

**REPORT OF PROCEEDINGS OF
TYNWALD COURT**

**Douglas, Tuesday, 16th November 1999
at 10.30 a.m.**

Present:

The President of Tynwald (the Hon Sir Charles Kerruish OBE LLD (hc) CP). In the Council: the

Attorney-General (Mr W J H Corlett QC), Hon C M Christian, Messrs E A Crowe, D F K Delaney, E G Lowey, Dr E J Mann, Messrs J N Radcliffe and G H Waft, with Mr T A Bawden, Clerk of the Council.

In the Keys: The Speaker (the Hon N Q Cringle) (Rushen); Mr L I Singer and Hon A R Bell (Ramsey); Mr R E Quine OBE (Ayre); Mr J D Q Cannan (Michael); Mrs H Hannan (Peel); Hon W A Gilbey (Glenfaba); Hon S C Rodan (Garff); Hon D North (Middle); 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, Clerk of Tynwald.

The Chaplain of the House of Keys took the prayers.

Apologies for Absence

The President: Hon. members, we have apologies for absence from the Lord Bishop, who is off the Island on Church business, and from the hon. member for Council, Mr Kniveton, and the hon. member for Onchan, Mr Karran, who are indisposed. I am sure hon. members will join me in sending best wishes to them for a speedy recovery.

Members: Hear, hear.

Welcome to Children from Onchan School

The President: Now this morning, hon. members, it is a pleasure to welcome to the Court the children from Onchan School. I had the opportunity of meeting you in the Legislative Council and this morning it is a delight to welcome you to the Tynwald Chamber. You are looking forward, as we are, to a millennium, but we celebrated yet another millennium in 1979 when this chamber became the first chamber in the history of the world to have one thousand years of continuing parliament. So you are with us this morning in a setting which goes back for more than a millennium. Please enjoy the experience and thank you for joining us.

Mr Houghton: Hear, hear.

Bill for Signature

The President: Now we have a Bill for signature, hon. members, and if you are agreeable we will continue our business while it is being signed. Is that agreed?

Members: Agreed.

Papers Laid before the Court

The President: I call upon the hon. Clerk to lay papers.

The Clerk: I lay before the Court:

Health and Safety at Work etc. Act 1974 (Parliament) -

Construction (Head Protection) Regulations 1999 [*SD No 536/99*]

Road Traffic Act 1985 -

Driving Licences and Tests (Amendment) Regulations 1999 [*SD No 628/99*]

Customs and Excise Act 1993 -

Export of Goods (Control) (Indonesia) (Application) Order 1999 [*SD No 565/99*]

Brewers' Act 1874 -

Brewing (Exempt Beers) Order 1999 [*SD No 566/99*]

Financial Supervision Act 1988 -

Financial Supervision (Professional Investor Fund) (Exemption) Order 1999 [*SD No 602/99*]

Financial Supervision (Experienced Investor Fund) (Exemption) Order 1999 [*SD No 603/99*]

Investment Business Acts 1991 to 1993 -

Investment Business (Exemption) (Fund Managers) Regulations 1999 [*SD No 604/99*]

National Lottery Act 1999 -

National Lottery Legislation (Designation) Order 1999 [*SD No 601/99*]

National Lottery Legislation (Application) Order 1999 [*SD No 600/99*]

Forestry Act 1984 -

Forestry (General) Byelaws 1999 [*SD No 584/99*]

Department of Agriculture, Fisheries and Forestry -

Beef Quality (Headage Payment) Scheme 1999 [*GC No 47/99*]

Report -

Report of the Department of Tourism and Leisure on the Falcon Cliff Lift

Companies (Transfer of Domicile) Act 1998 -

Companies (Transfer of Domicile) (Prescribed Investment Exchanges) (Amendment) Order 1999 [*SD No 618/99*]

Merchant Shipping Act 1985 -

Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999 [*SD No 613/99*]

Government Departments Act 1987 -

Appointment of Members of Departments (No.3) Instrument 1999 [*GC No 45/99*]

European Communities (Isle of Man) Act 1973 -

European Communities (Indonesia Sanctions) (Application) Order 1999 [*draft*]

European Communities (Flights Restrictions) (Application) Order 1999 [*draft*]

European Communities (Petroleum Sanctions) (Application) Order 1999 [*draft*]

Appointed Day Order -

National Lottery Act 1999 (Appointed Day) Order 1999 [*SD No 599/99*]

Reports and Accounts -

Ninth Annual Report of the Value for Money Committee dated October 1999
Isle of Man National Transport Limited: Report and Financial Statements for the year ended 31st March 1999
Isle of Man Limited: Directors' Report and Financial Statements for the year ended 31st March 1999
Annual Report of the Gaelic Broadcasting Committee for the year ended 31st March 1999

European Communities -

European Communities instruments circulated during September 1999 [GC No 46/99]

International Agreements -

International agreements which the Isle of Man Government has requested to be extended to the Isle of Man during the period 1st April 1998 to 30th September 1999 -

European Convention for the Protection of Farm Animals for Slaughter
Convention on Social Security between the United Kingdom and Turkey
1996 Protocol to the (London) Convention on the Prevention of Marine Pollution by Dumping of Waste and Other Matter 1972
Montreal Amendments (to the Montreal Protocol) of the Vienna Convention for the Protection of the Environment
Locarno Agreement establishing an International Classification for Industrial Designs
Ottawa (UN) Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their destruction
OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (in principle - pending enactment of domestic legislation)
IMO Protocols of 1998 relating to the International Conventions on Load Lines 1966 and to the International Convention for the Safety of Life at Sea
Annex IV to MARPOL (International Convention for the Prevention of Pollution from Ships - IMO, 1973)
European Convention for the Protection of the Archaeological Heritage (1992), amending the 1969 Convention of the same name
Council of Europe - European Convention on Corruption (in principle - pending review of domestic legislation)
Second Optional Protocol to the (UN) International Covenant on Civil and Political Rights aiming at abolishing the death penalty
Protocol of Amendment to the (Council of Europe) European Convention for the Protection of Vertebrate Animals Used for Experimental and Other Scientific Purposes
Council of Europe/UNESCO Convention on the recognition of Qualifications Concerning Higher Education in the European Union

International agreements which the Isle of Man Government has requested **not** to be extended to the Isle of Man during the period 1st April 1998 to 30th September 1999 -

None

E-Commerce – Action to Improve and Attract – Question by Mr Henderson

The President: We turn now, hon. members, to the question paper and I call upon the hon. member for Douglas North, Mr Henderson, to ask the question standing in his name.

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

What action is your government taking to improve e-commerce on the Island and to attract further e-commerce to the Island?

The President: The Chief Minister to reply.

Mr Gelling: Mr President, I am sure the hon. member will have read with much interest the expanded chapter on information technology in this year's Policy Review document which we debated last month in Tynwald and, with that in mind, I will not therefore repeat it, but I would like to say that since the policy report was published a contract has now been awarded to both Erikson and PDMS of Castletown to roll out an internet and e-commerce desk top system for over 2,000 government PCs which should help to prepare the government structure to improve its own electronic communications.

Furthermore, a further contract is about to be put out to tender which will bring about an audit of what the Island has done and perhaps needs to do to fully take advantage of the many commercial opportunities that will be presented through the growth of e-commerce.

The President: A supplementary, hon. member?

Mr Henderson: Yes, thank you, Mr President. I thank the hon. Chief Minister for that reply and his commitments as illustrated, but would he agree with me that just promoting something within government is far different from actually making a direct positive action plan which will have meaning and benefit to the business community, and is the Chief Minister aware that the UK is at this moment promoting an E-Commerce Bill and business consultants are calling for tax initiatives and the Republic of Ireland are aiming at 12.5 per cent corporation tax? Then will he consider similar moves to maintain and enhance the Island's business attractiveness and would he agree we need to be doing more and more quickly?

Mr Cretney: Yes.

Mr Gelling: Yes, Mr President, I hear what the hon. member is saying and I can assure all hon. members that the Isle of Man Government is going forward not just on its own e-commerce strategy and I would like at this time to congratulate the Post Office with the support of government who held a seminar some three weeks ago with the Baltimore Group, and I think that was something very worthwhile by the number of private sector people who attended it.

Also, of course, we have the brochure on the internet financial services where the clear statement is there to see that the Isle of Man is tackling these issues head on. We are convinced that the key factors that will enable the development of a high quality, wealth generating, electronic business are a clear legislative framework for the electronic delivery of financial services, an attractive fiscal environment in which to do business, an appropriate regulatory regime that recognises the special needs of e-business, consumer confidence in the safety and security provided by the business location, the benefits of offshore status and the right technical and telecommunications infrastructure and skilled resource to deliver and support the web technologies.

Now, that is the strategy, Mr President, and I can assure hon. members, as I have already stated publicly, that I and the government see e-commerce and electronic communication as something where the Isle of Man must be at the cutting edge of that technology.

Mr Henderson: Mr President, I thank the Chief Minister for that response and commitment to a strategy and for the nice brochure, but would he not agree with me that internet business is worth billions of pounds worldwide, that figure growing every day, and technological advances are happening so fast that an internet year is classed at three months? And given this scenario, does he not feel that this Island is exactly the right environment to carve out a specialist market for this kind of business and we should be doing it as quickly as we can so as not to lose any stake we may have in this market?

Mr Gelling: I could not agree more, sir.

Dr Mann: Mr President, would the Chief Minister agree with me that we have in the new international business school that is about to be set up, a positive training course in e-commerce, supported by a major United States company?

Mr Gelling: Yes, Mr President, I certainly can agree that the business school is yet one of those areas where we can exploit the modern technical advances that has been made and the Department of Education has made major advances in the provision of information and communication technology facilities in its schools and also the Isle of Man College, sir.

Organisation for Economic Co-operation and Development – Government Submission – Question by Mr Cannan

The President: Question 2, the hon. member for Michael.

Mr Cannan: Mr President, I beg to ask the Chief Minister:

- (1) *What is the basis of your government's submission to the Organisation for Economic Co-operation and Development that the Isle of Man is a properly managed self-governing state and under no circumstances a tax haven;*
- (2) *will you provide a seminar for members to discuss the submission; and*
- (3) *will you make the government's submission public?*

The President: The Chief Minister to reply.

Mr Gelling: Mr President, our written submission to the OECD was sent on 4th September 1998. Since then there have been two presentations to members on the various international tax initiatives, including that of the OECD. These presentations, which were held on 28th September 1998 and 19th November 1998, both included information on the submissions to the OECD. In addition, the submission has been copied to the Tynwald Standing Committee on Economic Initiatives, which was tasked by Tynwald in July of this year to oversee our work in this particular area.

As there have been two presentations and as the document is over a year old I see no need at this stage for a further presentation or discussion on its contents. However, the OECD issue has moved on since September 1998 and a further presentation will be desirable shortly

to bring members up to date. This will be arranged, and I will be providing members with the details as soon as I am able to do so.

Mr Cannan: A supplementary, Mr President. I thank the Chief Minister for his reply and acknowledgement that the presentation to the OECD needs to be updated. Can I ask the Chief Minister, in view of the importance of obtaining OECD clearance for the welfare and economic success of the Isle of Man, that he makes available to all members a copy of that submission so that all members are aware - or, if not a full copy, at least a précis copy of the submission that has most recently been made - and will he inform this Court about his meeting in London last Thursday regarding the submission of the report to the OECD and the presentation by the United Kingdom on our behalf and advise members of the briefing that he gave, the briefing he received so that people and business in the Isle of Man can be fully conversant of what is happening factually rather than through media statements and the rumour machine?

Mr Gelling: Mr President, a very long question with a lot of parts to the question. As I have said, we will be bringing members up to date. Now I would find it much more beneficial, I would suggest to members, if in bringing them up to date with a presentation we can actually bring the year-old submission from the Isle of Man up to date, because I can assure hon. members that the goal-posts are moving about a little and therefore it is, as I have already suggested, a changing scene.

Basically our submission has been, sir, that we do not believe that the Isle of Man should be on a list of tax havens and we have been following the four criteria for the identifications of tax havens, which we do not believe we therefore qualify for, and that is: the existence of no or only nominal taxation, lack of effective exchange of information, lack of transparency and, the fourth one, absence of substantial activities within the Island. We are following a strategy, sir, not to have the Isle of Man on that list, but I am afraid the OECD situation is that they have a provisional list and we have taken every step to make sure that Lord Bassam at the Home Office is fully aware of how we feel in the Isle of Man; that was the reason for the meeting that I requested with Lord Bassam last week. The hon. member states about the rumour machines; it is most unfortunate, Mr President, that that is the case, because on arriving in London I was told by the Jersey and Guernsey people that they had already been asked why they had been summoned to the Home Office, which was totally untrue, and yet then you read in the Telegraph another episode of - well, it looks like story telling, it is then again untrue, and I honestly do believe that if we give the members of this hon. Court a presentation, giving them exactly what the situation is and where we are to date, this would be the best way forward, sir.

Mr Cannan: A further supplementary, Mr President. I acknowledge what the Chief Minister has said, but will he not agree that not only members of this Court but the business community on which the good government of the Island depends for its income have a right to know what the terms of the presentation are to the OECD because it is fundamental that we are not on the so-called black list of the OECD, and therefore will he agree to issue a leaflet, a public pamphlet setting out the basis of the presentation in simple language, not civil service mumbo jumbo, but in simple language so that all the people in the Isle of Man can clearly understand the basis of where we are going through this very difficult period?

Mr Gelling: Mr President, the discussions with the OECD are ongoing. This is something, as I have already said, which is a very difficult situation I appreciate that, but I

would suggest that if we started putting out information leaflets into the public arena, not only would it cause problems for misinterpretation of actually what is going on and being able to fully explain why certain things do exist or do not exist but that would cause us more problems, as is being experienced with these people in other jurisdictions who are coming out with statements which then they attach to another statement, even to something to do with Dawn Primarolo, which is another initiative in the EU, and it is getting so confused that quite honestly the situation, I believe, is best left as it is. The OECD are meeting this very day, this week, and we will find out in June of next year what that list will have on it and, as I have said, we have done everything we can right up to the last request for a meeting with Lord Bassam to make sure that the Island's case was put absolutely fairly and squarely, sir.

Mr Delaney: Mr President, bearing in mind the answers you have given to me, Chief Minister, and other members of this hon. Court in relation to matters concerned with the OECD and now you have stated that your policy is not to be on that list, will you, for members, set out what damage could be caused to this Island in the different areas if we were on that list, so we will understand more the situation that may arise?

Mr Gelling: Mr President, again an extremely difficult question and an extremely difficult thing to do, because I would suggest to the hon. member that to try to list down what might be the downside to being on a list I have to really bring members to our current position when, over the last three years, we have had an EU initiative, an OECD initiative and an Edwards review and yet our Island is still buoyant, the confidence is still there, our economy is doing extremely well. It is extremely difficult to say, 'If we are on the list it will cause us damage'; in fact it might just be the reverse, for the simple reason that Luxembourg, Switzerland and Dublin have declared that they do not wish to be part of this, but I can assure hon. members that as far as they are concerned the EU machine will bring them very quickly into line.

As far as we are concerned in our submission, what we are saying to the OECD is, 'Do it in parallel.' Why should Luxembourg, Switzerland and Dublin not be on a list because they have decided that they will opt out? That is, I think, what we have to do: wait for the report and, when the report comes forward, Mr President, we will know exactly what the situation is and then we will already have a strategy to tackle whether we are on or whether we are off, sir.

Mr Singer: Mr President, in the event, Chief Minister, of the OECD rejecting your submission and not wishing to include Luxembourg and Ireland and Switzerland in the terms of tax havens, and the United Kingdom not giving the Isle of Man its full backing against that or any other external attacks, has your government undertaken a feasibility study so as to be able to make preparations and plans to commence a move towards independence?

Mr Gelling: Mr President, the hon. member is quite aware that we have a committee within the Council of Ministers that has been looking for quite some time at the very point that the member has raised, and I have said time and time again that we are not in a position where we need to look at that gigantic jump towards independence at this time, but we need to be prepared; we need to be in a position to know that we can do it for the good of the people of the Island rather than because we have to or we cannot do it because of financial restraints, so therefore I can assure the hon. member that this is something that is running parallel but not connected at this time with the issue in hand.

Tunisia – Agreement to Increase the Island's Radio Power – Question by Mr Cannan

The President: Question 3, the hon. member for Michael.

Mr Cannan: A point of order - may I just ask one . . . of paramount importance.

The President: The question has been fully answered. The hon. member, I think, had three supplementaries to put the points of paramount importance.

Mr Cretney: Hear, hear.

The President: Question 3.

Mr Corkill: Trying to damage the economy.

Mr Cannan: I beg leave to ask the Chief Minister:

Has the Government of Tunisia formally ratified the agreement to increase to 100 kilowatts the night-time power for the 279 kilohertz radio frequency?

The President: The Chief Minister to reply.

Mr Gelling: Mr President, I am not personally involved in this particular matter and therefore have no first-hand knowledge, obviously, of the issues. However, I am given to understand that the agreement has not yet been signed, although again, as I understand the position, there is no significant impediment or difficulty in it.

The President: A supplementary, sir?

Mr Cannan: One supplementary on this question, Mr President: are these negotiations with the Tunisian Government being conducted through normal diplomatic channels to obtain ratification or are they being conducted on a private basis by the Communications Commission?

Mr Gelling: Again I understand, Mr President, that the negotiations and the trip to Tunisia was organised by Mr Tony Steer of the UK Radio Communications Agency.

Manx Bar – Remedies for Negligence – Question by Mrs Cannell

The President: Question 4, hon. members. The hon. member for Douglas East, Mrs Cannell.

Mrs Cannell: Thank you, Mr President. I beg leave to ask HM Attorney-General:

What remedies are available to persons seeking redress for the professional negligence of a Manx advocate retained by them?

The President: The learned Attorney-General to reply.

The Attorney-General: Thank you, Mr President. In the Isle of Man we have a fused legal profession - that is, advocates who are qualified under the Advocates Act 1976 may act both as solicitors and barristers. Where an advocate acts as a solicitor - that is, in carrying out legal work which does not involve an appearance in court or the preparation of pleadings and other documents for use in court - the advocate owes a duty to his clients in all kinds of business which involve the law and to give legal advice to his clients in accordance with his contract of retainer. The advocate is bound to exercise a reasonable degree of care, skill and knowledge in all the legal business which he undertakes. In common with most other professions the duty of an advocate when acting as a solicitor arises both in contract and in

tort, but in addition there is a fiduciary duty which arises from the confidential relationship between an advocate and his client.

If an advocate is in breach of his professional duty of care the client who suffers loss as a result has a remedy in law which may be enforced by proceedings in the high court. To that extent, a client seeking redress against a Manx advocate who has acted as a solicitor has the same remedies as a client would have against a solicitor in England.

Where, however, the advocate acts as a barrister - that is, in the conduct and preparation of proceedings in court - the position of the client is different from that which exists in England, and from the client's point of view it may be regarded as being somewhat better insofar as an advocate, unlike his counterpart in England, has no immunity against a claim for negligence in acting as a barrister. Hon. members may recall that in June of last year I circulated a paper following upon the consideration of the Supply of Services (Exclusion of Implied Terms) Order 1998. The paper explains how in England there is an immunity against suit for negligence which is conferred upon barristers appearing in court or dealing with proceedings which are intimately involved with proceedings in court. In the Isle of Man, however, a client seeking redress against a Manx advocate who has acted as a barrister has a remedy for professional negligence whereas a client in England would not have such a remedy against a barrister.

I should also mention that if it appears to the court that costs have been improperly or without any reasonable cause incurred or there has been undue delay, misconduct or default on the part of an advocate, as a result of which costs have been unnecessarily incurred, the court may require an advocate to show cause why his client should have to pay those costs and also, if the circumstances of the case require it, why the advocate should not repay to his client any costs which have been unnecessarily incurred and paid by the client to any other person.

In summary, therefore, Mr President, where an advocate acts as a solicitor the client has the same rights and remedies as a client would have in England, and where the client acts as a barrister the client has a remedy in the courts in the Isle of Man in circumstances where no such remedy would appear to exist in England. The power of the court to make a costs order against an advocate is very similar to the power of the high court in England to make such an order against a barrister or solicitor having a right of audience in the courts in England.

The President: A supplementary, hon. member?

Mrs Cannell: Thank you, Mr President. I thank the Attorney-General for his response, but can I ask him in relation to an advocate who is acting as or providing the role of a barrister, where perhaps there is an allegation of a misappropriation of his client's funds, for example, and following that a complaint is then heard by the Advocates Disciplinary Tribunal and it found that the advocate did in fact misappropriate, apart from receiving a smack on the wrist and a very small fine, what sort of redress is there for the client if his money has been misappropriated - in other words, if he has lost his money? What is his redress then?

The Attorney-General: Mr President, the question which has been put to me by the hon. member relates to professional negligence; professional misconduct is another matter altogether and I feel that the question is really outside the ambit of the question before the Court.

Mr Delaney: Mr President, could I ask the learned Attorney why it is, when lawyers take funds belonging to somebody else and the general public take funds belonging to somebody else, it is theft by the general public, but it is misconduct by a lawyer?

The Attorney-General: Mr President, advocates do not have immunity from the criminal law. If an advocate has truly stolen funds belonging to a client he, like anybody else, is liable to be prosecuted and found guilty of theft.

Mr Delaney: Thank you, Mr Attorney.

Mr Quine: Where the Advocates Disciplinary Tribunal hands down an award to an advocate for misconduct, where does responsibility lie for ensuring that the award made is in fact honoured and executed? And if it is said to rest with the Law Society, is the learned Attorney satisfied that there is in being proper statutory responsibility resting with the Law Society to oversee the execution of that award?

The Attorney-General: Well, Mr President, as I indicated earlier, the question is not really concerned with misconduct, but I will do my best to answer the question put by the hon. member. When an advocate is found guilty of professional misconduct by the Advocates Disciplinary Tribunal it is incumbent on the tribunal to notify that finding to the Law Society and, as a result of a recent change in the legislation, the finding will be made public. In so far as the enforcement of the punishment is concerned, I would suggest that primarily it is for the tribunal to enforce the penalty, but also if the penalty is not enforced it is, of course, open to the tribunal to liaise with the Law Society and the members of the Law Society Council will, I am sure, be very concerned if the member who has been found in default is not pursued against.

Mrs Cannell: Mr President, In addition to the remedies which the Attorney-General has outlined for us this morning, would he not agree with me that if a person is dissatisfied with the ruling of a court or the findings of advocates acting as barristers, he or she can file a petition of doleance and then that indeed is also a remedy for the Manx public and, in relation to that, is he aware that at a quarter past nine this morning such a petition of doleance was actually filed in the General Registry and the fee of £75 accepted?

The Attorney-General: Mr President, I was not aware that a petition of doleance was filed at 9.15 this morning, but in so far as petitions of doleance are concerned the general rule is that those are designed to challenge the rights and powers of an administrative tribunal which may have exceeded its powers. I should have thought that, if it is alleged that an advocate has been guilty of professional negligence, that matter could be dealt with quite properly by the high court and then by the court of appeal without having to rely on a petition of doleance.

Nursing Profession – Recruitment of Former Nurses – Question by Mr Henderson

The President: Question 5, the hon. member for Douglas North, Mr Henderson.

Mr Henderson: Thank you, Mr President, I beg leave to ask the Minister for Health and Social Security:

What plans does your department have for encouraging local nursing staff who have left the profession to return to it?

The President: The Minister for Health and Social Security to reply.

Mrs Christian: Mr President, the department is committed to recruiting on-Island nursing staff, and in that connection a number of initiatives have been developed to attract people interested in resuming their career within the Isle of Man health service.

Whilst an annual 'Return to Nursing' course has been available for a number of years, it is fair to say that the uptake was somewhat disappointing. It was therefore decided earlier this year to mount an extensive publicity campaign so as to highlight the opportunities available to those individuals who may wish to return to their nursing career. This included the production of an information leaflet entitled *Welcome Back to Nursing* which the hon. member may have seen. The subsequent interest generated led to 21 participants enrolling on the most recent course, which commenced in May this year and finishes this month. This compares with an average over recent years of six people per course. The 'Return to Nursing' course is designed to assist those out of nursing for a period of more than five years to update their knowledge and understanding of contemporary nursing culture, concepts and practices. It is a comprehensive course which lasts for approximately six months and is designed to enable participants to study at their own pace when and where they want, fitting it around any other work or family commitments. It is organised through the Centre for Nurse Education at no cost to the individuals concerned.

In addition, and as supported by the results of a questionnaire undertaken amongst those interested in returning to the profession, a number of other initiatives have been addressed. We did aim to establish a holiday club. Our first efforts of obtaining people to tender for such a process failed so consideration is currently being given to another method of establishing such a holiday club and creche facilities and this follows on from the recent introduction of more flexible working arrangements in recognition of family and other commitments and improved opportunities for professional development.

I am pleased to be able to advise that there are positive indications that local nursing staff are returning to the profession whether it be within the hospital service or the community. I would say that the recent pay awards on the Island, well above those in the United Kingdom national average, together with the restructuring of the clinical grading, are also likely to have had some influence on the aid to recruitment and retention.

In conclusion, Mr President, I can confirm that the department will continue to support, develop and develop initiatives which prove to be effective in encouraging people back into nursing.

The President: A supplementary, sir?

Mr Henderson: Thank you, Mr President. I thank the hon. minister for that comprehensive reply and the initiatives which she indicated that her department are currently evaluating and trying to implement in the future and they no doubt will have an impact, but I would ask the hon. minister, would she agree with me that there is a very valuable local pool of trained nursing staff who have left the service but would return under the right conditions given the chance? I especially point out, although the minister has mentioned flexible arrangements, they would return under the right conditions if in some places the rigid and archaic shift rota system for nursing staff would be put to one side and staff did not have to rotate onto day and night shifts and leave it up to the staff that are able to do whichever shift they like. And further,

would the hon. minister not agree that producing information brochures is one thing and a good thing, but they must reach their intended target, and in that respect could the minister also confirm or otherwise that her department has actively canvassed, say, the last 50 or so staff to leave the service and, not only that, have they been sent these brochures, sir?

The President: Reply, minister.

Mrs Christian: Mr President, first of all I could perhaps respond to the question of flexibility. I think the hon. member will be aware with regard to the position on day and night shifts that there are certainly some professional requirements as opposed to Isle of Man Health Service requirements about some rotations in certain areas so that people's skills are kept up to scratch, and I think that is an important consideration for the patient. The department has in many areas improved the flexibility which is available to staff but there is a limit to how far we can go in relation to providing adequate levels of service for our patients. For example, I think we have had approaches from people who want to work perhaps only one shift a week. Now, that on an on-going basis is not really constructive or conducive to providing the best levels of care, though of course we do try and accommodate people's needs, as I say, within the parameters of providing a proper level of care for our patients.

The question of bringing local staff back in - I think I did illustrate that there has been a good response to the latest initiative which was advertised several times in the local press. It has resulted in this number of nurses coming back into the training course and we have no reason to believe that many of them will not rejoin the service when they conclude their course during this month. Some already have finished their course - as I indicated, it is flexible in terms of how quickly they progress through it - and have returned either to our hospital service or are now working in the community in residential and other situations.

With regard to those who have left we are aware some of them leave for personal reasons or for reasons of flexibility. Many of the people who are carrying out the courses now do not particularly wish to come back full-time and are becoming bank nurses and we respect their wish to do that. We will work with those people who want to work part-time and accommodate them as far as we possibly can.

Mr Delaney: Mr President, would the minister not agree with me that where Manx resident state registered nurses have left their professional calling and are encouraged back into nursing they are more likely to join the private nursing companies who offer better terms of employment, more flexible hours and higher rates of pay?

Mrs Christian: Mr President, I am not aware that private nursing services are offering higher rates of pay. I think it is a matter for the individual to choose whether or not they want to be part of our NHS or work in the private sector. I have indicated that we have introduced a greater degree of flexibility but there are limits to how far that can go in the interests of providing a good hospital service, and I think the balance is reasonable. If there are any particular areas which the hon. member Mr Henderson or the hon. member Mr Delaney would care to draw to my attention (*Mr Delaney interjecting*) I will certainly take a look at those, but I have to say that with this initiative and others which have been undertaken by the DHSS the vacancy situation at the hospital has improved very considerably since a year ago and, given that we have a staff of over 500 heads, we have at the moment vacancies for 21 people - and they are not whole-time equivalents; they are 21 heads who may be doing part-time work - I

would suggest that the situation with regard to staffing has improved very considerably and these 21 vacancies which currently exist - I feel sure many will be filled in the general nursing area by the people who are currently undertaking the return to nursing course.

The Speaker: Mr President, will the minister give the undertaking that the current recruiting service at the hospital, which I understand has been centralised, is of advantage to local residents where professional qualifications are compatible?

Mrs Christian: Mr President, I am not entirely clear what the hon. Mr Speaker means by his question. The personnel service does recruit nursing staff. I would need the hon. Mr Speaker to elucidate, please, what he means by his question.

The President: Would you care to respond, Mr Speaker?

The Speaker: Yes, Mr President. I understand that there has been a change in the recruitment service in so far as it is now done through one central unit rather than being done in its various forms throughout the hospital.

Mrs Christian: Mr President, yes, there is a central personnel unit through which recruitment is taking place. It is believed certainly that this should not represent any deterioration in service. It should ensure that we have a proper personnel function within the DHSS.

Mr Braidwood: Mr President, would the minister agree with me that the greatest barrier to the recruitment of local staff is the internal rotation (**Mr Henderson:** Hear, hear.) and that if the staff were allowed to just do night duties after returning to their profession after having their family, and that the restriction of working, getting their day skills up, is only probably two weeks in a year, I am sure that arrangements could be made for those staff to work during the day and that if the internal rotation was abolished she would have far more recruitment of local staff?

Mrs Christian: Mr President, the hon. member seems to recognise that some day work is necessary and I have said that, I think, in my earlier answer. The situation with regard to people not being on permanent night shift and the professional requirement to change that came about, as the hon. member may recall, because of situations in the United Kingdom in hospitals there where serious short falls in skills were found where people were permanently on nights. That is not something we want to happen here. We believe that there is a requirement for rotation. The hon. member has indicated that he believes it might be done in another way; I will certainly inquire of the hospital whether that is possible and we can take it forward, but I hope hon. members would recognise that it is important - and I hope that they would support - that we want all our staff to be kept up to scratch with regard to their skills in our hospitals.

Mrs Cannell: Mr President, does the hon. minister recall an approach I made to her about a year to 18 months ago in relation to two midwives who had practised and reached quite a high standard of nursing care in the Island, left to work abroad, subsequently returned to the Island and tried in vain to get back into the National Health Service with great difficulty? If she does recall that occasion, could she advise as to whether the 21 candidates who have enrolled for the return-to-work scheme have included midwives who have retained their

registration and their level of skill? Does it include midwives and will we be getting local midwives coming back into the service?

Mrs Christian: Mr President, I do recall the hon. member's discussion with me in relation to midwives, and those midwives were given advice as to how they best might prepare themselves for coming back into the service. They, as the hon. member is aware, had the opportunity to discuss this with their supervisors and the midwifery professionals at the time. I am not aware and I do not have a breakdown on the 21 people on the current course with regard to their original qualifications or training. However, I can tell the hon. Court that the situation with regard to vacancies in the midwifery service is that we have one vacancy at the moment and I am not aware of there being a vast pool of appropriately and up-to-date qualified midwives available in the community who are not employed by the health service.

Mr Waft: Mr President, I wonder if the minister could indicate whether there have been any projected forecasts as to the amount of nursing staff that will be required when commissioning the new hospital and how it compares with existing staff?

Mrs Christian: Yes, Mr President, that of course was done. The numbers of staff which we will need in the new hospital are clearly set out and the department is working towards achieving the appropriate staffing at the time when the hospital comes on stream.

Mr Henderson: A further supplementary, sir, if I may?

The President: That question has been fully ventilated. I am permitting no more supplementaries.

Schools – Inspections for Head Lice – Question by Mr Singer

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

Mr Singer: Thank you, Mr President. I beg leave to ask the Minister for Health and Social Security:

In view of the clear public concern at your department's failure to reduce the epidemic of head lice, will you now introduce regular hair inspections by nurses in the Island's primary schools?

The President: The Minister for Health and Social Security to reply.

