it actually achieves more than the hon. member is after and, I think, therefore should be congratulated, and I would urge members to see it for what it is, which is an expansion on what was originally intended into a far better piece of legislation, sir.

The Speaker: The minister to reply.

Mr Bell: Thank you, Mr Speaker. I can only endorse the comments that have been made by my colleague for West Douglas, Mr Shimmin. It is quite clear, it would seem to me from the hon. member for Onchan has said, that he has totally misread the Bill because it does deal primarily with using this legislation to close what could be considered a loophole currently for using the Isle of Man as a back door to promoting child sex abroad. Certainly the concept of child sex tourism is one which is at the forefront of people's minds, exploiting children in the Third World, but what we are providing here is a provision to stop the Island being used as a back door for this type of offence anywhere off-Island.

It is not only the Third World we are talking about; we feel that we have a moral duty to ensure that the Isle of Man plays its part internationally to make sure that we are not used in this way which would obviously bring the Isle of Man into severe disrepute and it is our intention, as best we possibly can phrase the legislation, to ensure that the Isle of Man is never used in this manner. It lists a range of offences for which the legislation can be utilised; it also stems the initial concept to cover conspiracy and incitement from the Island, and we believe we have covered the whole gamut of potential possibilities for the Island's misuse in this manner.

I have to say that we were not charged particularly by this hon. Court or another place to provide legislation in one direction or another. It is my department and the contributions I have had from the hon. members in this House and another place which have constructed the Bill in the manner that it has been done. We have consulted widely with all those people who have a legitimate voice and concern in this particular area and I believe the wording of the Bill now meets the requirements of members and certainly meets the requirements of the lobbyists who have approached us from outside. But I can give the hon. member a categorical assurance

that to the best of our drafting ability this Bill does tackle the problem of child sex tourism, and I hope the hon. member can find a way of supporting this particular move.

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

The Speaker: Hon. members, clause 2 and schedule 2 of the Criminal Justice Bill 2000. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 3 and schedule 3, the hon. member for Ramsey, Mr Bell.

Mr Bell: Thank you, Mr Speaker. Clause 3 deals with indecent photographs of children. This clause introduces schedule 3, which makes provision in relation to the possession, sale et cetera of indecent photographs and pseudo-photographs of children.

Schedule 3 deals with indecent photographs of children and this schedule creates new offences in relation to the taking, distribution, possession or publication of indecent photographs of children. Powers of entry, seizure and forfeiture are conferred on the police. The provisions apply in respect of photographs, negatives, photographic images on computers, film and computer-generated images which appear to be photographs. The schedule is based on the Protection of Children Act 1978 of parliament.

Paragraph 1 deals with the taking et cetera of indecent photographs of children. This paragraph makes it an offence to take, distribute, show or possess indecent photographs or pseudo-photographs of children under the age of 16 or to publish any advertisement to the effect that the advertiser distributes or shows such photographs. Mere possession of such photographs is clearly made an offence. The expressions used in this paragraph are defined in paragraph 7, and penalties for the offences are contained in paragraph 6.

Sub-paragraph (2) in effect defines 'distribution' for the purposes of the schedule. This can be simply parting with possession or offering or exposing it for acquisition.

Sub-paragraph (3) requires the Attorney-General's consent for proceedings to be taken under this schedule.

Sub-paragraph (4) provides defences to charges of distributing or showing or having possession of indecent photographs or pseudo-photographs of a child. The three defences are: first, there is a legitimate reason for distributing, showing or possessing the material - presumably exceptional medical or educational purposes; second, the person had not seen the material and did not know or had cause to suspect that the material was indecent - this would be an entirely innocent possession; third, the photograph was sent to the person without his request and he did not keep it for an unreasonable time - for example, an unsolicited photograph was sent to an e-mail address which is deleted on discovery.

Sub-paragraph (5) modifies the Children and Young Persons Act 1966, which in appropriate cases will enable a child to be removed to safety where an offence under this schedule has been committed.

Paragraph 2 deals with evidence. This paragraph is intended to limit argument about whether a child was, at the material time, under the age of 16. The court will be entitled to look at all the evidence and, if it appears that the child was then under 16, to make that assumption.

Paragraph 3 deals with offences by corporations. This paragraph is a standard technical paragraph to impose personal liability on officers of companies and other forms of body corporate where the officer, or a person who purported to act as such, gave his consent to the commission of an offence by the body corporate or if the offence was committed with the connivance of or was attributable to the neglect of that officer.

Sub-paragraph (2) deals with those companies which do not have boards of directors but are managed by their members. In such cases the managing members will attract criminal liability in the same manner as company officers.

Sub-paragraph (3) deals with the special case of limited liability companies, which are bodies which have some of the attributes for partnership and some of the attributes for company. The constitution of a limited liability company is such that management can be in the hands of members, the company's manager or its registered agent. These persons will attract the same liability as officers of companies under sub-paragraph (1).

Paragraph 4 deals with entry, search and seizure. This paragraph gives the police power of entry with a justice's search warrant to seize articles believed to be or to include indecent photographs or pseudo-photographs of children.

Sub-paragraph (1) applies the powers contained in this paragraph where a justice of the peace is satisfied that the indecent material is in any premises. A constable must provide information on oath to the justice of the peace to show that there are reasonable grounds for so suspecting.

Sub-paragraph (2) enables the justice to issue a warrant to enter and search premises. Force may be used to effect entry and the warrant authorises seizure and removal of what are believed to be indecent photographs or pseudo-photographs of children.

Sub-paragraph (3) requires anything seized under the authority of the justice's warrant to be brought before a JP, and sub-paragraph (4) extends the usual meaning of 'premises' to include stalls and vehicles.

Paragraph 5 deals with forfeiture and this paragraph provides a procedure for the determination of whether items seized under paragraph 4 are to be forfeited, in which event they would be destroyed.

Sub-paragraph (1) deals with the commencement of forfeiture proceedings. A summons is issued to the occupier of the premises - that is, the user in the case of a stall or a vehicle - to appear before the court to show why the items should not be forfeited.

Sub-paragraph (2) entitles the court to order the items to be forfeited if satisfied that they are indecent photographs or pseudo-photographs of children. An order can be made if the person summoned does not appear.

Sub-paragraph (3): a person claiming to be the owner of the items is entitled to appear before the court to argue that they should not be forfeited.

Sub-paragraph (4): there is a right of appeal against the forfeiture order to the high court, and sub-paragraph (5) allows the court to order the payment of costs where a forfeiture order is not made.

Sub-paragraph (6) provides for the cases where there has been a seizure under this schedule and, in addition, a person who is convicted in respect of the seized items. In such cases the court is obliged to order forfeiture.

Sub-paragraph (7) allows the time for making an appeal to expire before a forfeiture order takes place. Where there is an appeal, the forfeiture order will not take effect until the conclusion of the appeal.

Sub-paragraph (6) deals with punishments. This paragraph enables both Courts of Summary Jurisdiction and the Court of General Gaol Delivery to deal with proceedings under this schedule. On conviction before the Court of General Gaol Delivery the maximum penalty is five years' custody and/or a fine of any amount. On conviction before a Court of Summary Jurisdiction, the maximum penalty is six months' custody or £5,000.

