

**REPORT OF PROCEEDINGS OF
HOUSE OF KEYS**

**Douglas, Tuesday, 28th March 2000
at 10.00 a.m.**

Present:

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

The Chaplain took the prayers.

Apologies for Absence

The Speaker: Hon. members, the hon. member for Peel, Mrs Hannan, has leave of absence this morning.

TV Licence Fee – Question by Mr Henderson

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

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

(1) *Do you accept that -*

(a) *a significant proportion of the increase in the TV licence fee will support BBC digital TV initiatives;*

(b) *the product of those initiatives are unavailable to Manx residents; and*

(2) *if so, does your government propose to make representations about the inequity of imposing the increased TV licence fee in the Isle of Man?*

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

Mr Gelling: Mr Speaker, the Council of Ministers certainly accepts that the accelerated rate of increase proposed for the TV licence fee is to be used to fund the development of digital terrestrial TV. We also accept that, along with many other areas covered by the legislation and licence fee, generally Manx residents are not able to enjoy digital terrestrial TV.

We have already made representations about the situation which seek to secure some alleviation of the burden of the increase in the fee or alternatively some clear indication and some acceleration of the provision of the new service to us here in the Island, sir.

Mr Henderson: Mr Speaker, I thank the hon. Chief Minister for those assurances and could he give an assurance to this House that on completion of the information that he is

seeking he will be able to report back as soon as possible so that certainly the pensioners of this Island will be somewhat comforted?

Mr Gelling: Yes, I see no problem in this at all, Mr Speaker, in fact as I said in the answer to the original question, it is not just the increase in the fee but the fact that we have been given a time of 2006 for the ordinary television to be extinguished. It is our concern that they will have made provision for this Island to receive the new television digital signal so that we do not have a vacuum, sir.

Mr Singer: Mr Speaker, could I just ask the Chief Minister is it not a fact also that part of the TV licensing fee goes towards BBC regional radio stations which are not received on this Island and are of no interest to this Island and therefore should not that element of the television licence not be paid by the people of this Island?

Mr Gelling: Yes, Mr Speaker, of course our radio station is not a BBC regional station, but this is something certainly we have made representations about in the past and have been unsuccessful, sir.

Domestic Autonomy – Protection – Question by Mr Henderson

The Speaker: Question 2, then, hon. members, again I call on the hon. member for Douglas North, Mr Henderson.

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

What action is your government taking to protect the domestic autonomy of the Isle of Man from the apparent intention of Her Majesty's Government in the United Kingdom to treat the recommendations of inquiries instigated by the UK Government, the European Union and various international organisations as representing a programme of legislative and executive action to be implemented by the Isle of Man Government under the benevolent and informal supervision of the UK Government?

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

Mr Gelling: Yes, Mr Speaker, if I understand this question correctly I am asked to confirm that we will vigorously defend the Island's constitutional position, autonomy and economy and that we will not accept external direction of our affairs contrary to the wishes of the Island and its people, and I am certainly happy to confirm that and to confirm also that there can be no misunderstanding of that on the part of the United Kingdom Government also.

Mr Henderson: Mr Speaker, I could confirm that the Chief Minister has the gist of the question, but can the Chief Minister confirm even so that Lord Bassam's latest statement was that all jurisdictions should have level tax playing-fields and that even smaller jurisdictions could have a harmful effect on the larger economies and would he agree that such public statements are in reality pushing up the supervisory stakes?

Mr Gelling: Yes, Mr Speaker, we are well aware of the statements being made by persons in the United Kingdom Government for all kinds of different reasons but certainly we are well aware of that and other initiatives through Europe and further afield and we are certainly not complacent about these, but it is certainly something that we have expected and we have not been disappointed, sir.

Mr Quine: Does the Chief Minister accept that as a matter of general principle we should not allow the Island to be persuaded or induced or coerced into introducing regulatory or restrictive legislation in circumstances where the United Kingdom have not seen fit to introduce comparable legislation?

Mr Gelling: Mr Speaker, we made it absolutely clear that we were not going to be in the vanguard of any regulations or even inquiries into certain areas of regulation where the United Kingdom themselves were seen in the Edwards report in particular as being suggested as wanting and we have said we will await the outcome of their deliberations first.

Mr Houghton: Mr Speaker, can the hon. Chief Minister confirm that the chancellor, Gordon Brown, has indicated he will announce plans to take powers in the UK Finance Bill for the Inland Revenue to reach agreements with the Crown dependencies and others on exchanging information about tax affairs and if he has, has his office made contact with ours at this stage, sir?

Mr Gelling: Mr Speaker, I would suggest that legislation would not be required to come upon an agreement. In fact we already have agreements with the United Kingdom Government in other areas, but certainly this is something that has been suggested. The fine and the small print has not as yet been digested, but certainly one would question what other legislation he would require to be able to come upon an agreement with us, but of course the situation with the Island is already quite clear, that if it is criminal, if it is laundered money, if it is terrorist moneys we in fact already do assist other jurisdictions in those cases, sir.

The Speaker: I return to the original questioner, Mr Henderson.

Mr Henderson: Thank you, Mr Speaker. Will the Chief Minister be briefing all hon. members on his government's recent visit to Whitehall and the contents of its report to officers there and will also any brief include any new financial agreements that may be struck in the future?

Mr Gelling: As it is the case, Mr Speaker, we keep members informed as soon as we can of anything that happens outwith this Island so that members are readily informed as soon as we can.

The Speaker: I think a final supplementary, the hon. member for Michael, Mr Cannan.

Mr Cannan: Mr Speaker, returning to the supplementaries regarding the intention of the UK chancellor to have an exchange of information and tax affairs and the Inland Revenue to seek agreement with the Isle of Man, would the Chief Minister agree that it is perceived to be dangerous when they talk not so much about tax evasion, which is quite correct and which we take steps to avoid, but also they are now talking about an agreement on exchange of information as regards tax avoidance and will he agree that that could be used as a tool for trawling through private accounts?

Mr Gelling: Mr Speaker, I do not think there is any way whatsoever that we would ever agree to allow trawling through accounts of business here in the Isle of Man. I think that is something that we would never agree to no matter what, so therefore it is a case once again of we are in discussions with the United Kingdom Government, with the Inland Revenue and it is fair to say that they would very much like to have more transparency, but there is only so far that we would go and we have made that quite clear to them.

Mr Karran: Vainstyr Loayreyder, would the Chief Minister not agree that some members in this hon. House have talked about the chancellor in previous supplementaries, when they should be talking about the UK chancellor and would he not agree that the message needs to come out from this House from both sides, one from his government that it stops being some sort of Uncle Tom to our big neighbour, and the other to other members of this hon. House, reducing this hon. House to the locations of bus stops instead of dealing with national issues which undertones and demotes this House from what it should be as a national government?

Mr Gelling: Yes, Mr Speaker, I can assure members that we are well on top of the international situation in respect of this. We are well aware of what is going on in the United Kingdom and the United Kingdom chancellor and the noises he is making, and as I have already said, we are making representation and the United Kingdom Government themselves are well aware of the situation as far as the Isle of Man is concerned.

Illegal Immigrants – Question by Mr Cannell

The Speaker: Item 3, hon. members, and I turn to the hon. member for Onchan, Mr Cannell.

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

What plans does your government have to deal with any large influx of illegal immigrants claiming political asylum in the Isle of Man?

The Speaker: Again it is for the Chief Minister to reply.

Mr Gelling: Mr Speaker, this is not a contingency for which we do need a plan. Now, the Isle of Man does not have any scheduled airline or shipping services arriving from outside the Common Travel Area, so immigrants who claim political asylum are required to do so on arrival at their first safe country of entry. They would therefore be dealt with in the United Kingdom or in Ireland.

Now, immigrants who have claimed political asylum in the United Kingdom or Ireland and are awaiting a decision on their claim must remain in the United Kingdom or indeed Ireland until their application has been determined.

Now, those immigrants who are granted political asylum by the United Kingdom are, of course, free to come to the Isle of Man, but they are then not illegal immigrants, sir.

Mr Cannell: Mr Speaker, a supplementary if I may. Would the hon. Chief Minister not agree with me that there have been a number of breaches of the recognised procedures for the arrival of these people and that a plan should be actually formulated in case they do make their way to the Isle of Man because it is not just scheduled airlines that people are coming in on now but Eurostar and various other illegal methods of getting into Britain?

Mr Gelling: Yes, Mr Speaker, but I must again emphasise that they arrive in the United Kingdom, so therefore that is the place in which they would seek political asylum and certainly if any of those immigrants did get to the Isle of Man they would be returned immediately until such times as their application had been heard, sir.

Mr Cannell: So would the hon. Chief Minister not agree that it would be possible for a number to make their way to the Isle of Man and if that is the case it can often take a long time

to put into practice the procedure of taking them away for their proper registration in Britain or being dealt with in Britain and that could cause a problem for the social services of the Island?

Mr Houghton: Hear, hear.

Mr Gelling: No, indeed, Mr Speaker, I would suggest that as soon as they would make themselves known in the Isle of Man the authorities would immediately take the action, as I have already suggested, and return them to the United Kingdom or Ireland from whence they have come.

European Commission for the Prevention of Torture, Inhuman and Degrading Treatment

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Report on Manx Prison Facilities – Question by Mr Henderson

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

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

When does your government intend

- (1) to make available to members; and*
- (2) to publish the Report of the European Commission for the Prevention of Torture, Inhuman and Degrading Treatment on Manx Prison Facilities?*

The Speaker: The Chief Minister.

Mr Gelling: Mr Speaker, the report is not ours to make available and publish. That is the first part. The committee has produced a draft report which covers not only the Isle of Man prison but also certain prisons in the United Kingdom.

Now, publication of the report, which will include the formal response of the United Kingdom Government, which in turn will include our response to the section of the report dealing with the Isle of Man, is a matter for agreement between the committee and the governments of the United Kingdom and the Isle of Man.

Now, we are content with the committee's report so far as it deals with the Island and our response to the committee's comments. However, agreement between the committee and the United Kingdom Government has not yet been reached and the latest information we have is that an accommodation will shortly be reached and the report will then indeed be published.

Mr Henderson: Mr Speaker, does the Chief Minister intend to provide a briefing for members of Tynwald on the report furnished to the UN by the Attorney-General and the Chief Secretary at that recent meeting?

Mr Gelling: I think it would be a case, Mr Speaker, of waiting for the report to be published because I think it would be again dangerous for us to publish the comments that we have made when it is indeed their report, and therefore I would suggest to hon. members that once that report has been published, certainly if members require a briefing, that would be the time to do it.

Air Pollution – Reduction – Question by Mr Singer

The Speaker: Item 5, hon. members, the hon. member for Ramsey, Mr Singer.

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

In order to reduce air pollution, does your department intend to -

(1) take powers to prohibit the importation of coal with a high sulphur content; and

(2) introduce a Clean Air Bill?

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

Mr Gilbey: Mr Speaker, in answer to the first part of the hon. member's question, I can confirm that the department is aware that the sulphur content of coal imported into the Island varies dependent on the type of coal. Generally those coals with a lesser sulphur content, such as anthracite, costs more and are only capable of being burnt in or on a special stove or appliance which enables combustion conditions to be properly controlled. It would be difficult, if not impossible, to burn smokeless fuel in an open fireplace without costly modifications to control the air supply to the fuel. Because with fuels having a lower sulphur content the volatile matter is less, they do burn without producing smoke. Other house-type coals are relatively less expensive and can be burnt in any normal fireplace but have a higher sulphur content and produce smoke.

Whilst the department has certain powers under the Public Health Act 1990 these do not extend to prohibiting the importation of coal with a high sulphur content.

I now turn to the second part of the hon. member's question. On the Island legislation relating to air quality already exists in three ways. Firstly, section 1(2)(g) of the Public Health Act 1990 provides that 'any smoke emitted in such quantity, or of such. . . content as to be a nuisance' is a statutory nuisance and a local authority is empowered to take abatement action. Secondly, section 87 and schedule 3 of the Public Health Act 1990 empower the department to declare smoke control areas, and thirdly, sections 88 to 91 of the 1990 Act empower the department to prescribe air quality standards and take appropriate action in relation to individual premises where relevant to achieve compliance with those standards. To date these latter provisions are yet to be invoked by way of an appointed day order.

As regards smoke control areas, the department has advised on previous occasions that the results of the monitoring in relation to smoke and sulphur dioxide in the Island in Douglas, Ramsey and Peel since 1990 show that the levels of these pollutants comply with mandatory European requirements and, apart from a few days in the year, also comply with the much stricter guideline values. Against this backdrop, therefore, there is insufficient justification for the declaration of smoke control areas.

Mrs Cannell: Mr Speaker, I thank the hon. minister for his very informative reply, but can he advise members why his department has not come forward with an appointed day order to actually effect all these provisions in the 1990 Health Act?

Mr Gilbey: Because it appears to us there is no need to do so because, as I have said, the levels of pollutants comply not only with the mandatory European requirements but also, apart from a few days, they also comply with much stricter guidelines.

Mr Singer: May I thank the hon. minister for his reply, but can I say that as his answer implied that generally only anthracite fuel is low sulphur, is he aware of the most recent tests carried out on December 17th and January 4th on imported coal and the results of those tests not tallying with that answer he has given, and is he aware that the in six house coal samples tested there were two samples called premium house coal and just plain house coal with a sulphur content below one per cent and the plain house coal had a sulphur content less than the anthracite sample, and would he not agree therefore that there is not a correlation between the price of coal and its sulphur content?

Mr Gilbey: Well, frankly, I have not heard of these coals that were mentioned, but if the hon. member would provide the details of them and their prices I would be very interested, but I suspect the price of them is greater than the price of coal that does produce more sulphur. I think that is only a natural economic effect.

Mr Singer: I will gladly, Mr Speaker, give the details to the hon. member. I think he will find that that statement is not correct. But as sulphur dioxide is the main offensive pollutant in smoke from coal, in order to improve the air quality, particularly in our towns, will the department seek powers to only allow the importation of house coal which has been tested and comes with suitable certification to show that it has a sulphur content below one per cent, as we know quite clearly that that sort of coal is available?

Mr Gilbey: I certainly would not make that promise. I think you have to be very careful about this and every hon. member should consider the reactions of their constituents if they were told that they could not burn certain fuels on their fires, which they are doing at the moment, and they were forced to purchase more expensive fuels. I think there would be an outcry from many people, and as I keep emphasising, it is very fortunate that our overall levels of air pollution in the Island are well below the required international standards and much lower than many other places and furthermore they will be reduced further if we start generating in the future electricity from gas, when there are tighter controls on the way that cars are built so that they produce less pollutants. One must remember that probably the biggest pollutants come out of the exhausts of cars.

Mr Cretney: In view of the hon. minister's response to the question would he be good enough to consult with his colleague minister, my colleague minister the Minister for Health and Social Security, to ascertain from her whether, as I believe, the levels of bronchial disorders in certain areas in this Island and in particular in this town are excessive?

Mr Gilbey: Well, I am certainly quite happy to hear the views of the Department of Health and Social Security on this matter, but I do not know that there is any proof of this and if the hon. member is talking of course of the Pulrose area, the redevelopment there with new houses will certainly be an advantage and I am sure the hon. member welcomes, as I do, the fact that this redevelopment has already started with the demolition of some of the existing houses.

Mrs Cannell: Mr Speaker, bearing in mind that we may not get our direct gas in for 20 or 30 years, can the hon. minister advise what he is going to do in the meantime? Further, can he advise hon. members when was the last time the government analyst was called in to undertake testings at Quarter Bridge in Douglas, for example, during the rush hour period, and would he further accept that in 1990 when monitoring of such an area was undertaken, not

only of coal fuel burning but also vehicle emissions, the governments analyst made a public statement and said that the in Isle of Man the levels of pollution were equivalent to a busy metropolitan area of London? Can the minister advise how he thinks things have changed since 1990 to the year 2000 when car ownership is very high?

The Speaker: Now, hon. members, we had a supplementary, two 'and further's' and one seeking advice in that particular comment. Can I just ask the minister to reply?

Mr Gilbey: Mr Speaker, I think the easiest answer to this is to point out that the department has established a continuous air monitoring station at Quarter Bridge and also a background station at Richmond Hill and the satisfactory results that I referred to come from the operation of these, so it is being done continually and the results I have referred to. The hon. member may shake her head, but that is the fact of the case, as other members who have been in the department know.

Mrs Cannell: The levels.

Mr Karran: Vainstyr Loayreyder, would the minister not agree that the time has come for some firm commitment for when we are going to see the legislation coming in as far as this legislation is concerned and would he not also inform this hon. House when are we taking these samples at the Quarter Bridge, 3 o'clock in the morning, 4 o'clock in the morning or at quarter to nine in the morning when there is a load of traffic about? Could he inform this hon. House?

Would he also inform this hon. House that there is a higher bronchial problem (**Mr Duggan:** Hear, hear.) as far as the Island is concerned and would he also tell this hon. House that it is more important to save people's lungs than save their money in their pockets?

A Member: Hear, hear.

Mr Gilbey: As I understand it, it is a continuous automatic monitoring machine.

Regarding these statements that there is more bronchial diseases in the Island, I have no proof of that. I will enquire, as I promised, of the Department of Health and Social Security, but I think one needs to be sure, before one makes such statements, that they are correct. Again they could be caused by other things. It may be more people in the Isle of man smoke than they do in the adjacent isles. You cannot possibly say that the problem is necessarily due to fires in people's houses and therefore I personally think we should be extremely careful before we start trying to bring in smokeless zones and saying that people cannot have the kind of fire they want.

Regarding bringing in the legislation, the legislation is there. We could bring in smokeless zones, but it has been decided not to do so at the moment and I personally think this is the right decision. If any hon. members want more of the statistics, officers of the department will be quite delighted to provide them and explain in detail to them how the monitoring is done.

Mr Duggan: Mr Speaker, could I ask the minister, is he satisfied that the power station complies with the regulations and rules with emissions of four tonnes of sulphur dioxide emissions each day?

Mr Gilbey: I am certain if the power station did not we should have heard more about it. I have not actually looked into the power station, but of course, as I have said, the fact that in

the future we may get a gas-powered generation would be a help, although the hon. member for East Douglas says that will not be for a long time, but when it does come it will be a help. In the meantime it may be of assistance that we have a cable to the adjacent isles so there may actually at time be less generation from Pulrose.

A Member: Hear, hear.

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

Mr Singer: Thank you, Mr Speaker. Does the hon. minister's department, on behalf of government, stringently test the heating oil purchased for use in our schools, hospitals and government establishments to ensure that it does not contain a high sulphur content which would make government itself a major polluter or does he know whether the price of the oil is the only consideration?

Mr Gilbey: I am afraid I do not know that answer. I would have thought that all heating oil that was used anywhere came up to a reasonable standard, but certainly I will enquire about this, but I would be very surprised if we were having sub-standard oil in government schools, but of course this is primarily a matter for the Minister for Education whose department obviously buy the oil.

Mr Quine: Hear, hear.

Mr Duggan: Passing the buck.

Procedural

The Speaker: Hon. members, I call on the hon. member for Douglas East, Mrs Cannell.

Mrs Cannell: Mr Speaker, I would like to move:

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

Mr Cretney: I beg to second, sir.

The Speaker: Are we happy to continue with the questions, hon. members?

Members: Agreed.

Incinerator – Tenderer – Question by Mrs Cannell

The Speaker: Could I ask the hon. member to ask her question. Item 6, please.

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

- (1) Has the department selected a tenderer for the design, building and operation of the proposed all-Island incinerator; and*
- (2) if so, has the department obtained Treasury concurrence to enter into a contract with the tenderer for this work?*

The Speaker: Again I call on the Minister for Local Government and the Environment to reply.

Mr Gilbey: Mr Speaker, the department has not yet made a final selection. The department's officers, together with its technical and legal advisers and officers of the

Treasury, have been carrying out a very detailed and critical appraisal of the tenders which were submitted. This is a complex process and still subject to commercial confidentiality at this stage. Consequently I am sure hon. members would not expect me to say more at this time.

