

**REPORT OF PROCEEDINGS OF
LEGISLATIVE COUNCIL**

**Douglas, Tuesday, 5th December 2000
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, Messrs J N Radcliffe and G H Waft, with Mr T A Bawden, Clerk of the Council.

The Lord Bishop took the prayers.

Apologies for Absence

The President: Hon. members, Mr Crowe is attending a funeral and will be along later this morning. I can report that Dr Mann is still indisposed. He has been home and is due to go away and will apparently be moving backwards and forwards between home and Manchester.

National Health Service Bill — First Reading Approved

The President: We turn then to our order paper and the National Health Service Bill, which is down for first reading. Mrs Christian.

Mrs Christian: Thank you, Mr President. It is intended that the National Health Service Bill 2000 will replace the National Health Service (Isle of Man) Acts 1948 to 1995. The aim of the department in promoting this legislation is to combine and update the current primary legislation relating to the National Health Service on the Isle of Man. Much of the 1948 NHS Act is still in force, but it is now over 50 years old and in a number of areas fails to meet modern-day plans. When this Act was prepared, in common with other Acts of the time, it was very detailed and prescriptive, leaving little room for changes to be made swiftly in order to meet the changing needs of the health service.

In drafting this Bill the department has taken the opportunity to make this piece of primary legislation enabling in character so that the more detailed elements of the NHS can be dealt with through subsidiary legislation. It was, however, felt appropriate to include in the primary legislation certain principles, duties and responsibilities. These include: the fact that subject to any specific provisions to the contrary which are laid down in the Act itself or in the regulations made under the Act, the services provided shall be free of charge; the provision for consultation with those bodies recognised as representing the professions and with the consultative body to be established under clause 2 of the Bill; and the maintenance of the list of practitioners approved to provide services under the NHS.

It is not expected that the Bill will have any effect on public revenue or, subject to a minor amendment which went through in another place, possibly a minor increase in expenditure, but I will address that when we come to the second reading of the clauses. I beg to move, Mr President.

The President: Mr Kniveton.

Mr Kniveton: I beg to second, sir. It has been said, Mr President, that this Bill brings the laws governing the National Health Service into this new century. That certainly seems to be the case in the way that I read this Bill and I do support it.

The old laws of the National Health Service date back to 1948, as Mrs Christian has just told us. That was when the National Health Service was first set up - yes, Mr President, over half a century ago. I believe the Bill will give the National Health Service more flexibility, as presently the terms are

rather restrictive and cannot be changed easily. So much has changed since 1948. Today we are talking about modern-day requirements, and despite the changes as set out in this Bill important parts do remain: a free medical service, free medical care, consultations with interested parties and, most importantly, maintaining a list of all those approved to treat patients under the National Health Service. The Bill will I believe, Mr President, update the current primary legislation concerning the National Health Service on this Island.

I welcome the move to disqualify incompetent medics, about whom we have heard of late. We should not have to depend on mistakes being discovered only when something very wrong or tragic happens. We certainly should not have to depend on other staff having to report what they believe are incorrect happenings. I understand a great amount of consultancy has taken place within the medical profession and, as I say, Mr President, I do fully support the Bill. Thank you, sir.

The President: Mr Lowey.

Mr Lowey: Thank you, Mr President. Very much along those lines, I too will be supporting the Bill, not as an independent, free everything, but I do believe that the new Health Service Bill is bringing it up to date after 50 years. It is a testimony to the original Bill how well it has worked in that time (**Mr Delaney:** Hear, hear.) It is one of, if not the, most important pieces of social legislation of the last century. I have not the slightest doubt about that. I think we have a framework here which will permit the development of the National Health Service provisions in the Isle of Man.

The only thing that I would say to the minister is, again, on the independent audit of the medical profession. I am not super-critical of the medical profession at all. I think they do a tremendous job. We only ever hear of the failings, we never hear of the successes. That is not news and, as far as I am concerned, independent audit is a support for the medical profession, not an undermining of their professionalism. I will want reassurance that this Bill will permit as wide an independent audit of their performance as we can possibly permit within the regulations.

A lot of the Bill is permissive - in other words, we are able to do things - and that is right. As the minister said in her opening remarks, the Bill is designed to allow changes to happen if and when, instead of having to go back to primary legislation. I think that is sensible. I think the department have done a tremendous job in rewriting the National Health Act of 1948 as amended and I think it is worthy of support.

The President: Mr Waft.

Mr Waft: Thank you, Mr President. I would support the last speaker. I have had reason to congratulate the health service and the service that they give as both an in-patient and an out-patient and a member of that service. A lifetime's work has gone into it.

I did agree with the last speaker, especially when he mentioned the independent audit. Since the demise of the old administration committees, whether you loved them or hated them, at least they were an independent body that used to visit the different areas of the hospital and give an independent review back. It gave the clients of the service the chance to actually speak to someone who was not part of the system. With the introduction of the nurse education and training, now to take place at first level, there at least will be independent assessment by UK observers of the training system to keep them on course. I would have liked to have seen some independent review from time to time of the services. It is not unusual within the workings of government departments to have some independent body have a look at it and I would have thought that would have been helpful. Otherwise people tend to toe the party line, as it were, and the independence is not there. How that can be achieved would be best left to the department to consider in the future. Thank you, Mr President.

The President: Mr Radcliffe.

Mr Radcliffe: Thank you, sir. Just a comment or two, Mr President. I cannot altogether argue and I will not argue with the purpose of the Bill, which is an update and modernisation of the old Health Services Act. Following on from what the hon. member, Mr Waft, has said I think that it is rather a pity that over the years the administration committees of each of the hospitals have been done away with and everything centralised. I cannot help but wonder whether there is the same keenness in a central body to look after interests as there was when there were local people actually on the administration committees.

I have one question - I am quite sure the mover is well aware of what I am going to ask - and that is in relation to some of the committees and trusts which aid hospitals cash wise. The scheme in schedule 1 states that 'hospital trust' 'means any property held for purposes'. That does not really relate to the one I am involved with, which is the Welfare Committee of the Ramsey Cottage Hospital, which has over the years done some substantial work to assist health services in their services. It is a trust which is well thought of in our particular part of the Island and I fear that if this was to be centralised it certainly would affect the income which this Welfare Committee receives. I would seek an assurance from the minister that the department will not be seeking to take over the assets and everything else of trusts, welfare trusts particularly, in connection with hospitals other than Noble's or Ballamona.

The President: Mrs Christian to reply.

Mrs Christian: Thank you, Mr President. First of all can I thank members for their supportive comments. It has been said that this was an amazingly well drafted piece of legislation and indeed it was. It has served us very well and perhaps testament to that is that much of what is in the old Act is being carried forward into the new Bill. So it was an extremely well-drafted piece of legislation. However, the rigidity of the primary legislation is something we are seeking to reduce by introducing a more enabling structure within the new Bill.

