

**REPORT OF PROCEEDINGS OF
LEGISLATIVE COUNCIL**

**Douglas, Tuesday, 1st May 2001
at 10.30 a.m.**

Present:

The President (Hon N Q Cringle), The Lord Bishop (the Rt Rev Noël Debroy Jones), the Attorney-General (Mr W J H Corlett QC), Hon Mrs C M Christian, Messrs E A Crowe, D F K Delaney, J R Kniveton, E G Lowey, Dr E J Mann, Mr G H Waft, with Mrs M Cullen, Clerk of the Council.

The Lord Bishop took the prayers.

Apologies for Absence

The President: Hon. members, we have apologies this morning from Mr Radcliffe. I can report to you that he went back into Noble's on Sunday morning, but he is in good form actually hoping to be back out again this afternoon. He will be seen by the doctor this morning and is very hopeful that he will be out. It is largely a question of stabilisation and then he will be okay. That seems to be the message.

Road Transport Bill — First Reading Agreed

The President: So we turn then to the first reading of the Road Transport Bill.

Mr Kniveton: Thank you, Mr President. The object of this Bill, which is promoted by the Department of Transport, is to introduce new systems of regulation of commercial road passenger and goods transport. It replaces the existing systems of regulation of hackney carriages and public service vehicles.

Part I, which is clauses 1 to 2, establishes a Road Transport Licensing Committee as an all-Island regulatory authority, replacing the Road Traffic Commissioners. Clause 1 itself provides for the constitution of the committee and clause 2 for its proceedings.

Part II, being clauses 3 to 24, sets up a system of regulation of operators of passenger and goods vehicles through registration, with the alternative of licensing for those wishing to operate off as well as within the Island. Clause 3 is introductory. Clause 4 defines the commercial uses of passenger vehicles which are subject to regulation and clause 5 imposes the requirement for registration or a licence. Clause 6 provides for exemptions for voluntary organisations. Clauses 7 and 8 make similar provision for goods vehicles and clauses 9 to 12 and schedule 1 provide for applications for, and the grant and duration of, operator registration and licences. Clause 13 deals with the contents of registers and of licences. Going on to clauses 14 to 16, they require registers and licences to specify the operating centres for vehicles, the maximum number of vehicles authorised to be used and the conditions of registration and licences. Clauses 17 and 18 provide for the variation, suspension and revocation of registration and licences and clause 19 for disqualifications. Clause 20 requires an operator to inform the committee of certain convictions. Clause 21 gives a right of appeal from decisions of the committee. Clauses 22 and 23 require a certificate of registration or a licence to be displayed at operating centres et cetera. Clause 24 enables regulations to make supplemental provisions.

Going on to part III, sir, clauses 25 to 47, make further provision for regulating passenger transport. Clauses 25 to 29 require a service licence for a regular bus service and for plying for hire. Clauses 26 to 34 provide for applications for, and the grant and duration of, certain licences and appeals from decisions of the committee. Clauses 35 and 36 enable regulations to prescribe maximum fares which may be charged for journeys on vehicles plying for hire, and as to the signs and markings et cetera to be displayed on vehicles used under service licences. Clause 37 places holders of service licences under an obligation to carry passengers and

clause 38 requires licence holders to make returns? Going on to clauses 40 to 42, they provide for the licensing of drivers of public service vehicles. Clause 43 makes it an offence to supply liquor to drivers and conductors. Clauses 44 to 46 enable regulations to be made as to the conduct of drivers, conductors and passengers and the number of passengers to be carried. Clause 47 enables regulations to make supplemental provision.

Going on to part IV, clauses 48 to 65 contain miscellaneous and supplemental provisions. Clauses 48 and 49 deal with forgery and false statements. Clauses 50 to 54 make general provision for offences, inspections, evidence and other enforcement matters. Clause 55 provides that, subject to exceptions, licences and registrations are not transferable. Clauses 56 to 65 and schedules 2 and 3 are supplemental.

Mr President, it is expected that initial expenditure in the region of £120,000 for additional personnel et cetera will be incurred in each of the first two years of operation of the regulatory system introduced by the Bill, after which time it is expected to be self-financing through registration and licensing fees. Otherwise it is not expected the Bill will have any significant net effect on public revenue or expenditure. I beg to move the first reading of this Bill, sir.

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

The President: Mr Lowey has seconded. Mr Crowe.

Mr Crowe: Thank you, Mr President. In supporting this Bill, it is an interesting history, I think there has been an attempt over many years to change the legislation. The local authorities have the present responsibility through their bye-laws for taxi operators. The Road Traffic Commissioners are responsible for certain sizes of vehicles and I think technology today, such as mobile phones, has overtaken the limitation placed by local authorities on their own areas and the basis of plying for hire. I think it is right that an all-Island authority should supervise and regulate because this will smooth out imperfections in different areas and hopefully allow all operators to have a reasonable living to be made from it. I was interested in clause 65 which does give the department such transitional provisions that are necessary to bring this in without hopefully too much inconvenience to either the operators or the people administering the new law when it is passed.

The President: I call on Mr Kniveton to reply.

Mr Kniveton: Yes, thank you, Mr President. I do thank my hon. colleague, Mr Crowe, for expressing his support and certainly there is a very interesting history.

The first thoughts of this Bill arose some 15 years ago and it drifted from that situation until just five years ago when my department, I believe, or the Department of Transport, was requested to get on with the job and bring the Bill in. It took from five years ago until the last couple of years to really get down to it and I can assure you, sir, there has been a tremendous amount of consultation, particularly with the taxi owners. Certainly the heavy goods people, the bus people and the coach people, they seem to be quite happy with it all and the consultation with them was a reasonable period. Mr Crowe mentioned the local authorities and it is true to say, I believe, that the local authorities have been just acting in their capacity. They have never had any power over the taxis apart from granting licences and that appears to have been their position in this. The Road Traffic Commissioners I believe have been an excellent authority, but I also believe that their time has come now when they should move on to this new form of committee and go from that stage. Clause 65, the transitional period as mentioned by Mr Crowe, that is an interesting situation. I am sure we will debate it quite thoroughly when the time comes. So, Mr President, I beg to move, sir.

The President: Hon. members, the motion before us is that the Road Transport Bill be read for a first time. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Fair Trading (Amendment) Bill — Consideration of Clauses

The President: We turn then to item 2 on our order paper which is the Fair Trading (Amendment) Bill for consideration of clauses. I call on the hon. member, Mr Waft, to take clauses 1 to 4 and schedule 1, sir.

Mr Waft: Thank you, Mr President. Clause 1 inserts a new part in the Fair Trading Act 1996 outlawing pyramid selling and similar trading schemes. These schemes can lead to substantial losses being made by the participants who are often small investors or home workers who can ill afford such loss. It is often only those at the top of the pyramids who make a profit and they can only do so by recruiting more and more participants.

Clause 2 inserts a new section 7C and 7D into the Fair Trading Act 1996 and provides for offences for contraventions of the new sections 7A and 7B. Persons found guilty of these offences will be fined fines of up to £5,000 or imprisonment of up to two years. Clause 2 provides for the contravention of any regulations governing pyramid selling schemes to be a criminal offence with fines as I have just stated. Section 7D provides for a defence for the publishers who innocently publish an advertisement and gives the Office of Fair Trading enforcement powers and allows us to use our formal gateways for disclosures.

Clause 3 widens the scope of part II of the Fair Trading Act 1996 which provides machinery for investigating and restricting anti-competitive practices to cover arrangements involving any persons, not just persons who are associated with one another. This was recommended by the Monopolies and Mergers Subcommittee of the Council of Ministers when it reported in 1996. The clause also repeals an exemption for licences relating to the patents and registered design.

Clause 4 is regarding unfair contract terms and clause 4(1) replaces the heading to part V of the 1991 Act. Sub-clause (2) substitutes new sections 38 to 40 in the 1991 Act and section 38 defines the scope of the new part V limiting it to contracts between the seller and the consumer, but it allows the Office of Fair Trading to exempt particular types of contract and ensures that the controls cannot be avoided by the implication of a foreign legal system unless the contract has very real links with that jurisdiction. Mr President, I beg to move clauses 1 to 4 and schedule 1 of the Bill.

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

Mrs Christian: Mr President, these clauses are to be welcomed. It is interesting that clause 3, I think, deals with anti-competitive practices dealing with cartels or other elusive arrangements. The difficulty is identifying them, I guess, in the first instance, but where they are identified I think certainly we want to have power to clamp down on such practices.

The President: Mr Crowe.

Mr Crowe: Yes, it is interesting with pyramid selling that real life events always precede legislation and people are always trying to find opportunities to circumvent legislation, so it is interesting that catching up on these misuses of selling is to be welcomed. So I do support the tightening up of pyramid selling and other such schemes.

The President: Mr Waft to reply.

Mr Waft: I thank you, Mr President and members, for those remarks. We are in a catch-up situation. We have to try and keep ourselves a little bit ahead of the game and this goes some way towards that.

The President: Now, hon. members, before I put that particular motion to you I would point out that there has been an alteration made to the long title of the Bill which I understand has been circulated to members - I take it it has been - so that it reads after the supply of financial services to provide for the control of goods and services. So taking that into consideration, hon.

members, and being aware of that, I then put the motion to you that clauses 1 to 4 and schedule 1 do stand part of the Bill. Will those in favour please say aye; and against, no. The ayes have it. The ayes have it. Clause 5, Mr Waft.

Mr Waft: Clause 5, Mr President. This clause inserts a new section 40A into the Consumer Protection Act 1991. This change will mean that unfair contract terms will no longer bind the consumer except when required by statute or international obligation. Section 40A(1) provides that in general a contract term which is found to be unfair will no longer bind the consumer. Section 40A(2) makes an exemption for the use of these terms whether either statute or international convention dictates their inclusion in the contract. Section 40A(3) provides that when the contract can still be undertaken after removal of an unfair term then that will be so. Mr President, I beg to move clause 5 stand part of the Bill.

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

The President: Mr Lowey seconds. Mr Crowe.

Mr Crowe: Yes, again, it is interesting how it is trying to get an equitable situation between the purchaser and the seller, in fact both parties to a contract, and it is interesting where it talks about “a contract term shall be regarded as unfair if it causes a significant imbalance in the parties’ rights”, so again it is bringing some sort of balance to both sides of a contract. Again I am supportive of it.

The President: Mr Waft. Do you wish to reply?

Mr Waft: No.

The President: In that case, hon. members, the motion is that clause 5 stand part of the Bill. Will those in favour please say aye; and against, no. The ayes have it. The ayes have it. Clause 6 dealing with enforcement, Mr Waft.

Mr Waft: Clause 6, Mr President, inserts new sections 40B and 40D into the Consumer Protection Act 1991, providing machinery to stop or discourage traders from using unfair contract terms. Section 40B(1) requires that the Office of Fair Trading consider complaints that standard contractual terms are unfair and lays down the procedures. It also enables the Office of Fair Trading to allow an undertaking by the trader to alter the terms of the contract rather than instigating formal action. Section 40C(1) gives the Attorney-General, at the request of the Office of Fair Trading, the right to apply for an injunction restraining the use of an unfair contract term. Section 40C(2) gives the court power to grant the injunction when applied for by the Attorney-General. Section 40C(3) allows the injunction to extend beyond particular contract terms to other similar terms. The other sections in the clause set down the circumstances when the Office of Fair Trading can investigate and enables the office to demand a trader or trade body, document or information about the use of contract terms and covers the Office of Fair Trading powers of investigation. Section 40D(3) explains that a request for information is to be accompanied by a notice in writing which can be varied or revoked. Section 40D(4) is regarding the information of documentation required. Section 40D(5) is the obligation for a person to furnish that information when requested by the Attorney-General. The cost of this application will be borne by the person in default. Mr President, I beg to move clause 6 stand part of the Bill.

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

The President: Mrs Christian.

Mrs Christian: Mr President, it may be that I just have not spotted it, anyway, the hon. mover keeps referring to the Office of Fair Trading and the wording is board and I wonder is there a clause somewhere which changes ‘Board’ to Office of Fair Trading or has that been done in some other piece of legislation?

The President: Mr Waft to reply.

Mr Waft: I think, Mr President, this has just been a recent innovation, the Office of Fair Trading rather than the Board of Consumer Affairs, and I am sure that it will be encompassed when it is interpreted. Perhaps the Attorney-General might like to comment on it.

The President: Yes, Mr Attorney.

The Attorney-General: Mr President, I see in the Bill, sometimes it refers to the Board and sometimes to the Office. From my recollection of the legislation of the Fair Trading Act there was an amendment whereby 'the Board' was replaced by 'the Office' throughout. So I am sure there will be some technical reason why it is referred to the Board here. Perhaps I could just check that, Mr President, and come back to the hon. member. Certainly there is no doubt that the correct description of the former Board is now the Office of Fair Trading.

