

**REPORT OF PROCEEDINGS OF
LEGISLATIVE COUNCIL
Douglas, Tuesday, 7th November 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, we have apologies again this morning from Dr Mann, who is indisposed but, as I understand, is cheerful and bright.

**Housing – Public Sector and First-Time Buyer Houses under Construction –
Question by Mr Lowey**

The President: We have our question part of our order paper and I call on the hon. member Mr Lowey.

Mr Lowey: Thank you, Mr President. I beg leave to ask a Member of the Council of Ministers, Mrs Christian:

- (a) *How many public sector houses are being constructed at present; and*
- (b) *how many first-time buyers' homes are under construction for occupation in this financial year?*

The President: I call on the Council of Ministers, Mrs Christian, to respond.

Mrs Christian: Thank you, Mr President. The Department of Local Government and the Environment has advised that contracts are currently in progress on site for the construction of some 68 public sector housing units.

In terms of first-time buyer properties initiated by the public sector the department reports that it is unlikely that any of those under construction will be available for occupation within the current financial year. Houses in the first phase of the department's project at Springfield/Harcroft are planned to be released in May 2001.

The President: Mr Lowey.

Mr Lowey: Would the minister agree with me that the construction of 68 public sector houses in this financial year is hardly addressing a very acute and worsening problem, and isn't it time the government really put this as their number one priority and got their resources and act together, and does she consider 68 houses is addressing a growing problem?

The President: Let us not get into a housing debate. Mrs Christian to reply.

Mrs Christian: Mr President, I would respond by saying that the housing issue is the government's priority. It certainly would have preferred to have seen more houses actually being built at this stage, but government, like everybody else, has to go through the planning processes and it is appropriate that it should do so. There are, of course, other developments on stream which will obviously not be concluded in this financial year but which certainly we expect to be started during the financial year, and, notwithstanding the hon. member's comments, I would say that every effort is being made within the parameters which apply to government no less than everyone else, to bring forward as many housing units as possible.

The President: Mr Kniveton.

Mr Kniveton: Thank you, Mr President. Can I ask the hon. member, how many additional public sector housing over and above the 68 you have just advised will be started in this financial year? You have told us 68 have been started - was the target something like 500 in the financial year?

Mrs Christian: My understanding, Mr President, is that the target is 400 houses overall in the Island, not 400 public sector. As I say, there are some 68 public sector units started. The Springfield/Harcroft scheme is now about to get underway. That will include 55 first-time buyer properties; that is obviously going to start within this financial year. Planning approval has been received on another 50 first-time buyer properties at Cronk Grianagh in Jurby, and the department is currently awaiting planning approval for first-time buyer schemes in Andreas, Lonan and Castletown. That will bring on stream a further 45 first-time buyer units and that construction will commence in the 2001-2002 financial year.

Hon. members will be aware that the department has set out in the policy document the areas in which they seek to develop, and you will know from that that they have plans to progress, and are actively progressing, plans for sites at Foxdale, Bride and Ballasalla on the first-time buyer issue but, in addition to that early in the new year it is hoped to start work on 32 public sector elderly person's housing units at Bemahague, Onchan, four units at Castletown and enabling works for 18 units and associated work in Ramsey, so that there is a mix there of first-time buyer, private sector, at different stages of introduction and development, some of which will fall in this financial year and some of which will start being built early in the 2001-2002 financial year.

The President: Mr Waft.

Mr Waft: Thank you, Mr President. Would the minister agree with me that of the 32 units in Onchan 16 of those are only for local facility housing; the other 16 are going to SSAFA? With regard to the numbers of public sector houses being constructed at present, does the minister know what that is as a percentage of the whole on the waiting list? In other words, how well are we addressing the waiting list?

Mr Lowey: Five hundred.

Mrs Christian: Mr President, if I could comment first on the Bemahague elderly persons' housing units, I have no information on that; I accept the hon. member's comment, but I would say, notwithstanding whether they are to be run by SSAFA or somebody else, they are elderly persons' housing units which may release other properties onto the market. And I am sorry but

I do not have the information he requires with regard to what proportion of the waiting list this represents.

The President: I think a final supplementary, Mr Lowey.

Mr Lowey: Thank you, Mr President. Notwithstanding what the minister has said, those figures do not add up to 400, which is the government's target, but would the minister not agree that the construction industry in the Isle of Man is only capable of building so many dwellings a year and if the government is really serious about addressing local pressure they have got to prioritise the building, and where the construction industry is being given permission to build private houses it is at the expense of public sector housing building, and doesn't the government have to get more involved than it is at the moment and prioritise?

Mrs Christian: Mr President, the hon. member said this does not add up to 400 and I did comment earlier that the 400 is the total, as I understand it, of housing units expected to be built in the private and public sectors. So there is no correlation between these numbers and the 400 in my understanding, and I stand to be corrected if I am wrong.

With regard to the issue of where the priority lies, the department will be reporting early in the new year on the development of the housing strategy; it is my understanding that they seek to work with the private sector in bringing along both public sector, first-time buyer and other private sector units together.

Homeless Families and Individuals – DHSS Help – Question by Mr Lowey

The President: We turn to question 2, and again I call on the hon. member Mr Lowey.

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

- (a) *What steps do your department intend to take to house families made homeless in emergency situations;*
- (b) *how many families and individuals have been so housed in the past eight months by your department;*
- (c) *what advice or practical help is offered to single people; and*
- (d) *does this advice conform with human rights standards?*

The President: The Minister for Health and Social Security, Mrs Christian, to respond.

Mrs Christian: Thank you, Mr President. In answer to part (a), the only powers which the department has been given in terms of homelessness are those contained in section 22(1)(b) of the National Assistance (Isle of Man) Act 1951. This places on the department a duty to provide temporary accommodation for 'persons who are in urgent need thereof, being need arising in circumstances which could not reasonably have been foreseen or in such other circumstances as the department may in any particular case determine.' The department's officers will take such steps as appear appropriate and practical to discharge this particular duty in any particular case.

As regards part (b) the department is not a housing authority and so it does not house people in the sense applied in the question.

In answer to part (c) our social services division, which has operational responsibility for the duty laid down in section 22 of that Act, will give whatever practical help or advice is necessary depending on the circumstances of the case.

As to part (d) I am not aware of any transgression of the European Convention on Human Rights in the form of advice given by our social services division.

The President: Mr Lowey.

Mr Lowey: Could I ask a supplementary? Is it against human rights to discriminate against single or married people? And would the minister like to confirm that it is against the rights to discriminate on that ground, and is she satisfied that advice given by her department to a couple that they should buy a tent was practical help in the real sense, and could she confirm that that was given in June, and could she also confirm that in October no further advice or assistance had been offered by her department and how does that conform with the law that she quoted in part 1?

The President: Mrs Christian.

Mrs Christian: Mr President, I am not aware that anyone in my department has distinguished between single or married people when they seek to fulfil their responsibilities under the National Assistance Act. If local authorities have rules in that form that is not a matter which falls within the term of the question, as I understand it.

With regard to the comment made about the people who were advised to seek accommodation in a tent in June, whilst that seems on the face of it to be less than a satisfactory answer I think the hon. member is aware that that comment was made at a time during TT races when accommodation was absolutely packed and many people were camping in villages. The essence of the thing is that the department at that time was unable to find any other accommodation. As I have said, we are not a housing body. We seek to assist people either by referring them to DoLGE or to the housing trust or seeking to find for them accommodation in the private sector. We are not always able to do so if that accommodation is not there. Now, the hon. member goes on to say that by October the problem still existed. I am not aware that the people came back to our department to seek any further advice. Now, if they do not come back we presume that they have of their own volition found some other accommodation.

Mr Lowey: Incredible.

Mrs Christian: Why is it incredible, Mr Lowey?

The President: Mr Delaney.

Mr Lowey: Absolutely incredible!

Mr Delaney: Bearing in mind the housing local authorities, those who are actually in charge of the houses under and with the department of local government, is the member or the minister aware of the difference in the regulations? Each different authority seems to have different regulations, certainly in relation to males and females that through age are able to apply for a position on the housing list, which I would have thought - and I would like some advice here - must be against human rights, particularly now that we have had it brought in from Europe, which disallows the discrimination of the sexes.

The President: Well, I am not sure whether we can attach that to this question particularly.

Mr Delaney: Well, I am bringing this so it will be brought back to the minister.

The President: Yes, well, I am aware of your comments but nevertheless we want to stick to our question. Now-

Mr Delaney: It comes under (c) and (d).

The President: -if Mrs Christian wishes to reply I am quite happy to let her do so.

Mrs Christian: Yes, Mr President, I am happy to respond, not in the terms of the question but in terms of the comment, and that is that I have no doubt at all that local authorities and government departments will and even now are in the process of examining their rules and regulations viz. a viz. the human rights legislation, and whether or not that needs to be amended will no doubt be taken into consideration-

Mr Delaney: That is all I ask.

Mrs Christian: -in respect of discrimination by age or gender or whatever.

The President: Now, Mr Lowey, if you could frame it as a supplementary, please.

Mr Lowey: It is a supplementary in response to the answer given by the minister. Part 1 of her reply says that under the National Assistance Act the department has a duty to temporarily house people. The people were involved in a fire, not of their making, so therefore I would have assumed the department had a legal responsibility to house them, not to give advice but to temporarily house them. Notwithstanding the advice that they were given, the minister then implies later in her supplementary that it is up to the individual to keep coming back, and I find that amazing - that officers of the department, once being made aware of a problem, then wait for other people to keep coming back and the onus is not on them. Now, I would say that there are not that many people in this unfortunate position, but the department seems to me to be once again to be waiting for individuals to keep camping on their doorstep before they will do anything instead of being the reverse, and I find that rather alarming. Would the minister not agree that that is unsatisfactory? That is the question.

The President: Well, I almost agree it was unsatisfactory to put a question in that form, but minister?

Mrs Christian: Mr President, I think that the hon. member is unfair to the officers of my department, who do struggle greatly very often to try and find accommodation to help people over a temporary difficulty. Now, the hon. member has referred to our legal constraints or our legal responsibilities in this matter, and I accept that a person who has suffered a fire is in urgent need in circumstances which reasonably could not have been foreseen. I certainly accept that, and the department's officers do take whatever steps they can to try and discharge their duties in relation to that. They do liaise with DoLGE, they trawl the local housing market to try and find accommodation for people. Their responsibility is to house them temporarily or to try and seek accommodation temporarily. Now, very often the department does house them temporarily and then they find in due course their own accommodation. I do not think it is unreasonable to expect that if a person did not come back for several months it is a fair assumption that they have found something. Now, the hon. member may disagree with

that but we do, in fact, have people who come back on a regular basis so it is not an unusual feature of the matter and we have to house them time and time again. But the hon. member may feel that our department is not fulfilling its responsibilities; I would say, with the resources at their disposal, they are doing a very difficult job in difficult circumstances.

Property Speculation – Treasury Action – Question by Mr Lowey

The President: We move on, then, to question 3 on the order paper and I call again on the hon. member Mr Lowey.

Mr Lowey: Thank you, Mr President. I beg leave to ask a member of the Treasury, Mr Radcliffe.

(a) *Will Treasury*

(i) *consider re-instating property speculation tax forthwith;*

(ii) *consider other tax disincentives to discourage wholesale buying of existing and new housing by individuals speculating in the property market; and*

(b) *what monitoring does Treasury undertake of proven speculation in property at present or do other agencies of Government undertake such monitoring and, if not, why not?*

The President: On this occasion Mr Radcliffe to reply.

Mr Radcliffe: Thank you, Mr President. The hon. member may recall that Treasury's future taxation strategy was approved by Tynwald last month and that that strategy contained no proposals for any form of property speculation tax or capital gains tax on those who buy and sell property. It is true that there has been a substantial rise in property prices this year caused by a shortage of suitable properties in the market. It appears - and this seems supported by evidence from estate agents - that sales volumes are falling and that house price inflation has peaked and is now in decline. This does not mean that house prices have fallen but that the rate of increase in price has fallen.

The solution to the problem, of course, is the provision of more properties of a suitable size and at affordable prices, and this is what Department of Local Government and the Environment is trying to achieve even though there is some strong opposition to their plans in certain parts of the Island. Government is attempting, therefore, to resolve the whole question of speculation and house shortages and this is in hand, and indeed that has been verified by the answer to the hon. member for an earlier question he asked.

As far as the final part of the question is concerned, I can inform the hon. questioner and this Court that the income tax division of Treasury is conscious of the potential property speculation to which the hon. member refers and, as part of its compliance procedures, property transactions within the Island are constantly monitored. An integral part of those procedures is the collation of that information to identify those cases where the transactions concerned are other than the purchase and sale of the private residence of a taxpayer. Where it is established that the purpose of any transaction is other than as a residence or for long-term investment to provide rental income for the person concerned, the division will seek to bring any profits arising on disposals into charge for income tax purposes.

There are going to be changes to the current income tax legislation, and incorporated in that legislation are proposals which will support the division in this particular task.

I would add as a rider that this whole question is considered by Treasury on a regular basis, but on each occasion Treasury has been persuaded not to proceed with the reintroduction of land speculation tax.

The President: Mr Lowey.

Mr Lowey: Would the other member of the Treasury not agree that when property prices, I think, have risen by 25 per cent in the last calendar year . . . and I do not know about them peaking but I can only give an example of the bungalow alongside me in Ballasalla, which has gone up £450 in a month, so I think the rise is still rising, and the member does agree that it is just slowing down a bit but 25 per cent is unacceptable and when you are in an acute position regarding housing you have got to take acute action. And is it not a fact that some individuals are buying whole estates up or blocks of houses and therefore inflating the prices even further? If the government is aware of that - and I am sure they are - then is it not up to government to take corresponding action to counteract it, and this laissez-faire attitude of government of watching is not good enough in the circumstances?

The President: Mr Radcliffe.

Mr Radcliffe: Well, it is a hard job to find a real question in there, Mr President, but I cannot but agree that the rises have been substantial and particularly unacceptable to young people who are trying to find their first property. But, as I said and I think the hon. questioner agrees, the peak seems to have been passed at the moment and things are not on quite so steep a rise as there was within the last year.

As far as the individuals who are alleged to be speculating, they should be caught in the net by our tax division when the returns and other examinations of returns are completed.

The President: Mr Delaney.

Mr Delaney: I think it is a waste of time asking the question I was asking because I was asking similar to the hon. member Mr Lowey, but if I can just put another edge on it, isn't it the answer to the problem on the Island generally - it has been proved in the past, in which I hope I had some part - the only way to stop the speculators making the amounts of money they are making is to put a mass of houses on the market that have to compete with them in the market place?

The President: It is a comment but not really related to the question.

E-Commerce Director's Office – Cost of Setting up – Question by Mr Lowey

The President: We turn to item 4 on the order paper. Mr Lowey.

Mr Lowey: I beg leave to ask a member of the Council of Ministers, Mrs Christian.

(A) *What is the cost of setting up the E-Commerce Director's Office-*

(a) *in this financial year;*

(b) *in a full financial year; and*

(B) *what financial input will the private sector contribute to this exercise?*

The President: Member of the Council, Mrs Christian, to reply.

Mrs Christian: Thank you, Mr President. The Council of Ministers e-commerce strategy report that was approved unanimously by Tynwald at its July 2000 sitting made reference to the fact that £500,000 should be allocated in the financial year 2000-2001 and the sum of £750,000 allocated in the year 2001-2002. Recommendation (b) of the report was specifically that the £500,000 in the current financial year be approved by way of a supplementary vote. The Council of Ministers' report also made reference to the fact that the initial £500,000 would cover administrative costs, additional professional services and marketing costs.

With regard to part (b) of the question relating to financial input from the private sector I can advise that whilst the private sector on the Island is not contributing financially to the cost of setting up the office, it is investing a great deal of money in order to meet the challenges presented by the development of e-commerce. E-commerce represents both a threat and an opportunity. If the Isle of Man does not seize on the opportunities presented by this development the economy will undoubtedly suffer and our competitors will make progress at our expense.

On the other side of the coin, however, e-commerce is an opportunity for the Island and one which both the private sector and government are determined to take full advantage of.

I am advised that the private sector wholeheartedly supports government initiatives to date in relation to e-commerce and are similarly committing both time and resources to ensure that the Island and its people are not disadvantaged by this new development.

The President: Mr Lowey.

Mr Lowey: Two supplementaries, if I may, Mr President. Firstly, would the minister not agree that this new business is the same business delivered in a different way, simply put, and therefore, when we have already allocated half a million pounds, would she also agreed with me that when I hear the proposed new liaison committee that is to be set up to advise the government about the private sector talking about getting grants from government to deliver this services, that was not envisaged in the original document, and would she also confirm that as the users - we are talking about the people providing the service. . . that there is a service? The other end of the equation is the consumer, and would she not agree that equal weight must be put to the protection of the user of this, the consumer, and has the e-commerce director's office taken up any direct talks with the Office of Fair Trading to make sure that the old protections for consumers are applicable in the new scenario which we are creating? I think, in this rush to get in to it, that we are forgetting the users, and I think we have to be careful on that.

The President: Mrs Christian.

Mrs Christian: Thank you, Mr President. First of all I am advised that the moneys which have been voted for the e-commerce initiative are not earmarked for grants. Businesses can apply to the Department of Trade and Industry for grant and loan schemes if they qualify under those schemes but they are certainly not entitled to get grants from this particular vote. In so far as the position of the consumer is concerned, I cannot confirm one way or another whether or not the director of e-commerce has been in discussion with the Office of Fair Trading. I would accept what the hon. member says: it is important that the consumer's interest is

protected. I think we all accepted that when we dealt with the e-commerce legislation in this branch and in other places in the fact that the enabling legislation made provision for security codes and certification and so on, recognising that security in e-commerce is extremely important. I will refer the hon. member's comments to the director of e-commerce who, I am sure, will take cognisance of his concerns.

The President: Mr Crowe.

