

**REPORT OF PROCEEDINGS OF
LEGISLATIVE COUNCIL**

**Douglas, Tuesday, 6th February 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 and Mr J N Radcliffe, with Mr T A Bawden, Clerk of the Council.

The Lord Bishop took the prayers.

Apologies for Absence

The President: Now hon. members, we have apologies from Mr Waft, who is still indisposed but I understand will be back with us very shortly, and it is very good indeed to be able to welcome Dr Edgar Mann (**Members:** Hear, hear.) back amongst us this morning, so we look forward to contributions not to hold us up for too long, but to keep us on the ball this morning.

National Health Service Bill — Third Reading Postponed

The President: So we turn then to our order paper and the first item on the order paper is the National Health Service Bill, which I understand is postponed from last week and Mrs Christian again wishes to have a further week's delay on this matter.

Residence Bill — Third Reading Approved

The President: So we turn to item 2 on the order paper which is the Residence Bill down for third reading and again it is in the hands of Mrs Christian.

Mrs Christian: Thank you, Mr President. We have taken the first two readings of this Bill in some detail and as hon. members are aware it provides for the registration of persons who are qualified to reside in the Isle of Man. We have recognised that there is a wish for an enabling provision to be in place so that whenever it is considered appropriate, along with regulations, there will be powers to control the population of the Island through this mechanism. We have recognised that many methods of applying such a control have been examined and, notwithstanding that this bill presents quite a considerable measure of bureaucracy and indeed will present some Manx residents of a whole lifetime with what they may consider to be the unpalatable requirement to register to live in their own Island should they happen to move house, it has been found to be the only mechanism which appears to offer a satisfactory way of applying control. Now of course this is simply the first step. The more difficult area will come when regulations are drafted and the most difficult will come when someone decides that the time is now right to apply those regulations. But it will be a matter for political will of the day. It will be for politicians to determine whether or not the population growth is such that the quality of life in this Island, the infrastructure in the Island and all those factors which go to make up a desirable place to live, are being threatened. They will have to balance that against the potential for curtailing the economic growth. But I have to say that at this point there is certainly no wish in drafting and approving such a piece

of legislation to imply in any way that the barriers to economic progress are being put up here. That is not the case. It is an enabling piece of legislation to try and balance quality of life against economic expansion and growth. Mr President, I believe that members had a fair opportunity at clauses and second reading stage to express their views on this particular measure and I seek support for the third reading this morning.

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

The President: Mr Kniveton.

Mr Kniveton: Yes, thank you, Mr President. So we come to what we might call the crunch time for this Bill, this third reading of the Bill. I like other hon. members have had just seven days to consider the final step. As I believe, like some other members, I am not thoroughly happy with the Bill. I do not have any difficulty whatsoever in accepting the broad principles of the Bill. However, I am not keen on the prospect of having everybody in the Isle of Man accountable. I think they can be accountable enough by other ways and means. The only thing we lack at the moment is identity cards. I have heard this morning, Mrs Christian describe the Bill as bureaucratic and, I would add, intrusive. Certainly we would not want to bring about a state of over-bureaucracy. I am concerned with regard to non-conditional registration and the conditional registration. I consider it is rather an insult to the present resident population that the second they have to move house they are obliged to provide a certificate to prove that they are permitted to do so under the provisions of this Bill assuming it becomes an Act. It grieves many of us sorely to have to accept that we are nowadays an ethnic minority in our own Island but that certainly appears to be the case. I have given a lot of thought to this Bill over the last seven days and I have to say that I compare it with a sieve because there are so many ways of escaping the present, I emphasise the present, terms of the Bill. If I place myself in the position of others who would want to come to live on this Island, then I believe that I could quite easily overcome the some of these required qualifications. I can well imagine just prior to the appointed day that there will be one unearthly rush to find some reason to be a suitably registered person. This to my mind is undoubtedly an imperfect Bill. It would appear to be one which does not satisfy all wishes and aspirations from my own point of view, nor possibly those of other members, and certainly not those of the general public. But I believe we do have to have a willingness to accept the Bill, regardless of the flaws we see at this present moment. I am absolutely certain that the hardest part, and I think Mrs Christian has referred to it this morning, will be in the detail of the regulations and I really do not envy those charged with the responsibility of drawing up such regulations regulations which, if they are to be properly formulated, will take a considerable time to produce and I am sure this Bill will be a subject for discussion for a long time to come. So we, I am sure, have to agree that this is but a start to the introduction of residency control. It is better than nothing at all, as we have at the moment, and uneasy as I am about the matter I sincerely hope that this will be the basis of a step in the right direction. I will support the third reading, sir.

The President: Mr Crowe.

Mr Crowe: Thank you, Mr President. Yes, I support the Bill because I see with residence controls we can turn the tap on or off. Without residence controls we have less influence on the management of our economy and resources and I do believe the Island needs managed growth which can be assisted by the introduction of residence controls. As the hon. mover has said, the secondary legislation will provide the detailed procedures. On a doomsday

scenario, I would hate to see the Island swamped by unlimited immigration because of the strain it would put on the infrastructure, schools and health service et cetera. So I believe it is better to have the Bill on the shelf than have no legislation at all.

The President: The Lord Bishop.

The Lord Bishop: Thank you, Mr President. I have stated my reservations as we have gone through the Bill and I still want to have them noted, that I am not at all happy, especially about clause 19, and I am also concerned about the comments we have discussed on bureaucracy et cetera. However, I have received a letter from the Chief Minister in the last week, in response to my comments, which I found very helpful indeed and while acknowledging that the regulation period will be difficult I am pretty well assured that there will be a sensible approach to that clause so on that basis I will support the Bill.