The President: Yes, I think the point is fairly made by Mrs Christian and we are dealing with this matter. Mr Attorney has said that he will come back to us. Whilst we accept the position as it is, hon. members, would you agree that it might be necessary to make an amendment to that extent at the third reading stage? It does seem it would be wrong. Knowingly that there is a difference in the Bill now, we should certainly make sure that it is in its correct form at third reading stage. Happy with that, hon. members?

Members: Agreed.

The President: In that case, hon. members, I put to you the motion that the clause 6 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. We then take clause 7. Mr Waft.

Mr Waft: Thank you, Mr President. Clause 7 inserts a new section 40E into the Consumer Protection Act 1991 providing for the publication of information and advice on action taken by the Office of Fair Trading and general information regarding the consumer's rights in relation to unfair contract terms. Mr President, I beg to move clause 7 stand part of the Bill.

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

The President: The motion, hon. members, is that clause 7 do stand part of the Bill. Will those in favour please say aye; and against, no. The ayes have it. The ayes have it. Perhaps we could take 8, 9 and 10. Mr Crowe. Mr Waft, sorry. (*Laughter*) The hon. member, Mr Waft, 8, 9 and 10.

Mr Waft: Thank you, Mr President. These clauses are amend part VII of the Consumer Protection Act 1991 which gives the consumer a cooling-off period during which he can cancel a contract which has been concluded away from business premises so as to wider the definition of unsolicited visits and to impose criminal sanctions for a breach of certain requirements of part VII. We believe that these provisions would be particularly useful to us in our fight against cowboy builders and fly-by-night traders. Mr President, I beg to move clauses 8, 9 and 10.

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

The President: Mr Crowe, this time.

Mr Crowe: Thank you, Mr President. This loophole appears to be that if you are a cowboy builder and you phone a house and saying I am in the district and would you like me to call to look at your drive or roof or whatever, then when he arrives that is not deemed to be an unsolicited visit. Now what you are saying is that this new Act will prohibit that definition from applying then, if the house owner who gets a dodgy builder calling to fix his roof or whatever, even though he has telephoned in advance, it can still be deemed to be an unsolicited visit. Is that the way I am reading it?

Mr Waft: I think, Mr President, the interpretation is encompassed in clause 8 where it says 'In this section "unsolicited visit" means a visit by a trader, whether or not he is the trader who

supplies the goods or services, which does not take place at the express request of the consumer’.

Mr Lowey: That is right.

Mr Waft: In other words if they call I think this is basically what is covered by this. Obviously the trader has to contact either party one way or another at the end of the day, but it is to do away with the cold calling, really, to vulnerable populations who are susceptible to influence at their stage of life when perhaps they might be more unaware of what was happening. I think this is the situation.

Mr Crowe: Right.

The President: Mr Kniveton.

Mr Kniveton: Can I just ask, Mr Waft, I think it is a very simple question really. Many of us have experienced visits to Mediterranean countries and the Canary Islands and we have been chased around for timeshare. Now can I assume that timeshare fits into this, Mr President?

The President: Mr Waft, to reply.

Mr Waft: Mr President, timeshare is a completely separate entity which is covered by separate legislation. I think that is correct.

Mr Kniveton: Yes, I had forgotten that, thank you. Thank you, Mr President.

The President: Right, hon. members, the motion then before the House is that clauses 8, 9 and 10 do stand part of the Bill. Will those in favour please say aye; and against, no. The ayes have it. The ayes have it. Clause 11, distance selling. Mr Waft please.

Mr Waft: Clause 11, Mr President, inserts a new part VIII into the Consumer Protection Act 1991 which affords the consumer additional protection when dealing at a distance from the supplier of goods or services. Specific information must be provided to this consumer and failure to provide rights of cancellation may result in the committing of a criminal offence. Clause 11 inserts a new section 57A into the 1991 Act and this defines a ‘distance contract.’ Section 57A(2) excludes certain contracts such as those for the sale of land and construction of financial services, This is because they are covered by other regulations. Section 57A(3) excludes timeshare contracts.

Mr Kniveton: Thank you.

Mr Waft: Section 57A(4) excludes delivery of food, bookings of hotel, travel, restaurant and sports facilities, except in respect of the consumers’ rights in the case of non-performance, that is, as I have explained, because these are covered by other regulations. Mr President, I beg to move clause 11 stand part of the Bill

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

The President: Mrs Christian.

Mrs Christian: Mr President, I wonder if the mover will just confirm that this would involve catalogue purchasing or internet purchases? And does the purchase of something from outwith the Island have to comply with Manx legislation in this connection? I presume that is exactly what it does say.

Mr Waft: I think that is correct, Mr President.

The President: Mr Waft can reply to that.

Mr Waft: I think that is correct, Mr President. Mr Attorney?

The Attorney-General: Yes, that is correct.

The President: Confirmed by the Attorney and by the mover of the Bill. (*Interjection*) I think, Mr Waft you referred to it inserting a new part VIII. It is actually a new part VIII isn't it? So clause 11, hon. members. Those in favour please say aye; and against, no. The ayes have it. The ayes have it. Clause 12.

Mr Waft: Clause 12, Mr President, requires certain specified information to be given to the consumer by the supplier under a distance contract. It inserts new sections 57B and 57C in the Consumer Protection Act 1991. Mr President, I beg to move clause 12 stand part of the Bill.

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

The President: The motion, hon. members is that clause 12 do stand part of the Bill. Will those in favour please say aye; and against, no. The ayes have it. The ayes have it. Hon. member, Mr Waft, perhaps we could take 13, 14 and 15.

Mr Waft: Thank you, Mr President. Clause 13 gives the customer under a distance contract the right to cancel a contract within a certain time and the right to cancel a related credit agreement, whilst 14 requires the consumer who cancels a distance contract for the supply of goods to return the goods to the supplier and make provision for goods given in part exchange. It inserts new sections into 57J and 57K of the Consumer Protection Act 1991. Clause 15 lays down the rules in the way a distance contract is to be performed by the supplier and provides that the parties cannot contract out of part V. It also contains definitions of terms used in that part. Mr President, I beg to move clauses 13 to 15.

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

The President: Mr Delaney.

Mr Delaney: Just to ask this, one of the major problems on the Island has been as the member will be aware and certainly Mr Lowey would be aware as past chairman, of where we have things. Now I will mention the company, because I have personal experience of this. Britannia Sales where they wish to sell to clients on the Island. A large amount of videos or records or CDs. The person fills in a form which is on a newspaper to buy a fixed number of these CDs or cassettes et cetera and then finds himself committed for a long period of time to buy at a certain price, another add on piece of entertainment, be it music or film and the department is aware of this place. Sending back this particular item, whether it be a CD or a video can be as costly as the item itself. If the person who has purchased informs the company they do not wish any longer to carry on this agreement, can they ask for the supplier to pay for the payment of the return by post of this item?

The President: Mr Crowe.

Mr Crowe: Mr President, if I could ask the hon. mover just about the cancellation period which seems to be seven days after the contract is concluded and then seems to vary as to whether it is when the goods are received. Can the mover just clarify this, because I have visions if somebody bought, as in Mr Delaney's case, some CDs on the internet, they would arrive after the seven days. Is it then seven days after goods are received or seven days from the contract?

Mr Delaney: In some cases it is eight weeks before you get them.

Mr Crowe: On page 24 it mentions the period of three months and so on, so there seems to be some various dates and I know the mover mentioned information be given to consumers so maybe clarity as to the cancellation period would be helpful in any explanatory leaflet, I would think.

The President: Mr Lowey.

Mr Lowey: Could I just say on that one. If I take goods, and it does not matter whether they are videos or records, if you send for them by a catalogue you do not sign a contract when you

send for them. You actually only get them on approval. Once you have agreed to accept them that is when the contract, the seven days would normally apply from, not from the day you applied 'Would you kindly send me the goods for me to have a look at.' So they are on approval until then.

Mr Delaney: I have tried that one. Been there. It does not work.

Mr Lowey: I accept that. I accept that.

The President: Mr Crowe.

Mr Crowe: Mr President, I think on the internet you have to give your credit card details on the spot, so I think contractually you have bought the moment you give your credit card details. I can accept with catalogues they are on approval and people can return them if they do not wish to buy them, which is another circumstance, yes.

The President: Mr Waft, would you care to reply now.

Mr Waft: Yes, Mr President, the cancellation limitation is encompassed within the Act as is read within these clauses. The situation with regard to cancellation would depend greatly on the contract itself. Perhaps the Attorney might be able to. *(Laughter)*

The President: In fairness, Mr Attorney, I do not know whether you can help us or not in this particular matter? There seems to be a difference in the interpretation on page 24 and on page 25.

The Attorney-General: Yes. Mr President, there is a difference in relation to the cancellation period for on the one hand contracts for the supply of goods and then, on page 25, contracts for the supply of services. Excuse me, Mr President, I have a cold.

So far as the contracts for the supply of goods are concerned it will be see there in 57E(1) that 'the cancellation period in the case of contracts for the supply of goods begins with the day on which the contract is concluded and ends as provided in subsections (2) to (5).' Just pausing there, Mr President, the question arises 'When is a contract concluded?' and normally that means that there is an acceptance of an offer which is made. The offer nowadays can be made on the internet, it can be made by the posting of a catalogue to a consumer and so on. There has to be a positive act by the consumer to conclude the contract. Perhaps on the internet you would actually press the button and say 'Yes, I want to order those goods now.' So far as the supply of goods is concerned the cancellation period runs from the date you press the button, seven days as is it were, on the internet. Equally, perhaps on a catalogue it would be seven days after you accept the contract by posting back the acceptance form on the catalogue.

In relation to supply of services we see there at 57F(1), at the top of page 25, 'the cancellation period in the case of contracts for the supply of services begins with the day on which the contract is concluded' - again the same principles apply there, Mr President - 'and ends as provided in paragraphs (2) to (4)'. And (2) to (4) there says that 'Where the supplier complies with section 57C on or before the day on which the contract is concluded, the cancellation period begins on the expiry of the period of seven working days beginning with the day after the day on which the contract is concluded.' And then it goes on. Mr President, there are clearly some quite complicated provisions there: 57F(3) says 'Where a supplier has not complied with section 57C(1) to (3) and . . . I am sorry, Mr President, I will just have to go back to . . . It is a very complicated piece of legislation, isn't it? *(Laughter)*

The President: It is.

The Attorney-General: Certainly the three-month period is triggered off there somehow and I think probably in fairness to hon. members, what I should do is perhaps provide some sort of memorandum or summary of the cancellation periods. I just find it difficult at the moment

to see how that three-month period is triggered off on the contracts for supply of services. Would that be in order, Mr President?

The President: Well, hon. members, we are faced with somewhat of a conundrum. It has been questioned this morning in relation of the cancellation periods. . .

The Attorney-General: Unfortunately, I have not got any notes on clauses.

The President: Hon. members, the question is do you wish to continue on the understanding that you will have a memorandum or do you wish to hold over and stop at this stage in the particular piece of legislation? I appreciate that there would be a delay of a week or two, but nevertheless it is . . . Mr Waft.

Mr Lowey: It is important, I would say that we should continue. Mr President, the reason why the department had a seminar on this particular Bill, which is in various sections, was because it was so complicated and we had the experts there. They had to bring in not one expert, but experts in the various guises to take us through it. I got a clear indication that the reason for that was because this particular piece of legislation was very complex. So as far as I am concerned I think that, on the understanding that we do get the answers to the query of where the three months comes in, we can with justification continue with the Bill.

Members: Agreed.

The President: Right, hon. members, I am content with that and content that the explanatory memorandum at the front does say that clause 13 is giving the customer the right to cancel the contract. That is basically what it is doing. What we are really questioning is the difference between the supply of the goods and the cancellation of the contract and what we are really questioning is how the seven working days come into effect and then further than that the three month period which is three month and seven working days. The Attorney has indicated that he will submit to us a memorandum on that ground and, Mr Waft, if you are content with that I think members are content, we should continue with the Bill. Does anybody wish to contribute any further to clauses 13, 14 and 15? No - Mr Waft.

Mr Waft: It does add to the problems of an amendment Bill when you keep referring back to the original Bill and they have to be read in tandem from time to time, but I do accept that there could be difficulties when reading this section and an explanation can be forthcoming.

The President: Hon. members, we will continue with the legislation and I put to you that clauses 13, 14 and 15 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 16, the hon. member, Mr Waft.

Mr Waft: Clause 16, Mr President, amends the Unsolicited Goods and Services (Isle of Man) Act 1974 which was directed at inertia selling. It replaces section 1 of that act which gave the recipient of unsolicited goods the right to dispose of them after six months if the sender failed to collect them after being given notice by the recipient. The new section 1, which is limited to consumers only, gives the recipient the right to treat the goods as his own immediately and without notice and makes it an offence to demand payment or threaten legal or other actions to recover the payment for unsolicited goods or services. This is indeed a problem we have had in the Isle of Man. Mr President, I beg to move clause 16.

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

The President: Mrs Christian.