Paragraph 7 deals with interpretation. This paragraph provides for the meaning of certain expressions used in the schedule. The paragraph deals principally with the items that are to be included in the expressions 'photograph' and 'pseudo-photograph'. The intention is to cover all images, whether genuine photographs - that is, including film, video-recording and electronic images - or pseudo-photographs, which are made by means of digital manipulation of images to create completely synthetic photo-realistic pictures. Pseudo-photographs need only to be shown to convey the impression of a child even though some of physical characteristics are those of an adult. The schedule deliberately does not define the meaning of 'indecent'. There is a good deal of case law on this and it is not thought to require definition. In effect, it means offending against recognised standards of propriety. A photograph need not be obscene to be indecent. The circumstances in which a photograph was taken or made for the motivation of the photographer is not a relevant factor.

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

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

Mr Downie: Mr Speaker, no problem in supporting what the minister is doing today, but I wonder if he would use this opportunity to give a clear and unequivocal definition of images received on the internet. Now, my understanding of the situation is that a person can receive images on the internet which are or include indecent photographs of children and obtain pornography, but the offence then is to reproduce those images and use them in some other form. I think it would be a good time for the minister to put his marker down and clarify this situation. As members will be aware, we have all sorts of information that comes to us now, and it is obvious that the internet is being used, sadly in my opinion; it is an excellent medium for other things but sadly it also attracts images of a very poor and indecent nature from time to time, and I think, if the issue was clarified now, members would be aware of what the penalties were for reproducing any images that were taken directly from the internet in some way. Thank you.

Mr Cannell: Mr Speaker, a small concern which I would seek assurance on from the hon. minister. The powers of entry to people's premises we have spoken of in another context fairly recently, and I am sure it was the express wish of the majority of hon. members that that is a procedure to not be embarked upon except for the most desperate of reasons, and yet here again we have the opportunity for people to batter their way into people's houses, virtually, on the notion that they might find some incriminating material. If they do find it, then

that is not fine but it is justification for why that was embarked upon, but we need to go back just about four or five years - and this is the assurance I seek really - to a case where I think it was an ITV lady newsreader and her husband had the most terrible experience when some photographs they put in for processing proved to be viewed as being indecent by a Nosey Parker at the film processing laboratory, who took it upon himself or herself to do no less than contact the CID, whereupon the said persons were interrogated, as I recall it the child was temporarily removed, and all manner of items had to be gone through before they were able to prove their innocence. So I seek an assurance from the hon. minister that this procedure will be only embarked upon - that is, entering people's houses - for the most extremes of reasons and where there is more than just a passing notion of the fact that there might be a difficulty; and also that people taking ordinary shots of their children in innocent positions - and it is a very sad indictment of today's position that many of us who are parents of grown-up children, if you were to be in a similar position now of having new children, would feel inhibited from some of the procedures which were quite the normal thing between parents and their children, which is to take amusing photographs of them in the bath or whatever or in front of the fire, and now you feel inhibited from doing so because of the pressure of this material. I suppose it is a sad fact of life in general, but I just would like to know that there will be every reason taken before extreme procedures are embarked upon.

Mr Karran: Vainstyr Loayreyder, I think the hon. member has hit a very valid point. It is about a sensible balance. The hon. member for West Douglas is he talks about the internet and taking images off, and it is between the balance between the two members that have spoken before me; how far do you go as far as that is concerned? What concerns me is that this whole Bill is only supposed to cost £107,000 and 1¹/₂ personnel at an administrative officer's level grade.

Now, I support this clause; I have got no problems with this clause. I have one query with this clause: how are you really going to effectively police this? I am concerned that that is an issue that needs to be asked. This Bill is doing an awful lot of things, and for 1¹/₂ staff more, I just am concerned, and when we hear the hon. member for West Douglas talking about starting to looking at people who take stuff off the internet - and I think people who take stuff off would be indecent and sick - but the danger is, how do you police it? The one issue that I wanted to ask, not so much that, but with the resources of 1¹/₂ officers that are supposed to do all the things that are in this Bill, how does he expect to be able to put some sort of control over if there was an internet of paedophiles in the Island? Who would actually try and find out where they hung out and who they were who were putting the stuff on the thing? I just think it is a point that needs to be asked.

On the actual clause 3, sub-clause (2), all I would like to ask the hon. member is, it talks about if the material appears to show that the person is under the age of 16; I would take it that if somebody took indecent or pornographic pictures of children there would be no limitation on when that person can be prosecuted. Does that mean that in 10, 15 years' time the position would be that that person could be brought to account for that? I have got no problem with that but I just think we need to qualify that position at the present time. Thank you.

Mr Bell: Mr Speaker, if I can deal first of all with the hon. member for West Douglas and his concerns about the internet, I can give him an assurance that this Bill does cover that at

the moment; it covers both electronic and computer generated images and the interpretation can be found, actually, on page 53 of the Bill - this is section 7 of schedule 3, subsection (4)(b), which refers to data stored on a computer disk or by other electronic means which is capable of conversion into a photograph, so it does cover the downloading of pornographic images from the internet, and we have seen in recent months in the United Kingdom a very infamous case with Gary Glitter and what has happened there; in exactly the same way our legislation is based on the same premise that the UK Act operates under, so if that crime were carried out in the Isle of Man, the same penalty would arise here so he can rest assured that this Bill has tried to be as up to date as possible given the pace of technological advance, and I think - in fact, I am assured - the drafting as it stands at the moment will cover most expected eventualities at this stage with the development of technological production of indecent photographs, so I hope that answers the hon. member's point.

If I could move on to the hon. member for Onchan, Mr Cannell, who raises concern about powers of entry - and I know this is a regular concern of members in this Court that we do not want to see authority overstretching their right of entry - I could just point out that under paragraph 4, sub-paragraph (1), if I could just repeat it again, a constable must provide information on oath to the justice of the peace to show that there are reasonable grounds for suspecting. He cannot just go in off the street simply on a whim that so-and-so might have an indecent photograph. He has to have good grounds and to be able to prove it to a justice of the peace before he can take any action to enter on a particular premises.

I fully take the point that he has made about the case about the UK newsreader some years ago. I am well aware of the situation there. I think the problem which we are facing with this legislation, and sadly in society generally today, is trying to strike a balance between protecting the rights of the individual to avoid unnecessary harassment - or trespass, I suppose, if you take it to that extreme - and protecting the rights of the children and the moral welfare of the children at the same time. I hope we have got the balance right. We have made great efforts to try and balance those two interests, but where there is a conflict, I have to say, our first priority has to be the welfare of the child, and that will always take, I hope, precedence over every other aspect of it. But I would certainly expect any police officer in the future to use common sense when approaching this particular issue, to recognise what is an innocent family photograph, which I am sure most families have in their collection somewhere, and what has strayed over into pornography or something more serious and, as I say, there is that safeguard ultimately that a constable will need a warrant from a JP before he can actually enter the premises, so I hope that will go some way to reassure the hon. member that there will not be a reckless implementation of this piece of legislation.