Hon. members have referred to the question of independent audit of the medical profession and indeed other parts of the health service and I note their comments. There is nothing directly in the primary legislation which deals with this issue and I think that perhaps when we come to the clauses which cover the controls that the department may have over its professional staff, we can discuss those elements further.

However, I would say that the fact that we do not have administration committees and so on does not mean that we do not have reviews. We do have independent reviews from outwith the Island on various elements of the health service provision. Comment has been made about those administration committees and the fear that, because they have been stood down, something has been lost. I have to say that we do still have independent lay people on our advisory committee who are free to go round the hospitals and to comment to the staff who are managing those hospitals on any issues that they want to raise on the part of patients and users of the service.

I also hope that the hon. member, Mr Radcliffe, would accept that although there is a hospital management structure which covers both Ramsey and Douglas, they do move around for their meetings and do not cut themselves off from the north. They do go there to hold their meetings and I would hope that that ensures that, as we have representatives from Ramsey on those management bodies, there is not a divide or a feeling that somehow or other there is less interest in the north. That would not be true.

Could I confirm for the hon. member - I am quite sure that we had this discussion before with trusts, and I understand their concerns - that the department does not have horns and a tail. It does not covet their resources - well, we do covet them, but we are more than content to ensure that they are left within their control.

We will come to elements of the legislation which deal with powers the department will have in relation to trusts, but there will be specific reference in the legislation to particular trusts which we acknowledge work very well indeed and which give us excellent support for which we are extremely grateful. Their independence will be sustained and maintained in this piece of legislation. Our concern is only to deal with outdated trusts where perhaps trustees have no longer been appointed, there are small sums of money which are sitting there and doing nothing. Perhaps the trustees have become elderly and are not concerned with managing the funds any more. In fact, trustees may die off and they are left in limbo.

So the clauses in relation to trusts are to deal with those sort of situations, but I would emphasise that and do my best to reassure the hon. member that, with regard to the principal trusts, which we will come to as we go through the Bill, we are entirely happy to leave them in the very good hands of the trustees who operate them so effectively. Thank you, Mr President.

The President: The motion, hon. members, is that the National Health Service Bill be read for a first time. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Adoption (Amendment) Bill — First Reading Approved

The President: We turn then to item 2 on our order paper, hon. members, and it is the Adoption (Amendment) Bill again down for first reading and again in the hands of Mrs Christian.

Mr Christian: Thank you, Mr President. This Bill is based on the UK Adoption (Intercountry Aspects) Act of 1999 and it is intended to give effect in Manx law to the Hague Convention 1993 on protection of children and co-operation in respect of intercountry adoption. The Bill therefore will amend the existing adoption law in respect of intercountry adoption. It also enables the ratification by the United Kingdom of a new convention on intercountry adoption to be extended to the Isle of Man which will be implemented mainly in regulations. In addition it will introduce sanctions to deal with unacceptable practices in intercountry adoption. I beg to move the first reading of the Adoption Bill 2000.

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

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

Rehabilitation of Offenders Bill — Second Reading Approved

The President: We turn then to the Rehabilitation of Offenders Bill, which is item 3 on our order paper, for second reading and I call on Her Majesty's Attorney-General.

The Attorney-General: Thank you, Mr President. As I explained at the first reading of this Bill, its purpose is to afford recognition to people who have been convicted of a criminal offence, but who have mended their ways over a considerable period of time and have not re-offended. That purpose is achieved by, firstly, restricting the evidence or testimony which may be given in proceedings before a judicial authority; secondly, restricting information which may be given in other circumstances; and, thirdly, making disclosure of certain information an offence.

I believe that at the first reading hon. members indicated their broad support for the purposes of the Bill and, if I may say so, Mr President, the position was very well put by the hon. member, Mr Kniveton, who explained that people do change and that convictions should not hang over these people forever. This is particularly important in the context of employment in a small place like the Island. On the other hand it must be remembered that the Bill does not help offenders who continue to offend, nor does it help offenders who have been sentenced in respect of very serious offences which attract sentences of more than 30 months in custody.

The paragraphs of the first schedule of the Bill and in particular the table introduced by paragraph 7 are key to the working of the Bill and, of course, the heavier the sentence which is imposed the longer the rehabilitation period. As is so often the case, a balance must be struck between the broad interests of society in punishing the offender and protecting members of society on the one hand and giving the convicted person a second chance on the other. I believe that a correct balance has been struck by this Bill and in all the circumstances I move that this Bill be now read a second time.

Mr Kniveton: I beg to second, sir. I was going to reiterate some of the things I said at the first reading, but the Attorney-General has done that for me already this morning. All that I would say, sir, is that the explanatory memorandum sets out quite clearly the objectives of this Bill and I am happy to second it.

The President: Hon. members, the motion before us is that the Rehabilitation of Offenders Bill receives its second reading. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

The President: Now, hon. members, are we happy to go into committee in totality? (*It was agreed.*) I invite the Attorney-General to take the first clause.

The Attorney-General: Thank you, Mr President. Clause 1 deals with rehabilitated persons and spent convictions and the effect of the clause is to treat certain convictions as spent at the end of a rehabilitation period, which is to be calculated in accordance with the later provisions of the Bill. Rehabilitation will not be available where an individual has had imposed upon him a sentence which is excluded from rehabilitation or he has received a further conviction during a rehabilitation period.

Sub-clause (1) declares that a conviction is to be treated as spent at the end of a rehabilitation period, specified in schedule 1, if the conditions set out in sub-clause (2) are satisfied. The requirement that a conviction be treated as spent and the individual be treated as a rehabilitated person means in general terms that the conviction cannot subsequently be published or referred to.

Sub-clause (2) sets out the conditions for rehabilitation. Firstly, the conviction must not be excluded from rehabilitation under clause 2. Secondly, a person must not be convicted of an offence excluded from rehabilitation during the rehabilitation period. Thirdly, the person must have completed the sentence imposed on conviction. Mr President, I move that clause 1 do stand part of the Bill.

The President: Mr Kniveton.

Mr Kniveton: I beg to second, sir.

The President: Mr Lowey.

Mr Lowey: It is amazing really: we discussed this matter last week and at the weekend I had - I am not allowed to have a constituent - a person from the Isle of Man come to see me dealing with a caution that he had allegedly received from the police. Does this clause extend to wiping out cautions? In this particular instance I did not believe that the young man had a caution. He was spoken to verbally by the police and told to behave himself or else he would be cautioned. I did not take that as a caution, so I advised him that he did not have to fill in a form asking whether you have any police convictions or cautions.