Mrs Christian: Mr President, there is no evidence of an epidemic. Community staff report prevalence of head lice to be no more and no less than in recent years. There are no plans to introduce regular hair inspections by nurses in the Island's primary schools. This has never been an effective measure against head lice infestation. It was discontinued for that reason in the 1980s. It would be, in any case, an impracticable policy given the staffing levels that we have since each head would need to be inspected by wet combing and the process would take at least 10 minutes per child. We have to bear in mind there are over 6,500 primary school children.

The President: A supplementary, sir?

Mr Singer: Thank you, Mr President. Despite the fact, minister, that your department issue policy changes in line with the UK changes, are you aware that there are at least 30 petitions circulating around this Island (**A Member:** Hear, hear.) signed by parents who are

dissatisfied with your department's actions to eliminate this epidemic? Even though it may not have increased, it may not have decreased, it is at epidemic; they believe it is at epidemic proportions.

Mr Houghton: Hear, hear.

Mrs Christian: Mr President, I am aware via the media that petitions are circulating with a view to, I understand, seeking a reintroduction of nurses to inspect heads. It is not only children who have head lice (**A Member:** Hear, hear.); it is a community problem and it is primarily a parent's responsibility to check their children to see if they have head lice. The department is working with the Department of Education to ensure that all the professionals who are involved are aware of the current recommended treatments for head lice, and to that end information has been provided to schools to circulate to any parents who want to know what the current best recommended treatments are. I suspect that the fact that people are concerned about head lice at this time is that sometimes there is a failure for the treatment to get rid of the problem.

That arises for a number of reasons: sometimes perhaps instructions are not followed; sometimes the methods or the materials which are used are not the best recommended medical treatments of the time. So what we are trying to do is make sure that the message is a uniform one from all the professionals involved that the parents can, through school or through their primary health care team - their practice nurses, GPs, health visitors and so on - get the current advice on how best to treat this problem. We are working with education who will work with the school nursing service who will draw the attention of the primary care people to any problem where head lice exist, and if any family wants support and guidance on the treatment we are pleased to provide that. We have held seminars in the schools with the professionals. In many areas they were not particularly well attended except in the east of the Island. We have held meetings in schools with parents. In many cases they were not particularly well attended either except for a recent meeting in the north of the Island where parents called the meeting and I think a useful meeting was held.

So the parents are aware of what needs to be done and how they can get help. I believe that this is the best approach that we can pursue in relation to this, because simply treating the child in school does not deal with any infestation in other parts of the family or community which those children come into contact with outside of school.

Mr Houghton: Mr President, in view of the fact that the department is clearly incapable of resolving minor issues such as head lice and taking into account a number of systematic failures concerning other matters within her department, would the hon. member for Council not agree that her position is now untenable and that she should do the honourable thing and resign from her ministerial position forthwith, sir?

Members: Shame! (*Interjections*)

Mrs Christian: Mr President, I note the hon. member's priorities in life. (*Laughter and interjections*) Given that this is a major department of government with very considerable extensive services to provide (**A Member:** Hear, hear.) which are of great concern to the population in terms of their health care, I do not consider that head lice, which have been with us from time immemorial and which no other organisation or establishment has been able to eradicate, is cause for me to resign.

Members: Hear, hear.

The President: A final supplementary on this one, sir.

Mr Singer: Thank you, Mr President. Can I ask the hon. minister is she aware of the three-year trial which is to be carried out by the London School of Hygiene and Tropical Medicine on comparing parasitocidal medications for the treatment of head lice, and do you not agree that this need for this trial throws into doubt current recommendations for head lice treatment? Therefore will you ensure a greater involvement of the general practitioners in the treatment of head lice due to the recognised failure rate of over-the-counter head lice treatments - that is a failure rate of 87 per cent for Permethrin and 64 per cent for Malathion?

Mrs Christian: Mr President, I am aware that there are research programmes going on. I am also aware, as the hon. member having his pharmaceutical knowledge is aware, that it is a difficult problem to tackle. If these products worked easily and effectively we would not have a problem today. The question of whether or not the current practice is the best one - I can only tell you that this is the advice that we have that in the light of present knowledge this is the best way to tackle it. One hopes, as it clearly is a difficult issue, that any research which is carrying on will come up with a better answer. I have to agree with the hon. member in regard to that. One of the difficulties with the current products is that it is not an easy regime to go through in terms of applying it, leaving it on for 12 hours or whatever. It is quite possible that people find it very difficult to stick to that regime and that is the reason why some of the treatments do fail, but I certainly would be more than happy to accept any evidence from any research project which indicates that there is a better way of going about this.

With regard to the question about the GPs, yes, the department is taking steps to work with the GPs to make sure that they are fully behind the procedures which we are trying to work through at this time. There have been some meetings with GPs and they will be ongoing.

The Speaker: The hon. member for Garff and the final supplementary on this.

Mr Rodan: Mr President, will the minister agree with me that the vast majority of parents act responsibly and treat correctly their children's heads for head lice infestation but can find their efforts undermined by a small minority of parents who cannot or will not treat their children properly (**Mr Houghton:** Hear, hear.) for this problem, and therefore would she agree that even with a so-called 'nit nurse' or even if we had a whole army of nit nurses, unless parents know how to deal with the new head lice contracted a week after the nit-nurse has cleared up the first infestation, we are no further forward?

A Member: Hear, hear.

Mrs Christian: Yes, Mr President, there is, as the hon. member says, considerable sympathy with parents who treat their children's hair and find that there is a re-infestation. We are happy to work with the Department of Education in trying to identify families which may need additional help and support in terms of advice on how to go about the treatment procedures but, as the hon. member does indicate, an army of nit nurses is not going to eliminate this difficulty. We do not have compulsory or statutory powers to take people in hand and make sure that they treat themselves but we are working with, as I say, the schools now to try and make sure that any advice, guidance and help which is needed in particular quarters is given.

The President: Hon. members, in one of her responses the hon. member talked of the history of this problem. I think that history will show that those who wore wigs in the past were particularly susceptible. *(Laughter)*

Mr Delaney: I hope you are not referring to me, Mr President!

The President: Stand by, nurse! *(Laughter)*

Shipping Register – Action re UK Tax Incentives – Question by Mr Henderson

The President: Hon. members, we go on to item 7 and I call upon the hon. Mr Henderson for Douglas North.

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

What action will your department take to support the Isle of Man shipping register in response to the announcement by the UK Government of proposed tax incentives to encourage shipping to join the UK register?

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

Mr North: Thank you, Mr President. I thank the hon. member for his question and inform him that the department will not be taking any immediate action in response to the United Kingdom's proposals as it is not considered that their intended scheme will impact adversely on our shipping register or the Island's shipping industry. We have, in consultation with members of the Isle of Man Shipping Association, conducted a review of the proposals and our belief is that, while a tonnage tax may be welcomed by a number of ship-owners in the United Kingdom, it would not necessarily follow that owners will register their ships under the United Kingdom flag. Lord Alexander in his report recommends the proposed tonnage tax scheme be flag blind as he cannot discern any advantage in tying the scheme into ship registration under the UK flag. The department will continue to ensure that the Isle of Man flag remains competitive in the international market in which it operates and will bring forward appropriate proposals to Tynwald should this be deemed necessary.

The President: A supplementary, sir?

Mr Henderson: Thank you, Mr President. I thank the hon. minister for that reply and for his assessment of the proposals that the UK are intending but, notwithstanding that, is he aware that these proposals represent a 33-point plan and indeed are backed up by Lord Alexander's report and it effectively puts in place a tonnage tax, as he says, but it is coupled with crew training incentives, and would he accept that this does present a real and considerable challenge to our own shipping register?

Mr North: Yes, Mr President, the Isle of Man register is part of the British shipping industry; we play an active part as part of the British shipping industry. The Island's ship managers are most probably the largest trainers and providers of merchant navy cadets serving on United Kingdom ships and the department is also committed to promoting the recruitment of merchant navy cadets and seafarers from residents within the Island by the Island's ship-managers, and we have had that scheme going for several years. Our own scheme is to assist the shipping industry in recruiting cadets. The department also provides grants and assistance for the training of cadets and supernumerary deck boys to companies

employing Manx residents. So they are not disadvantaged in any way from the United Kingdom resident seafarers and we work, as I say, as part of the British ship industry and we do not see any basis to concern this at the moment. However, we need to be ever mindful of what is actually taking place.

Mr Cannell: Mr President, would the hon. minister agree with me it would be desirable that all persuasion should be exerted to operators of vessels of the Isle of Man Steam Packet Company to become registered in the Isle of Man and with the appropriate tax incentives as outlined if necessary?

Mr North: Yes, some of the Isle of Man Steam Packet ships, Mr President - we have spent a lot of time over the years making sure that certainly the new ship, the *Ben my Chree*, is registered here and the *Lady of Mann* is registered here, and we continue to work with them on some of their other vessels.

Mr Henderson: Mr President, I take what the hon. minister said in his reply, sir, but, notwithstanding that, would he still agree that this issue does require more urgency and some sort of even if it is an on-the-shelf action plan ready to use especially in the light of the UK Government's estimated £40 million to support their new tonnage tax scheme and the chairman of P&O, Lord Stirling's pledge to bring back to the British flag the biggest cruise liners in the world, doubling their registered UK tonnage?

Mr North: Mr President, I can understand the hon. member's concerns, but I can assure him that the United Kingdom scheme is quite a complex one; as he mentioned, there are many points to it. The interesting thing is that the reason that, for instance, he mentions P&O brought back their ships onto the United Kingdom register - and we are talking about largely passenger ships that they are looking at bringing back on - was that the scheme will permit ship-owners to wipe out deferred tax liabilities, and that is really what the scheme has been of great benefit to and as seen by the P&O Board. Now, we are under a different market here and our ship-owners and ship-managers have discussed this with us and, as I say, I assure the hon. member and all hon. members we will keep our eye on this one but at this stage we do not see any detriment whatsoever to the Isle of Man register.

Body Piercing of Minors – Question by Mr Singer

The President: Question 8, the hon. member for Ramsey, Mr Singer.

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

Are you aware that establishments are performing body piercing on minors without parental consent, and if so -

- (a) what action are you taking to halt this potentially dangerous practice;*
- (b) what inspections are taking place to prevent breaking of the law; and*
- (c) have you initiated any prosecutions against any such establishments?*

The President: The Minister for Local Government and the Environment to reply.

Mr Gilbey: Mr President, the Department of Local Government and the Environment is not aware that any establishment is performing body piercing on minors without parental

consent. Therefore the answers to parts (a), (b) and (c) of the question are in the negative. However, I can tell the hon. member that the department foresaw the possibility of such a thing happening and on 30th June 1998 a senior environmental health inspector wrote a letter to all registered tattooists and body piercers in which he stated, 'The Local Government (Miscellaneous Provisions) Act 1984 relates to the practice of tattooing and stipulates that persons under the age of 18 shall not be tattooed.' It continues, 'I am advised that there are considerable legal risks involved in performing body piercing including ear piercing to under 16-year-olds without the parents' consent and that the consent of parents in these circumstances should not be lightly disregarded. The piercing of any minor without parental consent could amount to a trespass to the person and could result in criminal and civil proceedings being brought against the person committing the trespass. I am writing to all those registered with the department under the acupuncture, tattooing, body piercing and electrolysis regulations to advise that adequate checks must be made and records kept to satisfactorily reduce the risk that under-age persons do not avail themselves of the services on offer.' I have subsequently spoken to the learned Attorney who has confirmed the position that anyone who pierced a person under 16 years old without parental consent could be liable for civil and criminal action against them.

Mr Brown: Hear, hear.

Mr Singer: I thank the hon. minister for his answer. Could I ask the hon. minister, since you issued this statement on 30th June 1998 to all registered tattooists and body piercers, has your department made any inspections of the premises of these people to check their records, and in view of the fact that it is alleged that various forms of intimate body piercing is taking place without parental consent - and I have informed your department of at least one case - would you consider establishing a minimum age of 18 below which parental or guardian's consent is required and that the responsibility for ensuring that parental or guardian's consent is given is that of the body-piercing establishment?

Mr Gilbey: Mr President, the answer to this is the existing law is not such that there is any Act to prevent a person body-piercing anyone of any age. The regulations say a person shall not tattoo a person under the age of 18 except when the tattoo is performed for medical reasons by a registered medical practitioner or by a person working under his direction. I do not think it is surprising that body-piercing is not included because, apart from ladies wearing earrings, until recently this for many of us strange practice of piercing other parts of the body to have rings all over it has not been prevalent, so it is not surprising there is not legislation. But there is a perfectly good way of dealing with this, and that is these people have been warned that they hold themselves open to civil and/or criminal action on grounds of assault or trespass on a person's body and therefore there is something to stop them, but obviously the person who had been assaulted or who had been told that he would be assaulted would have to report this to the police, but just in the same way it has to be reported if people were doing it and there was a specific law to prevent it, because you can only prevent it if you know that it is going on. So I would urge all hon. members to advise the department if they have reason to believe, and real reason, that anyone is doing this piercing and then a further letter, similar to the one dated June last year, could be sent to them.

Mrs Cannell: Mr President, given that the department actually sent a letter out to such establishments earlier this year -

Messrs Singer and Gilbey: No, 1998.

Mrs Cannell: - a year ago, and the hon. minister has spoken this morning about possibly getting another letter out, does he not regard a letter as unenforcement of the issue at hand? What enforcement procedures does his department have in relation to this, and have inspections been carried out of such premises?

Mr Gilbey: I am sorry, I could not have made it clear enough, Mr President, that there is no law on the statute book, no primary legislation or secondary legislation, which specifically stops body piercing, and this has been confirmed with the learned Attorney. What there is is a law that prevents tattooing of people under a certain age, and I explained the reason that body piercing probably was not included because such things did not go on at the time the legislation was introduced, but I have also explained that that does not stop it being illegal because, unless the parent has agreed, it could form an assault or trespass on the body of the person under the designated age if this was done. So there is a perfectly adequate way of dealing with this if it is reported and it should be made absolutely clear that we can write again, but it would be helpful if those hon. members who believe this is going on would tell the department who they believe is doing it so that suitable letters can be sent to them.

The President: A final supplementary from the hon. member of the Council, Mr Delaney.

Mr Delaney: Thank you, Mr President. Bearing in mind the comprehensive answer given to this question and obviously that there is a need in law to protect those minors from piercing of the body, would the minister give an undertaking to research the possibility of introducing amending legislation to that Act to include body piercing (**Mr Singer:** Hear, hear.) so that we may all rest a little bit more comfortably?

Mr Gilbey: I would not give that assurance because, as I have said, there seems to be a perfectly good legal remedy at the moment. The law can be operated in various ways and I am quite sure that the best thing would be if some parent would report this where it has happened and claim that an assault or trespass has taken place and then a prosecution, I am sure, might be considered by the learned Attorney's department and that would be an example to prevent other people doing the same thing.

DAFF – Eggs Regulations – Non-Enforcement – Question by Dr Mann

The President: Question 9, the hon. member of the Council, Dr Mann.

Dr Mann: I beg leave to ask the Minister for Local Government and the Environment:

Is it correct that an agreement was reached between your department and the Agricultural Marketing Society (Poultry Producers), not to enforce the Eggs (Marketing and Hygiene Standards) Regulations until 1st November 1999, three months after they came into effect?

The President: The Minister for Local Government and the Environment to reply.

Mr Gilbey: Mr President, to suggest that a form of agreement has been reached with egg producers is misleading and I am glad to have this opportunity to clarify the situation. The Department of Agriculture, Fisheries and Forestry arranged a meeting with egg producers on 1st July 1999 for the purpose of discussing with them the Eggs (Marketing and Hygiene Standards) Regulations 1999 which were approved by this hon. Court earlier this year. It was

the intention of that meeting that the full implications of the regulations would be explained and advice given to producers about what action they needed to take in order to comply with the regulations. The Department of Local Government and the Environment was represented at the meeting by invitation.

At the meeting the egg producers expressed concern at their inability to comply fully with the new regulations because they had been unable to obtain the necessary equipment for grading, handling and labelling which had to be imported. The representatives of both departments believed this to be a genuine explanation and concluded that it would be unreasonable to enforce the regulations in such circumstances. Consequently, an indication was given to the meeting that the Department of Local Government and the Environment would defer enforcement action until 1st November 1999 to allow the producers sufficient time to acquire and install the equipment essential to their ability to comply. The Department of Agriculture, Fisheries and Forestry were also still endeavouring to obtain new egg boxes. As I am sure the hon. member for Agriculture, Fisheries and Forestry will confirm, both departments felt such an approach to be sensible.

Although I was not present at the meeting in July 1999 I applaud the fact that common sense prevailed and I fully support the fact that a reasonable approach was adopted to a genuine problem which was not the egg producers' fault. (**Mr Brown:** Hear, hear.) Whilst the regulations came into force on 1st August 1999 the responsibility for enforcement rests with the Department of Local Government and the Environment, and I feel sure that hon. members will support the department's approach in seeking to ensure compliance through the provision of advice and education and by working with the affected parties. In my view, enforcement should always be regarded as an action of last resort to be taken only after advice from the Attorney-General's Chambers and we should always try to get results through persuasion, encouragement and discussion.

The President: A supplementary, hon. member?

Dr Mann: Thank you, Mr President. I think the minister will agree that his department does describe it in their communications as an agreement. Were you, Mr Minister, aware of and had you given your ministerial approval to this agreement at the time you answered the question on this matter at the October sitting of this hon. Court?

Mr Gilbey: I certainly do not accept it was an agreement. It was an informal understanding. I was not aware of it because no minister can be aware of everything officers do, otherwise you would not need any officers, you would just have one person running everything, which would be impossible. But, had I known of it, I would entirely have supported it as I do now. I believe the Minister for Agriculture was aware of it and he was, in my view, absolutely right in agreeing to it. As I have said before, Mr President, I believe most strongly in persuasion and discussion with people rather than prosecution.

Dr Mann: Mr President, would the hon. minister agree that at the time he answered the question the only people who knew of this so-called agreement were the producers? The hon. members of this Court who approved these regulations coming into force on the date they were coming into force, but most of all the consumers who were supposed to benefit, were totally in the dark, and it should have been the members of this Court at the last sitting who should have been informed of that agreement.

Two Members: Hear, hear.

Mr Gilbey: Well, I do not agree with him at all and, as he is well aware, he wrote suggesting this to me and I wrote him a very firm letter saying, just as I have now, that I do not agree with him at all.

Mr Cretney: Hear, hear.

Mr Brown: Well done, Walter, You would think he didn't know how it worked.

Mrs Cannell: Mr President, bearing in mind that the hon. minister and the previous hon. minister of this particular department have had asked of them many questions in relation to this, does he not consider that, prior to the introduction and the adoption of the marketing and hygiene standards regulations for producers, there was a considerable degree of time by which consultation was ensured with all egg producers? Indeed, there was the best part of a year in which consultation took place. Given that period of time and the concession which has now been afforded to this one particular industry, does he not regard that they have had sufficient time in which to seek to provide for what is required in the regulations? Also, can the hon. minister identify any other industry where such non-compliance with the law of the land is conceded to by his department?

Mr Gilbey: First of all, I think it was perfectly reasonable what was done (**Mr Brown:** Hear, hear.) and, as I have said and I will keep on saying, I totally concur with it and had I been asked if I agreed in advance I should have agreed, because I think it was perfectly reasonable and proper. Regarding other laws that are not immediately enforced, I know of many of them. I know of cases under dairy hygiene regulations where people have quite rightly been warned and persuaded and helped to put things right rather than being immediately prosecuted. I can think of one that affects all members of the public even more. When seat-belt regulations were first introduced, the police did not go rushing round looking for people and prosecuting them immediately because they were not wearing seat-belts; they quite rightly had a campaign of advice and persuasion in the papers.

Mr Brown: Hear, hear.

Dr Mann: Mr President, would the minister not agree that the seeking of the special equipment only represented part of the enforcement of those regulations and that, as a result, other parts were totally disregarded for the whole of the three-month period? And might I suggest, Mr Minister, if you spent a little more time in your department (**Mrs Cannell:** Hear, hear.) talking to your officials you might be better informed?

Members: Oh!

Mr Cannan: Hear, hear.

The President: Hon. members, I do not accept that supplementary questions can be used for personal attack. (**Mr Brown:** Hear, hear.) Reply, minister.

Mr Gilbey: Thank you very much for your remarks. I must say I thought the remark was quite unworthy of someone who has been the equivalent of Chief Minister, but I suppose you live and learn. (**Mr Brown:** Hear, hear.) As I say, if you spent 24 hours a day in the department, any major department, you could not know everything that was going on. It is quite impossible, and I would have thought that someone who had held various ministerial

positions would be well aware of that. There is also such a thing as delegation. I believe ministers should be dealing with matters of major policy and not with relatively minor matters.

Mr Delaney: Bearing in mind the comprehensive answers given by the minister on the subject under discussion, what then, as we know you cannot trace the source of an egg without great detail, is there to stop people in the Isle of Man who are selling eggs that are shipped in from Britain in Manx boxes and selling them as Manx eggs?

Mr Gilbey: I think the hon. member is really suggesting some kind of fraud which I am sure the consumer affairs department would take up (**Two Members:** Hear, hear.) because if people -

Mr Delaney: What is to prevent it?

Mr Singer: Answer the question.

Mr Gilbey: Well, I am sure the consumer affairs division has inspectors out. It is passing off goods for what they are not, and this does not just happen with eggs; this can happen with far more important things than eggs but this is what we have a consumer affairs division to stop passing off.

Lower Pulrose, Douglas – Safeguards for Residents' Health during Demolition – Question by Mr Duggan

The President: Question 10, hon. members. The hon. member for Douglas South, Mr Duggan.

Mr Duggan: Mr President, I beg leave to ask the Minister for Local Government and the Environment:

What procedures will be adopted to safeguard the health of residents of Lower Pulrose during the partial demolition of the estate, in particular with respect to the removal of asbestos?

The President: The Minister for Local Government and the Environment to reply.

Mr Gilbey: Mr President, the hon. member will recall that a few years ago the properties were demolished safely in Alder Grove, Lower Pulrose, and this served to provide the Douglas Corporation with the knowledge of the procedure to be adopted in other properties. Douglas Corporation, whose scheme Lower Pulrose is, has knowledge of the present asbestos in the construction of these properties which, while not a hazard to the occupants of the properties, needs to be carefully handled and controlled during demolition.

Douglas Corporation have also decided to apply the procedures of the UK construction, design and management regulations by appointing a specialist planning supervisor whose role involves preparation of health and safety documentation and advising the design team of risks and hazards during the demolition and construction phases. The Lower Pulrose design team have already been active in advising residents and the local community of the proposed works to be carried out at Lower Pulrose and have highlighted the hazards associated with construction sites.

I can assure the hon. member that, in common with all demolition works when asbestos is present, the Department of Local Government and the Environment is vigilant in applying

the legislative controls which exist, and the construction industry is well aware of the procedures which apply. The residents of Lower Pulrose should have no concerns for the demolition works when they are undertaken on the various phases of work so long as those residents take note of any advice or information provided in relation to the sites at the time.

I hope I have made it absolutely clear that both Douglas Corporation, whose primary responsibility this matter is, and the Department of Local Government and the Environment's health and safety division are well aware of the situation and it is firmly under control.

The President: A supplementary, hon. member?

Mr Duggan: Thank you, Mr President. I thank the minister for his assurances, but will also his environmental health officers be present, and health and safety at work officers, during the demolition of these houses, because there is concern amongst the residents about possible airborne pollution. Also, could he have a word with Douglas Corporation regarding better PR, because the people appear to be kept in the dark? They do not know what is going on half the time with the councillors.

Mr Gilbey: Certainly the environmental health officers will do whatever was necessary but it is primarily, as I understand it, a duty of the health and safety division as this is a construction work.

Regarding Douglas Corporation, I would really have thought they were capable of dealing with a matter like this themselves. So many members believe in more powers for local authorities, it does seem to me that we should feel they are capable of dealing with something of this nature by themselves, and personally I have no reason to suppose that they are not, and again I would suggest that their tenants should get hold of them both as landlords and as local electors of that authority.

Mr Henderson: Mr President, would the hon. minister not agree with me that the area in question suffers from an atmospheric condition known as inversion and thereby could possibly enhance the concerns that the residents are so worried about, and would he not further agree that this is a very complicated and technical issue under discussion and it might benefit his department to keep a very, very close eye on all proceedings relating to this matter?

Mr Gilbey: Frankly, Mr President, I do not know whether inversion would make any difference or not in this particular case, but I hope I had made it perfectly clear that both Douglas Corporation. . . I think I should again stress this is primarily a duty of Douglas Corporation; it is their buildings, it is they who are having them knocked down. Both they and the Department of Local Government in its monitoring role are well aware of the situation, and I have no reason to doubt that both will do whatever is required to be absolutely sure this work is done with the utmost safety.

Motor Trailers – Regulations – Question by Mrs Cannell

The President: Question 11, the hon. member for Douglas East, Mrs Cannell.

Mrs Cannell: Mr President, I beg leave to ask the Minister for Transport:

What consideration has your department given to making regulations for -

(a) trailers connected to motor vehicles;

- (b) attended trailers during loading and unloading operations;*
- (c) visiting trailers in specific areas, particularly with motor-sports events; and*
- (d) for special cases by authorisation of the department*

in accordance with your undertaking given to Tynwald on 15th June 1999?

The President: The Minister for Transport to reply.

Mr Brown: Mr President, I would repeat my statement given in Tynwald in June of this year, that is that I have no specific date to bring forward these regulations, and I would advise that no detailed consideration has yet taken place. Thank you.

The President: A supplementary, hon. member?

Mrs Cannell: Thank you, Mr President. Given that the answer to the particular question which was given in June did agree that there was a problem and that the hon. minister would look at it and we are now several months down the road, where in his list of priorities, if he has any, does this particular issue lie, and is there anything that I can do to assist him and his officers to actually consider this particular issue?

Mr Brown: Mr President, in response to the last point the hon. member made, if the hon. member has any proposals or ideas, then we will be glad to receive them in writing at the department and as far as priority-wise is concerned, it is certainly not a high priority.

Mr Braidwood: Mr President, would the minister reconsider introducing a regulation under the Road Traffic Regulation Act of 1985 to permit the parking of trailers which do not exceed a maximum laden weight of 750 kilograms in residential areas overnight and at weekends and, if he is not so inclined to do, would he agree to extend the definition of 'with reasonable excuse' to permit the parking of trailers which are attached to private vehicles in residential areas when there is no objection from other residents in the area?

Mr Brown: Mr President, basically, as I advised the hon. member at June's sitting when he asked the same question, our priority is, where possible, to provide parking for cars in residential areas, and certainly in the areas the hon. member is talking about my understanding is there is considerable pressure on the amount of space required for on-street car-parking for the amount of residential properties in those areas. Therefore I have to say the provision of parking for trailers overnight and at weekends on the highway is a very low priority.

Blackboards Corner – Motorists' Safety – Question by Mr Houghton

The President: Question 12, the hon. member for Douglas North, Mr Houghton.

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

Do you intend to enhance the safety of motorists at the Blackboards corner by -

- (a) providing an adequate safety barrier above the embankment; and*
- (b) providing adequate street lighting in the vicinity?*

The President: The Minister for Transport to reply.

Mr Brown: Mr President, I thank the hon. member for his question and would reply to part (a) as follows. The highways and traffic division have no proposals to install safety barriers at the Blackboards corner. Safety barriers or rigid vehicle restraints - that is, ARMCO barriers - are not suitable for installation at this location. Such barriers are primarily for deflecting glancing vehicles and, if used for the Douglas-bound traffic at the Blackboards, could increase considerably the danger to motorists.

The Blackboards has been the subject of recent improvement measures to improve safety. These improvements have included: an improved road surface - this is to aid skid resistance - the implementation of a central hatched area to aid vehicle separation, and improved signage. Further signage on the approach from Castletown is to be installed and the signs will incorporate yellow-backed visibility boards. Also, 'Slow' will be painted on the roadway on both approaches to the Blackboards.

In reply to part (b) of the question, the Department of Transport are not the street-lighting authority. The responsibility for providing street-lighting rests with the local authority and in the Blackboards area this is the Malew Parish Commissioners.

The President: A supplementary, sir?

Mr Houghton: Thank you, Mr President. I thank the hon. member for his answer but may I ask if he would reconsider some form of barrier there? Currently there are 12 poles supporting chevron signs which have an enhanced effect on the previous ones but may I ask, in view of serious accidents that have happened at this location in the past, that something is done to aid any vehicle that might go off the road?

Mr Brown: Mr President, certainly when my department considers any area for improvement it considers what is the best way to ensure safety for both pedestrians and those driving vehicles.

The issue of whether or not there should be barriers at this point has been considered on a number of occasions by the department, has been considered recently by the department and the view is quite clearly that the addition of barriers there would potentially bring a greater danger to motorists. I would also, if I may, just like to indicate that since 1st January 1993 and 31st December 1998 there have been four accidents in this area.

Mr Cannell: Mr President, would the hon. minister not agree with me that a central barrier might prove to be the answer at the Blackboards, and would he not further agree that, with respect to some recent welcome developments, lighting on all the Island's main roads - Douglas to Peel, Douglas to Ramsey via Laxey and Douglas to Port Erin - is inadequate?

Mr Houghton: Hear, hear.

Mr Brown: Mr President, firstly, the street lighting, as I have indicated, is a matter for a local authority. Clearly, where my department feels there is a need for improved street lighting we undertake discussions with the local authority to see what can be done. I would say that we do need to be careful that the Island's main roads, many of them, are within the rural areas of the Isle of Man and there is a balance between where you need street lighting and where you do not need it. My own impression is that sometimes I find it quite difficult when you come out of an area that is well street-lighted into an area that is not, and therefore I do think that that is something we have to look at very carefully.

As far as a central barrier is concerned, I am not too sure about that. I travel on that road every day and I have to say that in most cases where there has been an accident, my understanding is that that has been due to speed. Therefore the measures that we are taking are an endeavour to reduce speed. We have redone the road surface there and we will continue to assess the area. Hopefully that will assist those who are using this road.

Mr Duggan: Just a brief one, Mr President. Could the minister - he has mentioned speed - look at the speed limit itself?

Mr Brown: Mr President, what I indicated earlier is that we are putting up additional signs, we have extended the white lines back, we are putting 'Slow' painted on to the road in both directions. I am not convinced that a speed limit in that area would enhance any more. The area, as the hon. member will know, has no speed limit on and we must recognise there is a responsibility on anybody who drives a vehicle to drive carefully and to drive within the limitations of any highway. This is a road that is travelled by many, many people and unfortunately, here and in other areas, accidents do happen, but I again reiterate there have only been four accidents since 1993 and 1998 in this area.

Mr Houghton: Just one final supplementary, sir? Can I ask how many of those accidents were fatal accidents? Would he tell me that?

Mr Brown: As the hon. member, I am sure, is aware, Mr President, my understanding is there was one.

Livestock – Cage Sizes – Enforcement of Regulations – Question by Dr Mann

The President: Question 13, the hon. member of the Council, Dr Mann.

Dr Mann: I beg leave to ask the Minister for Agriculture, Fisheries and Forestry:

When the Welfare of Livestock Regulations 1996, covering the existing battery cage sizes, become effective on 1st January 2000, what steps will you take to ensure their enforcement?

The President: The Minister for Agriculture, Fisheries and Forestry to reply.

Mr Downie: Thank you, Mr President. I can confirm that it is my department's intention to inspect those premises employing battery systems to ensure compliance with the new regulations following the implementation date of 1st January 2000. Bearing in mind the long lead-in period between the making of the regulations and the coming into effect of these particular provisions, I would expect that all premises would comply with the new requirements from the operative date. I would also like to confirm that there are only four systems still based on battery cages operating in the Island and it is my understanding that, of these, two are considering transferring to more extensive systems. Thank you.

The President: A supplementary, sir?

Dr Mann: I would like to thank the minister for his reply and also to just stress that he must be aware of the great difficulties of enforcement. Has he the necessary rights of access to check on this after 1st January?

Mr Downie: I would just like to advise the Court, Mr President, that we do have access, we do have enforcement powers and I can confirm that rather than encouraging battery

production the department is attempting to effectively discourage it, as when it brings in its new farm improvements scheme to Tynwald for approval there will be no further support for battery cage systems and grants will be introduced for converting from battery or establishing extensive production systems. It will then be the department's intention to keep legislation in adjoining jurisdictions under review and to keep pace with it. The hon. member will be aware that it is the European Union's intention to effectively phase out battery production but over a much longer timescale than that we envisage in the Isle of Man.