Mr Crowe: Mr President, can I just ask the minister . . . and it is an interesting point that Mr Lowey makes, the consumer's interests. I think the risk, really, is for people on the Island buying goods off-Island and the companies supplying them go out of business. I think that has to be separated; there is a risk there which the minister, I hope, would agree, but the investment here in the new e-commerce is to encourage new business here on this Island that the Isle of Man could control through its own laws and regulations so, by having the e-commerce office, it allows us to control and gives support then to the consumer for on-Island businesses. But it is the off-Island businesses which are the consumer's risk. Would the minister confirm?

Mrs Christian: Mr President, I would agree that the risks are the same in relation to e-commerce as they are in conventional commerce in that off-Island firms go out of business leaving Island consumers disadvantaged but I do agree with him that the emphasis, perhaps, in the development of e-commerce is to bring reputable business to the Island, working from the Island with the appropriate safeguards in place, whether it be as a consumer or as a supplier of services.

Betting Offices Bill – First Reading Approved

The President: Now, hon. members, we turn to item 2 on our order paper, which is the Betting Offices Bill, and I call on Mr Lowey.

Mr Lowey: Thank you, Mr President. Hon. colleagues, the Betting Offices Bill 1999 sets up, in parallel with the existing system of licensing of betting offices, or betting shops as commonly known, a system of licensing of international telephone betting operations. Whereas once bookmakers took bets only from punters in their locality, a large part of the business of bookmakers in the British Isles is now with punters in other parts of the world who place bets by telephone or fax or, increasingly, via the internet. For tax reasons bookmakers find it advantageous to carry on this kind of business in the Isle of Man, but the existing legislation controlling betting offices is not suited to regulating the new business. In particular, the number of betting offices in the Island is limited to 10 at the moment and the establishment of such operations which, consist principally of call centres, has correspondingly reduced the number of betting shops available to ordinary punters. Furthermore, the controls on betting offices are more appropriate to small-scale cash betting than to large-scale credit betting, in particular, the lack of audit procedures such as applies at the moment to the casino.

This Bill preserves the existing system of betting shop licensing under the name of public licensed betting offices and sets up a parallel system of restricted licence betting offices, whose characteristics are as follows: (1) The licensee is authorised to effect betting transaction on the licensed premises only with persons outside the Isle of Man and the United Kingdom; (2) regulations may lay down special rules for conduct of restricted betting offices and provide for the appointment and functions of an accountant to supervise the operation; (3)

The number of restricted licence betting offices will be limited to 10 in addition to the 10 betting shops; (4) no-one will be allowed to hold more than one restricted betting office licence; (5) the fee for a restricted betting office licence will be £25,000 per annum compared with the £700 for a new public betting office; and (6) the Department of Home Affairs will have a veto over the grant restricting betting office licences.

It should be noted that this Bill affects only the licensing of betting offices, not the system of bookmakers' permits. Only the holder of a bookmaker's permit will be allowed to hold a public betting office licence or a restricted betting office licence.

Mr President, this Bill has been rather a long time in its gestation. The Bill had its first and second readings in the House of Keys in 1999, but as a result of concerns raised by the industry and developments in technology, to be fair, the clauses stage was delayed while the Department of Home Affairs consulted further with the companies that will operate out of the Island and therefore I think it was right to get it right and this Bill is, in my view, all the better for that consultation. So while it has been a little long in the gestation I think it is the better for it. Mr President, I beg to move the Betting Offices Bill 1999 be read a first time.

Mr Delaney: I beg to second, Mr President, but I would like to ask some questions, if I may, just for the public information here. Would the member let us know what is the maximum amount of money placed over the internet et cetera that can be placed at one of these licensed bookmakers, and are they the same regulations as is going to be applied to the banks with 'Know your client' and the proof of where that money is emanating from? Secondly, where we talk about the licence fee of £25,000, is that purely based on the estimated amount of money that is going to be turned over or is being turned over or, on a value-for-money basis, why haven't they gone for a percentage of the amount taken in tax purposes rather than a fee? Why haven't they gone the American way and gone for a percentage of the turnover as the licence fee?

The President: The Lord Bishop.

The Lord Bishop: Yes, thank you. If the mover would clarify for me, I understand betting shops at the moment are visible shops which you can see in the High Street. If I understand this correctly, this now makes an electronic use of telephones and the internet, so that means you have now got a faceless situation: there will be no shop or no visible premises. There will be a telephone somewhere, and I just wonder if that is going to be policed effectively. I would like to know how it will be, and certainly what we know these days of the internet and its corruption to people in all sorts of pornographic ways, is there going to be a similar sort of difficulty in policing that too? I just ask for clarification.

The President: Mr Crowe.

Mr Crowe: Mr President, yes, there seems to be a benefit having an onshore licence and an offshore licence; the public betting office licence would then allow people in the Isle of Man and the UK to bet, and presumably bet by telephone, whereas the non-resident licence, the B licence, would be restricted to people who are outside the UK and the Isle of Man. The question I would ask is, how will that be sifted and monitored? And again, what checks will be made to see that there is not a switching mechanism to have an offshore restricted licence where the calls come to the Isle of Man but can be switched to another jurisdiction to have it serviced in another jurisdiction? So I just wondered if those points could be considered.

The President: Mr Lowey to reply.

Mr Lowey: Yes, I thank the hon. members. A lot of the detail, of course, will be in the regulation, but I will come to that in the clauses stage, but in answer to Mr Delaney, 'why the department. . .?' I did say that they had had lots of consultation, whether it would be a fee or a percentage. It was felt by the industry that they would much prefer, at this stage, to try it with a fee. It does not mean in the future that maybe the department could look at how it develops and whether it should be transferred, but for the initial part it has now gone for a fee to get the thing up and running. So that is one of the reasons why it has gone for a fixed fee and not the scenario as painted by my hon. friend.

To my Lord Bishop, again, yes, this is the difference between a public regulated betting shop which has got a physical purpose and under the existing thing the two can be conducted in the same premises. They will not be allowed to be conducted in the same premises now because of the technology. It is not a visual thing, so it can be done in an office. Maybe a telephone can be in Peel or Castletown or the out of towns as opposed to in the High Street in Douglas or where people are, as long as they have got the technology. In this business it is much better to have it well regulated; it is like all gambling, it is like casinos: do you have it on the street corner, on the back street or is it better to be up front? I think, from the Isle of Man's point of view, it is much better to have a tightly, highly regulated, legitimate business, and this is legitimate business, this is not a hole-in-the-wall affair at all; this is legitimate business which is beneficial to the Isle of Man. The total amount of money involved is large; we are not talking here of small amounts of money. It is of benefit to the revenues of the Isle of Man. It is a high-paying employment. It does not impinge on the countryside, so it is small, it is high value and and it meets all the criteria and it is another form of legitimate business that can be operated here from the Isle of Man, but the operative word is 'regulated' and it will be regulated. Our gambling in the casino is a classic example; it was the first public casino and it has been very well regulated, and that is why I think now most people would accept - well, perhaps not most people but a large majority of the people of the Isle of Man would accept - that if you have to have this form of business then it is better to be well regulated, and I think we run a well regulated regime and I believe this will be well regulated under the controls of the Home Affairs and the Gaming Commission.

The same really. . . I think I have answered Mr Crowe in that general report. The more detail I will answer, obviously, at the clauses stage of the Bill. Mr President -

Mr Delaney: Could I ask the mover of the Bill to answer the second question I asked in relation to the amounts of money that can be wagered over the internet or into these particular licensed betting facilities?

Mr Lowey: I am not aware that there is -

Mr Delaney: - because you will have to produce proof, or the bank manager has to know, where the source of money is. If somebody walks into the bank with £1,000 the manager has a duty in the Banking Act to know where this sort of money comes from. What are the regulations that are going to cover and control these internet banks?

Mr Lowey: I will answer that in detail at the second reading. I am not sure, but I think it is a legitimate point that the hon. member makes.

The President: Okay, hon. members, the motion before us is that the Betting Offices Bill be read a first time. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Criminal Justice Bill – Consideration of Clauses Continued

The President: So we turn to item 3 on our order paper, hon. members, in the hands of the Attorney-General for further consideration of clauses and hopefully to get through on the third reading, and we had reached clause 12 to 14. Attorney-General.

The Attorney-General: Thank you very much, Mr President. Yes, starting at clause 12 of the Bill, the Bill provides for the issue of a warrant authorising a constable to enter premises to search for knives and publications and seize and remove any that he finds. An application for a warrant must be made by a constable and a warrant can only be issued if the justice of the peace is satisfied that there are reasonable grounds for suspecting the commission of the relevant offence or the presence of knives or publications as the case may be on the premises.

Sub-clause (3) authorises the use of force to implement the warrant.

Sub-clause (4) permits seized knives and publications to be retained by the police until the conclusion of proceedings.

For this purpose sub-clause (5) sets out when proceedings are to be treated as concluded. In essence this will be on completion of the proceedings before the court, a discontinuance of the proceedings or a decision not to prosecute.

Sub-clause (6) extends the meaning of 'premises' to include vehicles, vessels, aircraft, hovercraft, tents and movable structures.

Moving to clause 13, Mr President, this clause deals with the forfeiture of knives and publications by the court.

Sub-clauses (1) and (2) deal with offences under clauses 8 and 9 respectively. On conviction the court is authorised to order forfeiture of a knife or publication if seized under a warrant or if in the offender's possession or control at the relevant time.

Sub-clause (3) permits the court to make a forfeiture order whether or not it imposes any other sentence on the offender and without regard to restrictions on forfeiture in other enactments. This is a power which stands on its own.

Sub-clause (4) obliges the court to take into account, before making a forfeiture order, the value of the property and the effect on the offender taken together with other penalties that may be imposed by the court.

Sub-clause (5) defines 'relevant time' for the purposes of sub-clauses 1(b) and 2(b).

Clause 14 deals with the effect of a forfeiture order.

Sub-clause (1) declares that a forfeiture order deprives the offender of any rights he may have to the property, i.e. the knives and publications to which the order relates.

Sub-clause (2) obliges the police to take into their possession the property to which the forfeiture order relates. Normally it will be in their possession having been seized under the warrant.

Sub-clause (3) enables the court to deal with applications from persons other than the offender who claim to be owners of the forfeited property. The court is able to make a recovery order.

Sub-clause (4) requires applications for a recovery order to be made before the end of a period of six months beginning with the date of the forfeiture order.

Under sub-clause (5) a recovery order can only be made where the claimant satisfies the court that he had not consented to the offender having possession of the property or did not know and had no reason to suspect that an offence was likely to be committed.

Sub-clause (6) deals with circumstances where a third party claims property rights in respect of the property which is the subject of the recovery order.

Sub-clause (7) enables the Department of Home Affairs to make regulations to deal with the disposal of the property which is forfeited under this section.

Sub-clause (8) enables regulations to include provisions for dealing with the proceeds of forfeiture, and sub-clause (9) defines the various references to 'application'. Mr President, I move that clauses 12, 13 and 14 do stand part of the Bill.

The President: Mr Kniveton.

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

The President: Mr Radcliffe.

Mr Radcliffe: Could I just make one point? Sub-clause (7) of clause 14 deals with the Department of Home Affairs and what they may or may not do with property which is for disposal. It would appear from the reading of this that a lot of the weapons or whatever are going to be disposed of by sale, because in the subsequent sub-paragraph the regulations provide for investing money in auditing accounts and so on. I would have thought that the ideal answer in dealing with this would be to destroy totally such weapons rather than to say 'Well, we are going to sell them.' Who on earth are you going to sell them to and what possible value may they have? Why is the clause in at all, in effect, Mr President?

The President: Mr Waft.

Mr Waft: Thank you, Mr President. I just wondered, with the last remark, about whether they are going to fall into the hands of the person they got them from in the first place. I just wondered, on clause 13(4)(b), when they have to consider or have regard 'to the likely financial and other effects on the offender of the making of the order (taken together with any other order that the court contemplates making.)', we are talking about, in the next clause, forfeiture of knives and publications, and I just wonder where the financial effects come into that?

The President: Mr Attorney.

The Attorney-General: Yes, thank you very much, Mr President. Dealing first of all with the point raised by the hon. member, Mr Radcliffe, on clause 14(7), of course there is a great deal of sense in what the hon. member says. I entirely agree. I suppose that this provision is designed to cover the exceptional case where there may be a particularly valuable -

Mr Delaney: Curio?

The Attorney-General: - knife or curio or ceremonial sword or something which might have a particular value say to a museum or other professional collector where we can be sure that the item would be kept safely, but I do agree that for the ordinary run-of-the-mill case, the offensive weapon, the knife or so on, should be destroyed.

In relation to the point raised by the hon. member, Mr Waft, on clause 13(4)(b) I think there the purpose of that provision is to ensure that if an offender is having his property forfeited the court must ensure that the combination of fines, say, and other penalties which are imposed on the offender, albeit it is for a very serious offence, are not out of proportion with the offence. In other words, we must not, perhaps, deprive the person of an item which may be valuable, might have an inherent value, albeit that it is dangerous; we must not saddle him too much with an excessive fine. I think that must be the logic behind that.

The President: Now, hon. members, the motion before us is that 12, 13 and 14 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. We take, then, clauses 15 and 16.

The Attorney-General: Thank you very much, Mr President. Clause 15 deals with offences by bodies corporate. It is a standard technical provision to impose personal liability on officers of companies and other forms of body corporate where the officer or a person who purports to act as such gives his consent to the commission of an offence by the body corporate or if the offence was committed with the connivance of, or was attributable to, the neglect of that officer.

Clause 16 is a clause which provides definitions for certain expressions used in clauses 8 to 15, and I hope the definitions are self-explanatory.

The President: Mr Kniveton.

Mr Kniveton: I beg to second, sir.

Mr Delaney: Just one question -

The President: Mr Delaney.

Mr Delaney: The same thing again, Mr President: it is on the definition of 'knife'. 'Knife means an instrument which has a blade or is sharply pointed'. That covers everything we know, but why have we got to define a knife? A knife is a knife is a knife, and to say that it has got a sharp edge to it, which is a blade, which is a sharp edge, I take it - a definition of that - and is sharply pointed. A knife is a knife is a knife. What instrument would the Attorney-General envisage would be argued over in court as not being a knife?

The Attorney-General: Well, I think that we have to look at the word 'knife' in the context of various statutory provisions which we have got here under part 3. We have got to look at the provisions, look at, say, clause 8 and clause 9. You look to find whether the knife is adapted for or is suitable for combat and so on. So if there were to be a very small knife which

Mr Delaney: Why don't you go for the length of it?

The President: No, Mr Delaney, let Mr Attorney complete it.

The Attorney-General: Yes, if we were to have, Mr President, a very small knife or a knife which clearly was not used or adapted for the infliction of violence on another, it may be that that would not fall within the provisions of part 3. I think often there is a danger, is there not, in defining something which is so obvious, but I cannot think that what we have done here in clause 16 would effect the operation of the legislation in any way.

The President: Mr Waft.

Mr Waft: Thank you, Mr President. Would the Attorney-General like to clarify the situation with regard to clause 15, where the offence has been committed by a body corporate; it is proved to have been committed with the consent or connivance of, or to be attributable to, neglect on the part of a director, manager, secretary or other similar officer of the body corporate. Who, then, will be charged with this offence? Will it be the company or will it be passed from one person to another and finally get lost in the process? Is it the company or the individual, or would there be third party to the proceedings? If you would like to clarify that?

The Attorney-General: Yes, thank you, Mr President. This provision is designed to cover a situation where the relevant business is carried out by a company, but it is clear that a director or another officer within the company has a very real knowledge and involvement in the sale, so I would suggest in those situations where there was evidence of that very positive participation by the director he would have a charge against (a) the company and (b) the director joined on the same information or the same summons.

The President: Right, hon. members, the motion is that 15 and 16 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clauses 17, 18 and 19, sir.

The Attorney-General: Thank you, Mr President. Clause 17 deals with the power to stop and search for knives or offensive weapons and amends section 3 of the Police Powers and Procedures Act 1998 to extend the powers of the police to stop and search persons for knives or offensive weapons in anticipation of violence. Section 3 of that 1998 Act confers the power to stop and search persons and vehicles where there is a reasonable belief that incidents of serious violence may occur in any locality.

So sub-clause (1) introduces the amendments. Sub-clause (2) will enable an inspector to have the power to give an authorisation under the 1998 Act as respects persons carrying dangerous instruments or offensive weapons. At present authorisation can only be given if there is a believe that incidents involving serious violence may take place in any locality. The power will in future also be exercisable where there is reasonable belief that persons are carrying dangerous instruments or offensive weapons in any locality without good reason. The authorisation will mean that constables in uniform will have the power to stop pedestrians and vehicles and search them for offensive weapons and dangerous instruments. Authorisation will last for a period of 24 hours. The amendment also has the effect of conferring the power to grant authorisation on inspectors rather than chief inspectors and above, as exists at present.

Sub-clause (4) amends subsection (3) of section 3 of the 1998 Act. That subsection permits a chief inspector to extend an authorisation for a further six hours. The extended period is increased from six hours to 24 hours. The amendment also replaces the word 'incident' with 'activity' to take account of the fact that the new sub-clause deals with both incidents and activities.

Sub-clause (5) inserts a new subsection 3A in section 3 of the 1998 Act. The new provision obliges an inspector to report authorisations under section 3 of the Act to an officer of or above the rank of superintendent. The report must be given as soon as it is practicable to do so.

Sub-clause (6) amends subsection (9) of section 3 of the 1998 Act. That subsection requires authorisation to be in writing and signed and to give details of the locality and the period during which the powers are to be exercised. This amendment also requires the authorisation to specify the grounds on which the authorisation is given.

Sub-clause (7) adds new subsections to section 3 of the 1998 Act. The new subsection (11) entitles any person searched as a result of the authorisation to obtain a written statement to the effect that he was searched. An application for such a statement must be made within 12 months of the search, and the new subsection (12) defines the meaning of 'carries.' A person is to be treated as carrying a dangerous instrument or an offensive weapon if it is in his possession.

Turning to clause 18, Mr President, clause 18 deals with the sale and possession of knives et cetera. The clause adds new sections to the provisions of the Criminal Justice Act 1991 which contained provisions relating to the sale and possession et cetera of certain weapons. The new section 27B will make it an offence to have any article with a blade or point on school premises. The section provides defences where the article or weapon in question is being used for work, education purposes, religious purposes or is used as part of a national costume. The new section 27C will give a constable a power to enter school premises for the purpose of searching for weapons and articles with blades or points.