Does this Bill apply and is this where you get them wiped out? Does a caution stay on your record, because I would have thought if you are cautioned it means you are on a lower tariff than you are if you are prosecuted and convicted? So I would just like clarity on whether this covers a caution. It just shows you how relevant it is. We spoke about it last week and this week someone calls and asks you to interpret the existing law. I just hope that the Attorney will tell me that I advised the young man right.

Mrs Christian: Mr President, this illustrates a difficulty that might come about in the perceptions of the public because being ticked off by a policeman might be regarded as a caution by many of us, but it is not actually a technical caution, is it, which does go on a record? Maybe there will be some confusion about that in -

Mr Kniveton: I just hope, Mr President, that it does not stand as a caution, because I was speeding at Ballasalla in 1953 and I got a caution. *(Laughter)*

The Lord Bishop: It has blighted your career ever since. *(Laughter)*

The President: Mr Waft.

Mr Waft: Thank you, Mr President. Just on a different tack, is the 30-month limit, two years and six months, exactly the same as in the UK Act? Why was it two years, six months in particular? It appears that after 30 months they are completely written off as beyond redemption as they cannot be included in the Rehabilitation of Offenders Bill. Would the Attorney like to clarify that for me?

The President: I think that is actually in clause 2. We are still dealing with clause 1.

Mr Waft: I think it does refer to the rehabilitation period.

The President: Yes, okay. I will invite the Attorney to reply.

The Attorney-General: Thank you very much, Mr President. Insofar as the question raised by the hon. member, Mr Lowey, is concerned, a caution does not amount to a conviction. Although it can be worrying, particularly for a young person, to receive a caution, it is not a conviction and it does not appear on his record. It could not in any event be referred to in subsequent proceedings and therefore there is no need for this legislation to save any person from reference to cautions.

Insofar as the question raised by the hon. member, Mr Waft, is concerned, I confirm that the period of 30 months is exactly the same as the period in England, which is deemed to be appropriate. I think most of the serious offences which we would consider should not count for rehabilitation would attract sentences of more than 30 months. Therefore, a line has to be drawn somewhere, Mr President, and, arbitrary though it may be, we have followed the UK in this respect.

The President: Hon. members, the motion before us is that clause 1 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 2.

The Attorney-General: Thank you, Mr President. The effect of clause 2 is to specify the sentences which will not in any circumstances become spent. The sub-clause specifies the sentences therefore which are excluded from rehabilitation. They are custody for life - for example, for murder; custody in excess of 30 months - a vast range of offences involving dishonesty or violence can fall within this threshold; and thirdly a sentence of detention during Her Majesty's pleasure under section 8 of the Custody Act 1995. That section 8, Mr President, deals with young offenders, people under the age of 18 at the time the offence was committed, who are liable to be detained under such conditions as the Department of Home Affairs may direct. So, Mr President, I move that clause 2 do stand part of the Bill.

The President: Mr Kniveton.

Mr Kniveton: Yes, sir, I beg to second, and the only point I would mention is I would assume that the paedophiles and the sex offenders and those sort of people are well and truly covered, by sub-clause (2)(b) because their term of custody would exceed 30 months. Thank you.

The President: Mr Lowey.

Mr Lowey: Perhaps I could just comment on the 30 months. I think it is right that we should try and keep in step with our immediate neighbours so that there is a reciprocity of when you get a

clearance from one jurisdiction it means virtually the same as the other. That is the level playing field that I think is not in place at the moment. Our young people who may have been convicted in their younger days for minor offences have got to declare them whereas people in another jurisdiction do not. I think that is right. It may be arbitrary, but I think it is right that we keep a degree of seriousness that has to be reported, and that does include the paedophiles and all the rest of it. That is right and proper too. The public need reassurance and I think this gives them the reassurance that they deserve and which I am sure is intended.

The President: Mr Attorney.

The Attorney-General: Thank you, Mr President. On the point raised by Mr Kniveton, I would imagine that a person convicted of an offence against a young person, commonly known as a paedophile, would almost certainly attract a sentence of 30 months, depending on the seriousness of the matter. Therefore, those persons are not going to have the benefit of rehabilitation under the legislation.

I also entirely agree with the point made by the hon. member, Mr Lowey. It is absolutely correct that there should be a level playing field between the United Kingdom and this Island and consistency is very important.

The President: The motion, hon. members, is that clause 2 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. We will turn then to clause 3. Mr Attorney-General.

The Attorney-General: Thank you, Mr President. Clause 3 deals with the offence of publishing or broadcasting spent convictions. The clause will prevent the publication or broadcasting of details of spent convictions except in circumstances permitted by the Bill. Sub-clause (1) makes it an offence to publish or broadcast or cause or permit to be published or broadcast anything imputing that a rehabilitated person has committed, or been charged with, or prosecuted for, or convicted of, or sentenced for an offence in respect of a spent conviction. There is a sentence for breach of that offence, Mr President, of a maximum fine of £2,500 in a court of summary jurisdiction.

Sub-clause (2) provides some statutory defences to a prosecution for a charge under sub-clause (1); firstly, the conviction had not become spent when the publication or broadcast took place; secondly, the information about the spent conviction was published or broadcast with the express consent of the rehabilitated person or of a person whom the publisher or broadcaster reasonably believed to be the rehabilitated person; thirdly, the publication or broadcast is undertaken on the order of a court in the Island; fourthly, the publisher or broadcaster used proper diligence to avoid committing the offence and, fifthly, that broadcast takes place 30 or more years after the death of a rehabilitated person.

Sub-clauses (3), (4) and (5) deal further with the defences contained in sub-clause (2)(d).

Sub-clause (4) requires a publisher or broadcaster who is relying upon the defence under sub-clause (2)(d) and is suggesting that the offence was due to the actual default of another or in reliance of information given by another to give seven days notice of that fact to the person who brings the proceedings. Failure to do so will prevent reliance on the defence without the special leave of the court. The purpose of that notice is therefore to ensure that the prosecution and the court are not taken by surprise.

Sub-clause (5) requires the notice to identify or assist in the identification of the person who committed the act or default or gave the information and sub-clause (6) disapplies sub-clause (1) in certain cases.

Sub-clause (7) defines the meaning of the word 'broadcast'. It is intended to cover all forms of legal broadcasting to the public. 'Publish' is not defined, but is intended to cover all forms of publication to third parties.

Mr President, I move that clause 3 stand part of the Bill.

The President: Mr Kniveton.

Mr Kniveton: I beg to second, sir.

The President: Mr Waft.

