

**REPORT OF PROCEEDINGS OF
LEGISLATIVE COUNCIL**

**Douglas, Tuesday, 24th October 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, J R Kniveton, E G Lowey, Dr E J Mann, 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: This morning, hon. members, I have apologies from Mr Delaney.

Criminal Justice Bill — First Reading Approved

The President: On our order paper we have got the two items and we start off with the Criminal Justice Bill for first reading, so I call on the Attorney-General.

The Attorney-General: Thank you, Mr President. This Bill, which is divided into 12 parts, makes a number of important amendments to the Island's criminal law and criminal justice system. The explanatory memorandum to the Bill provides a clear outline of the purposes for which the Bill is introduced, but I would make the following additional comments on the various parts of the Bill.

Part 1 deals with sexual offences. Clause 1 and schedule 1 deal with the registration of sex offenders. Clause 1 makes provision for registration and schedule 1 gives details of the offences. Offenders convicted or cautioned in respect of specified sex offences will be required to notify their names, addresses and employer to the police. Any subsequent changes are also to be notified. It is the intention that this registration system will be proactive. Offenders will be required to present themselves to a police station within two days after release or caution. The purpose of the registration is to protect the public from sex offenders, reduce the risk of re-offending and lower the fear of crime. It also stops the Island being vulnerable to being used as a bolt-hole for sex offenders moving from the United Kingdom and other jurisdictions.

Clause 2, together with schedule 2, introduces new offences of committing certain serious sex acts while abroad.

Clause 3 and schedule 3 make it an offence to possess indecent photographs of children including the taking, distribution, publishing and storing of data on computer, including that which is downloaded from the internet.

Under clause 4 it will also no longer be presumed in law that a boy under the age of 14 is incapable of sexual intercourse.

Part 2 deals with offences against persons. Clause 5 introduces an offence of ill-treating or intentionally neglecting residents in nursing or residential homes, making this a specific offence by any person providing care in a residential nursing home, including the proprietor,

manager and staff. At this stage could I refer to an amendment which has been made in another place and which, I gather, will probably be inserted in this part of the Bill, probably after the existing clause 5? It is an important amendment which has the effect of reducing the age of consent in section 9 of the Sexual Offences Act from 21 to 18.

Reverting now to the text of the Bill as it is, clause 6 introduces an offence to make verbal or written threats to cause death or serious injury.

Clause 7 abolishes the ancient year-and-a-day rule in murder cases which presumed that if a person died later than a year and a day after an injury was caused, the offence was not unlawful killing. The advance in forensic science has made this rule redundant.

Part 3 deals with weapons, and clauses 8 to 18 introduce controls on the sale and the advertising of knives, suggesting a suitability for violent behaviour. A defence is provided in the case of marketing for use by the armed services and as an antique dealer. Supplementary powers of entry, seizure and retention are provided to allow enforcement of these new controls. Where persons are convicted of an offence under these controls the courts can order forfeiture of knives and relevant publications. Offences by bodies corporate are also included. Extended powers are provided to stop and search for knives or offensive weapons, and these will permit an officer of the rank of chief inspector or above to authorise the stop and search of persons in anticipation of violence; at present these powers only lie with the Deputy Chief Constable and The Chief Constable. The period of extension allowed for continuing searches is also increased from six hours to 24 hours. The possession of knives on school premises will be prohibited, except in certain circumstances, with the power given to constables to search school premises for the purpose of searching for weapons.

Clause 19 introduces controls on certain weapons that use gases other than air. There is currently a question as to whether weapons powered by gas or gases other than air are covered under the rules that apply to air-guns and which currently require a certificate. This clarification in the law will ensure that weapons that use separate canisters of carbon dioxide or other gases in order to fire a projectile through the air are treated in the same way as air-guns. As far as ballbearing guns, known as BB guns, are concerned, it will mean that those guns, using preon gas, will be treated as though they were air-guns, but those BB guns that use kinetic energy will not. The kinetic energy, spring-loaded BB gun is not considered a lethal barrelled gun because the force it creates is half a foot per pound and it cannot therefore penetrate the skin.

Part 4 deals with drugs and clause 20 clarifies the law, which at present is not clear, to allow for the search of postal packets suspected of containing drugs or substances used for the manufacture of drugs.

Part 5 deals with various offences of dishonesty. Clause 21 takes the effect of technology into account in updating the law to take account of modern forms of many transactions with new offences being created of obtaining money transfer by deception and retaining credit from dishonest sources.

Clause 22 expands the fraudulent use of a public telecommunications system to include the offence of dishonestly obtaining services provided through a telecommunications system with the intent of avoiding paying for the service.

Clause 23 introduces the offences of unlawfully procuring personal data, disclosing such personal data, selling or offering to sell unlawfully procured personal data, and advertising for sale unlawfully disclosed data.

Part 6 deals with trespass. Clause 24 increases the power to deal with trespassers. Currently the police can only remove trespassers if there are at least two of them. This change will permit the removal of individual trespassers.

Part 7 deals with so-called preparatory offences. Clauses 25 and 26 and schedule 4 introduce powers to permit the Island's courts to try offences of conspiracy and incitement to permit corrupt transactions where part of the offence was committed off the Island. This fills a loophole in the law whereby, if a corrupt transaction includes an exchange of money outside the Island, it cannot be tried on the Island. Clarification is also provided on the meaning of attempting to commit an offence.

Part 8 deals with sentencing and custody. Clause 27 introduces orders prohibiting anti-social behaviour - that is, acting in a manner to cause harassment, alarm, or distress to one or more people. Orders can be imposed on any person aged 10 or over for a maximum period of three years. The power to apply for orders is vested in the local authorities, the Department of Local Government or the police and, by virtue of an amendment made in another place, also vested in the Department of Education. Each of those authorities can apply to the courts for an order prohibiting the defendant from doing anything specified in the order. Penalties for failing to abide by the orders include, on summary conviction, imprisonment up to six months or to a fine not exceeding £5,000 or both, and on information that more serious sentences - namely up to five years or an unlimited fine, or both.

Clause 28 and schedule 5 enable courts to impose curfew orders for any offence except those that have a fixed sentence by law - for example, murder. The periods of curfew can be set at between two and 12 hours each day for a maximum duration of six months and these can be reinforced by electronic monitoring.

Clause 29 and schedule 6 enshrine in legislation the existing practice of convicted offenders being subjected to drugs testing during a probation period in order to ascertain whether improvement is continuing.

Clauses 30 to 32 introduce a reduction in the minimum age when an offender may be ordered to undertake community service. The reduction is from 14 to 13. A fine defaulter may be ordered to undertake community service as an alternative to prison - that is, community service to work off a fine, as an alternative to prison. The maximum number of hours of a combination order is also increased from 100 hours to 120.

Clause 33 increases the maximum compensation payable by offenders to victims of crime from £2,000 to £5,000. This is the first increase since 1981.

Clauses 34 and 35 enable the court to order offenders to make reparation. The purpose is to allow an offender to make recompense by undertaking such work as is agreed should be made in reparation. The offender will either work for the good of the victim of the offence or the community at large. Reparation orders, therefore, must be consensual by both victim and offender and can be no more than 24 hours in aggregate. They can be combined with some

other sentences, but not custodial sentences or those involving an element of community service.

Clause 36 and schedule 7 enable courts to order offenders to attend at attendance centres for a specified number of hours not exceeding 12 in aggregate. An attendance centre will be set up during the coming financial year. The attendance centres combine elements of physical education and a form of tuition involving talks on relevant subjects.

The section dealing with custody in clauses 37 to 41, the courts are empowered to impose a maximum five-year extended period of post-release supervision on violent criminal offenders and allows for the release on licence of these offenders. The courts will be able to place sex offenders under supervision for a maximum period of up to 10 years regardless of the length of sentence served. Restrictions are also placed on the unconditional release of certain sex offenders. Conditions can also be imposed on detainees on licence, including curfew and electronic monitoring. The purpose of these new sentences is to help prevent the commission by the offender of further offences and to secure rehabilitation.

Clause 42 provides for the testing of prisoners for drugs and alcohol which will help the prison authorities control the use of prohibited substances.

Part 9 deals with the proceeds of crime. Clause 43 allows the confiscation of any amount identified as being a proceed of crime. Previously, the amount of the proceeds had to exceed £10,000. The power to trace the proceeds of crime are also enhanced.

Part 10 deals with the powers of law enforcement officers. Clause 44 provides the powers for a constable to seize a vehicle licence if he suspects it to be false.

Clause 45 clarifies the situation with regard to access to computers by enforcement officers.

Clause 46 makes it clear that the 1996 VAT Act enables the UK customs authorities to apply for access orders to Isle of Man customs and for the courts to allow access to the records in the Isle of Man of a person suspected of committing a VAT offence in the UK. The practice whereby the UK authorities currently ask for access to records through general powers provided under the Criminal Justice Act is considered to be unsatisfactory.

Clause 46 extends this arrangement to include all EU member states and adds excise offences to those which can be used as the basis for gaining an access order.

Clause 47 provides special constables with the same powers of entry to licensed premises as those of other police officers. This will help improve the utilisation of the special constables at times of high demand when public houses are being closed - that is, at closing time.

Part 11, dealing with criminal justice - clauses 48 to 49 introduce changes to simplify the proof of a person's previous convictions. Convictions will be admissible when received from any other court in the British Isles.

Clause 50 deals with imputations of character in respect of the deceased victim of an alleged crime. The amendment limits the scope for unnecessary attacks on the character of the deceased.

Clause 51 will allow evidence to be received at committal in the absence of the defendant if there are exceptional circumstances which make it acceptable for the accused not to be present and the accused has agreed evidence may be received by a committal proceeding notwithstanding his absence.

Clause 52 allows for the extension to the period a person can be held on remand between court appearances from seven days to 28 days with their consent. This will avoid persons on remand appearing each week in court.

Clause 53 increases the time a person can be held in custody from four to six weeks in order to obtain social inquiry reports.

Clause 54 provides that documents sealed or stamped with the court's seal have the same effect as that signed by a judge.

Clause 55 is an important provision which abolishes the sentence of whipping by removing the power of the Court of General Gaol Delivery to sentence a person to receive the birch.

Clause 56 provides a definition for 'felony'. The word 'felony' is to be defined as any offence which is by any act specifically declared a felony. The current distinction between a felony, which is a more serious offence, and a misdemeanour is far from clear because of the many changes in the law in the last 30 years. Therefore, in order to make a clear distinction, an offence will only be a felony if a statute states that it is. If it is not so stated it will be a misdemeanour. This is a technical, legal matter and relates to persons who assist offenders in a crime.