So sub-clause (1) makes it an offence for a person to have with them on school premises or a youth club provided, maintained or aided under the Education (Young People's Welfare) Act 1944 any article which has a blade or is sharply pointed, excluding a folding pocket-knife with a blade of less than three inches.

Sub-clause (2) creates a similar offence in relation to articles made or adapted for use for causing injury to the person or intended by the person having it with him for such use.

Sub-clause (3) provides a statutory defence to charges under sub-clauses (1) and (2). The defendant must prove that he had good reason or lawful authority for having the article or weapon with him on the premises.

Sub-clause (4) contains a number of specific defences to charges under sub-clause (1) or (2). The defence applies if the offender proves to the court that the particular item was for use at work, educational purposes, religious purposes or was part of a national costume.

Sub-clause (5) provides penalties for offences under sub-clauses (1) and (2).

Sub-clause (6) provides a definition of 'school premises' and hopefully, Mr President, the definition is self-explanatory. A new section 27C is introduced. Subsection (1) of that confers a power of entry on a constable if he has reasonable grounds for believing that an offence under section 27B is being or has been committed. The power of entry applies to school premises as defined and enables a search of the premises and any person on the premises. Subsection (2) permits a constable to seize and retain any weapon or article discovered during the course

of the search. Subsection (3) permits a constable to use reasonable force to exercise the power of entry.

Sub-clause (2) of clause 18 amends the 1998 Act. The effect of the amendment is to make offences relating to offensive weapons, blades and articles with points arrestable offences. That means that the powers of arrest will be available without warrant.

Finally, Mr President, clause 19 deals with air weapons. This clause amends section 32 of the Firearms Act 1947. The Act contains references to air weapons, but does not contain a definition of that. The new provision will make it clear that reference is to air weapons, which are powered by any gas or combination of gases rather than air. The change in the definition will impact upon other legislation which defines air weapons by reference to the 1947 Act.

Mr President, I move that clauses 17, 18 and 19 do stand part of the Bill.

The President: Mr Kniveton.

Mr Kniveton: Yes, sir, I am happy to second that. I just have one point which I would like to put. It is a question of school premises. We seem to define them and finish at secondary school. Can I ask, does that include the College of Further Education? That is the top of page 12.

Mr Delaney: Why did we stop at that?

Mr Kniveton: Why did we stop at that? Why not the College of Further Education, or indeed a university would be included, I presume, further education, but are we stopping at secondary schools?

The President: Mr Delaney.

Mr Delaney: My question was going to be that, but it has been asked. My next question is dealing with, just to get it on layman's terms, clause 17 where it says here '(2)“(1) If a police officer of or above the rank of inspector reasonably believes” ’ Would you just clarify something for me? If a constable walking down the promenade suspects that somebody has a knife as defined in this Bill on him, can he search that man or take that from him without getting permission from an inspector? I want it clarified that without going to an inspector and then going through that nonsense he can stop if he suspects that there is a weapon in being on the person of somebody he suspects of carrying it, he can actually search and then take possession of it. That is one clarification I want, and the other one is why, through here, bearing in mind the limitation on the inspectors we have in the Island and the new police where we are changing from inspectors, we have gone for inspectors as being the ranking officer rather than further down the line; I would have thought a sergeant, with the experience to become a sergeant, would have been the person quite able to give permission. Why have we gone to that lower level?

The President: Mr Waft.

Mr Waft: Yes, I pose a similar question, Mr President, with regard to 17(2); again, 'the rank of inspector reasonably believes,' but when we get to the schools it then devolves to the constable may enter the premises and search. What is the difference? Is it to possibly pacify the stop-and-search problems that have ensued from other areas? Is that part of the situation with regard to the concerns of the public with the responsibilities of a constable to do so?

The President: And Mr Lowey?

Mr Lowey: Yes, sir, on clause 17(7) I understand this whole clause is to do with PACE, the Police Powers and Procedures Act - that is the power to stop and search in anticipation of violence - but when it says after subsection (10) of that Act, add (11), 'A person who is searched by a constable under this section shall be entitled to obtain a written statement that he was searched under the powers conferred by this section if he applies for such a statement not later than the end of the period of twelve months'. Now, it does seem amazing to me that if I go to the police station and a police constable asks me to produce my driving licence, I think I have three days or three weeks or whatever it is, but if I ask the police to provide me with evidence of why I was stopped and searched it is going to take them 12 months. They have got 12 months to do it. Now, is that right? I know it is up to a maximum of, but why insert 12 months for the police to give a statement, because they are on file and I would have thought that was quite easy to get out of the system and not take 12 months? Why have we written in 12 months?

The President: And Mrs Christian?

Mrs Christian: Mr President, my question relates to the same sub-clause 17(7) in relation to the statement. I would disagree with the hon. member Mr Lowey. It allows the person who has been searched 12 months before they apply for such a statement. It does not say that the police have 12 months to do it, but my question to the learned Attorney is, what purpose is served by seeking such a statement? For what purpose can it be used?

Mr Crowe: Mr President, could I just ask a question as to whether clause 19 covers replica guns which seem to be a problem sometimes in the UK, when armed police try to arrest somebody with a replica gun? Does clause 19 cover replica guns?

The President: Okay. Mr Attorney to reply, then, to the comments which have been made on clauses 17, 18 and 19.

The Attorney-General: Yes, thank you, Mr President. I will try to cover them as best I can. The first question raised by the hon. member Mr Kniveton in relation to schools: the school premises are defined at the bottom of page 11 of the Bill and on to the top of page 12 as meaning land used for the purposes of a primary, junior or secondary school, and then we had an amendment from another place also including therefore a youth club provided under the 1944 Act but excluding any land occupied solely as a dwelling by a person employed at the school. Now, as I understand it, the hon. member is concerned whether that definition is wide enough to cover further education.

Mr Kniveton: Correct, yes.

The Attorney-General: Yes. I think probably, Mr President, that it does not and I suppose that that could be an oversight, but perhaps the position would be that if you have young people who are attending a junior or a secondary school as defined they may need to have particular protection insofar as having constables able to inspect the premises to search for weapons and so on. I suppose, although I must say I am rather guessing at this, that if you have older people in an educational institution it may be that you would say that they can perhaps look after themselves a little better. I do not know. It is a good point. It may be, if you forgive the pun, a good point that you make, that perhaps we ought to enable people to come

onto educational premises and it may be that an amendment might be made, but I really cannot comment any further on that.

Insofar as the question raised by the hon. member Mr Delaney is concerned, I confirm that if a constable believes on reasonable grounds that someone is carrying a weapon he may indeed search and furthermore he may indeed arrest without a search warrant. Of course, every case has to be looked at on its own particular facts but if you were to exercise the power of stop and search and arrest without reason, arbitrarily, that would be an unlawful stop and search -

Mr Delaney: Oh, we do not want to go back to that one.

The Attorney-General: No, so there must be reasonable grounds and I suggest that the common sense of trained officers would be enough to ensure that they will keep on the right side of the law and also that the public will be protected.

Insofar as the role of the inspector is concerned, Mr President, of course the power to stop and search and to arrest is a very important power and one that should not be used arbitrarily. Therefore the whole theory which is enshrined in our Police Powers and Procedure Act is that there should be a system of authorisation and report, so after the constable has arrested and searched and so on there should be a report back to a senior officer, and that is where the inspectors have their particular role.

Insofar as the question raised by the hon. Mr Waft is concerned, 'why are constables authorised to come onto schools and not an inspector?' again I think I can endeavour to answer that: the role of the inspector is to authorise and to receive reports back from constables once they have done their job. I do not think that we need to authorise very senior officers to search schools as it is perfectly all right for constables to do that provided that they report back.

Insofar as the hon. member Mr Lowey's point is concerned, under clause 17(7) at page 10 I fully support the interpretation given by the hon. member Mrs Christian. The purpose of that is to ensure that you can ask for a statement confirming that you have been searched and it is up to you, the person who has been searched, to request that within a period of 12 months from the day on which you were searched.

Mr Lowey: Yes, but the argument then must be that that is a restriction. Most things in law you have got up to three years. Isn't it a thing of tort where you can go back? Why restrict? If I can give a scenario to illustrate: if I feel that I am being persecuted by the police and I wish to say 'Look, I have been arrested six times in the last three years' or I have been stopped and searched half a dozen times in the last three years, I can only go back 12 months. That does seem a restriction on that individual's right and perhaps there is a reason. These are practical considerations in the nth degree, and I am just interested; in drawing up legislation one has got to be in support of what all of this is to do, which is to enable the police to do their job more effectively, but you do, when you are putting in legislation, have to protect the citizen as well and so therefore I think if that is a restriction on people gaining information from the authorities I want to know the reason why it is really shoved in there and is taking away a power to give me information.

The President: Right, Mr Attorney.

The Attorney-General: Mr President, I feel that the reason for that is, to use the words of the hon. member, a practical reason. In other words, the police obviously have a great number of files and so on and reports and statements, and I think that it is entirely right that they should keep their records in relation to the issuing of written statements but they do not have to, surely, keep those records for ever and a day, and I suppose that if you are concerned that you may be harassed by the police or you are very anxious about what happened when you submitted to a search it is reasonable to expect that you would ask for that statement within a short period of time after it happened, and I believe that 12 months is a practical limitation period, because after that period then the police could reasonably assume that you will not be requesting the statement.

Under, again, clause 17(7) the hon. member Mrs Christian asked why you would ask for a statement. Well, I think, again, it is for the very reason perhaps that has been hinted at by the hon. member Mr Lowey: if there was a course of conduct by the police against you - in other words, you were being stopped and searched - you could demonstrate that the police appeared to be biased against you by producing the statements. In other words, the statements would be records that you had been stopped and searched and so on. You could produce those statements over a period of time to show that the police seemed to be acting unreasonably and in a hostile way against you.

The final point, I think, relates to replica guns, and to answer the question raised by the hon. member Mr Crowe the provision relating to air weapons does not cover replica guns. I believe that that is covered in another provision in the Firearms Act.

The President: Okay. The motion, hon. members, is that 17, 18 and 19, thus completing part 3 of the Bill, stand. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 20.

Mr Kniveton: Can I, on a point of order, Mr President?

The President: Mr Kniveton.

Mr Kniveton: I know that there is a wish to proceed to the third stage of this Bill today but I would like to put forward an amendment at the third reading, or whenever according to your ruling, on 18(6), the top of page 12, means land use for the purposes -

The President: Of course I take the point which you are making relative to the school which the Attorney raised in response to your question. We will see how we progress, hon. members, but can we progress with the Bill and, if the members are agreeable when we come to a third reading and if there is a responsible amendment put forward, we will consider it at that stage. Now, that may be later this afternoon depending how we can progress. I just warn the hon. member of that. We will see how we get on. Clause 20.

The Attorney-General: Yes, Mr President, clause 20 under part 4 amends section 49(3) of the Post Office Act 1993. The protection of the mail will not apply to postal packets which are suspected to contain a controlled drug or a scheduled substance - that is, substances used to manufacture controlled drugs as defined by the Misuse of Drugs Act 1976. It is anticipated that this new provision will be of advantage to the police in detecting drugs in the post. Mr President, I move that clause 20 stand part of the Bill.

The President: Mr Kniveton.

Mr Kniveton: Yes, I beg to second. I just have one point to put on this one. I meant to read the Post Office Act 1993. I omitted to do so. I apologise, but mail packages covered by Securicor or other delivery services - are they included in this clause, please?

The President: Any other hon. member wish to speak? In that case Mr Attorney to reply to Mr Kniveton's point on clause 20.

The Attorney-General: I believe so, Mr President, but I do not have that answer immediately to hand. Perhaps I might be permitted to check that?

The President: The motion therefore, hon. members, is that clause 20 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. We will take clause 21, sir.

The Attorney-General: Thank you, Mr President. Clause 21 under part 5 follows the provisions of the Theft (Amendment) Act 1996 of the United Kingdom Parliament, which was passed to implement a Law Commission report dealing with offences of dishonesty in relation to money transfers. The Law Commission had looked at the problem of prosecuting those who commit mortgage fraud or otherwise obtain a transfer of funds dishonestly and by deception. So the new proposed section 15A of the Theft Act provides for a new offence of obtaining a money transfer by deception and applies to payments made by cheque, electronic transfer and the like.

The new subsection (1) declares a person to be guilty of an offence if by any deception he dishonestly obtained a money transfer for himself or another. 'Deception' is defined in a new section 15B and 'money transfer' is described in subsection (2). Subsection (2) describes the circumstances in which a money transfer occurs. There are three factors: first, there must be a debit on one account; secondly, a credit to another; and thirdly, the credit must result from the debit or the debit must result from the credit. The third requirement ensures that there is some connection between both debit and credit. The subsection will cover automated transfers, clearing systems where the debit of a bank account and the credit of another are not actually directly connected but there is a net settlement between the banks or institutions concerned.

Subsection (3) defines references to credit and debit as being a credit and debit of an amount of money.

Subsection (4) clarifies certain issues: firstly, the amount credited does not have to be the same as the amount debited. This covers cases where for some reason the two are different. It could be as simple as a clerical error. Secondly, the method of the money transfer is immaterial: It could be by cheque, electronic transfer, et cetera. Thirdly, delays in processing the debit and credit are to be ignored.

Subsection (5) sets the penalty for an offence under the clause as a maximum term of custody of 10 years. Conviction must be before a Court of General Gaol Delivery. Although no mention is made of a fine, the court does have the option of an unlimited fine in appropriate cases.

The proposed new section 15B is supplementary to the new section 15A. It provides definitions for the words 'deception', 'account' and 'deposit'.

Subsection (2) of clause 21 declares that the new section 15A offence does not have effect in relation to anything done before the day on which the clause comes into operation.

Sub-clause (3) introduces a new section 24 into the Theft Act 1981.

Subsection (1) of the new section contains three principal elements of the new offence. Again, there must be a wrongful credit to a person's account and he must know or believe that the credit is wrongful and, acting dishonestly, he fails to have the credit cancelled.

Subsection (2) requires the credit to be an amount of money.

Subsections (3) and (4) specify cases where a credit is wrongful. This would be where the credit is made to an account and is the credit element of a money transfer obtained by deception contrary to the new section 15A, or derives from theft, blackmail, stolen goods or an offence under the new section 15A.

Subsection (5) deals with the question of whether the account is or is not overdrawn and states that that will be immaterial as with the new sections 15A and 15B.

Subsection (6) provides the penalty, which would be a custody term of up to 10 years on conviction before the Court of General Gaol Delivery.

Subsections (7) and (8) confirm the existing offence of handling stolen goods applies in respect of money dishonestly withdrawn from an account to which a wrongful credit has been made.

Subsection (9) provides definitions of 'account' and 'money', which are the same as in the new section 15B.

Subsection (4) of clause 21 deals with the transitional effect of subsection (3). The new section 24A will apply only to wrongful credits made after it comes into force.

Subsection (5) inserts a new section in section 16 of the Theft Act 1981. That section contains the offence of obtaining services by deception. The new provision makes it clear that an inducement to make a loan or to cause or permit a loan to be made constitutes an obtaining of services.

Subsection (6) limits the operation of the new subsection (5). It will not have effect in relation to anything done before the day on which the clause comes into operation. So, Mr President, I move that clause 21 do form part of the Bill.

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

The President: Mr Waft?

Mr Waft: Mr President, with regard to the transfer of moneys to, perhaps, your account inadvertently by a bank by mistake - I would know quite quickly if somebody transferred, but there is a possibility that somebody with a large bank account might have inadvertently moneys transferred to his account by a bank - with regard to 24A(b), section 1, it states that 'he knows or believes that the credit is wrongful'. How would they go about deciding that he knew or believed that it was wrongful if it was just absorbed into his bank account by a mistake by the bank? I am looking at the possibility of a 10-year sentence, and it is quite a substantial length of time if it is proved. How does that relate to the situation as regards enforcing this?

The President: Mr Attorney?

The Attorney-General: Well, Mr President, yes, it is an interesting point. Clearly, if you look at your bank statement one day and you find that £100 has been credited to your account and you are not certain where it has come from and you have not been involved in procuring that that money has come into your account there is no offence. However, the essential element of it is that if you are aware that a wrongful credit has been made - and if we look at section 24A(3), at page 15, it says 'A credit to an account is wrongful if it is the credit side of a money transfer obtained contrary to section 15A' and, it goes on in (4), 'A credit to an account is also wrongful to the extent that it derives from - (a) theft; (b) an offence under section 15A; blackmail; or stolen goods.' So it is only if you are aware, if you have the necessary mental knowledge, that the money derives from those four sources, that you are likely to be charged with an offence under section 24A. So in other words the inadvertent or mistaken credit to your account by a bank official will not trigger off the offence at all, but if you know that the money has come to your account and is the source or is derived from theft, an offence under section 15A, blackmail or stolen goods, and you fail to account for that and to ensure that the money is reported to the bank, then you are liable to prosecution.

Mr Waft: Just for clarification again, Mr President, that section which the Attorney has mentioned states 'A credit to the account if also wrongful' it is as well as the other, not just because of theft, an offence under 15A, blackmail or stolen goods.

The Attorney-General: Yes. I think the two clauses have to be read together, the two sub-clauses (3) and (4). A credit to an account is wrongful if it is the credit side of a money transfer obtained contrary to section 15A. Now, section 15A, as we have seen, again deals with the situation where you obtain money by deception; you obtain a money transfer. So you are going to be guilty of an offence under 24A if you receive money to your account as a result of deception under 15A. You are also going to be guilty of an offence under 24A if you receive money which is derived from those four things: theft; an offence under 15A; blackmail; or stolen goods.

The President: The motion, hon. members, is that clause 21 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 22.