Mr Waft: Could I just ask the Attorney-General to clarify why it was seen to be in sub-clause 2(c), the publication or broadcast if ordered by a court in the Island would be in breach of the Rehabilitation of Offenders Bill, but they seem to be able to do that. In what circumstances would that be necessary?

The President: Mr Crowe.

Mr Crowe: Is there an equivalent of the 30-year rule in the UK legislation?

The President: I invite the Attorney to reply.

The Attorney-General: Yes, thank you, Mr President. I am sorry, I was just hoping I could find quickly the equivalent position in the UK on the 30-year rule. I think I am right in saying that the 30-year rule in this clause is particular to the Island. I do not think there is a similar provision in the UK legislation, but perhaps I could check that and come back to the hon. member at third reading.

In relation to the question raised by the hon. member, Mr Waft, in what circumstances would a court order that there should be a broadcast or publication of the fact that someone had been convicted of an offence which otherwise would have been protected? It is possibly difficult to recall circumstances where that might be appropriate, but, as ever, I think that the legislation ought to anticipate particular circumstances - very unusual circumstances - where the court in its discretion feels that a person is so dangerous or is so much beyond redemption that it is appropriate that the fact of the conviction should be published or broadcast. I think that that can happen only in most exceptional circumstances. I cannot bring an example to mind, but it is the catch-all provision.

The President: Hon. members, the motion before us is that clause 3 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. So we will turn then to clause 4, Mr Attorney-General.

The Attorney-General: Thank you, Mr President. Clause 4 deals with the effect of rehabilitation on the obligation to disclose spent convictions.

Sub-clause (1) provides that any obligations imposed by any rule of law or by an agreement or arrangement will be deemed not to impose an obligation to disclose a spent conviction or any circumstances ancillary to a spent conviction.

Sub-clause (2) deals with cases where information is sought as to previous convictions other than in the courts. In such cases, enquiries as to previous convictions are to be treated as relating only to convictions which are not spent, so persons who give information are not liable for any failure to give information about spent convictions. This provision may apply in a wide variety of cases involving official, semi-official and commercial enquiries as to the background of individuals.

Sub-clause (3) safeguards employees who have spent convictions and a spent conviction will not be a proper ground for dismissal or for refusal to employ a person.

Mr President, I move that clause 4 stand part of the Bill.

The President: Mr Kniveton.

Mr Kniveton: I beg to second, sir.

The President: Mr Delaney.

Mr Delaney: Mr President, just to clarify, I was reading the clause in relation to a couple of matters which we will be handling shortly and which we have handled. We all know the history of the work permits, for example. The difficulty came when we could not get information from across about persons who were arriving on the Island in relation to any criminal convictions or gaol sentences et cetera. We know that that was brought in by the Freedom of Information Act, or whatever it was, or by European law.

Then we have the other situation. We are looking at putting into law a provision under which you do not have to disclose. Then we have a Bill coming forward towards us - I cannot pre-empt that - dealing with the residency on the Island in relation to convictions, yet here we are aiding and abetting what appears to be a situation where people do not have to tell anybody that they have got a conviction on which a judgment of that person can be based, whether they are applying for presidency, a work permit, an occupation or something. I am wondering how this all ties in together. That is perhaps a difficult question, but where are we going, in other words?

The President: Mr Attorney-General.

The Attorney-General: Yes, thank you, Mr President. I understand the force of the question raised by the hon. member and there is a natural tension between, on the one hand, the purpose of this Bill, which seeks to recognise rehabilitation of certain offenders and, on the other hand, the desire that we should not allow persons with convictions to undertake employment on the Island, particularly in sensitive professions. The fact is, though, as I indicated in my opening remarks today, that a balance has to be struck here in so far as work permits are concerned and perhaps also the tribunal under the Residents Bill, where someone is entitled to have his conviction regarded as spent and is entitled to come to the tribunal as if he had a completely clean record. That is a matter of policy which is behind the purpose of this Bill.

Having said that, it is open to the Department of Home Affairs to make an order which will allow people in authority - in other words, people who have custody of information relating to a person's convictions - to disclose that to other people in particular circumstances. I cannot, of course, pre-empt any situation at all, but it may be that if it were perceived that there were to be wholesale immigration, there was evidence that people were coming into the Island with convictions and it was deemed that that was totally inappropriate, the Department of Home Affairs could regulate that by orders made under the legislation. At the moment, however, to answer the question directly, the work permit tribunal and the other tribunals will not know about a person's convictions.

Mr Delaney: Yes, if I may, Mr President, for the benefit of other hon. members as well as myself, the confusing bit to me is that a piece of legislation is currently coming forward which seems - as I think you recognise - to be completely at loggerheads in relation to where our policy is on the future of this Island and its residents. Although people in high office may know of these convictions, they are, if I am not mistaken, not allowed to disclose that information without breaking other pieces of legislation and law which are in the pipeline.

The President: Yes, well, I do not want to get into a debate on the matter, but I call Mr Attorney-General.

The Attorney-General: Well, Mr President, perhaps we could look at that in greater detail when we come to clause -

Mr Delaney: Human rights, in other words.

The Attorney-General: Yes, Mr President, I do understand the point made by the hon. member. I think that it is dealt with in clause 8 and, in particular, clause 8(7). Perhaps it might be appropriate to look at it then.

The President: Okay, hon. members, the motion before us then is that clause 4 stand part of the Rehabilitation of Offenders Bill. Those in favour please say aye; and against, no. The ayes have it. The ayes have it.

Clause 5, Mr Attorney.

The Attorney-General: Thank you, Mr President. Clause 5 deals with the disclosure of spent convictions in criminal and civil proceedings.

Sub-clause (1) prevents evidence from being produced in any judicial proceedings of details of spent convictions nor can a witness be asked questions which relate directly or indirectly to spent convictions.

Sub-clause (2) permits reference to be made to those spent convictions in certain criminal proceedings relating to minors and cases where the person who is the subject of a spent conviction consents.

Firstly, evidence of spent convictions may be produced in Manx criminal proceedings and that includes appeals or references on points of law to the appeal court. This is an essential exception to the general rule because it is vital, for example, that when sentencing a person the court must have a complete picture of previous convictions in order that the correct penalty may be imposed.

Secondly, spent convictions may be referred to in a wide range of proceedings relating to the welfare of minors, adoption, guardianship, wardship et cetera. In such cases, the courts must treat the welfare of the minor as paramount and a complete record of previous convictions of the persons concerned is essential.

Thirdly, spent convictions may be referred to in the case of care proceedings under the Children and Young Persons Act. That legislation is, of course, appropriate when a juvenile court is satisfied that a juvenile is in need of care or protection.

Fourthly, of course, reference to spent convictions is permitted where the person actually consents to the reference being made.