As regards the second part of the hon. member's question, I can confirm that once a final selection has been made, Treasury concurrence will be sought and the Council of Ministers will be invited to agree to a motion being placed on the Tynwald order paper seeking approval for the same.

Mrs Cannell: Mr Speaker, can the hon. minister confirm that the tenders are based on the original conditions agreed with Braddan Commissioners on forming the basis of the planning inspector's recommendations?

Mr Gilbey: I think the hon. member has asked this question previously and I confirm, as I said then, that that is the case.

Mr Karran: Vainstyr Loayreyder, can the minister give this hon. House the facts that there is no way that his department has signed us up to any sort of contracts where, if we do not go ahead with this procedure, we will end up with a massive bill?

The Speaker: The minister has already replied and said not yet, I think was the response. The hon. member for Douglas East.

Mrs Cannell: Thank you, Mr Speaker. Can the hon. minister advise then that the costings that will come forward eventually once his officers have made all their testings will include expenses for the purchase of the land, the disposal of bottom ash and the disposal of fly ash and can he advise on whether or not his department has identified any further additional costs which might be expected?

The Speaker: Now, minister, I do not want to get into an incinerator debate but you may answer if you wish, sir.

Mr Gilbey: Mr Speaker, I totally agree with your remark. Well, the answer to this is that when the resolution is put to Tynwald regarding the costs of the project it will cover all necessary items in accordance with Treasury capital expenditure rules.

Crowe EPH Ltd – Completion of Work – Question by Mrs Cannell

The Speaker: We turn then to item 7, hon. members, and I call on the hon. member for Douglas East, Mrs Cannell.

Mrs Cannell: Thank you, Mr Speaker. I beg to ask the member for Health and Social Security:

Has a contractor been selected to complete the work on the new hospital which Crowe EPH Ltd was contracted to undertake?

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

Mr Karran: Vainstyr Loayreyder, I can confirm that the department has received recommendations from the design and construction team for the letting of contracts for the completion of the concrete frame zones 2 and 3. I anticipate a decision on the recommendation by the end of this week.

Mrs Cannell: Mr Speaker, can the hon. member for the department confirm whether or not Treasury procedures have been complied with on this occasion, bearing in mind the structure of firms invited to tender being open for inspection at the General Registry and I refer to the 2,000 £1 shares? Can he advise whether or not it is that company which has been recommended to his department as the preferred tender?

Mr Karran: Vainstyr Loayreyder, I believe I am in an awkward position as far as this is concerned because at the end of the day it has gone to Treasury and until it gets its support and agreement I cannot say. But what I can say is that the companies have followed the recommendations of the Department of Trade and Industry that is supposed to regulate the building industry and I do hope that the hon. member who is responsible for the building industry has consulted with her minister as far as this company is concerned.

Mrs Cannell: Mr Speaker, I thank the member for referring to the list of approved contractors which does not necessarily regulate satisfactorily the construction industry.

Members: Hear, hear.

Mr Brown: Employers Federation!

Mrs Cannell: Would the member be willing to meet with me some time when I will explain the situation properly to him so he might be better informed before he makes comment in this House?

Mr Cretney: Ooh, the pot calling the kettle black!

Mr Brown: Why don't you sort it out?

Mrs Cannell: Can I ask him, bearing in mind that it is now seven weeks since the financial collapse of the main contractor, when does his department expect that everything will be in place and a new main contractor will be on site so that we can finish this contract?

The Speaker: Hon. member, the hon. member for Onchan replied in the first part that he would have his tenderer by the end of the week. I think that was sufficient. Hon. member.

Mr Karran: Vainstyr Loayreyder, I do feel that we should be allowed to reply to the hon. member.

The Speaker: If you wish, sir.

Mr Karran: Vainstyr Loayreyder, I will be delighted to see a Bill regulating the construction industry and I do hope that the hon. member who is responsible for the construction industry -

Mr Brown: For the last three years!

Mr Karran: - pursues that piece of legislation (**Mr Gilbey:** Hear, hear.) and can I also inform this hon. House that it is one construction company of many that have been on the new hospital site -

Mrs Hannan: The same as the sports centre.

Mr Karran: - and I think it is wrong to try and make out that it is the king-pin of the lot.

New Hospital – Additional Costs and Delay in Construction – Question by Mrs Cannell

The Speaker: We turn then to item 8 on your order paper and again I call on the hon. member for Douglas East, Mrs Cannell.

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

What (a) additional costs and (b) delay will result in the construction of the new hospital as a result of the need to find a contractor to complete the work which Crowe EPH Ltd was contracted to undertake?

The Speaker: It is again for the hon. member for Onchan, Mr Karran, to reply.

Mr Karran: Vainstyr Loayreyder, I am not in a position to give a definitive answer to the hon. member's question. Following, hopefully, the appointment of a replacement contractor to complete the concrete frame for zones 2 and 3 the overall programme will be reassessed by the design and construction team, including the implications for the project budget.

Mrs Cannell: Mr Speaker, can the member for the department confirm that as from 1st April this year there will be a 20 per cent increase applied, which equates to an additional £15 placed on the cost of a cubic metre of concrete for the new hospital project? Can he confirm this and further, can he advise on whether or not any other supplier of materials to the hospital project will be taking a similar line?

Mr Karran: Vainstyr Loayreyder, I totally agree as far as the concrete is concerned. I wanted to use the new hospital as the catalyst to try and break the monopoly in this Island but once again vested interest was allowed to out-vote what I wanted to do.

The concrete price will affect the new hospital, it will affect IRIS if it goes ahead, it will affect the incinerator if it goes ahead, it will affect all the new first-time buyers if it goes ahead. I think it is wrong to try and say that it is going to just affect the hospital. We have a major problem. The problem is we have to now get on with building the new hospital.

I do not hope that I have joined the sect that believes that everything is right as far as the new hospital is concerned but what I will do is try and make sure that we will get a hospital that our kids will be proud of (**Several Members:** Hear, hear.) and that will not be a liability to future generations, which is the only way forward as far as I can see as a responsible member of this House.

Mr Quine: At the outset of the hospital project in the context of planning delays we were advised that a month's delay incurred a cost in the order of half a million pounds. Is that still the situation in terms of the order of costs for the delay factors now?

Mr Karran: Vainstyr Loayreyder, I am sure that the hon. member would be quoting correctly about what the position was at the beginning of the proposal to have a new hospital. I have not got any costs in front of me as far as the implications are concerned but I am very, very concerned as far as the new hospital is concerned because at the end of the day we will be six months away at least from the hospital being finished after the next general election and we will be at the blackest hour as far as the hospital is concerned, but at the end of the day it is about national government and looking after what is important and that is the people's long-term health and not my re-election.

Mrs Hannan and Mr Cannell: Hear, hear.

Mrs Cannell: Mr Speaker, bearing in mind the very great substantial list of creditors which are owed money in relation to the collapse of the main contractor, is the member for the department surprised then that suppliers are using this recourse for to recoup their losses? Is he surprised?

Mr Brown: So what are you doing about it? You're responsible for industry.

Mrs Cannell: Suppliers are not my responsibility.

Mr Karran: Vainstyr Loayreyder, that is an assumption by the hon. member that that is the case. I would imagine that the amount of money that is supposed to be lost by one of the concrete firms will be small fry compared to the amount of money and profits they more likely make on a yearly basis. It will be insignificant to the likes of a large firm of that level.

Obviously I am disappointed over this failure of this company and I hope that there will be a thorough investigation and if there are things wrong that it will be made sure that it does not repeat because it has happened before and I am as disappointed as the hon. member that this has happened again.

Mr Cannell: Mr Speaker, if I could ask the hon. member for health on the DHSS that the list of creditors which was produced at the liquidator's initial meeting has yet to be substantiated, would he agree with me, and also that the latest estimate from the quantity surveyor in respect of this project is that the estimated additional costs of the scheme as a result of the Crowe EPH issue can be contained within the overall budget?

Mr Gilbey: Hear, hear.

Mr Karran: Yes, that is the case at the present time.

The Speaker: Hon. members, items 9 and 10 were for written answer and I understand they have been circulated to you on your desks.

UN Human Rights Committee – Question by Mr Henderson for Written Answer

Question 9

The hon. member for Douglas North, Mr Henderson, to ask the Chief Minister:

- (1) *Does the appearance of HM Attorney-General and the Chief Secretary before the UN Human Rights Committee on 17th March 2000 represent a further shift in the constitutional convention that the Crown is responsible for the external relations of the Isle of Man; and*
- (2) *can you state what, in the view of the Isle of Man Government, is the contemporary scope and application of this convention?*

Answer

As the question suggests, the Crown **is** responsible for the Island's international relations. The Island is not a sovereign state and it is not, therefore, possible for the Island to sign international agreements on its own account or to speak, other than under the auspices of the Crown's representative, at international conferences. The basic position has not changed since the Kilbrandon Commission reported in 1973.

The appearance of the Attorney-General and the Chief Secretary before the United Nations Human Rights Committee on 17th March 2000 did **not** change the constitutional position. The islands were, however, seen as being separate and different from the United Kingdom and it was seen as being appropriate for the Island's own officials to answer questions and discuss issues relating specifically to the Island.

We are keen that, so far as the constitutional position will allow, the Island should represent itself and be seen to represent itself in the international arena. And we hope that the representation on 17th March will establish a pattern which can be repeated in the future.

NHS Patients – Referrals to the UK – Question by Mr Houghton for Written Answer

Question 10

The hon. member for Douglas North, Mr Houghton, to ask the member for Health and Social Security:

By category of operation, in each of the calendar years 1997 to 1999 inclusive -

- (1) how many patients of the National Health Service of the Isle of Man were referred for surgery to the United Kingdom; and*
- (2) why were they so referred?*

Answer

In response to part (1) of the hon. member's question, I must advise that hospital and patient transfer data does not presently provide this detailed level of information without an extensive manual examination of all individual patient files. However, a new computer system is due to be completed by April this year which will provide much greater detail of NHS patient transfer referrals. Whilst it will not record whether a patient is attending for an operation, it will record each patient episode in relation to whether it is a new in or out-patient appointment, or if it is a follow-up.

Turning to part (2) of the question, I would confirm that the basis for each referral continues to be determined by the Island's reciprocal agreement with the United Kingdom Department of Health. Under this agreement, Isle of Man patients who are considered to be in clinical need of specialist National Health Service treatment which is not available on the Island can be referred to hospitals/units in the United Kingdom in order to receive their treatment.

A Bill re the Popular Election of Members of the Legislative Council – Leave to Introduce Given

The Speaker: We turn then to item 11 on the order paper and again I call on the hon. member for Onchan, Mr Cannell.

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

That leave be given to introduce a Bill to provide for the elected Members of the Legislative Council to be elected by those registered as electors and entitled to vote in a general election to the House of Keys.

Hon. members may have been somewhat surprised to see this item on the agenda at this sitting, knowing full well that it was tabled prior to last week's sitting of Tynwald dealing

with the same subject. So I hope it does not appear too forward but I did this as a covering exercise in case my much postponed Tynwald motion dating back to October 1998 was either held up again or failed to attract sufficient support for it to pass. In the eventuality I was pleased that it received overwhelming backing with the main ingredient the unanimous acceptance of it by the Legislative Council itself. However, it is accepted of course that members of this hon. House were almost as keen not quite as keen, to be unanimous but only, nevertheless, five members voted against. It was more than enough to convince me that it is worth proceeding to further the principle of election to the Legislative Council by public franchise.

Last week's successful Tynwald resolution called upon the Council of Ministers to produce legislation to cover the matter and there is no need to think that they will do anything but that. Indeed, I understand a sub-committee has already been established to consider how best the legislation might be brought forward. Notwithstanding that, I respectfully ask this hon. House to take out an insurance policy here today to permit me to be given leave to introduce a private member's Bill and I undertake to fully take into consideration the instruction given to the Council of Ministers by Tynwald to produce legislation themselves. I do not feel it is too impertinent to question their commitment to getting on with this, bearing in mind all the other calls on their time, so I shall use this as a back-up measure. If sanction is given today I shall have a Bill drawn up and take soundings from the Chief Minister as to its production to this hon. House or otherwise as the case may then be when it is ready.

One thing, however, I would not like to see is the loss of impetus that last week's vote provided. The election of the fourth candidate to the Legislative Council now clears the way for reform to be introduced and the very fact that the Council itself produced its own Bill and then backed my call to the Council of Ministers for a better one suggests the time is right.

I admit the Legislative Council's Bill was not acceptable to this hon. House but I am sure that working with all the other information that can be put into a private member's Bill or indeed to accede to a Bill which may ultimately be produced by the Council of Ministers as per the Tynwald resolution should be able to satisfy the aspirations of those who, like me, seek to resolve this matter.

So I consider the production of my own Bill would therefore be meritorious in its principle and I ask for the opportunity to be given that permission for leave to introduce a private member's Bill for that purpose.

Mrs Cannell: Mr Speaker, I am very happy to second and reserve my remarks.

Mr Karran: Vainstyr Loayreyder, I will support the hon. member because I believe that we should in almost all circumstances give the opportunity for a private member's Bill to go ahead and for it to be debated fully. But I would have to say that I will find it very interesting to see what the hon. member comes out with as far as his Bill is concerned because I do feel that members need to wonder what will happen. How can we legislate, elect the upper House and then expect in my constituency three MHKs and one MLC with a bigger mandate to then turn around and say, 'I'm sorry, you can only do this.' It will not happen. I do think that we will actually get less decisions made in the new system, but that is the way it will be, and I would be interested to know how the hon. mover is going to resolve that issue. Is he proposing that then there would be an upper House that would end up being the powerhouse and we would

become the secondary House? So it would be interesting to know what the hon. member is proposing.

The only other issue I would like to ask the hon. member is will he look at the possibility of amendments being put to his Bill such as the fact that they should not be allowed to be re-elected over an age limit to the upper House? Would he support that? And maybe we should consider the issue of whether we should actually increase the length of term as far as the upper House is concerned from five years to seven and a half years or something like that in order that if we are to elect the upper House, then we have got to make sure we have the stability that we need, that we do not have a situation where everybody comes out at the same time and there is a vacuum.

Will the mover of the Bill also be looking at maybe ways of strengthening what is the real issue that we need to deal with constitutionally and that is to make sure that this House and this Island are seen as a national government and what moves will this do to make the Island's government look more of a national government and act like more of a national government when that is the biggest issue we have got at the present time? With the UK, the UK is undermining us all the time as far as this is concerned and I just worry about this Bill.

But I will support this Bill and I will listen to what the hon. mover has got to say, but I do feel that the most important issue as far as the other place is concerned in my opinion is that there should be some sort of restraint as far as people getting re-elected for years in the upper House and there should be some sort of age limit in the upper House.

The Speaker: Hon. members, we are dealing with leave to introduce. There is no Bill before the House at the present time. The hon. member for Douglas West, Mr Shimmin.

Mr Shimmin: Thank you, Mr Speaker. Certainly I believe it is appropriate to support leave to introduce on principle and also on the detail of the member's request. It is then up to the member to determine whether he brings forward a Bill which is his own view. We all know that he has many thoughts and has spent time researching this area. I will be interested to see whether he comes forward with his own views or whether he actually seeks the views of myself and others who I am sure will be able to contribute, but it is only when that Bill comes forward that we can then look at the detail and it is up to the member whether he brings that detail forward in his own view or takes further consultation, but certainly, as he describes it as a safety net in order to keep the pressure upon the Council of Ministers committee, I will support his motion.

Mr Corkill: Mr Speaker, I would just perhaps like to ask the hon. mover to explain a little bit more about what he perhaps intends to be in this Bill because we have already had considerable debate in this place and another place with regard to this subject and certainly there was a report to this House which was received by a small number of votes which left the ball truly in the court of the Council of Ministers to come up with the solution. I was disappointed in that because certainly in my experience with select committees they tend to at least suggest draft legislation as the way forward but that has not happened in this situation.

Now, what worries me is that we are focusing on a single issue suggested with this Bill and I would like to know the hon. member's view on what the whole package might be. I think possibly many people of the Isle of Man, including members of this House, were listening to comments on Manx Radio this morning by former Speaker Kneale. Very interesting his views

were with regard to this, and I do not want to stray into a debate on those comments, but I thought it was very relevant that the issue of constituency boundaries and the functions of the Legislative Council, all these sorts of issues still seem to be remaining unanswered in the debate that we have had and I am fearful that if we give leave to introduce for a Bill today and the Council of Ministers are going down another avenue with a Bill, where does all this lead us to? I do not think it is necessarily a very constructive situation.

But specifically to the issue of this Bill which is talking about popular election of the Legislative Council, I would be interested to know what the hon. mover's view is on the Bishop's vote, as to whether the Bishop should have to be elected or whether, by the thinking that he is involved in, he sees the Bishop being replaced by an elected member, an elected candidate from the public.

So I have a number of concerns. I normally almost automatically think that members should have a right to introduce a Bill, but I am fearful that we are actually complicating the situation. I would be interested in the hon. mover's winding up comments before deciding which way to vote.

Mr Downie: Mr Speaker, in listening to the debate so far and the background to the issue I think there is an opportunity here for a good old Manx compromise.

To me, I think the situation with regard to the future of the Legislative Council is one that is so contentious that really, in fairness, it is beyond the possibility of one individual member of this House to bring forward a solution by way of a Bill. One only has to peruse the Tynwald Library and see the previous attempts, and reference was made to the attempt that the former Speaker made to introduce legislation, which failed as it got towards the clauses stage.

I have no problem supporting Mr Cannell or not, whether he wants to progress his Bill, that is a matter for him, but I think what is required is his presence, if he feels so strongly about this subject, with the committee who are dealing with this on behalf of the Council of Ministers (**Mr Gilbey:** Hear, hear.) and there is an opportunity to have some dialogue and to see if there is at this stage some consensus in the way that we are trying to progress the issue.

Of course, if he does get leave to introduce today there will be a lot of work required. (**Mr Gilbey:** Hear, hear.) He will have to consult a lot of members in this House and it would be a shame perhaps after the first reading for his Bill then to go to committee and then for us to spend another 12 months arguing about it when there is this call for change, there is a view in both Houses now that the old system must be modified in some way, and I think there is an opportunity to bring this change to bear provided Mr Cannell is willing to sit down and have some input at the Council of Ministers committee.

So I will wait and hear a little bit more of what other members have got to say about leave to introduce, but I think it is an issue that is going to be a very difficult nut to crack and the more people who are involved in this, I think, the better.

Mr Rodan: Mr Speaker, the hon. member for Onchan, Mr Cannell, referred to an insurance policy. Well, an insurance policy is produced to insure yourself against a particular eventuality. There is no question that the Council of Ministers is carefully examining the issue

of direct election. There is a mandate, a parliamentary mandate, to do so. That is not in doubt. What comes forward, however, is a very much more difficult proposition as to the content.

To pass this motion today to ensure that something comes forward is not the question. What has to be enabled, as far as humanly possible, is that what comes forward is going to be workable and acceptable. It is very easy to pass a motion to bring forward a Bill reflecting the principle, but the content of the Bill is going to be the difficult part, and I am under no illusion myself as a member of the particular sub-committee that is looking at this issue that there is a great deal of detail to be examined as to the practicalities of bringing into effect this principle.

It is very nice to say, 'Let's have an insurance policy to make sure the Council of Ministers bring it in.' That does not need to be insured against. There is a mandate to the executive from parliament that that should happen, but it will be easier said than done and what we are doing this morning is doing the saying and not the doing. So I just raise that little cautionary note, Mr Speaker.

Mr Brown: Mr Speaker, I am going to be supporting this leave to introduce. I think that if a member is wanting on this occasion to try and put together a piece of legislation where everyone else seems to have failed, including a select committee of the House that sat for two and a half years, then good luck to him.