Finally, part 12 provides the sort title and commencement of the Bill.

I apologise for the lengthy first reading of this Bill, but I am sure hon. members will appreciate that this is an extensive Bill. It contains many important miscellaneous amendments to the criminal law and the Department of Home Affairs attaches a great deal of significance to the Bill. Mr President, I move that the Bill be read a first time.

The President: Mr Kniveton.

Mr Kniveton: Yes, thank you, Mr President. I am very happy to second the first reading of this Bill. I believe that this is, to me, a mainly non-controversial Bill. I feel that I must certainly support it. I am aware that this Bill has had extensive consultation for a very long while, including plenty of articles and editorials in the press and, of course, on the radio.

I will not go into depth, as the learned Attorney has done today, but when we take into account the number of important amendments to the Island's criminal justice system - and there are many in this Bill - we realise how important this Bill is. Many subjects are covered, as the learned Attorney has told us today, too many for me now to specify today but, from the main section of the Bill with the range of sex offences, in particular, and in particular the introduction of a sex offenders register, which I am sure will be of great assistance to the police, the ill-treatment of residents in nursing homes, the control of knives, tagging, and the introduction of anti-social behaviour orders, including curfews and other changes in sentencing, I note that finally the abolition of whipping, presumably birching, is also included. As I say, I support the Bill and I am happy to second it.

The President: Mr Radcliffe.

Mr Radcliffe: Could I just briefly say that I approve of the Bill in the most part. Modern-day requirements call for updating of legislation and this is what a lot of this Bill is certainly about. I am sorry to see five words are removing the sentence of whipping - that is in the explanatory memorandum anyway - and I still think that that particular item on the statute book was a great deterrent to some of the potentially young people particularly, who in a hot-headed moment would commit an offence for which the sentence would be a stroke or strokes of the birch. It still lives in people's minds, that particular one, and I think that, to my mind again, it is a retrograde step to remove it as quickly and as simply as it has happened here.

I would refer to the clause dealing with confiscation of the proceeds of crime and I just wonder, in the light of media reports which have surfaced this last day or two, it is said that courts cannot confiscate the proceeds of crime because it is infringing on human rights and so on, and I wonder whether this clause is going to be superfluous in this Bill if the following Bill is successful. We certainly want to be legislating for something that is possible to achieve, not to legislate for something which you know in the back of your mind is going to be unsuccessful anyway, and I wonder whether the learned Attorney would have any comment on that particular point.

But in general I welcome the Bill. As I say, some of the sentences and fines and so on are way out of tune with today's requirements and, apart from those two points, I approve of the Bill as it is standing.

The President: Mr Lowey.

Mr Lowey: Thank you, Mr President. Yes, in general terms the Criminal Justice Bill is a big Bill and deals with lots of subjects, as has been said. Can I just say, I can support the first... the bulk of them as well; I think they are practical and realistic, the first four dealing with sex, especially registers, and dealing with children - I fully support that; I think that is a real statement of intent and I think that would be warmly welcomed.

Can I just say though, I am less than enamoured with clauses 52 and 53, and that may seem a strange thing - it is the remand of people in custody for longer than currently, and it extends it from a week to four weeks and for medical reports and social inquiries from four weeks to six weeks. This seems to me to be compounding what I would call an extremely worrying concern for many regarding the speed of justice in the Isle of Man, from being charged to actually appearing in court. This seems to me to be legitimising a length of delay which quite honestly is unacceptable, and we should be trying to reduce, not to extend, albeit by consent of the individual in many cases, but I find that the Attorney will have to work hard on me to try and convince me that that is right. I did make the point about the length of justice, if I can take some of what I would call the most topical cases, where we had a very high profile drug raid in the very first week of this year and to the best of my knowledge many of them are still waiting to come before the courts and, 10 months later, that in my view is wrong. Justice delayed is justice denied and that is both to the community as well as to the defendants, and so therefore that seems to me to be an area where we are putting in the wrong message and compounding what I would call a weakness in the system.

Commenting on my friend who says, 'The abolishment of whipping, whether the rights or the wrongs' - well, I wonder how many times we are going to abolish it, because I think we

have abolished it at least three or four times in the last 10 years, so either it is abolished or it is not abolished or it is abolished, and I think we like whipping ourselves. We know it is abolished, so while we are hear redefining it and bringing it back into the arena seems to me. . . well, I just find it very, very strange; I thought we had abolished it.

Coming to the costs, I must compliment the Department of Home Affairs for getting the costs of these measures so refined to £107,580. My word, that is what I call accounting to the last penny! But I have worked it out at one and a half full time equivalents in personnel; we must be paying the people about £70,000 a year. I presume, and I am sure the Attorney will confirm, that that is not just the cost of the full-time equivalent, it is for the tagging equipment and the rest, but, just boldly put like that, it seems to me to be an expensive one-and-a-half full-time equivalents.

I do not want to go into too much detail but I do think, on the £10,000 small claims where they are now saying it does not matter, on confiscation and the point again raised by my hon. colleague, I am rather concerned that again we seem to be putting an emphasis on what I would call. . . I will not say 'petty crime', but it is not petty if you have robbed up to £10,000 and you can get away with it, but I do wonder why we do not put more emphasis on what I would call 'white collar crime' where the rewards are even bigger and the delays in justice are even longer, if I may say so, in that case where they can keep the thing going for years. Now, as far as I am concerned, the same emphasis should be put on white collar crime as it is on what I would call any other sort of crime, whether it is drugs or whether it is by criminal activity generally. As far as I am concerned the same emphasis should be put there and I think we are taking our eye off the rabbit a bit on this occasion.

So again there are other points on other clauses which we will raise when we come to them but I would compliment the learned Attorney on the way he has presented the case. He has put them in segments that are meaningful and I will be supporting, I think, the broad thrust of this Bill, but with those reservations, I give warning that perhaps the Attorney will have to persuade me on one or two of the clauses.

The President: Hon. member Mr Crowe.

Mr Crowe: Thank you, Mr President. Yes, I too am happy to support the Bill. As the Attorney-General and others have said, it is very wide-ranging, it covers a great deal of subjects and I think we can see that as crime becomes more sophisticated and international in its context, so must the measures that we must employ to counteract crime. I will just refer to two sections, clauses 25 and 26, which actually closes a loophole, and this may in fact go some way to where Mr Lowey has talked about white collar crime, but this one is where a loophole is filled if a corrupt transaction includes an exchange of money from outside the Isle of Man; whereas before it could not be tried in the Island, it now brings that into the ambit of the Isle of Man courts.

The other interesting one is clauses 48 and 49, which introduce a change which allows convictions from other courts in the British Isles and Ireland to be admissible in Isle of Man courts, and this, I think, gives greater scope and it allows the tracking of criminals who may come to this Island with previous records. So those points can be picked up again at the clauses stage.

But I was interested, and perhaps the mover could just talk about clauses 34 and 35, which enable the court to order offenders to make reparation. I think this is a very interesting move in a Criminal Justice Bill that an offender can work off his crime by recompensing the person who was the subject of the crime. Perhaps you could just expand on this as to how it would actually work in practice, and is there previous experience in the UK on this? Thank you, Mr President.

The President: Mrs Christian.

Mrs Christian: Mr President, I do not want to add to what has been said in the sense that this is a wide-ranging Bill with a great variety of different provisions in it. I would tend to disagree with my hon. colleague, Mr Lowey, in the sense that clause 43 - as he has indicated, perhaps white collar crime is one that brings in great rewards, and that is already catered for, but this is catering for crimes which bring in perhaps lesser rewards, and I think that what we should be saying is, to everybody, that crime should not pay, whether it is £10,000 or less than £10,000, and I am sure we can well imagine there are some crimes on the Island where it might be not be easy to identify sums in excess of £10,000 but possibly to identify lesser sums which have very serious consequences for Island residents and families in terms of perhaps drug dealing, where you might not be able to identify large sums but the smaller ones might be identifiable. That is as much an area that we certainly want to hit as the areas with larger sums involved which are already provided for within our legislation, so it may be just a question of emphasis there. I am sure the hon. member did not really mean to suggest that we are not concerned about anything lesser than that.

The other point - I am sure as we go through the clauses we will comment in detail, but it is interesting to see that the clause 47 allows special constables to have the same powers of entry under the Licensing Act, which I think will be useful as the constabulary are developing their alcohol strategy and, as was indicated in another place, there may be a specific alcohol team parallel to the drug team, bearing in mind that a lot of the criminal sentences or other cases that come before courts in the Isle of Man are alcohol-related, and it could well be that some of the financial resources required may be to pay the special constables to assist the regular police force in carrying out this work, so the figure which is indicated may be difficult to tie to the personnel requirements, but it is certainly there for other reasons as well. I think, when we come to the clauses specifically, I will have a comment to make on specific items. Thank you.

The President: The Lord Bishop.

The Lord Bishop: Yes, thank you, Mr President. Yes, I think this is a most interesting Bill. I was particularly interested in clauses 34 and 35, which I think is a very sound move but, rather like my hon. friend, I wonder if the Attorney could just tell us how. . . It seemed to me that as you read on this clause 34 gets weaker and weaker, just to sort of say, 'Well, we would like to do this, but we will hedge ourselves all round so we never have to do it.' And that seems a bit of a pity to me, but I might be misreading the legal jargon. Yes, I probably am, but I really feel that if you are going to say something about reparation. . . which is tremendous; getting people to actually face their victims and do something for them is proving to be, especially with young offenders, very good, and I reckon that 35 tends to be a bit of a let-out once 34 has made the case. I just wonder if the Attorney could comment on that.

Also in clauses 30 and 5A, in 5A I am disappointed that the age range has been slipped in there in this Bill from 21 to 18 in the new clause which has been put in in 5A, and I wondered why 14 to 13 has been substituted in clause 30. Why has the age been put down? Is that to keep in touch with UK law?

Mrs Christian: It is reality!

The Lord Bishop: Well, it depends how you define reality, doesn't it, really? And it seems to me that one needs to know why one year is going to make a difference, and I still think that a lot of young men of 18 are fairly immature and need to be protected.

The President: Mr Waft.

Mr Waft: Mr President, I am very interested in this Bill. It has some very interesting clauses in it. Without going to the clauses stage, it is easy to pick out individual clauses of concern to members. One of the clauses which does strike me - it is long overdue - is clause 15, where the offence has been committed by a body corporate; it has always proved difficult to find who is actually proved to be responsible for different areas of concern. And I am thinking of situations, especially in the UK, where there have been sins of omission and where health and safety breaches have taken place, often resulting in tragedies, and yet to actually pin down any one individual - there is a faceless number of directors and corporations and it all gets diffused after two or three years, and actually trying to get changes made is very, very difficult. That clause certainly needs to be included.