Mrs Christian: Mr President, I think this is a useful provision although what I think may be difficult is getting the message across to people who receive unsolicited goods (**Mr Delaney:** Hear, hear. Hear, hear.) so that they know what they need to do about it or what they do not need to do about it and, in fact, if they do receive a demand for payment or threats of court action that they can ignore them or even take steps to have action taken against those who are sending

such demands, I think that that information exercise will need to be loud and clear in order that there is a benefit from this particular provision.

The President: Mr Delaney.

Mr Delaney: I agree with my hon. colleague. The unsolicited goods has been the scourge of ordinary people who have not got the ability to pay for a lawyer to sort it out. We have had people with unsolicited goods who then have tried to cancel, found themselves in a dreadful position of having someone calling at their door after many threatening letters of legal action being taken - and older people particularly get concerned about their good name et cetera - only to find that had they just stood up to these people they would not have to pay. I believe it is sickening to see it. In one case of myself, if I explained my position, I once asked for a set of Inspector Frost videos only to receive Elvis Presley records, to tell them I did not want them and two years later to tell them not only I did not like Elvis Presley, I did not believe he was dead, in the minority, but the fact was take me to court, any court in the land and I will argue the case and it was only at that stage that any action was stopped. I had never asked for Elvis Presley and would not ask for Elvis Presley, I assure the world.

The Lord Bishop: Shame!

The President: Mr Crowe.

Mr Crowe: Yes, again, I support Mrs Christian and Mr Delaney. Inertia selling is a very difficult one to overcome.

Mr Delaney: It is unbelievable.

Mr Crowe: I remember many years ago I signed up for a book club and the books would arrive once a month with an invoice and trying to stop them was very difficult. Even though you would send this month's back with a cancellation they would send next month's as well -

Mr Delaney: That is right, that is exactly it.

Mr Crowe: - and you are caught in a sort of a vicious circle rather, so anything to improve that is good and I am supportive.

Mr Kniveton: I know what you are saying, Mr President, sounds like *Reader's Digest* to me. *(Interjections)*

The President: Mr Waft.

Mr Waft: Yes, thank you, Mr President. I thank the members for their remarks. It has been a problem in the past and hopefully with better education from the office we will make people aware of their legal obligations and hopefully we will relieve a problem.

The President: Hon. members, the motion before us is that clause 16 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. We turn then to clause 17. Mr Waft.

Mr Waft: Thank you, Mr President. Clause 17 introduces the new ombudsman scheme for resolving complaints and disputes involving individuals and providers of financial services. It involves preliminary investigation and mediation by the Isle of Man Office of Fair Trading. If that does not resolve the matter it may be referred to an independent adjudicator drawn from a panel who is given the power to make a binding decision which may include an award of compensation of up to £100,000 made against a supplier of financial services. Section 21A defines the kind of complaint that can be considered and covers the stage of conciliation of complaints by the Office of Fair Trading. Section 21A defines the dispute to which the scheme relates and the dispute must relate to financial services supplied in or from the Isle of Man to an individual, the complainant. There are no geographical restrictions on that complaint. Section 21A(2) requires the Office of Fair Trading to mediate in any dispute which is referred to it by either party. Section 21A(3) sets out the steps to be taken by the Office of Fair Trading to inquire

into the dispute and offer its assistance in settling it. Clause 21A(4) sets out the cases for which the office of Fair Trading can decline or cease to act under (2) where a complaint is referred to it out of time, that is more than two years after the cause of the complaint came or ought to have come to the complainant's knowledge or more than six years after the cause of the complaint arose. The Office of Fair Trading can refer the complaint to an adjudicator if the dispute remains unresolved after attempts at mediation under section 21A. Section 21B gives the High Court special powers where a dispute is subject to court proceedings. Section 21B(6) sets out the duties and powers of the adjudicator. He or she is to investigate and determine the dispute and make an award where he or she finds that the complainant has suffered loss or damage. Section 21B(7) enables the adjudicator to stop the case if he fails to find within 21A(4) above. Section 21B(8) sets out the adjudicator's powers to make an award. He can direct the supplier to make a remedial action and can award compensation of up to £100,000. Compensation can include amounts payable if a supplier fails to make remedial action in accordance with the award. There is also an allowance for the Treasury to make rules as to the procedures of the adjudicator. It also enables the adjudicator to summon and examine the witnesses and require the production of documents as a court of summary jurisdiction can. There is also a saving for privilege, that is legal professional privilege, and provides for the enforcement of summons. Section 21C applies section 23 and 24 of the 1988 Act of the Office of Fair Trading and the adjudicator that they deal with the confidentiality of the information contained in the course of the financial supervision. Section 21C preserves any other rights arising out of a dispute.

Members will also be aware that we have an amendment which has been circulated and also a new clause which has also been circulated. The new clause and amendments will subsequently alter the numbers of the clauses as a consequence. Just briefly, the new clause is regarding the ability of referring to the Council of Ministers after considering a report of the board on an investigation under section 19 and any person resident or carrying on a business in the Island has charged or charges an excessive price for any goods or services whether supplied by him or by another person and whether supplied on the Island or elsewhere. The Council of Ministers may refer to such department or statutory board or such other person or persons as the Council of Ministers thinks appropriate the question specified in subsection (4) for investigation and report. The amendment refers to clause 17, page 38, line 31, after subsection 21B(2) there is an insertion 'The office shall not refer a dispute under subsection (2) to a person who is at the time engaged or employed in any business consisting of or including the supply of financial services of the same kind as that to which the dispute relates.' This new clause was, of course, amended and made reference to the goods of a description specified in an order made by the Council of Ministers and an order on this subsection shall not have effect unless it is approved by Tynwald. Mr President, I beg to move clause 17 and the new amended clause.

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

The President: Mr Delaney.

Mr Delaney: Am I correct in assuming that any award by this ombudsman of the group, any non-payment by the party who are committed to pay any cost, would that be pursued in the normal way through the coroner or is there some other method?

The President: Mr Crowe.

Mr Crowe: Mr President, yes, again -

Mr Delaney: Because otherwise it would not happen.

Mr Crowe: - yes again I support the principle of an ombudsman. It is right that a complainant should have a central point where they can make complaints and I am aware in the past people have complained to the FSC and the IPA and have not received any satisfaction because their role is supervisory and not assisting the consumer. I would not envy the person

who is going to be the ombudsman because I think he would need the wisdom of Solomon, because I would believe that in a falling stock market the complaints would rise because people will complain about the performance of an investment even though I do not think this is intended that people can complain if their investment has gone down because of a stock market fall. It is rather more a complaint that what they have bought is not what they believed they were buying. For instance I know, certainly pension selling, if the maturity of an investment product matures after their date of pension age there is some reasonable case for a complaint, but again I am sure this legislation will, shall we say, encourage complaints which may not be what was looked for.

The President: Mr Lowey.

Mr Lowey: Can I just say this Bill is, as you rightly said, Mr President, for the consumer and I think it does remedy a little of the unfairness. One presumes we all have a level playing field, but we know that usually the consumer is an individual trying to take on a large company or a large international firm or an insurance company who have a might behind them of legal representation. It is a bit like David and Goliath. I think this particular legislation does assist the consumer to at least be heard and I think nine times out of 10 accommodations can be arrived at before it gets to that or the thought of this being in will focus minds. I think that is the joy of this and I welcome the clause, I really do

The President: Mrs Christian.

Mrs Christian: Mr President, I think this is an interesting development and it will be interesting to see how the function develops in due course. I would just comment that, whilst the hon. member has referred to the Davids and Goliaths, it is not unknown for what he describes as the Davids to sometimes be more than honest in their claims against pension or financial houses, so obviously the ombudsman has a duty to look at the circumstances of each case. In the presentation to members by the Office of Fair Trading they did produce a handout which indicated that the assessment of cases under this clause would be wider than the letter of the law. Now that is an interesting statement. We all know circumstances where looking at the very tightly defined letter of the law seems to be rather harsh. However, I wonder whether assessment wider than the letter of the law might in turn lead to dissatisfaction on the part of one party or another and whether that creates further problems, but that will all, I suppose, come out in the wash and we will see how the system works in practice.

Mr Lowey: Could I just respond a little to Mrs Christian's comment on the last point particularly. I mean there is dissatisfaction now. I know of individuals who have gone to the Financial Supervision. You hear an advert on the radio saying this institution is registered with the Financial Supervision. Most people think that that is a seal of approval and they think 'Oh, well, if he has given it the approval I can go to that person and find, well, why haven't I got that?' And then they are virtually told 'Sorry, nothing to do with us, we just supervise. We do not regulate . . .' And there is dissatisfaction there now, but there is an interesting development. I believe that the aim again is to resolve matters either speedily, quickly or without the need to go full course. They may at the end result may have to go to law, but I believe that this system is well worthy of a trial and support it.

The President: Mr Attorney.

The Attorney-General: Thank you, Mr President. Perhaps I can just add one or two comments to the consideration of this clause. Conciliation of disputes over financial services: that was a matter that was raised by Mr Edwards in his review of the Island's financial services sector and one of the things which struck him when he was conducting his review is that there were individuals on the Island who felt dissatisfied about the way they had been dealt with by banks or insurance companies and so on and so forth. It was recognised by Mr Edwards that it would be very helpful to have this informal conciliation process. Now it is significant I think that clause 21A simply says that this conciliation process is triggered off where there is a dispute

between an individual and the supplier of financial services. There does not have to be any merit whatsoever in the complaint and sometimes, of course, when the matter comes before an experienced conciliator who can talk to the complainant in an informal atmosphere without all the terror perhaps of court procedures and lawyers and fees and so on and so forth, the conciliator can point out in an informal way 'You do not have a complaint'. Sometimes that is quite enough and the person, when it is explained to him in that way, is happy that the matter has been resolved. Of course sometimes when complaints are made to suppliers of financial services, naturally there is sometimes an approach 'Oh, well, the drawbridge must come up and we have got to be very defensive and admissions must not be made and so on and so forth.' So the conciliation process, I think, will be very useful in dealing with these informal complaints, some of which have no merit whatsoever, some of which of course do have merit. The conciliator can deal with those and there are quite some extensive powers to award compensation and give directions, compensation of up to £100,000. Of course again, without stealing the thunder of the hon. mover of the Bill, there is in clause 21B(11) a provision which makes it clear that any award made is enforceable as if it were an execution issued by the High Court, so the coroner will indeed be able to enforce the execution as if it were a High Court judgment.

Finally, Mr President, in relation to Mr Crowe's observation that you have to have the judgement of Solomon in a falling stock market, at page 37 it is made clear that 'The office may decline or cease to act if the dispute relates to investment performance.' If you look at page 37 (g). So if the complaint is that the investment manager has failed to take account of the fall in the stock market and there is no allegation of negligence, then the office will again point out in the informal way that there is no complaint.

The President: Mr Waft:

Mr Waft: I thank Mr Attorney for the explanation. The comments from members, I think, have generally been supportive of the clause and 21(2) with regard to the stock market it goes up as well as down and if you lose money you lose money. Generally we are not happy when that happens, but there is a limit to what even an ombudsman or the conciliator can do in that circumstance. I would think this is certainly a step forward for members and for the legislation to have this in place. An ombudsman and the conciliation that takes place between people at the Office of Fair Trading has been in the past considerable and a lot of problems have been resolved early in the situation, but if it does go to the final arbiter and an ombudsman takes it up, there is a finite end to the process and we would support that if that does take place. Obviously if mistakes have been made it could go to the High Court I would understand. I beg to move, Mr President.

Mr Delaney: Could I ask about the award. I did ask, Mr President.

Mr Waft: With regard to the award, could it be pursued through the coroner, was that it?

Mr Delaney: I heard that.

Mr Waft: Sorry.

Mr Delaney: I heard what the Attorney said in relation to awards. That is the problem as I see it. We know the problems already with pursuing debt. This one here is going to be very vexatious to certain people when they are awarded the thing.

The President: The clause will go through the High Court and the coroner. In that case, hon. members, we at the stage of clause 17 and I want to make it perfectly plain that I am inviting you on the motion that clause 17 do stand part of the Bill. We also have the position that on page 38 we acknowledge that there was an amendment put in to 21B and similarly I understand the mover was also moving the new part which is the 17A, quite a lengthy section, 17A relative to price controls. Now, hon. members, that is the position, so we are perfectly clear on what we are doing, that we are moving clause 17 with an amendment made to 21B on page

38 and the addition of 17A which has been circulated to you. Will those in favour, hon. members, that clause 17 do stand part of the Bill, please say aye; and against, no. The ayes have it. The ayes have it. In that case, hon. members, we turn to 18.

Mr Waft: Clause 18, Mr President, - the new numbering will take place no doubt when it is all finally printed - amends section 28 of the Consumer Protection (Trade Descriptions) Act 1970 which confers powers eventually on trading standards officers. Section 28(5) makes it an offence to disclose, except for purposes of the 1970 Act, any information obtained as the result of entry, but this clause amends this section by allowing the disclosure for purposes specified in the Consumer Protection Act 1991, such as in connection with investigation of a criminal offence or for the purposes of civil law of criminal proceedings. Mr President, I beg to move clause 18.