Mr Karran, the hon. member for Onchan, again refers to staffing - how are we going to police it? We will be policing it as best we can within our resources on the basis of investigation and information passed on to the police. Clearly we are not going to be policing every computer on the Isle of Man. We are not going to be snooping on every household on the Isle of Man any more than we would do on fraud or any other issue, and the policing of this particular Bill will be carried out in exactly the same way as any other piece of criminal legislation which comes before it.

He also finally makes reference to the issue where the images on material, on photographs or pseudo-photographs, appear to be under the age of 16. It will be for the courts

to interpret whether in fact it is the case that they are under 16, and if a person has those photographs, it does not matter how old the photographs are, that in itself will, if they are pornographic or used in an indecent way, that will still commit an offence, so even if those photographs were 10 years old, as the hon. member refers to, it will still be an offence. So, Mr Speaker I hope I have answered the questions on those. I beg to move clause 3 and schedule 3.

The Speaker: Hon. members, clause 3, schedule 3, Criminal Justice Bill 2000. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 4. Hon. member for Ramsey, Mr Bell.

Mr Bell: Mr Speaker, clause 4 deals with the abolition of presumption of sexual incapacity. This clause inserts a new section 39A in the Sexual Offences Act 1992. It abolishes the existing presumption of sexual incapacity of a boy under the age of 14 years. This long-standing presumption was modified by section 1, subsection (5) of the Sexual Offences Act 1992, under which it was declared that a boy shall not be taken to be incapable of rape by reason only of being under the age of 14. That provision did not result in complete abolition of the presumption because it can apply in other cases involving sexual intercourse, natural or unnatural. This provision completely abolishes that presumption, and I beg to move clause 4.

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

Mrs Hannan: Vainstyr Loayreyder, in schedule 2 it actually names offences and it does not class them as either natural or unnatural, it just names the offences, and I wonder why under this clause it is 'natural or unnatural'. The interpretation under schedule 2 names the offences and yet here we are using the criminal code expressions of probably 200 years ago and I just wonder why we are pussy-footing round here and not naming the acts themselves?

Mr Bell: The only answer I can give to that, Mr President, is that this is the legal draftsman's advice as to how the Bill should be drafted, and we have taken his advice on that. I think people can understand quite clearly what the interpretation is meant to be and I really can not add any more than that to the explanation. I beg to move.

The Speaker: Hon. members, clause 4, Criminal Justice Bill 2000. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 5, hon. member for Ramsey, Mr Bell.

Mr Bell: Thank you, Mr Speaker. Clause 5 deals with the ill-treatment of residents of nursing homes et cetera. This clause amends section 14 of the Nursing and Residential Homes Act 1988 by inserting a new section 14A. The new section makes it an offence to ill-treat or intentionally neglect persons who are for the time being resident in a nursing home or a residential home. The offence can be committed by a variety of persons involved with the ownership, the management and the running of the home. The clause creates an offence similar to an existing offence in section 123 of the Mental Health Act 1998, which applies in respect of the ill treatment of patients in hospitals and mental nursing homes.

Subsection (1) of the new section 14A creates an offence of ill treatment or intentional neglect of persons who are resident in nursing homes or residential homes. A nursing home is defined in the Nursing and Residential Homes Act 1988 as 'any premises not being a mental

nursing home which are used or intended to be used - (1) for the reception of and the provision of nursing for persons suffering from any sickness, injury or infirmity; or (2) for the reception of pregnant women or of women immediately after childbirth; or (3) for the provision of surgical and medical services. A residential home is defined in the same Act as 'any premises which provide or are intended to provide, whether for reward or not, residential accommodation with both board and personal care for persons in need of personal care by reason of old age, disablement, past or present dependence on alcohol or drugs, or past or present mental disorder.' Although there are currently offences involving assault which would cover some of the ground of this offence, ill treatment or intentional neglect will not in all cases be an offence at present.

Subsection (2) of the new section 14A specifies the persons who are liable to prosecution for an offence under subsection (1). They are the proprietor of the home, a manager, officer, employee or other person employed in the home, and any person providing care or services for residents in the home.

Subsection (3) of the new section 14A describes the penalties for offences under the new section. On conviction before a High Bailiff of magistrate, the maximum penalty is six months and/or a maximum fine of £5,000. On conviction before a Court of General Gaol Delivery, the maximum penalty is two years custody and/or a fine of any amount. Subsection (4) of the new section 14A limits proceedings to cases taken by the Attorney-General or taken with the consent of the Attorney-General. The similar provisions in the Mental Health Act 1998 contains the same restriction. So, Mr Speaker, I beg to move clause 5 of the Bill.

Mr Karran: I beg to second, Vainstyr Loayreyder. I am very happy to see this piece of legislation in here. As the mover of the original Bill - and it was a job in itself to get recognised at that time that these vulnerable people can be even more vulnerable than our children in our society - I welcome the piece of legislation and I support it. I am a little bit disappointed that whilst some members in here did not manage to get to the presentation, other members more likely did get to the presentation of the Criminal Justice Bill and raised questions in this House this morning about the issue of care phones. This would have been the perfect place to put it and it is a shame that the hon. member did not use his legislative ability to do so.

But I will support this proposal this morning that is in front of us now because I think it is good. Obviously the way families go and the way that society is going is that people are not having children as part of their life circle. People become more and more vulnerable if they do not have close family ties, so I am very happy with this amendment and I am happy to second it, because I think it has tightened up something that we originally moved because there was nothing before that, and this is something that should be applauded.

Mr Cannell: Mr Speaker, again I welcome the provisions of this portion of the Bill and I feel that perhaps it may come too late to address a certain situation with which I think most members are now familiar, and I am sure the hon. minister is as it appears that the allegations are in connection with premises which may be in or near his constituency. But this comes in time, perhaps, to catch other similar situations of that nature, but perhaps again the hon. minister could give us the link to legislation which, in my opinion, might already be in place, where anybody convicted of such offences should be forthwith banned from operating similarly in the future. I would imagine that the case is that a licence has to be applied for and a conviction on such offences as are detailed in clause 5 would go against anybody being

granted that necessary licence to operate. But we have seen far too many times, in this Island and elsewhere, companies which are operated by directors who hit difficult situations, perhaps financial or otherwise disciplinary, and all they do is re-form another company with similar directors and off they go again, and I would not like to see that happen where people had had recorded convictions for these sorts of offences.

Mr Crowe: Mr Speaker, I would like the hon. mover of this Bill to confirm that in fact we have had discussions and that it was recognised that this was not a suitable vehicle for the registration of providers of alarm systems or indeed of other services which will need to be, as I say, a registration system, and this was not considered to be the correct vehicle after discussions with the Minister for Home Affairs.

The Speaker: The minister to reply.