The President: Mr Delaney.

Mr Delaney: Mr President. The enabling bill that we are now on the third reading, a stage up, has as I said at the clauses stage the benefit of having the title and at some time in the future I have no doubt whatsoever that there will be some form of control of residence on this Island. The one status the Island will have and should have and hopefully the people think we have is that we have a better way of life. In a way we are restricted by the water round on an island our size. The size of the population controls the environment in which those residents will live and once you get to the stage, whatever that figure might be perceived, or be at at the time when it says enough is enough, we will have a situation in the future, I have no doubt, where there will be a need for a residency Bill. The clauses in this Bill, I do not believe, in any shape or form will ever be introduced I just do not believe it and I believe that the Bishop on clause 19 need not even worry about that because I do not think it will happen. If we are to be anything in the future, when we are dead and gone, it will be what quality we have, was it better than anywhere else? If the answer to that is on the amount of people we can handle and we can look after, and that is the job of government, that is when this will key off this Bill. Once the public outside say enough is enough, our quality of life is going, as we see it eroding slightly now, and the government will say we must do something. I was not party and I still have not been real party to what went on with the discussions with the British government and all these other people we talked about when we said we were going to introduce this Bill. I do not know really what happened, what we were told we could do and what we could not do. But I believe it is very limited I honestly believe we should have told the public that it is very very limited what we can do in the set up of Europe and our association through Britain into Europe and the laws which will continue to change in Europe will affect what we can do with the future of this Island. I am inclined just to be honest and say, no. I just do not believe this will happen but the Residence Bill, as has been pointed out by Mr Crowe, will be needed in some shape or other and it will be there for members of the future to bring in to amend and use that title and bring in something that will benefit the people. I do not believe this will ever be introduced I do not believe it would ever benefit the people. The bureaucracy issue that has been raised is true. Even the mover has not denied that. The situation is, would this be acceptable to the public? I do not think it would, out there, but I know they will want something in the future and this title may very well be the means by which they bring in something that will be acceptable at that time to do something to protect the environment of the Isle of Man for everyone's benefit on the Island. I think we have gone through the procedure of getting

through the readings here but I just do not believe it has been an exercise other than producing to the public something which we are telling them may protect them in the future. Because that is why it was introduced in the first place - to protect the public in the future. I do not believe the contents of this Bill will do that. Mr President, I will vote for the title. That is exactly what I will do.

The President: I call on Mrs Christian to reply.

Mrs Christian: Thank you, Mr President. I thank the hon. members for their comments on the Bill. If there was another way, believe you me, the committee that has deliberated long and hard -

Mr Delaney: That is what I said.

Mrs Christian: - would have tried to find it. But there is not, so to suggest that sometime in the future there will be controls but it will not be in this form, well, I look forward to seeing what proposal comes forward in that connection. The hon. member, Mr Kniveton, has referred to identity cards I am not quite sure in what connection with the Bill because identity cards would not solve the problem of residence without some bureaucracy underlying the issue of such identity cards. He referred to his concerns about conditional and non-conditional registration and possible ways around the provisions of the Bill. It is true that if anybody puts a mind to avoiding legislation they usually can find a way. But what we are about is trying to set up a framework - and I have conceded it is bureaucratic because we could find no other way than to make it bureaucratic - a framework which will allow for some controls to be applied. The Lord Bishop has expressed some reservations but has been, I think, assured to some extent by the Chief Minister. The interpretation of clause 19 remains to be determined at some point in the future and no doubt at that point the Lord Bishop may wish to make representations on behalf of the clergy, as he has done during the passage of the Bill in this Council. Whether or not the Bill is left on the shelf is a political decision but many would argue that it is better to have something on the shelf that to have to go, at a time when it is felt that there is a need to have a control, through the long winded procedure of drafting a Bill. So it is as I said a first step. The hon. member on my right does not believe in the Bill. He believes people will say enough is enough. I think that is what we are trying to recognise in dealing with this particular piece of legislation. I am not quite sure what he alludes to when he talks about 'I do not know what happened in talks with the UK', as far as this Bill. . .

Mr Delaney: Excuse me, Mr President, can I explain this to the member? She does not understand what I have said. It is that you know and we all know that to get this Bill in any form, we had to negotiate with the British government and others to find out what we could do, so that is my allusion. I am alluding to that.

Mrs Christian: Mr President, I would simply say that what we can or cannot do is controlled by our own decision to be parties to other agreements. Our decision to be party to other agreements. So those elements are in our hands. I sense members have a feeling of some discomfiture about the Bill but nevertheless feel that it is a step forward and with that in mind, Mr President, I do beg to move the third reading.

The President: Hon. members, the motion before us then is that at 2 on your order paper, that the Residence Bill 2000 be read for the third time. Those in favour please say aye; against no. The ayes have it. The ayes have it.

Matrimonial Proceedings Bill — Third Reading Approved

The President: So we turn to item 3 on your order paper, the Matrimonial Proceedings Bill in the hands of the Attorney- General.