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

The President: The motion, hon. members, is that clause 18 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 19, Mr Waft.

Mr Waft: Clause 19, Mr President I am just getting mixed up with my clause numbering. It is clause 19 perhaps and 20 and schedule 2.

The President: All right, clauses 19, 20 and schedule 2.

Mr Waft: Enables certain functions under the consumer protection legislation, which is currently restricted to trading standards officers who are legally called Inspectors of Weights and Measures, to be exercised by authorised officers of the Office of Fair Trading. It introduces schedule 2 which amends various enactments by substituting references to an authorised officer instead of inspector. The principal Act amended is the Consumer Protection (Trade Descriptions) Act 1970, but the amendment will enable authorised officers to carry out a wide range of duties as several other statutes use the enforcement powers as cited in this Act.

Clause 21, Mr President, is the short title of the Bill. I am sorry, Mr President, I just thought I would just include this short title which is now the long title perhaps and enables the Department of Trade and Industry to bring the Act or parts of the Act into operation by making an appointed day order. Mr President, I beg to move clauses 19, 20 and 21 stand part of the Bill.

The President: Now, I want to be straight on this, hon. members, because I am getting confused now with the mover. It is clause 19, 20 and schedule 2. I do not have a clause 21.

Mr Waft: I think, Mr President, this was the change of the short title to the long title which you referred to at the beginning of the . . .

The President: Okay, right, but I think we are anticipating a new clause at 17. Have you renumbered 17A as 18 and I think that is where it might have gone adrift.

Mr Waft: 17A is 18. Right, well omitting the last item then I beg to move 19, 20 and schedule 2 stand part of the Bill.

The President: Mr Lowey.

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

The President: Hon. members, the motion before us is that clauses 19, 20 and schedule 2 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Now that concludes our deliberation of the Fair Trading (Amendment) Bill and consideration of the clauses.

Statutory Boards (Amendment) Bill — Second Reading Agreed — Clauses Considered

The President: We will then to item 3 on our order paper which is the Statutory Boards (Amendment) Bill and it is down for second reading and I call on the hon. member of Council, Mr Crowe.

Mr Crowe: Thank you, Mr President. At the first reading stage I mentioned that in another place the Bill was first published in 1998 and had been substantially altered by amendment and the addition of two clauses. If I could just reaffirm that the purpose of the Bill is to alter the term of office of members of four statutory boards, the MEA, the Post Office, the Water Authority and the Office of Fair Trading. This will give some flexibility to the process and would facilitate a reshuffle of the chairmen or members of the four boards who are members of Tynwald.

In specific terms the Bill limits the tenure of office of a Tynwald member of a statutory board such that they would go out of office in one of three situations. Firstly, after a period of two years and six months from the date on which the House of Keys was last dissolved or on the dissolution of the House of Keys or on ceasing to be a member of Tynwald or of the branch at the time of their appointment. It goes on further to limit the tenure of office of a non-Tynwald member of a statutory board such that they would go out of office in two circumstances. Firstly, after a period of five years from appointment or, secondly, on becoming a member of Tynwald. In addition to the following, two clauses were added and these clauses - and I would seek some guidance on the numbering because if we say they are new 2 and 3, perhaps we would do that and then the present clause 2 as published would become clause 4 so when I get to the clauses if I could treat the new clauses as 2 and 3 and the present clause 2 as 4. Just going on to new clause 2, it amends section 12 of the Broadcasting Act 1993 to remove the statutory requirement for the chairman of the Gaelic Broadcasting Committee to be a member of the Communications Commission and it amends a section of the Water Act 1991 to allow a degree of flexibility to increase the number of members of the Water Authority if circumstances require it.

In conclusion the Bill gives flexibility in regard to the tenure of office of the four statutory boards whilst ensuring that they function effectively and I have pleasure in moving the second reading of the Statutory Boards (Amendment) Bill.

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

The President: Mrs Christian seconds. Hon. members, the motion before us is that the Statutory Boards (Amendment) Bill 1998 be read a second time. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Now, hon. members, bearing in mind Mr Crowe's comments I would propose to take clause 1 then introduce the two new clauses as 2 and 3 and clause 2 as printed would then become clause 4. That is the measure in which we will work our way through the Bill and so I invite the hon. member, Mr Crowe, to take clause 1.

Mr Crowe: Mr President, clause 1(1) replaces section 3 of the Statutory Boards Act 1987 relating to the tenure of office of members of statutory boards and is applicable to four statutory boards only, namely the Isle of Man Post Office, the Isle of Man Water Authority, the Manx Electricity Authority and the Office of Fair Trading. This sub-clause requires the Tynwald members of the four statutory boards go out of office two years and six months after appointment, on the dissolution of the Keys or if they cease to be a member of Tynwald or of the branch of which they were a member when appointed. With regard to non-Tynwald members of the four statutory boards, the sub-clause requires that they go out of office five years after appointment or on becoming a member of Tynwald. It should be noted that both Tynwald and non-Tynwald members can be removed from office at any time by direction of the Council of Ministers. Sub-clause (2) is necessary to preserve the status quo in relation to the tenure of office of members of the Financial Supervision Commission as the FSC also currently falls within the ambit of the Statutory Boards Act. The existing position in relation to the tenure of office of members of the FSC is preserved by inserting a new section in the Financial Supervision

Commission Order 1983 as set out in sub-clause (2). Mr President, I beg to move clause 1 do stand part of the Bill.

The President: Mrs Christian.

Mrs Christian: I beg to second, Mr President. I think it is a useful measure in the sense that it is known in the past that any Chief Minister may wish to have a reshuffle half way through the term and that is somewhat constrained by Tynwald members of statutory boards being in office for a longer period. I think there is nothing here to prevent those members being reinstated for the remainder of the five years if that is seen to be appropriate but it does at least introduce potential for flexibility.

The President: Mr Lowey.

Mr Lowey: Can I just say the contrary argument to that is really we are trying to over-egg the cake in this particular thing. I would have thought the MEA, the Post Office and the Water Authority for example are not looking for short-term members, they are looking for long-term members with the investment that has to go on in the infrastructure and the thought that these are non-Tynwald members who are being appointed - they would not be appointed. If I was a businessman who wanted to do my civic bit - because these are not paid, nobody does these jobs for the payment - all I say, is that for a two and a half year period, I would be very suspicious of it. I really think what we are attempting here, and I am not going to vote against the Bill, but I think my view of short-termism - and we did this in the Legislative Council by reducing the term for what I would call 'political correct decisions'. This is a politically correct decision that could rebound and not have the advantages that are claimed for it. So with that I am not going to go against the tide. I understand where the mover and the seconder come from but I do think that the case being made for it is not really very strong.

The President: Mrs Christian.

Mrs Christian: Mr President, I would like to come back. The hon. member referred to business people being involved in these. The Bill is quite clear in that they have a five year appointment. It is only the Tynwald members who are on a two and a half year period of tenure. So I accept his point that people do not want to go in for short-termism in those circumstances but where they are Tynwald members and where the distribution of workload may be seen to be appropriately changed part way through I think that that flexibility is to be welcomed.

Mr Delaney: I come from a different angle I thought the object was to keep the Tynwald members in line, to make sure that they would toe the line, they could be moved half way through. That is what I thought it was but maybe I am just a cynic.

Mr Lowey: You are not allowed to say that. *(Laughter)*

The President: Can I call upon the hon. member, Mr Crowe, to reply.

Mr Crowe: Thank you, Mr President. I think Mrs Christian has answered Mr Lowey's point but I think Mr Delaney's point - I think what we also have to remember is that there could be a promotion so a member who is a Tynwald member chairman of a board might become a minister in a reshuffle. This gives the flexibility by having the two years six months they can at the half way. So there is that.

Mr Lowey: They would not have to wait to have to go out of office, just resign.

The President: Hon. members, the motion before us is that clause 1 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Now, hon. members, we introduce a new clause and it will become clause 2. I call on the hon. member, Mr Crowe.

Mr Crowe: Thank you, Mr President. This clause has the effect of removing the statutory requirement for the chairman of the Gaelic Broadcasting Committee to be a member of the

Communications Commission. This therefore allows greater flexibility in the appointment of members of the Communications Commission. Mr President, I beg to move that new clause 2 do stand part of the Bill.

The President: Mrs Christian.

Mrs Christian: I beg to second, Mr President. I think the Communications Commission is becoming very more a technical body or a body which needs a lot of technical expertise. I would certainly concur that it is not a necessity for the chairman of the Broadcasting Committee to be on it still. There can be communication links between the two where that is deemed to be necessary but there certainly should not be the requirement of the office of the chairman to be on the Communications Commission.

The President: Mr Crowe, do you wish to reply to that? In that case, hon. members, the motion before you is that the new clause headed up 'Gaelic Broadcasting Committee', which becomes number 2, do stand part of the Bill. Those in favour please say aye; and against, no. The ayes have it. The ayes have it. Then we turn to the second new clause which is headed, 'The Isle of Man Water Authority', I call on the hon. member, Mr Crowe, to move.

Mr Crowe: Thank you, Mr President. This clause allows a degree of flexibility to increase the number of members of the Water Authority if circumstances require. This flexibility would allow for the appointment of up to four members in addition to a chairman if required. There are currently two members in addition to a chairman. This amendment is at the request of the Water Authority by reason of the fact that they are undertaking a major improvement to the infrastructure and it was felt that they should be allowed if necessary to have extra members on the board so, Mr President, I beg to move clause 3.

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

The President: Mrs Christian seconds. Mr Kniveton.

Mr Kniveton: Yes I think this is very reasonable, Mr President. The Water Authority is undertaking huge changes in the water infrastructure and I think the expertise and assistance of other persons to cope for absence, if only for absence, I think it is essential we have the extra persons available.

The President: Mr Crowe, do you wish to comment?

Mr Crowe: Only to thank Mrs Christian and Mr Kniveton.

The President: Hon. members, the motion before you is that the second new clause headed 'Isle of Man Water Authority' which will become clause 3 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. We turn then to the printed clause 2 which becomes 4. Hon. member Mr Crowe.

Mr Crowe: Mr President, sub-clause (1) is a supplemental clause and provides for the Bill to come into force on 1st January 2002 which is of course after the 2001 general election. Sub-clause (2) is a consequential repeal necessary as a result of the amendment of section 3(1) of the Statutory Boards Act 1987 contained in clause 1. Mr President, I beg to move clause 4 do stand part of the Bill.

Mr Kniveton: I beg to second, Mr President.

The President: Mr Kniveton seconds, I call on Mrs Christian.

Mrs Christian: Mr President, I seek to move an amendment to this clause which hopefully has been circulated to hon. members. It is a technical amendment which is required to repeal consequentially the whole of the Council of Ministers Act 1990, schedule 1, paragraph 16, instead of only 16(1) as set out in the clause as originally printed. Paragraph 16 and amended section 3 of the Statutory Board Act 1987 and the entire paragraph is now redundant since

clause 1 of the Bill as amended replaces the whole of section 3 instead of only section 3(1). I beg to move.

Mr Lowey: I beg to second, sir.

The President: Mr Lowey seconds the amendment. Mr Waft, do you wish to speak? No, in that case, hon. members, the motion before us is that printed clause 2 which has become clause 4 do stand part of the Bill and to that we have the amendment just moved by the hon. member, Mrs Christian. Those in favour of the amendment, please say aye; against, no. The ayes have it. The ayes have it. Clause as amended, hon. members, those in favour please say aye; against, no. The ayes have it. The ayes have it. That concludes the clauses stage of the Statutory Boards (Amendment) Bill.

Licensing (Amendment) Bill — Second Reading Agreed — Clauses Considered

The President: We then move on to item 4 on our order paper which is the Licensing (Amendment) Bill for second reading and in this case I call upon the hon. member of Council, Dr Mann.

Dr Mann: Thank you, Mr President. I think we went through all the lists of the new powers and provisions in the Licensing (Amendment) Bill at the first reading.

There were only two main areas which were causing concern to members. One was the way in which under clause 1 the permitted hours were to be notified, the possible gaps between changes and how this was going to be controlled. I have talked with the department on this matter and, as I have pointed out and as is also pointed out in the actual clause 1 which we will come to in due course, it is only the power to introduce regulations and it will be the regulations that will control the frequency, the periods of notification and cancellation, which would be subject to Tynwald approval and would have to be in place before this part of the Bill became law. So it is essentially an enabling power which will be put strictly into perspective when it comes to the regulations before Tynwald.

The other matter was the use of credit cards to settle hotel bills which included drink and the ability of the licensee to supply drink on a credit card. Once again this is an enabling measure. It is not an absolute measure and depends entirely on the licensee as to whether he uses or agrees to permit this method of sale.

I hope that deals with, as far as I understand, the two major matters of concern and I beg to move the second reading of the Licensing (Amendment) Bill.

Mr Kniveton: I beg to second, sir.

The President: Seconded by Mr Kniveton. Hon. members, the motion before us is that the Licensing (Amendment) Bill now be read for a second time. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 1, sir.