What I will say is whilst I am happy to support the principle, I will warn the member now that I will certainly not be supporting anything to destroy the sovereignty of the House of Keys (**Mr Gilbey:** Hear, hear.) and the basis of the last report was doing that very thing. It was making the House into nothing more than a committee of Tynwald, and I can tell you now I do not believe that is what the people of the Isle of Man want, it is certainly what I do not want and furthermore, in trying to resolve one problem, which is a perceived problem about the Legislative Council - and hon. members, as we heard in another place only last week, are thinking the only way to resolve that problem is to have them elected - I think members need to give a broader vision to this whole issue to see what they want to do and certainly, in resolving what is seen as a small difficulty in terms of the members of the Legislative Council, who, after all, are elected by this House, not being elected by the public because they have an involvement in the executive, and that principle I agree with, that their involvement in the executive may be wrong, I certainly will not be supporting anything that is going to destroy the sovereignty of the House of Keys because I do not believe that is in the Island's best interest and I do not believe that is what the people want, but I am delighted to support this motion for leave to introduce.

Mr Quine: Mr Speaker, I believe that the different planks of this Bill have already been determined by this hon. House and I believe that that is the basis upon which this Bill should come forward. I trust Mr Cannell, the hon. member for Onchan, will pay due regard to the debate which followed upon the select committee report which clearly pointed to the way forward and that carried in terms of the support from this hon. House. If that is the procedure which follows - and I sincerely hope that that, as I say, will be the basis for the Bill - then your concern such as the hon. member for Onchan has concerns about will in fact be addressed because he was concerned about the distinction between the Keys and the Council. Well, of course that Bill addressed that and I think that was one of the strengths of the proposition embraced by the select committee report.

Certainly I would suggest that if we are into a situation where popular election is going to be the basis for the democratic legitimacy expected of members of this legislature, then I do not think an age limit enters into it because if you are going before the public it is for the public to take that decision. So again I think, in terms of Mr Karran's two primary concerns as he voiced here today, the proposition advocated by the select committee addresses both of those.

The Bill will be a complicated issue. I do not believe that that is the case. I have heard this mooted several times and of course it is one of these issues that is raised to deter people from really coming to terms with this issue. The fact remains that so far as putting together a Bill based on the recommendation of the select committee there is already in being a Bill from a previous occasion that takes on board if not 80 per cent, 90 per cent of what is in the select committee report. A large part of it is there and on a previous occasion, going back a number of years now, it received very strong support.

So I think we should not seek to put Mr Cannell off from pursuing this objective because the essence of what he needs to produce by way of a Bill will not be an insuperable problem and certainly, as chairman of the select committee of the Keys that reported, I would be delighted to co-operate with him in any way that I can and after two and a half years of looking at the options for reform of the Legislative Council ad nauseam I feel that I have a reasonable grasp of the issues and I would be pleased to assist in any way that I can.

Certainly the select committee, far from failing, brought this exercise further forward than we have ever done in the past. It provided for the first time an objective appraisal of all the issues, an identification of the options and the simple fact that the member for Castletown does not feel that that is the way to go, then the select committee has failed.

Mr Brown: Failed miserably.

Mr Quine: There is nothing new about that. The only thing miserable is yourself, sir. *(Laughter)* **(Mr Cretney:** Oh!)

Mr Speaker, the way forward, I feel, is already determined to a very large extent by this hon. House. That way forward is there. There is a need to fine-tune that and get a Bill before this House. That is the only way we are going to progress this matter because if we do not get it before the House where we can debate and we can amend, this issue will be put off and off and off for ever and a day. **(A Member:** Hear, hear.) That is the history, that is the past experience. If the Council of Ministers can get one here before Mr Cannell, then no doubt we will have a good look at that. Thank you, Mr Speaker.

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

Several Members: Hear, hear.

Mr Cannell: Thank you, Mr Speaker. Much the same tenor as we have experienced in recent addressings of this difficulty. I hope that the mini-debate will not influence the principle of asking for leave to introduce and I am reluctant to go into any of the ideas that might be contained with the Bill because otherwise we will just immediately create two separate camps then which will have made up their minds long before any possible report of a sub-committee, but nevertheless briefly and for the first time looking at the members' individual comments, my hon. colleague from Onchan offered his support but wondered what tack will be taken. That is

precisely what I am saying. I prefer not to be hide bound to any particular tack but to look at this and I am perfectly content to work with anybody who cares to put any input into this. I am pursuing the principle only at this moment.

Mr Karran did say that he would ask me to give details of amendments to the Bill. I have not even actually put forward the Bill yet, let alone put forward amendments myself, and he mentioned also the age limit which of course has been referred to from time to time. I presume he meant an upper age limit for that.

He also said about a possible clash with elections. I think that is fairly accepted by most, that that would be undesirable to have any elections clashing at the same time and emptying everybody out, but that would not be the case of course if there was to be an all-Tynwald election with 33 members. That would be at an election to be decided by those who consider the clauses of any Bill which would come forward from the Council of Ministers or from myself.

The hon. member for West Douglas, Mr Shimmin, supported the principle of having the leave to introduce today and he said account should be taken by me of individual views. I think there is one thing we are certainly not short of and that is views on this subject. I think in fact were you to press Legislative Council reform on one of these computers that identify the subject you would certainly need to load up a complete ream of paper while it printed it out.

My other hon. colleague from Onchan, the Treasury minister, Mr Corkill, said that the select committee report might be taken into account. Of course, sir, that would undoubtedly be the case. I do not think anybody could possibly ignore any evidence of recent note which has been put in and I accept the balance that was struck that day where in fact it was received on a very tight vote. It is the old adage of, is the glass half full or is the glass half empty? You could say that 12 members wanted it, 12 members did not, but nevertheless it did pass for reception.

Yes, I heard the former Speaker, Mr Kneale, this morning on the radio with his stout and stalwart views which he has procrastinated, including he claimed that the position of the Bishop in the legislature had been talked about for 150 years, which did leave me to wonder how he knew (*Mr Cretney interjecting*) but even with respect to Mr Kneale, he was not quite around at that time, but you have got to say one thing for him: he has stuck with it and he is a really devoted fan of getting reform and many of the reforms which we have today he battled long and hard to achieve.

Mr Corkill: And failed.

Mr Cannell: No, he did not fail on all of them. He did not, sir, fail on all of them. He succeeded in many of them and he did it by persistence and he did it in the face of considerable opposition from entrenched positions.

The hon. member for West Douglas, Mr Downie, said that a compromise was required. I think it is the first time I have ever heard him say he would possibly entertain a compromise on anything. So it just shows you how we are all getting older and, well, I do not know about wiser but we are certainly getting older.

He claimed it was beyond an individual member to succeed with this. Well, I do not pretend for a moment that it might be me that might do it, but one day it is going to happen whether we are still here or not. This is on a roll now and last week's Tynwald vote proved that.

Had that not been the case it would not have been passed. The question is now, can or will the Council of Ministers deliver? Now, it would be very impertinent to suggest that they will not, but as I said earlier on, they have many duties and they have passed it to a sub-committee and I would be quite happy to work with my respected colleagues and former friends, Mr Rodan and Mr Brown, on just such a committee.

Mr Rodan himself, the hon. member for Garff of course said it is an insurance policy which you have against a risk and he says there is no risk because the Council of Ministers have been charged with producing this, and that is acceptable, but of course, as we all know, you can have something passed to you and honour to agree to produce it but there was no tie as to when. That is the question: when will legislation be produced? If the Council of Ministers give me an undertaking that they have a Bill coming forth and most of the draft of that satisfies the same aspirations as I have myself I would be perfectly content to leave it to the sub-committee, but I am extremely nervous when one of the members of it seems to be already well entrenched into a position where he could not objectively actually say that he was behind the principle of examining it impartially.

So we come then to the hon. member for Castletown who was anxious that the sovereignty of the Keys be preserved. I do not think there are many who would question that. And he also doubted that the select committee's recommendations would find favour if they were incorporated into a Bill because he said that it had such a tight vote for it to be accepted at all. I think that is a shame because two and a half years might have been spent with allegedly no result. In actual fact I think it was a pretty good report and I think it did a lot of examination of some of the more tricky details and you do not do that in five minutes. Which brings us to the last speaker, the hon. member Mr Quine, who of course chaired that select committee. So you would say, 'He would, wouldn't he?' when he put forth his backing for the select committee's report.

Today we are not debating anything other than permission to introduce a private member's Bill to back up the objective vote which was given in Tynwald last week, age limits and all that, constituency boundaries, make-up of it all, all red herrings being thrown in. All we want to do is to get a Bill. It will be down to hon. members then to either accept it or to take it apart, but the principle at the moment can no better be demonstrated than last week's Tynwald vote which proves that in fact there is or there was last Tuesday the opportunity for the will to be preserved and for the principle of public franchise to the election of the Legislative Council to go forward.

The Speaker: Hon. members, the motion is that printed at item 11 on your order paper, that leave be given to introduce a Bill to provide for the elected members of the Legislative Council to be elected by those registered as electors and entitled to vote in a general election through the House of Keys. Will those in favour please say aye; against, no. The ayes have it.

A division was called for and voting resulted as follows:

In the Keys -

For: Messrs Cannan, Quine, Rodan, North, Mrs Crowe, Messrs Brown, Houghton, Henderson, Cretney, Duggan, Braidwood, Mrs Cannell, Messrs Shimmin, Downie, Singer, Karran, Corkill, Cannell, Gelling and the Speaker - 20

Against: Mr Gilbey, Sir Miles Walker and Mr Bell - 3

The Speaker: Hon. members, the motion carries, there being 20 votes cast for and 3 votes cast against.

Body-Piercing of Minors Bill – Clauses Considered

The Speaker: We turn then to item 12 on the order paper, the Body-Piercing of Minors Bill. I call upon the hon. member for Ramsey to move clause 1.

Mr Singer: Thank you, Mr Speaker. Clause 1(1) inserts a new section 23A in part III of the Local Government (Miscellaneous Provisions) Act 1984 which deals with tattooing and body-piercing. This clause makes it an offence to perform body-piercing on a person under the age of 18.

Sub-clauses (2) and (3) describe the exceptions and these are: allowing a procedure to be undertaken on a minor if written parental permission has been given; the parent themselves has attained the age of 18; and the person, though under 18, is married, as a married person's parent then in law has no legal rights over the child. There is an exception for treatment by a registered medical practitioner or a person working under their control.

Sub-clause (4) defines 'medicinal product' and also the word 'parent', as I described a few moments ago.

Clause 1(2) inserts into section 24 of the aforementioned local government Act a change in the maximum penalty, which is increased from £1,000 to £2,500 to bring it more up to today's inflationary values. Line 15 then defines a defence for a person charged with the offence to prove that at the time of the offence he reasonably believed that the person on whom the tattooing or body-piercing was performed was not under the age of 18.

At the second reading an hon. member asked what was the offence committed by a person who forged a parental signature. The legal draftsman informs me that such an act would be procuring the commission of the offence and that that person is guilty of the offence.

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

Mrs Crowe: I beg to second, Mr Speaker. Thank you.

Mr Duggan: Could I just ask the mover, Mr Speaker? It is okay bringing these rules and regulations in the Island in, but they can go on the boat maybe on a Saturday and go to Liverpool and get these tattoos put on them. So what can be done about that? Nothing, I suppose.

Mr Brown: Mr Speaker, hon. members will recall that when we did the second reading of this Bill I raised a concern in relation to the provision in the Bill under the new section 23A in clause 1 of this Bill where in fact it just said a parent of the person under the age of 18 consents in writing to the body-piercing. My concern was that that could be anything on a scrap of paper or it could even be, I suppose, forged and all sorts, and I raised this issue with the House at the last sitting.

Before members this morning I put forward an amendment which makes the position far more satisfactory I believe and I hope hon. members will feel able to support it and if members look at the amendment before them and the Bill they will see that the first part of that

amendment covers line 8 of page 1 by inserting new words into the new section 23A(2)(a) so that sub-clause (2)(a) will read 'a parent of the person under the age of 18 consents in writing in the prescribed form to the body-piercing' and then if we move to page 2, line 10, under basically what are the definitions, it makes it clear then in the amendment that 'prescribed form' means a form prescribed by the regulations made by the department, and then there is a new sub-clause (5) introduced which says, 'Regulations made for the purpose of subsection (4) shall not have effect unless they are approved by Tynwald.' I do think that if we are going into this area of controlling whether or not persons are permitted to have body-piercing when they under the age of 18 and where the government of the Island, through this legislation, will be required to seek from that parent written confirmation, then I believe that such confirmation, if we are going down this road, should be in a proper format and not just rely on a letter that is given to the person who is going to undertake the actual body-piercing and who may well misplace the letter. By having a proper prescribed form we can cover it so that there has to be a copy sent to the department and there is a proper record of that and therefore there would be no misunderstanding, if a case got before the courts, that it is absolutely clear there was a proper format for giving what is classed as parental permission for a person under the age of 18. I therefore beg to move the amendment standing in my name:

Page 1, line 8; after "in writing" insert "in the prescribed form".

Page 2, line 10; at the end insert -

" "prescribed form" means a form prescribed by regulations made by the Department.

(5) Regulations made for the purpose of subsection (4) shall not have effect unless they are approved by Tynwald."

Mr Rodan: Mr Speaker, I am very happy to second this particular amendment. There is a deficiency at the moment if we are simply thinking about ear-piercing because there is no standardised way that somebody with a licence can have established in writing parental consent. I know from past experience that with the various ear-piercing kits that are produced some do and some do not have forms for parental consent; there is certainly nothing standard about them. This will remedy that particular deficiency anyway. It is needed anyway even without this particular Bill, which I also welcome, so I am very happy to second what is a very straightforward move.

Mr Singer: Mr Speaker, I am happy to accept this amendment. I have had discussion with the hon. mover and the legal draftsman and it was a matter that I also raised at the second reading, as one of the consultation replies that came to me from an ear-piercing establishment had in fact requested an official form to be signed by the parents. Hon. members, I believe that this amendment will strengthen the effect of this Bill and I will support it and ask hon. members to support the amendment.

The Speaker: With no other hon. member wishing to speak, the hon. member for Castletown, do you wish to speak to the amendment at all? No?

Mr Brown: No, I am happy, Mr Speaker.

The Speaker: Now, hon. member for Ramsey, you can reply to the debate, sir.

Mr Singer: Thank you, Mr Speaker. I think there was one comment and I thank Mr Duggan for the comment. I think, though, he did sum the answer up himself really in the fact that when one goes to another country, then one is governed by the laws of that country, but that does not mean that we should have our own laws and hopefully the United Kingdom in this case will see the need to follow our lead and to protect their young people. I therefore move clause 1.

The Speaker: And now, hon. members, the motion before the House is that clause 1 stand part of the Bill. To that we have the amendment moved by the hon. member for Castletown, Mr Brown, and circulated on the white paper to you. Those in favour of the amendment please say aye; against, no. The ayes have it. The ayes have it.

Therefore, hon. members, clause 1 as amended. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. And the short title, clause 2, hon. member for Ramsey.

Mr Singer: Thank you, Mr Speaker. Clause 2 is supplemental and names this the Body-piercing of Minors Act 2000 and I so move.

Mrs Crowe: I beg to second, Mr Speaker.

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

Corporate Service Providers Bill – Second Reading – Debate Commenced

The Speaker: We turn therefore to item 13 on our order paper, the Corporate Service Providers Bill for second reading, and I call upon the hon. member for Douglas East, Mr Braidwood.

Mr Braidwood: Thank you, Mr Speaker. The purpose of this Bill is to introduce a regulatory regime for those who in or from the Island provide services to companies. It also requires Isle of Man incorporated companies carrying on corporate service activities outside the Island to be licensed.

In 1998 when Mr Andrew Edwards carried out his review for the Home Office of the financial services in the Crown dependencies the Island was already well advanced with the development of a regulatory regime for corporate service providers. Indeed, Mr Edwards acknowledged that the introduction of the corporate service providers regulatory regime would deal with a number of his criticisms of the Island as an international company registration and administration centre.

The Financial Supervision Commission, which was already responsible for the licensing and supervision of banking and investment business, was advised by the Treasury in July 1998 that it would become responsible for the supervision of corporate service providers, the companies registry and for ensuring compliance with company law.

With respect to the latter responsibilities the Companies (Transfer of Functions) Act 1999 received Tynwald's approval last week and its provisions will come into effect from 1st April 2000. This Act will affect the transfer of the Companies Registry from the Treasury to the Financial Supervision Commission.

The gestation of the Corporate Service Providers Bill 2000 has been long. Many of the issues raised by Mr Andrew Edwards in the Home Office review of the regulation of the financial service industries in the Crown dependencies had already been identified as weaknesses by the First Deemster in his report to the Council of Ministers in 1991. This report reviewed the events following the collapse of the Savings and Investment Bank Ltd in 1982.

The First Deemster's principal recommendations were that in order to eliminate undesirable and unscrupulous practitioners, company law be amended in such a way that those who acquire and own Manx companies are properly and effectively accountable to the authorities and legislation be introduced to regulate and control those who form and administer Manx companies.

Arising out of the First Deemster's report the Council of Ministers agreed to establish a working party consisting of representatives of the Treasury, Financial Supervision Commission, Insurance Authority, General Registry and Her Majesty's Attorney-General. The working party's report in January 1992 to the Council of Ministers recommended that the Financial Supervision Commission be asked to devise proposals to regulate and supervise those who form and administer Manx companies and those who act as professional trustees.

The primary aims of such a regulatory regime should be to deter criminal abuse of the Island, to establish minimum standards of companies, to deter fraud against clients and by so doing to protect the reputation of the Island.

The Bill before you today will give the Financial Supervision Commission the necessary powers and provide the framework for the regulation and supervision of those who form and administer not only Manx companies but also companies incorporated in other jurisdictions for which services are provided in or from within the Isle of Man. The introduction of legislation to regulate the providers of trustee services has for the time being been deferred.

In view of the amount of lobbying of the members of the House over the past few months by the corporate service providers sector on the introduction of this legislation, and indeed members will have received a briefing paper from the Isle of Man Society of Chartered Accountants in the last few days, I think it worthwhile describing to members the climate of transparency and co-operation the Financial Supervision Commission has tried to engender throughout what has been an extensive consultative process.

Consultation with the corporate service providers sector started in January 1995. The proposals then circulated were for all Isle of Man incorporated companies and all foreign companies registered in the Island to be required to appoint a corporate agent. There was some objection to this proposal, as the concept of a corporate agent for every company was considered to be an unnecessary additional layer to existing company law. The corporate service providers sector's preferred option was for all persons operating in this sector to be required to be licensed.

After extensive consultation with representatives of the corporate service providers sector a second consultative paper was issued in November 1997. The comments received were reviewed by the commission and a third consultative document summarising the main issues raised in response to the November 1997 paper and the commission's responses was issued in December 1998.

Having sought the views of the sector the commission was then able to brief the legislative draftsman and a draft Bill was issued for consultation at the end of June 1999.

The corporate service providers sector was afforded a further opportunity to comment on the Bill when the commission circulated a paper in October 1999. This paper responded to the issues raised on the first draft of the Bill and included a revised draft of the Bill.

Having taken account of the corporate service providers sector's comments, the Corporate Service Providers Bill was further amended prior to submission to Treasury and thereafter to the Council of Ministers for approval.

Members will recall that at the presentation made to them on the Corporate Service Providers Bill by the chief executive of the commission, Mr John Aspen, on 16th December 1999, the Attorney-General, supported by some members present, queried why acting as a director had not been included as a regulated activity. This was taken up by the Council of Ministers who considered that the Island may be exposed to criticism for failing to include this activity which for Sark has been a considerable problem. Members will recall that the so-called 'Sark lark' was strongly criticised by Mr Andrew Edwards and the Isle of Man should not risk putting itself in the same position as Sark, particularly when Guernsey is clamping down on the 'Sark lark'.

The chartered accountants complained that they were not consulted on the addition of acting as a director as a regulated activity. As this was a late amendment made on the instructions of the Council of Ministers members will appreciate that, as the Corporate Service Providers Bill was approved by the Council of Ministers and referred to the branches, the commission could not at that stage pursue further consultation. I will deal with the chartered accountants' other points in due course.

As I have explained, a total of five consultative documents was issued between 1995 and October 1999 and the commission has also met on several occasions with associations representing corporate service providers and with individual corporate service providers firms of varying sizes.

The representative associations with which the commission has had the most active liaison are the Association of Corporate Service Providers, the chartered accountants, the chartered secretaries, the Law Society and the Institute of Directors.