With regard to fines and the update of the Fines Act, that certainly needs to take place on a regular basis considering the situation of salaries et cetera; they appear to be of no significance from time to time.

With regard to tagging, I have long advocated that tagging should have taken place long ago when we were beginning to have problems with the prison. There were many people incarcerated in the prison where tagging would have been a much more economic way of dealing with it, especially where no victim crime has taken place, and it needs to be addressed.

With regard to the bottleneck with regard to the courts et cetera for different people, we appear to be taking the easy way out and giving them a longer time for reports to be made. I think we should be addressing the causes of that and maybe supplementing it with staff to alleviate the situation rather than have people waiting such a long time. Thank you, Mr President.

The President: Mr Attorney, do you want to reply to the debate?

The Attorney-General: Thank you, Mr President. Mr President, I am very grateful to hon. members for their very interesting comments on what is, I hope, an interesting and very important Bill.

May I start by thanking Mr Kniveton for his support of the Bill and for seconding the motion. Mr Kniveton has observed that the Bill covers a multitude of topics, and he is particularly pleased with the sex offenders register.

The hon. member Mr Radcliffe, although broadly in support of the Bill, has reservations about the abolition of birching. Of course it was a very, very controversial topic, but I venture to

say that time has moved on and opinions have moved on, and certainly when one is talking to people who are looking at the Island's reputation and compliance with international norms, whether it is looking at the rights of the child or human rights conventions generally, it actually does us a lot of good to be able to say to outside observers, 'Yes, we have abolished birching,' and in the summary courts - and that of course that has been the case for many, many years now - and we are also abolishing birching in the Court of General Gaol Delivery. I think that is absolutely the right move. It was interesting - for my sins, as it were, I was involved in a training scheme yesterday on the internet and I happened to look up 'human rights Isle of Man' and there was an article there where someone had written a paper about corporal punishment in Sudan, and there was the Isle of Man, someone had quite inaccurately stated that whipping and birching were still being carried out in the Isle of Man and the last time this had occurred was in 1998. So it just shows you how unreliable the internet is and also what a bad reputation the Island can have by being assimilated to a country like Sudan where, of course, they ignore human rights very, very often.

In so far as confiscation is concerned, I do take the point, Mr Radcliffe is absolutely right, that there has been a movement that if one attempts to confiscate the assets and money of someone who is suspected of being involved in crime, that could well be contrary to the Human Rights Act, and that is being held in the High Court in Scotland. This is not really the same point. What we are saying here is that, whereas under the existing law a court could confiscate the property of a convicted person provided that the amount of money involved was £10,000 or more, now, if someone has been involved in a criminal offence, he has been convicted and if the amount of money involved is less than £10,000 we can confiscate that. So there is no limit that has to be achieved before the courts can order a power for the confiscation, and again I venture to say that is exactly the right move. People can be devastated by a loss of £2,000 as well as a loss of £10,000, so I think that is a correct move, if I may say so.

If I may move to hon. member Mr Lowey, Mr Lowey gives the Bill general support, for which I am appreciative, but he is concerned about the delay which is involved in the criminal justice system, and he indicates that clauses 52 to 53, as it were, condone delay in the criminal justice system. I do not wish in any way to comment on any cases which are currently being dealt with. What I can say, though, is that quite often the defence can make applications to the court which can cause a lot of delay in the system, and if, for example, the defence were to allege that there had been an abusive process or all sorts of other allegations, those sort of applications have to be dealt with by the deemsters and those applications can hold up the trial, and I think it is a very, very difficult and complex area there.

I am obliged to Mr Lowey for supporting the abolition of birching. I cannot comment, I am afraid, on the breakdown of the Department of Home Affairs' estimate on costs, save to say that I am quite sure that it is not referable only to salaries, it must be referable also to equipment and so on. I would also like to say that so far as I am aware there is absolutely no question of white collar offenders being discriminated, in other words, them being treated more fairly, more leniently, than others and, of course, there have been some very high profile cases of fraud involving so-called white collar offenders.

I am obliged to the hon. member Mr Crowe for pointing out that clauses 25 and 26 in fact close a loophole in relation to corruption committed abroad. This actually is a very topical area

which is being looked at by the Home Office at the moment, and the UK are having to update their law. We, I think, are actually in advance of them in this respect.

In so far as reparation is concerned, clauses 34 and 35, one or two hon. members have made reference to this. I am not sure how it is going to work in practice, but I think the theory is that, of course, the court must have regard to the feelings of the victim. Time and time again people are anxious that the courts bend over backwards to look at the antecedents of the accused and to look at his background and how he feels about things and try to find the right sentence for the accused, but what about the victim? I think it is entirely right that if an accused person who has been convicted agrees to carry out work to make reparation, then he should be given the opportunity to do so. I think there has to be some element of consent. It is rather like taking a horse to water: you cannot make him drink, and I think clearly the unless we are going to have chain gangs and so on, we cannot compel people to make reparation if they will not actually do it.

I am obliged to the hon. member Mrs Christian for explaining how the role of special constables will be particularly important in promoting the alcohol strategy. I am sure that is absolutely right.

In so far as the Lord Bishop is concerned, I have made a brief comment in relation to reparation, which I think is as far as I can go today. In so far as clause 30 is concerned reducing the age from 14 to 13 in relation to community service, I think actually that that reflects, unfortunately, what is happening out there, because the age of young offenders, I am afraid, is falling, so 14 to 13 reflects the fact that there are some very naughty young people from 14 to 13 who need to be dealt with by a community service order.

Clause 5A, the age of consent - well, again that has been a most controversial matter in the past, but it was passed in another place without very much comment, and again I think that that reflects the way that public perception had gone, that it is right now that the age of consent for homosexual activity between males should be reduced from 21 to 18. I think we might have to brace ourselves, as it were, for a further debate in time to come when there may be a move to reduce the age still further, but that, of course, might very well depend on what happens in Parliament.

Finally, may I refer with thanks to the hon. member Mr Waft. I quite agree that in so far as crime committed by corporations is concerned, clause 15 is a most useful provision in relation to, for example, corporate manslaughter - we often hear about that. If it can be proved that a director, say, has known about, say, a defective railway operation or a defective steamer plying on the Thames, or whatever it may be, if that director knew or ought to have known or closed his eyes to the obvious, many people might say that it is entirely right that that person should be guilty, as should the corporation itself.

Finally, the hon. member Mr Waft approves tagging, and I quite agree that that will, hopefully, relieve the pressure on the prison system.

There are obviously some very important matters here and I will try to deal with them in better detail at the clauses stage, but in the meanwhile I move the first reading.

The President: Okay, hon. members, the motion before us is that the Criminal Justice Bill be read for a first time. Those in favour please say aye; against, no. The ayes have it.

Human Rights Bill — Second Reading Approved — Clauses Considered

The President: We turn, then, to second item on our order paper, which is the Human Rights Bill for second reading in the hands of Mr Waft. Now, I understand that Mr Waft is going to take the clauses when we get there individually and separately, but perhaps we could just briefly get on with dealing with the second reading and then deal with clauses as they come.

Mr Waft: Thank you, Mr President. If I may clarify some points which were raised at the first reading with regard to clause 4, clause 4 will not have the effect of striking down Acts of Tynwald which are incompatible with convention rights. This Bill is quite unlike the legislation relating to the implementation of the European Community's treaties. Under that legislation all existing and future law is subject to European Community legislation. If an Act of Tynwald is incompatible with European Community legislation, it will include terms to be overridden by the Community instrument.

Under clause 4 of the Bill, a court may declare a provision to be incompatible with a convention right, but it will then be a matter for Tynwald to deal with the correction of the incompatibility, and it is erroneous to suggest that members will not be able to remove Bills where a member moving the Bill is unable to state that the provisions are compatible with convention rights. Clause 16 (b) is quite clear on that.

There was a comment on clause 6 and the possibility of the Church of England only falling within the term 'public authority.' Quite some time was spend debating this in both the House of Lords and the House of Commons when the Bill went through Westminster. The Home Secretary's basic point was that, even without domestic legislation, the European Convention provides jurisdiction that can include religious bodies, although the European Court of Human Rights is very careful in the way in which it deals with religious beliefs. The Bill enables the Manx courts to adjudicate as an alternative to cases going to Strasbourg, with all the expense and inconvenience that might entail. It is fair to say that the clause which is referred to as clause 12 of the Bill is the same as the UK comfort clause - that is to say, it emphasises the effect of the convention so as to reassure Churches and religious organisations. The important thing to bear in mind at all times is that liability is linked to acts which are not private acts; that means that where an organisation has mixed public and private functions, only its functions of a public nature will be covered by the Bill. It will be for the courts to determine in the cases that come before them, whether or not an organisation is a public authority.

With regard to article 12 and the right to marry, the situation is quite clear. The right guaranteed by convention is a right for men and women to marry and not for same sex marriages. The reference to national laws is simply a recognition that marriage is subject to different formalities under different national laws. It does not mean that the national law of one state is imposed on another. By virtue of article 12 the rules of the Church of England very much stem from its status as the established Church. At present the rules on marriage in the Church of England are part of the warp and weft of national law. If there were a claim that the law was not in compliance with the convention it would involve a claim against the Government of the United Kingdom representing the Government of the Isle of Man.

With regard again to the comments on clause 8 and the award of costs, the clause does not refer to costs at all but to the award of damages for a particular unlawful act by a public

authority. Costs will be dealt with, as in all other cases, at the discretion of the court. The normal principles will apply and costs may be awarded in favour of the winner against the loser, or a proportion of costs may be ordered to be paid or indeed, in appropriate cases, the court may order each party to pay their own costs.

The Bill introduces no new rule as to costs. With regard to protocol 1 of the convention, this is not mentioned in the Bill because protocol 1 has not been extended to the Isle of Man. If it is in future extended to the Isle of Man, then the protocol could be speedily added to the legislation by means of an order under clause 14.

With regard to the comments of the hon. Mr Crowe, it was suggested that clause 4 might lead to a lot more primary legislation to correct situations where current legislation is incompatible. It is certainly true that there will initially be a trawl through primary legislation to assess, as far as possible, compliance. This is not expected to lead to the regular introduction of a lot more primary legislation.