Sub-clause (3) gives judicial authorities a discretion to admit evidence relating to spent convictions if it considers that justice cannot be done in the absence of such evidence.

Sub-clause (4) confirms that the discretion is not needed in cases to which sub-clauses (2)(a) to (c) apply, nor where an order has been made by the department under clause (10)(1), because in those cases there is, of course, a right to refer to spent convictions.

Sub-clause (5) introduces a new rule to ensure that records of a person's previous convictions must include only orders imposed on conviction when presented to a court. This means that interim orders and civil penalties are not to be included on lists of previous convictions.

Mr President, I move that clause 5 stand part of the Bill.

The President: Mr Kniveton.

Mr Kniveton: Yes, sir, I beg to second. I should like to comment on one point which comes to me during our consideration of the clauses today - please forgive me if I have missed the point. Let us suppose that an offender reaches a stage of spent conviction. First of all, how does he know he has reached that stage without reading the Bill? Is he issued with some sort of notice? Secondly, can he apply to anybody for - what shall we call it - a certificate to show that he has reached that stage, or

does it just drift into a situation? I do not think I can find it in the Bill, but I think it is worth getting an answer on that one.

The President: Mr Delaney.

Mr Delaney: I am just trying to pitch this in layman's terms. The court has taken place, somebody has been charged through your office for breaking and entering, he is stood there in his Savile Row suit and the jury are there. In an ordinary case like that, perhaps of breaking and entering, can, when he is in the dock, your department - which might be prosecuting this case - ask him the question, 'Is it not true that you have four previous convictions for breaking and entering in the same street?'. I am taking it to the extreme, but do you understand my point? Such information would be for the benefit of the jury.

The President: Mr Waft.

Mr Waft: Thank you, Mr President. I do not think that is a possibility. I would just clarify the position with regard to my own concern, which is that they have to be found guilty of the offence before information is given as to the previous spent conviction. Does that information have to be given in all circumstances or only in particular circumstances?

The President: Mrs Christian.

Mrs Christian: Yes, Mr President, I particularly welcome clause 5(2)(b) and (c) in relation to matters dealing with children. Notwithstanding that we are allowing people to have spent convictions in certain areas, I think it is important in these areas of adoption laws and family matters that the whole picture is known. It is necessary that we support the removal of the rules again in respect of those situations, so I welcome that in this clause.

The President: Mr Attorney-General.

The Attorney-General: Thank you, Mr President. The hon. member Mr Kniveton raises a very good point which is going to have practical effect. I suggest that it will perhaps be for the offender's lawyer to advise the offender that, after a particular period of time, the conviction is deemed to be spent. It could well be that the Law Society should, when and if the Bill becomes law, issue some sort of code of practice to make this very important point well known to the clients. I think it is an extremely good point.

There will not be a certificate, but I think the lawyers will have to issue some sort of letter or guidance to their clients.

In so far as the rather graphic example given by the hon. member, Mr Delaney, is concerned, breaking and entering and the chap in his Savile Row suit -

Mr Delaney: Probably belonging to the place he broke into! (*Laughter and interjection*)

The Attorney-General: - the general rule is, of course, that where a person is accused and has not been convicted, and is standing in the dock - and he may have given evidence - the prosecution are not able to put previous convictions to him unless the facts of the case show a certain method or a certain propensity to carry out a certain way of committing the offence -

Mr Delaney: Breaking and entering.

The Attorney-General: Interestingly, when Mr Delaney says he is charged with breaking and entering into all the other houses in the particular street, if the way he had done the breaking and entering showed a certain hallmark, the previous convictions could perhaps be put to him. So, inadvertently, Mr Delaney put his finger on a rather technical area of law.

But seriously, the situation is that generally a person cannot be asked whether he has been convicted of a previous offence unless and until a conviction has been recorded against him. Then, clause 5 takes effect and the court can have put to it evidence of the person's previous convictions. Clearly, a first offender needs to be sentenced to a far lesser penalty than someone who has serious convictions for similar offences. It is only after a conviction has been recorded that we can refer to previous convictions.

I entirely agree with the comments made by Mrs Christian. Clearly, the clause does acknowledge that children have to be protected.

With those comments, Mr President, I move that clause 5 stand part of the Bill.

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

Clause 6, Mr Attorney.

The Attorney-General: Thank you very much, Mr President. Clause 6 provides a definition of the phrases, 'circumstances ancillary to a conviction' and 'proceedings before a judicial authority' for the purposes of clauses 4 and 5.

Mr President, I move that clause 6 stand part of the Bill.

The President: Mr Kniveton.

Mr Kniveton: I beg to second, sir.

The President: The motion, hon. members, is that clause 6 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Now, Mr Attorney-General we will turn to clause 7 and schedule 1, sir.

The Attorney-General: Thank you, Mr President. Clause 7 introduces schedule 1, which sets out the detailed rules relating to the calculation of rehabilitation periods. Sub-clause (2) gives the Department of Home Affairs the power to amend schedule 1 by order. This will give the department the opportunity to modify the schedule to take account of developments in sentencing, but such an order will be subject to Tynwald approval in accordance with clause 10(2).

The schedule is at page 11 of the Bill. It sets out the rehabilitation periods which are to be applicable to convictions. The rule to be adopted in the most straightforward cases where only one sentence is imposed is dealt with in paragraph 1 and in part 2.

For the more complicated cases where there are a number of sentences to be imposed, or where further offences are committed during rehabilitation periods, paragraphs 2 to 6 apply. Where only one offence has been imposed, the rehabilitation periods for persons of 17 years or more are set out in the table at part 2 introduced by paragraph 7.

In the case of persons under the age of 17, the rehabilitation period, irrespective of the sentences set out in the table, are to be halved.

Paragraph 2 of the schedule provides a general rule where more than one sentence is imposed either in the same proceedings or in different proceedings. If the sentences are amenable to rehabilitation, the longer or the longest of the rehabilitation periods is applicable. This general rule is subject to the provisions of part 1 of the schedule.

Paragraph 3 of the schedule applies to cases where a person is sentenced to a conditional discharge or is placed on probation.

Paragraph 4 deals with cases where there are further convictions during a rehabilitation period applicable to a person. The basic rule will be that the rehabilitation period applicable to the earlier convictions will be extended to the end of the rehabilitation period applicable to the later convictions.

Paragraph 5 deals with cases where a disqualification order et cetera has been imposed as a sentence on conviction.

Paragraph 6 modifies the effect of paragraph 4, so that convictions for summary offences prescribed by the department during a rehabilitation period are not to cause the extension of the rehabilitation period applicable to the original conviction. Neither are convictions outside the Island which stem from acts which are not offences under the law of the Island.