The Attorney-General: Thank you, Mr President. As I have mentioned at the previous readings of this Bill, Part 1 of the Bill re-enacts Part 2 of the Judicature (Matrimonial Causes) Act 1976 and Part 3 of the Matrimonial Proceedings Act 1986. Part 2 of the 1976 Act is concerned with the powers of the court to make financial provision and property adjustment orders and Part 3 of the 1986 Act is concerned with the powers of the court when a marriage has been dissolved or annulled in an overseas country and the court in the Isle of Man has jurisdiction based on domicile, residence or the ownership of property on the Island. So for the most part, Part 1 of the Bill under consideration does not create new law save in relation to pension sharing orders. Bearing in mind some of the questions put by hon. members at the second reading, may I make it clear that the powers of the court to make financial provision orders and property adjustment orders are, in most cases, exercised when the court grants the decree of divorce et cetera and in some cases it may be very appropriate that the relationship between the parties should be severed once and for all. There should be a clean break. Equally, however, in other cases because of the particular circumstances of the parties and of the children of the marriage it may be necessary for the court to review the respective assets and income earning capacities of the parties and the court does have power to review financial orders and maintenance agreements based on shared circumstances. As hon. members will have noticed at the second reading, clauses 2,3,4 and 5 deal with the power of the court to make the various orders which are set out in clause 1, apart from a pension sharing order. Clause 6 of the Bill deals with pension sharing and in that context I am afraid that it appears I may have misled hon. members in indicating that where a party to a marriage suffers more than one divorce it would be open to the court to look at the residue of the pension rights remaining after the first divorce and if appropriate to make a second or subsequent order in relation to that residue. Having looked into the matter further, and with particular reference to clause 6 (3) of the Bill, it would seem that my advice was incorrect, although in my defence, clause 6 (3) does say that a pension sharing order may not be made in relation to a pension arrangement which is the subject of a pension sharing order in relation to the marriage. My interpretation of the sub-clause was that when dealing with the divorce of Mr X and his first wife, if a pension sharing order has been made in favour of the first wife she could not reapply for a further order in respect of the marriage - that is her marriage to Mr X - say increasing the percentage of the pension which she claimed from 25 per cent to 50 per cent. I did not think that the existence of a pension sharing order in favour of the first wife would necessarily preclude an application for such an order from wife number two or wife number three. If that were the intention one would have expected the clause to read, in 6 (3), 'The pension sharing order may not be made in relation to a pension arrangement which is the subject of a pension sharing order in relation to a marriage'. In any event the clause is based on UK legislation and the draughtsman assures me that my interpretation, as I put it to hon. members, was not correct. Again in the context of pensions, may I confirm that the new pension sharing orders which are created by this Bill envisage that a stated percentage value of a pension be transferred from one party to the marriage to the other and the transfer takes effect when the court order is made. These orders are to be

contrasted with the so called ear marking orders which require the person responsible for the pension arrangement to make a payment to a party to the marriage when the payment becomes due to the other party who has the pension rights. Ear marking orders are not new. They can be made under the existing legislation. In relation to the operation of clause 10, a question arose as to what would be the position if the court had ordered that a lump sum be payable out of the proceeds of a pension arrangement but the intended payee died before the date when the proceeds became payable. Would the estate of the deceased former spouse become entitled to the payment? The answer to that question is no. The former spouse must be alive in order to benefit from a lump sum ordered to be paid under clause 10. Before I leave Part 1 of the Bill may I refer to what would appear to be a typographical error in clause 31, sub-clause 6. Although I have not been able to check it with the draughtsman, who is currently indisposed, it seems to me that in sub-clause (6), in the second line of that sub-clause, the reference should be to subsection (5) rather than to subsection (6). I think that is a typographical error. I have checked it with the UK legislation and perhaps we can cure that at printing stage.

The President: I think you are probably right, yes.

The Attorney-General: Mr President, may I refer just briefly then to Part 2 of the Bill, which is concerned with the reciprocal enforcement of orders made in the United Kingdom and the Channel Islands. I would not propose to make any further comment on this Part save to refer to a question raised by the hon. member, Mr Radcliffe, concerning the difficulties which can be faced by a party whose former spouse leaves the Island to live outside the UK and the Channel Islands. The party who is left on the Island may be entitled to recover outstanding maintenance and this Bill does not provide a remedy. For the sake of completeness I should refer to the Maintenance Orders (Reciprocal Enforcement) Act 1995 by virtue of which a person may apply for the enforcement of a maintenance order against a former spouse or a spouse who has gone to live in what is known as a reciprocating country or has assets there. Part 2 of the 1995 Act also makes provision whereby a person in the Island may apply for recovery of maintenance from a person who is subject to the jurisdiction of a Convention Country, that is a country to which the United Nations Convention on the Recovery Abroad of Maintenance extends. So if the defaulting party goes to live in either a reciprocating country or a Convention Country under that 1995 Act it may be possible to enforce a maintenance order which has not been honoured here in the Island. I do not believe that there are any outstanding matters from Parts 3 or 4 of the Bill, although hon. members will no doubt correct me if I am mistaken in this respect. Mr President, with those comments may I move that the Matrimonial Proceedings Bill 2001 be read a third time and do pass.

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

The President: Mr Crowe.

Mr Crowe: Mr President, I think what we have here is certainly a Bill I can support but it is interesting how provision of personal pensions has changed over the last few years, where it used to be that very few people would have a company pension and the state provided the retirement pension for a person's retirement. I think now the message is getting out that the individual has the responsibility to make provision for his or her own retirement. I think this legislation, in the splitting of the pension, recognises that there is an asset there in the marriage which has some real value. I think the effects will be seen. The pity of this Bill is that

is has not been made more widespread in the outer world. I think it will only happen when somebody goes into the divorce courts and finds their pension now can be split. So I think whilst we are doing this to bring in a catching up, if you like, to reality, the effect will not be felt and then maybe there will be some screams coming from certain quarters. But I am supportive of the Bill, sir.