Mr Bell: Mr Speaker, first of all can I thank Mr Karran for his support and indeed Mr Cannell as well, members for Onchan. It is a measure now which we are bringing in in recognition of the growth in provision on the Island over the last few years and the likely continued expansion in the future provision of residential and nursing accommodation on the Island.

The issue which the hon. member for Onchan, Mr Cannell, refers to is something I would prefer not to comment on at this particular juncture, but our intention with this is obviously to prevent any abuse of authority which obviously lies with the staff and management of these facilities, particularly when that authority is over frequently very vulnerable people who are incapable often enough to look after themselves. So I hope this provision which we are moving now in clause 5 will fill a loophole which will give added comfort and protection not only to the individuals residing in these premises but also to their families outside in the knowledge that this abuse will not be tolerated and will be severely punished if it takes place.

I can confirm the comments of the hon. member for Rushen that the discussions which took place over the registration of providers of alarm systems - this was not felt to be appropriate at this particular time, but there is other legislation coming along and we are prepared to look at any suggestions for future legislation. So I beg to move.

The Speaker: Hon. members, clause 5, Criminal Justice Bill 2000. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 6, the minister to move.

Mr Bell: Clause 6, Mr Speaker, deals with threats to kill or cause serious injury. This clause amends section 38 of the Criminal Code 1872, which makes it an offence to make written threats of murder. The new wording, which is based on the report of the Law Commission on the Codification of Criminal Law in England and Wales, extends the section to include oral threats and updates the language of the section. Under the new section the threat can be to cause death or serious injury. It can be written or oral and the threat can be against the person to whom it is issued or a third person - for example, a relative. Circumstances must show that there was an intention for the others to believe that the threat would be carried out. I beg to move clause 6, Mr Speaker.

Mr Duggan: I beg to second, sir.

Mr Karran: Vainstyr Loayreyder, this just highlights the issue that I was a bit concerned about with the Protection from Harassment Bill, which I supported, and that was fair enough. I support this but what I would like to know is, what actually is the difference between this clause and the proposed Bill that will be getting its clauses stage at next week's sitting? In my opinion there is very little difference, really. What cases would be different as far as harassment? It does just highlight the issue that I brought up about harassment.

Now, we have all been harassed in this hon. House by people who have threatened all sorts to us. We have only got to look back at emotive issues like abortion and the likes of the legalisation of homosexuality and we have had people who have threatened all sorts at us. Now, this is something that I support completely and I have got no problems with this clause as it stands. I mean, if somebody goes around threatening to kill you or threatening serious injury to you, then I think the police should be able to deal with that issue, but I just think it would be very interesting to know what the difference is between this clause 6 and actually the Bill that was proposed and read today. I am concerned that it does highlight the issue of what is harassment? I would hate the issue that was raised with another Bill to blur the situation that we are having a situation where political groupings could be classed under another Bill, admittedly not under this, but I am concerned about that issue and I think that this hon. House should be concerned about that issue, because this clause actually highlights my concern even further. The threats of violence to somebody is unacceptable, but that is what I am concerned about with this, and I do think that members need to think seriously about the issue of harassment which comes up at the next sitting.

The Speaker: The minister to reply.

Mr Bell: Mr Speaker, this is a very straightforward Bill; it has got nothing to do with harassment. We have discussed harassment this morning. As I explained, and I will just repeat if hon. members will bear with me, the new wording which is based on the report of the Law Commission on the Codification of Criminal Law in England and Wales, extends that section to include oral threats and updates the language of the section. All we are doing is modernising something which in effect has been in since 1872, which is to give written threats of murder. It updates a language so that there is no misinterpretation of what the position might be and it extends that same interpretation to the use of oral threats. There is a considerable difference between my threatening the hon. member for Onchan with death immediately -

A Member: He needs it! *(Laughter)*

Mr Bell: - and his continual harassment of me on every clause that comes along this afternoon! *(Interjections)* I think there is a world of difference and I am sure hon. members recognise that -

Mr Henderson: Well said, minister.

Mr Bell: And I hope this is a very straightforward, small piece of modernisation of, in effect, the language of the law, and a small extension to include oral threats. I can not really explain it any further than that, Mr Speaker, and I beg to move.

The Speaker: The motion is that clause 6 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Hon. member for Ramsey, clause 7.

Mr Bell: Clause 7, Mr Speaker, deals with the abolition of the ancient year-and-a-day rule in homicide offences. The rule applied to offences involving death and suicide and required the death of a person to occur within one year and one day of the offence. The rule was probably intended to ensure that the act or omission caused the person's death. The advance in forensic science has now make the rule redundant. In homicide cases it will still be necessary to show that death was caused by the particular act or omission complained of. Sub-clause (1) abolishes the year-and-a-day rule and sub-clause (2) applies the abolition only to cases occurring after the commencement of this sub-clause. The act or omission in question in question must have occurred after the abolition comes into force. I beg to move clause 7, Mr Speaker.

Mr Duggan: I beg to second, Mr Speaker.

The Speaker: The motion is that clause 7 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. We move on to part 3. Clause 8, the Minister for Home Affairs.

Mr Bell: Clause 8, Mr Speaker, deals with the unlawful marketing of knives. This clause and all the clauses up to clause 16 deal with two new offences relating to combat knives. The offences are contained in clauses 8 and 9. Exemptions and defences are contained in clauses 10 and 11. Clauses 12 to 14 deal with the rights to entry, seizure and forfeiture. Clause 15 deals with the personal liability of officers or bodies corporate and clause 16 contains definitions. So clause 8 makes it an offence to market knives in a way which indicates or suggests that they are suitable for combat or in a way which is likely to stimulate or encourage violent behaviour involving the use of the knife as a weapon. A knife is an instrument which is a blade or is sharply pointed. Sub-clause (3) indicates examples of cases where there is an indication or suggestion that a knife is suitable for combat. It may be the name or description of the knife - for example, combat knife - some description on the knife or packaging or in any advertisement which applies to the knife. Sub-clause (4) defines what is meant by marketing a knife: it means sale, hire, offer or exposure for sale or hire or possession for the purposes of possession of sale or hire. Sub-clause (5) provides penalties for an offence under the clause. On conviction before the High Bailiff or magistrates, the maximum penalty is six months' custody and/or a fine not exceeding £5000. On conviction before a Court of General Gaol Delivery, a maximum penalty of two years' custody and/or a fine of any amount. Mr Speaker, I beg to move clause 8 stand part of the Bill.

Mr Duggan: I beg to second, sir.

The Speaker: The motion is that clause 8 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 9, Mr Bell.

Mr Bell: Clause 9 makes it unlawful to publish any written, pictorial or other material in connection with the marketing of any knife where that material indicates or suggests that a knife is suitable for combat or is otherwise likely to stimulate or encourage violent behaviour involving the use of a knife as a weapon. Publication includes all form of publication including electronic.

Sub-clause (2) specifies the penalties for an offence under sub-clause (1). On conviction before the High Bailiff or magistrates the maximum penalty is six months custody and/or a fine of £5000. On conviction before a Court of General Gaol Delivery the maximum penalty is two

years' custody and/or a fine of unlimited amount. Mr Speaker, I beg to move clause 9 stand part of the Bill.

