

**REPORT OF PROCEEDINGS OF
LEGISLATIVE COUNCIL**

**Douglas, Tuesday, 26th June 2001
at 10.30 a.m.**

Present:

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

The Lord Bishop took the prayers.

Government Office Telephone Systems — Cost — Question by Mr Lowey

The President: Hon. members, we turn then to our order paper and item 1 is a question for oral answer. I call on the hon. member, Mr Lowey.

Mr Lowey: Thank you, Mr President, I beg leave to ask a member of the Council of Ministers:

- (A) *What is the total cost of the installation of telephone systems in Government Office -*
 - (i) *in the last five years*
 - (ii) *in the last two years*
 - (iii) *in the last six months*
- (B) *What advantages to the consumer/user have resulted; and*
- (C) *Who monitors the new systems and who evaluates the results?*

The President: I call on Mrs Christian, the Minister for Health and Social Security, to respond.

Mrs Christian: Thank you, Mr President. The total cost of the installation of the new Mitel SX2000 telephone system which was commissioned in 1999 was £372,000. The system provided SX2000 exchanges located at Government Office, the Sea Terminal, Lord Street and Murray House which provides a core government network servicing approximately 50 government sites. It is the only system which has been installed in the last five years.

The new system has provided the following advantages: the provision of the necessary additional extension capacity together with the ability to handle the increasing volume of calls whilst potentially reducing the call handling time. In addition the system provides the ability to dial directly to all extension numbers. This reduces the calls made to the switchboard in Government Office, thus reducing call answering backlogs and eliminating the need for calls to be transferred. The system has given the potential to utilise the unified messaging system which permits access to email and voice messaging facilities via a networked personal computer, both of the desk top and if required remote sort. The system met the technical requirements necessary to ensure Year 2000 compliance, eliminating any problems on 1st January 2000.

The system is administered by the Support Services Section of the Treasury's Information Systems Division and reports are produced to user departments or divisions for use by the appropriate officers as one of their management tools.

The President: Mr Lowey.

Mr Lowey: Thank you, Mr President. Would the minister not agree that with an expenditure, albeit a few years ago, of £372,000 to install the system. . . would she be surprised to learn that I was informed that a new system had been installed in the Treasury within the last fortnight. I do not say it was installed in the last fortnight, but I was informed that part of the delay that I experienced - and it is worth, if I may with your permission, Mr President, express my experience of trying to get through to the Treasury. I tried all Monday afternoon to get through without success and it took me eight individual telephone calls on the Tuesday to get through, to be met with the response that they had installed a new system and the telephone was cutting off after eight rings. If that is the case would the minister not agree with me that the installation of any communications system should be for the benefit of the customer and not the people at the other end, the staff? And who monitors the success rate of complaints, because if that was my experience as a member of the public - and I was acting on behalf of a member of the public - but to all intents and purposes I was using the system. Would the minister not agree that that is unsatisfactory?

The President: Mrs Christian.

Mrs Christian: Mr President, I am not aware of the situation in Treasury, but I would agree that that is entirely unsatisfactory. The system should be there to provide for the customer and if it is ringing off after eight rings I would think that that is outside the parameters which 'The Way Ahead' document sets for customer service throughout government. In terms of whether or not that relates to the system I have just described I have to say that Treasury, in compiling the answer to this, were not entirely sure what you meant by a telephone system and defined it in terms of the exchange system which was been installed. With regard to the system or the adjustments which mean that phones cut off after eight rings, whether that is a tweak to the system I do not know, but I will certainly make sure. . . I am sure you have made your comments known to Treasury already -

Mr Lowey: I have.

Mrs Christian: - but in terms of the answer to this question I will certainly make your comments known to the Treasury because it does not provide for the best service to the caller.

Mr Lowey: Could I then press the minister? Who monitors the system? Who actually keeps an eye on the amount of telephone calls that come in and the success rate? In other words there must be a monitoring system surely within the service that we provide to the customer?

The President: Mrs Christian.

Mrs Christian: My understanding, Mr President, is that the system has the facility for monitoring itself. In other words the reports I alluded to can tell you how many calls came through to the particular numbers. I am not sure whether it tells you how promptly they were answered. It tells you what calls go out from each number so they can be monitored by the managers of individual divisions or departments. Those reports can be produced for departments so it is down to the departments to monitor the usage in their area.

Mr Lowey: So unless the department asks for it, it is not forthcoming? Would the minister not agree that this sort of monitoring should take place as a matter of course so that government can evaluate the investment of three hundred and whatever it was thousand pounds in the system?

Mrs Christian: The hon. member, I think is probably eluding to political monitoring as opposed to monitoring by the management. It is down to the management in the first place in each department to monitor the usage of the system. If he is implying that political input is needed there, that is a matter for each department but it might be a useful exercise to see

whether or not we are making best use of the phone systems and responding to calls appropriately.

The President: Now, hold on, we have all enjoyed the conversation so far I think across the table -

Mr Delaney: Why don't you make a telephone call? *(Laughter)*

The President: Mr Delaney.