The secondary legislation, namely regulatory codes for the conduct of corporate service providers business, has also been circulated for extensive consultation and the commission has met several times with representative associations which have been advising on the development of these codes. Revised codes have just been recirculated to the corporate service providers sector for further consultation and members will have received a copy of the document this morning.

Mr Brown: That's a big hope.

Mr Braidwood: Members of the House will be aware that in consultation on this Bill lobbyists have referred to the impending adoption by the Island of the European Convention on Human Rights through the Human Rights Bill. The Financial Supervision Commission's statutory indemnity previously stated that neither commission nor its officers shall be liable to any action, suit or proceedings in respect of any of their actions and performance of their

functions under the Bill. The commission received advice from a UK barrister who is a leading expert on the European law on human rights that the commission's statutory indemnity, which mirrored the provisions in the Investment Business Acts 1991 to 1993, would not be contrary to the European Convention on Human Rights. However, the commission considered it preferable to deal head on with any possible future challenge by amending this clause by the removal of the words 'any action, suit or proceedings' and substituting 'shall not be liable in damages'. A similar change will be made to the provisions relating to the commission's statutory indemnity in respect of the regulation of investment and banking business.

The chartered accountants' briefing paper, which I referred to earlier, also proposed an amendment to clause 18(I), which is the provision relating to the commission's statutory indemnity. They suggest that, in addition to the commission not being liable in damages for its actions, unless the acts et cetera can be shown to have been in bad faith, the words 'or to have been negligent or reckless' be included. In its information paper circulated to the corporate services providers sector on the 10th of March 2000 the commission responded to these suggestions, pointing out that the term 'bad faith' is fully recognised by the courts.

The commission has received legal advice on what is meant by bad faith as follows: 'Any exercise of a statutory power is invalid unless the repository of the power acts honestly and in good faith.' The English courts have found bad faith to include deliberate or reckless use of powers for illegal purposes - *Crown v Liverpool City Council 1985*; reckless indifference to the lawfulness of actions taken - *Smith v Skinner 1986*; deliberate disregard of known statutory duties - *Lloyd v McMahon 1987*.

The Attorney General's Chambers advises that it would be unwise to replace a term recognised by the courts with some other term, which, as explained above, has by case law precedent been shown to include recklessness and negligence. The chartered accountants' amendment may have the effect of relaxing the provisions, as the courts would need to consider why bad faith has been extended. Such reinterpretation may lay the commission open to challenge, not necessarily from the corporate service provider, or former corporate service provider, but from the underlying customer corporate service provider on the grounds that some failure of the corporate service provider is due to lack of regulation.

The Bill was further amended so that, where an offence is committed by a body corporate, for a director, officer et cetera of the body corporate also to be guilty of the offence it must be proved that the offence was committed with that person's consent or connivance or be attributable to neglect of their duties. However, it must be said that the former wording, which assumed that the director, officer et cetera, as the directing mind of the body corporate, was guilty of the offence unless that person could prove otherwise, would have further facilitated the process of rooting out miscreants.

The expert advice which I mentioned earlier also suggested that the particular circumstances of the Island's financial service industry and the greater protection afforded to licensed businesses by what is termed 'the reverse burden of proof provision' could be used as a justification for framing the Island's domestic legislation in this way, in terms of human rights. This advice was supported by considerable human rights case law.

In consultation it was also claimed that the procedure for a review of the commission's decision, namely by a committee appointed by the Treasury, was not sufficiently independent

of the commission and that such a review process may therefore be contrary to the European Convention on Human Rights. Although this review mechanism has worked satisfactorily in the past in respect of investment and banking business, a Council of Ministers appointed committee has now replaced the Treasury review committee in order to forestall any future challenge. Members will recall that a similar review mechanism was approved by the House at the clauses stage of the Retirement Benefits Schemes Bill 2000.

The powers of inspection and investigation in the Bill mirror those in the Investment Business Acts 1991 to 1993 and in the Banking Act 1998 and are considered to be necessary for any regulatory regime to be credible and effective.

It should be noted that regulation in any form is new to the majority of corporate service providers. Those who are part of an organisation which is already regulated for its investment of banking business activities have, it may be said, been less alarmed by the corporate service providers legislation.

The commission is aware that it is necessary to build up a relationship of trust and this was one reason why extensive consultation was undertaken with the corporate service providers sector. In this context members may be aware of a letter of yesterday's date from the Association of Corporate Service Providers. The commission has been liaising closely with the association, who have been generally supportive, whilst some others have been scaremongering about the effect of introducing regulation to the corporate service providers sector on the Island's economy.

Although the Corporate Service Providers Association recognises 'the need for regulation of the industry and looks forward to the few unscrupulous service providers, which have hitherto been unregulated, no longer being able to tarnish the reputation of the reputable corporate service providers on the Isle of Man', their principal argument appears to be that the result of introducing such regulation will be a downturn in corporate service providers' business. They imply a direct correlation between the decline in the number of Isle of Man incorporated companies and the impending introduction of the regulatory regime.

This is a rather more complex issue than their comment suggests. For example, the commission is aware, prior to the impending introduction of the corporate service providers legislation, that many corporate service providers were already providing for their clients' use companies incorporated in other jurisdictions, some of which may have less robust company law than the Island.

It should be noted that there have been no recent changes to Isle of Man company law, except that a moratorium was placed in April 1999 on the registration of Manx companies under the Non-Resident Company Duty Act 1986.

Either we have a credible regulatory regime for corporate service providers or we disregard the robust response the Island was able to give Mr Andrew Edwards' recommendations which, with regard to companies, were supported by the proposal to introduce the Bill before you today.

Whilst it is generally acknowledged that it is in the best interests of the Island and an enhancement of its reputation abroad that it has a well-regulated finance sector, references are sometimes made to ensuring that the Island is on a level playing-field with its competitor

jurisdictions. The commission has liaised closely with Jersey and Guernsey, both of which are in the process of introducing similar legislation. Indeed, these jurisdictions will be going further than the Isle of Man in that they will also be regulating fiduciaries, that is to say, providers of trust services, from the outset.

As referred to earlier, this was one of the recommendations coming out of the first deemster's report of 1991, but the Island foresaw problems in achieving this. It has since been decided that in respect of the regulation of trustee services the Island should only approach the regulation of trust services providers once the regime for the corporate sector has been established. The chartered accountants' briefing paper refers to maintaining a level playing field with Jersey. The commission has been advised that Jersey has been unable to come up with a form of words to exempt non-executive directors and are minded to require anyone who acts as a director, whether non-executive or not, to register.

The commission has also been advised that Jersey will be making exemptions by order, as was originally proposed with our Bill, but resisted by the corporate service providers sector, who wanted all exemptions to be shown on the face of the Bill.

The explanatory memorandum to the Bill contains figures for the fee income for licences in the first full year of operation. However, it should be noted that this is no more than a provisional broad estimate, as there is currently no firm information on how many corporate service providers will be coming forward to be licensed or how many companies they administer.

An application fee, in line with the lower end of the fee scale for investment business licence applications, has been proposed. For the annual licence fee thereafter the commission is considering a nominal fee per client company, domestic and overseas, for which any of the regulated activities have been provided. It is anticipated that corporate service providers will be able to pass on this fee to their client companies, who will be the persons benefiting from the protection of supervision.

The Corporate Service Providers Bill 2000 defines a corporate service provider or CSP as anyone who performs any of the regulated activities by way of business, and unless specifically exempted, it will be an offence to act as or hold oneself out as a CSP without a licence. The chartered accountants' briefing paper cite the lack of definition of the term 'by way of business' as a possible hindrance to those who act as directors of local charities from being able to claim exemption from this legislation. As was pointed out in the commission's consultative paper, the term 'by way of business' is well recognised by the courts and its meaning in specific circumstances is determined on a case by case basis. What was being pointed out was that acceptance of remuneration for doing something or, on the other hand, the lack of intention to make a profit will be just one of several factors related to the particular circumstances of the case.

I will describe in more detail the major exemption shortly but in the context of the chartered accountants' reference to those who act as directors of local charities members should note that paragraph 5(2) of schedule 2 allows the Commission, by notice in writing, to confirm whether any particular business is a domestic service. Thus acting as a director for a local charity would qualify for exemption from the need to be licensed as a CSP.

The regulated activities are defined as the provision of services with respect to the formation, sale, transfer or disposal of companies; the provision of premises for use as a registered office or providing accommodation address facilities; the provision of a registered office or of an accommodation address for a foreign incorporated company; acting as a director of companies; arranging for others to act as director or secretary of a company; acting as or arranging for others to act as nominee shareholders or nominee members of companies and providing company administration services, which are defined as the keeping of companies registers and accounting records and the preparation of accounts under the Companies Act 1982; the preparation and making of returns, for example the annual return under the Companies Act; convening general meetings and keeping minutes.

The Bill also contains some very important and wide-ranging exemptions, because it was recognised that the definition of the regulated activities may otherwise draw in persons who it would be outside the spirit of the legislation to regulate in this way. For example, the following are exempted: professional services provided by lawyers and accountants in the course of their legal and accountancy work, domestic services, being any regulated activity such as preparing a company's annual return for a local business which carries on a trade or business in the Island.

The description of the sole or principal activity of such trades or businesses covers the following activities undertaken on the Island: manufacturers, retailers, mining, fishing, farming; distribution of goods; development of land; purchase, sale, holding or trading in land; provision of services - taxi, hairdressing, car repair, recreation or accountancy.

It is likely that this list of domestic services will not be exhaustive. Members should note that the list of domestic services has not been drawn from the air. The list mirrors that used to define Isle of Man incorporated companies, which may not apply for exempt tax status under the Income Tax (Exempt Companies) Act 1984, the Income Tax (Exempt Companies) (Prescribed Exclusions) Regulations 1989, with the addition of service industries.

The chartered accountants point out that taxi services may not necessarily be provided solely to persons resident in the Island. I intend to have proposed an amendment to this particular exemption so that it will, as with the rest of the list, only refer to the services being required to be carried out in the Island and deleting 'to a person who is resident in the Island'.

Because the list cannot take account of all possible applications now and in the future, paragraph 5(2) of schedule 2 allows the commission, by notice in writing, to specify any regulated activity which is to be treated as a domestic service, both in relation to an individual company or class of company. The types of activity noted in the chartered accountants' paper will, if they meet the 'sole or principal activity carried on in the Island' definition, also be eligible for exemption. Contrary to the chartered accountants' claim that this will be a lengthy procedure, the committee believe that this is not a complex power and it should be possible to decide such issues quickly.

It should be noted that the criterion of beneficial ownership was not, on the advice of the Attorney General's Chambers, used for this definition of domestic services. Frequently legal ownership is not the same as beneficial ownership and there may be private arrangements between the legal owner of the shares and the beneficial owner. A defining concept of beneficial ownership would have been extremely difficult to determine and police.

There are also specific exemptions relating to those acting as a director of a company if the directorship is provided to one of the following: any company which is included in the domestic services exemption referred to earlier; a company quoted on a recognised stock exchange; a private family company, that is to say, where the director or his family is also the company's owner; employees of a CSP or persons who are acting as directors by arrangement of a CSP who will, itself, be licensed.

The commission has power to issue a CSP licence, issue a licence subject to conditions, or refuse the application. It may also revoke or suspend a licence if it has reasonable grounds for believing that the licence holder has contravened any provisions of the Act or codes made under the Act, has supplied the commission with false or misleading information, or has contravened any prohibition or requirement imposed under the Act.

An applicant for a CSP licence and its key staff must be and continue to be fit and proper persons. In the case of an individual's appointment to a key staff position a decision by the commission to refuse such an appointment may be referred to the independent review committee under clause 17.

The commission has the power to make regulatory codes in connection with the conduct of a CSP's business. Regulatory codes which require Tynwald's approval may be made in respect of a number of areas such as a CSP's systems, procedures, record-keeping controls and training; the treatment to be afforded to clients' money, which would be held on trust for the client; the form and contents of advertisements; and the submission to the commission of returns.

As I said earlier, considerable consultation has taken place on the draft regulatory codes. A second consultation paper and the revised draft codes were circulated to the CSP sector at the beginning of this week.

Clauses 10 to 13 refer to the commission's supervisory and investigative powers. These powers are fundamental to a credible regime under which both the everyday supervision work will be carried out and which allow the commission to prevent breaches of the legislation. Supervision will normally be carried out with the co-operation of a CSP and care will be taken by the commission to cause the minimum amount of disruption to the CSP's business.

The commission may, under the authority of a justice of the peace, require information and, in extreme circumstances, may obtain a deemster's warrant to allow the officers of the commission to enter and search the premises and take possession of documents. If it is in the public interest or necessary to protect the interests of customers or creditors, or necessary for the orderly winding-up of a CSP business, or to ensure that the business is settled or disposed of in an orderly manner the commission may petition the high court for the appointment of a receiver or manager in the respect of the affairs, business and property of a CSP or former CSP.

Clause 17, which I referred to before, provides a mechanism for anyone who is aggrieved by a decision of the commission to have that decision reviewed by an independent committee appointed by the Council of Ministers. The review committee will be made up of three persons with appropriate experience who are independent of both the commission and the applicant.

The nature of the decisions which can be referred for review are: to refuse to issue a licence; to revoke or suspend a licence, to issue a licence subject to conditions or to vary conditions on the grounds that a person does not meet the fit and proper criterion to refuse to allow a CSP to appoint a person in a key staff position; to withdraw an exemption or to impose any penalty.

Members will recall that in the Retirement Benefits Schemes Bill the House approved a similar review committee arrangement. I should point out that for consistency the Treasury-appointed review committee in the legislation relating to the regulation of investment and banking business will also be replaced by a review committee appointed by the Council of Ministers.

Clause 18 gives the commission statutory indemnity against liability in damages for any act carried out by the commission or its officers, provided that the act was not in bad faith. The commission believes that in order for the CSP regulatory regime to be credible it must be able to carry out its supervision free of fear or a suit for damages.

There is a similar indemnity provision for the Insurance and Pensions Authority, as approved by the House in the recently considered Retirement Benefits Schemes Bill. As I believe his words have equal relevance to this Bill, I would like to quote the Treasury minister's response to the hon. member for Ayre, Mr Quine, when that clause was debated. He said that the roles of a supervisor and of the police are very different: the supervisor plays a role of watch dog and has a duty to try to stop things going wrong, rather than actually chasing the situation after an offence has been committed.

As with the review committee, for consistency a similar change has been made to the legislation relating to the commission's work and the regulation of investment and banking business. As was approved by the House in the Retirement Benefits Schemes Bill in the case of a corporate offence the prosecution must also prove the guilt of any officer or person concerned in the management of that company. Once again for consistency a similar change will be made to the legislation relating to the regulation of investment and banking business.

Clause 25 allows the commission, after consulting with the Treasury, to prescribe fees to be paid on making application for a licence and the annual licence fee payable thereafter.

The Corporate Service Providers Bill 2000 reflects the current climate of openness and transparency engendered by extensive consultation with the CSP sector over a number of years. It should be noted that this legislation and the regulatory regime are merely a codification of best practice which may already be the norm in the majority of CSP businesses in the Island. The resultant Bill will therefore not be placing an onerous burden on any practitioner who practises high standards of probity and who wishes to see good-quality business attracted to the Island.

This Bill is the culmination of the government's desire to stamp out abuse of the Island's corporate sector and to protect its reputation in an area of activity which is of considerable importance to the Island's economy. That the Island was well advanced in developing the regulatory regime for CSPs was a considerable advantage to the Island in dealing with Mr Andrew Edwards' observations in his review of the Island's financial services for the Home Office report on the Crown dependencies.

To sum up, a credible licensing and supervisory regime for CSPs is an essential part of this Island's response to many of Mr Edwards' observations dealing with the corporate sector. There is a strong international expectation that we will be introducing effective measures and as a result we should proceed without delay. Mr Speaker, I beg to move.

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

Mr Shimmin: Mr Speaker, I wanted to speak early on this whilst I could still remember some of the issues that the chairman of the FSC has given us this morning. I think I was staying with him for the first half hour but it started to get a bit muddy after that, and it is one where I appreciate the effort to try and give members clarification of all the issues of something which is complex and I am sure we have all been lobbied and have attempted to try and understand this issue. I do, however, have a number of concerns which I am not convinced the chairman will be able to satisfy me with today but I will try and be succinct.

We are left with a choice whether we believe that the FSC have understood the legislation they are proposing and that it is beneficial to the Island or the sector involved who still have reservations and concerns, and in a complex area once again we as politicians and lay persons are left with the decision, who do we believe and who do we trust? So the chairman has put out comments such as 'transparency and co-operation', 'openness and transparency', 'consultation'. Yet throughout all of this there is still a nagging doubt in those sectors that the message has not got across, and I wrote down whilst the chairman was speaking, 'Don't convince us, convince them', because every member of this hon. House is desirous of the same end result.

The chairman of the FSC used quotes from the Association of Corporate Service Providers and I think we would all endorse regulation of the few unscrupulous service providers which have hitherto been unregulated. That is what I and I believe other members thought this legislation was going to do. However, the line which finished that paragraph says, 'A number of issues within the proposed legislation are causing grave concern.'

I do not wish to dilute this legislation. Attending the briefing for members from the chief executive of the FSC I believe that we have already to an extent reduced this legislation to a level where if we dilute it any further it will have no value to do what we hope it will achieve. I have to have the confidence in the FSC that they as the regulators and the safeguard of the Island's reputation in financial matters is sufficiently robust, and I believe that this exercise has questioned my confidence in them at present and I believe there are steps ahead which the FSC can take which will restore my confidence, and far more importantly, restore the confidence of the international and the local sectors.

When the chairman talks about the issues of case law and bad faith being recognised, again I would urge the chairman, if that is the case, and it sounds plausible, that that surely is not a difficult message to get across to people who work in this sector, but it is not clear. The institute of accountants and the Association of Corporate Service Providers still are not satisfied with the explanations that have been given.

There was talk of the relationship of trust. I think that has been compromised, not irreparably, but it is an area which we need to understand politically and that the finance sector which is important to the Isle of Man must retain a certain level of fear of but also confidence in the regulatory body, and I think it is the breakdown of trust which has allowed some

representatives and individuals to get fearful about the downturn in business, to talk about level playing-fields and to introduce the concerns that they expressed regarding exemptions, and even to the level of, I would say, some of the professional people who have lobbied us going to the lengths of putting forward rather silly arguments because they do not understand or trust that the real intention is one that is going to be resolved by this legislation.

After all of this consultation why are they not agreeing? Why is there still conflict? Now, that is either vested interest in the private sector, and I believe there is an element of that and I have no sympathy with that whatsoever. Persons protecting their own business interests at the expense potentially of the Island's reputation I have nothing but disdain for. But the people who have approached myself and I am sure other members are people who are credible, people who are still concerned. They are people who are intelligent enough to realise that this regulation is coming, this regulation is beneficial and that this regulation will support the reputation of the Isle of Man. Yet they are not yet satisfied with the arguments that have been put forward.

I believe that today, I and other members are left with three choices on the second reading. I can say, 'No, I have sufficient doubts: I'm not prepared to support this', but there is a danger then that the Bill will be sent away and we will lose this opportunity of getting good regulation in an area which is long overdue.

Some bright spark might say, 'Let's put it to a committee: that would give us time.' The hon. member for Ayre is nodding his head, so some bright spark I asked for. If it goes to a committee it is attractive because it sidelines it, it puts it away for a period of time and takes away from us as politicians to determine the legislation. But it is something where I believe that that approach will probably play into the hands of those with vested interests and actually allow them to muddy the water sufficiently so that this Bill may be diluted even further.

Or I say to the chairman, 'Yes, second reading, I will trust that you will still resolve some of these issues by the time of the clauses stage', which I believe would benefit by being slipped by two to four weeks, as happened with the Treasury minister's retirement Bill, in order to allay some of the fears which I have and I am sure other members have, because I will warn the chairman that if he blasts on regardless next week and tries to push through clauses without me being satisfied I will oppose him, because I am not talking about people with vested interests, it is legitimate business. Nearly every one of these corporate service providers currently and in the future is likely to experience a quality of life and income that I will never ever aspire to. I have no truck with some of these people, they are in business, they do their business and they make a good living out of it in many cases. I have no knowledge of the sector but these people expect regulations to be suitable and to be fair.