With regard to the request for the definition of the exact parameters of what is a public authority, that was dealt with in the enclosures. You will see that it is not possible to provide a definitive statement. The guidance issued by the human rights task force for public authorities states that the term covers three broad categories: (a) obvious public authorities such as a minister, government department or agency, local authorities, health authorities and trusts, the armed forces and the police: everything these bodies do is covered by the Act of Parliament, although it is not a public authority for the majority of its functions; (b) courts and tribunals: any person or organisation that carries out some functions of a public nature under the Act. However, they are only considered a public authority in relation to their public functions. So, for example, Railtrack is a public authority in relation to its work as a safety regulator for railways but not when acting as a commercial property developer. In some cases it will be difficult to know if a body is a public authority. You will need to take legal advice to clarify this. However, some key characteristics of a public authority include whether the body forms or operates in the public domain as an integral part of a statutory system which performs public law duties, whether the duty performed is of public significance, whether the rights and obligations of individuals may be affected in the performance of the duty, whether an individual may be deprived of some legitimate expectation in performance of the duty, whether the body is non-statutory but is established under the authority of government or local government, whether the body is supported by statutory powers and penalties, whether the body performs functions that the government or local authority would otherwise perform, whether the body is under a duty to act judicially in exercising what amounts to public powers.

The comments with regard to clause 16 represent a contradiction in terms as to moving a Bill which is at odds with the human rights legislation. The principal point is that the clause is drafted in such a way as to ensure that the sovereignty of Parliament is not limited. There will continue to be a right for any member to promote legislation on any subject, whether compatible or incompatible with the convention. The clause will ensure the issue of whether a new piece of legislation is compatible with the convention rights, is addressed at an early stage in the parliamentary procedure and fully debated where necessary. The rules relating to legal advice are not altered by the Bill. Legal aid will be available in civil cases in the High Courts and the Judicial Committee of the Privy Council on the same basis as at present, whether or not a human rights issue is involved. The same will apply for proceedings before

the courts of summary jurisdiction, the Court of General Gaol Delivery and the Judicial Committee of the Privy Council when dealing with criminal appeals from the Isle of Man.

Through the good offices of the Attorney-General, I have been able to get a research paper, which I have distributed to other members of the Council. This paper looks at the possible effects of the human rights on the main Churches in the United Kingdom as well as on religious schools, charities, courts and legislation. The issue was not addressed in the white paper on the Bill and indeed did not appear to arise as a matter of concern until the committee stage in the House of Lords. The paper first describes the protection given to religion in the European rights convention and the way this has been interpreted by the courts before looking at the constitutional position of religious bodies in the United Kingdom and other countries in Europe. It then goes on to look at the issues that arose in the House of Lords debates on the Bill. The main consideration was whether Churches and other religious bodies would be subject to the terms of the Bill and, if so, when. More particular concerns include the position of religious schools and charities and the freedom of ministers to refuse to carry out certain marriages on religious grounds. The issue of whether the decision of Church courts would be subject to review by the civil courts and whether the Church legislation would be bendable through the fast track procedure provided for the Bill also gave rise to considerable debate. Finally, the particular questions and concerns relating to the Church of Scotland were also addressed.

The Human Rights Bill 2000 also gives further effect into Manx law to the rights and freedoms guaranteed under the European Convention on Human Rights which have applied to the Isle of Man since the Island ratified the European convention in 1950. The Bill provides, as does the European convention which already applies to the Island, the freedom of expression, freedom of thought, conscience and religion.

There is a provision to permit a derogation from an article of the convention to be made by an order made by the Council of Ministers and relates to any derogation or reservation by the United Kingdom on behalf of the Island. The Bill requires the explanatory memorandum of the Bill to be promoted through the branches of the Manx legislature, who will be required to provide a statement to the effect that the Bill and its provisions are compatible with convention rights, or a statement to the effect that although the member moving the Bill is unable to make such a statement of compatibility, the member nevertheless wishes to proceed with the Bill. In either case it will still be a matter for the legislature, whether or not it pursues the Bill and its provisions - in other words, there is nothing to stop the House of Keys enacting the legislation which is incompatible with the convention. It means at least hon. members will be fully aware of the status of the proposed Bill. Nothing in the Bill creates a criminal offence within the Act and it makes the Act binding on the Crown. Mr President, I beg to move the Human Rights Bill 2000 be read a second time.

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

The President: Mr Crowe.

Mr Crowe: Thank you, Mr President. Again, a very interesting piece of legislation. As the hon. mover says, the European Convention on Human Rights is 50 years old and it was introduced immediately after the Second World War, when all sorts of infringements to human rights were taking place or had taken place. So we are in a totally different era and we are

looking at this piece of legislation now with the benefit of 50 years' experience. And this piece of legislation enables court actions to be taken in Isle of Man courts rather than going direct to the European courts, but my understanding is that applicants still have a right to go to the House of Lords and then again, if not satisfied, to the European courts, so although it does bring this into the local courts I believe there is still the right to take it through to the ultimate, into the European courts.

So really we are in effect bringing the human rights legislation directly before our courts, and it is thus making human rights more accessible for Isle of Man people. It gives our people in the Isle of Man the same statutory rights as are offered to people in the United Kingdom. I believe in the UK it came into law on 2nd October, so it is very recent implementation in the UK, although I believe Scotland has had a longer history of it than England and Wales have.

But I would just like to comment: we have talked about interpretation and where the convention is out of sync with legislation, and it could be seen as a major constitutional change and possibly a shift in power from Tynwald as the highest court in the land, to the judiciary, and I say this because of the interpretation of the European convention where the Isle of Man law would be incompatible, or seen to be incompatible, with the Human Rights Convention. I think the purpose of legislators is really that statute law should be clear and unambiguous, whereas the Convention on Human Rights seems to be very much open to interpretation by the judiciary. It is more a question of principles than of clear rulings, and I know the hon. mover, Mr Waft, has said that clause 16(b) does seem to rule in favour of Tynwald being able to override the courts, having supremacy over the courts, but I still see there is likely to be conflict over interpretation and who really is the supreme body in the Isle of Man. Thank you, Mr President.

The President: The Lord Bishop.

The Lord Bishop: Thank you. In view of a comment made at the first reading implying that I was against or speaking against human rights, I think I just want to make a few statements, certainly to say that the Church of England and other Churches too welcome the main thrust of the Bill. A recognition and respect for the unique value and dignity of human beings is the central teaching of Christianity and, in seeking to give effect to them, the framers of this convention stood very much in the Judaeo-Christian tradition. We also recognise that in order to safeguard human rights it is essential to provide effective remedies, and of course one particularly welcomes the fact that the Bill will safeguard the freedom to thought, conscience and religion which is protected in article 9 of the convention.

But I want to reiterate what I said at the first reading, that the Church obviously has some concerns about the Bill and its effect in practice. Some of them are probably shared by all those who have the status of public authorities under the Bill. Others stem from the realisation that in many cases under the new legislation the courts will need to balance different individual rights and freedoms and indeed the different needs of society. There is a good deal of anxiety about less the legislation could involve the secular courts in attempts to make the Church act in a way that was contrary to its beliefs and its principles or which would hinder it in giving effect to those beliefs and principles in practice, and I will say a bit more about that when we come to clause 6. Having said this, I would, of course, very much welcome reassurances from the Attorney-General about the way the legislation would actually effect the Church in the Island when we know what the debate in England has been.

Finally, I know that the Churches in the UK have come in for a certain amount of criticism over their concerns regarding the Bill in the UK Parliament. Because of that I would wish to underline that the Church in this Island is not seeking to say that human rights are a good thing, but should not apply to the Church, and again I have no doubt that that applies to all Churches. What I am concerned to do is to ensure that the Bill does not, however unwittingly, undermine the freedoms of article 9 in the convention itself, and I am sure that the framers of the convention would have seen that as a fundamental importance in a free society. I am just anxious that here we agree that that will be preserved in our legislation.

The President: Mr Lowey.

Mr Lowey: Yes, sir. Can I just again reiterate my support for this particular piece of legislation. Again, I think there are times when we can get frightened by the detail as opposed to the broad picture and, as my hon. colleague said, it was first introduced 50 years ago in different circumstances to what it is today. However, I think this Bill says for the first time in the Isle of Man that it must be right to have first recourse to hear human rights in your own country, and I think it must be right that our local legal remedies are open to the general population of the Isle of Man. That must be a fundamental right and, yes, ultimately if you are not satisfied perhaps then go, but as a first step. . . Remember, it is the only step we have at the moment is to go to Brussels. So, as far as I am concerned, that in itself must be right.

I gladly accede to the Lord Bishop's points. The Church in the broad sense has been a pioneer in human rights, and it does not matter whether it says Africa, Timore, Indonesia, South America, the people really at the sharp end and really pushing human rights and the rights of individuals have been the Church, and I readily accept that I do not see the Church in this instance being against the Human Rights Bill. I mean, their practice has been that they have been pioneers in doing it, and I understand where the Bishop comes from and the Church comes from, that they are not against this in that sense; they are looking in the practicalities, the detail as how it actually comes. So I have no difficulties in supporting and being party, and if I give an impression that I was saying the Church was against human rights, nothing could be further from the truth because I know the history and the practice of the Church in the round, in the international field, in pioneering and looking after human rights.

I do believe the point raised by my good friend, the member of Council, Mr Crowe, that Tynwald approves the convention; it must be for the judges then to interpret. There has to be a role for the judges in that. Judges judge, and I think we are going to have to learn to live with that. I think at the end of the day human rights are being judged by. . . I do not remember how many judges there are in the European Court but there are a lot of them; there is 13, I think - why that figure should stick in my mind? - but there are a lot of them sitting. I would much prefer to have one or two deemsters judging initially on my human rights than 13 gentlemen sitting in Brussels or the Hague, or wherever it is they sit.

The Bill itself came, believe it or not, into Scotland, I think, nearly a year ago, six months ago, and I did not notice the sun being blocked out and shafts of lightening and the world coming to a stop. Nor did it do that when it was introduced into the United Kingdom a month ago, and when it is passed in the Isle of Man I do not think the sun will stop shining either. This is a comfort factor; I believe that people have a right. You do not have to exercise it every day of the week or every month of the year or every year of the millennium. The reality is, it is there as a safeguard and I believe that it is right that our people should have that, their human

rights, incorporated into law and it must be right to have first recourse; if you feel that they have been put in jeopardy in any way, go through the local legal remedies first. I really do.

The President: Mrs Christian.