Mr Duggan: I beg to second, Mr Speaker.

The Speaker: The motion is that clause 9 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 10, Mr Bell.

Mr Bell: Clause 10 provides for a defence where a knife is marketed or material is published in connection with the marketing of a knife for use by the armed forces, as an antique or curio, or as falling within such category as may be prescribed. The defence will only apply if it was reasonable for the knife to be marketed in the way that it was and there were no reasonable grounds for suspecting that a person into whose possession the knife might come in consequence of the way in which it was marketed would use it for an unlawful purpose. The same defence is provided in respect of offences under clauses 8 and 9. Sub-clause (3) defines 'prescribed' for the purposes of sub-clauses (1)(a)(iii) and (2)(a)(iii) as meaning prescribed in regulations made by the Department of Home Affairs. Mr Speaker, I beg to move that clause 10 stand part of the Bill.

Mr Duggan: I beg to second, Mr Speaker.

The Speaker: The motion is that clause 10 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 11, Mr Bell.

Mr Bell: Clause 11 provides for a defence where the person accused does not know or suspect, and has no reasonable grounds for suspecting, that the way in which the knife was marketed or the material was published amounted to an indication or suggestion that a knife was suitable for combat or was likely to stimulate or encourage violent behaviour involving the use of a knife as a weapon. The clause also provides for a defence where the persons charged took all reasonable precautions and exercised all due diligence to avoid committing the offence. The same defences apply in respect of offences both under clauses 8 and 9.

For the purpose of sub-clause (3) of the clause an example of taking all reasonable precautions might arise where a shopkeeper issues instructions to all his staff not to market knives in an aggressive way. The prosecution which arose out of circumstances where one of the shop staff had flouted the instructions without the shopkeeper's knowledge or authority, will attract the defence. Mr Speaker, I beg to move that clause 11 stand part of the Bill.

Mr Duggan: I beg to second, sir.

Mr Downie: In supporting the principles behind the various clauses dealing with knives I would just like the minister to clarify: there are still quite a number of knives for sale on the Island; some are still, as we speak at this moment, being marketed as combat knives, commando knives, bush knives. In fact, I saw a large-bladed machete the other day and the advertising material on that was 'fight the weeds' by this particular type of bush knife. Now, that could be termed as aggressive - well, the word 'fight' was included so that is the way I read the Bill. I support what the mover of the Bill is trying to do, but I think, when this actually becomes law, there will be people out there who have a lot of these things in stock and I think it might be appropriate at some time during the reading stage of this Bill to indicate how all these offensive weapons can be dealt with, and whether there is going to be a system brought in similar to the UK where there has been a compensatory package to deal with firearms and

other weapons which become illegally held. So I would ask the minister to give some consideration to that and perhaps, if he is not going to address it today, address it when the Bill is being read for a third time.

Mr Karran: Vainstyr Loayreyder, I would just like to ask the mover, could he just clarify what he means by knives? Admittedly the generation before us that brought home knives or the likes of the knife off the end of the gun - is that classed as being illegal now in this situation? The point is, I do think that any moves to try and tighten up on the legislation on knives is a good thing and I have no problem with that, but I just wonder if he will just clarify so people who own those sorts of things - maybe their grandfather was at Dunkirk or somewhere - they could technically be criminals now as far as that is concerned, and I think it is important that we just clarify that because people outside might be innocent of the fact that they actually are committing a criminal offence, and I am worried in this hon. House that we are going to end up with more people who are committing criminal offences than people that will not, but I do think that this House needs to know that. Is that the sort of thing we are talking about?

The Speaker: The minister to reply.

Mr Bell: Thank you, Mr Speaker. Basically, what we are talking about is the promotion and aggressive selling of knives which are considered suitable for combat or would appear to encourage violent behaviour. A knife obviously is an instrument, and the interpretation is in the Bill, which has a blade or is sharply pointed. We are not banning all knives and there will obviously have to be a common-sense approach to this. It is where we see a sort of glorifying of the macho combat use of a knife which would be, certainly in the court's eyes, considered as an incitement to violence. I am not aware, I have to say, of any specific instances on the Isle of Man where this has happened, but there certainly have been instances in the United Kingdom and our attempt is really to recognise the growth in knife culture which we have experienced in the United Kingdom over the last few years and try and do our best now to preempt perhaps a similar development on the Isle of Man.

The hon. member for West Douglas raises a point about people who already either own or collect these knives and what position they will be in. There are exemptions for curios, for antiques, and I am sure that the collector will come under that. Perhaps the only time when they will fall into the trap would be if in fact they then decided to market them in an aggressive manner by saying that this will encourage aggressive behaviour on the part of the purchaser. I have no doubt at all that the bona fide collector of antiques or curios or whatever would never be involved in that type of trade and therefore would not come into it, and there certainly has been no consideration at all on my part about buying in all such knives from the community and providing a compensation package. I do not see that applies at all. It is simply to try and prevent the growth of a knife culture on the Isle of Man, and our first step at this stage is to try and control the marketing in particular of this aggressive type of combat weapon. I hope that answers the question, and I beg to move.

The Speaker: The motion is that clause 11 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 12, Mr Bell.

Mr Bell: Clause 12, Mr Speaker, provides for the issue of a warrant authorising a constable to enter premises, search for knives and publications and seize and remove any that he finds.

Sub-clause (1) deals with applicants involving offences under clause 8, and sub-clause (2) deals with offences under clause 9. An application must be made by a constable and a warrant can only be issued if the JP is satisfied that there are reasonable grounds for suspecting the commission of an offence or the presence of knives or publications on the premises. The warrant authorises entry, search and seizure and removal of the knives and/or publications.

Sub-clause (3) permits the use of force to implement the warrant.

Sub-clause (4) permits knives, seized knives and publications to be retained by the police until the conclusion of proceedings.

For this purpose sub-clause (5) sets out when proceedings are to be treated as concluded. In essence this will be on completion of the proceedings before the court, discontinuance of the proceedings or a decision not to prosecute.

Sub-clause (6) extends the meaning of 'premises' to include vehicles, vessels, aircraft, hovercraft, tents, and movable structures. Mr Speaker, I beg to move clause 12 stand part of the Bill.

Mr Duggan: I beg to second, sir.

Mr Karran: Vainstyr Loayreyder, I am just a little bit concerned, like the previous input from my colleague from Onchan. I mean, how far do we go on this power to be able to go into somebody's house? If I remember rightly, in my parents' house there is an old knife and an old tin hat lying up in the loft somewhere. Now, technically maybe under this provision it would mean that an officer could quite easily go to a JP to go and raid my parents' house. I know he is saying that it would never happen, but we are making legislation here and we have to make sure that we have safeguards. Could you just clarify to this hon. House that the position is that if an officer went to a justice of the peace for a search warrant, what would be the reason for going for that search warrant? Could you just go on the basis that somebody might have some Second World War . . . as far as that is concerned?

The Speaker: The minister to reply.