The President: Mr Lowey.

Mr Lowey: Yes, Mr President, I think, and I am sure my Lord Bishop will forgive me if I say, my contribution on a matrimonial bill, is the lightest of lightest ones. In fact, I am tempted to say fools rush in where angels fear to tread. Is it not a most amazing coincidence that this Bill follows on from the Residence Bill. Both are complex issues. Why I will support this particular Bill is that I think it is attempting to be fair and when the break up of a marriage occurs I think there must be fairness. There are always two aggrieved parties but there is always one that feels more hurt than the other, so fairness is the last thing on their minds and coming to splitting up the assets whether it is pensions or property or chattels, I think you have got to try and be fair in the long term. And I think this Bill tries to do that. Mr Crowe mentioned the fact that lots of people do not realise that this may affect them adversely but I think it also recognises in the Bill that we are more mobile now, the world is smaller and we are more global, whether it is the British Isles in this instance and the Channel Islands being interpreted in the law, the reality is we are more global than we have ever been and I think it takes recognition of that. But the thing that strikes me is that this particular piece of legislation is trying to be fair and I think in troubled times we turn to the law to try and get a bit of fairness and I think this Bill deserves support on those grounds. If for no other grounds.

The President: Mrs Christian.

Mrs Christian: Mr President, whilst the Bill is a step in the right direction I do feel rather disappointed with the response that the learned Attorney-General has given us this morning with regard to pension sharing in second or subsequent marriages. I, perhaps like him, had read it a different way the first time around and so had anticipated that, if we are talking about fairness, should not that asset which is there in a second marriage be available for division in the same way that it was in the first? So I feel rather undermined in supporting the third reading by a different interpretation to what I thought was going to be the case on that particular issue. I wonder what the thinking was behind such a proposal, that if you had come to the split in the first place there is an assessment made of the assets of the two parties and a split is made, whether it be the wife's pension or the husband's pension, but then if there is a subsequent marriage that does not happen. It seems strange, and whilst on consideration I will not vote against the third reading because it does have some element of improvement in it I do feel that that is a weakness.

The President: Mr Delaney.

Mr Delaney: I feel it is a good Bill, it is right proper as Mr Lowey says. Probably fairness is right. There is only one question I would like to raise at this stage. I should have raised it during the clause but I may as well. What prompted me on this one was this morning to hear on the news about Nicole Kidman and this 10-year relationship, big money people who do not have the problems of ordinary human beings. But what I was interested in was; unfortunately, because of the way things work nowadays more and more people are either not

getting married in church or they are having to get married by law. Can you make an agreement before you get married or before you enter into a relationship that when, on the breakdown of the relationship, that the pension will not be taken into consideration, from either party, should that relationship break down? That is my question. Can they make a legal agreement beforehand that this does not happen? Because that is the future. That is what is going to happen. Everyone is going to have a lawyer virtually, with due respect, lying in between them in the marriage bed. *(Laughter)*

Mr Lowey: Prenuptial expense item.

The Lord Bishop: An uncomfortable position to be in. *(Laughter)*

Mr Delaney: It depends what type of lawyer you are.

The President: Okay, can I ask the Attorney-General to reply to the debate then?

The Attorney-General: Thank you very much, Mr President. Clearly hon. members are particularly anxious about the pension sharing aspects of this Bill. That is not surprising. That is the new aspect of the financial provision section of the Bill. The hon. member, Mr Crowe, is absolutely right when he says that increasingly now the pension is the asset with the real value and more and more people are being asked to create their own pension rights for the future and considerable amounts of capital are being allocated to very sophisticated pension schemes. I am obliged to the hon. member, Mr Lowey, for his support in indicating that the Bill attempts to achieve fairness in the division of assets. Quite clearly when matters come to the divorce court there is often a very real aspect of bitterness between the parties and it is an extremely difficult task for the judge to achieve fairness, particularly where there are young children of the family whose interests have to be looked after. This Bill of course preserves the interests of the child when looking at the correct order that has to be made for the parties. In so far as the comment made by the hon. member, Mrs Christian, is concerned, I do share her concern about this construction of clause 6 (3). However, it is in fact a provision which is replicated in existing legislation as well, in the earmarking provisions, and I can only suggest that the reason why it is not correct in principle, that there should be more than one pension sharing order in relation to one pension, is that the people who administer the scheme - the pension managers or the pension trustees - might have a very very difficult job to do in dividing up percentages of a trust asset or an annuity. Certainly one of the threads which goes through this Bill is that, so far as the DHSS is concerned for example, it is not correct that an appeal court should overturn a pension sharing order if the DHSS have relied to their detriment in allocating pension rights between husband and wife. I think perhaps that is the reason for it, that the legislation is seeking to keep the pension rights as simple as they possibly can be. In saying that, it is a fairly feeble argument. I would have preferred my interpretation to have been correct. I did take it up with the draughtsman who looked into the position in the UK and, there we are, I really cannot add anything further to that. It may be that, if in due course of time it is considered that the legislation ought to be construed as I have indicated, it may be that an amending piece of legislation will have to come forward. I really cannot say anything further on that. In so far as the case of Kidman and Cruise is concerned, referred to by the hon. member, Mr Delaney, pre-nuptial agreements are possible. They are actually referred to in the old bankruptcy legislation in the middle of the nineteenth century and I have no doubt that pre-nuptial agreements would fall within the definition of maintenance agreements which are referred to in our Bill at clause 24, insofar as if we look at clause 24

(2), 'a maintenance agreement means any agreement in writing made at any time between the parties to a marriage.' Well, I suppose that I have already undermined my own argument I suppose by definition, if Mr Cruise and Miss Kidman were wishing to regulate their affairs after they became married, by definition they are not parties to a marriage when they make the agreement. So maybe it is not a maintenance agreement but certainly pre-nuptial agreements are recognised and again we will just have to see how the legislation copes with it in the future.