Mrs Christian: Mr President, can I just make one short comment? It is right I think to bring this into our own statute law. There may be a view abroad that individual human rights are somehow going to always take precedence over society's rights, and I think we should try and dispel that because I think that the convention does bring with it responsibilities as well which are sometimes not highlighted, but if you read the whole thing it is not as straightforward as 'me, me, me', it is broader than that and I think we should allow that message to go out as well. It is not simply a question of people feeling that they have been hard done by, their cases will be weighed up against what society also needs, I believe, and in that context it is right that Tynwald should be the ultimate arbiter or lawmakers, notwithstanding the human rights convention. If Tynwald is of a view that it does not want to be in line with something, then it has that authority still, though obviously I think it would be critically viewed from other quarters.

The President: Do you wish to reply, sir?

Mr Radcliffe: Could I just -?

The President: Sorry, Mr Radcliffe.

Mr Radcliffe: I support the Bill in principle, obviously, because human rights, coming as they did in the aftermath of the Second World War. . . and we all know the lack of thought for human rights of all sorts that occurred there and the world has tried to ensure, of course, that the like will not happen again by bringing in human rights. The danger, or the thing that bothers me a little bit, is it has been called - and I think rightly called in some areas - a 'Cranks' Charter' because people who have some real or imaginary infringement of their human rights - I think it probably would take a lot of time of somebody's time, the court's time or whatever, deciding whether rights are being broached or not. I would wonder whether there should not be a penalty for frivolous cases brought to a court, but I suppose the thing there is to decide what is frivolous and what is not. What is a frivolous thing to one person is a major thing to another person, and it is a hard job to decide, but certainly one cannot help but wonder whether there should not be some penalty for frivolous cases brought.

There are so many aspects of human rights, real or imaginary: their right to live in a certain place, build a house in a certain place, do this, do that, do the other. The person involved will say, 'Yes, it is infringing on my human rights'; other people will say 'Well, it is just not the case', and then that is where the big arguments will start and will never finish, I do not think.

I receive slight comfort from the fact that Tynwald will have some slight say in what or what not may happen. That is the only comfort I find in the Bill as a whole, I must say, sir. I have to support it because human rights are still being disregarded in many parts of the world and that is a thing we do not want to condone. Thank you, Mr President.

The President: Dr Mann.

Dr Mann: Yes, Mr President, I think we all have to accept that we have been committed to what is in this Bill for a long time; none of the principles enshrined in this Bill are in question, and I do not think any of us would accept that any of the principles should be in question. It is

a bit uncomfortable, but it does accept that the courts do have some rights that may infringe upon political activity within the Isle of Man just as in any other country, but that is what a Human Rights Bill is all about - to ensure that political repression of any sort does not occur. I am not saying it occurs here in the Isle of Man, but we are talking about what happened subsequent to the Second World War, and that was political oppression over and above a legal system, so yes, it does have to accept that the legal protection at times will override political activity; that is the key to the right.

What does not so much concern me but I think we need to look at - and I have raised this in another place some long time ago - is that the ordinary individual's grievances, possibly, are going to arrive in the function of public authorities, and I think it is the definition of public authorities and how they act and how those actions are catered either directly, as this Bill says, through the legal system or through the administration system of government itself, and when one comes to the exemptions within the realm of public authorities it is the impact of those exemptions on the rights of individuals that one needs to look at in particular. I was keeping my comments to when we came to the actual clauses, but there has to be an overall acceptance that there are certain principles that cannot be infringed, and I would support overwhelmingly the fact that we have put it into Manx law so that there are actually Manx courts that deal with it, but I will obviously support the Bill.

The President: Now, Mr Waft.

Mr Waft: Thank you, Mr President. I would like to thank the members who have supported the Bill. I would like to thank Mr Crowe for his support; he mentioned the human rights came in after the war, and perhaps we are living in a different era these days. With regards to the local courts he did support that view that it should be in the first instance ruled over by local people with local knowledge of the situation over and above trying to apply to the Strasbourg courts which have a very long waiting list for decisions to be taken.

He mentions that the statutory rights, perhaps, could be seen as a move from Tynwald. The only thing I would say to that: it is encompassed within the Bill. The European convention already applies to the Island, and that has been stated.

With regard to my Lord Bishop who acknowledges the necessity for the safeguarding of human rights and the possibility of the situation when the practicalities of the Bill start to hit there may be concerns, but I fully agree that human rights have been part and parcel of the Church's beliefs. The Church's beliefs and practice, I am sure, will continue as they have done in the past, and I am sure any problems can be sorted out with regard to this Bill.

With regard to Mr Lowey, I thank him for his support and his concerns that it is necessary to have recourse in your own country. My own thought is that with different individuals in the court of Strasbourg coming from different nationalities, sometimes I often think that maybe something gets lost in the interpretation of your case that might not do you the world of good, and I think I would certainly support his wish that we deal with our own problems on our own Island.

I thank Mrs Christian for her support. She mentions the needs of the society and the individual must be taken into consideration with Tynwald being the ultimate arbiter.

I thank Mr Radcliffe for his support, albeit considered. He makes reference to a 'Crank's Charter.' The possibility of frivolous claimants certainly is a possibility, and it would be for the courts to determine whether the claims are going to be vexatious or frivolous. I agree with his point that one human right of one person will overlap on the human rights of another and it is a difficult situation to resolve. However, it has to be resolved in certain instances.

I thank Dr Mann for his comments. He reinforced the fact that this situation has been in place for some considerable time and he makes comment also with regard to the individual rights over perhaps political agendas, and I think we all have to accept the principles that that shows the way that the individual has to be considered. I thank you, Mr President. I think those were all the comments I needed to make on the second reading.

The President: Well, hon. members, the motion is that the Bill be read a second time. Will those in favour please say aye; against, no. The ayes have it. So we turn then to the clauses stage.

Mr Waft: Mr President, I beg to move that the Council resolve into committee of the whole Council to deal with the clauses, Mr President.

Mr Lowey: Agreed.

The President: In that case we will progress with the clauses, then, and the hon. member - I do not know whether we can take clauses 1 and 2 and schedule 1? It is entirely up to you.

Mr Waft: Yes, sir, I can do that. Clauses 1 and 2 and schedule 1. Clause 1 specifies which rights ('the convention rights') are to be given further effect into Manx law through the provisions of this Bill. It also provides that the convention rights may be amended by order to reflect the effect of a protocol to the convention which is extended to the Isle of Man.

Sub-clause (1) explains the term 'the convention rights.' These are articles 2 to 12 and 14 of the convention for the Protection of Human Rights and Fundamental Freedoms, and articles 1 and 2 of the sixth protocol as read with articles 16 to 18 of the convention. These articles confer substantive rights or freedoms. The articles of the convention and protocols are not included, either because they do not confer substantive rights or because the Bill itself gives effect for the purpose of the Island's international law obligations to the article concerned - for example, article 1 of the convention. Articles 16 to 18 of the convention do not confer substantive rights, but they deal with the way in which the substantive rights are interpreted.

Sub-clause (2) provides that the convention rights are to have effect for the purposes of the Bill, subject to any designated derogation or reservation dealt with in clauses 13 and 15. This reflects the international obligations under the convention, which are similarly subject to any derogation or reservation that is in place in respect of the convention or any of its associated protocols.

Sub-clause (3) introduces schedule 1, which sets out the convention rights. The schedule reproduces the text of the articles.

Sub-clause (4) provides that the Council of Minister may by order amend the Act to reflect the effect, in relation to the Island, of a protocol. This order-making power has been included to enable the convention rights to be updated as appropriate to keep them in line with any further obligations which the Island may be assumed under the convention.

Sub-clause (5) states that 'protocol' as used in sub-clause (4) means a protocol to the convention which the United Kingdom has ratified on behalf of the Island.

Sub-clause (6) provides that an amendment made by order under sub-clause (4) cannot come into force before the protocol concerned is in force in relation to the Isle of Man.

Clause 2 requires the Isle of Man courts and tribunals to take account of the judgments, decisions, declarations or opinions of the institutions established by the convention when determining a question which has arisen in connection with a convention right. It makes provision for how evidence of them is to be given in relevant proceedings.

Sub-clause (1) requires that a court or tribunal determining a question in connection with a convention right must take into account any judgment, decision, declaration or advisory opinion of the European Court of Human Rights, opinion of the commission given in a report under article 31 of the convention, decision of the commission in connection with article 26 or 27(2) of the convention, or decision of the Committee of Ministers taken under article 46 of the convention, whenever made or given, so far as it is relevant to the proceedings. The Bill requires United Kingdom courts and tribunals to take these judgments, decisions, declarations and opinions into account in relevant proceedings because they are all potentially relevant to the correct interpretation of the convention rights.

Sub-clause (2) states that rules made by the deemsters may provide for how evidence of the judgments, decisions, declarations and opinions is to be given in relevant proceedings. These rules might, for example, cover the arrangements for authenticating the documents relating to such judgments. Mr President, I beg to move that clause 1 and 2 and schedule 1 be part of the Bill.

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

The President: The hon. member Mr Crowe.

Mr Crowe: Mr President, in supporting this clause I would just draw members' attention to article 8 in schedule 1 on page 16, and I think this is a fundamental right and I think it is something that Dr Mann has said we adhere to now anyway. It is something that is not new and, as Mrs Christian says also, with rights go responsibilities too, but I think it is worth just repeating that article 8 has this right to respect for private and family life. 'Everyone has the right to respect for his private and family life, his home and his correspondence,' although with new legislation brought out today in the UK regarding e-mails you might question that fact, but, going on to the second part of the article: 'There should be no interference by a public authority with the exercise of this right, except such as is in accordance with the law and is necessary in a democratic society in the interest of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others,' and I think this is the fundamental point that we in the Isle of Man, I would like to state, are adhering to that fundamental principle now, so what we are bringing into legislation here is not the human rights per se but the rights to have it in the Isle of Man courts.

The President: Mr Kniveton.

Mr Kniveton: Yes, just one point, Mr President: 1(4) 'The Council of Ministers may by order make such amendments to this Act as it considers appropriate to reflect the effect, in

relation to the Island, of a protocol.' Does that mean, then, that Tynwald would be advised, thus there is no debate, just a question of advising? That is what I have to ask.

The President: Mr Waft, do you wish to reply in any regard?

Mr Waft: I would just like to thank the members for their support. With regard to 1(4), 'may' has been put in there to give the Council of Ministers the ability to have consideration at that particular part of the clause.

The President: The Attorney-General.

The Attorney-General: Mr President, if I may just refer hon. members to clause 17(3), which provides that all orders made under the Act - and that would include an order made by the Council of Ministers - must be laid before Tynwald.