Dr Mann: This clause as I referred to previously abolishes the present permitted hours which apply to everybody in licensed premises and club premises, that is the limits on the hours during which liquor may be sold or supplied on the premises subject to a power by regulation, and this is where we come to the matter of control, to impose a requirement for the licensee of on licensed premises to notify the police of his intended opening hours. But within those regulations there will be the periods during which those have to be sustained or withdrawn or altered and that is not part of the Bill as presented in clause 1. I mean one could go into that in a little more detail. Sub-clause (1) substitutes for section 16 of the Licensing Act 1995, which actually prescribes the permitted hours, a power for the Department of Home Affairs to make regulations requiring the holder of an on-licence to notify the police of the hours during which he intends to sell liquor and make it an offence to fail to do so. The regulations will require Tynwald approval before they become law. I beg to move clause 1 stand part of the Bill.

Mr Kniveton: I beg to second, sir.

The President: Mr Kniveton seconds. Mr Lowey.

Mr Lowey: Thank you, Mr President. I have listened with great closeness to the mover of the Bill and the only difference between us really is whether we should by regulation allow - we are buying a pig in a poke, we must wait for the regulations. Now, if we look at the notes that have been circulated by the Department of Home Affairs on it, it actually says, 'Notification requirement for opening hours. The department is to have the power to make regulations on notification requirements for opening hours on on-licensed premises', as the mover said. 'This will enable the department after consultation with the police to exercise flexibility.' I understand that but this is a convenience for the police and for the licensee. Now here we are making legislation which is supposed to be protecting and, if you like, missing out the customer. I believe that the customer and the police should know when a licensed premise is going to be open, whether it is a good licensee. We presume all of them will be good licensees, licensed premises. So I do think that I am going to move an amendment which will in my view assist the department and the police in their aims and objectives as set out in the explanatory memorandum, because I think if you make it too loose and depend totally on regulations to be made later on, then I think the impression is given that the regulations may be introduced, they may not be introduced. The department are troubled with licensing legislation in my view is that they can be interpreted by too many people in too many different ways. I mean I get constant complaints from the licensed trade that the interpretation of the law by like the High Bailiff for an extension, for example, that is not what was intended when we gave the flexibility to the office. I believe that we need clarity in licensing laws not a nebulous "Well, we can do it by regulation". Therefore my amendment is quite clear. It tries to spell out that a licensee would have to notify the police of their opening hours for at least a three-months-in-advance programme and I do not think that is unreasonable. I do not think it is at variance with what is at the back of the department's mind and, in writing the legislation, I think we should be concise and not leave it to regulation because the aims of the department are clear. I believe this meets those requirements and therefore I beg leave to move the amendment standing in my name.

The Lord Bishop: I beg to second, sir.

The President: Seconded by the Bishop. Mr Delaney.

Mr Delaney: Yes, it was actually only on Sunday evening a group of tourists I bumped into were looking for a public house that was open and some are allowed to be open all day, some are not and do not open until 7 o'clock. What I do think, when the regulation comes in, if you will pass this back to the department, they should put a notice outside the public house when the pub was open. I cannot understand why this has not been pursued.

The second one is in relation to the whole dealings with licensees and their licence. I have raised privately with the Attorney-General but maybe in his position he may clarify it. I am not sure after listening to the radio this morning on another amendment which is coming forward for an extension of the situation, as I explained to the Attorney-General, in relation to the Licensing Act which I have had some dealings with over a number of years. As I understood it, the licensee when they were open had to be on the premises unless he had the authority of the Licensing Court to be absent. Yet I heard someone on behalf of the brewery saying, 'Ah well, the licensee can take time off during the day'. But that is not what the Licensing Act, to my mind, says and what I wanted spelt out is exactly what is happening here in relation to a licensee who is contracted to give a service by the brewery and now, according to amendments which are coming from the department, the situation is that they are going to be on duty virtually 24 hours a day. But the law says as I understand it they have to be on the premises. Now if you are in your business premises, you are working in my mind and I would like that clarified. I mean that situation. Is that the case, Mr Attorney? I did ask you this morning. Is that the case or will we find out?

Dr Mann: It is one of the clauses of this Bill if you read it.

Mr Delaney: I did read it, the situation, yes. But I think somebody should tell the brewery because this morning they did not seem to understand that.

The President: Mr Attorney, you have been requested by Mr Delaney to give an explanation. Perhaps you could.

The Attorney-General: Well, Mr President, Mr Delaney, the hon. member, has raised this shortly before this morning's session. My understanding of the current law is that a licensee does indeed have to be on his premises during the time the premises are open. Now of course he does not have to be actually there serving behind the bar. Indeed if he is very tired no doubt he could be taking a well-earned nap upstairs in his residential accommodation. But he certainly has to be there on the premises, Mr President, under the current law.

The President: Right, Dr Mann to reply. Sorry, Mr Crowe.

Mr Crowe: Yes, Mr Lowey's amendment obviously would bring some certainty into this but the only feeling I have is that it is rather harsh in the dates. I am not sure if I am allowed to move an amendment to an amendment but under 3(b), where it says 'three, six or nine months', if I could move that it be changed to 'one, three or six months' because I think a month is enough warning for anybody, either the licensee or the police. I think a three month period is quite a long time. Now whether anybody would wish to second my amendment to an amendment.

The President: I see no reason, there is no reason why you cannot move an amendment to an amendment and what you are proposing is, well, in effect it is a new amendment.

The Attorney-General: It has to be.

The President: It is effectively a new amendment. I assume, hon. member, that what you are proposing is an identical amendment to Mr Lowey's with the alteration to the period of dates.

Mr Crowe: Yes, instead of three, six, nine it will be one, three and six. I mean I do not wish to take anything away -

The President: Right, well let us take it step by step, hon. members. Now Mr Crowe is desirous of proposing an amendment in the form of Mr Lowey's with an alteration in the periods of time from three, six and nine to one, three and six. Is that right?

Mr Crowe: Yes.

The President: Now then, Mr Kniveton.

Mr Kniveton: Yes sir, I fully support that new amendment or amendment to amend whatever you want to call it. I think it is rather harsh that a licensee has to give three months notice. I think circumstances may change. I think he is quite entitled to look at one month.

The President: Mr Lowey.

Mr Lowey: I am not going to go the post on it if this is the view of the House but what I would say and why I picked the particular dates that I did is, bearing in mind the notes that I was given by the department which is for the notification for the police, policing these things is the key and if the police have got a month-by-month change going on then that imposes lots of stresses mostly in what I would call the deployment of manpower. I believe that the police have a reasonable expectation that when they do rosters and what have you that they have a little bit longer than that. So that is the operation. I was trying to get an even handed balance between the user which is the customer and the police who are going to have to police it and that is the reason why I came to the three months minimum, six months, nine months but again it is up to the mover. That is the reason that I came from.

Mr Crowe: Having had an explanation, I can see the justification of Mr Lowey's three months. Subject to the seconder allowing me to withdraw the motion - because it is quite clear

on reflection that the police have to set their rosters at some time into the future. If it depends on the police you must give them a longer period than a month because they are presumably setting quite a lot of months in advance for a rostering. It might be six months in advance for police rostering so -

The President: So in effect, just so we are all clear, Mr Crowe is now asking subject to the approval of his seconder, Mr Kniveton, that he would no longer wish to move his new amendment. Mr Kniveton.

Mr Kniveton: I am not enthusiastic, Mr President, but I will withdraw it.

The President: Right, okay, in that case, hon. members, let us take it that in fact what we have before us at the present time is clause 1 and the amendment circulated to you in the name of Mr Lowey on your white paper. That is all that is before us at the present time. Now then, anybody else wish to speak? Mrs Christian.

Mrs Christian: Mr President, I think we are in danger of setting something in concrete in the primary legislation which we could just as usefully leave to the regulations, as already defined in the Bill as printed. We have seen an example of it here this morning in that we have had a suggestion of an amendment to an amendment. The amendment proposed by the hon. member, Mr Lowey, does in fact only give the police 14 days notice of any change although that change is for a continuous period. I think that setting out three, six or nine months may be too rigid.

It may be that for a one month period the publican may want to vary the hours. The significant thing might be the notice to the police, not the period for which the time is changed, although I do accept also that it is important to the consumer to know what the opening hours are going to be. (**Mr Delaney:** Hear, hear.) But I think that all of this, because it is a new philosophy about opening hours, would be better dealt with by regulations, which have the benefit of being able to be changed more readily in primary legislation if the primary legislation, is ultimately found to be wanting, by having as the hon. member has suggested particular periods set out in it. So I am supportive of the notion that we should have notice for particular periods but I do believe they should be dealt with through the regulations, as set out here. My only concern might be that maybe a compromise might be found I am not sure that those regulations currently have to come before Tynwald.

Dr Mann: Yes, they do.

Mrs Christian: I have not been able to find that in here.

Dr Mann: Well it is in the Bill.

Mrs Christian: It is probably in the original Bill, yes, and I think that our safeguard therefore is in consideration of the regulations when they come before Tynwald.

The President: Mr Lowey.

Mr Lowey: Could I respond? I think there is a clear of blue water. We are dealing with primary legislation and I think licensing, as I said in the opening remarks, needs clarity and I think put your marker down first, clear, and then people know where they operate. You only get into trouble when you become a bit nebulous and I believe, in regulations, it might be done in the future it might not be done in the future. I would again just differ on emphasis. I do not think there is anything between us. I think, as Mrs Christian says, it may very well be when they come forward in regulations this would be here. If that is the case I think there is no reason at all why it should not be put down in this form in primary legislation. I still stick to the amendment.

The President: Lord Bishop.

The Lord Bishop: Giving a sort of power it has, because it is new it has a recipe for confusion and that does need stating quite clearly. For example, churches have given notice that

they have been open at 10.30 for years and people still say, 'What time do you start?' So there is going to be quite a confusion here if we are not careful and I think anything that we can do and I think this amendment does actually help towards that.

The President: Mr Waft.

Mr Waft: I agree that this could be covered by regulation. With regard to confusion, churches do not always open on the dates that they say they are going to open. I was at one last night that decided to change the format that was happening in the church at that time. Apart from that, I think regulation can be dealt with by people who are closer to the situation and the vagaries of having to inform the police and the times that the police will accept that information. The constables on the beat will have to be made aware of the changes and it might be better looked at by the people who have to do the job and I think we are on line to be doing far more deregulation with regard to the licensing in the future and this is one step towards it perhaps. I think perhaps regulation might be better identified at the end of the day by the people who have to enforce them and adhere to them.

The President: Mrs Christian.

Mrs Christian: Mr President, could I just add another point and that is, for example, it might be that a premise might want to open for longer hours over shall we say a TT period which is a fortnight and maybe a week or two either side. If you are going to say they have got to stick to those hours for three months you are impinging on the commercial viability, possibly, of such an establishment and I do really think by specifying what some might regard as lengthy periods we are reducing the flexibility that could be introduced.

Mr Lowey: Could I just react to that. I listened to what the mover of the Bill today said about licensees would be able to. . . if we go to another to illustrate what I would call the counter-argument that somehow we are going to impinge on commercial viability. In other words people would want to open for a fortnight as opposed to not. That brings back to the customer. I believe the customer does need some certainty as to what is and what is not available. The licensees are going to have the freedom to accept people's payment by credit cards. Believe you me that is nothing at all to do with the licensees. It will be the direction of the breweries who will decide whether they will accept payment by credit cards or not. Again this should be one of balance of the customer, the police requirements and society in general. Again I take note of what my colleagues say about it should be left to those at the other end and it will be done by regulation. I am much more concerned that, if you are doing primary legislation, that you should not leave legislation - and we have all had a dabble at Licensing Bills in our time in our parliamentary career and the problem always arises, as the Lord Bishop says, when you get uncertainty and you get interpretations. That is where you come down to it and therefore I think you should be clear at the outset to where you are going and then there is no variation. I think it would be better for everybody - society, the licensed trade and the people who frequent it - to have it clearly defined at the start.

The President: Dr Mann to reply.

Dr Mann: Thank you, Mr President. I have listened with great interest and I am absolutely amazed that this Council has been led down a cul-de-sac by a senior politician. Day in day out we accept Bill after Bill which gives an enabling power to a department to set up regulations. This debate over this amendment is an argument over regulation, over what is going to be in the regulations. The department, having read or heard the comments, will know that if they do not put these comments into the regulations they will never get them accepted in Tynwald anyway. There is no point in having an enabling power if immediately you then limit the enabling power before you can actually produce the regulations. I do not have any personal reason to support or to reject any time factor or on when premises should notify or alter but, on principle, here we have a situation where we are granting to a department an enabling power which is then immediately tied down to the fact that it has got to produce the regulations to go before Tynwald

and in fact would not be able to put this Bill into legal action until it did produce the regulations. I am not going to say whether I support or reject the proposed alterations to the regulations. In principle I think we should stick to the actual clause enabling the department and then argue over the regulations when it comes to Tynwald. So I beg to move clause 1 stands unamended.