Mr Lowey: It is a sure foundation to build a marriage on is it not, an escape clause before you tie the knot! I will keep single, I think, Mr President!

Mr Delaney: Just to make it clear, I am not courting Miss Kidman. *(Laughter)*

The President: Mr Attorney, please.

The Attorney-General: Well, Mr President, I have not anything further to add in response to the questions. I do bear in mind the comments you made, Mr President, at the end of the second reading that it is a complex piece of legislation and no doubt was a very dull exercise in going through the second reading and the clauses. But it is a most important piece of social legislation. I think it is most important that we keep up to date with developments, particularly where people can come and go so easily between the Island and the bigger island across the sea. So, Mr President, with those comments, may I again move that the Bill be read a third time and do pass.

The President: Yes, now hon. members we are faced with the position that the Matrimonial Proceedings Bill be read for a third time and we are conscious of the Attorney's comments in relation to clause 6, which was questioned here last week as it went through. My personal view is that I would have liked more publicity on that particular matter now, in relation to the explanation, but we have also got the position in relation to clause 31 (6) which has a reference to sub-clause (6) within it which should be, by Mr Attorney's definition, a reference to sub-clause (5). The suggestion is that that should be rectified at the printing stage. If hon. members are happy for that to take effect, and the indication around the table is that you are, in that case hon. members I put that the Matrimonial Proceedings Bill be now read a third time. Those in favour please say aye; against no. The ayes have it. The ayes have it.

Food (Emergency Provisions) (Amendment) Bill — First Reading Approved

The President: So we turn then to item 4 on the order paper, which is the Food (Emergency Provisions) (Amendment) Bill, in the hands of Mr Crowe for first reading. Mr Crowe.

Mr Crowe: Thank you, Mr President. This Bill amends the Food (Emergency Provisions) Act 1986 which was passed to deal with the Chernobyl crisis and followed closely on the the UK Food and Environment Protection Act 1985, on which it is based. The 1986 Act enables the Department of Local Government and the Environment to make emergency orders to prevent pollution arising from an escape of substances. The need for an amendment Bill has arisen because of a current issue concerning our fishing industry. Over the past few years the biotoxins which cause paralytic shellfish poisoning, diuretic shellfish poisoning and amnesic shellfish poisoning have been spreading close to the fishing grounds within Manx waters. During the summer of 1999 the marine laboratory at Port Erin reported, on a number of occasions, that routine water samples taken off the west coast of the Island indicated

dinophysis species, a toxic algae capable of causing diuretic shellfish poisoning. This Bill will enable the department to prohibit fishing in areas which have become infected with biotoxins. In order to identify that the shellfish are infected, samples of shellfish will need to be taken from the fishing grounds, identified by the marine laboratory in Port Erin and sent for analysis to the marine laboratory in Aberdeen, as the assays cannot be carried out on the Island. The Bill has been accepted by the UK Home Office in connection with their Ministry of Agriculture, Fisheries and Forestry and the Department of Agriculture, Fisheries and Forestry have also been consulted and have given their concurrence. In regard to emergency orders, this Bill enables the department to make emergency orders in response to any circumstances, not just an escape of substances, in consequence of which food may become polluted. It also removes criminal sanctions for breaches of emergency prohibitions outside the Isle of Man and its territorial waters. The effect will be that an area affected by, for example, amnesic shellfish poisoning outside Manx waters could be designated and fishing could be prohibited within that area, but fishing in that area would not be an offence under Manx law, only the landing of fish caught in breach of the prohibition. The Bill also removes officers' powers of entry in relation to vessels outside Manx waters. Clause 3 contains minor and consequential amendments. Any expenditure involved or required would be found from existing budgets. Mr President, I beg to move the first reading of the Food (Emergency Provisions) (Amendment) Bill.

The President: Mr Kniveton.

Mr Kniveton: Thank you, sir, I am happy to second that and I would continue. From the mover, as I understand it, the sanctioning of this Bill does much to provide the legislation to protect our own shellfish industry. Of recent years there have been a number of biotoxins, nasty things I believe they are, getting too close to our traditional Manx fishing grounds causing poisoning. Now this Bill will provide the situation whereby the department can prohibit fishing in certain areas, those certain areas which have been affected. The Bill will give the department powers to make emergency orders to deal with such situations: that is the way I see it. Shellfish poisoning can be a very, very dangerous illness. Yesterday we heard on the radio that there had been five million cases of food poisoning in the UK during the year 2000. Now I am not suggesting that they are all from shellfish poisoning or anything like that but it does give an example of the amount of food poisoning that does go on in this world. However, the thrust is to protect our own fishing industry and that is what I support.

The President: Mr Delaney.

Mr Delaney: I totally support this Bill. After 55, 60 years nearly, of eating shellfish I have found out so late in life that I have an allergy to it and I understand I have gone through hell for a lifetime to find out that I had an allergy. I understand exactly where everyone is coming from on this. I do think that it is a necessity, this particular legislation, and I will be supporting the Bill.

The President: Mr Lowey.