Mr Kniveton: Yes, that is all right, sir. Thank you.

The Attorney-General: So that does provide some safety valve there.

The President: Then we get into the business of whether they are laid before Tynwald or whether. . . However, right, okay. The motion, then, before the Council is that clause 1, clause 2 and schedule 1 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Perhaps we could take 3, 4 and 5, sir.

Mr Waft: Thank you, Mr President. Clause 3 deals with the relationship between the convention rights and the Isle of Man legislation. It requires legislation to be interpreted compatibly with the convention rights, so far as possible. Clause 3 is one of the main ways in which further domestic effect is given to the convention rights.

Sub-clause (1) states that, so far as it is possible to do so, Acts, both Manx and UK - see clause 19(1) and subordinate legislation - must be read and given effect in a way which is compatible with the convention rights. All courts and tribunals will be required to interpret legislation in this way where it is relevant to all of the cases before them.

Sub-clause (2) makes various further provision. The intention is to underline that, although it is expected that it will normally be possible for legislation to be construed in such a manner, there comes a point where an interpretation must yield to the intention of parliament notwithstanding that, in the result, the legislation is incompatible with the convention rights. In particular, and as read with clause 4, the interpretative rule does not empower courts to strike down or ignore Acts, whether enacted before or after the Bill comes into operation. It is possible that the Bill may well require an interpretation which differs from one previously adopted by an Isle of Man court. Paragraph (b) provides that if it is not possible to read and give effect to an Act in a way which is compatible with the convention rights, this does not affect its validity, continuing operation or enforcement. The intention is that if there is found to be an irreconcilable conflict between an Act and the convention rights, the Act will nevertheless remain valid legislation which can continue to be relied upon or enforced. Paragraph (c) makes the same provision as paragraph (b) but in respect of subordinate legislation which is incompatible with the convention rights and where, disregarding any possibility of revocation, an Act prevents the removal of the incompatibility. The consequence is that should the terms of the Act be such that any support of legislation made under it in relation to the matter in question will inevitably be incompatible with the convention, the subordinate legislation will not cease to be valid, nor will its continuing operation or

enforcement be affected by virtue of its being incompatible. If an Act does not prevent subordinate legislation from taking a form which is compatible with the convention rights sub-clause (2)(c) does not apply and under clause 6(1) the courts would be able to set aside the subordinate legislation to the extent that it is compatible. The paragraph is consistent with the principle of paragraph (b) that incompatible Acts should continue to remain valid in its existing form until or unless amended by Tynwald or Westminster. Both paragraphs (b) and (c) apply whether or not the incompatible legislation has been subject to a formal declaration under the provisions of clause 4.

With regard to clause 4 the purpose of this clause is to provide a mechanism for bringing to the attention of the government any provision of an Act which cannot be read and given effect in a way which is compatible with the convention rights or of subordinate legislation where the incompatibility cannot be removed because of the terms of the relevant Act. It sets out the circumstances where the higher courts can make a declaration of incompatibility, specify which courts may make such a declaration and make some provision relating to the effect of such a declaration under legislation in respect of which it is given.

Clause 5. The purpose of clause 5 is to give the Attorney-General the right to intervene in any proceedings where the court is considering making a declaration of incompatibility under the provisions of clause 4. The need for the Attorney-General to be given this right flows from the importance of such a declaration and the wish to ensure that the government, which will have the responsibility for considering whether to propose to Tynwald the amendment of legislation in respect of which a declaration is made, has the opportunity to put any relevant arguments to the court before it decides whether to make a declaration. I beg to move, Mr President.

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

The President: Mr Crowe.

Mr Crowe: Yes, Mr President, I think we have debated this point at earlier readings, but I think it is coming down to interpretation, I think this is quite a sticky section here where, under clause 3(1), 'So far as it is possible to do so, Acts and subordinate legislation must be read and given effect in a way which is compatible with the convention rights.' and we come up against this declaration of incompatibility which the courts can give but, interestingly enough, it does not affect the validity of the law and is not binding on the parties, so we are in a bit of a vacuum when there is a declaration of incompatibility and it would almost lead to a situation where that particular law would almost be put on ice, and I know the hon. mover has said it would then be up to the Council of Ministers to come before Tynwald and recommend a change in the law and I think that would be the outcome. Again in replying to the first reading the hon. mover did say there will have to be a trawl of the existing legislation to see where incompatibility exists although, having said that, it may not be a fruitful exercise to trawl for something that may or may not happen in the future, so it may be better leaving the problem to arise at the time it arises. So, as I say, again, whilst supporting this, I can see problems ensuing from this incompatibility rule.

The President: Mrs Christian.

Mrs Christian: Mr President, I think that this comes back to the point where people are concerned that somehow Tynwald's authority is going to be undermined. Tynwald will have its

attention pointed in a particular direction if such a declaration is made but it is down, then, to the democratic process and consideration through the branches to make any change which we feel is appropriate, and I think to that extent this is the right mechanism. I think where people would feel very concerned is where the courts could somehow change the statute law. If that had been put in people would have certainly been concerned. It may well result in a change in statutory provision; it will make sure that Tynwald addresses a matter, or certainly the Council of Ministers would have to address a matter, where a declaration of incompatibility had been made and it is appropriate, I think, certainly in clause 5, that the Attorney-General does have an opportunity there to discuss with the courts the views of the government before such a declaration is made. It may be that there may be an argument there that he can justifiably make which affects the decision on such a declaration. But I do think that these two clauses are setting up the best mechanism for ensuring that the democratic process addresses any of the issues which are raised by the courts.

The Speaker: Attorney?

The Attorney-General: Thank you, Mr President. Could I just support what the hon. member Mrs Christian has said. This actually is an area under clauses 3, 4 and 5, where, if anything, our legislation supports the supremacy of Tynwald rather better than the UK legislation supports the supremacy of Parliament, because in the UK statute, when a court makes a declaration of incompatibility, that then triggers off a so-called fast-track procedure whereby a minister is then empowered to amend the legislation, albeit that there are safeguards for giving notice to the various branches of Parliament, but it actually has a cause in effect. It triggers off a fast-track procedure and the legislation can be changed without the formality which would otherwise be attached to changing legislation. Here, in our Manx Bill the legislation in clause 3 (2)(b) makes it perfectly clear that if the legislation is not compatible with the convention rights, nonetheless it does not affect the continuing operation of the Manx Act. So if we take an example, perhaps a controversial one, if for example the Manx courts were reviewing our sexual offences legislation and held that the fact that homosexual activity between females of 16 was in compliance with the convention but that when you look at the legislation in relation to males and you see that the age of consent is 18, the Manx court might say, 'Well, our Sexual Offences Act cannot comply with the convention, it is incompatible with the convention because the convention implies that everybody should be treated the same; there should be no discrimination in these matters.' Nonetheless, our legislation remains until and unless Tynwald changes the law so the acts between the so-called consenting adults at the age of 18 might be incompatible with the convention and yet be compatible with our own Manx legislation and that position will not be affected unless and until Tynwald debates the matter fully which is, as I say, quite different from the fast-track procedure in the UK.

The President: Dr Mann.

Dr Mann: Presumably there is nothing to stop that case being referred to Strasbourg.

Mr Kniveton: That is right.

The President: Mr Waft, do you wish to say anything?

Mr Waft: I would just like to thank members for their support and thank the Attorney-General for the interpretation with regard to incompatibility, and the hon. member Mrs Christian for her statement that the courts cannot change the statute law.

The President: The motion, therefore, hon. members, is that clauses 3, 4 and 5 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. We turn then to 'Public authorities', clauses 6 and 7 of the Bill.

Mr Waft: Clause 6, Mr President. The purpose of this clause is to place a requirement on public authorities to act in a way which is compatible with the convention rights. It makes it unlawful except in specified circumstances to act contrary to a convention right, sets out circumstances in which it is not unlawful to act in a way which is incompatible with the convention and makes provision as to who is to be regarded as a public authority for the purposes of the Bill. The requirement which clause 6 imposes is one of the main building blocks of the Bill.

Sub-clause (1) provides that it is unlawful for a public authority to act in a way which is incompatible with the convention rights. In construing any convention right the courts will take into account of Strasbourg's jurisprudence as required by clause 2. Many of the convention articles require a balance to be struck between competing rights and freedoms where they are contained in the article itself or in other articles of the convention. Consequences of this Bill under the Bill appear in clauses 7, 8 and 9, and 'an act' covers anything a public authority does or fails to do and includes making subordinate legislation.

Sub-clause (2) seeks to protect legislation under which public authority acts and hence to preserve the parliamentary sovereignty of Tynwald. Thus the effect is that, where a public authority acts to give effect to legislative provision even if the action will be incompatible with a convention right, its acts are not thereby unlawful.

Sub-clause (1) does not apply to two kinds of act. The first kind is that where as the result of one or more provisions of Acts the public authority could not have acted differently. This could be because it is required by the legislation to take the action in question. The second kind of act from sub-clause (1) which is disapplied are those which give effect to an act which cannot be read or given effect in a way which is compatible with the convention rights or to subordinate legislation made under such primary legislation. The intention is that where a public authority is acting in such a way as to give effect to a provision of an act which is incompatible with the convention rights so to give effect to a provision of subordinate legislation whose incompatible form derives inevitability from the term of the incompatible parent act, it will not be acting unlawfully and its decisions will not be struck down. In other cases, however - for example, where a department makes secondary legislation which is incompatible with the convention but could have been made differently or where the act could have been construed in a manner which is compatible with the convention but the public authority has wrongly - for example, incompatibility with a convention right - exercised the discretion given to it the bar does not apply.

Sub-clause (3) deals with the meaning of 'public authority'.

Sub-clause (4) qualifies sub-clause (3) by providing that in relation to a particular act a person is not a public authority by virtue only of sub-clause 3(b) if the nature of the act is private.

Sub-clause (5) provides that an act includes a failure to act but does not include a failure to introduce in or lay before Tynwald a proposal for legislation or make any act. It is not

intended, for example, that a decision of the government not to introduce legislation to correct an incompatibility should be capable of being challenged in the courts.

Clause 7 describes how a person who is or would be a victim of a proposed unlawful act of a public authority is to be able to pursue his claim before an appropriate domestic court or tribunal. Under this clause a person can use the convention rights to bring proceedings against the public authority or rely on them in any proceedings brought by him to challenge the act or any proceedings brought against him by a public authority. Mr President, I beg to move clauses 6 and 7.

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

The President: Dr Mann.