I think that the codes and regulations that will come forward are beginning to take away some of those concerns because the detail in the regulations is clarifying and taking away some of the fear, and as the chairman said, this sector has not yet been regulated, many of these people are very scared about what it is going to do to their business, and through the legislation and through the regulations we should be able to say, 'Listen, you do good business, you keep your house in order: you have no problem. You play games, you cut corners: you will be dealt with severely.' Now, that level of understanding should be firm, should be clear, should be understood. But it also needs to be believed and at the moment - I apologise to the chairman - despite assurances to the contrary, my information is still that

there is a level of uncertainty which I believe in the short and in the medium term is going to damage the relationship of the regulators, of the sector and therefore also the politicians, and I would urge therefore my instinct is to say yes to the second reading but with the proviso that if we do not get a level of assurance from the sectors who are lobbying and who are giving us their fears at the moment, then I may oppose either at the clauses or the third reading stage, and I think that would be damaging to the Isle of Man.

If it goes to committee we are then left with, who do we put on it? And I think there are so many issues rattling round at the moment. The hon. member for Ramsey has just pointed to me, so it is time to shut up, otherwise I would end up on the committee. It is one where I believe this legislation should be robust, should be in place, preferably this session, but at the moment I would like to see a deferment for a period of time of consultation between the bodies who know about it: the sector and the regulators. **(Mr Houghton:** Hear, hear.) Chuck it into a committee of politicians and what is going to happen? You are going to find that it is going to be bogged down for six months as any of us try to get our heads around it. So I apologise to the bright spark if he is coming forward with a committee.

To me, I believe that the majority of the work is already done, the trust can be rebuilt. Instinct says yes to the second reading but big cautionary signs, Mr Speaker. Thank you.

Mr Quine: I have had to wait a long time for my due acknowledgement, sir, but it has arrived. Mr Speaker, earlier this morning the Chief Minister agreed with me that we should not be persuaded or induced or coerced into introducing legislation as a consequence of these various reports and fiscal initiatives where the other powers, countries and particularly the UK have not themselves put in place such legislation, and I think that is my starting point this morning. I would just like members to reflect on that for a moment, because I have no problem with the objectives of this Bill. I know what we are trying to achieve, and as the hon. member for West Douglas has said, I do not think that creates any problem for this hon. House or for the great majority of those who are in business within this particular sector. But there are a number of issues and I think we owe it to the profession itself and we owe it certainly to the community to make sure that these issues are properly addressed, and I think there are two issues that arise out of that initial statement that I made which I think we should reflect on before we look at certain particular aspects of the Bill. Firstly there is the matter of timing of this legislation, and secondly there is, I would suggest, an issue of whether our approach to this represents a sufficiently light touch because the consequences of having a touch that is too heavy I think are transparently obvious.

Various bodies are promoting these so-called fiscal initiatives and the UK is a prime mover with some of those initiatives, and I feel that the Isle of Man is at this point in time, if not in point of fact allowing itself to be induced to go along with some of these measures that are being promoted, is certainly at risk of following that path.

To my mind there is a fundamental premise on which any compliance with such initiatives should start and that is that those who promote our acquiescence should be operating to no less a standard, with comparable legislation in place or in train. Why should the Isle of Man put in place legislation which constrains the activities of our corporate service providers if the UK and others do not find it necessary? **(Mr Shimmin:** Hear, hear.) It is very easy for them to stand back and pass judgement on us. It is hardly an issue of good government. If it is not required for them, is it required here? It is all very well for us to display

a shirt in pristine condition, but if you have not got the money to buy a pair of trousers, it does not help you very much, and I think we have to reflect on that. As I have said, in this legislation I can see what we are seeking to achieve, but there is a matter here of whether the touch is sufficiently light. That is the concern that I have and those that stand in judgement or would stand in judgement I think should be leading the way, they should be making a mark and saying, 'This is the way that we do it and you should follow.'

Has the UK got legislation of this nature, in this form, in place? I am advised they have not. Have they any move, have they made any move to bring in a Bill on corporate service providers? I am not aware of any move on their part. What I am aware of, and hon. members have got this to hand, is that as a consequence of the moves we have made to date in respect of corporate service providers, business is leaving this Island and I think we are also aware that some of that business is going to the United Kingdom. I am not saying that the total downturn in the figures which have been quoted to us represents simply what is afoot in terms of corporate service providers, but some of that unquestionably does represent this particular move, it does represent business that is going elsewhere and some of that is going to the United Kingdom.

So I do not think we should be rushing into this type of legislation until we have thought about that and taken that point on board. It may be at the end of the day that we say, 'Yes, all right, we are opening up opportunities for others, but taken in the round we must do this: it is in the medium/long-term interests of the Island to do so.' That is fine if that is our considered decision, but I would just ask members to reflect on that point before we move and consider particular aspects of the Bill.

But turning to the Bill, I am afraid I must again focus on the review procedure and the immunity from civil action and in doing so I note of course the statements made by the mover, Mr Braidwood, this morning. I note his references to case law and legal opinion which has been obtained by the Financial Supervision Commission. It is not for me to try and pass judgement on that because I am certainly not qualified but what I can say is I am in possession of other legal opinion which indicates otherwise, and I do not propose to restate all that because I did so very recently in relation to another Bill and I am sure hon. members will recollect that.

But there is another matter that is somewhat related to that, albeit separate, and that is of course it is nothing new for us to have different questions or a difference of opinions on legal matters, this is a fairly commonplace situation, but if we have on offer an alternative approach to the review procedure, if we have that on offer and it is an adequate procedure, then surely that should be considered before we rush headlong into these other situations.

Legal opinion or not, I believe this issue of the review procedure lends itself to a fairly common-sense evaluation. Is the procedure prescribed in clause 17 in conflict with article 6(1) of the European Convention on Human Rights? A straightforward question. It is not in question that what we are talking about involves human rights; there is common ground on that. Do the prescribed procedures in 17 allow for an independent and impartial determination of the issues? I do not believe they do. I believe that what we have got, looked at objectively and impartially, will be seen as being somewhat incestuous. The application for review is to the executive. The application has to be in the form and subject to conditions determined by the executive. The person to constitute the review committee and to make those appointments,

appointments made without any security of tenure, is the executive. Regulations to provide for the practice and procedure of the review committee and the proceedings before the review committee are determined by the executive, and importantly, access to the high court to test a decision of the review committee is limited to an issue of law. I do not believe that that is a fair and impartial procedure. We can place our own interpretations on the case law, on the opinions because they do come in different forms and different directions. To me that is a fairly common-sense, straightforward situation for us to evaluate.

But this Bill does not stop there today. This Bill is not dealing simply with corporate service providers, because it has been quite openly explained by the hon. mover Mr Braidwood that by virtue of paragraph 7 of schedule 3 it seeks to apply the same, I would suggest, questionable procedure to the Investment Business Act 1991 and by paragraph 14 of the same schedule it seeks to apply the same review procedure to the Banking Act 1998, and perhaps I missed something but when the hon. mover was identifying the consultees this morning I did not note any reference to bankers in terms of the list of consultees.

Now, with regard to the issue of indemnity, the practical effect of clause 18 is that a designated body shall not be liable in damages unless that body or its officials acted in bad faith. If such a body or official does something incompetently or negligently but in good faith, the injured party has no access to the courts.

Now, this morning we were given information which seemed to qualify this matter of what is bad faith and what is not bad faith. It was not on offer to us when we considered an earlier Bill, and I feel that perhaps, going back to the hon. member for West Douglas's point, this failure to date to get the message clearly and distinctly across to the corporate service providers is indicative, just this one matter is indicative, of some of the difficulties that have yet to be overcome. But again it is my view, and I cannot see the difference between a police force undertaking a complicated, long-term investment into fraud and in substance what is going to be required and what will be going on by way of the investigations carried out by the FSC in relation to corporate service providers. Essentially it is the same issue and you cannot duck around this by saying the FSC is a watchdog and the police are the Rottweilers. That does not apply. Common sense tells us that if we look at the basic ingredients of an investigation leading to a matter being put before the courts there is no difference: the fundamentals are there.

Now, the Society of Chartered Accountants of course are taking the example of a surgeon and his negligence, and I do not need to repeat that because hon. members have that before them and I think that is not drawing a parallel. But I honestly do believe that a perfectly valid parallel can be drawn between a police fraud squad involved in a long-term investigation into fraud and what we are asking the FSC to do, and we have not seen fit to say to the police, 'You may have these all-embracing powers or authority to claim immunity.'

The next matter I would like to deal with is this question of domestic services because quite clearly this is one of the main areas of concern, domestic services in the context of exemptions under schedule 2. I do not think it is in dispute that 'domestic services', as the definition is presently cast, does bring within the net charities and sporting organisations, just to quote but one example, and the answer to that that is offered to us this morning is, Yes, it does and it would also bring within the net several other matters, but fear not, when these situations arise or when these are drawn to our attention the FSC, not Tynwald, the FSC will

determine whether or not they should be given a written exemption. There is something wrong with that. We are effectively leaving it to the FSC to determine which scenario will be within the definition and which scenario will be outwith the definition.

With the greatest of respect to the many very good brains, I am sure, that have been applied to this problem, I cannot believe that we cannot come up with a more definitive, a more exclusive definition of 'domestic services', and I cannot accept the approach adopted here, and that is to provide some statement of exemptions and then say, 'Over to you FSC: you determine the other exemptions to this.' I do not believe that that is right. I think we are sidestepping issues which we as this hon. House should be considering. I do not think that is fair and I do not think that is right.

Turning to clause 14, clause 14 empowers the Financial Supervision Commission to make a public statement concerning a company or a person it has reasonable grounds to believe is, amongst other things, in breach of any regulatory code, condition or direction. Not a person that has been before the courts and convicted: that would be a fairly safe premise upon which to make castigate and name somebody publicly. No, not on that basis, but where, as I read this, as determined by the Financial Supervision Commission, they are considered to be in breach of the regulatory code, a condition or direction.

Now, I am aware of course that it is proposed to put before the party prior to the naming a statement as to what is proposed to be said, I understand that, but that in no way removes my concerns. The issue is whether or not it is appropriate for a company or a person to be named publicly in the absence of a substantive offence having been established before a court of law or by some other independent and impartial tribunal. But simply to say it is good enough for the FSC in its wisdom to determine what the further exemptions will be - that is my reading of this and I am sure I will be very quickly corrected if I have read this wrong - to me that is wrong. Surely the minimum requirement is for a company or a person, having been advised of the FSC's intention, to have the right to contest it before a review committee. We must at least give them the right to have the conclusion, the decision, the proposed action of the FSC determined. Otherwise I think this is a third republic type of legislation.

I remain distinctly unhappy about this Bill. I am not concerned about the Bill, I am not concerned about what you are seeking to achieve, but I am concerned about whether our progression of it is timely, I am concerned that if our progression is not timely we could be unnecessarily harming our economy, unnecessarily harming it at this point in time, and I am concerned about certain aspects of this Bill which I believe are pretty fundamental and I think we have an obligation before this Bill leaves this House to make sure that there is a full and complete answer to those questions and quite frankly they have not been produced to us to date.

I would anticipate - and I may be wrong - that this Bill will receive its second reading because what is trying to be achieved is not really an issue, but having done that, I for one would wish to see this go before a select committee and I will so move if I have the opportunity. Thank you.

Sir Miles Walker: Mr Speaker, the piece of legislation we have before us this morning is indeed complex. It is also important and I think that is underlined by the fact that we have been discussing it in one way or another and discussing this information since 1991, a long time

ago. In the early days it was considered that it would be a difficult piece of legislation to enact because, as I understand it anyway, there was not a blueprint anywhere that we could pick off the shelf and say, 'This is what we want to do in this respect in the Isle of Man.' So we have been considering this sort of legislation since 1991. As the hon. mover said, in 1995 serious consideration was given to getting something down on paper. Since that time there have been five different consultative documents and here we arrive some five years after that with a Bill for its second reading, so it is a long, difficult road and I think a lot of lessons have been learnt by a lot of people during that process.

I have to say that I think that congratulations are due to both sides of this debate, to the corporate service providers in the form of the Association of Corporate Service Providers, the Society of Chartered Accountants and others who have contributed. I think they have made their views known in no uncertain matter with great clarity and I think that that has been useful to everybody and I do believe that the FSC have endeavoured to understand the points that have been made by the corporate service providers, albeit not agreeing with all the conclusions that the corporate service providers have reached.

But if we look at the sort of information that we have in front of us - and I am not going back over the five years but in recent times - we end up with a letter from the Association of Corporate Service Providers dated 27th March and one from the Society of Chartered Accountants dated 24th March, both quite interesting and both have been backed up with a fair amount of information, and if we look carefully at those two letters there are few fundamental points of difference that have not been thrashed out over this long period, and I am sure there are other things in the Bill, like clause 14 which has been mentioned by the hon. member for Ayre, which perhaps have some concerns for these bodies but have not been identified as such at least in the latest round of correspondence. But the letter from the Association of Corporate Service Providers I find very interesting. They say very clearly, 'The Association accepts the need for regulation of the industry and looks forward to the few unscrupulous service providers which have hitherto been unregulated no longer being able to tarnish the reputation of the reputable corporate service providers on the Isle of Man.' A good statement, but their concern is that they tarnish the reputation of the reputable corporate service providers in the Isle of Man. My concern is that they tarnish the reputation of the Isle of Man as a finance centre and I think as a legislator that is a point that I would wish to make. It was also interesting in the letter from the Isle of Man Society of Chartered Accountants in the first paragraph: 'I must stress that we are very supportive of the aims of the Bill and believe that it is essential for the Isle of Man that the industry is well regulated', and to that I say hear, hear. So we are agreed, I think, on the need to introduce regulation for the sort of services that are carried out by a number of companies on the Island.

The Association of Corporate Service Providers' letter goes on to indicate that there were 39,603 Manx registered companies. 'There are reasonable grounds to believe that the number of Manx companies registered could fall to below 20,000 within two years.' I do not know whether that is a correct figure or not. It is an indication, I think, of the views of the CSPs. But we should not be surprised. We put a moratorium on non-resident duty companies in April of last year and we knew that it would have this effect, and as I understand it, that moratorium, although objected to by a few, was applauded by the majority because they thought that it would assist in blocking up a part of the business which damaged from time to time the

reputation of this Island, and there are debates of whether it will or not, but it was certainly a perception that was the case, so it is not surprising that the number of companies registered on the Isle of Man has reduced and reduced considerably and it is not surprising that BVI companies are utilised instead and there is a loss of revenue to the Isle of Man. It was recognised. It is a matter of fact. It does not matter whether it is a shame or not. It is a matter of fact. BVI companies are being used more and more and are being administered by people here in the Isle of Man. Now then, members can draw their own conclusions as to whether, if there was bad publicity towards one of those BVI companies administered from the Isle of Man, it would reflect worse against the administration in the Isle of Man or more against the source of the company: BVI. I think it would be damaging for the Isle of Man. Just to discontinue non-resident duty companies is not, in my view, sufficient.

The main complaint, if I can call them that, of the Association of Corporate Service Providers that have been arrived at, it seems to me, is the statutory indemnity granted to the FSC, and I think that I just have to say that I have a fundamental difference of opinion with them and those arguments have been well aired; there is not much point in me going over them at this stage.

They are concerned about bona fide non-executive directors. Now then, as I understand it, there is no such thing as a non-executive director. If you are a director of a company you bear responsibility for that company, and that seems to be right. This may just be a matter of terminology but I think it is an important principle: a director is a director who is responsible for or shares responsibility for a company.

It seems to me that common sense will prevail here and directors of local companies that deal in local services to the local population will be exempted. Directors of companies acting on behalf of other people for companies in the Isle of Man, it seems to me, should be licensed. I do not have any particular problem with that. The corporate service providers accept that there will be a sensible exemption process, as I read it.

Then they are concerned about the general cost. Well, there is going to be a cost. We have a sector of our finance industry that is going to be regulated and there is going to be a cost of licensing. The point the CSPs make is that if there is a large number of these CSPs who will disappear, then the burden that will be left on a few may not be acceptable. Again I think that is one where we have to keep our feet firmly on the ground. We have to remember that the Isle of Man is successful as a finance sector not only because of our taxation arrangements but because it is a low-cost centre and we must ensure that it continues to be a low-cost centre and that we continue to be able to compete with other jurisdictions in a similar line of work, and I may just add as an aside to that that tax is but just another of those costs, so we do need to keep an eye on it.

So regarding the Association of Corporate Service Providers, I was consulted along with other members and enjoyed a lunch by them so that they had some time to go through the difference of opinion. I think most of those differences of opinion over this last 12 months or so have in fact been thrashed out and I would compliment both sides on that process.

The Isle of Man Society of Chartered Accountants, in the paper we have received off them today, say, 'Our key concerns are in respect of the following areas of the Bill', and they outline two areas: the definition of 'domestic services' contained in schedule 2 - and that

matter has been touched on by the hon. member for Ayre and I would look for some comment from the mover of the Bill to see whether or not he thinks it possible to further define those domestic services because I think an interesting point has been made on that - and the extent of the statutory indemnity for the Financial Supervision Commission contained in section 18, and here we go back to a fundamental principle: should there be statutory indemnity or not? And the conclusion that has been reached this far is that there should be.

So the differences of opinion which I guess 12 months ago we had piles of paper like this on have come right down to a number of very small succinct areas and I think it should be possible to deal with those areas on the floor of this House and I think it is the appropriate place for that to happen.

I was interested in the comments of the hon. member for Ayre in clause 14, and again it would be interesting to get a comment from the mover of the Bill, but presumably the commission could be concerned that the activities of an individual should be properly licensed. The point that has been made by the hon. member for Ayre is that no action should be taken until a court has reached a conclusion. Presumably some time can pass in amassing evidence, getting together the case, getting court time and going to the court and a lot of damage could happen during that period either to the customer or to the reputation of the Isle of Man which I believe is the paramount thing and if that is the reason that clause 14 is written in the way that it is, then I support clause 14. Thank you, sir.

Mr Henderson: Mr Speaker, it seems to me that there are one or two problems surrounding the second reading of this Bill this morning. One that stands out to my mind is the fact of uncertainty which the hon. member for West Douglas has alluded to. To me that seems to be the most fundamental factor in the whole thing. We, as *responsible* legislators, are being invited to endorse or not this Bill this morning, or its clauses at future stages, and the thing of endorsing it is do we understand fully what we are endorsing totally or also do we take on board there are still concerns by quite a large number of people out there who are going to be affected by the enactment of this legislation? Do we say, 'Yes, we'll crack on and vote it through and get on with it because we need it', or do we behave slightly more responsibly and accept the fact that we may not be as expert as we would like to believe in matters of corporate service and say, 'Hang on a minute, let's just put the brakes on and let's have a further look and let's revisit the one or two further concerns that have been flagged up to us', and quite rightly we have been circulated with correspondence from both the Association of Corporate Service Providers and also the Isle of Man Society of Chartered Accountants, hardly a small body and hardly a body that has got one or two members. They are bodies that I would take notice of because they are trained professionals in their own fields and are flagging concerns up as the people who know more about it than most.

To me that casts a sufficient amount of doubt in my mind. On the one hand we are saying, yes, we have got to legislate, we have got to crack on, we have got to have an excellently regulated finance sector to ensure the image of the Isle of Man is promoted. Well, I have got no problem with that and I think ultimately that is the aim of everybody, including myself, but in doing so perhaps there would not be any harm at all, considering we have gone down the road of the consultative process so far at the minute. As the hon. member for Rushen, Sir Miles Walker, indicated it has been a considerable time. What is wrong with a little bit more to get it as right as we can? (**Mr Houghton:** Hear, hear.) I am not saying, 'Let's throw

it out and wait till next year or the year after.' What I am saying is if we have taken this amount of time we have got a vehicle here that is nearly right, why can't we go the extra mile and make it as right as we can? That is the point there and I do not see why there is any reason why we cannot do that.