The Attorney-General: Clause 22, Mr President. This clause inserts a new section 29A in the Telecommunications Act of 1984. It is based on a 1997 Act of the United Kingdom Parliament which implemented the legislative recommendations made in a joint industry in government study group on mobile phone fraud and crime. It is intended to outlaw equipment used for the purpose of dishonestly obtaining a telecommunication service contrary to section 29 of the 1984 Act, which makes the fraudulent use of a public telecommunications system an offence. So the new section creates two new offences in subsections (2) and (4). A person is guilty of the first offence if he has in his custody or under his control anything which he intends to use to obtain a service dishonestly or which he intends dishonestly to allow others to use to obtain a service. He will also be guilty of the offence if he intends to use the thing or allow others to use it for a purpose connected with the dishonest obtaining of the service. A person is guilty of the second offence if he supplies or offers to supply anything knowing or believing that the person to whom it is supplied or offered intends to use it to obtain a service dishonestly, or dishonestly to allow others to use it to obtain a service. He will also be guilty of the offence if he knows or believes that the person to whom the thing is supplied or offered intends to use it or allow others to use it for a purpose connected with the dishonest obtaining.

Subsection (5) provides a penalty for the offences.

Subsection (6) makes it clear that reference to the use of a thing includes the use of data where the thing is used to record data.

Paragraph (b) of that clause amends section 29(1)(b) of the 1984 Act and the section contains the offence of dishonestly obtaining a telecommunications service with intent to avoid payment. The penalty is increased from two years to five years' custody. Mr President, I move that clause 22 do stand part of the Bill.

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

The President: The motion, hon. members, is that 22 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. 23, sir.

The Attorney-General: Thank you, Mr President. This clause deals with procuring disclosure of and selling computer-held personal information. Under the existing legislation information held on a computer and relating to a living individual may not be disclosed by a registered data user or his employee or agent to a person who is not described in the relevant entry in the register of data users which is kept under the 1986 Act. It is an offence knowingly or recklessly to disclose personal data. So, for example, a bank employee who discloses personal data to someone not entitled to receive it commits an offence and, if he was bribed to do so, the person giving the bribe would also be an accomplice. Mr President, I move that clause 23 do stand part of the Bill.

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

The President: Mr Crowe.

Mr Crowe: Mr President, can I just ask the Attorney: there is a big market in selling address lists and I think we all receive junk mail, which is a result of subscribing to either a book club or a CD club or whatever, and I would imagine, and perhaps the Attorney can confirm, that even voters' lists are sold to agencies in order that promotion mail or junk mail is sent to recipients. How does this clause cover those areas because, presumably, is it not intended to cover legitimate businesses, it is to cover the illegal use of personal data on computers which are not registered with the data protection registrar. Is my understanding correct?

The President: Mr Waft.

Mr Waft: Yes, can I clarify the position also similarly, and with regard to the voters' lists, I understand computer information can be obtained on disk for members who are standing for election. How does that relate to the situation in this clause?

Mr Lowey: Could I just add to that? Again, about the data protection. We all get junk mail, but the thing that has worried me recently is that - and it is no secret because I will give my date of birth; it is the 12.02.38, but the reality is I had insurance companies sending me letters with my name and date of birth and I wondered how on earth a private insurance company could get hold of personal details like that, and so while we have the Data Protection Act, which is personal data supposed to be protected, I wonder how it is that these things can happen.

The President: Hon. members, the Attorney to reply to the debate.

The Attorney-General: Yes, thank you, Mr President. I am afraid I do not know whether voters' lists are sold or not. I was under the impression that you were able to obtain those from the Registrar if you, for example, were a potential candidate in an election. I was not aware that they were sold -

The President: You could buy additional copies.

The Attorney-General: Yes. It would be rash of me to speculate an answer, I am afraid, on the voters' lists and so on, and indeed, in relation to junk mail and dates of birth generally, these are, I am afraid, speculative questions. The point is, under this particular clause, we are creating an offence dealing with the situation where someone discloses personal data knowing that he has no right to do so, because there are only certain people who are entitled to have details of somebody's personal data on a computer.

The President: Hon. members, the motion then before us is that clause 23 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. We turn to clause 24, sir.

The Attorney-General: Thank you, Mr President. Clause 24 deals with trespass. It amends section 4 of the Criminal Justice Act 1996, which contains a power for the police to direct trespassers to leave premises. The law presently requires that there be two or more persons on the premises before the power can be exercised. The provision amends the 1996 provision to allow for the powers to be exercised where one person rather than two is present on the premises. Paragraph (b) replaces the existing subsection (3) - that is, power of arrest without warrant - with an updated power which is consistent with the Police (Powers and Procedures) Act 1998. Mr President, I move that clause 24 do stand part of the Bill.

Mr Kniveton: Yes, thank you, Mr President, and I beg to second, sir. I just have one point to raise and that is 'that any person or persons have entered premises' - could we have a definition of 'premises'? Do they include land, beaches, glens and such like?

The President: Mr Attorney.

The Attorney-General: Mr President, 'premises', as from my recollection of the legislation, covers buildings and land but not land in public ownership.

The President: The motion, hon. members, is that 24 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Now we start with part 7 and clause 25 and schedule 4, sir.

The Attorney-General: Thank you very much, Mr President. As you say, clause 25 introduces schedule 4, which makes provision in relation to conspiracy in the Island as to undertake certain criminal acts outside the Island. Paragraph 1 of the schedule applies section 330 of the criminal code so that it applies to an agreed course of conduct to commit acts which, if done in the Isle of Man, would amount to an offence specified in or under paragraph 4 (1) of the schedule, and those are known as scheduled offences. The offence must also be an offence in the place where it is intended to be committed, so the paragraph sets out the conditions on which section 330 will apply. The circumstances which this provision deals with are those which occur where, for example, a person in the Isle of Man enters into an arrangement with persons outside the Island to undertake acts which amount to corrupt transactions outside the Island.

So sub-paragraph (1) applies that section if the conditions set out in the subsequent sub-paragraphs are satisfied.

Sub-paragraph (2) requires the agreed course of conduct to involve an act or happening which is intended to take place outside the Island.

Sub-paragraph (3) requires the act or event to constitute an offence under the law of the other country or territory.

Sub-paragraph (4) requires the agreement to fall within section 330 if all the elements of the offence were committed in the Island. Sub-paragraph (5) requires that a party to the agreement, or his agent, does something in the Island in relation to the agreement before its formation or a person becomes a party in the Island or a party or his agent acted in pursuance of the agreement in the Island. One of these requirements is essential to give a proper connection between the agreement, the parties, and the Island.

Sub-paragraph (6) applies the offence of conspiracy under section 330 of the code as if the scheduled offence in the other country or territory is an offence under the law of the Island. Paragraph 2 deals with incitement to commit certain acts outside the Island. Whereas conspiracy requires two or more conspirators, incitement can be committed by a single person. In general terms, incitement is influencing the mind of another to commit an offence.

If I could deal then with paragraph 3 of the schedule, that paragraph contains supplementary provisions for both paragraphs 2 and 3 and sub-paragraph (1) deals with cases where, under the law in force in the other country or territory, the country is not, under that law, described as an offence but nonetheless attracts punishment. Such an act is to be treated as an offence for the purposes of paragraphs 1 and 2.

Sub-paragraph (2) crystallises defence and prosecution submissions at an early stage. This will avoid delays at the hearing if the court is attempting to determine whether a foreign country or territory has a similar offence.

Sub-paragraph (3) defines 'relevant conduct'.

Sub-paragraph (4) permits the court to allow the defence to require the prosecution to show that there is an equivalent offence in the other country or territory, even where a notice under sub-paragraph (2) has not been served. This gives the court sufficient discretion to waive the notice where justice demands.

Sub-paragraph (5) applies to proceedings in the Court of General Gaol Delivery. The question of whether there is an equivalent offence will be decided by the deemster.

Sub-paragraph (6) makes it clear that British citizenship is irrelevant for the purposes of guilt.

Sub-paragraphs 7 to 9 provide interpretive provisions for references in other statutory provisions, to conspiracy or incitement, and in paragraph 4 (3) of the schedule it is made clear that it does not apply in respect of things done before the coming into force of the schedule. This prevents retrospective effect. Mr President, I move -

The President: Would you like to take us to clause 26 as well and finish part 7?

The Attorney-General: Yes, certainly, sir. Clause 26 deals with attempts. This clause inserts new subsections in section 9 of the Criminal Law Act 1981. That section creates the offence of attempting to commit an offence. The punishment is the same as if the principal offence had been committed.

The new subsection (2) declares that it is an attempt, where a person does an act which is more than merely preparatory to the commission of the offence. The wording is similar to that currently used in England.

Subsection (3) penalises anyone who carries out what would amount to the conduct required for an attempt to commit an offence, but for the existence of any facts or circumstances which render the commission of the intended offence impossible. The classic example there: the would-be thief who put his hand into an empty pocket with the intention of stealing. Such a person would be guilty of an attempt to steal.

The proposed new subsection (4) deems a defendant to have the requisite intent for an attempt to commit an offence if, on the facts or circumstances of the particular case as he believed them to be, he would be regarded as having that intent. So, Mr President I move that clauses 25 and 26 do stand part of the Bill.

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

Mr Crowe: Thank you, Mr President. I think at the second reading we said this was closing a loophole, which is an important part of the Bill. May I just ask the Attorney: where there are two parties, one a person on the Island and one a person off the Island, would proceedings commence against the person on the Island or would you have to bring the other person to the Island as well to conduct proceedings?

The President: Mr Attorney to reply.

The Attorney-General: Thank you very much, Mr President. I think that question raises similar issues to the ones we looked at when we were looking at schedule 2 and so on, dealing with sexual offences committed outside the Island, and I think the answer I gave there was that it could well be that offences could be committed in both countries, the foreign country and in the Isle of Man, but if we were looking at conspiracy, then we would really wish to have both defendants here in the Isle of Man to form the basis of a prosecution in the Isle of Man.

The President: Hon. members, the motion before us is that clause 25, schedule 4 and clause 26 - in other words, making up part 7 - 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 part 8 and we will take clause 27.

The Attorney-General: Thank you very much, Mr President. Clause 27 introduces the new anti-social behaviour order, which is concerned with the prohibition of acts that cause harassment, alarm or distress. A summary court may make an anti-social behaviour order where it is proved that the relevant person has acted in a manner which has caused, or was likely to cause, harassment, alarm or distress to one or more persons not of his household, and it is necessary to protect persons from further anti-social acts by that person. The order may prohibit the person from doing acts to the extent that the prohibition is necessary to afford the necessary protection, and breach of the order is punishable by a fine. The order is

analogous to an injunction and is limited to the extent that it is necessary to protect people from the harassment et cetera. So there is therefore a so-called civil stage where the perpetrator is ordered to cease the behaviour and not to recommence it for the duration of the order, and only if he breaches that first stage does the criminal stage kick in, as it were, and the person becomes potentially liable to imprisonment or a fine. The provisions are based on a 1998 Act of the United Kingdom Parliament.

So sub-clause (1) enables an application to be made for such an order by the Department of Local Government and the Environment, the Department of Education, a local authority or the Chief Constable.

Sub-clause (2) requires consultation between those authorities before making an application.

Sub-clause (3) requires applications to be dealt with by courts of summary jurisdiction.

Sub-clause (4) enables the court to make an anti-social behaviour order in respect of a person where it is proved that that person has acted in a manner which has caused, or was likely to cause, harassment et cetera and that it is necessary to protect those persons in the relevant area from further anti-social acts.

Sub-clause (5) requires the court to disregard any acts of the defendant which were in fact reasonable in the circumstances.

Sub-clause (6) permits the order to prohibit the person concerned from doing the acts.

Sub-clause (7) permits the order to have effect for a period not exceeding three years.

Sub-clause (8) permits the court to make further orders in respect of a person who has been the subject of an order in the past.

Sub-clause (9) makes it an offence to breach the order, and the penalties are prescribed in sub-clause (10). A person charged with the breach of an anti-social behaviour order will have a defence if he can satisfy the court that there was a reasonable excuse for doing that which he did.

Sub-clause (11) rules out the possibility of a conditional discharge for a conviction of an offence under sub-clause (10). The person concerned necessarily will have shown himself to be a person who does not comply with conditions set by a court and therefore a conditional discharge would be entirely inappropriate.

Sub-clause (12) defines 'relevant authority' for the purpose of the clause. Mr President, I move that clause 27 do stand part of the Bill.

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

The President: Mr Delaney.

Mr Delaney: I am more than pleased, I am sure the members are, to see such a clause like this coming. I just need a clarification, if I may. I, at the moment have - not in my own area, thank God - people who are virtually making hell on earth for their neighbours in relation to certain activities they carry out, and we all know of them through our experience in Tynwald. Will this now give the opportunity, for example, for the local authority to go for an order through the courts to prevent such activities as harassment of neighbours possible? That is the one

that springs readily to mind. Is that the case now? I know, without mentioning areas or names or locations, of one case which the learned Attorney is aware of and which I hope has been rectified now but which has gone one for nearly 14 years. Is this particular clause to aid the prevention of that happening over such a long period? I think he is aware of the case I am referring to, not too far from this building. We do not want to mention names do we, Mr President?

The President: Mr Radcliffe.

Mr Radcliffe: Mr President, could I ask the learned Attorney, noting in sub-paragraph (12) that there is an involvement with the Department of Local Government and the Environment, is noise covered by this particular section - excessive noise? I have heard a tale of neighbours who perhaps were at loggerheads but one of them spends a large part of the night playing loud music with the accompanying throb of the beat with the music. There are young children, I think, in one of the houses involved and I can think of nothing worse than to have that sort of thing rattling on for part of the night, and I ask directly, is the involvement of the Department of Local Government and the Environment just to do with that sort of situation?

The President: Mr Lowey.

Mr Lowey: Again, I welcome the introduction of this sort of legislation. I then have to come to clause 11, where it actually takes away the authority of the court to give a conditional discharge. I cannot recall having seen any piece of legislation that is before us where that sort of clause is put in to deny a court the ability to sentence as it thinks fit, and while the Attorney in justifying the clause says the person will have been prosecuted because he has shown a disregard for court orders, it does seem strange to me that we are actually now introducing into law a clause which prevents the court from exercising its judgment. Now, as lawmakers we put the sentences as a maximum; we never, or very rarely, put it in as a minimum and I just wonder if the Attorney can elaborate a little bit further for me on that particular one, please.

The President: Mr Waft.

Mr Waft: This Bill does seem to have similar wording to the Public Order Act where a constable can intervene in situations where there is someone who is likely to cause harassment along with the stress, and yet this does give the responsibility to the Department of Local Government and the Environment, and I take the point of the hon. member Mr Radcliffe who mentioned the noise situation. I have heard of instances where, despite the department being informed of this, the person has to take readings of where and when the noise took place. What were the decibels that happened? How often does it take place? And when all this has been detailed down, they have turned round and said, 'Well you have all the information, you can take a civil action.' Now, I do not think that is what the implication is with regard to noise. I would hope that this clause will enable the department to take action far more quickly than it does with regard to noise abatement. Thank you, Mr President.

The President: I ask the Attorney to reply to comments made in clause 27.

The Attorney-General: Thank you very much, Mr President. Dealing with the question raised by the hon. member Mr Delaney, I think that this clause is designed to cover the so-called 'neighbours from hell,' if you will forgive me for saying that. The most complaints that

one receives in the Attorney-General's chambers from hon. members is in relation to their constituents who are worried and concerned about nuisance by their neighbours or so on and so forth and, of course, one of the major problems we have is that very often the victims of this very difficult anti-social behaviour are elderly people, frightened people who are unable and unwilling to confront the perpetrators of the conduct in court, and moreover they do not have the financial wherewithal to do it. I am very relieved indeed to see this provision in the Bill, because I am sure that it will enable the public authorities (**Mr Delaney:** Hear, hear.) to champion the cause of those people who are victims of this anti-social behaviour. As I say, it occurs most often in relation to landlord and tenant situations but, to again answer the question raised specifically by the hon. member Mr Radcliffe, it certainly is designed to cover noise, and the Department of Local Government, of course, have inspectors who can monitor the level of noise and they can take proceedings, they can obtain the injunction - because that is what it is really, almost a civil injunction within this criminal act - and if there is any breach of the injunction the criminal proceedings will be brought against them.

In relation to the question raised by the hon. member, Mr Lowey, Clause 27 (11), it is, perhaps, a little unusual for the judges to be told that you must not impose a conditional discharge in relation to a person who has been convicted of an offence of breaching an anti-social behaviour order, but I think that that is logical, with respect, because clearly, as I have said to you earlier, the person concerned has shown himself to be totally unwilling to comply with the court order. The essence of a conditional discharge is that you are discharged, you are not going to be sentenced as you otherwise would be, provided that you accept and you undertake an obligation to the court which, almost by definition, you have disregarded, so I think it is entirely right that the judges should not be able to impose a conditional discharge in such circumstances, and of course in the context of the Human Rights Act we are concerned sometimes about judges having too much power. Here it is parliament telling the judges that, in relation to this, your powers are confined, and I do not think there is anything wrong with that in this particular context.

In relation to the question raised by the hon. member, Mr Waft, I agree that there are similarities with the Public Order Act and the essential thing is that the department will be able to take action without the victim having to act as plaintiff in the court proceedings.

The President: Now, hon. members, the motion before us is that 27 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 28 and schedule 5. Mr Attorney.

The Attorney-General: Thank you, Mr President. Clause 28 introduces schedule 5, which confers on the courts the power to impose curfew orders and, as the name implies, a curfew order requires the offender to remain for periods specified in the order at a place which is specified. Different places or different periods may be specified in the order for different days, but the order is not to last more than six months and the period specified must not amount to less than two hours and no more than 12 hours in any one day. There is an obligation imposed on the court by sub-paragraph (3) to avoid conflict with the offender's religious beliefs or with any other community service order, probation order et cetera, and interference with the times at which he works or attends school or college. Where a curfew order is made, there must be a person made responsible for monitoring the whereabouts of

the offender, and sub-paragraph (4) of that schedule requires the person to be of a description specified in an order made by the Department of Home Affairs.

Paragraph 5 of the schedule imposes limitations on the court. Curfew orders can only be made if arrangements are in place for monitoring the offender's whereabouts and the Department of Home Affairs has notified the court of that fact.