Dr Mann: Mr President, I think these two clauses do represent the area in which you are likely to get most public reaction to the legislation and I take Mr Radcliffe's point that there could be a whole range of cases brought under this sort of section, because the commonest grievance in general terms of ordinary individuals is probably against the acts of public authorities and up to now most of those individuals would either not have had the resources or the time to go to the court in Strasbourg. In particular I think we are tending to gloss over very easily the interpretation of article 14 in discrimination, because where you are talking discrimination in the actions of a public authority that is an area where a lot of individuals may well take the opportunity of legal action.

Now, these two clauses I do not oppose, but I think we as a government ought to be looking into the way of resolving some of the possible actions by consultation rather than seeking legal resolution, and I do plead that the Council of Ministers set up some form of ombudsman as soon as possible so that there is a direct access for individuals to resolve some of these difficulties before we start getting into a whole raft of legal cases. I am aware of several individuals, and I am sure many of you have been written to by individuals, who have particular grievances particularly involving discrimination, and some of those can be resolved without ever getting involved in legal issues.

I just hope that the Council of Ministers will act in some way in advance, particularly when we are talking about petitions of grievance, for instance, to Tynwald, because Tynwald here and the action of Tynwald in resolving those is actually exempt. Now, if that is the case then Tynwald itself really should be looking at the process to either combine it with an ombudsman function, but certainly I feel that these are matters that should be taken just to accept the way in which these two clauses are going to work. I support them, I am going to vote for them; I am just trying to avoid or at least satisfy some of these possible grievances before they arise.

The only thing is, I must tend to support the member who drew attention to the other Bill we were considering earlier because we are actually intruding, or possibly intruding, into the personal and private computer information, which is an area which is very personal and does not involve anybody else anyway. These are the kinds of things where one may accidentally slip into trouble.

The President: Lord Bishop.

The Lord Bishop: Thank you. Yes, I would like to share some of those concerns more specifically to my situation. Speaking for the established Church, of course one has to accept

that the Church's functions will come within clause 6(3)(a) because they are of a public nature, and I understand that the general view of the Church of England's function in England in relation to marriage, for example, will be a function of a public authority under the UK Act, and I would just like to check with the Attorney-General some time that the situation is the same here.

Like all the public authorities under the Bill, the Church is concerned that the precise effect of the Bill will need to be worked out over a period by the courts. Thus, even if the Church did its best to comply with the legislation, there is a risk that the courts as a whole will fail to do so. Equally, we are anxious that the Bill could result in a good deal of expensive litigation and that even where the public authority succeeds in court it will end up meeting a large Bill for legal costs. In the case of the Church you would understand it is particularly serious because it would mean eating into funds that the Church receives in a voluntary capacity from its members for very much other purposes. However, as I have already indicated, there is also a good deal of concern within the Church the new legislation could be used to try to force it to act in a way that was contrary to or undermined its beliefs and principles. Although the mover has made one or two assurances of that, we still need to know in practice if that would not be contravened, and although this involves clause 8 here as well as clause 6 I wanted to give a few examples at clause 6 at this stage.

Taking marriage as a first example, the Church has its rules based on doctrinal principles relating to the marriage to a divorced person whose former husband or wife is still alive. I know the Church as a whole is taking a fresh look at this at the moment, but a good deal of anxiety has been expressed about the possibility that an action could be brought on the basis of article 12 against a member of the clergy who refused to marry a divorced person, and although I know that at present marriage under article 12 is accepted as meaning a marriage of a man and a woman, there is a strong possibility that that may change. If you read *The Times* today there is lobbying already going on about the status of gay relationships and that could well change the nature of the term 'marriage'. However, I know that when the UK Parliament was considering the matter the government there was able to give reassurances to my colleagues in the House of Lords that the new legislation would not force the Church to act contrary to its principles and teachings in this respect, and I would like the Attorney-General at some stage to look into this matter and give me some similar reassurances that that applies here.

A second problem is the concern that the Church organisation might be held to be acting unlawfully if it was recruiting a senior member of its staff and lay down that he or she should be a practising member of the Church of England or even, indeed, a practising Christian. One of the main contexts in which this arose in England was in relation to Church schools, and I know that the concern about it was partly met by a specific provision in the statute law relating to schools, but the position in the Island may well be different, and again I should be grateful if the Attorney-General could advise me as to the working out of this particular point here.

My third example relates to the Church's legislation which is passed in and for the Island. The Bill makes it clear that Church measures are on the same footing as Acts of Tynwald and Acts of Parliament, and there is, of course, a special provision in section 4 under which the courts can declare that an Act, including a Church measure, is incompatible with a convention right. While I hope that the need for that will never arise in relation to a Church measure, it is obviously an essential part of the framework of the Bill and has to be accepted as such. A few

years ago in their capacity as presidents of the General Synod of England, the Church of England, the Archbishops of Canterbury and York were embroiled in a good deal of litigation over the legislation passed by Synod regarding women priests, and although that was passed, one - and I almost use the term of my hon. colleague, 'Cranks Charter' - one opponent crank spent ages and ages, a year or more, filing suits against the two archbishops which cost a lot of money. Clearly and rightly it is not possible under the Bill for anybody to bring proceedings against Tynwald. However, I should be grateful if the Attorney-General could consider whether someone bringing proceedings under clause 8 against me or my successors as Bishop representing the Diocesan Synod in relation to Church legislation could apply, and I would like some advice as to how that particular point would be enacted in the Bill.

The President: We are straying under clause 8 there but never mind. Mr Radcliffe.

Mr Radcliffe: Mr President, I share in no small manner the concerns which have been expressed by my colleague, Dr Mann. We all know that there are long waiting lists for courts' time and he suggests, perhaps, that an ombudsman would be an answer, but I think that it would have to be a truly exceptional person to act as an ombudsman for the variety of cases that you would get being brought up. A true Solomon, I think, would be required to be able to cover all sorts of aspects of life, and I think initially there probably would be a spate of actions of all sorts; people would be wanting to put it to the test and see exactly what is or is not going to be an infringement of human rights. An ombudsman normally is an expert in his own field, and where on earth you would find someone with such a broad wealth of experience and knowledge to be able to handle the variety of cases there would be I really do not know. It sounds good but I do not think in practice it would work very well, quite honestly. I think that over a period and in the light of experience some sort of refinements will have to be brought in so that the problems, real or imaginary, can be dealt with in a much quicker fashion than actually going to a court. That has just got to be because people will be waiting forever to see if there are any infringements of their rights or not, but I certainly understand the concerns expressed by Dr Mann. I think it is very well founded.

The President: Mr Lowey.

Mr Lowey: Yes, speaking to the clauses I do believe that this Bill has been highlighted that there will have to be a sea change in the way local authorities and government and agencies and business generally approach things. I think there is a change going to happen because of this Bill. Having said that, I tend to agree with my hon. colleague, Dr Mann, that perhaps. . . and that includes government to see how they actually deal with this, and I think the learned doctor has highlighted one area which we have already gone down - we already have an ombudsman, the pensions, already in being where we can - *(Mr Radcliffe interjecting)* - maybe, but the principle has already been adopted, we have accepted the principle of an ombudsman in legislation, so that is one route that could be explored and I think government would be wise to do so. Having said that, onto the principle of added costs because of defending actions, well, corporations - and I suppose this does include the Church, Lord Bishop - but corporations and so on - it presupposes that we have got at this moment in time a level playing field. The individual - remember, this is an individual - has to proceed; there will be no legal aid for these cases as far as I am aware, but it is an uneven playing field now. If I take on a corporation individually it is hardly a playing field where they have lawyers on tap. We see it in operation now where if you, as an individual, take a firm on that employs lawyers

on a yearly basis, for example, it is not a fair weight, it is David and Goliath, that is reality, and I believe in this particular instance that the problems that are being flagged up are what I would call the irritants that will actually become. . . there may very well be a flush at the start of individual claims, but I think it will settle down. When you bear in mind I think we have had three or four claims in the last 20 years - and I think that is because they have had to go to Strasbourg - the reality of bringing it home, if you like onto the home front, will automatically increase; I think that is reality. I think it will increase of its natural volition, but I do not think there is a whole mass of people out there waiting to exercise their right and, even if they do - and I am going to encroach onto the next couple of clauses, Mr President, just to say the rewards that somehow there is a big pot of money at the end where you put a bucket in and pull it out is not there, the reality again disproves that, although what I would call the media hyping it up that there is - and I do not think there is - the reality when you look at the facts is that there is not.

The President: Mr Attorney?

The Attorney-General: Thank you, Mr President. I would just make one or two comments. I know specifically the Lord Bishop has referred to some issues where he is particularly concerned, but I think there are one or two other matters of a general nature, if I may. I know that the Council of Ministers has anticipated this problem that public authorities may be exposed to claims under this legislation, and of course it is most important that there is some sort of vetting of existing legislation. It really is not enough to sit back and wait for the claim, because if government loses the claim government may have to pay damages and costs and so on, so we must try to anticipate this litigation which undoubtedly will be on its way. So to that end I know that in the Chief Secretary's Office, for example, there is to be a new appointment on a two-year contract to look at legislation and to help with administrative support there, and in my own chambers I am hoping that we will be able to recruit a lawyer who will have a particular interest and, hopefully, specialisation in human rights. I am afraid that all public authorities, including the Church, will have to review their legislation and we will all have to try and educate ourselves as to compliance with the convention, because if we do not we are going to be exposed to litigation and I am afraid that the Church is a public authority and it may be that the Lord Bishop would be exposed to litigation as well if it could be claimed that the Church and/or the Lord Bishop had acted in breach of the convention. That, I am afraid, is a risk that we all have to take as a public authority. I am quite sure equally, though, that there will be a system of learning. We will have to await landmark decisions which undoubtedly will come from the United Kingdom and Scotland and elsewhere. We can learn by those decisions and amend our legislation, amend our practices so that hopefully we will avoid the litigation.

I just thought that it would be useful to make those general points because, as the hon. member Dr Mann says, these clauses are absolutely crucial to the working of the Bill in practice.

The President: Mr Waft.

Mr Waft: Thank you, Mr President. I thank the members for their support and the Attorney-General for his deliberations on the comments that have been made. With regard to the setting-up of an ombudsman, that is a possibility the Council of Ministers might like to take on board for their consideration.

With regard to my Lord Bishop's concerns and with regard to the public nature of his situation with regard to marriage and the church schools et cetera, it was encompassed within the literature that I did send out with regard to the UK and I am sure that can be clarified for use within the Isle of Man context through the Attorney-General's offices, perhaps. *(Laughter)*

The Lord Bishop: I wait with anticipation!