Mr Lowey: Mr President, I want to support the Bill. We have talked about biotoxins and bringing them in, but the mover has not said where these biotoxins are coming from. Now has it got anything to do with Sellafield or where? Now if that is the case, we are like Canute trying to stem the tide and will our putting up a few toxins in vapour form from the new

proposed incinerator landing at sea, does that help or hinder? Could I just ask as a helpful gesture to my hon. friend and I also would like to know. He said if there are areas outside our territorial water which will be, if you like, prohibited to fishing, it will not be an offence to fish in those areas but it will be an offence if you brought the fish back to the Isle of Man and sold it. I would like to know how you check a shellfish that has come out of the sea and to be told that 'You, boy, lived 14 miles out' and 'You, boy, you lived 12 miles out'. 'You are free; you are not free'. I just wonder how the checks are going to be made on the landings of these fish. If it is an offence to fish them then it should be an offence to fish them I would have thought. I would have thought it would have been very very difficult. But again, can I come back, it is prevention of the toxic poisoning I think which is important. We are taking steps, we know it is coming closer towards us but is anybody taking steps to prevent the thing from being put into the environment in the first place. Because if we are continuing to poison the environment then it does seem to me that it is inevitable that it will be here and then you can take all the emergency things you like, you will just have to say, no, you cannot eat these things, they are poisonous. I do not want to do that because I know how important it is to the fishing and the reputation of the Island. But having said that, you would not think that I was in support of the Bill, but I am because I think it is an attempt to try and rectify something but again I come back to the logic of it. Should we not be trying, or somebody should be trying, to prevent the chain from being poisoned in the first place?

The President: Mr Crowe to reply.

Mr Delaney: He has clammed up! *(Laughter)*

Mr Crowe: Thank you, Mr President, and I thank members for speaking with general support and I thank Mr Kniveton for seconding the Bill and Mr Delaney's support. Mr Lowey raise some interesting comments which I think might have to wait until next week but I think certainly, as to where the biotoxins are coming from, they are moving into the Irish Sea. And the other key question, are steps being taken to eradicate the problem. I think it would be very difficult in scallop beds, or whatever they are, to go out and disinfect them or whatever methods you would use to eradicate the problem. I think it is trying to control the problem by stopping fishing in certain areas, where you would designate areas where you are not allowed to fish. I think there is an interesting point you make as to whether you stop people actually fishing and how you control it on the landing and of course the landing would have to be fish inspectors at the landing stage. But certainly these points I will bring back next week with a clear explanation. I thank members for their general support.

The President: Hon. members, the motion before us is that the Food (Emergency Provisions) (Amendment) Bill of 2000 be read for a first time. Those in favour please say aye; against no. The ayes have it. The ayes have it.

Local Government (Miscellaneous Provisions) Bill — First Reading Approved

The President: So we turn then to item 5 on our order paper which is the Local Government (Miscellaneous Provisions) Bill 2000 and again it is in the hands of Mr Crowe for first reading.

Mr Crowe: Thank you, Mr President. This Bill, which is promoted by the Department of Local Government and the Environment makes minor amendments to certain Acts relating to local government and public health. As there are quite a selection of different points, I would briefly outline what these amendments are. Clause 1 fills a gap in the provisions of the Local

Government Act 1985 which allow for the alteration of local government boundaries by enabling an order for that purpose to make supplemental and consequential provision. Just in explanation, at present the department can make an order under section 6 of the Local Government Act 1985 only after a public inquiry has been held and subject to Tynwald approval. This will widen the department's remit instead of requiring primary legislation. Clause 2 enables the present four pence rate limit on expenditure by local authorities on entertainments to be varied by order of the Department of Local Government and the Environment. This problem arose last year when certain local authorities found that they were restricted in what they could do in celebrating millennium year. So this again is an amendment which recognises that local authorities at some time have expenditure over and above that four pence rate limit. Clause 3 gives local authorities power, subject to the approval of the Department of Local Government and the Environment, to provide offices and other premises for the bodies described in the Bill. This is particularly relevant for one local authority who are currently unable to proceed with their plans for a new commissioners' offices to include medical facilities. Clause 4 gives additional powers to inspect records and take samples to a person who already has power to enter on land for the purpose of enforcing any provisions of the Public Health Act 1990. Clause 5 corrects an error in the Public Health (Amendment) Act 2000 which unfortunately stated 'not less than 21 days' and should have read 'within 21 days'. Clause 6 enables the fixed penalty for dropping litter, currently £10, to be varied by order made by the department, subject to Tynwald approval. Finally, a new clause has been inserted in another place which will assist in the removal and disposal of abandoned vehicles. At present an abandoned vehicle must be moved to a department compound and held for 21 days. This amendment will allow for the vehicle to be taken direct to a scrap merchant after 7 days in certain circumstances. Now this provision is in UK legislation but not in ours, so this again is bringing our legislation into line with the UK. Mr President, I beg to move the first reading of the Local Government (Miscellaneous Provisions) Bill 2000.

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

The President: Mr Lowey.

Mr Lowey: Yes, Mr President, I warmly welcome this Bill. As the hon. mover says clause 3 particularly has great interest to me locally, because of my local authority, which is very keen to promote a community enterprise. It does seem rather strange even at this late stage where local authorities have got a good reputation in the Isle of Man of investing in the community. Douglas Corporation own commercial properties such as the market place. This is going back many years. When you think Douglas Corporation in its heyday was the water, electricity, it has had involvement in creating and promoting the community. So the principle has always been there. Imagine our local surprise. Other go-ahead local authorities such as Onchan for example, already let properties, buildings to the government itself, data protection and the fire services to name but two that I know of. And yet it would appear on close interpretation of the law that there is a loophole here that actually prevents. Now if we can do it for commercial things, how much more important is it that local authorities which are trying, in co-operation, to have a medical centre based in a community, also a police presence in the community, all of which I think is vitally important. So this although it is a dry piece of legislation, is one I think will have an effect and certainly in my area and I will be supporting it fully.