Mrs Cannell: Mr President, bearing in mind that the hon. minister has said that it is his intention and the department's intention for an inspection to take place of the four battery hen systems which are still in existence at the moment after or as soon after 1st January 2000 and that he has also assured us today that under these particular regulations his department does have the power to make entry, could he advise - and I know it is a scenario but it is a possible scenario - if his officers following a inspection of one, two, three or four of these establishments discovers that after 1st January 2000 they have not complied with the new Welfare of Livestock Regulations 1996, will he then be as flexible as his colleague on the Council of Ministers and allow these particular producers to have another five, six months lead-in period, or will he be keen to enforce the powers under these particular regulations?

Mr Downie: I think, Mr President, in my initial reply I did make reference to the long lead-in period between the making of the regulations and the coming into effect of these particular provisions and I did indicate that I would expect all premises to comply with the new requirements from the operative date, and I can give this Court an assurance today that there will be plenty of dialogue between the egg producers and the department and, if after 1st January 2000 people are operating battery systems outwith the regulations, we will have no hesitation in referring the matter to the Attorney General's Office.

Mrs Cannell: Hear, hear.

Department of Education – Music Therapist for Children – Question by Mr Houghton

The President: Question 14, the hon. member for Douglas North, Mr Houghton.

Mr Houghton: Thank you, Mr President. I beg leave to ask the Minister for Education:

Does your department intend to provide a professionally qualified music therapist to work with autistic children and other people with learning difficulties and, if so, when?

The President: The Minister for Education to reply.

Mr Rodan: Mr President, I thank the hon. member for his question. The Department of Education is keenly aware of the benefits to all pupils of having music available on the curriculum. All the department's primary schools and secondary schools offer music to all pupils as part of the national curriculum. The Department of Education in addition provide a peripatetic music service of eight full-time staff and several part-time staff who run a comprehensive system of instrumental tuition in primary and secondary schools covering strings, woodwind and brass tuition. Music teachers in schools and the peripatetic teachers are the main staff who run the Saturday music workshops and the youth orchestras.

The Department of Education has in the October 1999 Policy Review clearly set out in its specific projects in primary and secondary education for the next 12 months to further develop

the peripatetic instrumental service to schools, and is seeking through the budget process the resources and staff to enable this to happen from April 2000 onwards.

The department does not employ a professionally qualified music therapist to work with pupils with special educational needs. Prior to the hon. member's question the department has not, as far as I am aware, been approached to provide such a post. However, I note what the hon. member is requesting and the department will consider this. It can, of course, at this stage of the estimated budget process only be considered for the 2001-2002 budget.

Mr Houghton: Mr President, I welcome the hon. minister's reply with regard to the peripatetic music service and I welcome that indeed. But may I ask, would the hon. Minister for Education not agree that many children with learning disabilities would benefit greatly if such a post was created, and would he not agree also that it is vitally important to offer enhanced support wherever possible to those children who find themselves in unfortunate circumstances, sir?

Mr Rodan: Mr President, the department is constantly looking at ways in which educational provision can be improved, not least in the field of music. I am looking forward to discussing next week as a matter of fact with representatives of the local Manx autism group how special needs education can be enhanced for this particular group (**Mr Houghton:** Hear, hear.) and I shall look forward with interest to hearing a little more about the benefits of music therapy for this particular group of young people.

Mr Houghton: I thank the hon. member for his reply, sir.

Eco-Tourism – Importance to Tourist Industry – Question by Mr Braidwood

The President: Question 15, the hon. member for Douglas East, Mr Braidwood.

Mr Braidwood: Thank you, Mr President. I beg leave to ask the Minister for Tourism and Leisure:

Do you consider that eco-tourism has an important place in the development of the Island's tourism industry?

The President: The Minister for Tourism and Leisure to reply.

Mr Cretney: Mr President, the recently introduced tourism strategy document *Building for the Future* acknowledges the important role played by eco-tourism as one of the segments of our tourism market. It also recognises the important contribution of such into the future together with the heritage, activity and events-related products. My department is currently working closely with a number of other government departments, in particular the Department of Transport, the Department of Agriculture, Fisheries and Forestry as well as Manx National Heritage, to develop projects for this growing niche market. This is in addition to continuing to work closely with other agencies such as the Manx Wildlife Trust and Basking Shark Society, an example of such co-operation being the recently established Manx Wildflower Project Committee emanating as a result of an idea from my departmental colleague, Mr Delaney MLC and chaired by Mr Henderson, member of the Department of Agriculture, Fisheries and Forestry. All segments of the tourism market are likely to utilise the natural environment in one form or another, as it is the use of our countryside, coastline and coastal waters for recreation purposes which represents the major opportunity for the Isle of Man, a fact which is being

emphasised at this year's world travel market when the theme for this year's exhibition stand for the Isle of Man is 'The Great Outdoors'.

The President: A supplementary, sir?

Mr Braidwood: Mr President, I thank the minister for his constructive reply. Would he agree with me that the development of the short-break holiday targeting the middle aged is the way forward for the tourism industry and that more of his department's resources should be directed in support for the marketing development and clear tourism potential for eco-tourism such as, as he has already mentioned, the Basking Shark Project and the Manx Bird Atlas?

Mr Cretney: Yes, I think it is clear that the department has to, in assessing the resources which it has available, effectively prioritise, and I think that the two elements which the hon. member has referred to, first of all the short-break market and secondly a particular age group which may have more disposable income and may have particular interests, are ways in which we can effectively use such resources.

Mr Henderson: Mr President, is the hon. minister aware that eco-tourism is the most rapidly growing form of tourism generating \$30 million worldwide and that the basking shark is one of the greatest wildlife attractions the British Isles has to offer both local and international visitors and that this fact has already been recognised and given financial support in other areas of Britain? Could I ask the hon. minister also, what plans does his department have to maintain the advantage that has been established by the Isle of Man Basking Shark Society?

Mr Cretney: Mr President, in reference to the basking shark initiative I would like to thank the hon. member for providing me with a further opportunity to advise of my department's position with regard to this particular project. Members may recall that this issue was previously discussed at the October 1998 and January 1999 sitting of Tynwald when questions were asked by the hon. member for Garff, Mr Rodan. In addition, a further question was asked at the House of Keys sitting dated 23rd March 1999 by the hon. member for Douglas East, Mr Braidwood. I shall commence by reiterating some of the comments made in response to those previous questions, with regard to the basking shark in particular.

During 1997 an interdepartmental working group led by the Department of Local Government and the Environment and including the Department of Agriculture, Fisheries and Forestry reviewed the Isle of Man Basking Shark Project. In December 1997 this group concluded it was unable to recommend that government should provide any financial assistance on the basis of the five-year business plan as submitted. Following on from that and in accordance with an undertaking given at the October 1998 sitting of Tynwald my department met with representatives of the Basking Shark Project and appraised the new business plan promoting the project as having potential for eco-tourism. In this respect I advised hon. members that there are elements of that plan which I am sure we can assist with. However, there are other elements which are more specifically scientific and it would not be appropriate for tourist money to be used for that purpose - that is what I said at the time. At that stage my department did not find it possible to offer financial support. Having said that, on the basis that some potential for tourism does exist for a project I accept that, I have accepted that from day one, and I recognise the work that Mr Watterson and others have done in terms of their particular interest.

Marketing support has been and will continue to be provided by my department by ways of arranging journalists' visits. This is in addition to previous financial assistance of £5,000 awarded in 1994 by way of a grant in respect of a new engine for the then vessel.

The basking shark initiative is one of a number of projects for which financial assistance is currently being sought from my department. Obviously such projects require to be appraised on the basis of their potential benefit to the tourism industry together with the availability of resources determining the level of assistance, if any, that is appropriate.

Mr Lowey: Would my minister confirm, Mr President, in our pursuit of eco-tourism that he and the department do not intend to introduce short breaks or safaris for nits or head lice? *(Laughter)*

Mr Delaney: You are only scratching the surface now!

Mr Cretney: I am happy to confirm that, Mr President.

Mrs Cannell: Mr President, bearing in mind the reassurances that we have been given this morning of how the Department of Tourism actually regard eco-tourism, in relation to that is the hon. minister aware that the figures generated worldwide for eco-tourism in 1995 were in excess of £20 million and that the latest figures are in excess of £0.5 billion? If he is aware of those particular figures could he not advise or see a way by which the likes of the Basking Shark Society, which has attracted visitors from all sorts of different countries, particularly this year, is our biggest asset in relation to eco-tourism? Can he identify or help to identify a scheme that is financed by government to help with, as he put it, the scientific element of their business plan?

Mr Cretney: Mr President, in relation to the scientific element of the business plan I think it is incumbent upon me in the role I currently have to ensure that the resources which are made available to my department via Treasury, via this Court are used in the manner for which I can properly account, and my remit is one of tourism and leisure, and so the business plan which was presented to me, to my department, caused some difficulty in that regard. However, it has been made quite clear to the Basking Shark Society, and I happy again to confirm it today - because I am in support of what they are doing - that there are certain matters that they are seeking to do in the future which clearly will have a tourism element where we can properly, and in accordance with financial regulations, support them.

Mr Delaney: Mr President, would my minister confirm that we are due to meet the Treasury on the 24th and all members of the department have agreed a priority budget of extra money including a substantial sum towards eco-tourism for the long-term future?

Mr Cretney: Yes, from day one, from the time of our department coming into place in December 1996 we have ensured wherever possible that the resources which we have available thanks to this Court are properly targeted. That is continuing in the financial year which is ahead, and we are doing that on that basis of the competition which is extensive and fierce in this business in which we are involved, and we can only make progress if we effectively use the resources which were made available and, as the hon. member of Council, Mr Delaney has pointed out, when we meet with Treasury we will be seeking to have additional funds made available because we do recognise the worth not only to this Island but

also to competitive destinations similar to heritage; eco-tourism is one of the strands into the future and we want our share of that business.

British-Manx Parliamentary Group – Recent Meeting – Question by Mr Henderson

The President: Question 16, the hon. member for Douglas North, Mr Henderson.

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

- (1) *What was the outcome of your recent meeting with the British-Manx All Party Parliamentary Group at Westminster;*
- (2) *what benefits from this do you envisage; and*
- (3) *how will these translate to -*
 - (a) *the business and finance sector; and*
 - (b) *the general public?*

The President: The Chief Minister to reply.

Mr Gelling: Mr President, our meeting with the British-Manx All Party Parliamentary Group at Westminster on 3rd November was part of a strategy to strengthen and improve the links with that particular group. It did not have as its objective a specific benefit for local businesses or the general public. It was concerned with developing good relations and improving understandings and the benefits will be long term, and therefore at this stage we are unspecific, sir.

Mr Henderson: Mr President, I would thank the Chief Minister for that reply, but given these long-term benefits he talks about, can he see those translating into any sort of assistance in special respect to the latest announcements through the media with regard to Euro designs on tax havens, sir?

Mr Gelling: Yes, indeed I do look forward to the long-term benefits from this because that is exactly what we were doing: we were presenting to them the situation of the Isle of Man and also those who could not attend due to the fact that there was a rolling whip on that particular night, which was rather unfortunate - we have since then furnished all the members of the group, whether they had intended to come or not and had declined, with the information so that we are keeping them up to date also with a quarterly newsletter, and I think this will in the end prove dividends, Mr President.

Mr Cannan: Mr President, at this meeting of the parliamentary group, did the Chief Minister discuss in particular the impending issue of the EU report on corporate taxation by the Primarolo group? And further, Chief Minister, at last week's meeting at the Home Office was the draft of the EU report discussed and has the Chief Minister obtained a copy, and will he distribute a copy to members?

Mr Gelling: Yes, Mr President, at our meeting with the British-Manx Group we obviously discussed many things. The one topic that was of paramount importance that was discussed with them was, of course, the initiatives both from the EU and the OECD and the situation in respect of the ongoing Edwards review. These were all topics which were discussed with them and, in reference to the latter part of the question - with which I do not see the connection - however, I have not got a copy as yet so I cannot distribute it to members.

Mr Cannan: A supplementary to the answer given. Can I assist the Chief Minister, then, and through your good offices, Mr President, arrange to have copies distributed, sir?

The President: At the conclusion of the proceedings this morning that would be acceptable.

Mr Cannan: Thank you, Mr President.

Natural Gas – Supply to Island – Question by Mr Waft

The President: Item 17, the hon. member of the Council, Mr Waft.

Mr Waft: Mr President, I beg leave to ask the Chief Minister:

- (1) *When will there be a natural gas supply to the Island;*
- (2) *how will natural gas be supplied to the Island;*
- (3) *will the supply require a further pipeline;*
- (4) *if so, what is the estimated cost of such a pipeline; and*
- (5) *how will this cost be met?*

The President: The Chief Minister to reply.

Mr Gelling: Yes, Mr President, I understand that in accordance with a resolution of Tynwald of November 1998 the Department of Trade and Industry is carrying out further work in relation to the examination of a scheme for the importation of natural gas to the Island. Now, I am informed that the department has commissioned a financial appraisal and outline technical and environmental studies into the feasibility of laying a pipeline from a point on the east coast of the Island to connect with the Scotland/Ireland pipeline system at Brigg House Bay in Scotland.

This work should give a clear indication as to the overall viability of the project. When it is complete it will be necessary for government to determine whether or not to proceed to the next stage, which will include the commissioning of a full technical specification and a detailed environmental study including a seabed survey. Following completion of these investigations a more accurate assessment of the full costs of the project and likely delivery timescales will then be available. At this stage, however, I am not able to provide specific answers to the hon. member's question, sir.

Mr Waft: Mr President, Chief Minister, are you aware that to now get a gas pipeline to the Island a journey of some 30 miles in some cases using the cheapest coring method, a drum avoiding welding sections, would cost in the region of over £20 million, plus the various devices which will be needed to keep the line clear, taking the various liquids from the gas, would be another £4 million? Who are the consultants who advised us not to take advantage of a T-piece from the existing pipeline at the time of its installation?

Mr Gelling: Mr President I understand that the department are aware of the technique of which the member speaks in the first part of his question. With regard to who the people were who advised us not to take a T-piece out of the existing pipe, I am sorry I cannot give you that off the top of my head; I will find out for the hon. member. But I understand that that is still a feasible option but the other way is cheaper. So therefore we are obviously looking for the best

way to get it to the Island and the technical ability is still there to do that and the option is there for it might very well not be cost-effective, sir.

Mr Waft: Mr President, is the Chief Minister aware that Bord Gas Éireann has announced that it intends to construct a second gas interconnector to Scotland to draw on North Sea gas reserves, and will the Council of Ministers investigate the possibility of using that facility in conjunction with Bord Gas Éireann?

Mr Gelling: Yes, indeed, Mr President, the department are aware of that and they are monitoring the situation.

Mr Singer: Mr President, can I just ask for a supplementary on that, please? Could I ask the hon. Chief Minister: you have mentioned two possible sources; are you freely available to approaches from other suppliers in different areas, perhaps Morecambe Bay, in order to ensure that the supply of natural gas we get to the Island is to the best advantage of the people who live in the Isle of Man at the cheapest cost?

Mr Gelling: Mr President, again I understand that that this an area that the department have explored.

Mr North: Is exploring.

Marine Drive – Feasibility of Reopening – Question by Mr Duggan

The President: Question 18, the hon. member for Douglas South, Mr Duggan.

Mr Duggan: Mr President, I beg leave to ask the Chief Minister:

Has the Council of Ministers given any recent consideration to the feasibility of reopening Marine Drive?

The President: The Chief Minister to reply.

Mr Gelling: Mr President, the answer to the hon. members question is no, the Council of Ministers have not given any recent consideration to the feasibility of reopening the Marine Drive. However, I can advise that the Minister of Transport has previously announced that it is his intention to undertake a review of the present policy of the department in relation to the use of the Marine Drive. It is, I understand, the minister's intention to chair a departmental working group to determine the future of the use of the Marine Drive, especially in relation to whether it should be reopened for normal use by vehicular traffic.

The Minister for Transport has advised me that there is presently no timetable determined for completing the review. However, the minister would hope to finalise the review before the end of next year, sir.

Mr Duggan: I thank the Chief Minister, sir.

Mr Cannell: Mr President, would the hon. Chief Minister not agree with me that there is great possibility for the Marine Drive even if used only in a one-way direction for that to be alternated to facilitate traffic coming in in the morning and going out at night in conjunction with the new harbour bridge scheme?

Mr Gelling: Yes, indeed the hon. questioner is on a very similar line to one that I raised with the minister in July in respect of the inconvenience to people on the Old Castletown Road and that here was a very good way in which, if it was opened, it would be a help. The minister

did undertake to look at that and I know that he has looked at it, but certainly I think there are other angles to this as well. There are the environmental angles which have to be addressed and I think the review will come up with something pretty definite.

Mr Cannell: Would the hon. Chief Minister not further agree with me that it is iniquitous that the Marine Drive is still allowed for full walking facilities and is open for car rallying purposes, albeit on closed public roads?

Mr Gelling: Yes, I have to agree that it is a beautiful and scenic route (**Mr Henderson:** Hear, hear.) but I suppose after 20 years nature has already started to creep in on the area and I suppose now it will be very, very difficult to upgrade it to a full standard normal road, but certainly whatever can be done, I think, to allow people to enjoy that particular environment would be certainly beneficial, sir.

Messrs Delaney and Cannan: Hear, hear.

The President: Hon. members that concludes our scrutiny of the question paper.

Legislative Council – Introduction of Legislation for Popular Election – President’s Ruling – Keys and Council Retire

The President: We turn now to item 3 on the order paper, which is the adjourned debate on the Legislative Council elections.

Now standing order 3.11(3) provides that no debate shall be permitted at any time on a matter tabled for consideration by a branch. As the Constitution Bill received its first reading in the Legislative Council this morning it would therefore be contrary to standing orders for debate to be resumed on this motion. Mr Cannell has already been advised of this decision.

The Speaker: Mr President, if I may, sir, I am concerned at the ruling. I understand exactly where you come from on the ruling of standing order 3.11(3), sir. Nevertheless, under standing order 4.6(1) I move, sir:

That the Keys retire to its own chamber to debate Mr President’s ruling.

Members: Hear, hear.

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

The Speaker: Hon. members, I put to the House that we retire to our own chamber to consider the position as we have just had outlined by Mr President. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Mr President, we will retire, sir.

Both branches retired to their own chambers at 12.30 p.m.

Legislative Council – Introduction of Legislation for Popular Election – President’s Ruling

The Speaker: The Keys left this hon. Court this morning to return to its own House, sir, because it was concerned over the procedure whereby a debate which had been started in October of 1998 and had been adjourned had come forward for resumption on the order paper quite properly this morning. Mr President, your ruling was that under standing order 3.11(3) the matter which had been brought to the attention of the Legislative Council in a new Bill which had its first reading this morning, because of that it was felt that item 3 on our order paper today could not be debated within this House. I have to say that unanimously the House is of

the view that that debate should take place. The House is unanimously of the view that this Court has a right and should make its opinion quite open and public in relation to the matter properly put on the order paper by the hon. member for Onchan, Mr Cannell. They wish that debate to take place so that the hon. Court of Tynwald can express its opinion. I would therefore like to move that standing order 3.11(3) be suspended to enable debate on the adjourned motion, 'That Tynwald requests the Council of Ministers to introduce legislation to provide for the election of the Legislative Council by popular franchise', standing at item 3 on the order paper to be resumed, and secondly, that standing order 3.11(3) be referred to the Standing Orders Committee for consideration and report, and further, at (iii), under standing order 3.12 the propositions at paragraphs (i) and (ii) be debated as one but voted upon separately.

The House is of the opinion that this hon. Court should debate the motion printed on our order paper. It wants Tynwald Court to be able to express its opinion and I would point out that the adjournment of the motion on the order paper from previous times was not only to allow a House committee to make its report to the House but importantly, very importantly, the debate which was adjourned was quite deliberately adjourned to allow a debate on the incinerator at that time considered to be important. Had it not been for that adjournment, Tynwald Court would have expressed its opinion and this is a resumption that we ask for of that debate to enable Tynwald Court to express openly and publicly its opinion. I so move, Mr President.

The President: Hon. members, it is my responsibility to ensure that Tynwald acts within its standing orders and conducts its business in a manner that has been determined by the Court as appropriate.

Now, when I conveyed my decision in respect of item 3 to the Court this morning the House of Keys withdrew, the Council withdrew, to consider the issue, obviously. Withdrawal does not confer any particular right of report or recommendation on either branch, but I am prepared to listen to proposals, and the proposal that Mr Speaker has made, despite the fact that it has the backing of the full House of Keys, is not one that I am prepared to accept and, hon. members, I would say why. There are a number of standing orders which embody constitutional principles which shall remain effective notwithstanding any purported suspension of those standing orders. Standing order 3.11(3), which seeks to preserve the right of each branch to consider a Bill without interference from the other branch, is such a standing order and I therefore rule it is not susceptible to suspension, and that is the end of the matter. The Court will proceed to the next business. Item 4, I call upon the hon. Mr Speaker.

The Speaker: Mr President, I respect and acknowledge your comments and am perfectly prepared to go on to item 4, but I would just like to make the observation that it was the wish of the House that we should be allowed to debate the previous item.

Members: Hear, hear.

The President: May I again say the wishes of an independent element of the Court do not go over and above the rules of the Court as a whole.

Ministerial Government – Select Committee Report Received

The President: Thank you, Mr Speaker.

The Speaker: Mr President, I beg to move:

That the Report of the Select Committee on Ministerial Government be received and its recommendations be approved.

Dealing with item 4, in February of 1998 this Court appointed myself and hon. members Mr Cretney, Mr Karran, Mr Rodan and Mr Shimmin to consider and evaluate the operation of ministerial government and today we present our report.

We held 14 formal meetings and took both written and oral evidence and considered a discussion document used at a seminar arranged for members by the Council of Ministers.

We spell out in section 2 an overview. We considered that there is no easy way of determining the extent to which achievements are attributable to a particular structure of government, as evidence is likely to be anecdotal, subjective and undoubtedly political. However, we point out in the final paragraph of section 2 that the preponderance of evidence which we received and our own judgement led us to the conclusion that the present departmental structure is to be preferred to the previous boards structure.

In section 3 we place the Governor in Council and the Council of Ministers in a governmental context and in section 4 likewise treat government departments. Our conclusions in both cases are agreed in 3.9 and 4.2 of our report. There, for example, we express concern regarding the relationship of the Treasury with both the Council of Ministers and government departments, pointing out that the contemporary statutory powers of the Treasury are now some nearly 40 years old and that the formal role of the Chief Minister in the sense of statutory powers and duties deserves re-examination.

Clearly, it is not in the interests of good government for there to be institutional rigidity between the Council of Ministers and government departments, but it is necessary to have protocols of appropriate procedures and we think somewhat more could be done to develop such protocols and make known their context.

We consider the parliamentary context of ministerial government in section 5 and in bold type on pages 22 and 23 make what is our first recommendations other than conclusions found within the separate paragraphs. The constitutional convention of collective ministerial responsibility is generally understood to encompass the notion that the parliamentary members of a government are responsible to the legislature for government policies and in particular that ministers are collectively responsible to the parliament for such decisions taken at cabinet, or in the case of the Isle of Man, our Council of Ministers level.

We recommend that the Standing Committee on Constitutional Matters should consider the terms of a motion to be tabled in Tynwald Court determining that scope of the convention of collective ministerial responsibility and in doing so take full account of our analysis of and observations which are encompassed within this report, and similarly we recommend that a motion in Tynwald Court determining the scope of the convention of collective ministerial responsibility should encompass the notion that appropriate questions for written answer on constituency matters tabled by a minister should not fall within the operation of the convention and that the Council of Ministers guidelines on the convention should reflect this.

Similarly, having looked at individual ministerial responsibility in section 6 of our report, we recommend that the Standing Committee on Constitutional Matters, taking account of our observations in this section, consider the terms of a motion to be placed before this hon. Court

and in section 7 is where you will find reference to the nomination and appointment to government offices.

Evidence given to the committee allowed that these were strong opinions on both sides in relation to the Chief Minister's appointments. Having examined these, we concluded that the quality and effectiveness of ministerial government would be enhanced by the nomination of members for ministerial appointment being again subject to Tynwald approval, while allowing the designation of the nominated ministers to departments remaining a matter solely for the Chief Minister and consequently recommend that legislation be introduced in line with that printed at page 33 of our report.

In paragraph 7.3, when looking at the position of a Tynwald member of a government department, we revert to our observations which we made in paragraph 4.2, that there may well be value in establishing a more formal relationship between ministers and members of departments and while there may be informal discussions on membership of departments, concurrence by the minister of the appointments would undoubtedly give more impetus to that relationship.

In 7.4 we comment on membership of statutory boards. We are aware that some government consideration is being given to members of Tynwald continuing to be eligible for membership of such statutory boards with regulatory functions in the finance sector and suggest that as part of the review, consideration should be given to creating separate statutory arrangements for those with primary regulatory functions.

Section 8 is where we discuss the parliamentary procedure for holding government to account.

This report places before hon. members recommendations, a summary of which is found in section 9. I do not propose to read them out but suffice it to say that we believe Tynwald should determine the scope of the convention of collective responsibility and encompass the change that appropriate questions for written answer on constituency matters by a minister should not fall within the convention. We recommend a change in legislation for ministerial appointment to again being subject to Tynwald approval but the Chief Minister remaining solely responsible for nomination.

Along with the recommendations we draw conclusions throughout the report and I would ask that members read the whole report, as the conclusions pointed to in our summary of recommendations at 9.5 are integral to the report's whole being. Mr President, I beg to move.

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

Mrs Hannan: Eaghtyrane, I must say when this issue was first discussed when legislation was being drawn up I was opposed to the system that we have now, but I have to say that, because I have learned more about parliament and about executive government, I do feel that there should be a divide. Parliament has a responsibility and the executive is responsible to the parliament, but that does not mean that the parliament has to take responsibility for those of the executive and the appointment of those of the executive. Therefore I do not go along with the recommendation in this report that the Chief Minister is elected. I support that the Chief Minister is continued to be elected by this hon. Court but I

really feel that it is then up to the Chief Minister to pick his or her team (**Mr Gilbey:** Hear, hear.) and to work with his or her team to the best of their ability.

Now, there are plenty of ways, as we know, if a minister is not approved of for any reason, how that minister can be replaced, but that is for the Chief Minister. That is not for parliament to do. Parliament should not interfere with that. Parliament can always bring forward a vote of no confidence at any time (**Mr Brown:** Hear, hear.) but parliament does not need to vote in the ministers, does not need to. The Chief Minister is elected. The Chief Minister should then pick his or her team and then they should govern from their executive position. We have not yet had a vote of no confidence, but it is up to each and every one of us to bring forward a vote of no confidence, if we so wish, in the Chief Minister or in any of the ministers, but to start involving the parliament who the executive is responsible to in the appointment of the executive to my mind is wrong and we should not proceed as this report is written.

I think the parliament should be satisfied that it steps back from appointing the executive, steps clearly back from that, but makes the executive, in the form of the Council of Ministers, answerable to the parliament. The Council of Ministers is answerable. Questions are asked, questions are posed, regulations in financial areas are moved in the Court and we can vote, as a parliament, for or against, and therefore I think the balance that we have at the moment is what we should be doing, moving forward, not taking a step back and a step back to what we had 10 years ago and I believe that we should be looking forward. We should have an executive that can get on with the work of governing. It should be responsible to the Chief Minister but also answerable to the parliament and therefore I cannot accept the comments that have been made in this report.

I found it quite amusing that I think each and every member with the exception of the mover of this motion is a member of a government department so is also working in parliament and as part of government. Mr Speaker has worked certainly as a minister within the government and I would have hoped that there could have, should have been a recognition from this particular select committee that things have moved on since parliament itself got involved with electing or even approving the ministers that the Chief Minister chose to put into his team and therefore I think that it is not necessarily the status quo because I think we should be moving forward, not going back, and I think we should be looking at things being enhanced, and if we always look back to the glorious days of the past, they were not glorious, when people being put forward to this hon. House as a minister did not get elected, and we know what happens when people outside are put forward as directors or members of committee: there is always some apprehension by the Court, some comment, and therefore I think in lots of cases we do not get the best people allowing their names to go forward for some of these positions. That is not to say that I do not agree with people being elected in the first instance to get into this Court and I would always totally wish that as far as possible the people will always elect and be involved with both the House of Keys and ultimately the Legislative Council.

Mr Gelling: Mr President, I would just like, if possible, to ask the mover of this particular motion perhaps in looking at the select committee's report where it does recommend that that Chief Minister should have exclusive competence to propose ministers for Tynwald endorsement and then it says first of all in an en bloc motion for the whole team followed by a

series of individual motions in the event that the en bloc motion fails, and this would continue until the Chief Minister has as many ministers as he wants up to a maximum of nine. Now, that differs from the present position in that ministerial nominations are not required to have the approval of Tynwald, but it also differs from the arrangement that was in 1986-89 because at that time the Chief Minister was allowed three attempts at an en bloc motion and thereafter, if those motions failed, he and any other member could have individual proposals.

Now, I would suggest therefore perhaps that there is something missing out of the report whereby perhaps it is incomplete because the committee are not explicit about what is to happen in the event, for argument's sake, of a casual vacancy following a death in office, for argument's sake I would presume it would be intended, I would suggest, that the Chief Minister would come forward with a motion for a replacement minister for approval by Tynwald, but it does not say that actually in the report.

The other was there is no reference to a dismissal. If the Chief Minister wants to make a change in the ministerial team, is he to be able to dismiss a minister on his own authority or will he have to come to Tynwald for that to be approved? Because if Tynwald approved the appointment they should perhaps also approve the dismissal, and I would suggest that perhaps that was rather an unattractive and potentially embarrassing political spectacle maybe.

Now, also the report does not address the issue of the parliamentary recesses. If a casual vacancy were to occur during a recess, or assuming the Chief Minister has a right to dismiss, if a dismissal occurred during the recess, the ministerial post would have to remain unfilled until the next sitting of Tynwald, if that was the case, and potentially you could have a department without a minister for up to perhaps three months.

So these are some of the areas, in following through the report, that perhaps the suggestion is that these issues could be considered further by the Standing Committee on Constitutional Matters. Now, I just pose the question, was that perhaps because the select committee were unable to resolve it or perhaps was there some other reason? So I just pose those questions to the hon. mover.

Dr Mann: Mr President, I accept the main recommendations of this report. I am, however, somewhat disappointed in the rather diffuse way in which some of the problems have been addressed and their resolution suggested. I think we have avoided up to now the fundamental issue of the introduction of ministerial government.

We, I think, all of us, with perhaps a few exceptions, now accept that the introduction of ministerial government was a great step forward and it was a very meaningful step forward and has served this Island very well. It has had problems. Those problems were foreseen while we were talking about its introduction. I know around the Court the hon. member for Rushen, Sir Miles Walker, was a prominent member of that committee. I am sure there are one or two others who took part in the deliberations before we introduced this system.

The great problem is the unique character of this Court and it is the unique character of this Court that provides most of the actual fundamental problems associated with introducing ministerial government in a non-party situation and really, when we are talking about how the ministerial government operates and how successful it is, one should see it first and foremost as handing considerable power to a relatively small group and their relationship to the

parliamentary establishment within this Court. People outside the Isle of Man find it incredibly difficult to understand, and if, for instance, we go to Africa we have President Nyerere who has often claimed that because he could not create an opposition it was determined that his state was non-democratic and there are many people outside the Isle of Man who look at our situation and say, 'How can it be democratic?' But of course they overlook the unique characteristics of Tynwald itself.

But we do have a problem. We are and have since 1986 or 1987, when it came in, given considerable power to a group of people, the Council of Ministers, and during that time since the introduction we have actually reached a point where every member of this Court is actually a paid-up member of the government.

Mrs Hannan: No.

Mr Brown: You do not have to be.

Dr Mann: You do not have to be, but it is a fact. Now, it is getting the balance right between the membership and the powers of the executive and the parliament. I think in general terms they are probably pretty well balanced, but if we are looking at the effectiveness, then I think that is the key to the problem.