Mr Bell: Mr Speaker, I have explained this point quite clearly: owners of curios would be exempted from this and a World War II or whatever souvenir that is brought home would clearly not fall within that category. The constable who would be asking for the warrant from the JP would have to prove very clearly to the JP that he has sufficient evidence to show that the the owner of property that he wishes to enter has been in breach of this particular legislation, and it is quite clear, the definition of the type of knife or the store of knives or materials that he is looking for, and it most definitely is not World War II souvenirs that people have brought back from the battlefield. So his mother and father are quite safe for the foreseeable future.

The Speaker: Hon. members, the motion is that clause 12 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 13, the hon. member for Ramsey.

Mr Bell: Mr Speaker, this clause makes provision for the forfeiture by the court in respect of knives and publications which have been seized or found in possession of the offender at the time of his arrest for the offence or of the issue of a summons in respect of it.

Sub-clauses (1) and (2) deal with offences under clauses 8 and 9 respectively. On conviction the court is authorised to order forfeiture of a knife or publication if seized under a warrant or in the offender's possession or control at the relevant time.

Sub-clause (3) permits the court to make a forfeiture order whether or not it imposes any other sentence on the offender and with that regard to restrictions on forfeiture in other enactments. This is a power which stands on its own.

Sub-clause (4) obliges the court to take into account before making a forfeiture order the value of the property and the effect on the offender taken together with other penalties that may be imposed by the court.

Sub-clause (5) defines 'relevant time' for the purpose of sub-clause (1)(b) and (2)(b). Mr Speaker, I beg to move clause 13.

Mr Duggan: I beg to second, sir.

The Speaker: Hon. members, the motion is that clause 13 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 14, the hon. member for Ramsey, Mr Bell.

Mr Bell: Clause 14, Mr Speaker, sets out the effect of a forfeiture order and provides for the making of a recovery order in favour of an innocent owner of the forfeited property.

Sub-clause (1) declares that a forfeiture order deprives the offender of any rights he may have to the property - that is knives and publications - to which the order relates.

Sub-clause (2) obliges the police to take into their possession all the property to which the forfeiture order relates. Normally it will be in their possession, having been seized under a warrant.

Sub-clause (3) enables the court to deal with applications from persons other than the offender who claim to be the owners of the forfeited property. The court is able to make a recovery order requiring the property to be delivered to the person who appears to the court to be the rightful owner.

Sub-clause (4) requires applications for a recovery order under sub-clause (3) to be made before the end of a period of six months beginning with the date of the forfeiture order.

Sub-clause (5) states that a recovery order can only be made where a claimant satisfies the court that he has not consented to the offender having possession of the property or did not know and had no reason to suspect that an offence was likely.

Sub-clause (6) deals with the circumstances where a third party who does not have any rights under a recovery order claims property rights in respect of the property which is the subject of a recovery order. Those property rights are not affected by the recovery order but those rights are lost at the end of a period of six months after the making of the order.

Sub-clause (7) enables the Department of Home Affairs to make regulations to deal with the disposal of property which is forfeited under this section.

Sub-clause (8) enables regulations to include provisions for dealing with the proceeds of forfeiture, and sub-clause (9) defines the various references to 'application' as meaning an application for a recovery order. References appear in sub-clauses (4), (5) and (7). Mr Speaker, I beg to move that clause 14 stand part of the Bill.

Mr Duggan: I beg to second, sir.

Mr Karran: Vainstyr Loayreyder, I would just like to ask the mover of the Bill: when making these regulations, who will actually be the person who actually makes the decision? Will it be somebody impartial, if there is a dispute over the ownership of that? Will it be left to his department or will it be left to somebody else, and who will that person be?

The Speaker: The minister to reply.

Mr Bell: Mr Speaker, this will be a matter for the courts to decide.

The Speaker: Hon. members, the motion is that clause 14 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 15, Minister for Home Affairs.

Mr Bell: Clause 15, Mr Speaker, deals with offences by body corporate. This section is a standard, technical section to impose personal liability on officers of companies and other forms of body corporate where the officer or a person who purported to act as such gave his consent to the commission of an offence by the body corporate or if the offence was committed with the connivance of, or was attributable to the neglect of, that officer.

Sub-clause (2) deals with those companies which do not have boards of directors but are managed by their members. In such cases the managing members will attract criminal liability in the same manner as company officers.

Sub-clause (3) deals with the special case of limited liability companies which are bodies that have some of the attributes of a partnership and some of the attributes of a company. The constitution of a limited liability company is such that management can be in the hands of members, the company's manager or its registered agent. Those persons will attract the same liabilities as officers of companies under sub-clause (1).

I beg to move that clause 15 stand part of the Bill, Mr Speaker.

Mr Duggan: I beg to second, Mr Speaker.

The Speaker: The motion is that clause 15 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 16, member for Ramsey, Mr Bell.

Mr Bell: Mr Speaker, clause 16 is simply interpretation, and this clause provides definitions for certain expressions used in clauses 8 to 15. The definitions are self-explanatory and I beg to move, sir.

Mr Duggan: I second, sir.

The Speaker: The motion is that clause 16 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 17, Minister for Home Affairs.

Mr Bell: Mr Speaker, this clause amends section 3 of the Police Powers and Procedures Act 1998 to extend the powers of the police to stop and search persons for knives or offensive weapons in anticipation of violence.

Sub-clause (1) introduces the amendments.

Sub-clause (2) will enable an inspector to have the power to give an authorisation under section 3 of the Police Powers and Procedures Act 1998 as respect persons carrying dangerous instruments or offensive weapons. At present authorisation can only be given if there is a belief that incidents involving serious violence may take place in any locality. The power will in future be exercisable where persons are carrying dangerous instruments or offensive weapons in any locality without good reasons. The authorisation of an inspector will mean that constables in uniform will have the power to stop pedestrians and vehicles and search them for offensive weapons and dangerous instruments. This authorisation will last for a period of 24 hours. The amendment also has the effect of conferring the power to grant authorisation on inspectors rather than chief inspectors and above as exists at present.

Sub-clause (3) repeals subsection (2) of section 3 of the Police Powers and Procedures Act 1998. The repeal provision conferred the power to make an authorisation on an inspector if no chief inspector was present and becomes, therefore, unnecessary by virtue of the amendment conferring the power on an inspector.

Sub-clause (4) amends subsection (3) of section 3 of the Police Powers and Procedures Act 1998. That subsection permits a chief inspector - and there are no changes made to that rank - to extend the authorisation for a further six hours. The extended period is increased from six to 24 hours. The amendment also replaces the word 'instant' with 'activity' to take account of the fact that the new subsection (1) deals with both incidents and activities.

Sub-clause (5) inserts a new subsection (3A) in section 3 of the Police Powers and Procedures Act 1998. The new provision obliges an inspector to report authorisations under section 3 of the 1998 Act to an officer of or above the rank of superintendent - that would be Deputy Chief Constable on the Isle of Man. The report must be given as soon as is practicable to do so.