The President: Hon. members, the motion before us is that clause 1 do stand part of the Bill and we acknowledge within that that it has new sub-clauses (4), (5) and (6). We have then to that the amendment circulated to you on the white paper in the name of Mr Lowey. Those in favour of the amendment please say aye; those against, no. The noes have it.

A division was called for and voting resulted as follows:

For: The Lord Bishop, Messrs Lowey and Crowe - 3

Against: Mr Waft, Dr Mann, Mr Kniveton, Mrs Christian and Mr Delaney - 5

The President: Five votes cast against and three votes cast for, hon. members. The amendment therefore fails to carry. Those in favour of clause 1 as printed with the addition of sub-clauses (4), (5) and (6). Those in favour please say aye; against, no. The ayes have it. The ayes have it. We turn then to clause 2. Dr Mann.

Dr Mann: Thank you, Mr President. This clause abolishes the present restrictions on under-16s being in a bar on licensed premises and substitutes a duty on the licensing court to consider whether to impose a condition barring under-16s from particular rooms in any licensed premises. This clause follows considerable difficulties in interpretation. As I think Mr Delaney has already drawn our attention to the fact, there is considerable argument after every Licensing Bill over interpretation and the interpretation of 'a bar' has been one that has caused considerable difficulty. So the intention here is to not use the word 'bar' but to give the licensing court the power to say, 'These rooms will not have young people in them.' That is the intention of clause 2. I beg to move clause 2 stand part of the Bill.

Mr Delaney: I beg to second, Mr President.

The President: Hon. members, the motion before us is that clause 2 stand part of the Bill and we acknowledge the fact that there is a new sub-clause (4) which has been moved in another place. Those in favour please say aye; against, no. The ayes have it. The ayes have it. We turn then to clause 3. Dr Mann.

Dr Mann: Clause 3, Mr President, is another enabling power. It enables the licensing court, on an application by the police, to cancel a licence if it is satisfied that the licensee has ceased to be a suitable person to hold a licence and I think that is a very important power that we should have. I beg to move clause 3 stand part of the Bill.

The President: Mr Delaney.

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

Mr Crowe: Mr President, it is quite a draconian measure because if it was a brewery owned pub there would be an opportunity for the brewery to apply for a new licensee to take over if the Chief Constable cancelled a licensee. If it was an owner/occupier it would be even harder for that man's business, presumably then, to substitute a licensee to continue with the business which in effect could be halted in its tracks. I am sure the Chief Constable would bear all these problems in mind when he was considering seeking to cancel a licence.

Dr Mann: Well, the sub-clause requires the court to give a licensee a hearing before cancelling the licence so there is a power of appeal to the court. I beg to move clause 3 stand part of the Bill.

The President: The motion, hon. members, is that clause 3 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 4, Dr Mann.

Dr Mann: Clause 4 covers the matter that has already been raised. This replaces the existing section 25 of the Licensing Act 1995, which imposes restrictions on the licensee or designated official being absent from the premises, with a new provision making a licensee or official or a person approved by the court in his absence to be personally responsible for the conduct of the premises and requiring at least one such person to be present on the premises when they are open for the sale of liquor. So this gives the licensee, with the approval of the court and indirectly of course to the court, the power to nominate other officials to be on the premises who would then have the full responsibility of the licensee.

Mrs Christian: I beg to second.

The President: Mrs Christian seconds.

Mr Delaney: I take it exactly where we are coming from to try and get over the problem as I perceive on this 24 hour licensing with the licensee in the present legislation. But as at the moment the licensee has to go to court and be handed a licence as a suitable and proper person to hold the licence, now we come to the situation where 24 hour licensing - and I am talking maybe in the future - comes on duty and then he can designate down. The court, do they have to say this is a suitable person?

Dr Man: Yes.

Mr Delaney: Well, when we get to the hours are we going to get to a situation of a number of hours where the licensee can work in his premises? That is where I am coming from. Not the object of the law but how are we going to get over this bearing in mind most pubs are run by breweries who are the bosses? How many hours are these people going to be contracted to work in the premises? I am against the manipulation of people to work longer than is really reasonable in a premises before they get a replacement to stand in for them. I see the difficulties there, Mr President.

The President: Mr Lowey.

Mr Lowey: Mr President, this one is a cracker, I think, we are opening here where the court will have to approve the deputy or whoever will be in charge of the licensed premises when the designated official is not there. As I read it, it is the court which will actually have to approve the deputy or the deputising person. How often is the court going to be invited to do that? At the annual sessions? And I believe that the licence is now going to be issued for longer than one year, so I am told, so therefore these deputies could vary from time to time. That flies in the face of what the department says in its notes, where they are saying they are trying to simplify matters. This is complicating matters because when you go to the court now you would have to apply to deputy. This is making the thing more bureaucratic and if the deputy goes, does the new deputy then have to be notified to the licensing court? Because if it is under the legislation then I think we are creating more bureaucracy if not less so that is not simplifying the matter at all. And just as a matter of interest has there ever been a case where a landlord has been prosecuted for not being on the premises at the appropriate time in the last 10 years?

The President: Mr Waft.

Mr Waft: Thank you, Mr President. I think it is a consequence of having the longer extension of the hours to designate a responsible person to deputise for the licensee. That being said, I always look on it as a captain of a ship. When he is not on the ship he is still responsible for that ship. He might be ashore but he still is responsible for what happens on it.

Mr Delaney: Oh yes.

Mr Waft: I do not know who is responsible for incidents which take place on licensed premises if the deputy is there. Who is responsible? I am thinking in terms of perhaps a drugs related issue or something, irresponsible thing happening on the premises. Who is actually responsible? The appointed deputy who has been licensed under the Licensing Act or the

licensee who is absent for whatever reason? Who actually takes responsibility at the end of the day?

The President: Attorney-General.

The Attorney-General: Mr President, just hopefully by way of assisting. At page 3 of the Bill, line 22: I think that gives the answer that the following persons are personally responsible for the conduct in the premises. So you have got the holder of the licence, the designated official where the licence holder is a company and then, thirdly, where either of those two persons is absent then an individual approved for the purpose by the court. So if to use the words, the deputy, if the deputy is deputising for the individual holder and is actually on the premises he is personally responsible for the conduct of the premises to the exclusion of the holder of the licence. That I think has been commented on: that must be the consequence of allowing greater or more liberal licensing hours. It makes good sense.

The President: Mrs Christian.

Mrs Christian: Could we just have some clarity on that in the light of the point which was made earlier please? Are we talking here about the actual rooms which comprise the licensed premises? Because if, for example, the licensee had taken a break and had gone to their own residential accommodation, which may be in the same building, but has handed over to a deputy for the purposes of running the licensed premises, surely - could we have some clarity that it would be the deputy who was responsible for anything that might occur at that time, notwithstanding that the person is still in the same building? Because earlier it was said he might be taking a nap or a rest but was still responsible. If that is to be the case and it is not just to relate to the actual licenced premises where alcohol may be consumed, then there is going to be a potential for confusion for about who is actually responsible.

The President: Mr Lowey.

Mr Lowey: Could I then come to having the clarity for that. At the moment, if I am a licensee of an hotel and I wish to go on holiday, the brewery has to put in another designated licensed official. Under the new system, will that have to take place or will I be able to deputise to my deputy? for how long can I deputise? Can I deputise for a month, two months, three months, four months? where is that laid down?

The President: Mr Attorney.

The Attorney-General: Thank you. Mr President, just to take up the point made by the hon. member, Mrs Christian. I think that it is quite clear that the premises for the purposes of section 25, the new section 25, means the licensed premises. So it is saying, to take the example we have discussed earlier, if the individual holder of the licence has been working for a long period of time, takes a rest in the residential part of the building, then he is not going to be responsible for the conduct on the premises. It is the deputy who will be responsible for that part of the building which comprises the licensed premises. I do not think there is any doubt about that. Again it is I feel entirely appropriate that should be so because under the existing law a licence holder is strictly liable sometimes for things that go on within his licensed premises. He might not know it. He might not know for example that drugs are being supplied or said and that I think is very wrong. Therefore it relieves the licensee of that duty provided that he is off the licensed premises.

The President: Dr Mann. One minute, sorry, Mr Lowey again wishes to come back.

Mr Lowey: I wonder if the Attorney could clarify for me how long I can designate a temporary official on licensed premises?

Dr Mann: As long as he wishes.

The Attorney-General: That Mr President, as I understand it, would be for the court to approve in accordance with 25(1)(c). So if somebody wants to have a deputy, then, he goes to the court and says, 'Look, I'd like to appoint my son or my best friend who has experience of the licensing trade to look after the premises either for a fixed period, say a month whilst I go on holiday, or I want him to be my permanent deputy so that when I am off duty then, during the licensing hours, he can substitute for me' and it would be for the court to decide.

The President: Now Dr Mann to reply.

Dr Mann: Thank you, Mr President. I do not know how many of the questions have been answered but, first of all, it is clear from the Bill that if a person is appointed as a deputy that deputy must be as suitable a person to hold a licence as the original licensee. That deputy assumes the total responsibility at the time that he is a deputy. Sub-clause (3) imposes the same criminal liability for misconduct of licensed premises on the licensee or the designated official and the person in charge of the premises in their absence. This amendment ensures that the liability is imposed on the person who is at the relevant time personally responsible for the conduct of the premises. I do not think there is any doubt in the proposed law that the person who is responsible is going to be totally responsible and I think it is clear also that the licensing court, as I said before, would look at a deputy as if they were looking at a licensee.

In terms of how they can be substituted vis-à-vis the management by the brewery, that really is part of the commercial operation of the premises. I cannot see how this Bill can actually determine that sort of relationship. I can understand what you are concerned about and the fact that perhaps the brewery may insist on a person doing hours that are totally out of this world as you might say. That surely must fall in other legislation rather than licensing and I am sure it would fall under certain employment legislation. I think although I can see your concern I honestly do not see how it can be brought in in this clause. So I think that, with the help of the comments of the learned Attorney, should answer most of the questions. I beg to move clause 4 stands part of the Bill.

The President: The motion, hon.members, is that clause 4 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 5.

Dr Mann: Clause 5, Mr President, was another clause that has been some concern expressed. This clause limits the scope of the prohibition on the sale of liquor on credit which up to now has been totally banned. This would allow the sale on credit to residents of a hotel and sale a credit or charge card. Once again this would only be exercised by the person responsible for the licensed premises. I take the point which has already been made that it will be the brewery who will decide whether a credit card is used. Once again that is something that I feel is very difficult to bring into this legislation. Once again it is an enablement. It, in my view, as far as the hotel part of it is concerned, must be a considerable irritation to somebody doing the accounts if in fact they can charge their hotel bill on a credit card but not the drinks that they had while they were in the hotel. That seems to be quite strange. So to a certain extent one can understand why this clause is in the Bill. I realise that there are some disadvantages that people would see. I think the advantages outweigh the disadvantages. I beg to move clause 5 stand part of the Bill.

Mr Kniveton: I beg to second, sir.

The President: Mr Kniveton seconds. Mr Lowey.

Mr Lowey: Mr President, if this was going to be on a pub where it could be sold in a pub on a night out then I would object to it strenuously. The only saving grace as I see it is that the people it deals with are people who are staying in a hotel. They have to be resident in the hotel. If I have an assurance that that is what its objectives are then I will not oppose it but if it is to allow alcohol to be sold in a public bar then I would be strongly opposed to it because I do think there is a difference between people when they are able to go down the road. . . I have heard the

argument, 'Oh well they can go down the road and take it out of the cash in the wall'. That inhibits and I do not believe that people when they are off for a night out towards the end of the evening are always - it is too easy for them to take a piece of paper out and pay it. I genuinely believe we should inhibit. So for the hotel bit, staying in the hotel on the bills, I do not mind but I do object if it is to be for general consumption at a public bar for a night out for people frequenting an hotel.

The President: Lord Bishop.

The Lord Bishop: Mr President, I read paragraph (c) as being entirely that you can buy alcohol in a pub on a credit card.

The President: Mr Delaney.

Mr Delaney: I have looked at this since we had the initial run on this one and I could not understand. I know that under the Licensing Act originally they could not serve alcohol on credit, but this one actually, if you look at the modern terms and the way of payment, this is not on credit because you just swipe the card to see if it is valid and it has access to it and therefore you are not selling on credit. You are selling in another form of cash. So in actual fact you are not giving it on credit. So I wonder why they could not have done this anyway without an Act to specifically saying that, because you are not selling on credit because that transaction going through goes through immediately that the person signs that chitty to say that the money is to be taken from their account and they get that when they slash the card it is valid or it is invalid. So I wonder where we are coming from here anyhow.

The President: Mrs Christian.

Mrs Christian: Thank you, Mr President. I feel that the elements which relate to hotels, meals, residents are very justifiable because in today's society it does not seem to be something that should create a problem. I do understand the concerns perhaps about (c) in that it might be argued that being able to pay by virtue of a credit card might encourage people to spend more than they may otherwise do, but against that I think we have to allow the publicans to make the decision really. This is enabling for them to determine whether or not it is better to have credit card payments than to have a lot of cash available on particular premises. I can see that there might be a danger for some people to spend more than they might otherwise do so and therefore drink more than they might otherwise do so. However, as far as the latter point is concerned, I think that we need to do more, and perhaps publicans need to do more, not to serve people who are the worse for wear in relation to drink. There are pluses and minuses in relation to this and I think we just have to test it against time.