Contrary to the hon. member for Peel, I am utterly convinced that if in our own situation - and I am talking about the unique situation of Tynwald Court - we are going to operate in a non-party position where we have just everybody operating as Independent members, then I think you have no alternative to an insistence that those people who are going to be granted this additional power should actually be supported by the majority of members of this Court, at least initially, and it is no great upset, I would suggest, to any person, any member of this Court if they knew they were being appointed to a position of power within the executive without the knowledge that the majority of members of this Court actually supported them. So I will never move from the fundamental view that a ministerial appointment should be shown to be supported by the majority of members of this Court and I therefore am very glad to see the recommendation put forward in this report.

Looking at the evidence, both the written and oral it is quite obvious that we are rehearsing or have been rehearsing, going over and over again, arguments that have been used now for very many years. Those arguments will be brought forward every time. I think what we do have to look at is moving forward because this system can evolve and evolve in a better and better functioning way.

It is now quite obvious that there is not going to be a situation where political parties will find favour either with the Manx people or with Tynwald Court itself, and I think it is incumbent upon us to ensure that within this Court there is a capable but not necessarily divisive means of the parliament outside the executive exerting control and question. Now, one can say that that could happen now. It is true: it happened this morning. But the one suggestion that I think does warrant considerable development and attention is the suggestion, albeit only a very small suggestion, that if there were a certain number of standing committees looking at certain functions of government, the principal, key functions of government, a way can be found to actually pay those members who are carrying out that function in place of their position as members of departments. Now, that need not necessarily be a compulsory thing, it could be a voluntary thing, it could be a rotational thing, but it certainly is a very interesting and valid

suggestion, and I do not think the executive itself should be fearful of such a situation, because I do not know of many parliaments in the world that do not have a standing committee structure overseeing the function of principal functions of the executive.

So I welcome that idea and I think it ought to be developed further, and when it comes to our consideration of the way in which members are paid, which I think is coming up in the next month or two, I think we should look at this as a possible alternative to the way in which people are paid at this moment. The alternative would be to reduce the number of people in government as members of departments (**A Member:** Hear, hear.) and those people not serving departments could in some way form, well not a true opposition, but a group that is responsible for overseeing the powers of the executive.

This balance and whether it is right or wrong - the arguments will continue for a long time. All I know is that if one looked at this from outside this Court and one looked at the structure, as indeed the group who were responsible for looking at members' pay looked at the structure, it does not actually look to be a very healthy political structure and although we know it works, such a structure always has the potential for not necessarily abuse but certainly things going wrong.

I welcome then the findings of the report. I certainly welcome that the recommendation is that these proposals now go to another committee to ensure that they get put into effect, that we develop some of the other suggestions therein, which I must admit I had not heard discussed previously. Thank you, Mr President.

Mrs Christian: Mr President, the recommendations for the most part recommend that we further discuss individual items here by way of a resolution brought before the court in due course, and to that extent I do not wish to focus on items 9.1 to 9.3 in any great detail, but I think the matter that is one on which I want to comment today is this structure of the Council of Ministers. There is no suggestion in this report that we change really the procedures for finding our Chief Minister, but it focuses really on then who he selects to take up the ministerial appointments.

Now, in the past I have always been of the view that it is beneficial to those ministers to feel that they have the support of the Court behind them and to that extent had in the past held the view that Tynwald should endorse the Chief Minister's nominees. However, I think the hon. member of the Council, Dr Mann, has focused on an area where I think there has been change, which has caused me to reconsider my view. The hon. member referred to the fact that by and large this Court has comprised of Independent members, and to that extent it was my view in the past that it was appropriate, with a body of such Independent members, that Tynwald be asked to give a view on whether or not they should be part of the ministerial team. When we vote for a Chief Minister we are aware of the policies which he expounds and which he seeks to follow. In looking at the recommendations of this report I feel that the Chief Minister's ability to pursue those particular policies may well be hampered by the recommendations which are before us. If the Chief Minister is successful in putting forward a team in the first instance, which, if the recommendations are accepted, goes to the Court and is endorsed by it, then clearly he has backing for his proposals. However, the further we proceed into a situation where some of his nominations are rejected by the Court the further we are undermining that Chief Minister's position, I believe, to pursue the policies which he has expounded in the first place, and I think that is more likely to happen as we have moved

from a situation where we have Independents standing to a situation where we have quasi-groupings where before elections and after elections groups of members indicate that they have particular policy lines which they want to pursue. Now, that is quite appropriate and proper for members if they want to get themselves into groupings to expound particular policy lines, but the fact of the matter is that those policy lines might well be outwith the determination of the Chief Minister's policy, and I can see that by going down this particular route we will make it extremely difficult for the Chief Minister to put together a team which will necessarily agree with his policies. There are provisions in the rules for any individual member, having declared a position before they go to the Council of Ministers, to continue to pursue that policy. I can envisage a situation here where the Chief Minister may not have sufficient people in his team who are in agreement with certain items of his policy, and to that extent I believe that it is appropriate that he picks his own team and that they are subject to the no-confidence votes if that is the will of the Court in the light of the policies which that team pursues.

This is a change of view on my part, but I think that whilst we can look at the theory, the practice has led me to believe that the present position is the most appropriate one.

Mr Brown: Mr President, I have to say that I am extremely disappointed but not surprised at the content of this report. It is very much an imbalanced report which gives one side of the picture and in fact I think important is the bits it does not say about, how it does not reflect the reality of the situation and how it gives an inference on, I suppose, really the way the members of the committee wanted to go regardless of the evidence, and that really is the bit that concerns me.

We have a system at the moment which is not perfect. I do not suppose we will ever have one, we never have had one. No government has one that is perfect. But we have one certainly, when you do talk to parliamentarians about it, a lot of people are envious of -

Mrs Crowe: Exactly.

Mr Brown: - and they think that our system works uniquely, and it works because of our system and because we are a small island and because we all know each other and we have our ups and downs and we fight, and I think the majority of us do what we believe is best for the Isle of Man and not for our own interest, so I think because of that, that enables us to go forward and provide what is beneficial to the Island.

A democracy - and I gave evidence to the committee - is quite straightforward and consists of three major components, all separate - the parliament, the government and the judiciary, and this report will drag us back to a system where parliament and government become one because the government is elected by the parliament directly. It does not matter how you dress it up. It does not matter what you say. It does not matter what members who will follow me will say. The old system that we are now trying to go back to, albeit slightly amended to make it look different, did not work. It did not work. It was a disaster. But we did not know because we had not had a system before. The then Chief Minister, I remember it well, in 1989 when he had to re-elect his team, and do not forget in 1986 he was elected as Chief Minister unopposed and got his team through straightaway because it was all new, but in 1989 when a few people had found their feet and what they wanted, which was slightly different to the then Chief Minister and were seeing the power base, as they saw it, in

somebody else's hands, the then Chief Minister spent two weeks, maybe more, sitting down with every member of Tynwald talking to them - 'Who do you want? What are your concerns?' - and then when he changed his team, what happened? Tynwald only just passed his team by one vote, one vote, yet everybody had given their views, and that is the reality of it. You are asking the same people in a small parliamentary system to vote him to be a minister and for himself not to be one, and if anybody believes that that is a realistic way to go forward, you are in cuckoo land, absolute cuckoo land. I know someone will get up after me and say 'Ah, he would say that: he's a minister.' It does not matter. I am a minister at the moment. I might not be a minister tomorrow, I might not be a minister after the next election, I might not even get elected at the next election, and this will all, if it goes, take place for what goes on after then. So my view is, what is good for the Isle of Man? What is the best for the Isle of Man?

You read the report, there is so much missing on how the system will work that you cannot even make sense of it anyway. What we would class as maybe fringe members we have seen since 1989 individual people become ministers about whom some would say 'Goodness me, them a minister?' It might be me, it might be anyone. The point is the Chief Minister who we gave the responsibility to, to pick his team and who is responsible for the government, has picked who he felt was best to balance up Tynwald, and there have been ministers, and I am one of them, who have not been happy with some people being ministers, as they are not happy with me being a minister, but at the end of the day there is a respect for the Chief Minister and there is a responsibility that you are answerable not only to the Chief Minister but also, very importantly, to Tynwald, because do not forget: at the end of the day the minister of the department is answerable to Tynwald Court. That is why we have Question Time. That is why you can have pressure put on the Chief Minister to remove a minister or ministers, as we have seen recently. That will all change, because if you make the changes in this report you compromise the members of Tynwald, you strengthen the ministers because the minister then can say, 'I'm elected by Tynwald.'

Mr Cannan: Quite right.

Mr Brown: 'Quite right', I hear. I am elected by Tynwald. The minister is strengthened, Tynwald is weakened. At the moment Tynwald is strength, the ministers are appointed by the Chief Minister answerable to Tynwald and therefore can not use, as was done between 1986 and 1989, as was used, 'I was elected by Tynwald.' I remember a famous one where a minister, who is not too far away from my righthand side, through 1986 to 1989 point blank refused to answer questions when he was a minister and a member for Rushen said, 'Well, I'm not going to ask the rest of my questions because you won't even answer me', and what did he say? 'I was elected by Tynwald', or words to that effect. So it is an excuse, it gives ministers a way out. Go to the public: 'I was elected by Tynwald, I am a minister because Tynwald wants me to be, not the Chief Minister, because Tynwald wants me to be.'

You have got to make your mind up. This faffing about - 'We don't like this because I'm not a minister or I want someone else to be a minister' - is absolute nonsense. We are talking about the Isle of Man, its democracy and its good government and unless you give somebody clear responsibility and make them answerable, and by putting a system in like this you are going to dilute that answerability, then you have got a situation where everybody who is in the government is stronger.

We are even talking about having the vote of the ministers by secret ballot, so the public do not even know. We are talking about a situation, and let me just give an example and let us look back to the last election for the Chief Minister, because I do not think it is time for being careful, it is time to be straight on this. After the last House of Keys election it was quite clear that the election for Chief Minister was going to be between the hon. member for Malew and Santon, who is now Chief Minister, and the hon. member for Ayre, Mr Quine. The hon. member for Malew and Santon, Mr Gelling, was elected by 21 votes in Tynwald to 12. Now, just imagine if then he had to go away and pick a team to put together his nine ministers and come back to this very same Court where 12 members had supported another member, especially a member in a group, an unofficial group, what is he going to do? I will tell you what I would do if I was him. If I was the person who had been defeated by the Chief Minister last week I would be going all out to undermine him getting the team he wanted because if he then is defeated, guess who is the next candidate for Chief Minister? The person who was defeated in the first place, and who is stronger? The person who was defeated in the first place, because the one who became Chief Minister has been defeated. He may well resign, I am sure he would, and up comes the new fella, the opposition has gone. Is that honestly the best way forward?

You make your mind up once. You make your mind up when you elect your Chief Minister. The system works, it might not be perfect, but it works, and if anybody thinks ministers are not answerable and if anybody thinks the old system worked, well I have been in both. Some of us have been here with both and have changed minds. In fact we should not forget, contrary to what has been said in the past, it was not at the promotion of the then Chief Minister Sir Miles Walker that we changed the law so that the Chief Minister would actually nominate his own team and get them in place, it was because the House of Keys and especially Most members of the House of Keys and some of the Legislative Council said, 'The '89 system doesn't work. This is crazy. You can't have a Chief Minister elected and responsible and he can't have his own team.' Now, okay, I understand some members will say, 'Well, we weren't there then.' That is fine. All I am doing is giving you background. I am telling you how it was, what happened, and you are in danger of going back to that to come all the way back again, and one thing I can assure you, Mr President, is that if you have a system where ministers have to be nominated by the Chief Minister and approved by Tynwald, there will be people who will be out, not because of what their ability is or anything, it is because they are either in that party or that group or that one.

Mr Cannan: That is what it is now.

Mr Brown: 'It happens now'. Isn't that wonderful?

Mr Quine: Cronyism.

Mr Brown: 'Cronyism'. One thing I have found out since I have been in here and since Mr Quine has been here, the hon. member for Ayre, is how he makes the words fit the story he wants to tell you. One minute you are dinosaurs because you do not agree with him -

Mr Henderson: You definitely are then, Tony!

Mr Brown: Then you are cronyism. He always talks about patronism or patronage or whatever -

Mr Quine: You can't even pronounce it.

Mr Henderson: Hear, hear.

Mr Brown: Well, I may be not able to pronounce words sometimes, Mr President -

Mr Corkill: You can hear the cronies who are laughing.

Mr Brown: - but the one thing I can tell you is I will say what I believe in and I do not make stories up to suit the subject as we go along, and one thing I will say is the hon. member for Ayre was a minister and when he was a minister he was quite content. We all know why he stepped down as a minister. The point is that under the system we have now the Chief Minister was able to appoint him and another member of his group to be a minister. I can tell you now: I bet it would not have got through if there had been a vote here in Tynwald Court.

Mr Quine: Try yourself!

Mr Cannan: Try yourself!

Mr Brown: Mr President, I have no problem in trying myself because on two occasions I have actually been elected by Tynwald to be a minister, so I do not have any problem at all. I am not scared of Tynwald Court because my view is Tynwald's will will actually determine what goes forward. I have no problem with that. What I do think is important is that you have the right system to enable the Isle of Man to function properly for the benefit of the people of the Isle of Man, and I have to say this report does nothing, nothing at all, to advance that. It drags us back. It pulls us back to a system that is known not to work, without any doubt.

They talk in the report about collective ministerial responsibility and that Tynwald needs to have a view on it. It shows how much research was done. Tynwald has a view on it. The hon. member for East Douglas, Mr Kermodé, when he was a member, put a motion down because there was criticism by members of Tynwald about the lack of collective responsibility, and Tynwald endorsed that with one vote against, who was I think John Orme, the hon. member for Rushen at the time. So Tynwald already has a policy, it already has a clear policy: there should be collective responsibility. We hear the point about the block vote. We hear the point about the new term, the wonderful new term: 'the Council of Ministers Party'. It is not a party.

Mr Houghton: Block vote.

Mr Brown: The Council of Ministers is not a party. The Council of Ministers -

A Member: Oh!

Mr Cannan: Come on!

Mr Brown: If the hon. member would bother to take the time and read the law, the Council of Ministers are set up by statute. They are not just a group who get together and say, 'Let's all stick together.' They are actually there my statute.

I have an indication where this is going to go and I think it is going to be a sad day for the Isle of Man, but if anybody believes that by making the changes recommended in this report it is going to be to the benefit of the Isle of Man, then I am sorry, you are sadly mistaken. It will do nothing to improve the situation: it will make it worse. As far as collective responsibility is concerned, I think that is clearly defined already and I just think that the Isle of Man is going

down the wrong road and I have said my point. No doubt I will get hassled. I do not mind that, because at least I have said what I have always said. I have been consistent about it and I believe that this is the best way forward, the way that we have at the moment. There may be improvements, but certainly what is in this report is nothing like an improvement.

Mr Delaney: Mr President, it is not the time for fighting old battles. I am one of the biggest supporters of the first Chief Minister when we got to the situation of him making a decision, and that was right and proper at that time, and it might be very well right and proper now, but the committee, who are not made up of all members, of groupings, which have been alluded to, they are people who I thought were really the middle-of-the-road members of this Court and have claimed so in the past, and I think they have come up with suggestions and whether or not Tynwald Court approves them or not, it is up to those members when they vote, and whether or not groups of people joined the government and left - and nobody has spent longer on the beach than I have done since this system was brought in - they can say there are certain things wrong. No democratic government in the world can claim it has got a perfect system, and we are no different and if there are changes that need to be tinkered with it is up to you the members and everyone will have their view, but it is no use blaming or digging up the past. We are moving forward for the betterment of the Isle of Man. That is the one thing with the member for Castletown I agree on. But you should be subject in some reality in politics to the public and you are the public representatives to your view on things.

If the Chief Minister is a capable man, he has been voted in and is given the job because of you the members, fair enough, let him choose his team, but the flaw in this system, and I have seen it, is that unfortunately there has been seen by the public to have been an element of 'brown-nose-ism', and that is not an understatement.

Mrs Hannan: That is disgusting.

Mr Delaney: Some members of the cabinet I may totally disagree with, but they have been good ministers and there is no doubt about that, but other ministers, to my view and to others' view, have not been good ministers, and how do then the parliament, without going to the real desperation of coming back here, do anything about it? And I say that is one of the problems that you the members have to get over. Maybe there is some other method that we have not had from this committee, but it has to be got over, because as the member for Castletown says, we are a very small grouping and in small groupings it is shown all over the world that power bases can grow to control. They have done and no doubt they will continue to do, where those small democracies are controlled by small groups, and I have not got to look to my right or my left, I only have to look to small other islands within the waters that we refer to quite often in this chamber, but they have seen a need to change because of what happened in the past, and the idea that is put abroad, again I will say it, that somehow groups of members of this Court have suddenly come into being, being of one persuasion or the other, is nonsense. The difference is nowadays we are more open about it, and what is wrong with that? That is an advancement. But I can tell you, like the hon. member - and I have been here as long, if not longer than he has - apart from one member and that was you, Mr President, as Speaker, nobody came to my support immediately except for you, sir, and I was told quite clearly by members then, 'Keep your nose clean, go with the right team and you'll be all right in here', and I think that is well worth noting about political groupings, but now we do it openly, and I must remind the hon. member, if he is going to go back in reminiscences, he

was the member, after he became a minister, who wanted to form his own group of members to give views to the government (*Interjections*) of a view he had been elected in with a policy from the then successful Chief Minister, so do not quote history, quote fact.

Mr Henderson: Well said.

Mr Brown: You haven't got a clue about him.

Mr Shimmin: Mr President, I am not surprised by the confusion and disappointment in some people's eyes on this report. It was five members of Tynwald put together to try and come up with an issue which was always going to engender strong opinions and therefore to have a commonality was always going to be difficult both within the committee and also in this chamber when the report was given.

I do think, like the previous speaker, it is worth pointing out that this is one of the few reports which actually has not got a membership of the APG and therefore it should not be seen as being an anti-executive or governmental committee (**Mr Henderson:** Hear, hear.) The committee is actually made up of the Speaker, who was a former minister, the hon. member for South Douglas, Mr Cretney, a member of the Labour Party, a long-term member of this House and now a minister. (**A Member:** Hear, hear.) The member for Garff, when elected, was a member relatively new but during the time of the committee became a minister. The hon. member for Onchan, Mr Karran, a very experienced member of this House, has never been a minister but has been in the House long enough to see the changes, and a member of the Labour Party, and myself as the newest member who has not got the history to look back upon in the same way as the other members of the committee.

Now, when the member for Castletown refers to a backwards step I can understand the passion and the belief that he has that it is a backwards step, but there are people on that committee who share his length of experience of both systems. Their views differ. That will always happen with reports. It does not mean that he is right, but it is an opinion which was well versed.

What the committee has done is failed to accept that any changes which were made to previous systems were necessarily correct. We as a committee identified from those who had been in the board system that that would have been a retrograde step, to move back to that direction. It looked at those issues which had been evolving over a number of years of the ministerial system and it was the collective view of the committee that, rather than being a retrograde step to go back to the original formation, it was an evaluation of the two systems and a conscious decision that that would give a greater level of scrutiny and accountability.

Now, the hon. member for Council, Dr Mann, referred to a scrutiny committee and certainly there were a number of issues such as that which taxed the members of the committee for many meetings. Now, to come up with a solution to that and write it down would merely produce a greater level of red herrings flying around this chamber because we would not get unanimity. The same goes for many issues within this committee. We found it very difficult to come to a final report which we could all sign, but it is one which we felt was moving in the right direction, did not satisfy all members all of the time, but it was a report which was felt as if it was moving forward, and I would identify what we have seen once again this morning is a result of the ministerial system as it has been evolving because this morning in Question Time we had questions coming in from an opposition group well structured, co-

ordinated, and why? Quite rightly the fact that there is a block vote of collective responsibility of the Council of Ministers was almost compelling a formal or informal opposition to be established. The decision as to whether those members of the opposition should rest within government or outwith is another debate we could go down. There are many views, personal views and political views, on the whole issue.

I believe we will continue to evolve, sadly for many people, into a party structure because I do not see how we can fail to do so. We will continue to question whether the scrutiny of what the executive government does is satisfactory, but to try and determine in a scope of a report on ministerial Government all of the crossing of t's and dotting of i's would have meant we would still be in committee until the next election and we would then not be able to write a report which people could support.

There is no panacea, there is no genuinely approvable solution to this debate. It is subjective. Whichever system we put in place or were to propose would still only be as good as the composite members who make up that system. Now, if you have no respect for persons who are currently elected as members to the chambers and that person is put as a minister you will strongly oppose those persons' position. But democracy dictates that people will be elected to this chamber. If they are then in this chamber they will be elected on occasions to promoted positions and as much as we do not like it, whatever system you put in there will be a level of selection. Now, some of the insulting comments about cronyism and worse that have been used are nonsensical because were those very people saying it to be the ones in power there would be allegations against them as well. It is the nature of the game that we are all in that we will turn around and require people close by who support our views. If that then becomes patronage or cronyism, then I fail to understand why we are here. Surely certain collective views shared by political beasts mean that those people will gravitate together, at least in most areas. So it is not patronage or cronyism, it is merely a common core of views, and that applies to the APG as much as to the Chief Minister selecting a team, so it will happen.

The idea of the selection of a team by the Chief Minister and approval by Tynwald is a view which some will share, some will disagree with. So be it. But do not underestimate the amount of work that went into this committee to try and find a way forward and a way which would actually move the debate further forward rather than bury it backwards.

We know it is not a perfect report, or certainly speaking for myself it is not a perfect report, but it has attempted to be as balanced and constructive as possible. I as a member of the report will be supporting it. I do believe that the view which were expressed to the committee and will be repeated later this afternoon are ones which are strongly held, should not be rubbished. We all will have a viewpoint and then we take a decision. It is called politics. Thank you, Mr President.

Sir Miles Walker: Thank you, Mr President. Mr President, I think there are just four points that I would like to make and the first one is that I think there is one comment in this report that I certainly go along with and that is that the present system is better than the old one, and after saying that I part company with the rest of the recommendations, which perhaps is not surprising and I have expressed those views before and I am not going to repeat them in detail again this afternoon.

The hon. member of the Council, Dr Mann, when he was speaking, said that it was because of the unique character of this Court that makes for most of the problems, or words to that effect. It seems to me that it is the unique character of this Court that is going to get over the problems, the wrinkles which we perhaps now, face and I think the unique character of this Court is certainly something that I am very fond of and have grown to be very fond of over the last period and I think we tinker with it at our peril. I think it is very easy to change things but not really know what we are going to change them for: suck it and see, if you like. I think that that is dangerous when you are talking about the parliamentary institution and I think it is the unique character of this Court that is going to reach the correct balance between parliament and the executive. If it is not correct at the moment, and if it is not I do not think it is very far away, we can tinker with it, but please do not fundamentally change it because I think that would be to the detriment of our community.

The hon. member Dr Mann, when he was on his feet earlier on, also suggested that in 1985 or 1986, whenever it was, when we were considering this step to ministerial government, and it was a big step, suggested that we were looking to get the right balance at that time between parliament and the executive. I would suggest that the truth of that matter and that debate at that time was that we felt we could only go so far before we recommended a further change which would make the whole lot unacceptable. There were many debates from 1980 through to 1985, 1986 about how we would move the situation forward from a committee system to a ministerial one and a number of solutions in fact were recommended. It was Mr Bell, the hon. member for Ramsey, who in fact moved the final resolution in this hon. Court to say that a ministerial system should be put in place and from there it all evolved. Change was not easily won, but it was worthwhile and I have no doubt at all that the Isle of Man's constitution, the Isle of Man community are stronger and better for those changes that were made back in the 1980s.

Party politics or not is an interesting question and I have to say for me I do not believe it is one for the parliament to decide on. It seems to me that that is an issue for our constituents

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Mr Shimmin: Hear, hear.

Mrs Crowe: Yes.

Sir Miles Walker: and if they want to vote for a number of people who belong to a party or a group, that is entirely a matter for our constituents (**Mrs Crowe:** Hear, hear.)

I can understand the concern that people have about party politics and we only have to look at the adjacent isle at the Westminster situation where we see that in fact party politics has taken the responsibility away from parliament. Parliament is almost incidental over there where you get a party which has a large majority, and I think it is that sort of issue, certainly as far as I am concerned, that makes me feel that as an individual I would not vote as a constituent, as a voter, for a party system. But as I said it is a concern that is often mentioned, and I know that our colleagues in the Channel Islands look jealously at the system that we have managed to put in place (**Mr Delaney:** Hear, hear.) because they are still well bogged down with committees, and I think in Guernsey there are 57 committees within their parliamentary structure and they have not got a clue where parliament finishes and government begins. Thank goodness we have moved forward from that situation. But the fear

that is expressed in those other two jurisdictions, those other two communities, about moving to a ministerial system is that, 'Ah well, then we're bound to get party politics', and it is a spectre, I think, that looms too large and ought to be kept in perspective.

The only other point that I would wish to make or just touch on is the one alluded to by the hon. member for Castletown, Mr Brown, when he was speaking. If you have two strong candidates for Chief Minister, one is elected and one is defeated, and it does not matter who they may be, the one who is defeated is not going to support the elected Chief Minister to get the strongest possible team in place. I cannot believe that to be the case. If you have two people with different policies up for Chief Minister, one is elected, one is defeated, is the defeated one going to wish to see the elected one succeed?

Mr Cannell: Yes.

Sir Miles Walker: Well, the hon. member says, 'Yes.' He has his right to his own opinion. I do not share it, Mr President. In the real world it will not happen.

Mr Cannell: Oh no, not in the real world, no.

Mr Cannan: This is not the real world.

Sir Miles Walker: That is the problem, Mr President, for some members this is not the real world, and it jolly well ought to be. (**A Member:** Hear, hear.)

Mrs Crowe: They are in fairyland, Miles.

Sir Miles Walker: The issues we are talking about are not issues to joke about. (**A Member:** Hear, hear.) They are the very essence of government and parliament and that correct balance and its continuance in this community of which we are all so fond. So let us not jest about them. Let us have a bit of fun by all means, but the issues are serious ones.

I hope, but I rather think otherwise, that a majority of members will vote against the contents of this report because it seems to me and I hope it seems to the majority that it takes us back and I think we should be going forward (**A Member:** Hear, hear.) and if we have not got the balance right, then let us look forward and find another mechanism which helps redress it, but let us not go back. The issues are far too important for that, and I believe that the thinking people outside there in our community want to see a stronger executive and not a weaker one, and I do believe, along with the comments made by Mr Brown, that many of the proposals made in this document will give us a weaker executive rather than a stronger one and again I think that is a backward step. I am not going to support it.

Mr Rodan: Mr President, the remit of the select committee was to consider and evaluate the operation of the ministerial government and to report, in other words to take a temperature check on the ministerial system, there having been much debate in the 1980s leading up to what was unquestionably the very, very bold move at that time to move on to a system of ministerial government, and the temperature check has been duly taken and the report is that by and large the system works well and is, as has been referred to, a massive improvement on what went before. That is not to say that there are not various views represented in this hon. Court, which have been expressed this afternoon very forcibly, that have not been considered within the committee itself, because I certainly hope that this select committee has been sufficiently objective not to have stuck with preconceived ideas but to have looked at the issues and to have been very conscientious in seeking views and assessing them and I

believe it has been done. There is nothing that has been said this afternoon that was not thrashed out within that select committee.

The views that were canvassed are well represented in this report and make most interesting reading, both the written and the oral evidence, and I do not think it can be claimed, and indeed in fairness it has not been claimed, that this committee has not looked exhaustively at all the options.

It has been pointed out that in the Isle of Man there has evolved a unique system of separation of the executive from the judiciary from the legislature, from the parliament, and this is certainly far in advance of the other Crown dependencies and represents, while the hon. member of the Council is undoubtedly correct, what can from the outside seem a confusing system but nevertheless there are checks and balances present which are there by both evolution and design.

Now, it is very important that we do from time to time evaluate ourselves and the way we operate and this report, in my opinion, goes along way to highlighting one particular difficulty in this process of evolution in the Isle of Man and that is the role of the public in electing a government and the way that that government agrees and drives forward policy, in other words its mandate to government.

The first issue and recommendation within this report, and it is the one that many people have focused on, is the Chief Minister's exclusive right to choose his team or not and the report advances the proposal that Tynwald approval should be sought by the Chief Minister for nominations to his team and when you examine that proposal in the light of the evidence and in the light of a logical appraisal of the alternatives you are led to the point of having to recognise that the present system which we have today whereby the Chief Minister has the sole right to choose is more appropriate to a political system that is in fact different from that of the Isle of Man. If we had here a situation where the electorate voted for a potential government and a potential Chief Minister before an election, rather than an election simply being the opportunity for the public to choose individuals who have the delegated responsibility to choose the government leader, then that would be quite different. Any Chief Minister, having led his team to victory at the polls as candidates, would certainly then be entitled to pick from that team his own ministers, in my opinion. But that is not the system that we have (**A Member:** Hear, hear.) It is not the system that operates and I hear people saying 'Thank goodness.' Yes, okay, thank goodness, but please recognise that the system that you do have is appropriate to the system from which you say thank goodness we have been saved. The system we have is a different system and I therefore see it as being necessary for the delegation of responsibility for forming a government after an election that the public gives to members of Tynwald being taken to its logical conclusion by requiring not only the Chief Minister but also the ministerial team having Tynwald approval. It is the logical consequence of the system that we apparently prefer.

Mr Brown: Why?

Mr Rodan: Now, I see therefore we only have two basic choices: we either change the system to one of political parties either going into government or opposition as a result of a general election when the Chief Minister elect then gets on with the job of government with his chosen team, or we make sure that the delegated authority which the electors give us in this

Court, or certainly in its elected branch, to construct a government extends to a say in who should be in the team.

Now, I say that not only because that is the view I have always held but the evidence actually in the report bears that out, because when one considers such questions as 'How in practice does a Chief Minister choose his team? What are the criteria that he applies?', if one looks at the oral evidence given by the former Chief Minister, the hon. member for Rushen, Sir Miles Walker, when he was certainly asked about the criteria for selection of members to the team, and the hon. member is perhaps uniquely placed to answer those particular questions, what he said was that the Chief Minister has to have regard to a lot of things in putting together the team, has to have regard to the geographical spread of members, has to have regard to the personality of members, working relationships and the ability of people to fill the posts. He also went on, after further questioning, to express the view, to consider the constituencies they come from: 'If you have a three-member constituency I would suggest all three should not be ministers.' So they are fairly reasonable criteria, but the one criterion that was not actually volunteered to the committee under examination was the question of policies of members. The business of government is about surely a co-ordinated programme of policy for the ensuing five years. When pressed the hon. member for Rushen did agree that it was certainly one of the considerations.

But I will say I was fairly taken aback by the fact that policy positions were not judged as the most important basis on which to assemble a team, because that team is all, surely, about advancing policy, and I think that highlights or brings home a lot of the difficulty we have under the system whereby after an election is over, only after it is over is then policy graciously unveiled or revealed to the electorate who have just voted as to what is to be the programme for the next five years by the system we have of electing a Chief Minister who, in the view of many in this hon. Court, should then have an unfettered right to choose his team. I would submit, and the report has come to the same conclusion, that it is not appropriate for the Chief Minister to have that unfettered right under the system and that we prefer and that Tynwald approve the delegated responsibility of the people of the Isle of Man to this Court be further extended in determining how the policies will be carried forward in a co-ordinated way.

The report has also flagged up the value of a standing committee to assist the process of parliamentary scrutiny. It has not made it a principal recommendation but it is important and significant that it is flagged up as an issue for further examination by the constitutional committee, and I think it does that in order to progress better the question of policy development in the sense of government holding itself accountable to parliament.

I think it will bring practical benefits as well in that it will reduce the necessity for so many select committees to be appointed to look at particular questions. Issues of the day could be referred perhaps to this standing committee and it would enhance the value and the worth of parliamentary scrutiny and the logic or it would dispel the illogic, which is often expressed in this Court, of members being in government and serving as members of government and having the temerity later to question government policy. To me that is a very, very real difficulty and one I think that could be partly resolved by looking at this question of a permanent standing committee on which members would serve as an alternative to being in government, which is not to take away the rights from everyone else to scrutinise government, but I think it would help the distinction process of parliamentary scrutiny.

Mr Brown: Without party politics?