Paragraph 6 requires the court to give an explanation of the curfew order to the offender in ordinary language. The offender must also have explained to him the consequences of a breach of the order and the court has the power to review the order if necessary. An application for a review may be made by the responsible person or by the offender himself.

Sub-paragraph (7) imposes a further obligation on the court before making a curfew order. The court must obtain information about the place at which the person will be required to remain under the order. The court must consider that information and the attitude of the person at the premises who may be affected by the enforced presence of the offender. It is anticipated that this will normally be the family home.

Sub-paragraph (8) requires a copy of the curfew order to be given to the offender and to the responsible person.

Sub-paragraph (9) enables the department to vary the periods specified. An order under the paragraph is required to receive the approval of Tynwald before it comes into operation.

Paragraph 2 of the schedule contains procedural requirements. It imposes an obligation on the courts to ensure that the sentence and orders are the most suitable for the offender, and the court must take into account the information about the offender which is before the court.

Sub-paragraph (2) deals with restrictions on liberty which are imposed by the orders. The restrictions must be commensurate with the seriousness of the offence and other offences associated with it. The court is obliged to take into account all the information it has about the circumstances of the offence and other offences associated with it. All aggravating or mitigating factors in other words, must be taken into account.

Paragraph 3 deals with enforcement, and sub-paragraph (1) enables an application to be made for the issue of a summons or the issue of an arrest warrant. Where a person fails to comply with the requirements of a curfew order, summons or warrant will direct the defendant to be brought before the High Bailiff or the magistrates.

Sub-paragraph (3) - where a court is satisfied that that person has failed to comply with the curfew order and there is no reasonable excuse for the failure, the court may impose a fine not exceeding £5,000, and if the curfew order is made by a summary court it may revoke the order and deal with the offender for the original offence. Alternatively, the matter may be referred to the Court of General Gaol Delivery.

Sub-paragraph (4) is a procedural provision which requires the summary court which refers a matter to the Court of General Gaol Delivery to notify the Chief Registrar.

Sub-paragraph (5) makes provision for the powers of the Court of General Gaol Delivery in dealing with an offender. The maximum fine for the failure is £5,000 but in addition the court may revoke the order and deal with the offender for the original offence.

Sub-paragraph (6) ensures that there is a right of appeal, and sub-paragraph (7) enables the Court of General Gaol Delivery to determine a question of whether a person has failed to comply with the requirements of the order, and that must be dealt with by a deemster without a jury.

Paragraph 4 deals with amendments of the curfew orders. The paragraph will enable the court to review a curfew order whilst it is in force. Applications can be made by the offender or by the person responsible for monitoring compliance or where the offender is convicted of a further offence. The application is made to a Court of Summary Jurisdiction.

Sub-paragraph (2) permits the Court of General Gaol Delivery, when dealing with a person who is already subject to a curfew order, to revoke the curfew order and deal with the offender as if he had just been convicted of the original offence.

Sub-paragraph (3) confirms that there is a right of appeal against the sentence imposed by a summary court or the Court of General Gaol Delivery in place of a curfew order.

Sub-paragraph (4) obliges the Court of Summary Jurisdiction to ensure the presence of the offender either by summons or warrant.

Paragraph 5 deals with the regulation of curfew orders. It confers powers on the Department of Home Affairs to make rules regulating the monitoring of the whereabouts of persons subject to curfew orders.

Paragraph 6 is an interpretation clause. It defines 'responsible person' as either a probation officer where a probation order is in force, otherwise it is the person responsible for monitoring the curfew order under paragraph 1(4) of the schedule.

Sub-paragraph (2) makes it clear that references to persons under the age of 17 years are references to persons who are under that age on conviction.

Sub-paragraph (3) confers jurisdiction to deal with the enforcement and amendment of curfew orders on juvenile courts where a juvenile - that is, a person under the age of 17 - is the subject of the order.

Paragraph 7 deals with offenders who are under the age of 17. It prevents curfew orders being made in respect of juvenile offenders unless the provisions of paragraph 8 have been brought into operation by means of an appointed day order. If we could look at paragraph 8(2) that requires the court to consider the family circumstances of the person who is under the age of 16 and the likely effect of a curfew order on those circumstances.

Paragraph 8(3) limits the maximum period of the curfew order to three months rather than six months for juveniles, and paragraph 8(4) will enable the department to impose additional restrictions and orders which must receive Tynwald approval before they come into operation.

Mr President, I move that clause 28 and schedule 5 do stand part of the Bill.

Mr Kniveton: I beg to second, sir.

The President: Mrs Christian.

Mrs Christian: Mr President, I think the clause has to be welcomed. It does give another mechanism to the court to deal with offenders. However, it is clear that curfew orders can only

be effective if they are properly monitored and I guess that there are resource implications here -

A Member: I am sure there are.

Mrs Christian: - which will need to be addressed. However, as a mechanism it has potential, I think, of dealing with certain cases.

The President: Mr Lowey.

Mr Lowey: I agree absolutely. It must be right to keep people out of prison, and yet we have to protect society. Most of us are restricted in a way when we work, working hours; our free time - and that is what you are restricting here - is free time, weekends and evenings, and I think that is right and proper, and this seems to me to be another option that can be given. This is not a soft option, this is in fact restricting people's free time and that is really what, at the end of the day, most people feel aggrieved about when their freedom is taken away from them. I personally believe it is a sensible step forward. The technology is now about right and the way it will be monitored, I think, will be the test of this alternative to prison, and I genuinely believe it is the right way forward for a whole host of things. For the life of me we have got to try and reduce the numbers in prisons full time. However, having said that, I do think you can restrict people's freedoms in a variety of ways. This is only one option, it is not the only option, but I do think it is an option that the courts should have, and wherever it has been tested out I think we only ever hear of the what I would call the breakdowns but not of the success stories. I personally believe, for example, that we should try and keep people out of prison more than we do. I think it is a matter of last resort, not first resort, and I do worry at times that our only instrument that we have got is gaol or not to send them to gaol, and I do not think that is right. I think this Bill is to be welcomed for the whole variety of alternatives it offers, and this particular one I do welcome.

The President: Mr Attorney to reply.

Mr Waft: Could I just ask, Mr President, one thing with regard to the curfew orders where we have establishments like Cummal Shee and curfew orders being imposed, what obligations are on officers of similar institutions with regard to residents who have curfew orders imposed on them to actually make sure that they are on the premises?

The President: There is a further question from Mr Waft; maybe, Mr Attorney, you can reply now.

The Attorney-General: Yes, I am not sure, Mr President, in relation to the question raised by the hon. member Mr Waft, whether this actually relates to curfew orders. Of course young offenders who are resident at Cummal Shee have to reside at the institution. The criticism, I suppose, has been that there does not appear to have been a power to require them to reside there - in other words, if they voluntarily leave during the evening who is going to enforce that? I feel quite sure that the imposition of a curfew order can be linked to residents of Cummal Shee and that actually would be a very useful weapon in the armoury of the juvenile courts, so it is an important point.

You very kindly pointed out, Mr President, that there was an amendment in another place. I am afraid I misled hon. members in relation to paragraph 8(2) and (3) of schedule 5. There had been an amendment to refer to a person being under the age of 17 years rather

than 16 years, and I apologise for having misled hon. members in that respect, but otherwise Mr President, I move that clause 28 and schedule 5 do stand part of the Bill.

The President: The motion, hon. members, is that clause 28 and schedule 5 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 29 and schedule 6 this time, Mr Attorney, please.

The Attorney-General: Thank you, Mr President. Clause 29 amends the provisions of the Criminal Justice Act 1963, which deals with probation orders, and if we could look at schedule 6, the schedule sets out a new schedule 1A which is inserted into the 1963 Act. It will enable the court to require that a person on probation will be subject to testing for drugs during the term of the probation order so that if the tests disclose that fresh drugs are present in the body or that the level of drugs has not reduced since the last testing, that should be treated as a failure to comply with the probation order and may result in the probationer being returned to court for further action.

Paragraph 1 limits the requirements of the schedule to circumstances where the court is satisfied that the offender is dependent on or has a propensity to misuse drugs.

Paragraph 2 permits the court to include the testing requirements in a probation order. This will mean that during the whole or part of a probation order there will be periodic testing to ascertain the presence of drugs.

Paragraph 3 obliges the offender to supply samples for testing.

Paragraph 4 requires the responsible probation officer to make arrangements for the taking of samples by qualified persons.

Paragraph 5 requires the court order to specify the frequency of testing and the tests which are to be undertaken.

Paragraph 6 deals with cases where a test indicates either that drugs are present where there were none before or that there has been no reduction in the level of drugs present since last tested. In that case, as I say, there will be a failure to comply with the requirements of the probation order and it will then be for the officer to refer the matter back to court as a breach of the probation order.

Mr President, I move that clause 29 and schedule 6 do stand part of the Bill.

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

Mr Lowey: Could I ask the Attorney - and this, perhaps, is showing my ignorance of the drugs scene - if I am a very heavy drug user, say a heroin user, I am led to believe that you take them off it on a gradual basis; you do not turn the tap off straight away, it is on a gradual basis. But under this probation order, if you are tested for drugs and if it is found, 'from the urine sample that you have got drugs in your body, is there some sort of table that allows the reduction of the drugs until it is. . . or a substitute? I mean, I am on the technology now as opposed to the principle. I think the principle of testing is right, but how do you. . . and I do not see it in the schedule in any way that there is an ability to allow for people to come off them on a gradual basis, which apparently is the medical way of getting from high dependency to a zero dependency. Perhaps the Attorney could say to me why or how that is?

The President: Mrs Christian.

Mrs Christian: Mr President, I think this particular clause and schedule is yet another very useful instrument in the armoury of the law enforcing authorities. I think the probation service in particular will very much welcome the introduction of this facility.

With regard to the comment by the hon. member, Mr Lowey, I think the wording 'relevant drugs' is important in the schedule because I suppose one of the difficulties in the past has been that probationers could cock a snook at the probation officer if there is no effective method of determining whether or not they have breached any condition of probation in respect of drug usage, but mechanisms are there which could identify and distinguish between illegal drugs and drugs of treatment, and I am quite sure that was provided for in the wording, 'relevant drugs' in this particular schedule. I do believe this is going to be very useful for the probation service.

The President: Can I ask Mr Attorney to reply?

The Attorney-General: Thank you very much, Mr President. I think the question raised by the hon. member Mr Lowey can be answered by saying that it must, I think, be a matter for the medical officers to determine. People with experience in treating drug-related problems, whether it is alcohol or a prohibited drug - it will be for the experience of the medical officer to determine whether someone is, as it were, weaning himself off a drug or whether he is actually taking on new quantities of drug. As I say, that must, I think, be a matter for the experience of the medical officer and I entirely endorse what the hon. member Mrs Christian has said, that there must be a distinction between drugs of the prohibited kind and drugs which are used for treatment, and again it will be up to the medical officers to determine that.

The President: Hon. members, the motion is that clause 29 and schedule 6 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Perhaps we could take 30 to 35, sir.

The Attorney-General: Thank you very much, Mr President. Clause 30 deals with community service orders and makes two amendments to the existing regime. The first is to enable community service orders to be imposed in respect of persons who are of or over the age of 13 instead of persons who are of or over the age of 14 as at present. The second amendment replaces paragraph 4 of part 1 of schedule 3 to the Criminal Law Act 1981. The effect is to require that the person supervising community service in respect of juveniles is to be a person nominated by the Department of Health and Social Security. The supervisor of persons over the age of 17 is to be nominated by the Department of Home Affairs. At present the Department of Home Affairs nominates the responsible officer in all cases.

Sub-clause (2) repeals a provision in the Criminal Law (Amendment) Act 1985, which amended the paragraph replaced by subsection 1(b).

Clause 31 inserts a new section into the Summary Jurisdiction Act 1989 and provides an alternative mechanism to custody for dealing with fine defaulters. In such cases the court will have the option of ordering a fine defaulter to undertake community service.

Clause 32 amends the Criminal Justice (Penalties, Etc.) Act 1993 which deals with combination orders. That section enables a court to combine probation with a community service order. At present the maximum number of hours of unpaid work which a person may be ordered to undertake is 100 hours. This clause increases the maximum to 120.

Clause 33 deals with compensation orders. It amends schedule 6 to the Criminal Law Act 1981 and that schedule 6 at present prevents compensation being ordered to the dependents of a person who has died as a consequence of a person's death, nor can such an order be made in respect of injury, loss or damage due to a motor vehicle accident. Paragraph (a) of the clause repeals that limitation.

Paragraph 5 of schedule 6 limits the maximum amount of compensation which may be awarded by a Court of Summary Jurisdiction to £2,000. That figure was set in 1981; an increase is long overdue, and paragraph (b) increases the maximum amount of compensation from £2,000 to £5,000.

Clause 34 deals with reparation orders. It will enable the court to order persons convicted of offences to make reparation to persons who have suffered from the commission of the offence or to make reparation to the community at large.

Clause 35 contains a number of supplemental provisions in respect of reparation orders. It obliges the court to obtain a written report by a person nominated under clause 34(10) before making a reparation order. The report must indicate the type of work that is suitable and the attitude of the victim to the reparation.

Sub-clause (2) obliges the court to explain in ordinary language the effect of a reparation order and its requirements, and sub-clause (3) creates an offence.

Mr President, that deals with clause 35 and I move that clauses 30 to 35 do stand part of the Bill.

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

The President: Mr Lowey.

Mr Lowey: Could I ask a question on clause 30? In the case of a person over 17 years of age the person to deal with them is to be nominated by the Department of Home Affairs, under 17 by the Department of Health and Social Security. I can understand a fit and proper person being appointed to deal with young people, but I cannot for the life of me understand why it should be the Department of Health and Social Security. Surely, if you are trying to process a fit and proper person to make sure that they have not got a criminal record it should be the Department of Home Affairs who has access to that information as opposed to the Department of Health and Social Security, which will have to ask the Department of Home Affairs - and we understand all the problems of inter-departmental disclosure of information. I just wonder why we are building that in? Are we just building in bridges which may not work? I understand the reasoning for it and am fully in support of having fit and proper people looking after young people, but it does seem to me to be a splitting of authority when there does not seem to be any need or reason for it, or is there?

The President: Mr Waft.

Mr Waft: I was taking clause 35 and the mention of the fact that before making a reparation order the court shall explain to the offender 'in ordinary language'. Is that a sign that perhaps some of the Bill that is going to be before the courts is going to be in ordinary language in the future?

The President: Mr Radcliffe.

Mr Radcliffe: Perhaps my comment is more of a flippant nature, Mr President, but noting in the table in clause 31 it would appear that those on community service are valued very highly at up to £10 an hour for the bit that they do, and I say a flippant comment but it is intriguing, to say the least, that there are many who are working hard and very very hard for a lot less than £10 an hour.

The President: Mr Crowe.

Mr Crowe: Thank you, Mr President. Can I just ask about reparation orders? Would these be suitable for such offences as graffiti on walls and criminal damage? Would this be suitable for offenders to remove graffiti, because it seems to be an appropriate punishment to fit a crime of that nature?

The President: Mrs Christian.

Mrs Christian: Mr President, first of all in clause 30 I think it is interesting to see the change from 14 to 13, and it is to be welcomed. I think that we need to remind ourselves, probably, that children should, even at younger ages than that, be made conscious of social responsibility and the proper part that they should play in community life, so I think I certainly should welcome a change to 13.

With regard to the comments from the hon. member Mr Lowey, the DHSS is charged with a number of responsibilities in relation to children and perhaps that is the reason for this sub-division, but maybe the learned Attorney would care to expand on that. I am quite sure that whoever does it would have to have cognizance of the needs of children and whether it needs to be one or the other is maybe a moot point.

The clauses in relation to reparation orders are also a new move which, in the right circumstances, I think can do much to satisfy the victim and to perhaps bring about some sort of recognition of their misdemeanour on the part of the offender in a very practical and immediate sense, so whilst we recognise that it will not work in every circumstance I think where the victim is prepared for that to happen it is a very useful measure.

The President: Mr Attorney to reply.

The Attorney-General: Thank you, Mr President. In so far as clause 30 is concerned and the demarcation of work between the two departments, could I suggest that the reason why the Department of Health and Social Security is designated as the relevant department for a person under 17 years of age is that it is that department which has developed and continues to develop the particular expertise in dealing with children and young persons, and that is something which has been stressed, I think, in the forthcoming Children and Young Persons Bill. I know that the director is very keen to promote the welfare of children and young persons, whereas I would imagine that the Department of Home Affairs does not have that particular expertise, although obviously they are expert in very many other matters and areas. The Department of Home Affairs really is concerned more with, I suggest, the police and crime and punishment rather than looking after the best interests of children, so that, I think, is really why we are looking at the DHSS in that particular event.

I do appreciate the reference made by the hon. member Mr Waft to ordinary language. As hon. members may have noticed in the course of my dealing with this Bill, I am struggling sometimes with the language of the Bill but it is a hard job and certainly defendants - when

they come before a court it is incumbent on the judge to make it clear to them exactly what is happening.

I entirely agree and endorse the suggestion made by the hon. member Mr Crowe that a reparation order would be ideal for people who are guilty of inscribing graffiti in public places.

I am obliged to the hon. member Mrs Christian for her general support of those clauses, Mr President.

The President: Hon. members, before us is the motion that clauses 30, 31, 32, 33, 34 and 35 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Now, hon. members, looking at the clock I think it is an appropriate time in which to take a lunch break. The Council will sit again at 2.30 and can I suggest to the hon. member Mr Kniveton, as we are intent on trying to complete and take the third reading as is printed on our order paper today if that is achievable, that you look at an amendment of clause 18 on page 12 which you indicated you may wish to move, sir. Thank you.

The Council adjourned.

Criminal Justice Bill – Consideration of Clauses Concluded – Third Reading Approved

The President: We have made progress as far as clause 36 this morning, so we will continue now with 36 and schedule 7. Mr Attorney, please.

The Attorney-General: Yes, Mr President, clause 36 introduces schedule 7, which contains provisions to enable courts to order offenders to attend attendance centres for specified numbers of hours. The schedule is again based on a provision of the UK Parliament which deals with attendance centres.