Mr Delaney: Thank you, Mr President. Just a quick one, bearing in mind to back up what the hon. member has said about the call system to the Treasury. I am interested to hear from the minister, would she agree with me that the original telephone system in Mr Callin's time was installed here for £650,000. We never had a report back on whether it worked or not. It is deteriorating and the problem we have got, would she not agree with me, is that there is nobody answering the calls or transferred calls are not picked up by a human voice. It is bad business, particularly in our business which is people business. The people are entitled to an answer from somebody, even if it is only a machine.

The President: Mrs Christian.

Mrs Christian: I know nothing, Mr President, of the system installed under Mr Callin's leadership.

Mr Delaney: £650,000 it cost.

Mrs Christian: £600,000 worth. That is not part of the information I have before me. I would accept what the hon. member says, that people do expect to have an answer. This system by providing a line to every extension should mean that many calls go direct to the person to whom the caller wants to speak and should not have to be transferred. That is the process you have referred to when people find it unsatisfactory to be passed round from pillar to post. The system is designed to avoid that, provided that the caller knows which extension to call. Where they do not, the system is designed for this reason to route calls through the exchange quickly to make sure they get to the right place. If that is not happening, clearly Treasury may wish to monitor the situation.

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

Mr Lowey: Thank you. Could I just take the opportunity to say the strongest link in this case is undoubtedly the lady who operates the switchboard (**Mr Delaney:** Hear, hear.) who does a tremendous job in my view. But that still does not stop the fact that I do think. . . would the minister not agree, again, that the system needs to be monitored, not on just the numbers of calls in and answered, but also the quality of the service and that can only be done from the department itself, so is it long overdue? And I thank the minister for her reply and her courtesy, Mr President.

The President: Mrs Christian, do you wish to respond any further?

Mrs Christian: I only respond to that, Mr President, in terms of the response by the people who are answering the phones must be a matter to be addressed by the individual departments in the light of 'The Way Ahead' document and in many departments a requirement that phones are answered within four rings.

The President: Right.

Royal Bank of Scotland International Bill — Consideration of Clauses — Standing Orders Suspended — Third Reading Approved

The President: Hon. members, we have reached item 2 and it is the Royal Bank of Scotland International Limited Bill. We have reached the consideration of clauses stage and I call on the hon. member, Mr Crowe, to take clause 1.

Mr Crowe: Thank you, Mr President. Clause 1 gives the Bill its short title and provides that the Bill, when it becomes an Act, will come into operation on an appointed day order which it is envisaged will be 1st January 2002. I beg to move clause 1 do stand part of the Bill.

Mr Radcliffe: I beg to second, Mr President.

The President: Mr Radcliffe seconds. Agreed, hon. members.

Members: Agreed.

The President: Clause 1 stands part of the Bill. Right and then we take clause 2 and I call on the hon. member, Mr Crowe.

Mr Crowe: Clause 2 is the interpretation clause. It sets out various definitions, for example, 'the appointed day,' as referred to in clause 1.

'Banking business of Coutts (Isle of Man) Limited': this is the business carried on by Coutts (Isle of Man) in any part of the world which constitutes the receipt of deposits, the payment and collection of cheques and part of its lending business which has been entered into by Coutts (Isle of Man) Limited as a bank. The definition includes all rights and liabilities and all property which is vested in, belongs to or is held by Coutts in its banking capacity. Would hon. members please note that the definition specifically excludes the trust business, the investment business and the corporate service business carried on by Coutts (Isle of Man) and any property vested in or belonging to Coutts (Isle of Man) in relation to such trust, investment and corporate service business. These will continue to be operated by Coutts (Isle of Man) from their Isle of Man offices. Royal Bank of Scotland International will thereafter carry on the banking business presently carried out by Coutts (Isle of Man) under the business name of Coutts in the Isle of Man.

'Business of NatWest Offshore': this is the key definition setting out the business carried on by NatWest Offshore Limited in any part of the world and all property vested in it or belonging to it whether beneficially or in a trust capacity which will be transferred to the Royal Bank of Scotland. Again if hon. members would note the following exceptions relating to business which is to remain in the Isle of Man and this covers any business carried on in any part of the world under the registered business name of 'Isle of Man Bank.' All rights and liabilities and all property which are owned by the bank either beneficially or as trustee and all rights and liabilities which are, prior to the appointed day, vested in the name of 'Isle of Man Bank', which is a registered business name, or which were acquired by NatWest Offshore Limited in its original company names. The company was incorporated in 1865 as The Isle of Man Banking Company Limited, the first company so registered, and in 1926 changed its name to Isle of Man Bank Limited. This means that, for example, all of its banking premises which were acquired in the names of either The Isle of Man Banking Company Limited or Isle of Man Bank Limited are excluded from the transfer to Royal Bank of Scotland International. There will be retained in the Isle of Man and not transferred certain shareholdings registered in the name of NatWest Offshore which are in the definition of 'Excluded Shares'; that is 100 shares in Isle of Man (Nominees) Limited, 2 shares in Lombard Manx Limited and 99 shares in Isle of Man Bank (Leasing) Limited. These companies will remain subsidiaries of NatWest Offshore Limited in the Isle of Man.