Mr Rodan: Whatever happens to this report this afternoon, whatever happens, one recommendation I do hope will be taken on board by the Council of Ministers, by government, is this question of ministers having the right to pose written questions because undoubtedly we are all here at the behest of the people who elect us and to whom we owe our first responsibility, whether we are ministers or not, and it is very important that our constituents understand that we progress their interests and represent them and are seen to represent them and an impression can be derived that by not having the ability to pose even written questions if you are a minister, you somehow are not representing your constituents properly. Now, we know about the alternative ways in which we do it, but I come back to the point which is to be seen to be doing it, and this will be a way which will not undermine government, undermine the Chief Minister. It is perfectly possible and ought to be unquestioned that the system would not be abused and it would be done properly and not in a negative or a destructive way. So I do hope that that will be taken on board.

There is much of value in this report. I have expressed my view and I do hope it will get wider support from this hon. Court.

Mr Cretney: Hear, hear.

Mr Lowey: Mr President, first of all I would like to congratulate the authors of the report. It is one of those few reports - perhaps I am getting too old now and long in the tooth - that actually excited me a little and made me read it from the front cover and not go to the recommendations; if I went for the recommendations I would have a long look at the conclusions. But it was an interesting report. But, like Mrs Christian, the hon. member of Council who says really at the end of it a lot of it is to go back to a committee to look and see if they can work it up, and that is no bad thing either, I think it does focus at the end of the day on really one issue, and that is why I think most of the debate today has been really about one issue and that is, to quote the last speaker, the hon. member for Garff, the unfettered right of whoever happens to be the Chief Minister to pick his or her team.

Again you have had the history lessons of how we have arrived and where we have been. All I would like to say is when we first started out the Chief Minister was elected with no manifesto, he was just elected on the say - so of a proposer and seconder, and the ministers were then approved by Tynwald. Now, the first change was we decided that we should get rid of that and if the Chief Minister was to survive as an entity he should have the right to pick his own team. Now, we have changed it yet again, and this is what I want us to remember: we now have the Chief Minister who has to produce a manifesto, all right albeit after the election. But no-one need tell me that the people of the Isle of Man will not know who the front-runners will be for the Chief Minister and when they elect the individual in their constituencies it will be paramount in that constituency, and unless you are wanting every individual elector in the Isle of Man to have a say in who is going to be Chief Minister, then I am afraid that is the system we have got.

Now, I agree with Sir Miles when he says the system we have put in place is a huge advance on what we had before, obviously, but is envied externally by our main competitors or some of those who we tend to evaluate ourselves with, namely the Channel Islands and other small jurisdictions.

A strong executive is essential, and if I have one criticism of the present administration it is that I do not think they are strong enough, and collective responsibility is the key in that. But that brings us to what I would call the counter-arguments of what we really ought to be looking at, and it is not so much the make-up of whether the Chief Minister should pick his team or whether then it should be vetted, because if I take the last speaker, the hon. member for Garff, Mr Rodan again - the hon. Mr Rodan, sorry, the minister - he says the Chief Minister should not have an unfettered right to pick because he only comes in afterwards and has his say, but then I waited for him to tell me why this magical formula then, if he puts his team before Tynwald and it is approved, somehow legitimises it.

A Member: Hear, hear.

Mr Cretney: Political accountability.

Mr Lowey: It may be accountability, I hear, but then we have already heard that the ministers are accountable to parliament, and that leads me on to my very next point. The real issue is strengthening parliament to compete with a strong executive, and that is where you ought to be keeping your eye on the ball, that is what it is about.

Now, when I was a minister, and I have been a minister, I did not feel superior, and mind you, now I am a backbencher I do not feel inferior -

Mr Delaney and Mrs Hannan: Hear, hear.

Mrs Cannell: Quite right.

Mr Lowey: - and that is what it is about: it is about confidence first of all. If you have confidence in putting your faith in a man or a woman to lead the Island, then you should have enough faith then to say, 'Get on with the team, and on your head be it -

Mrs Crowe: Absolutely, yes.

Mr Lowey: - but meanwhile we will hold you to account, we will hold the ministers to account, hopefully in this forum and in both branches, but in this forum in particular where policy and financial matters are made.'

So I am looking and I am sorry there is not an amendment where we could refer it back or what-have-you. So there are going to be stark choices. I am not afraid to take a stark choice. While I enjoyed the read (*Mr Cretney interjecting*) and while I will go for a lot of what they say in going to discuss it, I come back to this very key point of whether the Chief Minister should have the right, the unfettered right, and this is where I disagree with my hon. friend. I believe he or she should. Now, that does not make me a devil, it does not make me despise the views of those who hold opposing points of view, but I do think there was great talk earlier this afternoon of evolution. I coined a phrase, and my hon. friend Mr Delaney will remember it when we were in the Tourist Board together before, where I think one of our phrases was 'You'll look forward to going backwards.' 'You'll look forward to going back.'*(Laughter and interjections)* Let me finish there. Well, near enough.

Mr Downie: You were right the first time!

Mr Lowey: But this really today is, when you think of it, going back. Now, there is nothing wrong with going back if there has been a mistake, but all the evidence points to the contrary, everything points to us getting better.

Now, nobody has made a case yet, and maybe Mr Speaker will and persuade me later, that it is all back on that one issue. I have yet to hear the case being made, and as I said, as far as I am concerned it was a very good report. I think it is healthy, I think it was thought-provoking. I did think the evidence that was produced was good, but I am not persuaded and if we are really thinking that we are doing something right, we should stick with it. Will somebody tell me why nine people approved by this Court - and I was approved on two occasions - made that more legitimate than the other ministers when they had been appointed by the Chief Minister to serve? I cannot see any difference at all, I really cannot.

Mr Gilbey: Mr President, I cannot agree with this report for various reasons. The first is if we start with the summary of recommendations it says, 'We recommend that the Standing Committee on Constitutional Matters should consider the terms of a motion to be tabled in Tynwald Court determining the scope of the convention of collective ministerial responsibility and in doing so take full account of our analysis of, and observations on, the convention, and report.' Now, one of these opinions, which I am surprised no-one has referred to already, is in the middle of page 19 where it says, 'Secondly, one of the stated exceptions to the operation of the convention, as understood by the Council of Ministers, is that a minister joining the Council of Ministers with a declared political position which is not shared by the Council may maintain that position but not actively promote it', but it goes on, 'While recognising that Ministers must be drawn from the relatively few Members of Tynwald, many may consider that it would contribute to more effective government were a Member, who held a declared political position contrary to a significant policy adopted by the Council of Ministers, not to be nominated as a Minister'.

Now, I cannot believe that one should consider such a move. Everyone who is in politics is probably only in politics because they have a strong opinion on something. Is one to say that those who have strong opinions, one of which or two of which, may not agree with the Council of Ministers then can never be in the Council of Ministers? Can you expect people of honour and integrity, having said one thing yesterday, to say another thing tomorrow when they are in the Council of Ministers, and can anyone really believe that in any organisation every single member agrees with the main policies of that organisation? I should not think there is a single member of the Council of Ministers who agrees with every one of its policies. I should not think there is a single member of the APG who agrees with every one of its policies.

Mrs Crowe: Oh yes there is. *(Mr Cretney interjecting)*

Mr Gilbey: I should not think there is one member of the Labour Party -

Mr Cretney: Oh, we do.

Mr Gilbey: Well, they certainly don't in the Labour Party across the water.

Mr Cretney: That is why we have been here a long time.

Mr Gilbey: They certainly do not in the Labour Party across the water and we know very well that the Liberals do not agree, we know that the Conservatives do not agree. So to try to bring in something like this, which clearly is suggested should be taken into account, I think is a fundamental reason for not agreeing with this report. But there are other reasons as well. I was amazed to hear the hon. mover of the resolution actually expressing concern about the position and powers of the Treasury. I think we should be thankful for the position and powers

of the Treasury. It is largely through those that we have got one of the strongest economies in the western world, an economy that most people would be jealous of, with no borrowing, balanced budgets, surpluses in our budgets.

Then moving on, I totally agree with the hon. member for Peel that a Chief Minister should pick his own team. If you put a person in that responsible position to lead an organisation you must let him pick his team -

Mr Cretney: Or her.

Mr Gilbey: - because if he is to be responsible for the success of this team, how can you hold him responsible if he does not pick it but has other people foisted on him?

Now, the hon. member of Council, Dr Mann, and I may not have agreed this morning about egg labelling, but I certainly agree with him when he says he is delighted it is now obvious that political parties will not find favour with the public or with members of this hon. Court. Those of us who have ever been in political parties across the water will know they are the last thing you would want to foist on the Isle of Man, and why? Because political parties think more about the party than the good of the people they are meant to represent.

Mr Brown: Hear, hear.

Mr Cretney: Nonsense!

Mr Gilbey: Now, the hon. member for Garff, Mr Rodan, wants a committee of parliamentary scrutiny. I cannot see why we need that. Surely this should be done by this hon. Court through branches. They are small enough to do it, and they do do it, and I think they can do it very effectively.

The final point that I just cannot agree with is the need for ministers to pose written questions. As the hon. member for Garff admits, ministers can get the information they require in many other ways and relay it to their constituents, (**Mr Brown:** Hear, hear.) and if they are looking after their constituents properly I would argue they do not need to ask questions in writing to prove that they are looking after them: the constituents know it jolly well.

In all I would say, if it ain't broke, don't mend it and we should leave the ministerial system as it is. (*Mr Cretney interjecting*)

Mrs Cannell: Well, Mr President, we have heard comments from previous ministers here today, the previous Chief Minister in relation to this report, we have had members allude to the Manx Labour Party, the APG and I believe we have just heard comments from perhaps the only Conservative within this parliament.

Mrs Hannan: Oh, come on! Good grief!

Mrs Cannell: But turning to the report, whether or not members have read it, what I would say is we are made up from all persuasions and I indeed think that we are a very balanced parliament and I think that the committee was a very balanced committee, although I am a little prejudiced in that it would have been more balanced had there been an APG colleague on it, but nevertheless there was not.

If members read all of the report they will have noticed that those people, some of whom were hon. members themselves and members of the public, did go and give oral evidence,

and I think that is very interesting too because there was not one piece of oral evidence given that was entirely complimentary to another. They all had different facets to them. Some obviously were defensive of the present system. Not surprisingly of course present ministers within this government were very defensive of the present system, and one would expect them to be so.

Mr Brown: Why?

Mrs Cannell: Of other members of the public, some were defensive, others saw that changes, because it is evolving, were required.

I myself gave evidence and I was quite strong on my view. My personal view was that Tynwald should elect a body of 10 individuals to form a cabinet and from within the 10 they would nominate a leader, their Chief Minister, and then that would then come back for endorsement. Mind you, I did say the House of Keys as opposed to Tynwald because I believe it is the Keys that is the publicly elected chamber and it is the Keys that to my mind is the powerhouse, but I do have respect for Tynwald Court, sir, and I would not have a word said against Tynwald Court. Of course that was not taken up by the committee.

Another point which I felt was interesting and worthy of deliberation - I dare say the committee did consider it - which I think is important is that a minister, when appointed, he or she is at the very sharp end of that particular department. They have to uphold, they have to defend, they have to forge forward with the policies of that particular department, and their responsibilities quite rightly are quite heavy. In view of that I felt that no minister should occupy a ministerial position indefinitely, and we do have a position here where one of our ministers who is serving at present has been a minister for I believe almost 15 years. Now, to my mind that is quite improper. (*Interjection*) Thirteen. Well, it is over a decade, which I believe is quite a long time. I would have liked to have seen a mechanism whereby all ministers, after serving a period of time and giving their best, which they would do in the first few years because of the demanding situation - and the same can be said of politics in general that you do your best in your first few years and after that you begin to flag, which is understandable because we are human, all of us, whether we are ministers, backbenchers or whatever we are, we are human beings - at a certain point in time should be made to rest. (*Laughter*)

Mrs Crowe: Shoot them!

Mrs Cannell: Now, I am not suggesting they should be laid to rest, but made to rest -

A Member: That is much better!

A Member: Adrian has gone!

Mrs Cannell: - that is to say that I felt that they should not qualify for nomination, whether it be through a selection process of the Chief Minister or the parliament or the Keys, but once they have done a certain length of time they are not eligible for selection for at least two, possibly three years, by which time the reins would then pass to a backbencher.

Now, my argument at the time was that that was going to provide for an enhanced stability for the parliament. If you have a situation where you are going out to general election, the House of Keys general election, half of the Keys has enjoyed a ministerial position, is presently serving in a ministry or has enjoyed serving in a ministry, and half have not, and you come to a general election and your half of the Keys that have enjoyed ministerial

responsibility all lose their seats, and you get a fresh batch of candidates coming in with no previous political experience, on top of which you have half a parliament already returned who equally have no ministerial experience. That is the type of scenario, looking into the future, and I was trying to come up with ideas to prevent something like that happening. In other words if a minister was able to take a rest for two or three years and sit back from the leadership role and a member of that particular minister's department took the reins, was at the sharp end for two or three years during the rest period, and then it could resume back to the minister if that was the wish, it would provide experience for the department members serving on that particular department, it would provide experience for backbenchers, it would spread the wisdom so it was not all within the closed shop, within the ranks of the Council of Ministers, but it would be spread. But that has not been touched upon and I am disappointed to see that it has not.

Having said all of that I will go along with the select committee report and the recommendations because I believe it is a step in the right direction. I do not think it is going backwards. It is not going backwards, it is going forwards. It made quite strong observations. It has not covered everything, but one would not expect any select committee to actually cover everything, not unless they sit and deliberate for a five-year term or something, but they are referring a lot to the Standing Committee on Constitutional Matters who will then have to come back to us anyway.

The only query I would have is on the second page of recommendations. It says, 'Consequently, we recommend that legislation be introduced', but it is not quite clear who will be expected to introduce the legislation, whether that would be a Council of Ministers function if that is the intention or whether it would be open for a member to take it in order to move forward with such legislation.

I would just like to say that the hon. member for West Douglas's remarks in relation to the explanation of the personalities contained within the select committee, and in recognition of the personalities and groupings that appear in parliament and in Keys, I have to say are spot on. He always hits the nerve and he hits it rightly, and it is a great disappointment to me that the hon. member is not a member of my opposition group, as we are so referred to.

Mr Shimmin: Not yet.

Mrs Cannell: Not yet. Oh well, there is a promise there, Mr President.

Mr Delaney: Stay where you are if you want to be a minister!

Mrs Cannell: I also hear comments from our previous Chief Minister, and I have to touch upon these because I took exception to them. One was that the select committee are saying, 'Suck it and see', and that approach is dangerous, and yet I remember on numerous occasions when the hon. member for Rushen was Chief Minister and I was sat in the public gallery and I listened to the hon. member, when he was Chief Minister, saying, 'Well, it's not perfect; let's suck it and see what happens: we can always tweak it a bit later on', and he advocated that very action in relation to lots of reports, prospective legislation and so on, so I find it ironic that we are now being told do not suck and see it, but when he was in the steering seat of course it was 'Let's see what it's like.'

He also mentioned the last time when we came in from the general election that we had two candidates running for Chief Minister. I think that is a very healthy situation, to actually have choice and that members actually had a choice. They made quite clear who their preferred choice was at the time. There was nine votes difference in the totals. There is speculation as to where the nine came from, but I will not go into that, but there is speculation that perhaps it did not come from the floor but came from the Legislative Council.

But the hon. member for Rushen said in the real world it would not happen. That is to say that the failed or unsuccessful candidate would then be prepared to work with the new Chief Minister and his team. But that is what did happen, because our Chief Minister at that time invited two groupings, two members of the APG group, to join his team and they did, and at that time I think - and I do not think the Chief Minister would disagree with me and I am sure he would be very quick to if I am wrong - at that time those two particular members made admirable ministers for the Chief Minister and I believe they were very faithful and loyal to him during their service. I know that there was never public conflict, there was never public embarrassment that I have witnessed over the last three years from time to time with certain ministers because there seems a lack of a co-ordinated view and collective responsibility, but then I think, well, we have a consensus, this is consensus. I believe consensus has not and does not work, and that something does need to be done.

The report also touched upon - and it was something I was cross-examined upon when I was giving oral evidence - about there being a standing committee, that is to say not all elected members would have a departmental or a board responsibility, but they would be kept free to serve on a committee for scrutiny purposes, and I believe there is a lot of merit in that and I would like to think that the Council of Ministers or somebody will look at that and perhaps bring that forward because there is much merit in that. If we look at other parliamentary situations you do have standing committees that actually scrutinise proposed legislation before the House even begins to consider it. There is a proactive approach there and I think we would be missing out if we were not looking at being more proactive in the 21st century.

Lastly I would just like to say that I believe that ministers should be able to put questions. Again I was cross-examined on this and my view was that a minister should be able to put a question on behalf of his constituency, or if not able to question, was able to vote against a situation which he or she did not agree with, that there had to be some kind of recognition, particularly where you have a constituency which is represented by one member, and of course contained within this report there is evidence in relation to the problem that Braddan residents feel that they had and the frustration that they feel they have endured because their elected member is a member of the Council of Ministers. It is a very pointed part of the report in relation to that and I do not think we should ignore that.

But just lastly, I always enjoy it when the hon. member for Castletown gets to his feet because he and I so often conflict with our views and if I did not have an intention to speak on a debate he certainly prompts me to do so, Mr President.

The President: Convey the message.

Mrs Cannell: Yes, Mr President.

The President: It is missing.

Mrs Cannell: The hon. member for Castletown said that if we were to go along with the recommendations contained within the report ministers would refuse to answer if a question was put because they would feel that they had some kind of supremacy because their appointment had been endorsed by Keys or Tynwald, whichever is to be the proper place for doing that. But I would say this, that under the present system ministers can turn round and refuse to answer. Ministers can get up and be blasé and just merely say yes or no in response to an answer, which I think is verging on rudeness at times. But it is done and it is exercised by ministers now, to my knowledge, but that is a standing orders issue. Standing orders provide for a minister to not respond if he or she does not want to. That has got nothing to do with the report we are being asked to support today and the recommendations in it. If we do not like that, well then we should lobby the Standing Orders Committee to change that so that every minister has to give a form of answer and cannot back off from that. So that is a bit of a red herring, I think, that has been thrown in the pot and I think we should disregard that.

The hon. member for Castletown also said that the recommendations do not have any regard to the evidence. Well, I would agree with him that they do not have any regard to the evidence that he gave, but in relation to the evidence that others gave I would say that they do have, there is a lot of regard there, because the select committee obviously listened to what all contributors said, all the written evidence and the oral evidence, and I think they have come up with a good set of plans that is an improvement, is continuing the evolving situation and I am very pleased to support it and I congratulate them for all their hard work.

Mr Crowe: Mr President, I just have two things to say about this report which is fine and well documented.

As far as the questions for ministers asking questions, I do not see that as a problem.

The problem I see, which is a weakness in the report, is the way the ministers are appointed, and perhaps the hon. Mr Speaker, when he sums up, would clarify this point for me, but we have a clear situation that when the Chief Minister is appointed, he is appointed by 17 votes, it is a clear majority. It is the next stage that I just want some clarification on because if he chooses his team of nine and it is brought back before Tynwald for a vote, if that fails he then has to submit each member of that first nine individually for approval by Tynwald. If some of those are not appointed by or supported by Tynwald he has to go through the remainder of the members until he reaches his nine people. Now, the problem is, and I know you may say it may never happen, you could reach a point where you exhaust all the members of Tynwald and the Chief Minister does not have his team. In that case I would imagine it would be incumbent upon the Chief Minister to stand down. You would then have another nomination for Chief Minister, so you could go through this, and I think I would like some clarification on how you would resolve that, whether you would have fail-safe mechanisms in the proposed legislation, but I think we should not overlook the fact that you could actually weaken the present system rather than strengthen it.

I think the inherent message from the report is that it is mooted that Tynwald should sanction the ministers and the team of ministers, so I think the message is clear. It is the delivery of that message which is the part that I feel a bit uncomfortable with, and perhaps if the hon. Mr Speaker can clarify that and give some assurances on that I will maintain my position until I hear the summing up. Thank you, Mr President.

Mr North: Mr President, I thought I had better have a few words on this one, seeing that it has been a very interesting year for me as far as the constituency goes and the position of a minister. This is the third House where the ministerial system has existed and it is still an evolutionary process, and from my experience I do not know the previous system but certainly in terms of our responsibilities in the international field now there is no doubt whatsoever that this system works and we are not looking to change that now, thank goodness, although there were some members, when I first came into this House, who were trying to change it, and I just do not think that would have been a good idea at all.

But we are maturing and in my last manifesto, having been round the majority of my constituency, there was a strong feeling by a large number of constituents, and, all right, it had been perpetuated by certain members within this Court in the last House that the Council of Ministers should be elected by Tynwald, and I can remember saying to the hon. member of the Council many years ago that I thought it was six of one and half a dozen of the other, the argument, but I have come down, and I came down in my manifesto, that I believe that the team should be put to Tynwald because of the perception of the public outside. Now, the fact is that in a few years they may want to revert it again. Fine, and I know it is a finely balanced argument. I do not have any qualms about those who think it should go the other way. It is my belief that the public certainly feel at this stage and did certainly at the last election that by perception they should be elected, so I go along with that one.

The hon. member for Garff mentioned you have to be seen to represent your constituents. Well, I have been the victim, I think, of what somebody told me they thought was treacherous political guile and certainly there has been a lot of ridicule thrown at me because I could not ask questions of another minister in this hon. Court or in the House of Keys. I was ridiculed in public for not being able to do that and I was able to answer the letters in the paper, that the rules are there and all I was doing was following the rules. Now, if you are going to be ridiculed for following the rules of this hon. Court and the House, then I think we have got something wrong in our democracy, and the fact that this report recommends that we should as a minister perhaps be able to put written questions - yes, maybe that is a compromise and I do not have a problem with that. I find it a little bit strange that any constituent, as they do now, asks you to write to another member and you do and you get an answer. What is wrong with that? Where is the loss of the democratic right? Now, if it is a written answer you do not get the publicity, but some of my constituents have been asking other members, who are not present in this House at the moment, to ask questions for them for years and they have been doing that, and that is fine, and others do within my constituency and I know others do in others, and I do not have a major problem with that at all, as long as they get what they want, but to say that people lose their democratic right I just think is totally over the top.

I think the other point which I suggested in my evidence was that the ministers, I believe, should come from the House of Keys. I know that was not a recommendation, but I also believe that if you do that, because of circumstances where I think, as somebody else mentioned earlier on, 50 per cent of this House could change within one election, you should give the option to the Keys to elect a minister from the Legislative Council, and I think that is a compromise that I would certainly like to see.

So I am carrying on with my manifesto commitment which had lots of policies in it which I have adhered to and I shall be voting for this report.

Mr Singer: Mr President, my initial comment is on the first and second recommendations in the report, 9.1 and 9.2, and I would like to just talk briefly about the ministerial system and the way it has evolved and the way it now works rather than the mechanics of appointments to it.

The report recommends some relaxation for ministers of their ministerial responsibility on matters, particularly enabling the placing of questions and matters within their own constituency, and I personally cannot quarrel with that recommendation. I read through this complete report and I took note of the detailed submission to the select committee of the hon. member Mr Gilbey, but that was of course before he joined the club. I thought that the hon. minister's argument that ministerial responsibility should be applicable to the budget, the policy debate and one or two other major items was sensible if the Council of Ministers is not to be seen as a political party in its own right.

The hon. member also, interestingly, stated that ministers should not be expected to support the whole of the Bill unless it was absolutely fundamental, such as the Customs and Excise Agreement. These, I believe, are honest views and I hope that the hon minister does stick to those because if the Council of Ministers of the time could act in that spirit I think we would see not only a more coherent and democratic government but also a government which would have the respect and support of the parliament much more than it does now. What we have now, or certainly appear to have, is a Council of Ministers within which some members show their loyalty and others go their own way without punishment. The ministers seem to have, in my view, a pecking order, some perhaps more powerful than the Chief Minister and they are immune to the rules. Certainly things have occurred during this administration which would not have escaped the wrath of the Chief Minister of the previous administration. We have seen ministerial responsibility ignored, lack of support and even hostility to other ministers, including the Chief Minister, all this in open court, and depending on the pecking order, little or no action appears to have been taken, and I must say that the hon. member for Castletown has exhibited this example in this Court of lack of ministerial support for his own colleagues, and that is something that has been clearly noted and I think is to be regretted.

The hon. member of Council, Dr Mann, did refer to the healthy way in which ministerial responsibility should work but often does not, and I think he was absolutely right on that particular matter.

There is comment in 5.1 of the report on ministerial responsibility as regards inconsequential matters. The report comments that what is inconsequential may vary in the eye of the beholder, but what we do see is the obvious powers of certain ministers and the Chief Minister to invoke ministerial responsibility on matters that can not be interpreted in any way related to established policy, the budget or any matter of policy at all, and this therefore gives the perception that in the Council of Ministers what we have is on one side the table thumpers and the rest who sit there like rabbits in headlights.

This was ably demonstrated in another place last week when I sought leave to introduce a Bill, and the Council of Ministers, with the co-operation of the DHSS, decided to refuse permission without even having heard the argument.

The President: Hon. member, this is not the place to reflect on proceedings in another place.

Mr Singer: Thank you, Mr President. What I am trying to say is that matters of concern and policy should be the concern of the Council of Ministers, but not inconsequential matters, and that is what is happening and therefore I believe that the public, in seeing what I believe is an abuse of the system which was set up for ministerial responsibility, degrades the whole of the ministerial concept.

The hon. minister Mrs Christian talked about changes taking place because of quasi-groupings, but as has been said, groupings are not new. With due respect to certain members in this Court, we have a weak Labour Party and have always had a weak Labour Party, but there will always be groupings, official or otherwise. Even if you could put a ban on groupings, likeminded people will vote together but a small group of individuals against the Council of Ministers gets nowhere.

There is no large grouping to challenge the Council of Ministers without others joining en force and therefore the Council of Ministers, together with its wannabe ministers, can defeat any Independent and any grouping. The small jurisdiction as we are now includes and must include all shades of opinion in government and therefore we must rely on fair treatment and tolerance within the Council of Ministers and within this hon. Court, and we do not have that now.

As for the comments of the hon. Sir Miles Walker, I was quite surprised for him to imply that if he had had, when he stood for Chief Minister, three members perhaps standing against him at his election he would not have included them in his administration, however competent they were, because he could not trust them, because they would be there looking to stab him in the back. That is what he said: he could not rely on the support of somebody who had stood against the Chief Minister. And I am surprised at that comment and I think that is regrettable because I think that once a contest has taken place, then one can rely on the responsibility of other members to fully back the Council of Ministers, of which they are a member, to back the government and to back this Island.

As far as the other select committee recommendations are concerned, I support the overall tenor of the contents, although the way forward is not as clearly defined as I think it might have been. Thank you, Mr President.

Mr Quine: Mr President, I am reasonably comfortable with the recommendations contained in this report and, contrary to some of the views that have been expressed that it is unbalanced, it does not acknowledge reality and that much is missing, I do not think we could expect much more. I think it makes very interesting reading and I think it serves its purpose, but quite clearly, as the report itself makes manifestly clear, it is a process to carry things forward, it is just starting to carry the ball forward, and as long as we take it and view it as we should do in those realistic views I think this report is very beneficial and well worth supporting. It will move us forward in the right direction and I do not think we could ask any more of any single report.

There are a number of matters on which I would particularly comment and I am picking these up from the report.

The report deals with the relationship between the Council of Ministers and the Treasury, and contrary to what one other member has said in relation to this matter, I wholeheartedly endorse the view contained in the report that the contemporary powers of the Treasury are out of step with the development of ministerial government. I think it is unacceptable to continue the position where the Treasury have statutory powers exercisable over departments. I think we have now reached a stage where there is a level above the Treasury at which those matters should be resolved and that is through the Council of Ministers and ultimately through this hon. Court.

I am unhappy with the position which is set out in the report where statutorily the minister is in effect the department. That has never sat comfortably with me and I know from my own experience with more than one minister that it does not represent the situation which happens within a department anyway. The actual position is of course, as we know, that ministers with their members work in concert and tend to take a consensus view and the department moves forward. (**Messrs Houghton and Gilbey:** Hear, hear.). That is the way it is, that is the way that you will get harmonious workings, and therefore to have embodied in statute that the minister is the department I do not think helps that process at all, (**Mr Houghton:** Hear, hear.) and I find that embodying that in statute is incompatible with the proposition that collective responsibility - and this has been discussed within the report - should be attached to members of departments. I am not saying that I oppose under certain circumstances collective responsibility being attached to departments. I can see circumstances where that could be a distinct advantage. But what I am saying is that if on the one hand you are saying the minister is the department, on the other hand you are saying to members of the department who are recognised in statute or not recognised in statute as being of any significance in the department and 'You will back up the minister in his decisions', they do not sit comfortably with me at all.

Certainly if we are going to move forward to a position where we have collective responsibility attached to a department in this sort of scenario, then surely one of the exceptions to the rule must be where a department policy is overruled by the Council of Ministers. It is one thing to ask a member of a department to say, 'Yes, I was part of that decision-making process and therefore I will back up my minister', but if the minister's proposition is kicked into touch by the Council of Ministers, I do not see the case for looking to members of departments to back that decision. It is up to the Council of Ministers to go forward and seek to persuade Tynwald as a whole that that decision is the correct decision.

Staying again with this question of collective responsibility, and it is dealt with quite extensively in the report, one of the background reading documents which has come to my hand is this document called *The Scottish Executive - A Guide to Collective Decision-Making*. I found that very interesting reading and very current, and I presume other members have had access to that document. But staying with collective responsibility, I think when we are considering to what extent collective responsibility should attach to the Council of Ministers or indeed if it is progressed to a point where departments are going to have and recognise the concept of collective responsibility, I think we have to work from the position of members within government. In other words if we have a position where virtually all members of government are going to be tied down through membership of departments, membership of boards et cetera, if that is going to be the situation, then I think we should be looking to having significant

freedom of action within the framework that we provide for the Council of Ministers to give the ministers more freedom of action. If we are talking of a situation, which is again brought out in the report, where there will be a number of members who are not involved in government but will be committed to the parliamentary checks and balances within the administration, then I think if that is the situation the balance to be struck in relation to what is or is not collective responsibility would be different. So I can see that there is a need to look more closely at this issue of collective responsibility before it is brought back hopefully to this hon. Court.

I am not persuaded by the argument in the report that no more can be done to give the electorate a more direct say into the selection of the Chief Minister and his policies, and I am sure other members have done likewise, and there are a number of documents within the report where different propositions have been aired as to how that could be done, but the least that could be done, I would suggest, is to make it a requirement for candidates for Chief Minister to declare their intention prior to a general election so that the candidate and the policies, if the public were so minded, could put them under scrutiny. There is nothing wrong with that and that, I believe, is the minimum that we could and should achieve.

I strongly support the proposition that the nomination of members for ministerial office should be subject to Tynwald approval. My observation over many years is that that is not only desirable, that is essential. I think it is quite wrong that the Chief Minister should be in a position of picking his own team, as it has been expressed here today. I concur with the views of the hon. member for Garff, Mr Rodan, that that concept is one that is particular or peculiar to a party political system and I do not think it matches up for what we have in the Isle of Man at this point in time.

The question was put, why should members be elected as ministers by Tynwald, why should they carry that imprimatur? Well, I would suggest there are three sound reasons, at least three sound reasons.

Firstly, there is the question of the authority which a minister should carry when he exercises such important powers as are embodied in the office of minister, and I believe that if a minister has the authority of Tynwald as a whole behind him, then that makes a difference to his standing and a difference to his acceptability in terms of the way and the manner in which he discharges his duties.

Secondly, I think there is the issue of legitimacy. Public support has to be expressed in some way, I would suggest, because we live in a democratic system, in some way for those they put into these high public offices, and therefore this issue of legitimacy I believe is an important consideration, and the least we can expect in that respect is that the public's elected representatives directly should pass judgement on who should or should not hold the office and execute the responsibilities of a minister.

The third consideration, I would suggest, as to why these members should have the support of Tynwald is the issue of public acceptability, and the hon. member for Middle touched upon this or dealt with this as well. I think we often underestimate the view of the public in terms of the say they should have in matters political. Perhaps that is because we do not have a sufficient in-depth line of communication with them, perhaps we do not provide the forums for them to more frequently and more adequately express their views, but there is no doubt in my mind that on this issue it is an issue of public acceptability and that it is, in the

view of many people outside, publicly unacceptable that one individual should be able to say, 'I shall have these people, for ever and a day if needs be, as part and parcel of my team.'