The President: Hon. member, Mr Waft.

Mr Waft: Thank you, Mr President. I think on reading clause 5 (c) it says, 'is paid for, at the time it is sold or supplied.' I would doubt it very much if the licensee was to take a credit card for one drink. It would have to be for, I would have thought, a large amount of credit because the credit card, by its very nature, deducts a certain amount of money from the price of the drink anyway to perform that function. Given the licensee has a certain amount of common sense when this is applied, we are going perhaps too much the other way. I think we have to move with the times. I think they are responsible people and they would not encourage anyone to absorb large quantities of alcohol through a charge card. I think the fact that it has to be paid at the time it is sold or supplied deviates from that situation.

The President: Mr Kniveton.

Mr Kniveton: Yes, Mr President, not being a hardened drinker I do not know much about bars in the evenings and so on but I do use pubs for pub lunches. I was going to enquire of Mr Lowey what was his attitude to somebody using a credit card to purchase pub lunches and alcohol. It is there.

Mr Lowey: It is quite clear in (a) that for a meal and a drink, that is fine. I have no objections to that. I do genuinely, Mr President, feel that this is one step too far. It is all right for us to sit here in a calm, cool, rational situation. You have to transpose yourself towards the end of an evening out with a group of young people who are enjoying themselves and they are getting merrier and merrier and the money runs out. The temptation will be to put in the card and take it. Now it is all right for members here to say, 'Ah, well, we have responsible licensees who won't do that.' Hon. members, put yourself in the real world. The licensee has got a customer who is willing to pay for a large round of drinks. They will do it because that is brewery policy and that is his job. I genuinely believe this is making alcohol even more available and too readily available. I am sorry as legislators it may be uncomfortable. I did not realise we had all become libertarians, that somehow everything must go. I genuinely believe this is a step too far. I know that I am in a minority but I genuinely believe that this is a step too far. The meal part I can go with and hotels. That seems to me sensible but this opening of the gates to allow this to be used, I think we will come to live to regret it.

The President: If I may I just want to make it quite plain that at the present time we have the whole of clause 5 in front of us. There has been no amendment to remove part (c) in any regard. Mr Attorney.

The Attorney-General: Mr President, I simply wanted to, hopefully, clarify the position because, as I understand it, the hon. member, Mr Lowey, was prepared to vote in favour of the clause provided he received an assurance that the clause only referred to the sale on credit if that was in respect of hotel premises where a meal was being consumed. That is not the only implication of this clause. Section 27 in the Licensing Act 1995 is concerned with sale on credit and of course we all know the archetypal slate, where somebody goes and he does not have the cash to pay and he says 'Put it on the slate, will you'. Of course what section 27 is concerned about is debt, debt mounting up and interestingly section 27 (4) says that no debt or demand arising from the sale of liquor in contravention of the provisions is recoverable. So it is illegal to try to recover from somebody a debt that has been incurred on the slate. So just going through each of those provisions, I do not think there is any controversy, as I understand it on (a). Everybody is agreed that if a meal has been consumed it is perfectly all right for the landlady to say, for example, 'Well, would you like to put the bill for the wine on the bill for the meal later on?' That would be perfectly all right. Equally if someone is resident in a hotel, again, there should not be any problem because he is going to pay his bill at the end of the day anyway. The controversial matter perhaps is (c) and all I would say there is that there is not any question here of a debt arising in the future. The fact is that the credit card will arrange for payment there and then. Of course the supplier of the alcohol, the licensee, may very well have some money deducted as commission, or a fee, but he knows that he is going to get paid because that is the concept of the credit card, the commercial card. So he is going to be paid and of course he is not going to allow credit cards to be used just for a couple of pints of beer. What he may very well agree is that at the end of the night, when there is a group of people together, he might say, 'Well, now, who is paying for this?' and the organiser of the party says, 'Well I'm paying for it, as I agreed at the beginning of the night' and so he puts his credit card in and that is it. But, Mr President, certainly I did not want Mr Lowey to go ahead under a misapprehension.

Mr Lowey: Mr President, I apologise to you and my colleagues for not having it in written form, but could I move an amendment to delete part (c) from clause 5, to test the feel of this Council for the making credit card purchase of alcohol a legal proposition in the licensed trade? I do not believe it is in the interests of the Island, I do not believe it is in the interest of young people and I certainly do not think that we should be enshrining it. To that extent, I would seek your indulgence, sir, and the Council's indulgence at least to put it on the record that the Council had consciously decided that they think it is all right to go ahead.

The President: Yes. Now, hon. members, I am aware of the debate which has gone previously and the discussion which has been round the table. I did indicate that in fact there

was no amendment or any move to delete any of clause 5 in any regard. Now you have heard Mr Lowey who is proposing that we delete little (c). I leave it entirely to Council members. No seconder. In that case I call upon Dr Mann to reply.

Dr Mann: Thank you, Mr President. I share to some extent the apprehension on subsection (c). At a previous session I did refer to the person who actually organises a cricket club and having been a retailer in limited trade, not in licensed trade, I can assure you that the amount of administrative time taken up by organising credit card transactions is very considerable. The loss, the financial loss is quite considerable and over and above that, if I imagine myself as a licensee, the first thing that would happen if an individual came in and had signed for a considerable sum of money, would be that person could claim that he was under the influence of alcohol at the time I asked him to sign the form and one could make out quite a good legal argument for the fact that I as a licensee persuaded the man to sign the form. I would have thought that licensees would be very wary indeed of entering into this sort of trade and certainly not across the bar because it is open to all kinds of abuse. So I can understand members' apprehension. I think in practical terms it is extremely unlikely to happen over an ordinary bar in individual drinks or even small groups of drinks.

The President: The motion before us then, hon. members, is that clause 5 do stand part of the Bill. Those in favour please say aye; against no. The ayes have it.

A division was called for and voting resulted as follows:

For: The Lord Bishop, Mr Waft, Dr Mann, Mr Kniveton, Mrs Christian, Messrs Delaney and Crowe - 7

Against: Mr Lowey - 1

The President: With the one vote cast against, hon. members, the motion therefore carries. We turn then to clause 6 and I call on the hon. member, Dr. Mann.

Dr Mann: Clause 6 enables. . .

The President: Hon. members, Mr Delaney is indicating that he wishes to leave and I am content with that with the reason stipulated but I am aware also that we have still to move through - and I am looking at the Court clock - we have still to move through to clause 17. Do you wish to continue to finish or do you wish to come back this afternoon?

Dr Mann: I would wish to finish if I could.

The President: You wish to sit to continue. That Mr Delaney an indication I think. We are going to continue.

Dr Mann: Clause 6 enables the licensing court in proceedings concerning a provision of an on licence allowing music and dancing under section 28 of the 1995 Act, to call on the expertise of environmental health officers of the Department of Local Government and the Environment as to noise levels and measures to reduce noise. The court can call for a report and the department is required to provide it. The power is available on an application for such a provision or in proceedings for its variance or revocation. I know that there are, sitting on either side of me, members who are very aware of licensed premises with very high noise levels. It is very disturbing to the neighbours immediately adjacent to these licensed premises and I think this power is long overdue and I hope it will be used very rapidly. I beg to move that clause 6 stand part of the Bill.

Mr Kniveton: I beg to second, sir.

The President: Seconded by Mr Kniveton. Hon. members, the motion before us is that clause 6 do stand part of the Bill. Those in favour please say aye, against no. The ayes have it. The ayes have it. Clause 7.

Dr Mann: Clause 7, Mr President, makes various amendments to the provisions relating to misbehaviour on or near licensed premises, with the object of increasing the maximum penalty for offences of misbehaviour under the 1995 Act from £1,000, to six months and/or £5,000. Sub-clause 2 gives wider powers to make a banning order on a person: (1) the class of offences on conviction of which an order can be imposed is widened and (2) power is given to forbid the person to enter on licensed premises as well as to purchase liquor. The maximum period of the order is increased from one to five years. This is a significant increase in the powers of the court, not only to ban a person from drinking but to actually ban them from entering licensed premises. At the moment such a person can enter and cause considerable disturbance. I beg to move clause 7 stands part of the Bill.

Mr Kniveton: I beg to second, sir.

The President: Mr Lowey.

Mr Lowey: Can I just say as I get older I am sure I live in a schizophrenic world. We create a climate in our legislation. We create a climate where we allow more and more drinking of alcohol and we know the consequences of excess alcohol and when people are in excess of alcohol, we do not reason with people like that. You cannot. They should not behave like they do but they do and we know when they get intoxicated they behave like that. So what we are doing is increasing the penalties which we know we will impose because we have permitted the climate to permeate that it is accepted. That is what you do by saying there should be more of it and longer. I know the counter arguments and all the rest of it, but it does seem to me that imposing more stringent penalties and the idea that somehow you can stop people going on to licensed premises and buying it when we all know that the easiest thing to do is if they cannot go in they get a friend to go in and buy it for them. While I will be supporting this clause, I do think it is right that. . . now that is my schizophrenia coming out, but it really is schizophrenic for us to suggest that we have a problem, that we have a known problem and there is a medical term for it, putting a cordon sanitaire round whatever. I think that is the terminology they use, to keep a ring round it. But I cannot see increasing the penalties is the sole answer to the problem of alcoholism and its side effects, which is if you like impinging on society.

The President: Dr Mann to reply.

Dr Mann: Well, I think we take note of what Mr Lowey has said.

The President: In that case, hon. members the motion before you is that clause 7 do stand part of the Bill. Those in favour please say aye, against no. The ayes have it. The ayes have it. Clause 8.

Dr Mann: This clause replaces the existing section 40 of the 1995 Act, which prohibits the employment on licensed premises of security staff who have been convicted of certain offences of violence, with a power of the Department of Home Affairs to set up a register of authorised security staff. This will take over from the non-statutory register maintained at the present time by the summary courts office of the General Registry. I think this is a matter which I think it is true also falls into line with security staff in clubs. I beg to move clause 8 stand part of the Bill.

Mr Kniveton: I beg to second, sir.

The President: Seconded by Mr Kniveton. The motion hon. members is that clause 8 do stand part of the Bill. Those in favour please say aye, against no. The ayes have it. The ayes have it. We turn then to clause 9.

Dr Mann: Clause 9, Mr President, replaces section 45 of 1995 Act, which enables licensed premises to be closed by a JP in the case of riot, with new provisions giving the police limited powers to do so as well and also allowing closure in case of violence on the premises. This considerably strengthens the powers of the police to actually close a licensed premises immediately if there is a disturbance. I beg to move that clause 9 stand part of the Bill.

Mr Kniveton: I beg to second, sir.

The President: Mr Lowey.

Mr Lowey: Could I enquire, please? I am writing primary legislation here, now I can understand what a riot is. What is the difference between a riot or a tumult? Is tumult defined anywhere?

The President: Mr Crowe.

Mr Crowe: It is the number of members who riot is a certain number. A tumult is a larger gathering, I think. But that was not the point I wanted to make, the mover can answer for himself. What intrigues me, Mr President, drinking alcohol is meant to be pleasurable but as we go through the Bill we seem to be talking about riots and locking people up and jailing people. The whole point of increasing the licensing hours seems to have the reverse effect. All we are doing is creating body guards, goal sentences, the pleasure of it seems to have gone out of it - the enjoyment.

The President: Lord Bishop.

The Lord Bishop: As I understand it a riot is when something is actually happening, stones are being thrown, bricks are being hurled and paving slabs are being pulled up for missiles. A tumult is where it is likely to happen. There is a growing number of people gathering together and the situation gets rather ugly. So it is the threat. A tumult is more of a threatening situation, and you take precautionary action rather than you are in the middle of the stone-flying. I might be wrong but that is how I have understood it.

The President: We may have that position in London today.

The Lord Bishop: Absolutely.

The President: Mr Attorney.

The Attorney-General: Well, Mr President, I am delighted that the Clerk has been able to find a dictionary. I am afraid that it does not really help us very much. A tumult is described as 'an uproar or din, especially of a disorderly crowd, an angry demonstration by a mob, a riot', so it is the same, 'a public disturbance'.

A Member: And riot will say 'see tumult.' (*Laughter.*)

The President: Hon. members, we will be content at that then, but the motion before you there is that clause 9 do stand part of the Bill. Those in favour please say aye; against no. The ayes have it. The ayes have it. For the purposes of Hansard I will make it plain that the ayes had it on clause 8 as well. So can we then move to clause 10.

Dr Mann: Clause 10, Mr President, extends certain powers of the court to suspend the licence for up to four weeks so as to enable it instead to make an order limiting the hours during which liquor can be sold or consumed on the premises for up to four weeks. This gives powers of intervention at an early stage. I beg to move clause 10 stands part of the Bill.