The President: Mr Delaney.

Mr Delaney: I welcome this Bill. My old department certainly is still working well because this has been talked about for a long time. Remember, the legislation on which local authorities are governed goes back to 1896, Douglas Corporation particularly. The situation is that where it may have worked well then, times have changed and there is no reason at all why they should not be looking at the modern residents of communities, at what their requirements are. The situation, as I see it, is that we have been reluctant to give any extra powers back to local authorities and this is going to rectify that wrong. I welcome the Bill and I will be fully supporting it.

The President: Mr Radcliffe.

Mr Radcliffe: Just make a few brief comments if I may. The Bill, I think, makes sense apart from one clause, which I will come on to in a minute, but certainly the new clause which was introduced in the other place for dealing with derelict vehicles is one I totally approve of because I think one of the scourge of modern times (**A Member:** Hear, hear.) is derelict vehicles. People seem to just drive them in any corner, abandon ship and that is it. If the perpetrator is caught he says he bought it from somebody he did not know. You cannot trace any details of it and I think that the power to remove directly to the scrapyards is quite correct and good. As hon. members are probably aware, in the other place there was a certain amount of discussion about clause 4 and the powers of entry which are encompassed in that. It is a fact that an organisation which deals with the farming community was worried, and is still worried, about the provisions which are in that particular clause. I would be endeavouring at the next reading, the clauses stage, to introduce an amendment to clause 4. I have got to say it is atypical of this particular organisation that it is almost only the night before a reading that they really get together, but I would hope to have a sensible amendment to clause 4 for the next stage of the Bill which deals with the powers of entry on to land to examine and look for various substances or activities which go on. But in the main I welcome the Bill, it makes sense apart from clause 4, sir.

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

Mr Crowe: Thank you, Mr President. I thank Mrs Christian for seconding the Bill and I thank Mr Lowey for the points he made about his local authority. I think last year it was very clear that the department wanted to support their efforts but found they were restricted in what they could do and this legislation is to correct that, so it becomes absolutely clear and unequivocal. I also thank Mr Delaney for his support. Mr Radcliffe raises clause 4 and the department has had a lot of correspondence with the Manx National Farmers Union. I attended a meeting with representatives from the MNFU and at that meeting the hon. minister, Mr Gilbey, gave a commitment that he would make a statement in the House of Keys and it was confirmed in writing that I would make that similar commitment and if I could just repeat this statement: It will remain firm practice, to which the department is committed, for all officers of the department to seek the approval of the landowner before entering land or their premises for the purposes of carrying out their duties in terms of the Public Health Act 1990 and they will continue to inform the landowner of the reasons why access is required. This is, of course, with the proviso that some details may be withheld in certain very rare and special circumstances, where it is believed not to be in the best public interests to disclose particular information. Now that assurance was given to the MNFU. I understand they still have some

concerns and I think an amendment was moved in another place. Now Mr Radcliffe has given notice that he is intending to move an amendment and of course that is his right so to do. Hopefully I can respond with full details as to why the existing situation should remain at the second reading and clauses stages. So, Mr President, I beg to move the first reading.

The President: Hon. members, the motion before us is that the Local Government (Miscellaneous Provisions) Bill be read for a first time. Those in favour please say aye; against no. The ayes have it. The ayes have it.

Gaming, Betting and Lotteries (Amendment) Bill — Second Reading Approved

The President: We turn then to our final item on our order paper this morning, hon. members, which is the Gaming, Betting and Lotteries (Amendment) Bill, in the hands of Mr Delaney. I understand Mr Delaney will just be taking the second reading and not the clause stages for it. Mr Delaney.

Mr Delaney: Mr President, as a result of a consultation exercise in which members of Tynwald, the Isle of Man Gaming Commissioners and interested parties were asked to comment on the present gaming laws on the Island, the Council of Ministers agreed to appoint a committee to consider the comments made and to consolidate proposals which would be incorporated into a Gaming, Betting and Lotteries Bill. The committee reported to the Council in May 2000 and as a result the Bill which is before you today was drafted to make minor amendments to the legislation relating to gaming on the Island. This Bill will remove the control on opening hours for betting shops, which are currently 8.00am to 10.00pm, with the exception of Christmas Day and Good Friday when betting shops will be closed. Advertising by licensed betting offices in the Island will be the same as those in the United Kingdom, permitting advertising only on the outside of the office. The sale of tickets for Christmas draws on licensed premises will be extended into November and not restricted to the present December date. Voluntary bodies, in this Bill, will be permitted to advertise society lotteries provided that the advertisement contains information prescribed by regulations made by the Gaming Control Commissioners about the promoter, the objects of the body, the prizes, the price of tickets and the time and place of the draw, et cetera. Society lotteries will also be able to offer jackpot prizes of up to £10,000. The Gaming Control Commissioners will be given the additional powers by regulation to specify other approved accounting bodies to submit financial returns on behalf of a society lottery. Horse racing nights will be legal for the first time and the gaming commissioners be provided with the powers to make regulations laying down the rules according to which such events can be run. Rules will include limiting them to charitable organisations, prescribing maximum stake and maximum deductions for society funds, restricting advertisements, prohibiting the operation otherwise than as a lottery, in other words preventing betting based on the form of horses or riders. The anomaly in respect of bingo will be removed to allow bingo to be played at functions. The controls of amusement machines - and this is one which I am particularly interested in having raised this with the HM learned Attorney-General at some time past - will be extended to prize machines on passenger vessels within Manx territorial waters whilst on a voyage to or from the harbour of the Isle of Man, which at present obviously does not exist. In addition, three