Now, another hon. member said that it is unreasonable to have responsibility imposed upon the Chief Minister unless he is able to pick his team. Well, I would just remind hon. members - and I know we are moving from the political to the commercial here, the industrial - that if you relate this scenario to one of a board of directors, does he say, 'Oh, I'm not having him. No, no, no, no, I'm not having him'? No. He will work with the team and that team will be represented through the body of opinion in terms of those who have the equity in that business.

So I believe there is an overpowering case for us to have an arrangement whereby, by all means the Chief Minister of the day puts forward his team, but it should be for Tynwald to say whether that team is acceptable or whether it is not acceptable.

Moving away to a matter that is somewhat of lesser importance, I must confess, again I am not convinced that, in the context of members being placed in departments, members' placement in departments should be subject to a veto by the minister of this or that department. Again this creates the wrong impression. If we are prepared to serve in departments, then we should accept that and it may be that we may not be happy with the leadership in that department. In most cases we are at the moment, I feel sure, but the idea that within our system of government a minister should say, 'No, I'm not having that person because I just don't like that person', I do not think that is acceptable.

Mr Cannell: It happens now.

Mr Quine: It happens now, yes, and that is why it is raised in this report, no doubt, but I think that is quite wrong, and if we are into that scenario, then this raises the question of how members should be placed in departments. Should they be placed in departments as the consequence of horse-trading evolving from an exchange of views between the Chief Minister and members who are available to serve in departments and subsequently a dialogue between ministers and perhaps some of the people who could serve in those departments, and should it be on what is essentially a casual base, or should these appointments again have the approval of Tynwald? It is a question I think we should be addressing.

I do support the proposition made in this report that not all members should be absorbed within government. I have advocated this on a number of occasions. I do not believe there is a role for all members within government. Quite frankly there is not. We have departments where we have too many members and they are there, I would suggest, purely for political reasons. It would be more productive of the time of the members and it would be more representative of the public interest to have a number of members, as suggested in the report, put forward by the committee who are available to provide the checks and balances that are required outwith government. The only qualification I would make to that is I think there must be an arrangement by which there is a rotation of those duties, otherwise you would get one block who would be on the one hand lacking from getting government experience, on the other hand would become a permanent opposition. So I think that certainly should be carried forward.

There is a lot in this report and I think there are a number of particularly important items that need further examination and it is proposed in the report that they should be examined

and we should bring them back by way of individual motion. That is right and proper and I would suggest that we should carry forward this debate by endorsing this report and then let us look in greater detail at the individual aspects which will in accordance with this report return to this hon. Court for further consideration. Thank you, sir.

Mr Bell: Mr President, I fully recognise that there is benefit from time to time for this institution to study its navel and to investigate ways of improving the system within which we work, but I have to say also there are times, both in this hon. Court and in another place, where I have the feeling of being a member of the crew of the *Titanic* wallowing in self-indulgence while the ship heads towards an iceberg.

I, as the hon. member for Rushen, I think, mentioned earlier on, moved the resolution I think in 1985, early 1986, to finally institute the system of ministerial government, and that was born - and there are still a number of members, I think, left with the same period of experience as me - out of extreme frustration with the old board system and the inefficient, incompetent form of government which had evolved out of it, but it was also stimulated on my part by a recognition, which was ultimately shared by my colleagues at the time, that the Isle of Man was moving into a new era altogether, that our economy was starting to grow, we were starting to be more of an international player than we had been before and that we needed to establish a new form of government which was more relevant to the times and indeed to give the Island the ability to compete effectively in the new markets which we were looking at. The old system had been really totally discredited and it was time to move on. That system, with its various changes over the last 13 years, I believe has served the Island extremely well and those who from time to time condemn the ministerial system really ought to have experienced what went on before (**Mr Delaney:** Hear, hear.) before they come forward with their criticism to that end.

I have to say, though - and I do not intend to go into all of the points which are raised in this document, but there is really just one area which does give me some concern because I have to compromise my own views to a certain extent - I have always believed in all the debates which have gone on over the period that the Chief Minister ought to have the power to appoint his or her ministers. He should have the authority to build a team around him, first of all that he obviously can work with, but which in his view will give the best leadership to the Island. I have supported that view consistently.

The one thing which gives me just cause for concern now, though, I have to say is what I believe was a totally unedifying experience which went on for probably the best part of 12 months prior to the reshuffle earlier this year where a concerted destabilisation exercise went on to remove several ministers from office and to force through the change. That may or may not have been appropriate at the time that the change was perhaps due. But what concerns me is that it was felt at the time that that was the only method to bring about change. I, on reflection now, am beginning to think that perhaps if those ministers had been approved by Tynwald, either individually or en bloc, that destabilising exercise either may not have taken place or it may not have been as effective and as destabilising as it turned out to be, because I would remind hon. members that that period of disruption within government, which made us, I think, a lot more introspective during that period as well, coincided with the Edwards report being sprung on us and indeed a number of, in fact all of the international tax initiatives which we are now trying to come to terms with being launched. There is a danger, if that was to

happen again, that we will find the Chief Minister and indeed the Council of Ministers taking its eye off the rabbit and being forced to fight rear-guard actions against this sort of activity.

So there is perhaps now, certainly in my eyes, a thought that whilst the ideal situation is still, I believe, that the Chief Minister should be able to appoint his own cabinet, there may well be, in the cause of creating a more stable system, an argument for Tynwald to appoint the ministers.

The one concern of course I have always had in that is not so much an objection to the principle of Tynwald supporting the ministers, but what happens ultimately if the various slates put forward by the Chief Minister of the day are rejected? And certainly in the early days there was a thought that ministers then would be individually appointed from the floor of Tynwald, and I cannot imagine any Chief Minister being able to work in that situation where people are ad hoc being foisted on the Chief Minister simply by dint of vote virtually on the spur of the moment from the floor of Tynwald, and that was something I could never come to terms with and I still will need some convincing, once a Chief Minister has run out of his recommendations, what the next stage then is to make the system work.

I have a real concern. I was early on content to listen to the debate and simply vote at the end of it, but I was very seriously concerned when the thought was put forward by the hon. member for East Douglas that as far as the appointment of ministers is concerned a Briggins' turn system could operate, that it did not matter about experience or ability or capabilities of working with his colleagues, it would be a nice idea to give everyone a turn of being a minister. Now, in some theoretical dream world I guess that is probably a nice way of living and certainly if the Island faced no challenges whatsoever, we were comfortable economically and socially, we had no external threats to the Island, that might be another piece of self-indulgence we could enjoy and would no doubt give a degree of experience either to the individual as a minister, though perhaps not the experience people would want outside on the basis of the performance of that minister.

I think there is one underlying thought which this hon. Court has to bear in mind, disregarding grouping politics, individual beliefs or whatever, while we are pursuing this particular debate today. We have one overriding responsibility and that is to provide stable government, strong leadership and direction for the Island (**Several Members:** Hear, hear.) and for parliament and for the parliamentary system. Leadership, strong leadership above all, has to be the one driving criterion which structures our approach to whatever form of government we develop between ourselves and we must do our utmost to avoid the diversionary arguments of individual ambition and the problems which that has caused the Island in the past, and it is very easy for members perhaps to laugh and certainly members who have caused a great deal of instability in some areas. We have a duty now at this very difficult time, a time which is potentially going to get more difficult in the next few years unless we keep very much on the game, to give the best possible leadership, and anyone in this hon. Court who thinks otherwise is doing a great disservice not only to the institution of government on the Isle of Man but to every single individual on the Island who we are here elected to represent. We are the guardians of the future of 75,000 people and we have to bear that responsibility very heavily, because if we lose sight of that fact and we resort to petty in-fighting and self-indulgence on the floor of this House simply to pursue our own personal ambitions, then I think the Island will be in for a very rocky time in the years ahead.

Whilst not in any way wholly embracing the contents of this report today I am prepared to support it at this stage but with a great number of reservations and I need convincing that the systems which are being recommended, once they are worked through, will be an improvement on what we have at the moment. I remain a sceptic but I am prepared to give it a chance and it is really up now to the committee to convince me that this is the way forward.

Mr Henderson: Mr President, I think it is perfectly clear now exactly where we stand with the issues relating to this document, and it is certainly perfectly clear to me why this document is before us today and why the original mover, the hon. Mr Karran, brought the motion before Tynwald in the first place, and I think all the evidence to back up what I am saying has been illustrated here today in one form or another by one or two hon. members and certainly the hon. member for Castletown, Mr Brown, has given me ample evidence of why this document is here, and certainly there seems to be this notion that anybody who steps out of line is rocking the boat, causing trouble or is doing some sort of scurrilous exercise which is not in keeping with this term 'government'. I have also heard this term 'executive' and the 'strengthening of government' and that we must be stable and we must be this and we must be that, and all that is saying to me is that everyone in here must be good little hon. members, sit quietly, go with the flow and do not do much else. Now, as far as I am concerned, I was elected and it is in the policies of my manifesto that, far be it from sitting quietly that people wanted people to test issues, debate issues and ask questions if needs be or produce motions or whatever, and that is what they were really interested in, and I believe that is one of the reasons why we are here today with this debate and certainly this report. It is very interesting how things have developed because all I can see is, it is a case of 'Let us strengthen what we have got, fine tune it, add more power to it and let it keep going in the same direction.' Why we cannot evolve escapes me. I am quite concerned that there is no reasoning behind that. I think we should be evolving and just standing still treading water is not going to get us anywhere either.

I am also concerned that the debates widen into some sort of 'us and them' grouping. Now the hon. member for West Douglas, Mr Shimmin, quite rightly identified at page 41 the members of the committee who produced this report, and logic defies me as to why we are discussing all sorts of other issues here. The Hon. D C Cretney, Mr P Karran, the Hon. S C Rodan, Mr J P Shimmin himself - you could not get a better, more balanced cross-section of this hon. Court and they have certainly, in my opinion put a lot of work into this (**A Member:** Hear, hear.) and assessed a mountain load of information and I think that is good, and I think at times a certain amount of introspection is good; we do need to examine the way things have been done.

As I say, there are two things in here that stand out. One is this issue of 'let us strengthen what we have got and lots more of it,' and anybody who does otherwise is in the 'them' camp and out in the cold, and the other thing that shines out from this is the word 'constituent'. I find that quite pleasing, that piece in the report enabling a minister to table a written question if needs be, because I think it is every parliamentarian's duty to represent the people of this Island to the best and highest quality that they can, and certainly, if it is under difficult circumstances where no other option other than tabling a question will move a situation on, well, so be it, and I think that is very good and it is an excellent point within this report.

I am very disappointed and I am sorry that other people have not picked up on that particular aspect of the report and I think my hon. colleague, Mr Rodan, did touch upon it in his

contribution to the debate but really I think it is a fundamental piece of information and it is a recognition of the electorate out there who, at the end of the day, are the taxpayers and they do vote us in, and I think they should have every right to the best representation available, and if that means a written question, so be it, although I have to say that maybe there could be a few more recommendations in here that I would like to see, but nonetheless I feel this document is good, it opens the door and I think we should step through that door and, if needs be, in time should re-examine the situation and have the courage and conviction to do so. It is all very well saying, 'Oh everything's nice and stable at the minute. What's the problem? Why should we make any changes whatsoever?' We do need to make changes from time to time and we do need to evolve because - I have used the phrase before - strategic drift creeps into the equation and, as we have heard many, many times in media comments and wherever else, the people's perception of what we are doing is quite different from what we believe we do sometimes and I think we need to bring the two back together a little bit. I think there should be more of that and give the electorate a little more credit, because there are many, people out there with much expertise.

Anyway, notwithstanding all of that I think it is a good report and I fully support the recommendations contained therein, sir.

Mr Downie: Mr President, basically I just want to rise and put down my marker as being a person who is going to support this report. I personally feel that the endorsement of the Chief Minister's recommendation for ministers by Tynwald will actually strengthen his hand (**Mr Delaney:** Hear, hear.) and I would like to feel that having had that initial strength and support by Tynwald - and do not forget, we are talking about a brand new Chief Minister coming in with a policy statement which is generally adopted for a five-year period to the next election - we then give him a clear mandate from Tynwald that, provided he stays in office for the next five years, he has the right to hire or fire without the need to refer to Tynwald for approval, so initially he puts his list in, is supported by Tynwald and he is off then and he can make whatever alterations he can provided he stays in office. I would be happy with that and I think that system would work and it would dispel this myth about having to come back to the House every time there is a change. The responsibility is the Chief Minister's.

The other thing I think we need to have some regard for: those who choose to accept the Chief Minister's invitation to serve on the Council of Ministers and who are ultimately given the sanction by Tynwald - I think there has to be some more soul-searching here and they must be prepared to make some personal sacrifices for the sake of good, strong government and I think that really is the way forward and, although there are differing personalities in this Court and in another place, at the end of the day the performance of the Council of Ministers is being judged by their ability to work together and get things done, and that is what the whole system, in my opinion, is about. I agree that a minister should have the right to put written questions because, like a lot of other people in this Court, we can get frustrated by departments and I think if we cannot solve it internally we should have that right. We do have constituents out there like everybody else and we must be in a position where, if we cannot move a thing along, we can put a written question ourselves. It is much easier than boning somebody in the Member's Room and saying, 'Will you ask. . .' so-and-so minister which we know is what happens now, so let us have a system where we can be clean and be up front.

I also would like to go a step further because I think that one of the down sides to the ministerial system is that since its inauguration there has been a myth set up and there is some mystery event that happens every Thursday behind locked doors on the third floor, and I would openly support a system where, if a minister cannot be available, there is a deputy who comes along to take his place (**Two Members:** Hear, hear.) irrespective of his political group or his views. If he has been given delegated responsibility in a department and that minister has confidence in him I have absolutely no problem in that person being along to represent that department on that particular day, and I think that will go some way to dispel, as I say, some of this myth which exists and it will definitely encourage better working relationships between the department members.

I honestly think we have got to find a way of providing a much more efficient use of our members. I am sorry to say that I am a great traditionalist and I love Tynwald, I love the House of Keys and I love the Legislative Council (**Members:** Oh! *Laughter*) but in all honesty if you look at what we are doing we are doing exactly the same as our forebears did a hundred years ago: we are trying to run an efficient, effective government in the Isle of Man but the system that is in place is more suitable for us coming in on our pony and traps one day a month and then one day a week to address the business that is before us. I think that what we have got to start to do is to look in a more focused way what we do and we have got to try (**A Member:** Hear, hear.) and look at change, and when you look at the cost (*Interjection*) of our legislative system and the amount of paper that we churn out and the rules which we operate under I think there has to be some sort of change and I hope that in the not-too-distant future there will be various committees and bodies set up within the Court to try and address some of those issues. If not, I think there are so many big issues facing us now, we are spread far too thinly over too large an area and I think we have got to get back to focusing on where we want to be, particularly with the new millennium just around the corner. Thank you, Mr President.

The Speaker: Mr President, 'we considered that there is not easy way of determining the extent to which achievements are attributable to a particular structure of government, as evidence is likely to be anecdotal, subjective and undoubtedly political. However, we point out that the preponderance of evidence which we received and our own judgement leads us to the conclusion that the present departmental structure is to be preferred to the previous board structure' (**Some Members:** Hear, hear.), a point that I started this debate on some considerable time ago, picked up by my hon. colleague, Sir Miles Walker from Rushen. No-one in the committee and certainly not the committee were attacking the ministerial system. We were not attacking the ministerial system in our overview at the start. The committee are saying that in fact it is supportive of the system and we were not looking backwards. That is the point I would make and I am also very pleased that in fact the words which I used at the end of my opening address to this Court were, 'Members, read the whole report, as the conclusions pointed to in 9.5 are integral in the reports overall'.

I am pleased with the debate this afternoon and I am sure my colleagues on the committee are pleased with the debate because I think it has shown that members have read the report; they have been able to pick out bits throughout, and I am pleased that there have been congratulatory remarks made about the presentation of the report, and I know my colleagues would equally say thank you to Professor StJohn Bates for the way in which he has

been able to disseminate our observations which we made at our meetings, sometimes not very easily, and yet we have arrived at an overall report.

I have absolutely no intention of going through member by member (**Members:** Hear, hear.) What have we had this afternoon? We have had simply, very easily, discussion on collective responsibility, party politics, should the Chief Minister choose his team or not? Backwards and forwards, which way are we intent on going? That has been the summing up of the debate as far as I am concerned.

Now, what is collective responsibility? What your committee decided to do in the presentation of this report was to provide this hon. Court with three pointers: we are asking the constitutional committee to look again at the first two points in our summary of recommendations; we are asking that legislation be introduced in relation to the approval of the Chief Minister's team; and we wish that the Council of Ministers, government and Tynwald Court take account of the conclusions which we drew in the other sectors of the report and pointed to in 9.5. That is what your committee has presented to you and I hope that is what you will be prepared to take on board.

So what is collective responsibility? Collective responsibility - Executive Council, motion carried, Wednesday 22nd February 1989, the then member for Douglas East: 'Tynwald is of the opinion that the doctrine of collective responsibility should apply to Executive Council.' Okay, supported with the exception of one member. Now, since then we may very well have had the Council of Ministers come up with the documentation in relation to collective responsibility but, hon. members, has Tynwald Court had a true input into what is collective responsibility? What do we mean by 'collective responsibility'? And that is the question which the committee said, 'Well, okay, let's have a look at that and ask the Constitutional Committee to seriously consider it'. No more than that, just simply have a look at it; that is where we came in.

The Chief Minister did ask one or two questions and he said, 'How's this going to work?' Well, that is fine and I accept that in relation to the legislation, in relation to how it is spelt out in here, in summary in the paragraph number 9 not all the i's and not all the t's are dotted and crossed, but I can quote, if the Chief Minister likes, from the committee minutes, 'The view of the committee is that the Chief Minister should seek the approval of Tynwald for the initial nominations of members to hold ministerial appointments, and that if the Chief Minister were to recommend changes in ministerial appointments other than those resulting directly from vacancies arising through death or resignation, the Chief Minister should seek the further approval of Tynwald for those nominations.' So we had considered; we were considering.

Now, hon. members, I myself and my four committee members were indeed very grateful for the evidence, which was given to the committee both in writing and when we questioned them at oral hearings. We were delighted to get that evidence, and in fact most of that evidence supported the view which we have carried forward to you in the summary of our recommendations and I think that is equally supported. We drew our own conclusions, but the evidence pointed us in that way.

Whilst I am quoting that particular bit of our minutes to the Chief Minister in response to his query to me, I just would like to quote the next paragraph of that particular minute, '. . . that parliament, rather than the Council of Ministers, should express a formal view on the scope

and operation of collective and individual ministerial responsibility on the grounds that ministers are responsible to the parliament and not the Council'. There is a question asked in there. We were asking the questions, we were looking to see if we could sort out the answers, we were looking quite deliberately at what the evidence placed in front of us was and we were not looking backwards to try to turn the clock back to some halcyon day of the past which the hon. member for Castletown and the hon. member for Peel seem to think existed. What we were trying to do with the best will in the world was to look forward to see if we could arrive at a structure which would improve the position, and I am grateful for the hon. member for Ramsey, Mr Bell, who was open-minded enough to say that, yes, he may be taking on board the opposing view from what he previously held. He is now seeing that maybe there is some merit in Tynwald approving, and that is the important point that I would stress to this hon. Court this afternoon. The important point is not that Tynwald is going to nominate, Tynwald is going to decide who does what; it is quite simply spelt out to you: 'Consequently we recommend that legislation be introduced to grant the Chief Minister exclusive competence to table a motion seeking the en-bloc approval of Tynwald for the nomination.' The Chief Minister nominates executive, exclusive competence, lies in the hands of the Chief Minister. It comes to Tynwald Court for approval and the hon. member for Ramsey has summed that up far better than I can. I am convinced, because I know that I am guilty of holding very strong, principle views on some items and, no matter what members try to say, they do not change my opinion, so I acknowledge that the hon. member for Castletown holds a strong view in relation to this. Pointless in me arguing with the hon. member for Castletown; I will not change his mind, so all I can ask him to do is to re-read paragraph 7.2.3. See what the committee considered. Take on board what the committee's job was and what we were actually doing. That is what I ask him to do.

I want this afternoon to spend my time not talking to the hon. members of this Court, because most of the members in front of me have already answered each other during the debate in point-scoring and point being put backwards against. I want to put my weight, if there is such a thing that I have whilst I am on my feet, (*Mr Delaney interjecting*) on two members of the Legislative Council: my hon. colleague Mr Lowey and my hon. colleague and friend in the far right corner, Mr Crowe. Both have indicated to me during their contributions to the debate that they may be supportive. Now then, I say to both of those, 'Were you listening when the bell was rung from the Ramsey corner?' (*Laughter*). If you were listening when the bell was rung from the Ramsey corner -

Mr Delaney: For whom the bell tolls!

The Speaker: - then I am quite sure that those two members will be prepared to acknowledge that the committee have presented to the Tynwald Court a report based on three factors which I have already spelt out to you. Re-look, Constitutional Issues Committee, bring forward legislation. The i's can be dotted the t's crossed. Hon. member Mr Lowey, you know that as well as I know it: when it comes to legislation that is when it gets the detail spelt into it, and what we say is in 9.5. Look at the other points which the committee considered in the report. Accept it as a whole, accept it as a committee report that has spent hours doing its job, carried out its job efficiently and, frankly, I am sure my colleagues along with me feel proud that we are able to put such a committee's report in front of this hon. Court today, and I simply

move that the Report of the Select Committee on Ministerial Government be received and its recommendations approved. Thank you, Mr President.

Members: Hear, hear.

The President: Hon. members, I will now put the resolution set out at item 4 on the order paper. Will those in favour please say aye, against no. The noes have it.

A division was called for and voiting resulted as follows:

In the Keys -

For: Messrs Cannan, Quine, Rodan, North, Houghton, Henderson, Cretney, Duggan, Braidwood, Mrs Cannell, Messrs Shimmin, Downie, Singer, Bell, Cannell, Gelling and the Speaker - 17

Against: Mr Gilbey, Sir Miles Walker, Mrs Crowe, Mr Brown, Mrs Hannan and Mr Corkill - 6

The Speaker: Mr President, the motion carries in the House with 17 votes cast for, 6 votes cast against.

In the Council -

For: Messrs. Mann, Kniveton, Radcliffe, Delaney and Crowe - 5

Against: Mr Lowey and Mrs Christian - 2

Mr Lowey: Fifty per cent conversion is not bad! *(Laughter)*

The President: In the Council, hon. members, 5 votes have been cast in favour of the resolution, 2 votes against. I declare the resolution to be carried.

Members: Hear, hear.

Announcement of Royal Assent

The President: Hon. members, the Limited Liabilities Company and Financial Supervision (Amendment) Bill has been granted Royal Assent this day.

Procedural

The President: Now, hon. members, I usually consult with the Court at 6 o'clock as to how the Court wants to progress its business. I would imagine that the Court, not having had any refreshment at all during the afternoon session (**Members:** Hear, hear.) would wish to perhaps adjourn till tomorrow morning. Is that right?

A Member: Agreed.

Other Members: No, no. Crack on!

The President: There is refreshment below and, if it is your wish to continue, we could have a tea break and then move on. Given that that is the wish of the Court, the adjournment will be until ten minutes past six by the Court clock and then we reassemble and proceed with the next item on the order paper. Thank you, hon. members.

The Court adjourned at 6.00 p.m.

**Sewerage – Storage Tanks and Pumping Station, South Douglas – Expenditure
Approved**

The President: Hon. members, I call on the Minister for Transport to move item 5 on the order paper.

Mr Brown: Mr President, I beg to move:

That Tynwald -

- (a) approves of the Department of Transport incurring additional expenditure of £334,350 for the construction of the sewage storage tanks and pumping station at Loch Promenade, Douglas; and*
- (b) authorises the Treasury to expend during the yea ending 31st March 2000, from the capital transactions account, a sum not exceeding £334,350 in respect of the additional expenditure.*

The IRIS Master Plan Contract 1, Sewerage Storage Tanks and Pumping Station, Loch Promenade, Douglas, was approved by Tynwald in April 1995 in the total sum of £7,208,800. The works were undertaken between June 1995 and December 1996. The main parties to the contract were the Department of Transport as the client, the main contractor was Shephard Hill Limited, a subsidiary of Jarvis plc, and the principal subcontractor Farrans Construction Limited. The consulting engineer was Hyder Consulting Limited, the quantity surveyor Cameron Hall and the architect was Partington, Nixon and Kinrade.

The Department of Transport advised Tynwald in April 1998, when it submitted the IRIS Master Plan second review and update, that the main contractor Shephard Hill had notified the engineer and submitted a claim for additional costs following a failure by Shephard Hill to reach an acceptable settlement of the final account with their principal subcontractors Farrans Construction Limited. In an attempt to reach an acceptable settlement the Department of Transport advised Tynwald in April 1998 that an attempt was being made to reach an acceptable solution with the support from Jarvis (Isle of Man) Limited, Shephard Hill's local representative, Hyder Consulting Limited and Cameron Hall, quantity surveyors.

Under the ICE sixth edition contract there is a facility for a contractor to make a contractual claim and clause 12 applies. The clause 12 claim submitted as part of Shephard Hill Limited final accounts submission on 4th November 1998, under the heading of 'Farrans Construction Limited', revised their standing account for additional costs involving the following issues: Unforeseen ground conditions, difficulties of dealing with ground water, repairs to concrete joints and DM1800 pipeline, pipelines C6 to C8 to HM435. The principal areas of the claim relate to the nature and increased permeability of the main ground and to hard driving, namely the allegedly more difficult sheet pile driving conditions encountered in both the main ground and the glacial deposits.

On 26th May 1999 Shephard Hill served a notice of dispute on the engineer Hyder Consulting Limited under clause 66(2) of the ICE conditions of contract in respect of the claim included in their final accounts submission. On 23rd August 1999 the engineer Hyder Consulting Limited informed Shephard Hill that they had rejected the claim in total. On 21st September 1999 Shephard Hill gave notice to the department that they required the claim to be considered under the Institution of Civil Engineers Conciliation Procedure 1999 and formally advised of the notice of conciliation. The engineers, Hyder Consulting Limited, have confirmed that in their opinion no further payment is due to the contract in respect of the

matter or the matters being referred to conciliation. However, they are prepared to present the facts and circumstances of the dispute to the conciliator in accordance with clause 10 of conciliation procedures. Hyder Consulting Limited advise that the objective of the procedure is to facilitate an agreed settlement with provision under clause 15 for the conciliator to make a recommendation in the event that no agreement can be reached between the employer - that is, the Department of Transport - and the contractor Shephard Hill. However, Hyder Consultants Limited consider that the employer - that is, the Department of Transport - may wish Hyder Consulting Limited to negotiate a settlement. Payment for their services would be in accordance with clause 12 of the ACE conditions of engagement 1995 agreement 1, 'Payment for Additional Services'.

The Department of Transport referred the relevant papers to Rawlinson Solicitors of London, who in turn passed them to a leading counsel, Mr Robert Gaitskell QC of Keating Chambers. In summary, counsel's opinion was that it did not appear that Shepherd Hill, the main contractor, foresaw the true nature of the ground, and the true nature of the ground could not reasonably have been foreseen by an experienced contractor. Accordingly it appeared that Shephard Hill's clause 12 claim may well be valid in principle. Counsel advised that whether or not the enormous sum claimed is justified was an entirely different question. Counsel also advised that, in order to avoid the substantial cost associated with arbitration or litigation, the Department of Transport should give early consideration to (a) an expert determination or (b) mediation. The department devised the following strategy: (1) await the engineers announcement of his decision under clause 66 of the ICE conditions of contract on the value of the final account; and (2) await the reaction from the main contractor as to whether he requests conciliation or arbitration. Following the announcement of the engineers' decision and the issue of the notice of conciliation by the main contractor a meeting was held on 20th October 1999 attended by the chief executive of my department, the Department of Transport, the capital projects co-ordinator for government from the Treasury, and Mr Burroughs of Burroughs Stewart Associates. Based upon a recommendation by the team, the department agreed that Mr Burroughs should hold an informal, without prejudice meeting with the managing director of Farrans Construction Limited in order to determine whether there was any mutual ground by which an agreement could be reached which would avoid the possibility of conciliation, arbitration or high court action.

Various assessments have been made of the quantum - that is, the value of the claims submitted in the sum of £2,578,146. Cameron Hall, chartered quantity surveyors and cost consultants, undertook an assessment in February 1998 and stated that their preliminary assessment of the Farrans claim was £1,361,348.42, and stated that in their opinion a settlement in the region of £1 million was realistic, exclusive of any additional costs attributable to Shephard Hill and to the interest due in accordance with the ICE conditions of contract. In April 1998 Shephard Hill Limited appointed Brewers, an independent firm of cost consultants, to undertake an assessment of the claim, and, based on the information available to that date, Brewers Consultants Limited assess the quantum at £773,917.90 exclusive of Shephard Hill's additional costs and interest charges. Following the submission by Farrans Construction Limited of additional information and particulars to Brewers Cost Consultants in July 1999 Brewers reassessed their quantum at £1,005,534.77 exclusive of Shephard Hill's additional costs and interest charges.

In addition to the costs claimed above by the principal subcontractor Farrans Construction Limited, there are other headings of cost which will be claimed and payable should a negotiated settlement not be reached and the claim proceed to conciliation, arbitration or high court. They are, namely, main contractors' additional costs, overheads and profits, interest charges on moneys due and consultant's fees and charges, expert witnesses, legal fees and charges, conciliator and arbitration charges. Following the without prejudice meeting held between Mr Burroughs of Burroughs Stewart Associates, representing the Department of Transport, and the managing director of Farrans Construction Limited in consultation with Shephard Hill, they have confirmed that they are prepared to accept in full and final settlement, including all Farrans Construction Limited additional costs, Shephard Hill's additional costs and interest charges in the sum of £773,917.90 as the original assessment of a quantum undertaken by Brewers Cost Consultants.

The Department of Transport believes that we should endeavour to avoid conciliation, arbitration and the possible high court proceedings as these could be very expensive to the taxpayer and they believe that the claim has justification, and therefore conclude that a full and final settlement in the sum of £773,917.90 should be paid. Therefore we seek approval from Tynwald for the Department of Transport to incur additional expenditure of £334,350 for the sewage storage tanks and pumping station at Loch Promenade, Douglas, which would be required to enable us to pay off this cost. Mr President, I beg to move the motion standing in my name.

Mrs Hannan: I beg to second and reserve my remarks.

Mr Shimmin: Mr President, for a laymen looking at this it is difficult to argue against the common sense of the final recommendations. However, I would ask the minister if he could just clarify on two points whether the department holds a view. Firstly, on why the people of the Isle of Man should be paying for a failure of supposed experts in the first place; secondly, in section 7 of his paper that he has circulated the 35 or so per cent difference between the Cameron Hall, chartered quantity surveyors and cost consultants, estimate to that held by Brewers does seem an enormous difference for professional people who are meant to be evaluating the same area of work, and as this is a firm which has quite a number of contracts with the government it does concern me when their estimate is so far out from an alternative independent firm. I am sure his department has noticed these. Therefore, if he could comment upon those in the summing up? Thank you.

The President: Hon. member, do you wish to speak?

Mrs Cannell: Yes, please, Mr President.

The President: Hon. member, I would just draw your attention to the fact that you were not present in the Court when the minister presented his case, and that of course leads to a lot of repetition and delay for the rest of the Court, and those members who are in the habit of being late returning from refreshment, please bear that in mind. Proceed.

Mrs Cannell: Thank you, Mr President. I am appreciative, however, sir, that the papers were circulated by the hon. minister which give all the detailed information in relation to the motion requiring moneys that he now requests. My observation is simple: if I come to Tynwald and ask Tynwald for such a large amount of money when it may have been prudent to have gone for an out-of-court settlement which may have saved quite a considerable amount of

money, I believe it is all too easy for a situation like this for a minister to actually come forward and say, 'Well, give me your support, dear colleagues, to make this settlement.' It is taxpayers' money. It seems an excessive amount of money to actually come back and say that we now need this to actually put things right.

Looking at number five on the legal opinion and the Rawlinson Solicitors of London and leading counsel, Mr Robert Gaitskill QC of Keating Chambers and the advice that he gave the department, I am a little intrigued at the first paragraph, the last sentence in that when he said 'The counsel advised that whether or not the enormous sum claimed is justified was an entirely different question.' That has not been broadened; merely it is a statement the counsel made, and I wonder whether or not the minister and the department wanted to pursue that with him, albeit that counsel said that it was a different question altogether to that which you were first putting to him for his opinion. He made the point that it is an enormous sum, and I would agree with him. Unless I hear something that is going to reassure me that this is the best option, the best way to go, I am afraid I shall not be supporting it.