Sub-clause (6) amends subsection (9) of section 3 of the Police Powers and Procedures Act 1998. That subsection requires authorisation to be in writing and signed and to give details of the locality and the period during which the powers are to be exercised. This amendment also requires that authorisation to specify the grounds on which the authorisation is given.

Sub-clause (7) adds new subsections to section 3 of the Police Powers and Procedures Act 1998. Those new subsections entitle any person searched as a result of the authorisation to obtain a written statement to the effect that he was searched. An application for such a statement must be made within 12 months of the search and the new subsection (12) defines the meaning of 'carries.' A person is to be treated as carrying a dangerous instrument or an offensive weapon if it is in his possession. Mr Speaker, I beg to move that clause 17 stand part of the Bill.

Mr Duggan: I rise to second, sir.

The Speaker: The motion is that clause 17 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 18, hon. member for Ramsey, Mr Bell.

Mr Bell: Clause 18, Mr Speaker, deals with the sale and possession of knives. This clause adds new sections to the provision of the Criminal Justice Act 1991 which contain provisions relating to the sale, possession, et cetera of certain weapons. The new section 27B will make it an offence to have any article with a blade or point on school premises. The section provides defences where the article or weapon in question is being used for work, education purposes, religious purposes or is used as part of a national costume. The new section 27C will give a constable a power to enter school premises for the purpose of searching for weapons and articles with blades or points.

Sub-clause (1) makes it an offence for a person to have with them on school premises any article which has a blade or is sharply pointed, excluding a folding pocket-knife with a blade of less than three inches.

Sub-clause (2) creates a similar offence in relation to articles made or adapted for use for causing injury to the person or intended by the person having it with him for such use by him.

Sub-clause (3) provides a statutory defence for charges under sub-clauses (1) and (2). The defendant must prove that he had good reason or lawful authority for having the article or weapon with him on the premises. It will not be necessary for the defendant to prove beyond all reasonable doubt but rather the balance of probabilities.

Sub-clause (4) contains a number of specific defences to charges under sub-clauses (1) or (2). The defence applies if the offender proves to the court that the particular item was for use at work educational purposes, religious purposes, or was part of a national costume.

Sub-clause (5) provides penalties for offences under sub-clauses (1) and (2). In both cases conviction before a magistrate or the High Bailiff attracts maximum penalty of six months' custody or a fine of £5,000. Conviction before a Court of General Gaol Delivery attracts a maximum sentence of four years' custody and an unlimited fine.

Sub-clause (6) provides a definition of 'school premises' both for sections 27B and 27C. The definition is self-explanatory. New section 27C(1) confers the power of entry on a constable if he has reasonable grounds for believing that an offence under section 27B is being or has been committed. The power of entry applies to school premises as defined in section 27B(6) and enables a search of the premises and any person on the premises for blades, pointed articles, and offensive weapons. Subsection (2) permits a constable to seize and retain any weapon or article discovered during the course of a search. Subsection (3) permits a constable to use reasonable force in the exercise of the power of entry, and subsection (2) of clause 18 amends the Police Powers and Procedures Act 1998. The effect of the amendment is to make offences relating to offensive weapons, blades and articles with points arrestable offences. That means that powers of arrest will be available without warrant. Mr Speaker, I beg to move that clause 18 stand part of the Bill.

Mr Duggan: I beg to second, sir.

Mr Karran: Vainstyr Loayreyder, I looked at this Bill and I cannot understand why we have singled out only secondary schools and why youth club facilities are not in the provision

concerned. I would hope that somebody would second this proposal because I think the hon. mover should come up with some sensible reason why this provision should only be for secondary schools. As a former youth leader - admittedly I have been out of youth clubs for nearly 20 years - we had problems with knives then, we had problems with drugs then and I believe that the way that we dealt with running youth clubs and the way that we had discipline in youth clubs would not be acceptable to the way that the department runs youth clubs today.

I cannot see why this provision is not extended to youth clubs. I think it makes common sense. I hope that what we will see is that the executive come up with a reason why it should not be extended to youth clubs. I would think there will be more of a problem with some youth clubs. Admittedly, from my days with quite a considerable amount of experience in the youth service there has been a tendency to ever lower the age of allowing people into youth clubs, and that has detracted from the older children going to youth clubs, but I do feel still that we need a reason why we are not having this provision because, to be perfectly honest with you, I actually think teachers have got a hard job but youth leaders will have an even harder job as regards discipline, and I think this excellent piece of legislation should be extended to youth clubs and I hope it does get extended to youth clubs, because I cannot see any reason why it should not be. I beg to move:

Page 12, line 2; after "secondary school" insert "or a youth club provided, maintained or aided under the Education (Young People's Welfare) Act 1944" [XVI p.187]

Mr Shimmin: Mr Speaker, I rise to second the amendment in the name of the hon. member Mr Karran. The reason, I think, is an oversight and I think it shows the benefit of consultation. Certainly there are many things which can be added into that process. I am grateful to the hon. member. I agree with the comments that he has made and I would wish to second it, sir.

Mrs Hannan: I would just like to query. The mover of the legislation said that a knife was not to be carried but it was all right to have a three-inch blade on, presumably, a pen-knife or whatever, but a three-inch blade can do quite a bit of damage. I might have misunderstood what he meant by that, but a three-inch blade can do a lot of damage and I wonder why, if my understanding is right - he mentioned it was all right to carry a three-inch blade - that it is under the legislation and it is not prohibited.

Mrs Cannell: Mr Speaker, in relation to 27B(1) it says '27A applies with him on school premises shall be guilty of an offence' and at that bottom of that page we look at the definition of 'school premises', which means 'land used for the purpose for a primary, junior or secondary school and excluding any land occupied solely as a dwelling by a person employed at the school.' I agree with the comments made by the hon. member for Onchan in relation to youth clubs but I would ask the mover, does this provision extend to the Isle of Man College? Of course that also comes under the educational system. I would have thought it perhaps a little remiss if primary schools, secondary schools, are covered, youth clubs will subsequently be covered but we are going to leave out the Isle of Man College. So I wonder whether it actually covers the college or does it not?

The Speaker: The mover of the amendment to reply.

Mr Karran: No, Vainstyr Loayreyder, thank you.

The Speaker: The minister to reply.

Mr Bell: Thank you, Mr Speaker. I think my hon. colleague has touched on one of the points which was raised by the member for Onchan. 'School premises' does not just refer to secondary schools, it is primary schools as well, So it is right through the whole system, and my understanding is it also applies to the Isle of Man College. It is school premises in the broadest sense of it, so the college certainly will be covered in that.

As far as the hon. member for Peel's comment is concerned about the three-inch blade, this was an attempt to be realistic, I think, and recognise the fact that a good number of schoolchildren carry small pen-knives with them for work at school and about their person quite regularly. We could have been heavy-handed and said 'Right, we ban everything' but we thought we would try to strike a balance again with it with being realistic and this is why we have left that in, but we have tried to be, beyond that, quite comprehensive, and anyone who is caught on a school premise with an offensive weapon and a knife will be pursued by the police for that possession.