We are at the forefront of this legislation, as other members have pointed out. We will be ahead of London and other places, and as I pointed out earlier in a question to the Chief Minister, I was concerned with benign supervision and what I would not like is for us to go rushing off trying to comply with pressures of other jurisdictions when in fact what we might be doing is causing a number of casualties that we will not be happy with ultimately when in the course of events we could sit down. There is no harm in eating a little bit of humble pie and us as legislators saying, 'Okay, something's been flagged up: we'll give it one more try, we'll listen one more time.' I have no problem with that. If that causes a few weeks extra, well so what? When it comes back here it will be as right as we can get it and I think that is the point I want to make here.

To get round the element of sufficient doubt, I am very interested to hear huffings and puffings around the place, but, really, how can you vote as an elected representative of this House, the legislature of the Isle of Man, if there is doubt on the table? (**Mr Houghton:** Hear, hear.) How can you say categorically, 'I apply my vote to this issue: it's got to go through.' Well, I think to be quite honest the responsible way out is to take a step back and then, by golly, we will find out what is and what is not and where we are going and if there is anything more that we can do because, as I say, why should we rush into something needlessly and then suddenly realise the amount of casualties? How many casualties do we want to take in pursuing this image of excellence? How many small businesses do we want to see affected? How many little people do we want to see go out of business?

I take the point of the hon. member for West Douglas's issue with vested interest but at the same time there are legitimate interests and if we are going to cause a Bill to go forward that is going to affect a lot of people I think we need to take a careful assessment of it and ensure it is as right as we can get it. In order to do that and in order to satisfy ourselves one more listening consultative process would not do any harm because then we can see what the problems are and then when it does come back we will be more or less completely sure that we have taken on board the issues and we will be voting with some element of confidence in it and that is, I suppose, the top and bottom of it and that in my opinion is the way forward to ensure that what we are doing is not only addressing other pressures from outside the Island but ensuring that we are addressing our own people here, our own businesses and all that goes with it.

I am not going to go over the technical problems that have been highlighted this morning, I think the hon. member for Ayre did that eloquently enough, and if that does not highlight a little bit of doubt I do not know what will, but perhaps with the hon. mover of the Bill himself admitting to this hon. House not 45 minutes ago that there were other amendments on the way because he himself and his department or the commission have found anomalies, then surely that must indicate that it is not as right as it could be, and I think that is where the issue is and if the hon. member for East Douglas can come back to us and assure us of that before we get to the clauses stage, as the hon. member for West Douglas said, and I have it down in my notes here anyway but it needs to be raised. We need an assurance that perhaps it would

not hurt to delay things for a little while longer before we get to the clauses stage (**Mr Houghton:** Hear, hear.) and take on board a little bit more and get it as right as we can get it. Thank you, Mr Speaker.

Mr North: Mr Speaker, just a few brief comments. I believe in this legislation. We have needed this legislation for a long time and I know all the arguments about non-resident companies and everything else and the fact that we may be ahead of the field with this legislation does not, and I repeat, does not mean that the FSC should not consider what has been raised in terms of queries to hon. members and by hon. members in this House this morning. As the hon. member for West Douglas said, we are all desirous of the same result.

The problem I have is that I would like some assurances and I just do not see any benefit in this Bill going to a select committee -

Mr Henderson: It has not been moved.

Mr North: - or if it is proposed as such. I do not believe any benefits are in that and as far as the House is concerned, they have to, obviously, make up their mind, but I hope that the hon. member chairman of the FSC will go away and consider all the points that have been raised and I would like some assurance from him. For instance, I am looking at my own position as chairman and director of Marown Parish Community Care which is a limited liability company, a housing association, and would I have to apply to the FSC to be exempt? I just want an assurance from him so that it is on record - and this applies to lots of other local businesses - I want the assurance from him that I do not have to apply, I do not have to do anything, and I should not have to do anything, and I raise these points because it is all very well having legislation, but it is the implementation and businesses have to be so careful today to follow the letter of the law, and I give hon. members an example of where I think we have gone totally over the top and I hope that the chairman of the FSC will actually investigate the fact that, for instance, a 13-year-old daughter of a gentleman living in Douglas goes into a bank to open her first bank account. She is 13 and the bank insists that she has to have a reference and they ask for a utility bill. That is where we go over the top, hon. members.

Mr Houghton: Absolutely.

Mr North: We have to make sure that what is carried out is sensible. I have just moved my bank account from one to another in Douglas, the one north of the border -

Mr Brown: That depends where you stand in Douglas.

Mr North: - and I had to go in - what a paraphernalia - and I had to produce my passport

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Mr Houghton: Nobody had ever heard of you!

Mr North: - so that they made sure that they knew who I was.

Mrs Crowe: Know your customer.

Mr North: Know your customer? They knew exactly who I was, but I still had to produce my passport.

Mr Cretney: You said, 'Don't you know who I am?'

Mr Houghton: Absolute nonsense.

Mr North: A load of nonsense -

Mr Houghton: It is that. Well done.

Mr North: - totally over the top and that is what we need to make sure, that we are living in the real world.

Mr Houghton: Absolutely.

Mr North: But I think the chairman of the FSC will get this legislation right. I am sure he will consult and make sure that some of these exemptions do apply.

Mr Gelling: Mr Speaker, just speaking to the second reading of this Bill, I think I would just like to bring members back to actually the pressure I am hearing that is upon us from outside. That is not where we started at all. Where we started was the pressure from inside this House and inside another place when we were being criticised because the Island was being brought into disrepute (**Several Members:** Hear, hear.) by for ever being in the international papers as 'the company registered in the Isle of Man'. That is where we started. So I do not want members to get this feeling that Mr Edwards is the one who brought all this pressure to bear. Mr Edwards in fact said quite clearly that he was only displeased that we had not accomplished it. He was absolutely delighted to see we were addressing it, but we had not brought it to fruition, that was his complaint, and he still said it was the one area of the regulations of the Isle of Man which was the difficult bit. That was the one that was causing us problems.

So I would immediately say to members please do not think we are being led or, as the hon. member for Ayre said, 'Well, the United Kingdom aren't introducing it: why should we?' We were leading this because we wanted to eradicate it ourselves. I well remember going back nine or 10 years ago when this happened. We could actually more or less tell the FSC where to go, one of four different routes, and we could have told you the exact office where that company would be, but you cannot just say we are eliminating four different people. You have got to have legislation that unfortunately brings into it those who are absolutely competent, all above board and so on.

We have seen since this legislation came into being, or the draft, that moved very dramatically - I can well remember this one - where we were going to control the business that they did, and it was the pressure from the very sector that made the FSC go away and change it to 'Well, let's look at the people who are doing the business.' We do not want to be regulating the business they are doing. If the person that is doing it is fit and proper, let him get on with as much flexibility as possible. So that is why we go down this road and it is amazing how suddenly, as someone has said, we have lost business. I would say to, hon. members, take note of where those businesses have gone from.

Mrs Crowe: Yes, absolutely.

Mr North: Let them go.

Mr Gelling: Take note of the companies that have disappeared and it will tell you something. I also was speaking to a gentleman who recently had taken over one of these and he was telling me himself that he had just written off over a thousand companies off the register that were lying in files, that were not in being, they were not working. So this is where the companies are going. People are already seeing that they are going to have to get their

businesses right and be absolutely as per the Isle of Man and that is we want good-quality business. We have got the people that will do it and there is good-quality business out there.

The other point I would like to say is this. I know it has been said that we are still getting correspondence from the accountants and the corporate service providers. If we are not getting the message over to them, that is one thing, but if it is that the message that they are getting they do not like, that is something else.

Now, I would also agree that before I would ever want to go down the road of a select committee, because we are always being told isn't it about time we made some decisions, is the fact that the time that might be given between the second reading and the clauses stage is used to actually either convince the people, enlighten them, or whatever. I am getting the message that it is not really the contents, it is that they have not had time to study, inwardly digest and, even from the lawyers, advise their clients, actually to advise their corporate service customers what it really means. Now, if that is what we are talking about I would also join the queue of people saying, 'Please, Mr Mover, just give us a little bit of space', if that is the case, but it might very well not be.

So basically I think it is time that we got this on the statute. We are here because we have been at it for over 10 years and basically we will have to make a decision at some time. We have told everybody in the world that this is what we are doing and quite honestly I think for the reputation of the Isle of Man we really need to be seen to be doing something about what we have been talking about for 10 years, but not at the expense of small operators. I do not think that is the intention at all, but if the small operator cannot quite understand . . . I am hearing about four-eyes. How do they get a four-eyes to look over their particular business when they are a one-person operator? Well, this is the opportunity. The mover might very well be able to explain exactly how that can happen, and if that can happen there is one more explanation that I am quite sure the corporate service providers in that position will be delighted to hear.

So I would say to hon. members, yes, we must give this the second reading. It is up to the mover then to judge, because at the end of the day he wants to get this legislation through. He must make the judgement as to whether or not he feels that he can take it straight through and bring clauses at the next sitting or whatever. But certainly that is what I would say if that is the case, that it is just time for the professionals to actually get a grip and understand it. It might very well be time worth spent.

The Speaker: Now, hon. members, I am aware of the House clock and I think it is an appropriate time at which to adjourn. The member to speak on our resumption at 2.30 will be the hon. member for Michael, Mr Cannan.

The House adjourned at 1.05 p.m.

Corporate Service Providers Bill – Second Reading – Debate Concluded – Motion Carried

The Speaker: Now, hon. members, we resume our deliberations on the Corporate Service Providers Bill second reading and, as I indicated when we rose at lunchtime that the hon. member for Michael would be the next to speak, I call upon the hon. member for Michael.

Mr Cannan: Mr Speaker, thank you very much. I will be brief in an attempt not to be repetitive. There are just one or two points that I would make. It was 10, 12, 14 years ago that there was a phrase in the corridors of power, 'we do not want to deal in the grubby end of the market,' and that was all to do with these non-resident companies. There was continuous trouble in particular from the non-resident companies, shady companies, companies that were giving the Isle of Man a bad press, and it was policy that somehow they were to be controlled and it has taken 12, 14 years to get to the present state that we are today with a Corporate Service Providers Bill.

I welcome the Bill; I welcome it because it will be a signal that we do not need the grubby end of the market, but in looking at the Bill I am somewhat alarmed on the domestic corporate scene. Unless I am mistaken, voluntary people who may be directors of small village football clubs because they have become companies limited by guarantee - are they to be involved in this paperwork, in this legislation, or are they to be excused? And, being excused, is that the prerogative of the Financial Services Commission, the FSC, who will decide the directors of that village club are only a company limited by guarantee for purposes of liability and indemnity, or small housing associations, where the directors - it is a charity - are there voluntarily? No fee, no director's fee, they are there giving their services free to ensure that a housing association operates for the benefit of the community. There are so many charitable companies now that are limited by guarantee and, by virtue of that, have directors, and I think it is terribly important that their exclusion should be in primary legislation in some form rather than by executive decree from the Financial Supervision Commission. That is very, very important.

There have been many other comments and I will not repeat them, but I would ask the mover, the Chairman of the Financial Supervision Commission, in summing up this afternoon to make it quite clear that it is not his intention to bring this Bill for consideration of clauses in the immediate future. The best suggested date, in my opinion, would be immediately after the Easter recess. It would give him time to satisfy himself and members that the concerns have been properly addressed, because if he is unwilling to seek the Speaker's permission to do that, then there is the option of going to committee. Going to committee, you chew over the whole thing once more. The other option, as I have said, is for the mover to give proper consideration to all the points that have been raised, chew them over himself with his advisers, bring forth the Bill for clauses after he has done that and the necessary amendments. That, I believe, is what the decision of this House will be: whether we see the mover holding back and making his amendments or whether we go for a committee and an investigation by three or five members.

I am not unduly worried about the matter of liability. I believe that dolence in the courts will look after those who have been deprived of their liberty or have suffered from some wrongdoing, but the real issue is the domestic corporate services and I feel that a form of words must be introduced by amendment to ensure that there is not that unnecessary examination and hassle for ordinary people going about their ordinary business and having small companies limited by guarantee, particularly in charity work, which is good works, and for other small businesses such as taxi drivers, domestic servants and so on and so forth. Thank you, Mr Speaker.

Mr Gilbey: Mr Speaker, I am glad the last hon. member said that he was not concerned particularly about the objections to the statutory indemnity for the FSC. I am sure he is totally correct in this. It is, to my mind, perfectly reasonable that they should have this indemnity and you would think, the way that some people have written and spoken, that it was something that would arise every day of the year. In fact it is a very remote contingency that anyone would ever challenge this indemnity at all because the FSC, as I know from personal experience, are extremely careful in what they do and try to make absolutely sure that they never act unless there is some justification.

Now, the point made by the hon. member for Michael about domestic companies is one about which I had someone ringing me at 7.30 this morning, someone else has written a special letter about it and we have these letters to all of us as well, but I honestly think those who argue this case are mistaken in their attitude. I certainly am one of those who prefers, if one can, to have everything contained in primary legislation, for reasons that are obvious. However, when you get to the operations of the FSC or, for that matter, the Insurance Authority, I believe their controls have to be flexible. They cannot wait to alter things until they could get in primary legislation in the future. They need flexibility because unfortunately a lot of that what I think the hon. member for Michael called grubby minority are quite sharp and agile on their feet and will act very quickly. Therefore the regulators have to act very quickly as well, and when you come to domestic companies it is terribly difficult to get at this stage definitions which will cover every situation to catch the bad boys while at the same time giving flexibility to others. I myself was concerned about the original drafting and indeed took this up with John Aspden and I think it was as a result of my correspondence with him that we now have on page 31 of the green Act, under schedule 2, part 1, 5(2) the following wording: 'The Commission may, by notice in writing, specify any regulated activity which is to be treated as a domestic service and to which section 2(1) and 2(2) shall not apply when that activity is undertaken by a company or class of company specified in the notice.' Therefore it is perfectly simple for the FSC to decide that a whole class of companies should be excluded, such as companies by guarantee which are running sports clubs or companies that are not by guarantee but are ordinary companies that are running football clubs or sports clubs. This is perfectly possible. Again, those who have written to and telephoned me have said what about companies that they are directors of? Well, it is quite simple for the company secretary to write a half-page letter in a quarter of an hour to the FSC asking for exemption for that company. I can see no problem in this at all.

But what is even more surprising is that some of these people who have written in seem to suggest that because we may not have done what they wanted regarding domestic companies it could actually affect people all round the world from setting up companies here. I honestly do not believe that non-residents around the world will be deterred in the slightest by what rules we have for domestic companies. What they are interested in is companies that may be formed for their purposes while they live outside this Island. Indeed, I would think the reverse is the case: I would think that they would probably take the view, 'Well, we're glad they've got such good controls, although flexible controls, because it shows that the Isle of Man is a better place to have our money than many other offshore financial sectors.' So I find it very surprising that such eminent bodies as the Society of Chartered Accountants and the CSP Association should be so totally concerned about two matters, one of which, that of indemnity, really will hardly ever arise, and the second of which I do not think will affect their

business at all because it only applies to local firms and there is the flexibility for those local firms to be easily exempted. So I honestly feel that the concerns that have been expressed are not justified.

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

Mr Braidwood: Thank you, Mr Speaker. On this day in 1941 Virginia Woolf committed suicide. After the debate today I have no intention of following in her footsteps!

It has been a lively debate with two camps. Now, we started off with Mr Shimmin, who was concerned about the bodies who had been lobbying the members being in conflict with the FSC. Now, I am a little bit perplexed with that because we have been in consultation with those bodies; there has been general support for the legislation; the corporate service providers are a very diverse sector - different size of businesses, different levels of activity. Now, Mr Shimmin also said he would have disdain for those people who only had a vested interest and were only protecting their own business, but he was worried that there was not enough time between the clauses stage and today for those members to again voice their differences of opinion. Now, to appease everybody who has been speaking today, I am quite happy to postpone the clauses stage to 18th April, which will give us three weeks for another consultation, and I think that will alleviate some of the fears that some of the members have expressed today.

Mr Quine mentioned about the pressures from the UK to introduce this type of legislation. That, I think, was adequately answered by the Chief Minister. There has been no pressure from the UK. This was from pressures from within following on from the First Deemster's report of 1991, and following on there have been five consultation papers; in my brief today I said from 1995 to 1999, and again the corporate service providers in the Isle of Man are quite a large proportion of the finance industry in the Isle of Man, quite small in the UK compared to their finance industry.

Mr Quine also mentioned a light touch. Now, that is one of the aims of the FSC: to have a light touch in this type of legislation and regulation. He also mentioned consultation: had we had consultation with the bankers? And how we were changing the Investment Business Act and the Bankers Act to accommodate the burden of proof and statutory indemnity, and this arrived from a directive from the Council of Ministers that there should be uniformity in all the Bills. We had uniformity in the Retirement Benefits Schemes Bill and this will be the same, hopefully, through the Corporate Service Providers Bill and the Investment and Banking Act.

I do not really want to get into another debate on the statutory indemnity and liability to damages, and the difference between the police and the FSC. I have tried to explain that in my briefing papers. I think it was adequately explained by the Treasury minister in the Retirement Benefits Schemes Bill. As the hon. member for Ayre, Mr Quine, said, you will always have differences of opinion from lawyers. Our opinion is it is not in contravention of the European Court of Human Rights. I went through and clearly defined bad faith from the judgments that have been in the UK and I do feel that is an adequate explanation.

Mr Henderson mentioned again the uncertainty, and I think if we defer, as I have already mentioned, the clauses stage this will help to appease the concerns he has. He also mentioned he was concerned about smaller businesses. Now, going out of business - I would

like to say on that point that compliance is not intended to be costly for small corporate service providers. Hopefully, most people will be complying anyway. There is no minimal capital; there is a small application fee of £750 and there is only a nominal-fee company fee. The annual one is about £10 per company. It is not an onerous burden. As I said, there is no minimum capital requirement, only one of solvency, which will be for £10,000. Many of the requirements of the professional insurance indemnity are tailored to the type of work the corporate service provider is doing. I hope that will answer Mr Henderson's queries.

I thank Sir Miles Walker for his contribution and I think he answered the point which had been raised by Mr Quine on clause 14, which was the FSC's intention to give notice. It can give seven days' or more notice. I will just look at clause 14 and that is on the public statements and I think Sir Miles explained the situation. The FSC could give notice of that seven days; they would also be going to court and if they are acting illegally as a corporate service provider, saying they are licensed, we have to protect the investors. So by naming them and telling them that this person is not a corporate service provider, hopefully they will not be investing in that company. We will be going to court, but again that corporate service provider can go to court to bring an injunction. He has that right.

Mr North mentioned he was quite happy if we could just put the clauses stage back, but he also mentioned about the problems of the exemptions to charities such as the Marown Association. That is exempt, that directorship. It is very, very difficult to put a comprehensive list of domestic services. You would have pages and pages and pages, and the reason we put, as I said in my briefing paper this morning, the list that was under schedule 2 was because it was the incorporated companies which may not apply for exempt status under the income tax. So the position was already there.

Mr Gilbey has mentioned that under schedule 2, 5(2) gives the power to the FSC to exempt those charitable organisations.

Mr North was a little bit concerned. He did not want to write into the FSC, but there could be case law. Once one person writes in and says 'exempt for a charity' then we know everybody else is exempt from that charitable work. They have an exemption for the directorships, and that is answering Mr Cannan's point as well, when he mentioned about the housing associations. It is very, very difficult to make a definition of 'domestic business'. We tried to, and the point that was raised by the corporate service providers in their submission of the paper about what they would like to see on section 5 of schedule 2 was brought to the attention of the FSC right at the beginning, and it was the view of the legislative draftsman that it would be extremely difficult to give the definition, very difficult to police and would leave the regime open to abuse. The legislative draftsman was firmly of this view, hence his clear preference to go for a list approach and extend power for the FSC. This is what we have under schedule 2, sub-clause 5(2).

I thank again Mr Gilbey for his support and his explanation of the exemptions under schedule 2. I hope I have covered all the points raised by the members and therefore I beg to move, Mr Speaker.

The Speaker: Hon. members, the motion before you is that printed at item 13 on your order paper, that the Corporate Services Providers Bill be read for a second time. Will those in favour please say aye; against, no. The ayes have it.