amendments were made and proved in the House of Keys which provided for, the Gaming Control Commission to make regulations for management of betting shops. This will bring betting shop licences in line with other gaming licences. A change of name for the Gaming Control Commission to Gambling Control Commission to make more truly reflective the actual name and title of that body. An exemption for British society lotteries which will permit scratch cards to be sold on the Island that can be sold legally in the UK. Mr President, I have been informed that a number of other amendments are due and are not mentioned by me in this reading. The hon. member from the Treasury phoned me last evening. I think it fairness to members that I should not be moving the clauses today but holding them over until they have had a chance to study the new amendments. I beg to move, Mr President.

Mr Radcliffe: I beg to second, sir, and can I say in relation to the remarks made by the hon. member, I am very much obliged to him on my own behalf and on Treasury's behalf. There is sheaf of amendments proposed to the Bill and if I could just briefly say that the principle aim is to provide for a duty of excise to be levied on the lottery tickets. the proposed rate of duty would be the same as that on the National Lottery, that is 12 per cent, and this rate could be changed, of course, by order of the Treasury subject to Tynwald approval. But the reason for the introduction of the duty would be to ensure that there is a level playing field in relation to National Lottery tickets. There is a duty of 12 per cent included in the price of those whereas, if not for this amendment, there would be no duty payable on British society lottery tickets. There would be no benefit aside from any commission payable to the vendor. And in fact it is thought that sales of these tickets could have an adverse effect on sales of the National Lottery tickets, particularly on National Lottery scratch cards. We know that all the income of duty from the National Lottery goes to good causes in the Island and the Treasury would hate to be a party to that amount of duty dropping, shall we say, from the possible £500,000-600,000 that the good causes will receive in this year. Another part of the amendment deals with betting office licences. The Department of Home Affairs has identified that because the Bill will come into force after the date of the issue of the current types of licences in April, and as the licences run from the 1st June, this will result in restricted licence holders being granted a twelve months' additional licence period without having to pay the £25,000 licence fee. This amendment will enable the Department of Home Affairs to restrict that licence for a period of three months so at least they would gain nine months, three quarters of the fee anyway. That is encompassed in the sheaf of amendments that we have before us, Mr President, and I am obliged to the mover and to yourself, sir, for allowing me to explain just a little of the background to the amendments which are before us.

The President: Mr Lowey.

Mr Lowey: I support the Bill as printed but it goes to show the need for careful scrutiny of the legislation is even at this stage very important and I think the Treasury is right to voice those concerns. I think they are right when it certainly comes to the licensing fees, which is substantial money, and I think it is right that those that operate should pay their proper dues and not by an accident of draughtsmanship should they be allowed to get away with that and I agree with him.

The President: Mr Crowe.

Mr Crowe: Thank you, Mr President. Yes, I am supporting the Bill. I just want to be absolutely sure that, when we talk about the National Lottery and the scratch cards and British

lotteries and duty of 12 per cent on lotteries, we do not sweep into this the small society lotteries that are raising money for £100 draws where you are selling books of tickets and all these sorts of things, that we are not bringing into the net some smaller lotteries. I would like some confirmation next week that those smaller lotteries are all taken out of the frame, shall we say.

The President: Mr Delaney to reply.

Mr Delaney: I thank the members for, at this stage, offering their support. I realise, as I have pointed out, about the amendments which are necessary. I mean as much as I love my bookmaker, I do not love him that much as to give him £25,000 free licence. The situation is that all will be explained hopefully next week. There are two questions that have been raised with me outside of this chamber which I will be looking at. I want to find out exactly when we will be able directly, as part of the National Lottery, to call on those funds for local charities, directly. I do not know that answer. The second one is, another question that was raised, on the advertisement for betting shops, which is restricted in this Bill, just to their premises. Can they advertise on the Island local football teams, as sponsor, local sport. I do not know I am sure that they cannot under this Bill but I will find out why we have not. Why we have not sort of broadened it a bit.

The President: Hon. members, the motion before us then is that the Gaming, Betting and Lotteries (Amendment) Bill be read for a second time. Those in favour please say aye; against no. The ayes have it. The ayes have it. Now, hon. members that concludes the order paper before us this morning.

Pending Retirement of Clerk of the Council

The President: Before we do actually adjourn, can I say that it is my understanding that in normal circumstances this morning would be the final sitting of our Clerk to Council, Mr Bawden. I would just like to place on record my thanks to Arthur. In the short term that I have been here as the President of the Legislative Council, his work and his attention to detail has been exemplary as far as I am concerned and I am sure over the period of years which he has served the Legislative Council and indeed Tynwald Court, that is true of people who have previously held the office, which I currently do. So it is our thanks to Arthur at this time but I do know as well that whilst it may have been officially coming to an end, his period of office, he is remaining in office for some time as we get over the difficulties which surround the office. So thank you very much, Arthur, for the work so far which (**Members:** Hear, hear.) you have done for the Legislative Council.

Hon. members that draws to a conclusion our sitting for this morning. We will adjourn until Tuesday next the 13th February at 10.30 am and I would, hon. members, like if you would remain behind for a short private sitting. Thank you.

The Council sat in private.