Sub-paragraph (1) enables the Department of Home Affairs to provide attendance centres, and sub-paragraph (2) defines them as a place which offenders may be required to attend and receive occupational instruction under supervision. The department is empowered to make rules for regulation and management of the centres.

Sub-paragraph (4) enables the department to enter into arrangements with others for the use of the premises.

If we look at paragraph 2 of the schedule, that enables a court which convicts a person of an offence to make an attendance centre order. The offence must be one which is otherwise punishable with custody, but not an offence for which there is a fixed sentence.

Sub-paragraph (3) deals with discharge and variation of attendance centre orders.

Sub-paragraphs (1) and (2) enable the offender or the officer in charge of an attendance centre to apply for a discharge of an attendance centre order. The application is made to either the Court of General Gaol Delivery or the court of summary jurisdiction.

Sub-paragraph (5) enables the court dealing with the application to impose, in place of the attendance centre order any penalty which was available to it when ordering the original sentence, and sub-paragraph (6) enables a court of summary jurisdiction to vary an attendance centre order on the application of the offender or the officer in charge.

Paragraph 4 deals with breaches of attendance centre orders called 'the rules'.

Sub-paragraph (1) enables a justice of the peace to issue a summons or a warrant to ensure the attendance of the offender before the court where there is a complaint that the offender has failed to attend or has committed a serious breach of the attendance centre rules.

Sub-paragraph (2) provides the options open to the court. The court may order a fine or impose a fine up to £1,000. The court may also deal with the offender for the original offence, but if the original attendance centre order was made by a Court of General Gaol Delivery the summary court must commit that person to appear before the Court of General Gaol.

Sub-paragraph (3) declares a fine for a failure or breach, as is mentioned in the complaint, and that is deemed to be a sum to be paid by a conviction.

If we look at sub-paragraph (6), that requires the courts to take into account the extent of compliance with the attendance centre order. Where the offender wilfully and persistently failed to comply with the attendance centre order the court may impose a custodial sentence, perhaps even if it would not have considered it appropriate in the first instance.

And sub-paragraph (7): where a Court of General Gaol Delivery or a court of summary jurisdiction exercises its powers to sentence the offender in respect of the original offence it must revoke the original order if it is still in force. Mr President, those are the main provisions of the schedule and I move that clause 36 and the schedule do stand part of the Bill.

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

The President: Mr Crowe.

Mr Crowe: If I may ask the Attorney, is it intended that schools be used as attendance centres out of hours from normal teaching, or are new buildings going to be provided here?

The President: Mr Waft.

Mr Waft: I am just checking, on schedule 7 for (2) at the top of page 66, the offender appears before the court has failed without reasonable excuse to attend, and it says in order to impose a fine not exceeding £1,000 and the possibility of General Gaol Delivery - would the court take into consideration the defendant's financial means, their ability to pay a fine, or whether it is just for those of different means?

The President: Those are the only comments relative to clause 36 and schedule 7. Mr Attorney, reply to the debate, please.

The Attorney-General: Thank you, Mr President. The hon. member, Mr Crowe, asks whether schools will be used to provide attendance centres. I am afraid, Mr President, I do not know the policy of the department in respect of their power to provide attendance centres. We can see in schedule 7, paragraph 1(2) that it means a place at which offenders may be required to attend and be given, under supervision, appropriate occupation or instruction. I would imagine, Mr President, that a school could be adapted for that use; it might be an ideal place, say, for young offenders to attend and be instructed in the evening or something like that, but I am afraid I cannot give a definitive answer to that.

In answer to the question raised by the hon. member, Mr Waft in relation to paragraph 4(2) at the top of page 66, as is the usual situation, Mr President, where a court is deciding whether or not to impose a fine, the court will look not only at how serious the offence is but

also will look at the circumstances of the defendant, and it would be quite pointless to impose a fine which the person could not pay.

The President: Hon. members, the motion in front of us is that clause 36 and schedule 7 stand part of the Bill. Will those in favour please say aye; and against no. The ayes have it. The ayes have it.

Now then, Mr Attorney, if we can move on a little bit, perhaps we can take 37 to 41 or 42, whichever you require.

The Attorney-General: Yes, sir. Clause 37 of the Bill, Mr President, introduces the power to impose a sentence which included an extended period of post-release supervision.

Sub-clause (1) of the clause specifies the circumstances in which the powers may be exercised by the court. First of all the court must be proposing to impose a custodial sentence and the offence concerned must be a sexual or violent offence as defined. The court must be of the opinion that the normal period of release on licence from custody is not sufficient to prevent further offences. The normal rules for release on licence are contained in the Custody Act 1993.

So sub-clause (2) enables the court to impose an extended sentence in those circumstances. The term of the sentence is the normal tariff applied by the court for a particular offence, plus an extended licence period, and during that extended licence period the offender will be subject to recall to the institution if any of the conditions of the licence are broken.

Sub-clause (3) limits the extended licence period to 10 years in the case of a sexual offence and five years in the case of a violent offence.

Sub-clause (4) provides that in any event the aggregate extended sentence must not exceed the maximum term permitted for that offence.

Sub-clause (5) provides definitions for 'licence', and you will see there also that 'sexual offence' means one of the serious sexual offences set out in paragraph 2(1) and 'violent offence' is self-explanatory.

Moving to clause 38, Mr President, this clause is based upon section 59 of the Crime and Disorder Act 1998 of the UK Parliament. It inserts a new paragraph 13A into schedule 2 of the Custody Act 1995, which deals with early release of detainees. The new paragraph makes provision in connection with the early release and post-release supervision of prisoners on whom an extended sentence has been passed under the preceding clause. Under the new paragraph the extension period of an extended sentence is not to be reckoned in calculating the date of release on licence of a prisoner serving such a sentence, but is to be determinative in establishing the duration of the licence period, and a prisoner serving an extended sentence who would otherwise be released unconditionally is instead to be released on licence for the duration of the extension period.

If I could move to clause 39, which deals with the re-release of prisoners serving extended sentences, this clause inserts a new paragraph 13B in schedule 2 of the Custody Act. The clause makes provision for the re-release of prisoners serving extended sentences who have been recalled to prison while on licence, enabling the Parole Committee to order the detainee's release where it is satisfied that he no longer poses a threat to the public.

Sub-clause (1) specifies the circumstances to which the paragraph applies. It applies to a detainee serving an extended sentence who has been released on licence. The paragraph is triggered if the person is recalled and his licence revoked. The licensee will thereupon return to detention.

Clause 40 inserts a new paragraph 2A into schedule 2 of the Custody Act to impose restrictions on the unconditional release of specified sex offenders. In such cases an early release will be release on licence instead of unconditional release.

Clause 41 inserts a new sub-paragraph into paragraph 8 of schedule 2 of the 1995 Act and makes it clear that there is power to enable the release of a detainee on licence to be made on conditions which secure the electronic monitoring of the person's whereabouts.

Finally in this group, clause 42 inserts a new section in the Custody Act 1995 which will enable samples to be taken from detainees to detect drugs or alcohol.

Sub-clause (1), or subsection (1) of the proposed new section 19A, authorises any officer of an institution to require a detainee to provide samples for the purpose of ascertaining whether that person has any drug or alcohol in his body, and subsection (2) defines 'drug' by reference to the list of controlled drugs under the Misuse of Drugs Act 1976 and also defines 'intimate sample'. Mr President, I move that clauses 37 to 42 do stand part of the Bill.

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

The President: Mrs Christian.

Mrs Christian: Can I just ask for some clarification on clause 39, which deals with re-release of prisoners serving extended sentences? Is it correct to interpret this as meaning that if a person is brought back because of a breach of their licence condition, they can subsequently be released? Is that release again under licence or is it a clear-cut release?

Mr Lowey: Could I support the principle of what is underlining these clauses, Mr President? I do believe that prisoners who do go out on release, especially for these particular crimes, are better, and I think it is a bigger comfort to the community that under licence they are under supervision, whereas if you let them out early without any counselling or checking, then I think the community is at greater risk. I think the record quite clearly shows that prisoners on release reoffend less than those that in the past have done. I think the thinking behind this is sensible. It keeps them on an extended check list and by the professionals, the probation service in particular, I think, and I believe that that is the right way to be going about it. Again I think it is the carrot-and-stick approach and I do believe that society is better served by having these people, when they are released, being counselled and checked and monitored by the authorities, and I think it is the right way forward.

The President: Mr Waft.

Mr Waft: Yes, Mr President, I am just a bit concerned about the phraseology used in clause 40, 2A with regard to the form of wording and when it says about a 'mental patient or a 'sub-normal person'. I think present-day phraseology has outdated, those references in the wording. Thank you, Mr President.

The President: Sorry, Mr Waft, are you dealing with clause 40?

Mr Waft: Clause 40, 2A at the top of page 29 where it refers to sub-clause (vi) '(sexual act with a mental patient)', and sub-clause (xv) '(procurement of a subnormal person)'; it is just the phraseology of the wording. It could be phrased better, using modern, up-to-date language.

The President: No other member wishing to speak, Mr Attorney, perhaps you could reply to the queries raised on those clauses.

The Attorney-General: Thank you, Mr President. To answer the question raised by the hon. member Mrs Christian, I confirm that the intention is that the prisoner - because that is what he is at that stage - does remain on licence so it may be that the person will have been released on licence and then it is considered that he ought to be recalled, because perhaps he might have been in breach of a condition or he might have demonstrated some tendency to commit a further offence. He is then recalled, but he can then be released again and he remains subject to supervision right up until the time when the licence period comes to an end.

I am grateful to the hon. member, Mr Lowey, for his general support of the provisions in clause 39, Mr President, and I entirely support his sentiments in that respect. I also cannot help but agree with the hon. member, Mr Waft, when we look at the definition of some of the sexual offences in the Sexual Offences Act 1992, and certainly we do refer, in the Mental Health Act now, to a patient rather than a mental patient or a subnormal person. I quite agree that those are inappropriate words and perhaps we can look at that when and if the Sexual Offences Act is revised on a more comprehensive basis.

The President: Right, hon. members, the motion before us is that clauses 37, 38, 39, 40, 41 and 42 stand part of the Bill. Will those in favour please say aye; and against, no. The ayes have it. The ayes have it.

That leads us up to 43, and I think it is appropriate to take this one on its own. Clause 43.

The Attorney-General: Thank you, Mr President. Clause 43 amends section 1 of the Criminal Justice Act 1990. That is an important provision which deals with the confiscation of the proceeds of offences, other than drug trafficking offences which are dealt with in a separate piece of legislation. Under the present legislation confiscation orders may only be made if the benefit from crime is at least £10,000. The effect of the amendment which is in this clause is to abolish the minimum amount of £10,000; this will mean that the court may order confiscation in cases where the benefit is less than £10,000.

The amendment in sub-clause (2) is consequential.

Sub-clause (3) amends section 2A of the 1990 Act and is also consequential.

Sub-clause (4) introduces a new power to undertake investigations into whether any person has benefited from any criminal conduct or into the extent or whereabouts of the proceeds of any criminal conduct. Mr President, I move that clause 43 do stand part of the Bill.

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

The President: Mr Waft.

Mr Waft: Could I just have this clarified, Mr President, with regard to the proceeds of crime? How far do they investigate where the proceeds have gone - in other words, nearest relatives or next of kin or friends or . . . ? How far do they investigate that?

The President: Right, Mr Attorney.

The Attorney-General: Mr President, yes, I can confirm that under the Criminal Justice Act very extensive powers are given to the police and to the courts to investigate transactions; so-called gifts which might have been made at an undervalue to relatives and friends will all be looked at, and if the court is satisfied that the asset concerned represents the proceeds of crime, then that asset can be confiscated and, as I say, also transactions leading up to the acquisition or disposal of the asset can be looked at in very great detail.

The President: Hon. members, the motion is that clause 43 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Now, at this stage I understand that Mr Crowe wishes to move four new clauses. Now, how do you wish to deal with them. Do you wish to deal with all which is on our white paper as one or do you wish to take them individually?

Mr Crowe: Mr President, if I can take the four new clauses which will come in after clause 43 as separate clauses, and then I will take after clause 50 a new clause and after clause 56 another new clause? Now, the numbering may present a slight problem. I will leave this to yourself and Arthur as to whether we number them 43A, 43B -

The President: Can I suggest we renumber as -

The Clerk: 43A, B, C and D.

Mr Crowe: You can have 43A, B, C and D or renumber 44 -

The President: No, we will renumber A,B,C,D and work from there.

Mr Crowe: Thank you, Mr President, so just taking the four clauses as an introduction, then I will take each clause individually so that the four new clauses are dealing with the proceeds of criminal conduct -

The President: I am sorry, hon. member, to hold you up again, just so that I have it right, is it necessary to have these clauses debated in principle before we debate them as individual or are we quite happy just to take them as they are?

The Clerk: The Council does not have that procedure.

The President: Right, okay, just so that I am happy and I know where I am going. Okay, we will deal with the clauses, then. Mr Crowe.

Mr Crowe: Thank you, Mr President. These four new clauses after clause 43 are dealing with the proceeds of criminal conduct and the four new clauses will lead to improved monitoring, investigation and prevention of the laundering of the proceeds of crime and the more efficient exchange of criminal intelligence between criminal intelligence agencies.

So if I take the new clause 43A first, which is an increase in the penalties for the breach of money laundering codes, this new clause increases the penalty which may be imposed under the anti-money laundering codes made under the Criminal Justice Act 1990. At present the maximum penalty is £5,000 and/or six months' custody. That level is not believed to be sufficient to represent a real penalty against many commercial enterprises, and in future the fine will not be limited. Mr President, I beg to move the new clause:

Increase in penalties for breach of money laundering codes.

43A. *In section 17F(1)(d), of the Criminal Justice Act 1990 [c. 1] for the words from “on summary” to the end of the subsection substitute -*

“ -

- (a) *on summary conviction to a fine not exceeding £5,000 or to custody for 6 months or to both; and*
- (b) *on conviction on information to custody not exceeding 2 years or to a fine, or to both.”.*

Mr Lowey: I beg to second, sir.

The President: Right, hon. members, we have a new clause to insert after 43 - 43A. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Then we will turn to 43B, Mr Crowe.

Mr Crowe: Thank you, Mr President. This is to do with the repeal of the requirement for the Attorney-General’s consent to disclosure of certain information, and this new clause will repeal the provisions of the Criminal Justice Act 1990 which require the Attorney-General to give his consent to the release of certain information to criminal intelligence agencies outside the Isle of Man in cases where the information is passed for criminal investigations and criminal intelligence purposes. The consent is viewed as a possible impediment to the proper flow of criminal intelligence. It might be perceived by international criminal intelligence agencies as a provision which indicates a lack of goodwill on the part of the Isle of Man to co-operate in the international effort to fight organised crime. Mr President, I beg to move clause 43B:

43B. *In section 17I of the Criminal Justice Act 1990 -*

- (a) *subsection (1)(a);*
- (b) *subsection (4); and*
- (c) *in subsection (5), the words “(1) or”,*

are repealed.

The President: Mr Lowey.

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

The President: Hon. members, the motion therefore is that 43B stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. So we turn to 43C.

Mr Crowe: Thank you, Mr President. This clause is regarding the disclosure of suspicion of money laundering and creates a new offence connected with laundering the proceeds of crime. It will require certain persons to provide information to the police in relation to laundering. The clause imposes the same requirements in respect of suspicion of laundering proceeds of crime as section 48 of the Drug Trafficking Act 1996 does in relation to the proceeds of drug trafficking. Mr President, I beg to move:

Disclosure of suspicion of money laundering.

43C. After section 17I of the Criminal Justice Act 1990

insert -

“Failure to disclose knowledge or suspicion of money laundering.

17J. (1) A person is guilty of an offence if -

- (a) *he knows or suspects that another person is engaged in laundering the proceeds of criminal conduct;*
- (b) *the information, or other matter, on which that knowledge or suspicion is based came to his attention in the course of his trade, profession, business or employment, and*
- (c) *he does not disclose the information or other matter to a constable as soon as is reasonably practicable after it comes to his attention.*

(2) *Subsection (1) does not make it an offence for a professional legal adviser to fail to disclose any information or other matter which has come to him in privileged circumstances.*

(3) *It is a defence to a charge of committing an offence under this section that the person charged had a reasonable excuse for not disclosing the information or other matter in question.*

(4) *Where a person discloses to a constable -*

- (a) *his suspicion or belief that another person is engaged in laundering the proceeds of criminal conduct, or*
- (b) *any information or other matter on which that suspicion or belief is based,*

the disclosure shall not be treated as a breach of any restriction imposed by statute or otherwise.

(5) *Without prejudice to subsection (3) or (4), in the case of a person who was in employment at the time in question, it is a defence to a charge of committing an offence under this section that he disclosed the information or other matter in question to his employer or, where his employer has established a procedure for the making of such disclosures, to the appropriate person in accordance with the procedure.*

(6) *A disclosure to which subsection (5) applies*

shall not be treated as a breach of any restriction imposed by statute or otherwise.

(7) *In this section “laundering the proceeds of criminal conduct” means doing any act -*

- (a) *which constitutes an offence under section 17A, 17B or 17C; or*
- (b) *in the case of an act done otherwise than in the Island, which would constitute such an offence if done in the Island.*

(8) *For the purposes of subsection (7), having possession of any property shall be taken to be doing an act in relation to it.*

(9) *For the purposes of this section, any information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated, or given, to him -*

- (a) *by, or by a representative of, a client of his in connection with the giving by the adviser of legal advice to the client;*
- (b) *by, or by a representative of, a person seeking legal advice from the adviser; or*
- (c) *by any person -*
 - (i) *in contemplation of, or in connection with, legal proceedings; and*
 - (ii) *for the purpose of those proceedings.*

(10) *No information or other matter shall be treated as coming to a professional legal adviser in privileged circumstances if it is communicated or given with a view to furthering any criminal purpose.”.*

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

The President: Hon. members, the motion is that 43C stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. 43D.