Paragraph 8 prescribes a rehabilitation period of six months from the date of conviction in relation to an absolute discharge. An absolute discharge is, of course, one which is imposed when it is inappropriate to impose a fine or other sentence because of the exceptional circumstances surrounding the commission of the offence.

Paragraph 9 deals with the more serious case of conditional discharge binding over to keep the peace et cetera. In such cases, the rehabilitation period is a minimum of one year from the date of conviction, but extends to the date on which the conditional discharge, probation or binding over ceases to have effect, if that is longer than one year after conviction.

Paragraph 10 deals with certain cases relating to young offenders. The effect is similar to that under paragraph 9, in that the rehabilitation period is a minimum of one year, but where a supervision order or care order et cetera lasts for more than one year, the rehabilitation period expires on the date the order or requirement ceases to have effect.

Paragraph 11 deals with hospital orders under the Mental Health Act. These occur where a person is convicted of an offence but is ordered to be detained in a mental hospital for treatment. In such cases, the period is a minimum of five years, but is extended to two years after release from hospital if the detention in hospital is for more than five years.

Paragraph 12 deals with cases where a disqualification disability et cetera has been imposed following a conviction. In such cases, the rehabilitation period ends on the date on which the disqualification ceases to have effect. Therefore, at the end of the period of disqualification, the conviction is to be treated as spent.

Paragraphs 13 and 14 are supplemental explanatory provisions.

So, Mr President, I move that clause 7 and the first schedule to the Bill stand part of the Bill.

The President: Mr Kniveton.

Mr Kniveton: Yes, sir, I beg to second, but I would like to go back to the reply to my previous question under the previous clause if I may, sir. That is where our learned Attorney-General advises that, presumably, there will be a code of practice in respect of lawyers or solicitors who are advising their clients regarding spent convictions. I do not want to introduce an amendment, but can the learned Attorney-General convince me that that will be so? Is there a ways and means of his department speaking to the lawyers or advocates society to ensure that that is so?

I look back at this and say that if the convicted know that they can reach the spent convictions stage, it probably assists them, as it is a target for them to get to. (**Mr Delaney:** Hear, hear.) Unless we get an assurance from the Attorney-General if that is possible, will he put a recommendation to the advocates society? That is my question, sir.

The President: Mr Delaney.

Mr Delaney: It is just that we are making the primary legislation here, or amending the primary legislation. The situation is that, although the Attorney-General is saying that he will ask somebody else, I thought we were elected thus from the other House for us to make the law. If it is good law that somebody has got a certificate to say they have completed their sentence, so be it. It should be in the Bill or at least intended to be in it, rather than it might or might not be.

The President: Mr Crowe.

Mr Crowe: Yes, I was just thinking that presumably, they would have a database of all crimes and convictions with an indicator when the rehabilitation period would expire. Surely the courts would have sufficient records and it would be in the interest of the person involved, who is charged with an offence and convicted of an offence, to know absolutely the date when his rehabilitation period would expire, because it would affect his job application ability, would it not?

Mr Delaney: A lot of things.

The President: Mr Lowey.

Mr Lowey: Taking the point that has been raised, there should not be too much difficulty in principle because we already disqualify people from driving, for example. These are what I would call the logistics. We know if you were disqualified today for 18 months you would get your licence back whenever. I would have assumed your sentence is in place and all we do is then say 'it will expire on a certain date'. I am quite comfortable really that we have got it.

Taking the point that primary legislation is the place to make sure that it does happen, I remind my hon. friend when we sat in another place and debated electricity, for example. When we dealt with the taking over of the electricity, we got the amalgamation through on the premise that there would be a special regime. Everybody in the debate or who read the debate knew it was accepted because there were special recommendations. However, because it was not written down in primary legislation, we regrettably had to amend the legislation to make sure that it did happen, so I accept that.

But I am quite content that we have what I would call the logistics in place to make it happen. It is just the reassurance that it will happen, and the question of which agency will do it, whether it would be the advocates or not. That is all right for the defence on most occasions, because it will only be the defence that will have that onus put on them. But there should also be a place for somebody to get it from the police if they have lost it. We are back to what I would call the Data Protection Act, under which you are not allowed to know who holds what even on you.

Mr Delaney: Imagine applying for a job, with three GCEs and two expired convictions.

The President: Mr Waft.

Mr Waft: I think it would not be too great an onus on a judge in his summing up to incorporate the time limit of the Rehabilitation of Offenders Bill particular to that offence. I would just like to say on behalf of some of the employers that they need to know as well about the periods over which the rehabilitation takes place. They want to know.

The President: Mrs Christian.

Mrs Christian: Yes, Mr President, there is a practical issue in this, not only for people being able to know when their conviction becomes spent for purposes of applying for jobs and so on. Much more important is that they are told at the time of conviction how long it is going to be. As the hon. member, Mr Kniveton, has pointed out, that might act as an incentive to behave. But in addition to that, they should also be told that if they do not and there is a further conviction, there is an extension in the penalty. **(A Member:** Hear, hear.) That is set out in the schedule.

In certain circumstances, there is a penalty if you happen to stray again before your conviction is spent. I think those two messages need to go hand in hand. Whoever is going to deliver them, it is important that they are delivered and do not just moulder in the statutes.

The President: Mr Crowe.

Mr Crowe: Mr President, I was going to make the same point as Mrs Christian. If you re-offend during the period of rehabilitation, and if your time has not expired then it is the new date from when you do your second offence or third or whatever. So the meter runs from that date. I do not think the courts could give a clear indication that it would expire at X date.

Mr Delaney: The legal profession should know. Both sides the prosecution and defence, should have something in writing, even for the benefit of good court procedure, saying that they will not be able to raise any previous convictions because they have expired.

The President: Mr Attorney-General to reply.

The Attorney-General: Thank you, Mr President, and I thank hon. members for their very interesting comments. First of all, in relation to a point made by the hon. member Mr Kniveton, I would certainly have no difficulty in advising hon. members that I will write to the president of the Law Society to make him aware of the passing of the legislation and perhaps to suggest that members of the Law Society should make a point, when they represent people in criminal cases, of indicating when the likely period of rehabilitation will expire.

Recalling my own experience, for example in relation to people who are disqualified from driving, dangerous driving or driving under the influence of drink and so on, I have to say that people knew very, very well when their period of disqualification expired. In certain circumstances, of course, they can apply to have their licence restored before the expiration of the total period of disqualification. I feel quite sure that people will, in their own interests, find out when their disqualifications or convictions expire.

As other hon. members have said, that is for the good not only of the convicted person, but of potential employers. It may well be again that advocates have a useful role to play in so far as they can confirm the understanding of the convicted person or the potential employer.