The aim of this, again, is to try and pre-empt cultures which are developing off-Island where, particularly on school premises now, it is becoming more and more frequent that stabbings are taking place, the knife culture is becoming established in certain areas and we want to be sure that we have sufficient provision in law on the Isle of Man so that again, should this regrettable development progress any further on the Isle of Man, we are in a position to move quite quickly and effectively to combat it.

As far as the amendment is concerned, I have no problems with this amendment relating to youth clubs. As my hon. colleague from West Douglas says, I suspect this has been an oversight in the drafting that we have not included it. I as Chairman of Ramsey Youth Centre myself am fully aware of the potential problems which could occur on youth centre premises these days and I am more than happy to endorse the amendment and ask hon. members to support it. I cannot add any further than that, Mr Speaker, so I beg to move.

The Speaker: The motion is that the amendment moved by Mr Karran, the hon. member for Onchan, stand part of the clause. Will those in favour please say aye; those against, no. The ayes have it. The ayes have it.

The motion is that clause 18 as amended stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 19, Mr Bell.

Mr Bell: Thank you, Mr Speaker. Clause 19 deals with air weapons, and this clause amends section 32 of the Firearms Act 1947 which contains definitions. The Act contains references to air weapons but does not contain a definition of an air weapon. The new provision will make it clear that references to air weapons which are powered by any gas or combination of gases rather than air come under this definition. The change in the definition will impact on other legislation which defines air weapons, air guns, air rifles or air pistols by reference to the 1947 Act. The most prominent example is the Shotguns, Air Weapons and Crossbows Act. This is a small amendment, Mr Speaker, and I beg to move.

Mr Duggan: I beg to second, sir.

Mr Downie: I would just like the minister to clarify for everybody's benefit the situation regarding what is called soft air weapons, those weapons which fire a small plastic ball, they

are considered as children's toys. There is still some doubt. They do not require to have a licence in the UK or anywhere in Europe and if confirmation cannot be given today I would be grateful, when the Bill is read for a third time, if a legal definition can be given. Could also a definition be given at the next reading on types of air weapons which are activated by inertia? It will clear up any grey areas then and it should put to bed for ever this issue with regard to what the person can legally buy and own. Thank you, Mr Speaker.

Mr Karran: Vainstyr Loayreyder, I would just like to ask the mover: when he talks about air weapons would that include laser guns? Is that something that would be included, (*Interjections*) because it is another thing that we regard as not very important but can actually do a lot of damage. Are there any proposals in the legislation as far as that is concerned?

Mr Shimmin: Mr Speaker, always attempting to be helpful to my minister, if I can just give some information regarding this item? There is currently a question as to whether weapons powered by gas or gases other than air are covered under the rules that apply to air guns which currently require a certificate. This clarification the law proposed will ensure that weapons that use separate canisters of CO₂ or other gases in order to fire a projectile through the air are treated in the same way as air guns.

As far as ball-bearing guns, known as BB guns, are concerned, it will mean that those BB guns using Freon gas will be treated as though they were air guns but those BB guns that use kinetic energy will not. The kinetic energy, spring-loaded BB gun is not considered a lethal barrelled gun because the force it creates is half a foot per pound. It cannot therefore penetrate the skin to cause possible infection. These controls will not change the law on toy guns, which will be treated as they are now. Thank you, Mr Speaker.

The Speaker: The minister to reply.

Mr Bell: Thank you, Mr Speaker, and I am extremely grateful to the member for West Douglas who took the words right out of my mouth! (*Laughter*) I hope that explanation has clarified the situation for the hon. member for West Douglas. Again, I know his interest in guns and if he has any further queries on that I will be happy to clarify it at a later stage if he still has any doubts and, as for laser guns, this does not cover laser guns. I beg to move, Mr Speaker.

The Speaker: Hon. members, the motion 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, the Minister for Home Affairs.

Mr Bell: Mr Speaker, this clause amends section 49(3) of the Post Office Act 1993. That section gives statutory protection to the mail except in special cases. Subsection (3) of the section specifies some of the cases to which the protection does not apply. Those cases are repeated in paragraphs (a) and (c) of the new subsection (3) inserted by this clause.

Paragraph (b) of the new subsection (3) is new. The protection of the mail contained in section 49(1) of the Post Office Act 1993 will not apply to postal packets which are suspected to contain a controlled drug or a scheduled substance - that is, substances used to manufacture controlled drugs as defined by the Misuse of Drugs Act 1976. It is anticipated that the new provision will be of some advantage to the police in detecting drugs which come into the Island by post. I beg to move clause 20 stand part of the Bill, Mr Speaker.

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

Mr Cannell: Mr Speaker, I just wondered if I could query the position regarding courier services of similar packages, please, where it is quite possible, of course, to receive similar packages to that which go through the mail without having recourse to any other authority.

Mr Karran: Vainstyr Loayreyder, I wonder whether the minister could just explain whilst I support the proposal in front of us, why it was not extended maybe for the likes of arms as well as we see an increasing amount of arms activity, arms being in crime in the adjacent island, and do they have the same provisions regarding the postal service to make sure that we can take out if we thought illegal arms were coming through the postal service? And if not maybe the hon. member could tell us if they had ever thought about the need for such provision, allowing for the fact that have I been in correspondence for some time with the Chief Minister over this issue.

Mr Downie: By way of being helpful to the minister, the member for Onchan referred to arms coming through the post. The UK legislation is very, very strict with regard to arms being sent through the post; in fact, it is against the law, and in the UK they have adopted a system where there has to be what is called a 'part 5 carrier', and if a firearm is to be transported in the UK it is given to a part 5 carrier who signs for it and then accompanies it wherever it is going to in the country, and then it is passed on to the person it is going to and all the paperwork is signed off. So as for sending part 1 firearms through the post it is a very serious offence and it could land the person doing it in prison for a period of up to five years, if that is helpful.

The Speaker: The minister to reply.

Mr Bell: Once again, Mr Speaker, I am extremely grateful to the West Douglas alliance for their support and advice. *(Interjections and laughter)* I hope that partially explains the position to the hon. member. The point in question at the moment is, though, that we are not dealing with the transport of arms by mail, we are dealing with a potential anomaly which may have occurred within the Post Office Act which enables the police to search packages which are suspected as containing illegal drugs, controlled drugs. We have not considered at this stage the need for new legislation relating to the importation of arms into the Island. It has not been brought to my attention or my department's attention as a matter of concern, but obviously if there is a deficiency in the law and there is a problem there, then no doubt we will be responding to it as best we can but this simply clarifies the relationship that the police currently have with the Post Office under the Post Office Act to enable them to intercept packages coming into the Island via the Royal Mail which are suspected of carrying controlled drugs. It does not in this instance apply to private carriers, it is only an amendment of the Post Office Act, which is quite separate from carriers at this stage. So I hope that helps members and I beg to move.

The Speaker: Hon. members, the motion 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.

Hon. members, I think that this is probably an appropriate point at which to close today's business. The House therefore stands adjourned to Tuesday next, 30th May at 10 a.m. in this chamber. Thank you, hon. members.

The House adjourned at 5.25 p.m.