Mr Crowe: Thank you, Mr President. This deals with the import and export of proceeds of crime in cash. Firstly, these clauses are based on provisions of the Drug Trafficking Act 1996, and then we look first at seizure and detention. Section 23A enables customs and police officers to detain money which is being imported or exported where there are reasonable grounds for suspecting that the money represents the proceeds of crime or is intended to be used for criminal purposes.

Next, dealing with forfeiture, 23B enables the High Bailiff, if satisfied that detained cash represents the proceeds of crime, to order its permanent forfeiture.

Turning to an appeal against a forfeiture order made by the High Bailiff, section 23C introduces an appeal procedure in respect of permanent forfeiture orders made by the High Bailiff; and the appeal is to the High Court. ‘Rules of the court,’ 23D, enables the making of rules of court for the purposes of proceedings under 23A to 23F. And dealing with receipts under 23E it makes provision for dealing with cash, which is subject to a forfeiture order, but is subject to an appeal or the time numbered for an appeal has not passed, and 23F deals with interpretation and provides for the interpretation of the terms used in 23A to 23F. Mr President, I beg to move the new clause:

Import and export of proceeds of crime in cash.

43D After Part I of the Criminal Justice Act 1990 insert -

“PART IA

PROCEEDS OF CRIMINAL CONDUCT IMPORTED OR EXPORTED IN CASH

Seizure and detention.

23A. (1) A customs officer or constable may seize and, in accordance with this section, detain any cash which is being imported into or exported from the Island if he has

reasonable grounds for suspecting that it directly or indirectly represents any person's proceeds of criminal conduct, or is intended by any person for use in any criminal conduct.

(2) Cash seized by virtue of this section shall not be detained for more than 48 hours unless its continued detention is authorised by an order made by the High Bailiff.

(3) No order shall be made under subsection (2) unless the High Bailiff is satisfied

(a) that there are reasonable grounds for the suspicion mentioned in subsection (1); and

(b) that continued detention of the cash is justified while its origin or derivation is further investigated or consideration is given to the institution (whether in the Island or elsewhere) of criminal proceedings against any person for an offence with which the cash is connected.

(4) An order under subsection (2) shall authorise the continued detention of the cash to which it relates for such period, not exceeding 3 months beginning with the date of the order, as may be specified in the order.

(5) The High Bailiff, if satisfied as to the matters mentioned in subsection (3), may by order authorise the further detention of the cash but so that -

(a) no period of detention specified in such an order shall exceed 3 months beginning with the date of the order; and

(b) the total period of detention shall not exceed 2 years from the date of the order under subsection (2).

(6) An order under subsection (2) shall provide for notice to be given to persons affected by the order.

(7) Any application for an order under subsection (2) or (5) shall be made by the Attorney General.

(8) At any time while cash is detained under this section the High Bailiff may direct its release if satisfied -

(a) on an application made by the person from whom it was seized or a person by or on whose behalf it was being imported or exported, that there are no, or are no longer any, such grounds for its detention as are mentioned in subsection (3); or

(b) on an application made by any person, that detention of the cash is not for that or any other reason justified.

(9) A customs officer or constable -

(a) may release the cash if satisfied that its detention is no longer justified;

(b) shall release the cash if directed by the Attorney General, but shall first notify the High Bailiff.

(10) If at a time when any cash is being detained under this section -

- (a) *an application for its forfeiture is made under section 23B; or*
- (b) *proceedings are instituted (whether in the Island or elsewhere) against any person for an offence with which the cash is connected,*

the cash shall not be released until any proceedings pursuant to the application or, as the case may be, the proceedings for that offence have been concluded.

(11) Cash seized under this section and detained for more than 48 hours shall, unless required as evidence of an offence, be held in an interest-bearing account and the interest accruing on any such cash shall be added to that cash on its forfeiture or release.

Forfeiture.

23B. (1) The High Bailiff may order the forfeiture of any cash which has been seized under section 23B if satisfied, on an application made while the cash is detained under that section, that the cash directly or indirectly represents any person's proceeds of criminal conduct, or is intended by any person for use in any criminal conduct.

(2) Any application for an order under this section shall be made by the Attorney General.

(3) The standard of proof in proceedings on an application under this section shall be that applicable to civil proceedings.

(4) An order may be made under this section whether or not proceedings are brought against any person for an offence with which the cash in question is connected.

Appeal against forfeiture order made by High Bailiff.

23C. (1) This section applies where an order for the forfeiture of cash ('the forfeiture order') is made under section 23B by the High Bailiff.

(2) Any party to the proceedings in which the forfeiture order is made (other than the applicant for the order) may, before the end of the period of 30 days beginning with the date on which it is made, appeal to the High Court.

(3) On an application made by the appellant to the High Bailiff at any time, he may order the release of so much of the cash to which the forfeiture order relates as he considers appropriate to enable the appellant to meet his legal expenses in connection with the appeal.

(4) The High Court when hearing an appeal under this section may make such order as it considers appropriate.

(5) If it upholds the appeal, the High Court may order the release of the cash, or (as the case may be) the remaining cash, together with any accrued interest.

(6) Section 23B(3) applies in relation to a rehearing on an appeal under this section as it applies to proceedings under that section.

Rules of the court.

23D. (1) Provision may be made by rules of court under section 91 of the Summary Jurisdiction Act 1989 with respect to applications to the High Bailiff under this Part, for

the giving of notice of such applications to persons affected, for the joinder of such persons as parties and generally with respect to the procedure under this Part before the High Bailiff.

(2) Provision may be made by rules of court under section 25 of the High Court Act 1991 with respect to appeals to the High Court under this Part, for the giving of notice of such appeals to persons affected, for the joinder of such persons as parties and generally with respect to the procedure under this Part before the High Court.

(3) Subsections (1) and (2) are without prejudice to the generality of any existing power to make rules.

Receipts.

23E. Any money representing cash forfeited under this Part or accrued interest thereon shall be paid into the General Revenue but not -

- (a) where an appeal is made under section 23C, before the appeal is determined or otherwise disposed of; and*
- (b) in any other case where the forfeiture was ordered by the High Bailiff, before the end of the period of 30 days mentioned in section 23C(2).*

Interpretation of Part IA.

23F. (1) In this Part -

“cash” includes coins and notes in any currency;

“criminal conduct” and “proceeds of criminal conduct” have the same meaning as in Part I;

“exported”, in relation to any cash, includes its being brought to any place in the Island for the purpose of being exported.

(2) For the avoidance of doubt, references in this Part to importation into or export from the Island include references to removal into the Island from the United Kingdom and removal from the Island to the United Kingdom.”.

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

The President: The motion, hon. members, is that 43D stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

We therefore turn back to part 10 in your green Bill as printed and we have reached 44; can I invite Mr Attorney to take 44 to 47?

The Attorney-General: Thank you, Mr President. Clause 44 inserts a new section 14A in the Licensing and Registration of Vehicles Act 1985. Section 14 of that Act deals with forgery et cetera of vehicle licences. The new section will give a constable a power to enter vehicles and seize licences. The constable may do that only if he has reasonable grounds to believe that the vehicle is exhibiting a vehicle licence which is forged or is otherwise the subject of an offence under section 14 of the 1985 Act. The vehicle must be on a public road.

Clause 45 amends section 10 of the Computer Security Act 1992. The effect of the amendment is to ensure that law enforcement powers of the police and other enforcement

agencies are not undermined where there is an indication that consent to access the data is withheld from them. Under the Computer Security Act 1982 it is an offence to access and run computer programmes without consent. The Computer Security Act 1992 as amended by this clause will not create an offence where proper access is gained by the police and other investigating authorities, even though the person controlling the system does not consent.

Clause 46 amends the Value Added Tax Act 1996 and the Customs and Excise Management Act 1986 to clarify the effect of the powers conferred on customs officers with respect to value added tax and excise fraud. The amendment makes it clear that customs officers can exercise their powers of access to information in relation to VAT or excise duties offences in the United Kingdom or a member state of the European Community.

Clause 47 amends the definition of 'police officer' in section 80 of the Licensing Act 1995. That definition currently excludes members of the special constabulary from the definition of 'police officer'. This has been found to limit the effect of use of special constables in relation to licensed premises. In particular, special constables have not had a right to enter licensed premises to ensure compliance with the Licensing Act.

Mr President, I move that clauses 44 to 47 do stand part of the Bill.

Mr Kniveton: I beg to second, sir, and I would just like to refer to clause 44, 14A, regarding vehicle licences. I know a lot of this goes on in the UK, a tremendous amount of switching licences from one vehicle to another. I am not sure how much goes on in the Island; certainly we should be prepared for it. Thank you.

The President: Hon. members, the motion before us is that clauses 44 to 47 inclusive stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clauses 48, 49 and 50, Mr Attorney, please.

The Attorney-General: Thank you very much, Mr President. This section deals with criminal justice and evidence in criminal proceedings.

Sub-clause (1) of clause 48 permits the court to allow evidence of a conviction as evidence that the person concerned committed the particular offence. The sub-clause applies only in respect of persons other than the accused. The principle applies in respect of any conviction before a court in the British Isles. A straightforward example of the operation of this principle would occur if a person, for example, is charged with handling goods which were stolen by another person. Evidence that the second person was convicted of stealing the goods will be admissible to prove that the goods were stolen.

Sub-clause (2) provides that the person convicted shall be taken to have committed the offence unless the contrary is proved, so the burden is on that person to prove that, and that is on the balance of probabilities.

Sub-clause (3) deals with the position of the accused person; where evidence is admissible of the fact that he has committed an offence, then the conviction for that offence shall be taken as proof that he committed the offence unless the contrary is proved. This provision will apply only if the commission of the offence is relevant to a matter in issue before the court and is not simply prejudicial evidence such as that which shows a disposition to commit the kind of offence with which the person is charged.

Sub-clause (4) preserves the operation of any statute, making a conviction or a finding of fact conclusive for the purpose of other proceedings. It is also provided that the admissibility of any conviction which would be admissible apart from the clause is not prejudiced. Mr President, do you want me to take the grouping of this one to 50?

The President: I think so; I think we can take it through to 50 which completes the section.

The Attorney-General: Thank you, sir. Clause 49, then, which supports clause 48, deals with the admissibility of evidence of documents for the purpose of identifying the facts on which a previous conviction is based.

Sub-clauses (1) and (2) make admissible duly certified copies of documents to prove the facts of the offence including the complaint, information or charge sheet which identified the facts on which the conviction was based.

Sub-clause (3) provides that certain enactments under which a conviction leading to probation or discharge is to be disregarded shall not affect the admissibility of the conviction for evidential reasons.

Sub-clause (4) limits the operation of clause 48 to subsisting convictions; convictions quashed on appeal or for which a pardon has been granted are inadmissible.

Sub-clause (5) confirms the power of the court to exclude evidence at its discretion. There are many grounds for exclusion of evidence and it might occur where the evidence is irrelevant or is prejudicial to a fair trial.

Clause 50 amends section 1(f)(ii) of the Criminal Evidence Act 1946. As the law currently stands, an accused person is able to cast imputations on the character of the deceased victim of an alleged crime without losing the protection which the law confers on an accused person and which prevents cross-examination in respect of his own bad character. That is illogical in the sense that an attack on the character of a living prosecution witness would potentially lead to the loss of that protection. The amendment deals with the anomaly and an attack on the character of the deceased victim of the alleged crime could lead to the loss of the charged person's protection.

I move, Mr President, that clauses 48 to 50 do stand part of the Bill.

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

The President: The motion, hon. members, is that clauses 48, 49 and 50 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Now I think it might be appropriate if we took 50A, Mr Crowe.

Mr Crowe: Thank you, Mr President. This new clause deals with the abolition of the corroboration rules. Currently where an offence involves a sexual offence and where the prosecution is relying on information provided by the alleged victim with no corroboration, the court is required to warn the jury about convicting the accused on the uncorroborated evidence. In other words, the deemster is obliged to tell the jury that it is dangerous to convict in such a case without independent corroboration as there can be many reasons, real or imagined, why women make false complaints. In England the corroboration requirement in sexual cases was abolished by section 32 of the Criminal Justice and Public Order Act 1994. It

was considered that the requirement should be purely discretionary as the direction to the jury was virtually a direction to acquit. This has led in the past to persons being acquitted in the Isle of Man who would probably have otherwise been convicted if the direction had not been given. Because the ordeal of complaining is so traumatic the government prosecutor is currently reluctant to sanction a prosecution in the case of a sexual offence where there is no independent corroboration until the corroboration requirement is abolished, and the Isle of Man Constabulary has also expressed its concern that cases of this kind will not be prosecuted, and so it was therefore decided to move this amendment to the Bill. The amendment will therefore, in this clause, remove the requirement for the court to warn a jury about convicting a person merely because that person is an alleged accomplice of the accused or where the offence is a sexual offence and the evidence is provided by the alleged victim. Mr President, I beg to move new clause 50A:

Abolition of corroboration rules. P. 1994/33/32

50A. (1) Any requirement whereby at a trial on information it is obligatory for the court to give the jury a warning about convicting the accused on the uncorroborated evidence of a person merely because that person is -

- (a) an alleged accomplice of the accused, or*
- (b) where the offence charged is a sexual offence, the person in respect of whom it is alleged to have been committed,*

is hereby abrogated.

(2) In section 29(2) of the Criminal Justice Act 1990 [c. 1], (abolition of requirement of corroboration warning in respect of evidence of a child) the words from "in relation to" to the end are repealed.

(3) Any requirement that -

- (a) is applicable at the summary trial of a person for an offence, and*
- (b) corresponds to the requirement mentioned in subsection (1) above or that mentioned in section 29(2) of the Criminal Justice Act 1990,*

is hereby abrogated.

(4) Nothing in this section applies in relation to -

- (a) any trial, or*
- (b) any committal proceedings before a court of summary jurisdiction,*

which began before the commencement of this section.

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

The President: Hon. members, you have the motion before you that the new clause to be numbered 50A stands part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Now, we revert once again to the green paper and perhaps, Mr Attorney, we could take clauses 51 through to 54 inclusive?

The Attorney-General: Thank you, Mr President. Clause 51 of the Bill amends section 70 of the Summary Jurisdiction Act 1989. Paragraph (a) will enable a court to receive evidence

in committal proceedings in the absence of the defendant. The court can only hear evidence in the absence of the defendant under this provision if he has given his consent and is represented by an advocate and the court is satisfied that no prejudice is likely to be caused. Paragraph (b) amends section 70 of the 1989 Act in respect of statements which are obtained outside the Isle of Man as a result of a request from the appropriate authorities inside the Island. The amendment will mean that written statements obtained in accordance with the laws of other countries need not be signed by the maker of the statement and need not contain the formal declarations which apply to statements taken in the Island. The amendment acknowledges the fact that legal systems outside the Island may have different methods of validating witness statements.

Clause 52 amends section 84 of the Summary Jurisdiction Act and increases from 7 days to 28 days the period during which a person may be remanded in custody after a first remand. The consent of the accused person is required for the purpose and the consent may subsequently be withdrawn, in which event arrangements must be made for the accused person to appear before the court as soon as practicable after withdrawal of the consent. Where the section applies, magistrates who have already remanded an accused in custody once and are proposing to do so again will be entitled to remand him for more than the present permissible maximum of eight clear days. The new maximum will be 28 days or the period likely to elapse before the next effective hearing, whichever is the less. Clause 53 amends the 1989 Act to permit a Court of Summary Jurisdiction to remand a person in custody for a period of up to six weeks for the purpose of obtaining social inquiry reports or medical reports. Currently the maximum period is four weeks.

Sub-clause (2) amends the Criminal Jurisdiction Act 1993 to increase the period for which a Court of General Gaol Delivery may remand a person in custody for the same purpose.

Clause 54 inserts a new section 56 in the Criminal Jurisdiction Act 1993 and will enable the Court of General Gaol Delivery to seal or stamp documents with the seal of the High Court. Documents containing that seal will have the same effect as if they were signed by a judge of the court. At present, all documents issued by the court have to be signed by the judge.

I move, Mr President, that clauses 51 to 54 do stand part of the Bill.

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

The President: The motion, hon. members, is that clauses 51 to 54 inclusive stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. We deal then with clause 55.

The Attorney-General: Thank you, Mr President. This brief but important provision abolishes the power of the Court of General Gaol Delivery to sentence a person to be whipped - in other words, birching. I move that clause 55 do stand part of the Bill.

Mr Kniveton: I beg to second, sir, and I would just like to add it is quite amazing that we are today, after so long, attempting to get rid of the whip or birch in just a few lines here. I believe we should be rid of the birch if for no other reason we cannot carry it out. It is, to my mind, totally degrading; we have coped without it for so many years and we have proved we

can do without it by not being able to carry it out. So I believe we should go forward, forget what I would call the caveman days and those persons who enjoyed the knowledge that someone, particularly someone they did not like, was to be birched. I think it is degrading, it is uncivilised so I say 'Out with it.' Thank you, sir.

The President: Mr Radcliffe.

Mr Radcliffe: As the learned Attorney has said, it is a very brief but very important little section of this Bill, this particular one. I can and will probably be accused of standing alone in my opposition to the removal of this particular punishment but I do quite honestly believe that many people on the Island are loath to see this particular provision go. Perhaps it could be said that it applies more to the elderly than to the young, I do not know, but certainly the people I talk to are, well, not amazed but certainly sorry to see this particular form of punishment being removed totally from the statute book. It is all very well the hon. member Mr Kniveton saying we have managed without it, but to my mind there is no harm in still retaining it on the book, albeit not for use every day, not for use at all maybe, but as a deterrent to those who do not know the Island, and many who come here still believe quite firmly that the birch can be administered in the Isle of Man and is certainly a great deterrent against some of the petty crimes, I think. I am not going to go on forever about it but I shall make my intention quite clear by saying that I will be opposing this particular clause.

The President: No other member wishing to speak, I ask the Attorney to reply.

The Attorney-General: Well, Mr President, I am very grateful to the hon. member Mr Kniveton for supporting the clause.

I do note and, of course, respect the comments made by the hon. member Mr Radcliffe. However, as I said at the first reading of the Bill, I really do believe that we cannot nowadays have this sentence of birching on our statute book, we have to move with the times, I am afraid, and that is it, Mr President.