I do not know how the deemsters are going to react to the legislation. I can only think that perhaps they may very well make reference to this legislation. It is rather like the deemsters and the bailiffs imposing conditional discharges, where the deemster might say that in the particular circumstances of this case, 'I impose a conditional discharge for a period of 18 months, provided that you understand that if you re-offend within that period you will be brought back to this court and you will be sentenced for the original offence.

It may well be that some sort of warning in relation to rehabilitation will be given by the deemsters, but that really is a matter for their Honours.

Mr President, I hope I have dealt with the comments made by hon. members and I move that the clause stand part of the Bill.

The President: Hon. members, the motion is that clause 7 and schedule 1 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 8.

The Attorney-General: Thank you, Mr President. Clause 8 deals with unauthorised disclosure of spent convictions. The effect of the clause is to make it an offence for officials to pass on information as to spent convictions from official records. It also makes it an offence to obtain such information by fraud, dishonesty or bribes.

Sub-clause (1) makes it an offence for an official having custody of an official record or information knowingly, or having reasonable cause to suspect that any specified information he has obtained in the course of his duties is specified information, to pass on the information to another person. It will not be an offence for officials to pass records and information between themselves in the course of their duty.

The Department of Home Affairs can make an order under sub clause (7) to exempt specified disclosures from the offence. The penalty is set out in sub-clause (2): a £2,500 fine on summary conviction.

Sub-clause (3) provides a statutory defence to proceedings under sub-clause (1). It is a defence if the information is disclosed to the rehabilitated person concerned, to another person at the express request of the rehabilitated person, to a person reasonably believed to be the rehabilitated person, or to another person at the express request of a person who would be reasonably believed to be the rehabilitated person.

Sub-clause (4) provides that proceedings for an offence under sub-clause (1) must not be instituted except by, or on behalf of, the Attorney-General.

Sub clause (5) makes it an offence to obtain information on spent convictions from an official record by means of fraud, dishonesty or a bribe. In that case, the maximum penalty is £5000 and or six months' custody on a summary conviction.

Sub-clause (6) defines the expressions, 'official record' and 'specified information'.

Sub-clause (7) gives the department a power to exclude from the offence created by sub-clause (1) such disclosures as appear to it to be appropriate. An order under that sub-clause must, however, have Tynwald approval under clause 10(2).

I move, Mr President, that clause 8 stand part of the Bill.

The President: Mr Kniveton.

Mr Kniveton: I beg to second, sir.

The President: Mrs Christian.

Mrs Christian: I wonder if I might just clarify certain matters. The reference here is to unauthorised disclosure of spent convictions from official records. Earlier on in clause 3, we dealt with publication and the rules which do not apply to bone fide law reports or records of proceedings in court. Who would have access to those court records? Presumably, law reports are there for the profession, for students or whoever to research previous cases and so on. Does this clause restrict in some way how those records might be accessed and used? Does it mean in fact that names on all those old reports would now have to be removed because they are spent convictions, or will be?

Mr Delaney: Good one, good one.

Mrs Christian: I find it a little difficult to know when reports are published in bone fide education, scientific or professional journals whether or not they can use names. It does not seem to say whether they have got to take names out for old cases. I wonder if the Attorney-General could clarify that. I appreciate that it is rather a garbled question, and I apologise.

Mr Delaney: It is a good question.

Mrs Christian: I wonder whether the Attorney-General could clarify whether those two clauses sit together.

Mr Delaney: If they are not allowed to give the information in court how will they do so elsewhere?

The President: Mr Attorney-General to reply then.

The Attorney-General: Thank you, Mr President. The question is, of course, as usual, a very good question. In so far as law reports are concerned, names of convicted persons are not removed from law reports. In the United Kingdom, for example, we have a set of reports which is known as the Criminal Appeal Reports Sentencing. As their name implies, these reports deal only with the sentences imposed by courts where people are convicted of serious offences.

You, well you will always see the name of the accused and his accomplices and what they were up to. The previous convictions will be referred to and so on and so forth. Of course, the purpose of the reports is to guide the judges and the advocates in court as to what sort of sentence should be imposed where a similar offence or case comes before the courts. This is all to do with the English and Manx system of precedent.

It is entirely proper that judges and others dealing with the administration of justice should be able to look back at previous cases and say, 'Ah well, if Mr Smith is charged and convicted of armed robbery and he had six similar offences as in the case of Jones in 1990, we know what sort of offence is applicable.' That exception from the normal rule is set out in clause 3(6), as the hon. member has stated. I think it is an entirely proper departure from the ordinary rule which we have been discussing.

Clause 8 is, I think, designed to cope with another set of circumstances, in so far as it sets out a general proposition that, whereas you can disclose information to bone fide researchers, law professors and so on when they are compiling their law reports, none the less if someone who has the information discloses it to someone who is not entitled to it, that official will be guilty of an offence. Clause 8 is the clause which imposes the duty on the official to keep things absolutely secret, but clause 3 has said earlier on that there is an exception to that, where, for example, law reports are compiled and so on.

The President: Mrs Christian.

Mrs Christian: Mr President, just for clarification please. Who, then, has access to those law reports? Is it a very limited access?

The President: Mr Attorney-General.

The Attorney-General: Mr President, if we look at clause 3, sub-clause (6), we see that it is contemplated there that, in respect of a bone fide series of law reports, or other publications which consist solely of reports of proceedings in courts of law, the people who would be compiling those reports would be perhaps law graduates, lawyers or academics. I suggest that they would have to produce some sort of evidence of their authority to ask the Chief Registrar for access to a particular file. The Registry is now very keen now that files should not become readily available to any member of the public who wants to look at them. You actually have to produce some sort of authority and justification for applying for access to the reports.

The President: Hon. members, the motion before us this morning is that clause 8 stand part of the Bill. Those in favour please say aye; against no. The ayes have it. The ayes have it.

We turn then to page 8, and to clause 9.

The Attorney-General: Thank you, Mr President. Clause 9 deals with offences by bodies corporate. Sub-clause (1) makes officers of companies liable in respect of offences committed by a company if the officer was negligent, consented to or connived in the commission of the offence.

Sub-clause (2) makes special provision for cases where a body corporate is managed by its members.

Sub-clause (3) deals with a special type of association known as a limited liability company.

Mr President, I move that clause 9 stand part of the Bill.

The President: Mr Kniveton.

Mr Kniveton: I beg to second.

The President: The motion, hon. members, is that clause 9 stand part. Those in favour please say aye; against no. The ayes have it. The ayes have it.

Clause 10, Mr Attorney-General.

The Attorney-General: Thank you, Mr President.