Mr Crowe: Mr President, can I just draw the hon. minister's mention in the report that the principal areas of the claim relate to 'the nature and increased permeability of the main ground and to hard driving, namely the allegedly more difficult sheet power driving conditions encountered in both the made ground and glacial deposits'. Could I just ask the minister if he has the information as to the extent of the test boring by the contractor; and secondly, how does the final amount of this contract compare to the next highest tenderer when the contract was awarded?

Mr Brown: Mr President, can I say that I take this issue extremely seriously hence why I gave instructions for a detailed paper to be circulated to members which laid out exactly where we are, the costs that we have put forward and the situation that arose. Can I just say that as far as the experts are concerned, bore conditions were undertaken, works were undertaken to identify the ground conditions, those were then put in the documentation for tendering and it would not matter whether this was the lowest tender; or the next one was the lowest tender the ground conditions that were experienced were not as has been identified by the bore holes that were taken, and that is not unusual. In fact, we have had that on other occasions where they take the bore tests, everything is fine, suddenly they get to a stage and they hit either solid rock or whatever, and that can happen on a relatively small site. What happened on this occasion was that when the contractor went on they found the ground conditions were not what they had expected. That meant considerable additional cost to them.

Can I say that the department has taken this one, again, very seriously. We have had our people dealing with it; my chief executive, who has considerable experience in construction as members will know, has been very much involved in this with Mr Alistair Burroughs, and to both of them I would put on record my appreciation, and I believe the appreciation should be coming from this Court as well, and the taxpayers, for the money that by their negotiations and review of this whole situation we were actually looking to save the taxpayer.

Now, it was raised by the hon. member Mrs Cannell, the member for East Douglas, when she appreciated the paper - and I thank her for that - why come to Tynwald for the money when we could have come to an out-of-court settlement? Well, this is an out-of-court settlement. We have got to the stage where we have come to an agreement where both parties are content without going to arbitration, conciliation or court - no point shaking your

head; that is the reality of it. We have come to a stage where we have actually got a situation where we have reached an agreement that, whether we like it or not, is a considerable financial saving on what could have been required for government to actually achieve a result in this. It could have cost us more than the £300,000 just to fight this through court if we had had to go to court.

I would also make the point, just in answer to the hon. member for East Douglas who asked about the original sum: when counsel under the paper mentioned about whether or not the enormous sum claimed was justifiable, I would refer to my presentation and to the paper - the sum that was originally claimed was £2,578,146. We have come to an agreement of £773,000 or thereabouts in terms of the end result. We have been able to do that without going to court, without going to conciliation, without going to arbitration, and I have to say the easy option for my department and myself as minister would have been to say, 'Let it go all that way.' But it did not make sense when we felt we could negotiate an agreement that quite clearly was sensible and in everybody's interest. In other words, we accepted there was a claim; the only difference was the amount that was claimed, and I have to say that with the help of Shephard Hill and Jarvis (Isle of Man) we have been successful in coming to what I believe is a claim of great benefit to us all.

If I may just give some other additional figures that might help hon. members just to understand the situation, to date Tynwald has voted funds to the Department of Transport to progress the IRIS scheme and those schemes that have been completed to a total amount of £6,870,650. The actual expenditure on these schemes - the schemes that have been finalised - is at £6,341,737. This has resulted in a total saving on the approved expenditure of £528,913. Therefore if Tynwald approves the additional expenditure sought under item 5 on the order paper today - that is, of £334,350 - there will still be an overall saving on the previously approved expenditure by Tynwald Court of £194,563, and of course the reason that I have to come here, as members will know, is that it is capital expenditure and you cannot use capital from different phases of the IRIS project or any other project to pay off the balance in another area. So clearly I have to come to Tynwald Court for that money. All I would say to hon. members is, in overall budgetary terms of the moneys approved by Tynwald Court my department will still be £190,000 within the approved expenditure.

Therefore I hope that has responded to the points that members have raised, except one which the hon. member for West Douglas, Mr Shimmin, asked: why should people have to pay for the failure of experts? I think I have answered that in terms that the ground conditions as were identified were identified; when they went on site they hit different ground conditions. Therefore things that had not been expected were experienced, and why the difference in the estimates? That is the problem with quantity surveyors. One was a claim by the contractor, one was an estimate by the QS based on the facts he had and one was an estimate on the contractors' QS and there is a difference, and of course do not forget that they are then hoping to get into a position of negotiation allowing there might have to be give and take, so the QS on both sides have come up with the estimate as they see it, and the only answer I can give is that we use Cameron Hall. That is the estimate they gave us and we are not in a position to question that because we are not assessors, we are not QSs in the department. So all I can say is, I believe that at the end of the day, if Tynwald supports this, which I hope they do, I

think we will have come out of it well on what is a legitimate claim by the contractor for unforeseen circumstances in this contract. I beg to move.

The President: Hon. members, I will now put the resolution set out at item 5 on the order paper. Will those in favour please aye; against, no. The ayes have it.

A division was called for and voting resulted as follows:

In the Keys -

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

Against: Mrs Cannell - 1

The Speaker: Mr President, the motion carries in the House 20 votes cast for 1 against, sir.

In the Council -

For: Messrs Lowey, Waft, Radcliffe, Mrs Christian, Messrs Delaney and Crowe - 6

Against: None

The President: In the Council, hon. members, 6 votes in favour of the resolution, no votes against; I declare the resolution carried.

Patents (Plant Protection Products) Order 1999 [Draft] – Approved

The President: Item 6, the hon. Chief Minister.

Mr Gelling: Mr President, I beg to move:

That the draft Patents (Plant Protection Products) Order 1999 [draft] be approved.

The European Community has in the past enacted legislation which enabled the patent protection given to drug manufacturers to be extended from 20 to 25 years by means of a supplementary protection certificate which covered the extra five years period. This was in recognition of the fact that the research and development, and subsequent trial tests of these products, may take in many cases 5 to 10 years to complete, leaving producers only 10 to 15 years to recoup their costs. The Isle of Man followed this lead and implemented the relevant EU regulation in Manx law and so prevented a loophole arising whereby medical products covered by a supplementary protection certificate in the EU may have been imported through the Isle of Man and illegally marketed through the EU.

The Patent (Plant Protection Products) Order 1999 allows for an EU regulation increasing the protection period for plant protection products by five years by means of a supplementary protection certificate to be applied in the Isle of Man in the same way. Similarly this will prevent the Isle of Man becoming a loophole which might be exploited and used to import plant protection products illegally into the community.

Mr President, I beg to move the motion standing on our order paper at item number 6.

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

The President: Hon. members, I will put the resolution set out at item 6 on the order paper. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

**European Communities (Federal Republic of Yugoslavia Sanctions)(Application)
Order 1999 [Draft] – Approved**

The President: Item 7, the Chief Minister.

Mr Gelling: Mr President, I beg to move:

That the draft European Communities (Federal Republic of Yugoslavia Sanctions) (Application) Order 1999 [draft] be approved.

In November of 1998 Tynwald approved the European Communities Sanctions Application Order which applied three EU Council Regulations in the Isle of Man. Those regulations dealt with the reduction of certain economic relations with the Federal Republic of Yugoslavia, the freezing of funds held abroad by the governments of the Republic of Serbia and Federal Republic of Yugoslavia and the prohibition of new investments in the Republic of Serbia. In June of this year the Council of the European Union adopted regulation 1294/1999 concerning a freeze of funds and a ban on investments in relation to the Federal Republic of Yugoslavia and repealing regulations 1295/1998 and 1607/1998. The sanctions against the former Yugoslavia were expanded in scope and this new regulation also listed people who are a part of or associated with the régime which was the former Yugoslavia.

Mr President, I beg to move the motion standing at item number 7 on our order paper today.

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

The President: I will put the resolution, hon. members, set out at item 7 on the order paper. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Construction (Head Protection) Regulations 1999 – Approved

The President: Item 8, the Minister for Local Government and the Environment.

Mr Gilbey: Mr President, I beg to move:

That the Construction (Head Protection) Regulations 1999 [SD No 536/99] be approved.

As explained in the explanatory note to hon. members the regulations will require the supply and use of suitable head protection on construction sites. It is intended that they will make explicit the existing implied duties under section 2 and 3 of the Act, leaving all concerned in no doubt as to their obligations. A consultative document containing the regulations was circulated to local media and the total of 53 employer and employee organisations and there were no objections. Mr President, I beg to move.

Mr North: Well done, Walter.

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

The President: Hon. members, I will put the resolution set out at item 8 on the order paper. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Driving Licences and Tests (Amendment) Regulations 1999 –Approved

The President: Item 9, the Minister for Transport.

Mr Brown: Thank you, Mr President, I beg to move:

That the Driving Licences and Tests (Amendment) Regulations 1999 [SD No 628/99] be approved.

The Driving Licences and Tests (Amendment) Regulations amend the Driving Test Regulations 1992 and make consequential amendments to the Driving Licences Regulations of 1992.

With effect from 1st January 2000 the regulations substitute a new classification of motor vehicles for the purpose of driving tests and driving licences. The definitions of the new groups are set out in the table at schedule 1 to the regulations. The schedule also sets out the additional groups covered when a test is passed for one of the new groups on or after 1st January 2000.

For drivers who have a licence or a test certificate issued before the driving test groups come into force on 1st January 2000 there is a conversion chart for converting existing entitlements expressed in former groups to the new groups. This conversion chart is set out in the table as schedule 2 to the regulations. This is intended to preserve the grandfather rights of existing drivers so that Manx drivers who hold a licence or pass a test before 1st January 2000 will enjoy at least the same grandfather rights in respect of the medium goods vehicles and mini-buses as are held by pre-1997 drivers in the UK who hold such grandfather rights.

Some new drivers who pass a test on or after 1st January 2000 will need to be able to drive heavier trailers than their basic test categories will allow. This will be mainly in the course of employment or attendance at sporting or recreational activities. It is necessary to provide for instruction and tests to be taken when drawing a heavy trailer. The regulations therefore disapply the existing prohibition on learner drivers drawing a trailer for the purpose of being instructed for and taking a test. The regulations are intended to come into operation on 1st January 2000 in time for the introduction of new driving licence production equipment at the Treasury licensing office and the introduction of revised formats for the photo-card and paper parts of the driving licences. Mr President, I beg to move the motion standing in my name.

Mrs Hannan: Mr President, I beg to second and reserve my remarks.

The President: Hon. members, I will put the resolution set out at item 9 on the order paper. Will those in favour please say aye, against, no. The ayes have it. The ayes have it.

Export of Goods (Control) (Indonesia) (Application) Order 1999 – Approved

The President: Item 10, the Minister for Treasury.

Mr Corkill: Mr President, I beg to move:

That the Export of Goods (Control) (Indonesia) (Application) Order 1999 [SD No 565/99] be approved.

Mr Radcliffe: I beg to second, sir.

The President: Hon. members, I will put the resolution set out at item 10 on the order paper. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Brewing (Exempt Beers) Order 1999 – Approved

The President: Item 11, the Minister for the Treasury.

Mr Corkill: Mr President, I beg to move:

That the Brewing (Exempt Beers) Order 1999 [SD No 566/99] be approved.

The purpose of this order is to exempt from the provisions of the Brewers Act 1874 so-called 'wheat beers' - that is, top-fermented beers that use malted or unmalted wheat in combination with the more usual malted barley.

The Brewers Act of 1874 is designed to safeguard the integrity of traditional Manx ales (**A Member:** Hear, hear.) and restricts ingredients to malted barley, water and sugar with hops for flavouring.

In 1998 this hon. Court amended the Act in part to allow for exemptions from the provisions of the Act for other types of beers that Island brewers might wish to produce to meet changing demands of the market place.

Mr North: White beer.

Mr Corkill: At the time one of the beer types mentioned in discussion with Island brewers were wheat beers. This order is made under the section 18A inserted in 1998.

Wheat beers can contain anything from 10 per cent raw or malted wheat, although recipes more typically call for between 30 and 60 per cent. They are top-fermented, therefore being ales rather than bottom-fermented like lagers. (**A Member:** Hear, hear.) This order results from an approach made to the Treasury by the brewing industry in the Island. It is likely that wheat beer would only form a small proportion of the beer brewed in the Island but the exemption will allow Island brewers more flexibility in meeting consumer demand and competing in the market place.

Mr President, there are no revenue or resource implications arising from this order, and I beg to move.

Mr Radcliffe: I beg to second.

The President: Hon. members, I will put the resolution set out at item 11 on the order paper. Will those in favour please say aye, against, no. The ayes have it. The ayes have it.

Financial Supervision (Professional Investor Fund) (Exemption) Order 1999 – Approved

The President: Item 12, the Minister for the Treasury.

Mr Corkill: Mr President, I beg to move:

That the Financial Supervision (Professional Investor Fund) (Exemption) Order 1999 [SD No 602/99] be approved.

The Financial Supervision (Professional Investor Fund) (Exemption) Order 1999 came into operation on 14th October of 1999. This order revokes and replaces the Financial Supervision (Professional Investor Fund) (Exemption) Order of 1995 which created a new form of restricted collective investment scheme called the 'professional investor fund' or, as more commonly known, the PIF.

The PIF provides a framework for the design of mutual fund vehicles which are suitable for sophisticated and high network individuals and market professionals. Such investors

demand a different level of regulation to that which applies to ordinary investors. The PIF régime provides this and brings with it flexibility and cost savings potential. Investors must fall within the categories set out in the order, which include the requirement for the investor to hold net assets in excess of \$1 million US and for the initial subscription in the fund to be no less than \$100,000. The investor's ordinary business must also involve the acquisition and disposal of property similar to that to which the professional investor fund in question relates.

However, since the PIF's creation the industry has had little interest shown in the product. It is felt that this is perhaps due to the declaration that a potential investor has to sign, which requires them to confirm that they will fall within the categories mentioned above and that they have read and understood the mandatory risk warnings which are required by the order to be included in the offering document.

The order has therefore been amended to replace the declaration with a statement contained within the application form which must be signed by the investor stating that he is a professional investor and has read and understood the description of the arrangements for the custody of the assets and the statement set out within the offering document, such statements being concerned with the risks associated with investment in this type of fund.

The order has also been amended to replace the term 'third party fund administrator' with 'fund administrator' throughout the order. The term 'third party fund administrator' falls within the definition given to category 4 investment business licence holder in the financial resources and reporting regulatory code. It was felt that this limited the persons qualified to act as third party fund administrators. It is envisaged that the amendment will now enable both category 3 and 4 investment business licence holders to act as fund administrators. I beg to move, Mr President.

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

The President: Hon. members, I will put the resolution set out at item 12 on the order paper. Will those in favour please say aye, against, no. The ayes have it. The ayes have it.

Financial Supervision (Experienced Investor Fund) (Exemption) Order 1999 – Approved

Mr Corkill: Mr President, I beg to move:

That the Financial Supervision (Experienced Investor Fund) (Exemption) Order 1999 [SD No 603/99] be approved.

The Financial Supervision (Experienced Investor Fund) (Exemption) Order 1999 came into operation on 14th October of this year. The order has created a new form of restricted collective investment scheme which is to be called the 'experienced investor fund', or the EIF.

The EIF has been introduced in order to provide a regulatory framework for mutual fund vehicles suitable for investors with a high level of investment experience. Consequently the EIF is only aimed at investors whom the manager or fund administrator of the EIF is satisfied qualify as experienced investors. The order defines an experienced investor as 'a person who in relation to any experienced investor fund is sufficiently experienced to understand the risks associated with an investment in that fund.' I beg to move, Mr President.

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

The Speaker: Very briefly, Mr President, can the hon. member explain to me in 2(2): 'In this order any figure expressed in US dollars should be taken as including its equivalent in any other currency'? It was exactly the same in the previous order which went through. Do we take that rate of exchange the date they sign the agreement or it is a flexible figure?

Mr Henderson: Mr President, I rise to support this initiative. It is an excellent product and certainly the word 'vision' creeps into the equation here. It is a specialist market that it is aimed at and I think that is the way the Isle of Man has to go - aiming at specialist niche markets; certainly the feedback I have been getting from colleagues that I know in the finance sector is good and positive. I also like the fact that this is been a joint working initiative and it shows that joint working and partnership approaches can work. So that is good, but I would ask the hon. Treasury minister to move this forward that the Isle of Man is continually promoted throughout the finance world and certainly promoting and selling the Island's excellent finance administration part of the pieces in making this a successful enterprise. Having said that, as I say, it is a visionary product and it is certainly something that we can excel in, and I fully support it.

Mrs Cannell: Mr President, I have just one query, really, to make. I am pleased that extended powers in a way are being afforded to the Financial Supervision Commission, who are putting in more rigours in relation to the management of funds in requiring that those who operate them are experienced investors, but can I ask him: in relation to acquiring the licence to run such a fund, an investment business licence, where we have a situation quite recently of an advocate who applied for such a business licence and was given a business licence and, despite the fact that he had misappropriated public moneys prior to applying for the licence in respect of client's money when he was practising as an advocate, does this move in any way ensure that in future when we get people applying for licences to operate a fund such as this to the Financial Supervision Commission, the Supervision Commission will be able to do a proper check on that person? And a proper check will be required, as I understand it - and I think the minister will recall me taking this case up with him this year just. This particular individual, this advocate, did obtain his licence and yet the Financial Supervision Commission have said they have no knowledge that the particular person in question had had a case proven against him for the misappropriation of public money. So is there any safeguard in this for that situation?

Mr Cannan: Mr President, there are certain aspects of this fund that concern me. Now, the professional investor fund which we have just passed - they were for people with high net worth, but with this fund any investor who has a minimum of US \$15,000 or £9,000 and is prepared to sign a declaration to say they are experienced can invest in these new funds. Now, as with the professional investor fund there is no restriction on the type of asset into which these people of limited means can be induced to put their money. An experienced investor fund invests in say precious stones, residential real estate or vintage cars, and these types of investment are normally entirely inappropriate for this type of investor, which is why the Financial Supervision Commission in its own guidance notes for restricted schemes states that such investment funds are not acceptable, and I consider that they should not be acceptable for the experienced investor fund.

Now, when the Financial Supervision Act of 1988 was introduced there were at that time funds for dealing in precious gems, residential property. These sorts of dealings had to be

suspended because there was no reliable value that could be placed on the assets or because the market and the underlying assets had completely dried up, and at that time there were many small investors who could not get their money out of these funds; they were trapped for years, resulting in hardship for many, and this also resulted in much adverse publicity for the Island.

I speak with some knowledge of this because I happened at that time to be chairman of the FSC. We did have a lot of problems with people who had been induced to invest - people of limited means - and it caused a lot of trouble getting it all sorted out.

I had no problem with the previous matter which we passed because they were for people with high net value, but this is allowing people who call themselves experienced investors to be allowed to be induced to invest in what one might call fringe activities. They may make a lot of money; they may lose a lot of money also. And in the restricted schemes regulations published by the Financial Supervision Commission now, and quite rightly so, this type of investment is discouraged.

I make these points because there seems to be some sort of conflict. Restricted schemes - and we have passed a lot of restricted schemes legislation in various Tynwalds recently - and then here we come with a new one upon which there appears to be no restriction and in contradiction to what is already in the market place. Professional investor funds - yes, these experienced investor funds. How do you know a person is experienced unless they say they are experienced?

The President: Minister, reply.

Mr Corkill: Thank you, Mr President. Now, in trying to respond to the points this is a complex issue and I take note of the comments that have been made.

With regard to the very first point by Mr Speaker in terms of the currency issue I have to say it is not something I had considered myself in terms of the exchange rate but merely considered the fact that many of these products internationally are considered in dollar currencies and therefore that is the language of the situation, and I can only offer to confirm with him at what point the exchange rate is fixed into the situation that we have discussed.

Now, the hon. member for Douglas North, Mr Henderson, was very supportive and I thank him for his support, because this whole project, effectively, is designed to try to encourage some life into an area which has been languishing.

The hon. member for Douglas East, Mrs Cannell, mentioned the fit and proper situation. Now, existing investment business licence holders who are authorised to manage or administer authorised or restricted collective investment schemes must apply to the commission for their existing licence to be extended before they will be permitted to manage or administer these experienced investor funds. So that is in effect a hauling-in of the regulatory situation for those people with existing licences. If they wish to go into this area, then they will come more to the FSC's control, who will only licence when the demonstration of fitness and properness has been put to the FSC. So I hope that allays the fears of the hon. member, because I am fully aware of the issue that she has raised in this Court a number of times and with me in another place, I think, earlier this year.

Now, the hon. member for Michael, Mr Cannan, obviously has a lot of experience in this area over the years as indeed he was chairman of this situation some years ago. Obviously he is concerned that the amount is too small and therefore people who feel as those they are experienced who are not in reality could be sucked into the situation, and I think the order has been drafted in such a way, as to minimise that risk, and to remove that risk because there are actual transitional arrangements included and this is an attempt to actually try and bring the exempt restrictive schemes more into the regulatory environment, and these schemes will fall more under the control of the FSC because at the moment they do not. Exempt restricted collective investment schemes at the moment are regarded as private arrangements and therefore not subject to regulation by the commission. The commission is not required to and does not approve these schemes. This changes the situation and I hope hon. members will see it as a positive step forward on the regulatory front, but as well as that it has been done with a point of view of vision, as the hon. member for Douglas North mentioned, to try and stimulate this area of the economy. There is a clear process whereby the health warning, as it were, is brought to the attention of the potential investor and the forms are laid out in such a way that anyone signing up to these schemes is in no doubt as to the risks involved. I beg to move.

The President: Hon. members, I will put the resolution set out at item 13 on the order paper. Will those in favour please say aye, against, no. The ayes have it. The ayes have it.

Procedural

The President: Before turning to the next item I would just say to the hon. member for Douglas North who has just arrived in the Court that earlier I commented on bad time-keeping: 05.10 does not mean 06.50 in the eyes of your President.

Investment Business (Exemption) (Fund Managers) Regulations 1999 – Approved

The President: Hon. members, we move on to item 14 and I call on the Minister for the Treasury.

Mr Corkill: Mr President, I beg to move:

That the Investment Business (Exemption) (Fund Managers) Regulations 1999 [SD No 604/99] be approved.

The Investment Business (Exemption) (Fund Managers) Regulations of 1999 came into operation on 14th October, 1999. This regulation revokes the Investment Business (Exemption) (Fund Managers) Regulations of 1995.

These regulations introduce the concept of the exempt person. A manager of an experienced investor fund or a professional investor fund is exempt from the requirement to hold an investment business licence in the event that he qualifies as an exempt person. In order to qualify as an exempt person the manager has delegated all of its activities with the exception of the receipt of the management fees and the power to appoint investment advisers to a fund administrator.

The regulations have been amended to replace the term ‘third party fund administrator’ with the term ‘fund administrator’ throughout. This is a result of the creation of the experienced investor fund and the amendment made by the Financial Supervision (Professional Investor Fund) (Exemption) Order of 1999. The term ‘third party fund administrator’ falls within the

definition given to category 4 investment business licence holders in the financial resources and reporting regulatory code. It was felt that this limited the persons qualified to act as third party fund administrators to category 4 licence holders. It is envisaged that the amendment will now enable both category 3 and 4 investment business licence holders to act as fund administrators.

The regulation has also been amended to include a condition requiring the exempt person to obtain the prior written approval of the fund administrator before appointing an investment adviser. It was felt that the emphasis placed on the role of the administrator was increasing and the regulations should be amended to reflect this change. I beg to move, Mr President.

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

The President: Hon. members, I will put the resolution set out at item 14 on the order paper. Will those in favour please say aye, against, no. The ayes have it. The ayes have it.

National Lottery Legislation (Designation) Order 1999 – Approved

The President: Item 15, the Minister for the Treasury.

Mr Corkill: Thank you, Mr President. I beg to move:

That the National Lottery Legislation (Designation) Order 1999 [SD No 601/99] be approved.

The purpose of this order is to designate the United Kingdom National Lottery as lawful on the Island.

Camelot, the National Lottery operator, has appointed 11 outlets as local agents. With effect from the commencement date of this order, 22nd November, the promotion of the United Kingdom National Lottery will no longer be prohibited. Camelot and the selected agents will be able to advertise ticket sales and the local arrangements for claiming prizes. Actual sales are due to commence on 2nd December but can only do so if this order is passed. Local residents will be able to purchase tickets by subscription as well as from the local outlets.

The United Kingdom authorities have agreed that the duty collected in respect of subscription sales to Manx addresses will be paid to the Isle of Man Treasury. The order also directs that the whole of the excise duty received in respect of ticket sales during the part financial year ending on 31st March 2000 be paid to the Public Lottery Trust. (**Mr North:** Hear, hear.) In the United Kingdom the duty of 12 pence on every ticket sold is retained by the United Kingdom Treasury for general expenditure.

For members' information I wish to restate that many of the United Kingdom distribution bodies which receive a proportion of the funds raised by ticket sales are prevented by their constitutions from making grants to charitable bodies outside specified areas. The Isle of Man Treasury accepted during negotiations with the United Kingdom authorities that changes to the United Kingdom legislation to allow a proportion of the National Lottery distribution fund to be allocated to an Isle of Man body could not be considered in the short term. I beg to move.

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

Mr Delaney: Opening somewhat the National Lottery eventually to be getting to the Island and the latter part of the statement by the minister concerned, which I congratulate, can the minister tell us on the last part of his statement when he envisages, or has he had any idea of when the British Government will change their legislation to enable such grants to be claimed by Manx charities from that substantial fund so that some of the charities in the Island which we are now having to support through this very good idea of putting the direct tax more or less to them can be taken up by a grant system from this huge body of money that is placed - and we see it twice a week on the television being spent on all sort of things - and we would very much appreciate a little bit of it? But can you give us an idea of when we are looking for that to happen? Thank you, Mr President.

Mr Cretney: Mr President, obviously like the majority of hon. members, I would wish to support the matter which is before hon. members today but I would want to place on record, as I did in another place privately, my view that the amount of funds which in this period are going to be dedicated solely to the Public Lottery Trust to distribute to worthy causes should be carried on into the future carrying on from this period of time. I did say that in another place. I know that that is a matter which is going to be considered by the Treasury but I do believe that it is something which would be well-received by the public on the Isle of Man.

I would like to say also that, if it were to be possible, could some consideration be made, along with the charitable purposes for which such funds have been used traditionally by the Public Lottery Trust, regarding some assistance to sports or the arts in the future? I think that that is something which we could all be content with.

Mr Waft: Mr President, on the same vein as my colleague on the Council, the hon. Mr Delaney, the possibility of local charities to apply to the UK should not be overlooked in the short term, and we would look to the minister, and the Council of Ministers indeed, to negotiate with Camelot to provide equal status for Manx charities along with UK charities. I do appreciate that the money from the duty tax is going to go to the Manx Lottery Trust, but at the same time not all charities do have the possibility of withdrawing from that trust and are outwith that situation. So there are a lot of charities who would like to be considered by Camelot with regard to making a worthwhile scheme that can be funded by the lottery, and I do hope that, once we have this organised, the minister will pursue this on behalf of the Isle of Man charities. (**Mr Delaney:** Hear, hear.) There are very large sums of money to be obtained from Camelot and we should use our best endeavours to achieve some of this. Thank you, Mr President.

Mr Shimmin: Mr President, as the Tynwald member on the public lottery I would certainly concur with my hon. friend for South Douglas Mr Cretney's remarks about the funding, but other than that I would like to clarify to the Court that the Public Lottery Trust has and does and will continue to support the arts and the sports on the Island. Hopefully with a larger amount of money in the pot we will be able to support it to a greater extent. Thank you, sir.

The Speaker: Mr President, I did not intend to speak and I will be brief. It appears to me, listening to the contributions, that there is still confusion in members' minds as to what is charitable giving and what is the duty of government in relation to assisting charities or allowing funds to be raised by general forms of taxation, and, whether members like it or not, I am concerned, hon. member for Douglas South, that whilst I understand where you come from

in relation to the comment which you made in relation to the sums of money which will be raised, that government gets itself involved in raising funds which it should properly do via taxation; it is getting into the habit of seeing that an easy way of milking the cow is to rely on the back of gambling. It is a principle that leaves me cold, and whilst I understand, as I said, where members come from, I wish members would learn to distinguish between the proper way of government raising its funds by taxation for those jobs where we find it necessary to support those less able to look after themselves in the community and divorce that from the pretence of raising tax via gambling.

Mr Singer: Mr President, I feel that there will be many people now or after December who will be actually donating to charity through the tax who might not have chosen to donate money to charity, so I think it is to the advantage of the charities. But can I ask the hon. minister, has he got any indication, or can he give any indication, of when he will decide what percentage of the tax will be given to the Public Lottery Trust after March?

Mrs Hannan: Vainstyr Loayreyder, I agree to a certain extent with the remarks made by the Speaker. This is a tax, really, which is levied on those that use the lottery and it is not everyone who buys lottery tickets and therefore probably it is the least well-off who will purchase a lottery ticket who will be supporting these charities to a small extent. Twelve per cent is not that great an amount over that period to be giving to charity, and one thing that does concern me is that we are saying all the money that is raised is going to the Public Lottery Trust. That concerns me because the funds can go up that are raised by this duty, they can also go down, and we will get back to the same situation, because sales have tailed off in the UK, where there will not be quite as much interest in the lottery and it will come out of income tax because we will have to keep taking up this support for the Public Lottery Trust.

I think there are a certain number of issues which we should be supporting through income tax such as sports, the arts, and I would hope that Treasury, while accepting this - and it has been a long trip to get to this stage - would also look at funding more sports and more arts in the future along with this, not saying, 'Now we are doing more because this is going into the public lottery.'

But I would just also like to put this into context. We are talking here, or at least the amount that is being talked about, of somewhere in the region of £¹/₂ million a year. That is what we are giving to charities in the Isle of Man. Overseas aid - we are giving £125,000 in this financial year, and I just think we have to get that into perspective. (**Two Members:** Hear, hear.) We can rejoice because of the funds that are going to be raised through the lottery, but where we make a conscious decision of giving to people who are very much worse off than us - we are looking at £125,000 - I think it needs to be remembered this evening and not rejoiced in.

Mr Cannell: Mr President, I would like to say that I regard this as a momentous step being taken here today. It is one that the Manx public has called long and hard for and one which reflects our interests, because we represent those constituents. But as we do, I think we should dwell on the fact that we appear to be going to be disenfranchised to a certain degree because our taxpayers, our ratepayers, our ordinary constituents are going to be paying exactly the same for their tickets as anybody else without having the same access to the benefits, and I understand that it was the lesser of the two evils to have the scheme to start with, get it in, get it rolling and then represent to Camelot that we should be entitled to have

some of the payouts as well. So it is better than nothing but it is certainly nowhere near as good as having the full benefits with all the access to those huge sums of money which are available. Now, it has been said to me, and I would like confirmation of it, that if Isle of Man organisations have a head organisation in the United Kingdom - in other words, they are a branch or an affiliated centre or whatever they are - then they will be able to do that. I wonder what inquiries have been made in that regard.

Now, this is due to come in, providing this hon. Court approves it and everything else is in place, on 2nd December and there will be an absolute wave of Isle of Man hysteria for this, make no mistake. I think it is a shame that it is coming in then because there are so many charities in the Isle of Man, (**Mr Delaney:** Hear, hear.) recognised small charities, who will be depending on that month between 2nd December and the 24th to gain a substantial amount of their income, and I see them being absolutely decimated. I can visualise in my mind's eye now, down Strand Street, people with tins and nothing in them, because people will be going mad to get the lottery until it settles down in the same way that everything else will always settle down because people only have a certain amount of income to expend. (*Interjections*) But it does, however, having said that of course, legitimise only a situation which we have where many people are already in the lottery market by different methods of obtaining the tickets, and there are, of course, many syndicates in the Isle of Man as well. We do get carried away by it. When you read the odds of winning on it, then it is amazing that anybody ever buys a ticket, but I buy them and I am sure most will. That does not include the hon. Mr Speaker, who I was surprised to see was unable to support a charitable thing because he said we should be raising it by income tax, because I am well aware that, of course, as a member of the Department of Health and Social Security we absolutely rely totally on many people to contribute items to the likes of the hospital, whereas you could easily make out a case to say that if we need a new scanner or whatever we do, then we should raise it from taxation until we have got the money for it rather than depending on friends or charitable raising organisations or people such as myself lapping the TT course frequently to gain a few sponsorship bob to help towards it. So I do not think that principle is in any jeopardy.