Mr Kniveton: I beg to second, sir.

The President: Mr Crowe.

Mr Crowe: Yes Mr President, presumably this then is rather like the cooling-off bin. Instead of revoking the licence totally they have got the cooling-off bin for a week or so.

The President: Right, Dr Mann is content with that and agrees it is a cooling off period, I take it. So, hon. members, the motion before you is that clause 10 do stand part of the Bill. Those in favour please say aye; against no. The ayes have it. The ayes have it. Clause 11.

Dr Mann: Clause 11 amends section 65(1) of the 1995 Act, which enables the licensing court to disqualify a licensee from holding a licence for up to 2 years where he is convicted of an

indictable offence on two or more occasions, by removing the requirement for two or more such convictions. I beg to move clause 11 stand part of the Bill.

Mr Kniveton: I beg to second sir.

The President: Mr Lowey.

Mr Lowey: Could I ask the mover of the Bill is this compliant with the human rights legislation?

Dr Mann: I would have to ask the Attorney for that.

The President: Mr Attorney, do you wish to respond to that, sir?

The Attorney-General: I take it, Mr President, that the hon. member, Mr Lowey, is concerned that the person who is likely to be disqualified is going to have a fair hearing under article 6 of the convention. Section 65, if amended by this clause, will read as follows: 'If a person who is or has been the holder of a licence has been convicted of any offence triable on information, the court may on the application of the Chief Constable make an order disqualifying him for holding or obtaining a licence for such period, not exceeding two years, as the court may direct.' Now, Mr President, when someone is under pain of disqualification, he is always given the opportunity to appear and put his case before the court and I feel sure that the person who is under pain of disqualification would have the right to put his case properly in compliance with article 6.

Mr Waft: Mr President, I take it that the Rehabilitation of Offenders Act would apply in such instances.

Mr Lowey: The difference with this is you will be taking a man's livelihood away from him.

The President: We have a question from Mr Waft in relation to the Rehabilitation of Offenders Act and we have Mr Lowey coming back in relation to livelihood. Dr Mann would you like to reply?

Dr Mann: Well, I have to admit that I could not give the answer to that one. Is there a further answer?

The Attorney-General: Mr President, I am trying to remember the provision in the Rehabilitation of Offenders Act. I feel sure that there was a provision which enabled the Act to, as it were, do away with any disqualification. Whether it was restricted to driving or licensed premises, I cannot remember. So perhaps this is another matter, Mr President, I can come back to you on.

The President: Hon. members, the motion before you is that clause 11 do stand part of the Bill. Those in favour please say aye, against no. The ayes have it. The ayes have it. Perhaps we could take clause 12 and 13, dealing with registered clubs Dr Mann.

Dr Mann: These two clauses relate to fire proportions of club premises. Clause 12 allows the use of premises as club premises to be designated under section 2 of the Fire Precautions Act 1975, so that a fire certificate is required for the premises. This will bring club premises into line with on-licensed premises, the use of which is already designated under the 1975 Act. However, club premises will only require a fire certificate if the club is registered under part 4 of the Licensing Act 1995. The effect of this is that if a designation order for club premises is made corresponding to the existing designation of on-licensed premises, club premises at which liquor is sold or supplied will need a fire certificate but not other club premises. This brings licensed premises into line with requirement to have fire precautions. Clause 13 relates to the duration. At the moment the registration will remain in force for three years instead of one, thus bringing club registration into line with on and off-licences which now run for three years. They expire on 31st March in each year in which the tri-ennial session after they are granted is held. The next tri-ennial session is due in 2003. Club registrations will henceforth expire on the same

day. It is to bring club and licensed premises into line with their period of licences. I beg to move clause 12 and 13 stand part of the Bill.

Mr Kniveton: I beg to second, sir.

The President: The motion, hon. members, is that clauses 12 and 13 do stand part of the Bill. Those in favour please say aye, against no. The ayes have it. The ayes have it. Clause 14.

Dr Mann: Clause 14 inserts a new section 75A in the 1995 Act making it an offence for any person to buy liquor so that a person who is banned from buying liquor can drink it in a public place. It is just to block one of the ways in which a banned person can obtain alcohol in a public place. I beg to move clause 14 stand part of the Bill.

Mr Kniveton: I beg to second, sir.

The President: Mr Lowey.

Mr Lowey: Could I just seek two clarifications? It is a public place or on licensed premises, but there is nothing to stop an individual buying drink for somebody to drink in a private name. Can I also then ask, if it was an offence for that to be done, where is the defence - if I am charged with this offence, where is my defence that I did not know that he was banned? Where is the defence? do I have a defence and, if there is not, it does not say so.

Dr Mann: Whether you have a defence will depend upon the court. It is correct though in that this clause, I think, only applies to the drinking in a public place and I do not think it is possible to restrict what a person does in their own private house.

The President: Maybe I am wrong, but I tend to agree with Mr Lowey on this one. My understanding was that in fact if you invite a guest into the house and turn them out intoxicated you have committed an offence. However, Mr Attorney, maybe you could bring some light *(Laughter.)*

The Attorney-General: Well, Mr President, this clause relates to sections 33 (4)(a) and 75 (5)(a) of the existing legislation. 33 (4) (a) is concerned with drunkenness on licensed premises and if someone is convicted of being drunk on licensed premises, the court may order that he shall not purchase liquor from the holder of any licence for a period of 12 months from the date of the order. Equally, Mr President, in section 75, which is concerned with public drunkenness, again on the conviction of a person for an offence under that provision, the court may order that he shall not purchase liquor from the holder of any licence for a period of 12 months from the date of the order. So, to just answer the question raised by the hon. member, Mr Lowey, the defence would be that you did not know that he had been convicted or prohibited from buying liquor from the holder of a licence. You might be able to allege and prove to the satisfaction of the court that he told you a pack of lies about his previous history and that you knew nothing about his trouble in court. That would be your absolute defence. I hope, Mr President, that answer the point.

Mr Lowey: Could I come back then to the point that I can supply somebody who has been banned in my home and get him drunk and put him out into the street? It seems to me that the clause seems to be more concerned about drunkenness on licensed premises when we know that most of the problems of drunkenness and gives it offence to the largest number of people, you expect drunkenness in a pub. You do not expect drunkenness on a street. Therefore this clause does nothing. When we saying we are banning it really because we can still create it and put it out on to the street and we have not committed an offence.

Dr Mann: I think the problem is this Bill applies to licensed premises. It is not about private houses. I quite appreciate what Mr Lowey is saying but this Bill is about licensed premises and the control of licensed premises.

The President: Hon. members, the motion before you then is that clause 14 do stand part of the Bill. Those in favour please say aye; against no. The ayes have it. The ayes have it. Clause 15.

Dr Mann: Clause 15 extends the definition of sale by retail of liquor, which is the main activity controlled by liquor licensing, to cover other kinds of supply in the way of business. This relates to prizes or free gifts in conjunction with the sale of goods or services. There have been cases where cans of lager are given as a free gift on a sale of something else and this forbids that. I beg to move clause 15 stands part of the Bill.

Mr Kniveton: I beg to second.

The President: Hon. members the motion is that clause 15 do stand part of the Bill. Those in favour please say aye; against no. The ayes have it. The ayes have it. Finally can we take clauses 16, 17 along with the two Schedules?

Dr Mann: Thank you Mr President. Clause 16 introduces Schedules 1 and 2 which make consequential amendments and repeals. Clause 17 is the short title and the actual coming into operation on such day or days as the Department of Home Affairs may order. I beg to move clauses 16 and 17.

Mr Kniveton: I beg to second.

The President: Now, can I just hold at that. I am content that in fact that I have invited you to move clause 16 and 17. We also should have actually, should we not, a new clause to insert, the drinking in public places new clause? Dr Mann were you proposing to put that in front of us as well?

Dr Mann: Yes, there is a new clause which was set out in another place. Currently in the Department of Home Affairs has a power to designate specific places where it is an offence to consume liquor once a police officer has given a warning to stop doing so. The department has made many such orders in Douglas, Onchan, Port Erin and Peel. These orders have proved highly effective in stopping problem drinkers causing trouble. The police have used these powers sparingly and no complaints have been received by members of the public concerning the use of these powers. This additional clause will provide the police in the Isle of Man with similar powers to powers introduced in the UK in Manchester and Liverpool. A police officer will be able to request that an individual in a designated area who is carrying a vessel which contains, or has contained, liquor should deposit the vessel in a receptacle for the deposit of litter. If the individual refuses to do this immediately, he or she will be guilty of an offence on summary conviction of a fine not exceeding £500. The purpose of this is not to prevent members of the public having a drink outside a public house on a sunny day but to provide the police with power to stop troublemakers continuing to carry out alcohol from pub to pub or making a nuisance of themselves. So I beg to move.

The President: I take the point and I apologise hon. member. I had not taken this as a separate clause, but what I would propose to do, I think it is the sensible thing, is that the new clause will become clause 16 and the other two would be re-numbered thereafter. That would be the sensible thing. So I would take that as clause 16 and the two printed on the green Bill 16 and 17 will therefore be re-numbered as 17 and 18. Are we clear on that, hon. members?

Dr Mann: Can I move then that the new clause is clause 16 and clauses 17 and 18 re-numbered form part of the Bill?

Mr Kniveton: I am happy to second that, sir.

The President: Mr Lowey.

Mr Lowey : I accept the new clause and what its aims are but can I come back to clause 17? Really what I want to spell out is - and I know this is administration really, rather than

primary legislation and I do not know which way it can be done - but it says this Act will come into operation at such day or days as the Department of Home Affairs may by order appoint. What happens, and I use the department itself and on licensing in particular, where we have approved in the past to ban people under the age of 21 from selling alcohol and we approved that, both branches approved it, and because the order was not imposed by the department, it has never been introduced. Now that is what I would call the department defying the wishes of the legislative branches. Apart from legislators keeping their eye on the rabbit all the time and saying, 'Where is it, where is it, where is it?', it does seem to me important that departments of government wherever they are, actually taking note of the wishes of the legislature and, if you like, implementing the wishes of the legislature. So, while again this is not specific to this Bill, I think it is germane for me to draw attention to the licensing laws, particularly how sensitive they are, that they should be implemented, because we have had lots of reassurances today, but the history, the recent history of licensing, is not a particularly happy one.

The President: Mrs Christian.

Mrs Christian: Yes, Mr President. With regard to the new clause 16, I think that whilst we fully accept what the intention is, and that is to deal with problems that may evolve or have erupted, the actual wording of the clause does not in any way allude to problems and we are very reliant here on the interpretation. It is always rather a tricky situation when the wording of the law does not convey the intention of the legislators. I will not oppose it but I do have some concerns about a clause such as this, which would allow a police officer simply to demand that a person, if they chose for no reason at all, to deposit their bottles or cans into a receptacle or litter bin or whatever, and if they do not there is a liability to fine and conviction. I would also wonder on the question of interpretation, does the 'open' which precedes 'bottle' also refer to flasks and cans, whether they are closed cans and closed flasks. It is tricky. Mr Attorney, I do not know whether you have a view?

The President: Mr Crowe.

Mr Crowe: Mr President, I have just got a general point. Presumably the regulations will be approved by Tynwald, although I do not see it this Bill. It must be in 1995 Act. Is that correct?

Dr Mann: Which regulations? Clause 1?

Mr Crowe: I do not know. The new regulations. It actually goes back to clause 1 where, 'the department may make regulations.' But Tynwald will approve those regulations, it is not recited in the amendment Bill. Is it recited in the 1995 Act?

The President: Mr Attorney.

The Attorney-General: Section 81 of the 1995 Act that provides that orders and regulations made by a department or statutory board under the Act shall not have affect unless they are approved by Tynwald. I think that answers that one, Mr President. In relation to the question raised by the hon. member, Mrs Christian, I think that 'open bottle', 'open' must also refer to open flask, open can.

The President: Dr Mann, do you wish to reply.

Dr Mann: No, once again on a matter of regulation, certainly the department assures me that the regulations would have to be in place, approved by Tynwald, before an appointed day order can put that part of the Bill into effect.

Mr Lowey: Could I ask the mover of the Bill to relay to the department that if orders that are not being enacted, they should also, on a regular basis, explain their position and why they are not enacting them? Not responding to pressure from the legislature.

The President: I think the point is made but it was a separate case and I am sure it could be the subject of a question to the minister. Could we, hon. members, if I may, so that we are

absolutely plain on the position. What I am proposing now is in fact that before you there is the new clause which will become 16, that clauses 16 and 17 printed on the green Bill will become 17 and 18 and the proposal before us then is that the new clause 16, clause 17 and 18, along with the schedules as amended by the Keys on the white paper which has been circulated to you, that hon. members, they be approved. Those in favour please say aye; against no. The ayes have it. The ayes have it. That concludes our order paper and our dealing with the Licensing (Amendment) Bill for this morning, hon. members. I am appreciative of the clock but I would like, in fact, if the Council will now just sit in private for a very few minutes. Thank you.

The Council adjourned.