Clause 10, sub-clause (1), confers powers on the Department of Home Affairs to make orders which may provide for exclusions and exceptions from provisions of the Bill in special cases. In addition, an order may apply the Bill to service disciplinary proceedings.

Sub-clause (2) requires all subordinate, legislation under the Bill to receive Tynwald approval before it comes into operation. An exception is made in respect of the appointed day order which requires to be made under clause 14 (2) of the Bill.

Mr President, I move that clause 10 stand part of the Bill.

The President: Mr Kniveton.

Mr Kniveton: I beg to second, sir.

The President: The motion, hon. members, is that clause 10 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Clause 11.

The Attorney-General: Thank you, Mr President.

Clause 11 is the interpretation clause. Sub-clause (1) defines various expressions used in the Bill. Sub-clause (2) is important in so far as it ensures that the expression 'sentence' when used in the Bill includes any order made by a court as a result of the conviction of a person for an offence. This does not, however, include orders to enforce the payment of fines or other monetary orders such as compensation orders or orders in effect activating a suspended sentence of imprisonment.

Sub-clause (3) ensures that two concepts are included when the word 'conviction' is used. Firstly, it includes convictions outside the Island and, secondly, it includes cases where a person is not actually convicted in criminal proceedings but there is a decision that a person has committed the offence.

The most commonly cited example is in juvenile proceedings where there is no conviction as such, but a finding of guilt is entered. The effect of that sub-clause is that the findings and convictions in such cases will be subject to rehabilitation in the same way as a conviction before a Manx court.

Probation orders, absolute discharge orders and conditional discharge orders are also to be treated as convictions so that they also can become spent.

Sub-clause (4) deals with the transitional effect of references in the Bill to offences. The references will include convictions for similar offences, under legislation which is being repealed.

Mr President, I move that clause 11 stand part of the Bill.

The President: Mr Kniveton.

Mr Kniveton: I beg to second, sir.

The President: The motion, hon. members, is that clause 11 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Clause 12, Mr Attorney-General.

The Attorney-General: Thank you, Mr President. Clause 12 deals with civil remedies and provides that a breach of the restrictions on publication, broadcasting and disclosure of information about spent convictions does not confer a right of action in civil proceedings.

Mr President, I move that clause 12 stand part of the Bill.

The President: Mr Kniveton.

Mr Kniveton: I beg to second, sir.

The President: The motion, hon. members, is that clause 12 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

And perhaps we can finish with a rush and take clause 13 and 14, sir.

The Attorney-General: Thank you, Mr President.

Mr Delaney: I have got a question on clause 13.

The President: That is the way it goes. Clauses 13 and 14, Mr Attorney-General.

The Attorney-General: Thank you, Mr President. Clause 13 deals with amendments and introduces schedule 2, which contains minor consequential amendments; at least, I hoped that they were minor.

Clause 14 deals with the short title of the Bill and enables the Department of Home Affairs to bring it into operation by an appointed day order.

Mr President, I move that clause 13, schedule 2 and clause 14 stand part of the Bill.

Mr Kniveton: I beg to second, sir.

The President: Mr Delaney.

Mr Delaney: I would have thought that the Rehabilitation of Offenders Bill would have affected more Acts. The Wildlife Act seems to be only one of two mentioned. I cannot recall this section in it - would the learned Attorney tell us why this one has to be amended under the schedule?

The President: Certainly I cannot recollect either, so I think as time is standing still in our Council room this morning, we can wait to get the result.

Mr Delaney: I tell you what - leave it till the next time.

The Attorney-General: If I can find it, Mr President. Yes, Mr President, I am sorry that I did not have the Act to hand, but the relevant section of the Wildlife Act 1990 enables the department - it will be the Department of Agriculture, I think, in this particular Bill or Act - to make regulations which enable persons to sell various birds, animals and so on.

In order to deal with those birds and animals, they have to be registered, so the department has power to register. 'Section 6(9) of the Wildlife Act provides that regulations shall secure that no person shall become or remain registered within five years of his having been convicted of an offence under this part, for which a special penalty is provided, or within three years of his having been convicted of any other offence under this part, in so far as it relates to the protection of birds or other animals.

So what this new subsection will say is that no account will be taken, for this purpose, of a conviction which has been spent. So, in other words, a person who is a dealer in live or dead wild

birds, eggs and so on is entitled under the Act to be treated as a rehabilitated person in the same way as any other person.

Mr Delaney: That is exactly why I asked the question, because the major part of this is that a person who had been cruel to animals or imported birds illegally or something like that would, as soon as the sentence was finished and he had got his little certificate or whatever it is, be able to start all over again. That worries me. That is an example of what happens. No longer will it be a period of time; as soon as he has finished that sentence, he can apply and start off again.

Mr Lowey: But the point is that it was restricted under the Wildlife Act to a certain period.

Mr Delaney: But now he can act as soon as it is finished.

Mr Lowey: Yes, but under the restrictions of this Act. There is a restriction, so it is not that there is no restriction; you are rehabilitated.

Mr Delaney: But as I understand it, if some official happens to say to him, 'Oh well, you were convicted for something', that is wrong. You cannot even do that.

The President: Mrs Christian.

Mrs Christian: Yes, Mr President, I am just not entirely clear why it was necessary to state this when a spent conviction is a spent conviction, irrespective of what piece of legislation it applies to.

Mr Delaney: So he can get his licence back.

The President: Mr Attorney-General.

The Attorney-General: I am sorry, Mr President, but I do not have a direct answer to that. I can only assume that the draftsman has trawled through the legislation and has spotted the Road Traffic Regulations Act, the Wildlife Act and so on and that those are the only relevant pieces of legislation. Perhaps I can deal with that on third reading and be more explicit.

The President: Hon. members, the motion then before us is that clause 13, schedule 2 and clause 14 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

That concludes our deliberation on the Rehabilitation of Offenders Bill on second reading and the clause stage. It also concludes our order paper for today.

Procedural

The President: Now, hon. members, we adjourn until the sittings of Tynwald commencing on the 12th December 2000 and the 16th January 2001, and thereafter Tuesday, 23rd January 2001, all commencing at 10.30am.

Hon. members, before we adjourn, can I draw attention to the fact that already I have been noticed that in fact two members will be missing on December 12th and on the 16th January, depending on Dr Mann's position. I understand that Mr Waft and Mr Kniveton have already indicated that they will be missing.

Mr Delaney: What date is that in January?

The President: On the 16th January, the Tynwald sitting. It is incumbent upon us that we be in attendance so that we have a quorum. I am just drawing members' attention to the fact that, as far as I understand it, Mr Waft and Mr Kniveton will be missing in January. Depending on Dr Mann, I could not guarantee that he will be here. Thank you, hon. members.

The Council adjourned.