Finally, if I could ask, please, what is the legal position when if it was to occur that Camelot were not to actually regain the franchise for the lottery. Does that make any difference to its legal standing in the Isle of Man or is it the principle of the lottery being allowed to operate?

Mr Crowe: Mr President, I was just going to make the same point that Mr Cannell has just made - that National Lottery tickets are being sold now and the Isle of Man does not get any benefit whatsoever. This will give 12 per cent of the ticket sales that are being made so it is better for the Island that we get some of the money back rather than have it all going off to the UK.

Sir Miles Walker: Mr President, it seems to me there are two issues. One of those issues causes me no problem at all and the other one I have some concern about. The one that does not concern me at all is that lottery tickets should be on sale in the Isle of Man. I recognise that many of our residents already buy lottery tickets. It seems to me eminently sensible that we should pick up the revenue, the tax which goes with those purchases. I have no problem either that we should allocate an appropriate amount to the lottery trustees for distribution - no problem with that at all, and this year we are recommending that the full

proceeds of the tax on the tickets on the sales goes to the trustees. What does cause me concern, if we think further away than that, is thinking out a commitment for future years when we do not know what the resource is going to be, and if we say as a matter of principle that 100 per cent of the tax ought to go to the lottery trustees to give them lots of money, what happens when ticket sales reduce, as they undoubtedly will in due course, their revenue drops? Will we then be saying to our people 'Please will you buy more lottery tickets so these guys will have more money to spend'? There is a principle there that causes me a concern. I think we should be talking about an appropriate amount of money for the government lottery trustees, we should decide what that is and we should make sure they get it, and I would not like to see it linked fairly and squarely in future years to the taxations we receive from the sale of tickets.

Mr Bell: Mr President, just one small point following from that for clarification, really. How will the proceeds raised by the taxation element of ticket sales actually be distributed to the lottery trust? Clearly Camelot themselves, or certainly the Treasury, will not know until the end of the financial year, for example, exactly how much has been raised in that particular time. So how on an ongoing basis will the lottery trust be given funds prior to the end of that financial year? Certainly for the first year, anyway, it will be difficult, I would imagine, for them to anticipate precisely how much money they are going to get and, unless they have a regular flow of funds from the Treasury during the period, it is going to be a very difficult system to operate. So I just wondered if the Treasury minister could explain the distribution process, please.

The President: Reply, minister.

Mr Corkill: Thank you, Mr President. It was an order that I brought to this hon. Court which I did expect obviously some comment on.

The hon. member of the Council, Mr Delaney, welcomed the proposals and I thank him for that, but the main issue which I feel as though I have never ducked at the primary legislation stage and in other debates concerning the lottery, and in answering questions, is the very fact that Isle of Man charities will not have access in the same way that their United Kingdom counterparts do. A number of members have mentioned this. Now, this is not an issue to do with Camelot. This is ring-fenced in the United Kingdom legislation. Let us face it, all countries in this world have to some extent harmful tax practices, and maybe in this case the United Kingdom passed a piece of legislation which was not in our interest at that time. So I would make the point that we have a situation where we know many Island residents are buying these tickets and the whole concept from the word go was the Treasury took a global view on the finances to this Island, and that was that duty was leaking from the Island at the rate of 12 per cent in the pound for every one of those tickets. I cannot give the hon. member of the Council an answer about the future and when I envisage the situation of the UK legislation changing. It is not Camelot, because obviously they could be gone in the next round of the new lottery or whatever that may be; their time is only limited. They will be no doubt at some stage, whether this time or in the future, replaced by another operator or a variation on the lottery. Now, that is the commercial issue there, but whether we can get the UK to change their legislation I cannot predict at this moment. What I would suggest is that those charitable bodies on the Island who have affiliated or parent bodies within the United Kingdom, when they are discussing issues with those parent bodies, actually raise this issue so that the

awareness is there on a broader front, and I think that may well be the first plank of the next stage with regard to the lottery.

The hon. member and my colleague from the Council, Mr Cretney, is quite keen that all this duty should go to the lottery trust in the future, (**Mr Cannan:** Hear, hear.) that we should stick with 100 per cent. Now, that is fine. That is what this order today says for this current financial year. What I would just urge a bit of caution and enthusiasm on is that we do not know what the ticket sales are; we do not know what the cashflow is going to be. At the end of the day this hon. Court will determine that percentage and an order will come to this hon. Court in due course ready for the next financial year. If there is a percentage in that rather than 100 per cent, then let us see what the figures are at that time, and I would just reserve my position in that respect. But if it is the majority will of this hon. Court, then obviously Treasury knows its place in life. (*Laughter*)

Mr Houghton: When did that start?

Mr Corkill: Now, bearing in mind the debate we had here not very long ago where a report said how all-powerful the Treasury was, perhaps members reading between the lines can understand the political process that has gone on with regard to the allocation of this duty, where it started in Treasury with one suggestion and came out of the Council of Ministers with another suggestion, and that is the situation.

I think the hon. member of the Council, Mr Waft, also mentioned the issue about Camelot, and I would just make the point again it is the UK legislation and not Camelot, but I do hope this is the first base and we can move on.

I have to say, hon. members, that I fundamentally have a lot of empathy with the comments that Mr Speaker has made, some of which have been echoed by the hon. member for Peel, Mrs Hannan, because he made the two points about what is charitable giving and what is government funding, and he has a very clear view on his issues with regard to gambling and I respect those for being very clear and black and white. What the hon. member Mr Speaker said was that this was an indirect way of raising taxation. What I would say, Mr Speaker, is that that was not a decision of the Isle of Man to do that; this was a United Kingdom situation which has impacted onto the Isle of Man, and all Treasury is doing is putting an arm round that duty and bringing it back to where it rightfully belongs on the Island, and I hope he understands that that is the process that I come from on this particular issue, and I am quite clear myself of the lines between charitable giving and government funding.

Also, the hon. member for Ramsey, Mr Singer, was asking into the future too about the percentage, and I think I have made it clear that Treasury is trying to reserve its position in this respect to fight the battle another day, but obviously everyone will have an input when that time comes. We thought it was quite sensible to get this order in place so that the Public Lottery Trust knew where they were this financial year, because at the moment - and the hon. member for Ramsey, Mr Bell, has pointed this out - on a cashflow basis what is happening is that for the last two years the taxpayer has just been giving a subvention to the Public Lottery Trust; no lottery has been operating and so they have actually been distributing revenue on a general basis, and that was a position that I was not going to stand for for another year, and if this lottery fails then that is a situation where the Public Lottery Trust, as far as I am concerned, would have no more funding and there would be no purpose for that lottery trust

with there being no lottery. So they do have a certain amount of cashflow already in place, limited as it is. We understand that the duty will arrive to the Island about two months after the auditing of the sales of the tickets et cetera, but in any event the money is paid over to the Public Lottery Trust in lumps and sometimes that is in advance and then the final payment is levelled off at the end of the financial year.

The hon. member for Peel, Mrs Hannan, as well as the hon. Minister for Tourism, has mentioned arts and sport. I would point out that we have, as a community and as an island, invested considerable amounts in sport. The National Sports Centre has not been there that long, or the swimming pool. The western pool is obviously, perhaps, on some people's minds. I think the taxpayer has already invested in sport, but whether the Public Lottery Trust wishes to take that into account is for them to decide. That is why the body exists. They make the priorities with the minimum of political interference, I hope.

The other point that was made by the hon. member for Peel was the figure for overseas aid, and I know discussions have been taking place between the Chief Minister and the hon. member, the chairman of the Overseas Aid Committee, with regard to that figure and we are in the budgetary process at the moment just starting.

My hon. colleague from Onchan, Mr Cannell, says that the public generally support this and I think they do. I think that is my reading of the situation. They already do it because they already buy the tickets. It is fairly self-evident, I think. Whether we are going to see hysteria, as my hon. colleague put it, on 2nd December - I hope not -

Mr Delaney: Only if they win! *(Laughter)*

Mr Corkill: - because at the end of the day the odds are very long. I hope that we do not actually start a hysterical stampede and I certainly do not feel that that is the case, although I am sure that there may well be an initial rush, but I doubt whether that will be hysteria, unless of course the machines do not work.

The hon. member of the Council, Mr Crowe, also mentioned the 12 per cent. My hon. colleague Sir Miles, the member for Rushen, was concerned that into the future we may be trying to stimulate sales of tickets in order to get the duty and the contribution back up to the Public Lottery Trust. Well, I will not take any part in that because I think that is fruitless and pointless. People walked out of the last lottery, the local lottery, because it did not suit their needs or their desires any more. They have changed their habit to this particular lottery; I am sure as time goes by things will change again, and certainly there is no desire. But on the point of duty, I can comment to hon. members that we have been sharing and collecting our football pools duty year after year after year and it goes straight into general revenue, and there has been very little, if any, comment with regard to that over the years.

So I hope that has answered most of the points. It is a first base and we look forward to getting this duty back to the Island where we deservedly should be controlling it, and we look at this as a global exercise for the Manx economy and I beg to move.

The President: Hon. members, I will put the resolution set out at item 15 on the order paper. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

National Lottery Legislation (Application) Order 1999 – Approved

The President: Item 16, the Minister for the Treasury.

Mr Corkill: Mr President, I beg to move:

That the National Lottery Legislation (Application) Order 1999 [SD No 600/99] be approved.

The purpose of this order is to modify and apply to the Island the United Kingdom National Lottery legislation. The order also amends schedule 1 of the Gaming, Betting and Lotteries Act 1988 to include the negotiating of a bet on the outcome of any lottery forming part of the United Kingdom National Lottery as grounds for refusal to grant or renew a bookmaker's or betting agency permit. I beg to move, Mr President.

Mr Radcliffe: I beg to second, sir.

Mr Delaney: A quick one, Mr President. Members are aware in all their constituencies, whether they are for the lottery or not, that during the time when the lottery was not on the Island, quite a few of their constituents will have had a bet at their local bookmakers controlled by the Isle of Man Government on the outcome of any or each or all of the numbers on the lottery. Now, of course, in this order that is going to be stopped. What concerns me now, and the clarification I require, is a lot of the bookmakers rightly are turning then to the Irish lottery, which contains 42 numbers instead of the 49 and they are offering odds against that, and all these people who have been backing groups of numbers or single numbers through this period are in a rut for doing it and have grown accustomed to doing it, and so they will turn their attention onto this lottery. Now, my interest is in the information which they require to know whether they have won anything or not, and that is the numbers from the Irish lottery which can be got, I am aware, on Ceefax and can be got from the bookmakers themselves. But I am also aware that the bookmakers' permit prohibits them from advertising outside of their premises. Can the minister, when he looked at this, tell me is there a method by which our local papers, for example, or our radio can legally carry the result of the Irish lottery to inform those people in your constituencies who had a bet on the Irish lottery, now that they cannot bet on the English lottery, so they will know the results? That is what I am asking the minister.

Mr Cretney: Bring back Waking Ned!

The President: Reply, minister.

Mr Corkill: Right, well, the hon. member of the Council, Mr Delaney, is quite right, of course. This was in the original debate about the lottery and the bookmakers made a lot of representation at that time because they were successfully filling the gap of taking bets for certain people on what the UK lottery numbers would be each week. Now, the agreement is such that we went along the line of agreeing not to allow fixed-odd betting in this way with regard to the UK lottery because we have agreed to import the whole thing wholesale, but it does not prevent bookmakers using some other lottery numbers. So I hope that is made clear. So that business aspect of the bookmakers may well be slightly affected but maybe, if they are inventive and ingenious, which they tend to be generally, they will be able to produce an equivalent for their customers.

With regard to publication of numbers, the information I have at the moment, Mr President, only relates to the UK side of things where it is prohibited, because that is part of the prohibition. I am not sure on the general issue of gaming regulations what the rules are - I

have not got them to hand - with regard to other competitions or lotteries and what bookmakers can do in or out of their premises, and it may be that they can publish in the newspaper. 'I do not know', is the answer -

Mr Delaney: Thank you.

Mr Corkill: - but I will certainly follow that through for the hon. member because at the end of the day he is concerned that customers know the outcome of what they have wagered, and I think that is an important point to make. I beg to move.

The President: Hon. members, I will put the resolution set out at item 16 on the order paper. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Forestry (General) Byelaws 1999 – Approved

The President: Item 17, the Minister for Agriculture, Fisheries and Forestry.

Mr Downie: Thank you, Mr President. I rise to move:

That the Forestry (General) Byelaws 1999 [SD No 584/00] be approved.

These bye-laws have been drafted to address three particular areas of concern which my department considers of importance in maintaining the quality of its land-holdings. They are the first general bye-laws to be introduced under the Forestry Act of 1984.

The first item addresses the practice of taking vehicles onto open moorland or indeed onto other areas such as national glens where vehicular access is unauthorised. Increasing levels of damage have been reported by my officers on the uplands especially. This provision is made to give a clear message to those would-be off-roaders that the hills are an important but fragile environment and unauthorised access does not come under the heading of sustainable management practice.

The second area refers to horse access. The department is keen to encourage horse-riding where access can be accommodated without damage to the environment or inconvenience to others using the department's land. It is our intention to upgrade existing access for horses within the plantations by the creation of designated bridleways. However, examples of unauthorised access both to open hill land and within national glens have sadly been encountered. Where this results in ground damage and inconvenience to the general public, the department has to give guidance as to what is acceptable practice.

The final part of the bye-law refers to the all-too-common problem of dog fouling. Whilst the department has no intention of restricting access to the national glens for dog-owners, it has witnessed an increasing level of dog fouling in the glens following the introduction of restrictions and penalties for fouling in urban areas. This bye-law makes it an offence to allow a dog to disturb wildlife or other animals, to cause a nuisance to another member of the public or to permit a dog to foul a footpath in a glen. Whilst the public visiting the glens may be inconvenienced by dog fouling, it has to be borne in mind that our manual workers carrying out such operations as grass-cutting in those areas frequently come into direct contact with dog faeces with the associated health problems and risks from diseases such as toxicara roundworm. It is in order to provide both a more pleasant environment for walkers in the glens and to offer staff some protection from this problem that this bye-law has been found necessary. Thank you, Mr President. I beg to move.

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

Mr Shimmin: Very briefly, Mr President, I would just rise to congratulate my colleague in West Douglas. In these bye-laws the department is actually making considerable progress against off-road motor vehicle riders and drivers, horse-riders and dog-owners and it is an area which is something which is due, is not an easy one because it is greeted with some reluctance from many members of the community, and I hope that the whole Court will support the department in actually trying to protect the glens and the hillsides. Thank you.

The President: Reply, minister?

Mr Downie: Just to thank the hon. member for West Douglas, Mr Shimmin, for his remarks and to assure hon. members that the department is taking a common-sense approach to this. We are very keen to open up the countryside to people but we expect them to be responsible when they are on our property. Thank you, Mr President.

The President: Hon. members, I will put the resolution set out at item 17 on the order paper. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Beef Quality (Headage Payment) Scheme 1999 – Approved

The President: Item 18, the Minister for Agriculture, Fisheries and Forestry.

Mr Downie: Thank you, Mr President. I beg to move:

That the Beef Quality (Headage Payment) Scheme 1999 [CG No 47/99] be approved.

The new Beef Quality (Headage Payment) Scheme 1999 updates the current 1993 scheme. It provides a system of headage payment for cattle processed through the meat plant. Payment rates reflect the quality of the carcasses which are judged on classification, the recognised European system for describing the fatness and conformation of the animal. Rates are varied weekly, with the highest level in May for cattle that have been kept and reared through the winter months and the lowest in October when summer-grazed cattle are likely to be marketed. The overall objective is to encourage continuity of supplies through the meat plant, an important element in maintaining our market outlets.

This scheme seeks to exclude the present lowest-quality carcass, the -P classification, from headage. These animals currently receive a £50 headage payment. They are principally derived as a by-product of the dairy industry, the offspring necessary to keep the cow in milk. They number an approximate 40 carcasses per year. The department proposes to withdraw in July 2000, subject to the approval of this Court, the next lowest-quality carcass, the P+ classification, from headage. These are, numerically, some 400 in a year and currently attract an average headage of £70. Being the lowest-quality carcass, the FMA have great difficulty in finding a market outlet for such carcasses and inevitably they have to be cut into portions and sold only as meat for manufacture. The FMA pays only £150 to £200 for these animals. Such carcasses, the department believes, do not have a place in a scheme intended to reward quality.

The department originally intended to withdraw both -P and P+ carcasses from headage at this time. After further consultation with the industry, a longer lead-in time has been allowed to accommodate those farmers who have some P+ grades.

The department intends, with effect from July 2000, to redistribute the total amount of headage payments which P carcasses would have attracted throughout the remaining classification boxes. This would mean that an average animal would receive £5 more headage. The better class of animal would receive up to £8.50 more. The department believes these incentives should be provided to encourage the quality, the meat plant and the consumer want. The department continues to operate a voluntary calf-culling scheme and producers will still, therefore, have an option of receiving £50 for animals which are likely only to grade as P through this source.

The scheme is equivalent to the United Kingdom Beef (Special Premium) Scheme. There are no quality criteria under that scheme and it is paid on a purely numerical basis. It applies only to steers and young bulls, not heifers, and has a current payment level of £84.32 per head. The maximum claim is 90 animals per producer year. There is, however, an ability to claim twice in the animal's lifetime at nine and 21 months of age. There is therefore £160.60 available.

The department's headage payment under this scheme is further supported by a payment of £75 which is currently being advanced as a BSE compensation payment for the fall in the returns in the beef market. The Isle of Man average payment would therefore be some £185 per animal in total.

The department remains committed to a bovine identification and tracing programme, both for local consumers' interests and in compliance with the EU requirements. It has therefore made eligibility for headage dependent upon correct marking and identification, which is two complete tags, a front and back in each ear and the requirement for a valid passport to accompany the animal to the meat plant.

There are various options for dressing cattle: EU specification; UK national specification; meat and livestock standard specification; or a company specification operated by the local operator. The FMA are currently in the company category, their dressing specification being neither the full EU specification nor any other. The scheme would permit variation without further recourse to Tynwald Court.

The department also proposes to introduce in the amendments next year a defined maximum age for young bulls. This again will be a quality-driven initiative as the longer such bulls are kept in an attempt to increase weight and shape, the worse the quality of the meat becomes. The maximum age of 15 months is seen as fair, allowing bulls from whatever rearing system to remain eligible. Such age has been endorsed by the FMA, who are at the end responsible for marketing such animals. Again, a lead-in time has been permitted to allow any bulls currently being reared to still be eligible. All the Island's producers have been notified directly by the department of these impending changes.

Just finally, to advise hon. members, the total cost of the headage scheme is £660,000 per year on 6,000 cattle. There are an approximate 220 producers entering cattle into the meat plant.

Thank you, Mr President. I beg to move.

Mr Singer: Mr President, I beg to second and reserve my remarks.

The President: Hon. members, I will put the resolution set out at item 18 on the order paper. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Falcon Cliff Lift – Report Received

The President: Item 19, the Minister for Tourism and Leisure.

Mr Cretney: Mr President, I beg to move:

That the Falcon Cliff Lift Report be received and the recommendations therein be adopted.

As a result of a resolution proposed by the hon. member for Onchan, Mr Karran, and approved at the July 1999 sitting of Tynwald, my department has investigated the practical and financial viability of relocating and restoring the Falcon Cliff lift for public use. The Tynwald resolution called for the report to be presented to the October sitting. However, an extension of time was requested in this matter due to the necessity to seek the services of a structural engineer to advise on a number of matters and the need for such information to be appraised by my department prior to it being presented. The report, which hon. members are now in possession of, advises on the existing condition of the lift, options for consideration of the way forward and the estimated one-off construction costs of such options, together with indicators of ongoing operational costs.

From such information it is clear that either re-establishing the original lift at Falcon Cliff or resiting and reconstruction at another site will have major cost implications in respect of both one-off and ongoing operational costs, the cost indicated for construction being estimated at £160,000 excluding VAT, land purchase, professional fees, strengthening works or reinstatement of the existing site, the ongoing revenue implications of re-establishment regardless of site being personnel and maintenance with a likelihood that a minimum of two personnel would be required, one to operate the lift and the other for back-up, safety purposes, ticket sales et cetera.

On the basis of the information provided, my department has concluded that it is neither practical nor financially viable to restore the Falcon Cliff lift in situ or at an alternative site for the following reasons: the high capital costs involved do not justify the benefits arising therefrom; there is so little of the original lift capable of restoration that for all practical purposes it will be a new structure and therefore cannot be justified on heritage grounds; and the staffing and ongoing revenue costs would be relatively significant. Bearing this in mind, I would therefore ask the hon. Court to support the motion standing in my name.

Several Members: Agreed.

Mr Cannell: I beg to second, Mr President.

Mr Henderson: Mr President, I thank the hon. minister for his detailed report but it does beg one or two questions and unfortunately, minister, they run like this: could he advise this hon. Court how much this report cost or as guesstimation as he can get? How many man-hours roughly did the consultants put into preparing this report for that guesstimated amount of money? My third question to the hon. minister is: why did he or his department not utilise the expertise in the Manx Electric Railway Society and other members in the Joint Steam Association which would have probably produced a higher-quality report with far more expertise?

Mrs Cannell: Mr President, I would like to just start off by saying that, given the report looking into this whole affair was as a result of a motion that was put down by the hon. member for Onchan, Mr Karran, it is a pity, really, that he is unable to be with us today, because I feel sure he would have had some comments to make.

I was concerned at the onset actually that the project would be viable because it has deteriorated quite a bit for a considerable amount of time but, looking at the conclusions, the recommendation is that the department recommends that government should not consider investing funds in such a scheme. I would just like to ask, though, on page 12 when we are talking - it specifies the conditions of the walkway - it does say here that the walkway is now impassable and the timber stairs from the lower station are in an advanced stage of decay and in a dangerous condition. Does the department have any intention of doing anything about the dangerous condition of the remainder of the stairs that are still there? Will the site at least be tidied up and rendered safe? I do recall just a couple of years ago a member of the public taking his dog for a walk along this area actually fell and it took quite a considerable effort on the part of the rescue service to actually get him up and then eventually his dog up, but the dog was all tied up with what remains on this particular site. So I would concur it is dangerous. Can we have something done about it, please?

The President: Reply, minister.

Mr Cretney: Thank you, Mr President. I am sure we can have something done about it and we could raise that with the owner of the walkway. It is certainly nothing to do with this department.

In relation to Mr Henderson's questions, the report - no guesstimates, £8,000; no guesstimates, no estimates, everything has been done properly. In terms of the man-hours, though, that particular element, without referring back to the people who prepared the report, I am afraid I am not able to provide that information this evening.

In terms of why we did not utilise the Manx Electric Railway Society, I do not know what the answer to that is; I am sorry. It was felt - (*Interjection*) Well, it may be a shame in retrospect and may be something that I should have thought about more at the time (**A Member:** Hear, hear.); for that I apologise. However, it was felt that, given that this matter had appeared on a Tynwald resolution in the proper form, it was incumbent upon the department to have a proper, professional assessment (**A Member:** Hear, hear.) and that is why we went to the firm to get that. I value, as I think we have said previously, the views of the Manx Electric Railway Society and I am happy to say that it seems to me that we have a more fruitful relationship going along at the moment (**Several Members:** Hear, hear.) and perhaps we will be able to take their advice with regard to other matters in the future. I beg to move, Mr President.

The President: Hon. members, I will put the resolution set out at item 19 on the order paper. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Territorial Sea Jurisdiction – Statement by the President

The President: Now, hon. members, turning to the supplementary order paper which has as its main business the Sea-Fisheries (Scallop Fishing) Bye-laws 1999, I would inform the Court that when I sought justification from the department for a supplementary order paper

I was informed that the concurrence of the United Kingdom Secretary of State in the Home Office is required in respect of sea fisheries bye-laws in a three to twelve-nautical-mile area of the territorial sea and that the concurrence of the Home Secretary in this matter had delayed the progress of these bye-laws.

Hon. members, this was the first occasion since I have presided over the Court that I have been officially informed that a proposed Manx Government regulation was subject to the prior approval of the Home Secretary of the United Kingdom Government. (**Mr Houghton:** Hear, hear.) The implications for this Tynwald assembly are such that, as your President, I felt obliged to examine the background, and I found that when Her Majesty's United Kingdom Government eventually accepted the United Nations convention of 1958 in respect of the territorial sea and the contiguous zone, it did so in respect of its own territorial waters and, in the case of the offshore dependencies such as the Isle of Man and the Channel Islands, as the sovereign territory acting on their behalf internationally.

I am unaware of any authority vested in Her Majesty's United Kingdom Government which permits them either to enhance or diminish the privileges and responsibilities which the convention confers. This would suggest, hon. members, that the agreement entered into between the Isle of Man and the United Kingdom in 1990, which effectively changed the provisions of the territorial sea and contiguous zone convention, may well be neither legal nor binding. It is an issue I would invite the Standing Committee on Constitutional Matters to consider and report thereon in due course.

Members: Hear, hear.

Supplementary Order Paper – Standing Order Suspended

The President: Turning now to the supplementary order paper, I call on the Minister for Agriculture, Fisheries and Forestry and in so doing I would emphasise that his department has in no way been responsible for delays on this issue.

Members: Hear, hear.

Mr Downie: Thank you, Mr President. Just before I move the suspension of standing orders, could I just indicate to you that there is an additional hurdle that since devolution we have to cross as well, because not only have we got to seek the concurrence of the Secretary of State, but I understand now that since devolution he has to consult with Northern Ireland, with Scotland and Wales and with MAFF before he can make a decision. So in advising the Court of that, I wish to move:

That standing order 10.9 be suspended and that, under standing order 2.2(6), the following business be considered.

The President: A seconder?

Mr Singer: I beg to second, Mr President.

The President: Is that agreed, hon. members?

Members: Agreed.

The President: Thank you.

Papers Laid before the Court

The President: I call upon the learned Clerk to lay papers.

The Clerk: I lay before the Court:

Sea Fisheries Act 1971 -

Sea Fisheries (Scallop Fishing) Bye-laws 1999 [SD No 653/99].

Sea Fisheries (Scallop Fishing) Bye-laws 1999 – Approved

The President: Item 3, the Minister for Agriculture, Fisheries and Forestry.

Mr Downie: Thank you, Mr President. I beg to move:

That the Sea Fisheries (Scallop Fishing) Bye-laws 1999 be approved.

As hon. members will know, the scallop fishery has developed over the last 60 years to become the most commercially important fishery of our fishing fleet. The Island has led the way in the introduction of conservation measures going back to 1943. In recent years fishermen from the Island have played their part in a working party looking at scallop conservation.

As a result of recommendations made by that group, the department introduced further new bye-laws in 1996 which gave effect to several of the recommendations. The Northern Ireland authorities have since followed suit with some variations. At a very useful and practical meeting of the Irish Sea Fisheries Interests held at the end of July this year, it was agreed that it would be useful for scallop legislation to be harmonised. In the spirit of harmonisation and co-operation, the new bye-laws now before this hon. Court add some further technical details to our legislation on scallops.

The principles of conservation are vital for the long-term interest of the scallop fishery. Anything we can add to our legislation which is helpful towards conservation is for the benefit of the industry, not just for the catching sector but also in processing. We need to manage this valuable resource responsibly for the future of our fishing industry.

This product, scallops from our territorial sea, is recognised and valued for its high quality, particularly in French and Belgian markets. These bye-laws set out more detailed technical measures for scallop-dredgers and maintain the minimum size at which scallops may be taken at 110 mm. The bye-laws also include reference to the closed season, when scallops are not to be fished. That normally runs from 1st June until 31st October. However, as hon. members will be aware, many fishing grounds off the west coast of Scotland and, more recently, off Northern Ireland have been closed because of a toxin in scallops which causes amnesic shellfish poisoning, or ASP. ASP has not been found in scallops from our territorial sea and, with the prospect of scallop fishing being open in our area from 1st November, many vessels from the west of Scotland and as far north as Orkney expressed an intention of coming here to fish for our scallops. My department was gravely concerned that all the conservation measures applied to manage the stocks responsibly would be totally undone by the pressure of so many vessels fishing on our grounds. The available stocks would be fished out very quickly. There would also be a high level of incidental damage to the smaller stock on the ground and, because of this, these bye-laws introduce a temporary measure to continue the closed season until 14th November.

Immediately on making these bye-laws my department expanded the arguments for continuing with a closure after 14th November. The points made by the department were both detailed and extensive, and I am pleased to tell hon. members that the force of that argument has been accepted and I have already made amendment bye-laws extending the closed season until the end of November at the earliest.

The bye-laws incorporated a further conservation measure which has been promoted and fully supported by the Isle of Man Fishermen's Association, namely a prohibition on fishing overnight - that is, from 6 o'clock in the evening until 6 o'clock the following morning. This will prevent round-the-clock fishing for scallops over two or three days, which is a style of fishing that has been putting extra pressure on the scallop stocks in recent years. This applies in the three-mile area only of the territorial sea.

These bye-laws were intended as a consolidation of our existing measures, together with the inclusion of some further technical amendments. The situation with ASP in other waters and our concerns for conservation mean that these bye-laws have been subject to immediate amendment with further amendment to follow. I am sorry that this should be the case, but I am sure that hon. members will appreciate the necessity for prompt action. However, it serves to underline my department's commitment to conservation and responsible management of this very important commercial fishery.

Mr President, I beg to move.

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

The Speaker: Mr President, before we commenced this particular item on the supplementary order paper, you were making a comment about things which had happened effectively in the past which have an effect now. This hon. Court, I am sure, will support the minister this evening in relation to the Sea-Fisheries (Scallop Fishing) Bye-laws of 1999 and I think we will all pay tribute to the work which he is putting into the conservation of our fishing industry. (**Several Members:** Hear, hear.) That does not cause me much concern at all, and in fact I support the actions which he has taken. But I do feel that we ought to get the papers which we are putting our name to in correct order. This one, at the start, says 'Approved by Tynwald on.1999' - that is okay, approved today, and then it says 'Coming into operation on 3rd November' but if you look at the legal text in (i) it says 'These bye-laws may be cited by the Sea-Fisheries (Scallop Fishing) Bye-laws and shall come into operation on. . .' we do not know when. It has not been put in. If you turn your page, hon. members, to paragraph 3, you have the business there when it makes it an offence, and an offence means that someone could be, on summary conviction for failing to comply, subject to a fine of £10,000. Now, the period in these bye-laws stated it shall be, in (iii) of (3), 'No person shall fish for or take or kill scallops in a territorial sea during the period 1st November until 14th November,' both days inclusive, and yet the document is signed and came into operation on the third day of November 1999, so there are two days in there which are legally incorrect, if nothing else, and somebody could be fined by retrospective legislation.

I have, minister, no problem at all with the need for us to introduce the bye-laws and the need for conservation; I just query that sometimes in the rush to do things we need to be sure that we get it correct.

Mr North: Absolutely.

The Speaker: Reply, minister.

Mr Downie: Just to clarify that situation, the reason for the delay or the time-lag was that we were informed by MAFF verbally that everything was in order, but I am sad to say that they took two days to track down the Secretary of State to sign the paper and we had to crack on with this particular issue because our grounds were at risk and I had to make the decision to sign the order and get it on. Now, if I am going to be hung for a . . .

Mr Delaney: Scallop! *(Laughter)*

Mr Downie: - I will plead guilty now and rest my case, but it was done in our best interests. The two days are the delay it actually took for the signed authorisation to come, and that is where it was from, Mr President.

The President: Hon. members, I will put the resolution set out at item 3 on the supplementary order paper. Would those in favour please say aye; against, no. The ayes have it. The ayes have it.

Now, hon. members, that concludes the business before the Court. I am grateful to all hon. members for their patience and achievement the clearing of both order papers today. The Council will now withdraw and leave the House of Keys to transact such business as Mr Speaker may place before them. Thank you, hon. members.

The Council withdrew.

HOUSE OF KEYS

The Speaker: Hon. members, the House of Keys will stand adjourned until Tuesday next, 23rd November, in our own chamber at 10 a.m. Thank you, hon. members.

The House adjourned at 8.07 p.m.