Mr Waft: Thank you, Mr President. I would like to thank the members for their qualified support.

The President: The motion, hon. members, is that 6 and 7 stand part of the Bill. Those in favour please say aye; and against, no. The ayes have it. The ayes have it. We will take 8 and 9, sir.

Mr Waft: Thank you, Mr President. The purpose of clause 8 is to enable the court or tribunal to grant appropriate remedies when it finds that a public authority has acted or proposes to act in a way which is incompatible with the convention right and has therefore acted unlawfully under clause 6. It also links an award of damages for a convention breach to the level of award which the individual would expect to be granted if a violation of the convention had been found by the European Court of Human Rights. The clause is concerned with breaches of convention rights. Remedies otherwise available to the individual in connection with the act of the public authority are unaffected, and paragraph (b) of clause 10 makes it clear these can still be claimed.

Clause 9. The purpose of clause 9 is to provide that receivings in respect of a judicial court, act of a court or tribunal under clause 7(1)(a) may be brought only by way of an appeal or on an application for judicial review or in the form prescribed by rules. Damages may not be awarded in proceedings under this Bill in respect of judicial acts otherwise than to compensate a person to the extent required by article 5(5) of the convention. Any such award of damages is to be made against the Crown and to preserve judicial immunity. The clause preserves judicial immunity generally for judicial acts undertaken by judges, magistrates and tribunal members and court staff performing judicial functions or acting on behalf of the judge or on the instructions of the judge. It makes an exception in order to provide an enforceable right of compensation for breaches of article 5 by judicial acts to the extent required by article 5(5) of the convention. Existing rights of action are unaffected. Clause 7 provides that a person who claims that a public authority has acted or proposes to act in a way which is unlawful because it is incompatible with a convention right may bring proceedings against that authority under the Bill, may rely on any convention right in any legal proceedings under clause 6(3). Public authority includes courts and tribunals. Mr President, I beg to move clause 8 and clause 9 stand part of the Bill.

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

The President: The motion, hon. members, is that 8 and 9 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. 10, 11 and 12, sir.

Mr Waft: Clause 10, Mr President. This clause saves more generous rights of individuals which are available apart from this Bill. It mirrors at the domestic level the original article 60 of the convention, article 53 as amended by the 11th protocol.

Clause 11, with regard to freedom of expression. The purpose of this clause is to safeguard the freedom of the press and to ensure that courts have particular regard to article 10 of the convention, which relates to freedom of expression when considering the grant of any relief which might affect such freedom. This clause will mainly affect injunctions. Mr President, I beg to move clauses 10 and 11.

The President: And 12, sir?

Mr Waft: Clause 12, sir. Clause 12 is with regard to the freedom of thought, conscience and religion. This clause provides that the courts must have a particular regard to the right of freedom of thought, conscience and religion guaranteed by article 9 of the convention when considering any question under the Act which might affect such a right. Mr President, I beg to move clauses 10, 11 and 12.

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

The President: The Lord Bishop.

The Lord Bishop: I just want to support clause 12, Mr President, and I only do so because I am aware that, when this was being debated across, there was quite some surprise that this was included in the Bill, and I wanted to say that we welcome it here on the part of the Churches, especially as it extends to all religious organisations. I think it is important that one actually underlines that, that one is supporting freedom of religious expression and thought, and one would hope that there are certain countries of the world which might take it up as far as Christians are concerned, but I think that is another matter. But some people suggested it was not necessary to have it in the Bill and I only yesterday got a copy of the poster of a lecture taking place on 1st November in King's College, London which is called 'Values for a Godless Age, the Story of the Human Rights Act' and this lecture is going to be under the quotation 'For the first time our rights are written down, easy to understand and enforceable against the government and all other public authorities and our own courts come along and find out more about these new values for a godless age' and it seemed to me that we ought to underline the importance of respecting people's religious convictions and beliefs and practices in a time when perhaps the emphasis on the secular and the godless might hit the headlines more than any other. I just would like to support that clause.

The President: Mrs Christian.

Mrs Christian: Mr President, I will not vote against the clause but, whilst the Lord Bishop has argued in favour of it, one might ask why any of the rights which are set out in the Bill needs particular emphasis here. They should all be treated equally and with equal importance. However, it is in and I will not seek to vote against it. The only thing is that one might be concerned about the interpretation of religion, because we all know various sects that call themselves religions but would not be generally accepted by society.

The Lord Bishop: Yes, that was exactly the point debated across - how do you define religion?

The President: Mr Crowe?

Mr Crowe: Yes, I was just saying, in confirmation of both the Lord Bishop and Mrs Christian's remarks, I think we recognise we are in a multi-faith society and we must respect the rights of all religions, however they may be defined.

The President: Mr Attorney first.

The Attorney-General: Thank you, Mr President. I am really picking up on a question raised by the Lord Bishop earlier on in this morning's debate. The question really was in relation to this clause, clause 12, whether the secular courts would have the power to perhaps override the Church courts on the Island, and of course the Lord Bishop refers to article 9, which is the freedom of thought, conscience and religion, but of course article 9 is not an absolute right, it is qualified by article 9.2 which says that 'Freedom to manifest one's religion' - this is at page 17 of the Bill - 'or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.' So although clearly the fundamental right of thought, conscience and religion is of extreme importance, as is underlined by the fact that it is highlighted in clause 12 - and, to take up the hon. member Mrs Christian's point, it is surprising in many ways that that has been highlighted there as a very special right - nonetheless I feel quite sure in my own mind that the courts - that is, the Church courts - will indeed be subject to review in the same way as any other public authority will be, but when the courts do review the rights of the Church under clause 12 the court must have particular regard to the importance of the right to freedom of thought, conscience and religion.

The President: Now, Mr Waft.

Mr Waft: Thank you, Mr President. I would not dare to get into the rounds of defining religion in the presence of the Bishop so I just beg that it be moved, sir!

The President: Well, hon. members, I did invite the hon. mover to take 10, 11 and 12. As the discussion has been around 12 I think what I will do is put to you 10 and 11 and then put 12 separately so that you can make your own decision on it. So those in favour of 10 and 11 standing part of the Bill please say aye; against no. The ayes have it. The ayes have it. And separately, then, clause 12. Those in favour please say aye; against, no. The ayes have it. The ayes have it. We will take, then, clause 13 and schedule 2, sir.

Mr Waft: Thank you, Mr President. Clause 13 and schedule 2 deal with derogations and reservations. This clause defines 'designated derogation' and 'designated reservation' for the purposes of the Bill. The convention rights are, by virtue of clause 1(2), to have effect for the purposes of the Bill subject to such a derogation or reservation. The clause also makes provision in respect of designated derogation and designated reservation orders made under this clause. Mr President, I beg to move clause 13 and schedule 2.

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

The President: The motion, hon. members, is that clause 13 and schedule 2 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Perhaps we can take 14 and 15, sir.

Mr Waft: Thank you, Mr President. Clause 14 deals with the period for which designated derogations have effect. This clause provides that in view of the essentially temporary and exceptional nature of any derogation, its effect for the purposes of the Bill should be time-limited and that a derogation should accordingly cease to be designated derogation after a five-year period unless that period is extended by order with the approval of parliament.

Clause 15 deals with periodic review of designated reservations. Clause 15 provides for the periodic review of all designated reservations and designated derogations. This reflects the exception that countries should periodically review the continued need for a reservation to or a derogation from any international instrument which applies to it. I beg to move clauses 14 and 15.

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

The President: The motion is, hon. members, that 14 and 15 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. And 16, sir.

Mr Waft: Thank you, Mr President. Clause 16 deals with the statements of compatibility. This clause places a new requirement for the explanatory memorandum of a Bill to make a statement concerning the compatibility of that Bill with the convention rights. Its purpose is to ensure that in the preparation of a Bill and its consideration by parliament thorough consideration is given to any implications it may have in relation to the convention rights and to ensure that any relevant issues are identified at an early stage so that they can be subject to informed debate. Mr President, I beg to move clause 16 stand part of the Bill.

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

The President: Mr Crowe.

Mr Crowe: Mr President, can I just ask, will this happen after the appointed day orders are in place or will all Bills now coming before the branches have to have this statement?

The President: Mr Attorney.

The Attorney-General: Mr President, the position is that clause 16 of the Bill will not become operative unless and until an order is made under clause 23, but at the moment there is an informal procedure whereby chambers is asked to certify that there is not a breach of the convention. It is often a very difficult task, Mr President.

Mr Crowe: This conforms, does it? *(Laughter)*

The President: Well, hon. members, the motion is that clause 16 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. 17 and 18.

Mr Waft: Thank you, Mr President. Clause 17 deals with rules and orders. This clause makes provision in respect of rule and order-making powers contained in the Bill. This is supplemental to the specific procedures laid down elsewhere in the Bill for the making of designated orders under clause 13.

Clause 18 deals with extension of enabling powers. This clause enables rule-making authorities to make orders to extend the jurisdiction of tribunals to determine questions relating to convention rights. I beg to move clauses 17 and 18 stand part of the Bill.

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

The President: The motion, hon. members, is that 17 and 18 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. And perhaps we could take the remaining clauses now, hon. member?

Mr Waft: Thank you, Mr President. Clause 19 deals with the interpretation, et cetera. This clause defines various terms used in the Bill, explains how references in the Bill to articles

of the convention are to be read before and after the coming into force of the 11th protocol to the convention.

Clause 20 deals with the saving of criminal law. This clause makes it clear that no offence of breaching the convention is created.

Clause 21 deals with application to the Crown. Clause 21 makes it clear that the Bill will bind the Crown. Without the statement there would be doubt as to whether the Bill applies to the Crown.

Clause 22 is transitional. This provides that paragraph (b) of sub-clause (1) of clause 7 applies to proceedings brought by or at the instigation of a public authority whenever the Act in question took place, but that otherwise a sub-clause does not apply to the act committed before the coming into force of that clause. This means that it will be possible for an individual to rely on convention arguments after commencement in any civil or criminal action brought by a public authority irrespective of when the events took place or whether the proceedings have already started. Otherwise, however, acts of public authorities committed before clause 7 comes into force will not be capable of challenge.

Clause 23 deals with the short title, commencement, application and extent. Clause 23 makes the provision about the short title and commencement and full extent of the Bill. I beg to move clauses 19 to 23 stand part of the Bill.

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

The President: Hon. members, the motion is that 19, 20, 21, 22 and 23 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

That concludes the second reading and clauses stage of the Human Rights Bill and concludes our agenda in public this morning. Thank you very much.

The Council sat in private.