A division was called for and voting resulted as follows:

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

Against: None

The Speaker: Now, hon. members, I think that is 22 votes cast for, unanimous as far as the House goes this afternoon. In that case, hon. members, the second reading has completed its course, and I would take note of the comments by the mover in charge that he would not wish the third reading to come forward before 18th April. The hon. member for Ayre.

Mr Quine: Mr Speaker, having concluded the second reading, I would like to, at this juncture, move that this Bill be referred to a select committee, if I might speak to that effect. I have assigned a paper to this effect. I trust it is in the possession of the hon. Secretary.

I would just approach this on the basis of two parts, if I may: first of all, are there issues to be examined; and secondly, are there advantages in it going to a committee? I think it has been quite clearly established this morning that there are issues to be examined. There appears to be common ground that there are issues to be examined to the extent that the mover of the Bill has intimated that there will be amendments which he hopes will come forward and that have his support to the various matters that have been identified in the debate here this morning.

Speaking on my own account and to the matters that I identified, I will very quickly touch on them, if I may. First of all, I have serious doubts whether the legislation as drafted represents a sufficiently light touch to address the problem which has been identified. I remain concerned that we are going further than we need to to address our concerns. Secondly, I am far from convinced - and I know a number of other members are far from convinced - that the review procedure is in compliance with article 6.1, and also I think, even if you set aside the various legal arguments, as I suggested this morning, I think from a purely practical, common-sense point of view, if you have a procedure which is built in from beginning to end as a list of executive functions, I do not think that offers the prospect of an impartial and independent process to determine these issues.

On the issue of immunity I remain far from persuaded that this is appropriate. It has been suggested here today that it is a remote contingency, that recourse to this provision that we are building into this Bill, shelter behind it by the FSC would be a remote contingency. I would sincerely hope so, but that does not alter it one iota. If any person at any time has a basis for grievance and if it is founded, as I say, on an act of good faith but carried out recklessly and carelessly, then if there is a question about whether that is embraced by this provision, then I believe we should examine it further before we pass this Bill.

In terms of domestic services and the definition of domestic services in the context of schedule 2 and exemptions, again I think there is a broad party of opinion within this House that that falls short by a considerable extent as to what is required, and we are asked to accept in relation to that that it is an adequate and acceptable process that the gap should be filled by allowing the regulatory body, the police force in relation to these matters, to determine for itself whether or not certain activities fall within the definition of 'domestic services' or not

and that they should have the right to specify them in writing without even recourse to the review procedure. I do not believe that that is correct.

We then have the question of public statement: the ability for the FSC to issue public statements based on breach of condition, breach of code, and at the same time all they have to do is to serve notice on the party that they propose to make that statement and they can go ahead and publish that statement - no appeal procedure in terms of calling into play an independent party to see whether that decision by the FSC is a reasonable decision or not, at least based on fact, never mind based on law. I believe that these and other issues which have all been brought out and spoken to here this morning put beyond doubt the question of whether there are issues to be examined? Clearly there are issues to be examined, and I do not think that that can be contested.

As to the case for it, well, I am pleased, of course, that the hon. mover of the Bill has intimated his willingness to enter into a further round of consultation and, in effect, I believe, not to bring forward the Bill again until 17th April, if I remember the date correctly. That is welcome. I think that is move in the right direction. But let us bear in mind, we have had several rounds of consultation already, and the object of the exercise surely from herein has got to be to resort to a process that allows for a mechanism to come through the middle and weigh the position taken by the FSC against the position taken by the corporate providers and their allies. If we leave it to a further round of consultation, I would suggest that it is highly possible that on 17th April we are no further forward than we are now, and that would not be a productive exercise; that will cause further delay. It is my belief that a select committee is a more appropriate mechanism for this because they can come in through the centre, weigh the evidence objectively and offer to this hon. House, by way of their report, an independent view as to how these issues should unfold, and that, I believe, would be very helpful to this hon. House in resolving this piece of legislation.

I am convinced in my own mind that the committee procedure is the right one, having regard to the issues which have been brought into question in the context of this debate. I am also convinced that it offers a distinctly better prospect of finding some common ground on these issues than to enter into another round of consultations, following on several other rounds of consultation that have already taken place, because I do not think that that would be particularly helpful. So I would wish to move:

That the Corporate Service Providers Bill be referred to a select committee of three members to consider and report.

Mr Singer: I beg to second, Mr Speaker.

Mr Cretney: As yet, Mr Speaker, we have not had any proposal placed before us in paper form, but I just wonder if any timescale is envisaged. At least the mover of the Bill in his presentation said that he was going to have a delay and come back on 18th April. If we have a committee without a timescale I think that would be unfortunate.

The Speaker: Can we just have that clear? The hon. member for Ayre's paper which I have in front of me says that the Corporate Service Providers Bill be referred to a select committee of three members to consider and report; there is no timescale attached to it at that particular stage. I take that point on board. The hon. member for Castletown.

Mr Brown: Mr Speaker, I think that the House would not be doing the best service by referring this to a committee of the House. The reasons were explained during the second reading stage and I think it is worth re-emphasising. If we refer this Bill to a committee of the House, whether or not we put a timescale on it, one thing is absolutely sure: this Bill will not be able to be passed through this House before the end of this legislative session; that means that it will not be able to pass through the House before the end of this calendar year at least, if we are lucky. But, more important, listening to the debate on the second reading, was in fact that the number of points that were raised have already been discussed at length. The mover of the Bill has quite clearly said he is willing to delay progress of the Bill to enable further discussions and, whether or not a select committee is set up, you might not reach agreement then. The point then is, it will be this House's responsibility to do what it believes here, in committee, debating this Bill clause by clause, line by line, as to whether or not it agrees with the industry, those few who are expressing concern; or it believes it should get on the job and take the responsibility for the decisions it is being asked to make.

Now, if we refer this to a committee, it is delay, and it is delay for the wrong reasons. This Bill has already had considerable consultation; there have been documents provided to the industry, they put views in, there has been discussion and then the Bill has been finalised. We can talk and talk and talk and talk; the problem you have got is, it is D-Day to make decisions; and all I would say is, we should respect the mover of the Bill, the Chairman of the Financial Supervision Commission who is actually saying, 'I will delay its progression', who will take on board the points that members have made, which was the very reason that we actually amended our Standing Orders so that there was a gap between the principle of second reading and the detailed consideration of clauses to enable issues like this to be discussed, where something was raised. And I think the point the hon. member for West Douglas, Mr Shimmin, made was absolutely valid. If then there is still a concern, members will have to make their minds up, and if they are still not convinced then there is nothing to stop the issue of it going to a select committee to come up again, but I have to say I would warn against that because you are then putting the whole Bill back. And the point that was made by an hon. member - I cannot remember who it was now - which was very valid is that a select committee is going to have to pick this piece of legislation up from scratch and start to work all the way through it, the detail of it, and go all the way through it, because the select committee is not to consider a cause, it is to consider the Bill. That is the whole Bill that is there before us, all the clauses that are in this Bill, and that is what they would have to do. And okay, they might come back quickly; the record is we do not. I would say, let the mover, who is, I thought, giving quite a reasonable undertaking to the House, carry out that undertaking and members consider whether or not at the clauses stage they feel they then need to progress the Bill as written or amend it, whichever is the choice.

Mr Corkill: Mr Speaker, I feel as though for the second time today we are actually into a debate about sending this Bill to a select committee because the hon. mover of this motion, the hon. member for Ayre, Mr Quine, did say - I think his words were this morning - 'if I have the opportunity.' Now, the hon. member has taken that opportunity subsequent to the large support that has actually manifested itself at the second reading stage, and I am pleased that this Bill has received such strong support for the principles that are contained therein, and I was very heartened this morning that I do not think anyone actually argued against the principle of regulating this type of industry on the Island. Now, that is a great move forward

from some years ago, when the debate in this House would have been completely different. So, hon. members, we are making progress and it is difficult.

Some of the points the hon. member has just put forward are repeatedly points that he made during the second reading stage, and he has doubts as to whether this is a light touch. We have had the presentation; we have had the matter; we have had the second reading; we have got our own views, surely, as to whether we feel this Bill is or is not a light touch, because some of the alternatives which have been examined over the previous years and the long consultation period are in fact a great deal heavier. So I would argue that the light touch is actually in this Bill, therefore the first point that the hon. mover has put forward in his case for sending to committee, I believe, is removed.

Another word comes to mind, Chief Minister, and that is the word 'trust'. A lot was made of the fact this morning that improvements need to be made, and certainly there is a great willingness, I believe, on all sides for this to happen, for a better trust between the regulator, the Financial Supervision Commission, and the industry. And yet it was highlighted that perhaps this could be improved, and the hon. mover of the Bill has suggested a stalling in the process for several weeks to actually get back to the industry and improve that understanding and improve that trust between the two sides. But in terms of the word 'trust', the hon. mover, Mr Quine, is well known, I believe, for his lack of trust in executive functions of government. It is a regular scenario whereby he seeks to move situations to the side, to third-party scenarios, non-accountable to the electorate third-party scenarios, where at the end of the day what we really need are decisions, we need government functions to operate, and in this case we need the regulator to function in the way that this Bill is structured. Now, this, of course, is not a new debate either, because during the Retirement Benefits Schemes Bill some of these issues surfaced and were resolved, and what I would say is that the House is in no different a position than it was a couple of weeks ago and these issues can be resolved. This morning clause 17 was mentioned, obviously with regard to the domestic side, and I do believe the explanations are being put forward.

Now, the issue which I do believe - and I understand where the hon. mover is coming from because we had this debate with the other Bill - is the independence of the review. Now we cleared that away, we voted on it, and in terms of the human rights situation, it was made quite clear and members took a view that as things stand today the review committee, as put forward by the Council of Ministers instead of the Treasury, because there have already been moves in this area, fitted the Bill, and I believe that this Bill is no different. The blueprint was set several weeks ago in that respect. Of course the hon. member is right to point out that human rights issues are evolving and they are changing. But how long can we wait for the UK, who are setting the pace in this human rights legislation, to sort out their particular policy in these areas? And I would suggest that if we do wait for the human rights issues to be completely clarified, if that is ever the case, then this Bill will never surface again, because these issues are evolving not just in this piece of legislation but throughout. The hon. mover may well be right that in years to come we will be revisiting these appeals mechanisms, but certainly there is no light on the horizon that I can see that that is a reality in the short to medium term. So obviously when passing legislation we look to the long term but there are limits, I believe, as to how far one can go.

I do believe the hon. mover has not made his case to send this to a committee and I am fearful, if it does go into committee, of the time that it would take. But a point was made this morning - and I find this slightly ironic at times - that because the UK is not putting this legislation forward then we should not either. How often do we hear the reverse of that argument, when the UK is putting legislation through and sometimes we follow and sometimes we do not? Isn't this perhaps a situation that does not occur too often where we have legislation which is purely appropriate for our set of circumstances here on the Island regardless of what the United Kingdom may or may not wish to do, and we are not in isolation with regard to this situation because the other Crown dependencies are all making progress with this type of legislation.

If I thought that a committee would actually improve the consultative process I would support it, but it is quite clear to me - even the hon. mover, Mr Quine, said so - that another round of consultation would not do any good. But that is exactly what a select committee will have to do, surely, or is it going to be set up to actually process some legislation without any consultation? I would hardly think that any member of a select committee would go down that route and not ask for consultation. So I do believe that that argument is also null and void with regard to the purpose of setting up a committee.

Hon. members, I do hope you resist this move. I think it is unfortunate, although it is quite in order and I would not say otherwise, that we have had the debate and then the move for this stalling afterwards. It would have been, I think, more helpful to the debate if we had known from the beginning, but that is my point of view. Having got the second reading successfully concluded and a three-week delay for us all to digest the reality of it including the industry and the fact that we can all speak to our constituents with regard to these issues, I would ask the members to sit tight and see how it develops, because I think they will be pleasantly pleased, as things unroll, about the positive things that have actually come out of the consultation that are already in the Bill but that another round of consultation will not make any better, as the hon. mover, Mr Quine, has already said. So please resist the temptation to send it to a committee. The issues are on the surface, they can be decided upon, we can make our views known with a vote and come back in three weeks' time and let us see what the clauses bring about.

The Speaker: Now, hon. members, I did not want to stop the hon. member for Onchan in his flow and I would just tell the house that we are actually dealing with this matter under Standing Order 156 which simply says 'After the motion for second reading has been carried, the Bill may be referred to a Committee to consider and report; and during the consideration of the clauses of the Bill, any clause may be referred to a Committee to consider and report.' That was the first opportunity that we have had for it to be put to the House, to be sent to a committee. I want to make that plain. Hon. member for Douglas East.

Mrs Cannell: Thank you, Mr Speaker. Just listening to the words of the previous speaker I do detect some words and a note of comfort in what he has to say and I sincerely hope, if the House is of a mind to reject a select committee today that those words of comfort echoed by the Minister for the Treasury will be realised and that he perhaps will not be put in a position where he feels as though he has to eat those words.

I have not partaken in this debate until this point in time because I was undecided. I had niggling doubts because of the extent of information that has been sent to us from the

Association of Corporate Service Providers, from bankers, from advocates, in relation to this expected piece of legislation, and I have sat back and listened to the debate thus far and I have to say that I firmly believe that there would be much merit in an impartial group of people taking this issue to one side and looking at it a little bit closer.

What we have to remind ourselves of is, it has been suggested that we could lose quite a lot of business. It is a matter of record that as of December 1999 there were 39,603 Manx-registered companies and there are reasonable grounds, as stated by the Association of Corporate Service Providers, to expect that number to fall to below 20,000. That is quite a significant expected fall in an important industry. I think what we have to decide as a government is whether or not we want to maintain, enhance, and keep our finance sector or whether we want to rather appease the United Kingdom government. At the end of the day I think that is a decision we are going to have to take ultimately.

I accept that this has been a bone of contention for some considerable time and that the House, various Houses, have been looking at ways in which they could properly regulate and I applaud those measures; I applaud certain strong measures contained within the written Bill as presented today, because we do not want to continue to encourage by the lack of legislation certain unscrupulous service providers. But I believe there are only a small amount of such providers in the Isle of Man and that the rest of the service providers are bona fide, they are good, their businesses are good and they do a good job and they do it within the law, and I certainly believe that they would be seen to be doing it within the law should this legislation be passed.

But very serious questions have been raised in relation to certain provisions contained within the legislation. What frightens me is this push and shove and 'let us get it through', despite the fact that the hon. mover of the original legislation is prepared to hold it for three weeks: 'Let us do it because this is the only piece of legislation that has come out of all of this that we have been concerned about for so much time.' What frightens me is that the House seems of a mind, knowing there are fundamental flaws, recognising that there could be problems in relation to losing industry, losing money, losing the finance sector ultimately, to push through a piece of legislation rather under the premise that it is better to have bad legislation than to have no legislation at all. That has never been my view. We are at the stage at the moment where we are being asked to endorse and encourage and allow the principle of the legislation to go forward. The underlining principle has not been in question because all of us have moved to support that, but there are very genuine concerns about certain provisions, and I think we have to take that seriously.

This is not a move, in my view, to hijack, to stymie, to jeopardise this piece of legislation. We all want the industry to be properly regulated, but we are almost totally reliant upon the finance sector for our gross national product. Can we afford to lose such a lot of business, if the suggestions from the assertions that are coming from the Association of Corporate Service Providers are to be taken seriously? Can we really afford to ignore that? What will we do if we disregard the move today to have a closer look at it? Plough ahead with it, try and appease those concerns over a three-week period and we come back in three weeks' time on 17th April and there has still been no compromise in relation to that, that the hon. mover of the original Bill has been unable to convince the smaller businesses that they will be all right, that he has been unable to convince the bankers and the advocates who are asking questions in relation

to this what will happen. As the hon. mover of the select committee has said, we will be no further forward. Yes, under Standing Orders, when we reach certain clauses we can also move to select committee. I would suggest that to move it to that type of situation would be incompetent on our part. I believe now is the time to set aside and just have a closer look at it. Members may move an amendment to this move that the select committee report by no later than, if they so wish.

I think this is far too important a move today to ignore, and I would hate for us, in a year, two years' time, to be looking at the situation where we had lost part of our bona fide finance industry. The unscrupulous ones - if they do not want to be regulated, fine, we can do without that sort of business, I agree with you entirely, but if the good, small businesses are squashed by the bigger businesses, which is the allegation here by some of the measures contained within the legislation and we lose that business and there is a ripple effect across the finance industry, what will we do then? Who will be the brave man to stand up and say, 'I am responsible for this'? That is the question I would leave in hon. members' minds today. I would sooner us go forward, confident that we had done all that we were expected to do, that we have put together the very best piece of legislation that was possible irrespective of whether it exists anywhere else, and we could move forward with confidence. But while there is doubt I am afraid my support will go for a select committee.

Mr Shimmin: Mr Speaker, a very short speech. I congratulate the chairman of the FSC for the decision he has taken. I am hardly, as nobody else would be, surprised about the desire to go to a select committee. The whip is out, we can all do the sums and we all know how the vote is going to go. The decision is one that is quite simple: you either support the chairman and the FSC in going forward with all the assurances he has made or you join with a manoeuvre to try and hedge this because of other reasons. I just do not think there is a case for a select committee at this point. Let us chuck it out.

Sir Miles Walker: Mr Speaker, the hon. member for Douglas East, Mrs Cannell, has suggested to us just a short time ago that in her view this Bill, this piece of legislation, is fundamentally flawed and because of it we may lose the finance sector. I would just like to place on record an opposite point of view to that, (**Members:** Hear, hear.) certainly an opposite point of view which is mine - that is, that this legislation is not fundamentally flawed and the issues that have been identified that are a difference of opinion between the FSC and the corporate service providers may be important but they are not many, and I believe they can be ironed out or, at the end of the day, we may have to agree to differ, which is a legitimate position to adopt.

The thought that this Bill may in some way lose us the finance sector leaves me cold. I believe that this legislation, even if it went through as it is now unamended, would not do that. What I am sure we are all about is trying to expand the finance sector, encourage it to grow, and certainly let us accept that the corporate service providers are an active body of people, they do a lot of good business for this Island, they employ a lot of people and what we are about is trying to encourage that sector to grow. That certainly is what I would like to see happen, and I believe it can grow and will grow better within the terms of some regulation, and I believe that the majority of those corporate service providers recognise that. We know that there has been a reduction in the number of companies; we know there is a moratorium on non-resident duty companies. Perhaps, when we get this legislation through, it would be

sensible to lift that moratorium. Once the people are licensed, let us consider very carefully whether or not we can make business easier for them to do under a licensed regime.

I do not believe the case has been made for this legislation to go to a committee. I recognise there are differences and I believe the way to deal with those difference, because they are few, is on the floor of this house. I think it would be a great shame to go to a select committee and, as the hon. member for Castletown suggested, start again at clause 1 and work all the way through the Bill when much of that exercise has been done, and we have honed down the differences to very few. I think we should be content to try and deal with it on the floor of this House. If then we come to an impossible situation a committee can be considered, but at this stage I do not think it is a way forward.

Mr Braidwood: Mr Speaker, first of all I must implore members not to support the motion of the hon. member for Ayre, Mr Quine, for this Bill to be referred to select committee for three members to consider and report. It would be a retrograde step. We have had a lot of consultation; it would be more consultation. My own viewpoint is we only differ on small variations with the chartered accountants and the corporate service providers. Now, my hon. colleague for Douglas East, as mentioned by Sir Miles, has said that the Bill was fundamentally flawed. Therefore I thank her for her support on the second reading. (**Messrs Cretney and Gilbey:** Hear, hear.) She also mentioned letters from the bankers and advocates. This is the first time I have heard this mentioned. The law society is in full support of this Bill. There has been no mention from the bankers. They are quite happy because it does not affect them.

Mrs Cannell: That is not what it says in here.

Mr Braidwood: Now, I think it has been answered by Sir Miles about the reduction in the registered companies. It was also mentioned by the Chief Minister in the second reading that one person is taking off 1,000 companies who were not being administered properly. This is better for the Isle of Man. Let us have top quality companies to be administered.