The President: Hon. members, the motion before this Council is that clause 55 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it.

A division was called for and voting resulted as follows:

For: The Lord Bishop, Messrs. Lowey, Waft, Mr Radcliffe, Mrs Christian and Mr Crowe - 6

Against: Mr Radcliffe - 1

The President: Now, hon. members, with Mr Radcliffe being the one dissenting voice the clause is passed. We turn, then, to clause 56.

The Attorney-General: Thank you, Mr President. This clause inserts a new definition in the criminal code so that for the first time there will be a statutory definition of 'felony'. The definition is quite straightforward and in future an offence will be a felony only if it is declared to be such by an Act of Tynwald. This means that all other offences will fall under the category of misdemeanour and summary offences. The significance is of relevance when we look at certain offences under the Criminal Code 1872, there are different provisions which apply to misdemeanours and felonies, and it is, therefore, important to know whether any particular offence is or is not a felony or a misdemeanour.

Mr President, I move that clause 56 do stand part of the Bill.

The President: Mr Kniveton?

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

The President: The motion, hon. members, is that clause 56 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. We turn to Mr Crowe again, I think, so we come to 56A.

Mr Crowe: Thank you, Mr President. If I could bring before you all a new clause 56A and a new schedule dealing with the prosecution of offences, this new clause introduces a new schedule which will have the effect of conferring on the Attorney-General the control and management of all criminal prosecutions with certain minor exceptions - for example, the right for an interested party to commence a private prosecution in a Court of Summary Jurisdiction.

If I can turn to the schedule, paragraph 1 gives the Attorney-General the conduct and control of all proceedings. The proceedings affected by this are criminal proceedings commenced in the summary courts by the police, immigration officers, government departments and their officers, government boards and their officers and other persons that are important or complex. Proceedings commenced by a warrant to enter and seize articles under the Obscene Publications and Indecent Advertisement Act 1907 are also included, and the paragraph contains a power to specify classes of proceedings which are to be exempt from the paragraph.

Paragraph 2 enables the Attorney-General to delegate functions to an advocate subject to general or specific conditions imposed by the Attorney-General.

Paragraph 3 ensures that the provisions of the schedule do not prejudice the right of persons to take proceedings which are not included in paragraph 1 - for example, the right of an interested party to commence a private prosecution in a Court of Summary Jurisdiction is preserved.

Paragraph 4 continues the current law under which police officers of the rank of sergeant and above may prosecute in the summary courts. This paragraph repeals and replaces section 30(1) of the Summary Jurisdiction Act 1989.

Paragraph 5 will enable regulations to be made which will require the Chief Constable to provide information for the purposes of criminal cases managed by the Attorney-General.

Paragraph 6 provides for the interpretation of the new schedule. Sub-paragraphs (3) and (4) include as criminal proceedings certain classes of proceedings which might not otherwise have been strictly construed as criminal proceedings.

Mr President, I beg to move clause 56A and the schedule, which will be schedule 8:

Prosecution of offences

Prosecution of offences.

56A. Schedule 8, which makes provision for the prosecution of offences, shall have effect.

SCHEDULE 8

PROSECUTION OF OFFENCES

1. (1) *It shall be the duty of the Attorney General -*
 - (a) *to take over the conduct of all criminal proceedings, other than specified proceedings, instituted on behalf of the police force (whether by a member of that force or by any other person);*
 - (b) *to take over the conduct of any criminal proceedings instituted by an immigration officer (as defined for the purposes of the Immigration Act 1971 (an Act of Parliament) as that Act has effect in the Island) acting in his capacity as such an officer;*
 - (c) *to take over the conduct of any criminal proceedings instituted by -*
 - (i) *any department or statutory board; or*
 - (ii) *any officer of any such department or board acting in his capacity as such an officer;*
 - (d) *to institute and have the conduct of criminal proceedings in any case where it appears to him that -*
 - (i) *the importance or difficulty of the case makes it appropriate that proceedings should be instituted by him; or*
 - (ii) *it is otherwise appropriate for proceedings to be instituted by him; and*
 - (e) *to take over the conduct of all proceedings begun by summons issued under section 3 of the Obscene Publications and Indecent Advertisements Act 1907 [VIII p. 91] (forfeiture of obscene, etc articles).*

(2) *In this paragraph, "specified proceedings" means proceedings which fall within any category for the time being specified by order made by the Attorney General for the purposes of this paragraph.*

(3) *Orders under this paragraph shall be laid before Tynwald as soon as practicable after they are made, and if Tynwald at the sitting at which the orders are laid or at the next following sitting resolves that they shall be annulled, they shall cease to have effect.*

(4) *This paragraph is additional to, and without prejudice to, the existing status, duties and powers of the office of Attorney General.*

2. (1) *The Attorney General may at any time authorise an advocate to institute or take over the conduct of such criminal proceedings as the Attorney General may assign to him.*

(2) *Any advocate conducting proceedings assigned to him under this paragraph shall have all the powers of the Attorney General as to the institution and conduct of the proceedings but shall exercise those powers subject to any instructions given to him by the Attorney General.*

(3) *Any such instructions may be given so as to apply generally.*

3. (1) *Subject to sub-paragraph (2), nothing in this Schedule shall preclude any person from instituting any criminal proceedings or conducting any criminal proceedings to which the Attorney General's duty to take over the conduct of proceedings does not apply.*

(2) *Where criminal proceedings are instituted in circumstances in which the Attorney General is not under a duty to take over their conduct, he may nevertheless do so at any stage.*

4. (1) *The Attorney General may designate constables of the rank of sergeant or above for the purposes of this paragraph.*

(2) *Subject to such exceptions and conditions as may be specified in the designation, a constable so designated, whether he is the complainant or not, may prosecute any criminal proceedings in a court of summary jurisdiction in which a constable is the complainant.*

(3) *A person so designated shall exercise any such powers subject to instructions given to him by the Attorney General.*

(4) *Any such instructions may be given so as to apply generally.*

(5) *This paragraph has effect notwithstanding the provisions of any statutory provision other than this Schedule.*

(6) *Section 30(1) of the Summary Jurisdiction Act 1989 [c. 15] is repealed.*

5. (1) *The Attorney General may make regulations requiring the Chief Constable to give the Attorney General information with respect to every offence of a kind prescribed by the regulations which is alleged to have been committed in the Island and in respect of which it appears to him that there is a prima facie case for proceedings.*

(2) *The regulations may also require the Chief Constable to give to the Attorney General such information as the Attorney General may require with respect to such cases or classes of case as he may from time to time specify.*

(3) *Regulations under this paragraph shall be laid before Tynwald as soon as practicable after they are made, and if Tynwald at the sitting at which the regulations are laid or at the next following sitting resolves that they shall be annulled, they shall cease to have effect.*

6. (1) *For the purposes of this Schedule, proceedings in relation to an offence are instituted -*

(a) *where a justice of the peace issues a summons under section 4 of the Summary Jurisdiction Act 1989, when the complaint in respect of the offence is made to him;*

(b) *where a justice of the peace issues a warrant for the arrest of any person under that section, when the complaint in respect of the offence is made to him;*

- (c) *where a person is charged with the offence after being taken into custody without a warrant, when he is informed of the particulars of the charge,*

and where the application of this sub-paragraph would result in there being more than one time for the institution of the proceedings, they shall be taken to have been instituted at the earliest of those times.

(2) *For the purposes of this Schedule, references to the conduct of any proceedings include references to the proceedings being discontinued and to the taking of any steps (including the bringing of appeals and making of representations in respect of applications for bail) which may be taken in relations to them.*

(3) *For the purposes of paragraph 2, proceedings begun by summons issued under section 3 of the Obscene Publications and Indecent Advertisements Act 1907 [VIII p. 91] (forfeiture of obscene, etc. articles) shall be taken to be criminal proceedings.*

(4) *For the purposes of this Schedule, binding over proceedings under section 87 and 87A of the Summary Jurisdiction Act 1989 [c. 15] shall be taken to be criminal proceedings.*

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

The President: Mr Lowey has seconded. Any hon. member wish to speak to the new clause or schedule? In that case, hon. members, the motion is that clause 56A and the new schedule, which will be renumbered 8, stand part of the Bill. Those in favour please say aye; against no. The ayes have it. The ayes have it.

Finally part 12, 'General', clause 57, sir.

The Attorney-General: Thank you very much, Mr President. Clause 57 provides a short title to the Act and enables the Department of Home Affairs to bring provisions of the Bill into operation by means of appointed day orders. I move, Mr President, that clause 57 do stand part of the Bill.

Mr Kniveton: I beg to second.

The President: Hon. members, the motion is that clause 57 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Now then, hon. members, that concludes the clause part of our deliberations and, as is printed on our order paper, it is to also take the third reading. Are we content, Mr Attorney, to progress with the third reading?

The Attorney-General: Yes, Mr President, thank you very much indeed. I am most grateful to hon. members for their patience in allowing me to deal with the second reading today and the clauses and I am grateful, as I say, for their indulgence and for their interesting questions on the clauses.

As I mentioned at the first reading, the Bill represents a compendium of provisions in our criminal law and criminal evidence, all of which are considered to be, and are, most important insofar as the administration of our criminal system is concerned.

There were one or two matters which were raised by hon. members in respect of which I was not able to give answers, and perhaps if I could deal with those at this stage?

I think that there was a general concern that the provisions in the Bill relating to the use of knives and the marketing of knives might not have been in compliance with developments in the United Kingdom, and I think it was a question raised by the hon. member Mr Waft. I am pleased to say that I am assured that our legislation will, in fact, for the most part now, if passed, as contained in the Criminal Justice Bill 2000 will bring our law up to date and will be consistent with the law in the UK, so it is not as if we are, as it were, going out on a limb in this respect.

There was also a question raised in relation to postal services and the power of the police to intercept postal packages, if I could just find the clause -

Mr Radcliffe: Clause 20, I think.

The Attorney-General: Thank you very much. Yes, thank you, Mr President. Under part 4 of the Bill there is an amendment there to the Post Office Act 1993. The question which was raised was whether the police could intercept and investigate a postal packet delivered by a courier service such as Securicor or something like that. The answer to that is yes, it could. The reason why we have to have a specific provision dealing with the Post Office is that of course the mail and postal packets which are delivered by the Post Office are very special, they are inviolate and must not be intercepted and opened up unless there is express power to do so, otherwise there is a heavy penalty, so important is the mail. But where we are dealing with packages dealt with by courier services, those do not attract the same protection as packages delivered by the Post Office.

I hope that those are the only remaining questions that arose from hon. members in the course of the debate. I understand that the hon. member Mr Kniveton will have an amendment in relation to clause 18, and perhaps I can conclude after that.

The President: Well, let us see if we can first off have the third reading seconded so we know where we are going. Mr Kniveton?

Mr Lowey: Could I second the third reading?

The President: You are seconding the third reading?

Mr Lowey: Yes.

The President: Right. And then I take it we take Mr Kniveton for his new amendment, which has been circulated on our white piece of paper for us.

Mr Kniveton: Yes, can I refer hon. members to the amendment paper in front of them, please, sir? It does in fact refer to clause 18, top of page 12, where earlier this morning in the clauses stage I asked a question about how far the secondary school situation extended, and it was not exactly clear but we have cleared it up now; it did not, in fact, cover one or two more higher forms of education and for that purpose, hon. members, I have asked for this amendment to cover those very points and, shall we say, stretch the education situation by adding 'junior or secondary school, at college or other educational establishment or a youth club provided maintained or aided under the Education (Young People's Welfare) Act 1944.' Now, I think that is absolutely simple, straightforward and I do not propose to take any more

time this afternoon because I believe, as I say, it is straightforward. Therefore I wish to put the amendment before you, sir:

Page 12, lines 1 and 2: for the words from "junior" to the end of the subsection substitute -

"junior or secondary school, a college or other educational establishment or a youth club provided, maintained or aided under the Education (Young People's Welfare) Act 1944 [XVI, p. 187], excluding any land occupied solely as a dwelling by a person employed at the school, college or establishment."

Mr Waft: I beg to second, sir.

The President: Mr Waft seconds. Mrs Christian?

Mrs Christian: Mr President, I understand that the department sponsoring this Bill have no difficulty with accepting that amendment. In fact, I think they felt perhaps it had already been dealt with in another place but they were wrong in that it appears not to have been apart from amendment. It clearly covers all the areas which the Department of Education are responsible for, and that seems sensible.

The President: Now then, hon. members, I have an amendment proposed at this particular stage, so I would like to deal with that at the present time, no other hon. member wishing to speak to the amendment. Those in favour of the amendment moved by Mr Kniveton please say aye; against, no. The ayes have it. The ayes have it.

Thank you, hon. members, and then we continue with the third reading. Does any other member now wish to speak to the third reading of the Criminal Justice Bill? Mr Radcliffe.

Mr Radcliffe: Just to reiterate once again, Mr President, my opposition to clause 55; I make no apologies for labouring this particular one. There is a lot of good stuff in the Bill as a whole and I support the Bill except for this two-line clause which gives me concern and I know gives quite a lot of other people outside of this hon. Court here concern. Corporal punishment is a direct and effective method of punishment; I think everyone would agree with that, surely. You can reason with some people, others you cannot reason with and you have just got to be the boss and show who is boss. It pains me that we should abandon so absolutely the power to make an order for an offender to be whipped. I will have to oppose the third reading of the Bill purely on that single clause, Mr President.

The President: Mrs Christian.

Mrs Christian: Thank you, Mr President, if I could just respond perhaps to some of the comments made by my hon. colleague, who said that corporal punishment is direct and effective, I think the evidence has shown that it is not always effective and it clearly depends on the individual concerned whether or not it brings about any change in their behaviour or attitudes, and in many case it never did. But I do accept that he is right in saying that many people in our community still believe that it should be on the statute book. I think we all acknowledge it has effectively gone some long time ago, but I think we should not let that overshadow what is in the Bill, and that is a wide-ranging series of measures which should assist our law enforcement bodies to carry out their work. They are in many cases simple, straightforward and individual measures, but together give quite a broad scope to tackle

offending behaviour in a variety of different ways. We should look at that part of the Bill and welcome all the things that it does enable.

The President: Mr Crowe.

Mr Crowe: Thank you, Mr President. Yes, quite willing to support the Bill, and it just brings home to us all how the nature of crime changes over the years, how crime is becoming more cross-border and has an international complexion and we are into criminal frauds in the white collar crimes instead of just the knives and the various other offences. But we bring before us today sentencing of such things as curfews and tagging which you would never have heard of years ago, which just shows the punishments are coming round more to fitting the crime, and I think in years to come we might have more, shall we say, draconian rules that might bring us back towards Mr Radcliffe's concerns, so the world goes round in a big circle so we might see a different perspective in years to come but, again, happy to support the Bill.

The President: Mr Lowey.

Mr Lowey: Yes, I would like just to say that the Bill is a welcome piece of updating of the Criminal Justice Bill. I warmly welcome the way it strengthens crimes against children, for example. Again, I would also applaud offences against a person; it protects the elderly in nursing homes to a degree which we have not had before. The new technology that is being used, and again the sentencing of prisoners and putting them out on licence, and again I think strengthening society against the worst offences and, as far as I am concerned, taken as a package I think this Bill has addressed very complex issues and has come up with the balance, and I think overall it strengthens the law enforcement agencies. I think it must be very demoralising for people at the end of the day when they have got the convictions, charged the person who has got the convictions and then somehow the system fails them, and it fails not just them it fails society.

I would again not like the occasion to go by to say that I can appreciate from whence my good friend Mr Radcliffe comes on the birching issue but, as I said before, we have had this before. I am sure in another two years we will have another Bill before us which will again abolish whipping, because it will have been discovered somewhere on the statute. I remember moving the first time in prisons where we abolished it in prisons long before it became fashionable to do it outside - and I use the word advisedly. But I do not mourn its passing at all and I believe the Isle of Man is no less safe a place because we do not have the birch than it was when we titularly had it on the statute but never used it.

The President: Mr Waft.

Mr Waft: I would like to support the Bill, Mr President. I would also like to compliment the Attorney-General on the way he has persevered with this Bill (**Mr Crowe:** Hear, hear.) - not the easiest of Bills to go through. I was just going to make a comment about the number of clauses and the schedule that has been added to this Bill since it has arrived in the Legislative Council. I take it they have all been from the Home Affairs?

Mr Crowe: The new clauses, I think, have been from Home Affairs and with the consent and approval of the Attorney-General.

Mr Waft: I am quite happy with the Bill. Thank you, Mr President.

The Lord Bishop: Can I just have a word on this? While I share a certain amount of the concern of my hon. colleague on that particular clause I do hope that great emphasis will be placed on the reparation clauses of this Bill. It seems to me that that is something that really ought to be a future emphasis in our criminal law and I would hope that it will help victims, who have been very much undervalued and uncared for, and I do hope that the main thrust of some of this legislation will go towards getting criminals to face up to it and face their victims and also do some community service, which is more positive than standing around being thwacked around the buttocks.

The President: Having chaired a committee on law and order and looking at reparation, I appreciate that point! Mr Attorney.

The Attorney-General: Well, Mr President, I am very grateful to hon. members for their comments and am gratified to note that everyone is in support of 99 per cent of the Bill. It is a shame perhaps that Mr Radcliffe cannot join us in that but I do understand his feeling. However, I do not want to labour the debate any further. May I formally move a third reading of the Bill and it do pass.

The President: Hon. members, therefore the motion is that the third reading of the Criminal Justice Bill be approved. Those in favour please say aye; against, no. The ayes have it.

A division was called for and voting resulted as follows:

For: The Lord Bishop, Messrs Lowey, Waft, Kniveton, Mrs Christian, Mr Crowe - 6

Against: Mr Radcliffe - 1

The President: With again Mr Radcliffe the dissenting voice the Criminal Justice Bill has now passed it stages in the Legislative Council and will return to another place.

Hon. members that concludes our order paper for today. We will now adjourn to the sitting of the Council on Tuesday next, the 14th November, again to commence at 10.30. Thank you hon. members.

The Council adjourned.