I think it was mentioned by the hon. member for Douglas West, Mr Shimmin, that we should throw this out, there is no point. We know there are two camps; we know the situation. Secondly - can I just bring this forward? - when we and other members of this hon. House met members of the corporate service providers and we went down and had lunch with them, there were three points they were raising: statutory indemnity, burden of proof, and the review committee. We have changed the review committee so it is a review committee appointed by the Council of Ministers, not the Treasury. So we conceded that point. The burden of proof was changed that you were innocent until proved guilty, different to previously; we amended that, so we are bending over backwards. Then, statutory indemnity - the statutory indemnity before and in the other legislation for the Investment Business Act and the Banking Act was that the FSC was not liable to any action, suit or proceedings in any matter done. We have changed that so it is liable to damages. It came through on the Retirement Benefits Schemes Bill. It has been mentioned previously, in Schedule 3 of the enactments, we are going to change those for the review and the indemnity. So I think we have accommodated a lot of the aspects that have been mentioned by the chartered accountants and the corporate service providers. In their letter, as they said, they only mentioned two things: the statutory indemnity and also on the domestic services.

I do not want to carry on and say it is there; if they look at the Bill they will see it in schedule 2, sub-clause 5(2) for the exemptions. And remember, you are only licensed by way of business, and we can say voluntary charitable work is not by way of business, therefore you automatically exempt. Points will be raised hopefully in the three weeks until the clauses stage. I am sure a lot of these points can be ironed out.

That is all I have got to say, Mr Speaker. *(Interjections)* I want members, please, to throw this motion out by the hon. member for Ayre.

A Member: Hear, hear.

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

Mr Quine: Thank you, Mr Speaker. I can understand the hon. mover's concern. A lot of work has gone into this Bill and it is a Bill with which there is common agreement that this is an area that should be covered, that there should be a degree of regulation, but that is not a case for taking approaches to the regulation that are either unacceptable in international law or indeed do not measure up to our own legal principles which, given any other subject, we would apply and have applied and yet, because it seems to be one of our sacred cows, we somehow seem to be wanting to veer away from that.

The issues are there; I do not think I need to revisit them. I would simply say this: I take no comfort from the fact that, as part of the consultation process hitherto, the Treasury has decided to remove from the Bill the assumption that you are guilty until proven innocent. I think that is indicative of the absence of a sufficiently light touch in approaching this particular subject. I take no comfort from the fact, sir, that the existing review committee procedure has removed it from Treasury, where it was, to a committee formed by the Council of Ministers. It was the executive, it is the executive, so nothing has changed of any substance.

Let me just deal with what I think is the real nub of the motion I have put, and that is whether it is sufficient for us to leave this in the hands of the Treasury for a further period of consultation, bringing it back to this House on 17th April. Now, as I said, I welcome the underlying willingness to look at this afresh, but let us look at the practicalities of that. If it is going to come back on the 17th for us to deal with clauses -

A Member: The 18th.

Mr Quine: - well, the 18th, thank you - then I presume there is going to have to be some report to us, because after all we are the ones that are going to have to run with amendments on the 18th if these are not addressed. So unless we are advised, say, a week before then to get the amendments ready we are left with a matter of a couple of weeks for consultation. I am not sure what that is going to achieve, but, whether it is achievable within that period of two weeks or not, if that is the course that they are running with then I must make the point that we would need good notice of your conclusions so as amendments can be dealt with.

Mr Brown: You can have the amendments and not move them.

Mr Quine: I am always pleased to get advice from the hon. member for Castletown. *(Interjections and laughter, and Mr Brown further interjecting)*

Mr Quine: Well - no, I will not say it, no!

Several Members: Go on! *(Laughter and interjections)*

Mr Quine: Mr Speaker, consultation. Let us deal with the principles, as I say, as between another round of consultation by questioning the FSC and a select committee. It is my contention - and I think it stands objective scrutiny - that the FSC is not a substitute and cannot be a substitute for detailed study by the Keys. We all know the difference quite clearly. If we go into a Keys process we are going to take evidence and we are going to be dealing with a report which will address these matters in detail. They will be arrived at by an objective process and I would suggest to you that that is the best way to confront an evaluation of this Bill with a view to finalising it. If we do not do that, unless there are some compromises made and some meeting of common ground, some kind of common ground, we will be dealing with a series of amendments on a highly complex, highly contentious and some highly contentious matters on the floor of this House. (**A Member:** Hear, hear.) That, I would submit, is not the way to put through important legislation.

The hon. member for Onchan, Mr Corkill, has suggested that I exhibit a lack of trust in the executive. Well, he is entitled to hold that view if that is the view he holds, but that is not where I am coming from and I do not think that is where other members are coming from. This is simply a matter of whether or not principles which apply in international law relating to the European Convention on Human Rights are being applied or not, and that is not whether you trust an executive or whether you do not trust an executive; that can be approached on a very objective basis, and that is where I have approached this. That is the basis upon which I have approached it.

We have not been given a great degree of comfort in relation to these two issues, the one of the review committee and the one to do with immunity, but, just dealing with the one to do with the review committee, the Minister for the Treasury has been quite honest and quite straightforward and he said as things stand today it fills the bill. I do not think that is really a very convincing statement, a very convincing way to express his belief in whether or not the principles have been met in the way that these two matters have been drafted. I would suggest that that would intimate to all of us that there is good cause to look more closely at this matter and to take another view other than that which has been offered to us through the Treasury counsel.

I am quite happy to leave this matter to the House today to decide. The issues have been, I think, well voiced. I think we know the issues here. We either arrive at a position where we take pot luck on a further round of consultation by the Financial Services Commission in a very limited timescale and hope that that is going to produce the answers - I suspect it will not in which case we are into amendments on the floor - or we address it in the most responsible way and the proper way, and that is to have the issue examined by a select committee of this House. I advocate the other. I wish to go down on record as advocating the other and I beg to move, sir.

The Speaker: Hon. members, the motion is that the Corporate Service Providers Bill be referred to a select committee of three members to consider and report. Will those in favour please say aye; against, no. The noes have it.

A division was called for and voting resulted as follows:

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

Against: Messrs Gilbey, Cannan, Rodan, North, Sir Miles Walker, Mrs Crowe, Messrs Brown, Cretney, Braidwood, Shimmin, Downie, Bell, Karran, Corkill, Cannell, Gelling and the Speaker - 17

The Speaker: Hon. members, the motion fails with 17 votes cast against and 6 votes cast for. Hon. members, the Corporate Service Providers Bill will take precedence on the order paper for 18th April.

UK Budget – Implications for Isle of Man Economy – Motion Carried

The Speaker: We move then to our final item on the order paper for today, item 14. I call upon the hon. member for Michael, Mr Cannan.

Mr Cannan: Mr Speaker, I beg to move:

That this House takes note of the policies and proposals within the budget of the UK Government and their implications for the economy and economic policies of the Isle of Man.

As was mentioned this morning by the hon. member for Onchan, we in this House spend almost all our time in the debate on the internal affairs of the Isle of Man, and that is quite right, we are an independent jurisdiction, but I think that from time to time we ought to address the wider issues of the global economy, because it is through our success in that arena that we have the financial wherewithal to spend on our health and education, on our agriculture, on our trade and industry, and all those matters that are important to us. We are not independent of what goes on in the outside world. There is an old saying, 'No man is an island', and though we are an Island we are, in terms of survival and living and prospering and our well-being, dependent on the general well-being through our own efforts in the outside world.

So, as I say, it is important that members from time to time address their minds to what is going on outside and to how we should preserve what we have and to ensure that it is not undermined by such organisations as the European Union, OECD, the G7 nations and all those other countries, organisations, world organisations, that somehow see the Crown dependencies or low-tax areas firstly as a threat to them, and secondly they see it as well probably through the green-eyed monster of 'why should they be successful?' 'Why should they have full employment and a good standard of living?' 'Why should they in the Isle of Man be successful?' It is almost as if the old Manx crabs principle exists in the outside world. Tut, tut, 'we cannot have the Crown dependencies doing so well.'

So while these matters go on I think that it is appropriate in the parliamentary setting for the Treasury minister and perhaps the Chief Minister to indicate to us their policies in dealing with these threats that we constantly hear. They go on and on and on. They are not new. The Primarolo report comes and goes and keeps popping up again on the agenda. The UK chancellor in his budget talked about bringing in agreements so that the UK inland revenue could have some sort of agreement possibly to look at tax evasion and tax avoidance within the Crown dependencies. In fact, the Inland Revenue issued a very strong press release setting out what they felt they would like to do, and I would just like to repeat what the Inland Revenue and the United Kingdom think they would like to do.

'Tax information exchange agreements will allow the Inland Revenue to receive information about foreign transactions of UK taxpayers and multinational companies not

currently available because there is no agreement for effective exchange of information in place' - *effective*. 'Government intends to open talks with other countries including the United Kingdom's own overseas territories and Crown dependencies as part of its efforts to develop new international standards on exchange of information in support of OECD and G7 initiatives' - strong words! And we must, I believe, have a positive reaction setting out our stall in response to what the Inland Revenue is saying the OECD is saying and G7 is saying.

I go on to say about the UK Inland Revenue: 'The Inland Revenue is already able to exchange some taxation information with other countries with which the UK has a double taxation agreement. Information received under those arrangements has assisted in the recovery of millions of pounds in UK tax revenues. The tax information exchange agreements offer a route for exchange of information to be significantly extended and approved.' These are very important words. They are not mine; they are coming from the United Kingdom Inland Revenue in what they hope they might be able to do and, as I have said before, we must preserve and protect our financial services industry here. It provides us 40 per cent of our GDP. It enables us in our own budgets to provide so much for education and health and, next month, for agriculture, for trade and industry, for tourism, for all those other matters. It is easy for us to spend. It is important that we preserve our income - very, very important.

So I am hoping that the Treasury minister will respond to this debate to let us know in a parliamentary setting the hopes and aspirations that he has and that his government has to fend off what these constant insidious probes into our defences, to somehow have an interference in our autonomy for taxation and the conduct of our internal affairs - very, very important. As I say, this morning the hon. member for Onchan, Mr Karran, said that he wanted more debate. Well, I look forward to his contribution too, Mr Speaker, because to have the opportunity for members to say how these matters should be handled is important. I do not believe it should be left to media releases or radio interviews; I do believe the opportunity should happen here in the parliamentary setting of this, our Island. Mr Speaker, on that note - and I will leave it now hopefully for the Treasury minister to respond - I beg to move the motion standing in my name.

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

Mr Corkill: Mr Speaker, not one for not responding to an invitation to speak I cannot resist but get to my feet! So I have to say I was slightly surprised when I saw this motion on the agenda, but the hon. member for Michael did give me some notice and showed me what was proposed to be on the agenda, but I have to say also I was slightly concerned about the motives behind it, and I thank him for making it quite clear today that what he is looking for is comment in the House of Keys as opposed to comment in the media and the fact that a statement here, quite rightly, has more meaning than perhaps statements outside.

I studied the wording of the motion, which very much relates to the UK budget, and obviously, like many people when the UK budget is announced each year, we study it. There have been some changes recently because there seem to be fewer and fewer headlines. This is the way of budgets generally, I think - not many surprises because much of the information is actually released prior to the event, and there was no difference this year. Much of the information that was of interest to us was already public before the day of the budget. And then, of course, we have the raft of legislation, of regulations which come in the wake of the budget, and certainly this is where the scrutiny begins because there is always the devil in the

detail, and it has been no different this year. There is a situation where at the very outset the UK chancellor, Mr Brown, said that he was going to produce anti-avoidance regulations and legislation. He wants as much tax from the UK residents as is possible and once again this year he has made some steps forward, so he has made it harder again for the UK citizens to avoid certain capital gains taxes, and this is something obviously that the professionals are busy scrutinising.

Also, the control foreign company legislation - these rules are more and more complicated but they are designed particularly to repatriate taxes to the UK but certainly that received a very blunt response by industry in the UK. The United Kingdom chancellor spoke of £300 million as being his target figure in tax in this particular area and the headlines in the newspapers referred to £10 billion of tax. So there is certainly some conflict there between what is proposed and what is perhaps a reality. But these are matters for the United Kingdom to determine for its business and its citizens, and no doubt they will make their mind up as to how fair those rulings are and as to how best structure their businesses as a result of those changes.

But I believe in such a motion as this it would be wrong just to concentrate on the negatives that were in the United Kingdom budget which are appertaining to the Isle of Man, because there are some positive things there. It is quite clear to me that there are certain things going on in the United Kingdom where they are trying to emulate the offshore territories in terms of taxation policy. There is no doubt that corporate taxes are on the way down. Regardless of the international debate about harmful tax competition, we are in an environment of reducing corporate taxes and the issue of the Island's competitiveness - my hon. colleague from Treasury, Sir Miles, spoke this morning about the Island being a low-cost centre and tax being one issue - these are important issues in terms of competitiveness. So the United Kingdom is learning to become offshore Europe and learning very quickly. That I take as a positive because it underlines some of the policies which the Isle of Man Government has and, I would say, accepts are valid.

The other positive things: gross domestic product, 2.75 per cent to 3.25 per cent in the year 2000; inflation below target for the year 2000; spending up 2.5 per cent; and a UK debt repayment of £12 billion in the year 2000. If the United Kingdom economy is doing well, then generally the Isle of Man economy does well and, if we do not it, certainly is our own fault. So these are positive things, the fact that the UK is doing well.

Other things which will have an impact on us and open up opportunity: the changes announced to air passenger duty. Air passenger duty, of course, has been ruled unfair by the European Commission looking at that situation, and the UK has been forced to make changes. Those changes will occur from April 2001. Therefore the situation where we have been in, that in order to keep revenue on the Island we have had to implement the same sort of air passenger duty rather than lose it to the United Kingdom, is going to change and therefore that gives a further option for this House and for another place to consider, I believe, in due course because we will have more options without losing the duty in future.

So that is a positive change, but I think the hon. member for Michael has hit the nail on the head in that perhaps the major headline was the announcement on exchange of information, and I think one needs to study the position that the United Kingdom chancellor is in with regard to the debate on withholding tax and the whole European debate on taxation to

see where he is coming from. It is quite clear that the United Kingdom policy which has been there for some time is that rather than go down that road of withholding tax they would much prefer exchange of information, and I suppose it is quite clear then that they will be expected to treat areas under their control as perceived in the same way as they would expect others, and this obviously is very, very important for the Island and I think it is an opportune moment for me to state what our policy is here with regard to exchange of information for these tax purposes, because that policy has not changed since the response to Edwards. The double taxation agreement situation was talked of during Edwards. The response by the Isle of Man Government endorsed by Tynwald was quite clear that the way forward was an updated and revised double taxation agreement on an OECD type of model. Now, as far as I am concerned, nothing is changed since that statement except that there are changes elsewhere.

To put it in perspective, of course in this last budget of the UK chancellor - and I am sorry I keep saying the words 'UK Chancellor', but I want to be clear for the record that this is a UK budget debate and not an Isle of Man budget debate - he has abolished tax on international bonds interest where the tax usually was levied at 20 per cent. I think that is an interesting figure as well. The 20 per cent tax figure is something that we are quite used to hearing about. It is not something one often hears about in the United Kingdom, but they have just done away with the 20 per cent tax on the bonds interest for international bonds. Now, this is in direct conflict with the whole debate about withholding tax, but exchange of information is the way that the United Kingdom wants to go forward.

If I can refer to a *Financial Times* article of Wednesday, March 22nd, it says here that in response to this whole scenario Germany, Austria and Luxembourg are opposed to an exchange of information system among Europe's internal revenue authorities because of their laws on banking secrecy, 'Reversing these long established laws would be politically sensitive' - rather an understatement, I would say, but certainly sensitive.

And so we come to the argument about the level playing field which we hear so much about. I would say to the United Kingdom that if they can establish a level playing field in this type of situation, good luck to them. I think it is impossible but that is what their objective is, but certainly it is a very persuasive argument when trying to avoid the predicament they are in, which is to protect their international bonds market in the City of London. And the health of the City of London's energy and business is also the fact that the Isle of Man here is a feeder of that big financial centre, one of the world's premier financial centres, not only important to the UK and important to us but very important to Europe as well, and hence we are getting into this debate about whether we should chase Eurobonds away. One could take a short-term view, which is if the UK wants to introduce a withholding tax, if Europe forces them down that way, we stand our ground; we could perhaps have some of that international bonds market here rather than it all go off to Switzerland. But I think that would be rather short-term because I do believe that our future is obviously linked to the international climate, but it is also very important that the United Kingdom remains strong as well. Our strength is certainly connected to their strength.

So I think I would have to come down on the side of supporting this stance against a withholding tax. The UK has made it quite clear that, under the rules of Europe, qualified majority voting is not an issue with regard to taxation. They will not release sovereignty in that

area, and I quite agree, and I would say that that is an appropriate stance for the Isle of Man to take, bearing in mind our constitutional relationship which is so long standing.

So the arguments go round and round with regard to exchange of information, but I will come back to the point that I believe the way forward is the double taxation agreement with the United Kingdom. But, of course, we only have that one agreement with the United Kingdom, and maybe it would be worth scrutiny that as part of this debate we should be looking at the possibility of double taxation agreements with other countries, other jurisdictions. I would point out to hon. members that the UK, in terms of its relationship with the OECD - there are 17 OECD members who have double taxation agreements with the United Kingdom, and they are generally beneficial for all those parties involved. Maybe that should bear scrutiny as part of the debate which is obviously going to ensue with regard to exchange of information. But, of course, the point was made by the mover that for certain circumstances information does exchange as things stand for particular purposes, particularly for criminal purposes. I do not believe there is anyone who thinks that that is wrong.

So it is the debate about whether we have automatic exchange of information. That, of course, is always going to be asked for by the Inland Revenue. It makes life easy for them if it is automatic, and we all know how government systems work. So who can blame the United Kingdom Treasury Inland Revenue, for asking for it? It would certainly make life easier for our Assessor of Tax, if he had certain things happening automatically, but life is not that simple.

So there are many, many issues which spill out from the UK Treasury. They do deserve, not just the scrutiny on the day or the week after, but continued scrutiny as in fact the legislation surfaces. If the United Kingdom wishes to have legislation in place to allow for agreements of exchange of information with other jurisdictions, then obviously that is a matter for them. Whether other parties will actually agree to those exchanges - I mentioned Germany, Austria and Luxembourg as just the EU members, let alone non-EU members - then obviously they have a lot of work to do. So this is a debate that is going to go on for some time, but it is one, I believe, in terms of our debate with the OECD, that I think we can contribute to and should contribute to and maybe receive some benefit from in the longer term.

I have not much else to say. I am conscious of the hour, Mr Speaker. I thank the hon. mover for an opportunity to put the record straight on exchange of information and thank you, Mr Speaker.

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

Mr Cannan: Mr Speaker, I thank the Treasury minister for setting out his stall. I think it is important that he set it out here, as I said before. I will not comment on what he has said, but I believe formally, in a parliamentary setting, his views on the UK budget and the small print, how he sees things developing in the withholding tax, the exchange of information, but above all that the United Kingdom budget and decisions that are taken there has a major influence on the Island's economy. Our future is linked - and there cannot be any doubt about that - to the international climate.

I am surprised that there were not more contributors to this debate, when I hear, from time to time, people saying that these matters should be discussed in public, but the terms of the motion were that this House takes note of the policies and proposals within the budget of the UK Government and their implications for the economy and economic policies of the Isle

of Man. Having heard the Treasury minister and nobody else wishing to speak, I assume that we are all supportive of the manner in which the Treasury minister is examining these matters, conducting the Island's response, and by supporting this motion and not speaking and having listened to the Treasury minister, I can assume that we all have a vote of confidence in the minister. Thank you, Mr Speaker.

Members: Hear, hear.

The Speaker: Hon. members, the motion is that printed at item 14 on your order paper. Will those in favour please say aye; against no. The ayes have it. The ayes have it.

Hon. members, that concludes the order paper for today. The House will now stand adjourned until the 4th day of April at 10.00 a.m. Thank you, hon. members.

The House adjourned at 4.09 p.m.