'Customer' is any person having a bank account and dealing with the entities namely Royal Bank of Scotland International Limited, NatWest Offshore Limited and Coutts (Isle of Man) Limited.

'Investment business' has the same definition as in the regulations for investment business regulated by the Financial Supervision Commission.

'Liabilities' are any debts, duties or other obligations whether presently existing or which may arise in the future and whether actual or contingent.

'Property' includes assets of every description including land, moveable and immoveable property wherever situate. It also includes properties and investments held on trust, including securities and any other rights and obligations.

'Securities' includes a variety of charges which are set out in the definition.

'Subsidiary' refers to the Companies Act definition.

'Trust business' includes any trusteeship whether in the name of NatWest Offshore alone or with others and includes executorship, administration of the estate of a deceased person and trusteeships where there is a court appointment.

Sub-clause (2) is for the purpose of interpretation where there are changes in legislation to include any such amendments or re-enactments. Mr President, I beg to move clause 2 stand part of the Bill.

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

The President: Seconded by Mr Waft. Dr Mann.

Dr Mann: I know I raised this point at second reading. This clause, of course, has to be very specific and one of the specifics is the withdrawal of certain services by Coutts Bank. Now that bank has advised all its customers that it is withdrawing a service, but one of those services is an executor of a will. If one looks at the letter of advice given by the bank to the individual, if that individual fails to act, that is to change the will, presumably this clause exempts the bank from any legal liability. Many of these individuals may be elderly, may be even confused. If they do not take action what is the position of those individuals? The bank is doing what it should do, it is acting commercially. It is specifically in this clause exempting itself from any legal action, but just as a matter of personal interest, what happens to individuals who do not act? Is their will without legal effect if that is the sole executor?

The President: Mr Crowe do you wish to respond?

Mr Crowe: Yes, thank you, Mr President. The situation with this issue on Coutts writing to some of its customers about wills where a customer had appointed Coutts (Isle of Man) as executor of the will. Now this is a commercial decision taken by the bank and Coutts (Isle of Man) is a trust corporation so it can prove the will. What it did when it wrote to all the customers was to say 'Look, this is not the sort of business commercially that we feel we ought to be in. We are writing to each and every customer saying we think it might be appropriate if you choose another executor of the will. Most people who may wish to then take that advice, they would appoint a new executor, either a family member or another trust corporation or a lawyer or accountant or whatever as the executor of the will. If no action is taken by the customer who does not change the will and the person dies and the will says Coutts (Isle of Man) is the executor, there is an option for Coutts who could either prove the will or they could renounce probate and it would have to be taken out by the family's legal advisers who would have to take out administration. That is right, they could take out administration if necessary. I hope that answers the question, but I think what Coutts were saying is that they did not feel this was the

sort of business they wanted to be in so they have asked their customers to seek another appointment for executor of their will.

The President: Hon. members, therefore, the motion before us is that clause 2 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Do go on to clause 3. Mr Crowe.

Mr Crowe: Thank you, Mr President. Clause 3 relates to the acquisition of businesses. This is the main operative clause and provides that on the appointed day the business of NatWest Offshore as strictly defined, and of course subject to the exceptions previously referred to, and the banking business of Coutts (Isle of Man) as defined in section 2 is transferred to Royal Bank of Scotland International. This means that in respect of those transferred businesses Royal Bank of Scotland International stands in the place of NatWest Offshore and Coutts (Isle of Man) in respect of the transferred businesses. Mr President, I beg to move clause 3 do stand part of the Bill.

The President: Mr Waft.

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

The President: Mr Lowey.

Mr Lowey: Could I ask the mover of the Bill when is the appointed day order to be announced. This is very much. . . it does not give any specific date at all. Is it to be sooner rather than later or will it be used when convenient? Why is there not a particular date? Normally they say one month after, in a government Bill it will say one month after or on a specific date. Here we do not have the specific date.

The President: Mr Kniveton.

Mr Kniveton: Just following on from that question, Mr President. The other jurisdictions - is it the same date for them, sir, as it is in the Isle of Man if this is all agreed today, sir?

The President: Mr Crowe to respond.

Mr Crowe: Yes, my understanding is that it is hoped to bring the appointed day order on 1st January 2002, but as Mr Kniveton has rightly said, there are other Bills going through the legislatures in Jersey, Guernsey and Gibraltar so the whole thing has to be co-ordinated. When all legislation in those jurisdictions is passed then there will be an application made to have the appointed day order. It all has to run in synchronisation.

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

Mr Crowe: Clause 4(1), this provides that the official copy of the Act is conclusive evidence in all court proceedings that the acquisition has taken place and it specifically states that in respect of registered securities, that is stocks and shares which are transferred by virtue of the legislation, the copy of the Act produced to the registrars of the companies is prove of the change without other documentation being required.

Clause 4(2) deals with the transfer of interest in land. The transfer under the Act does not, so far as it relates to other parties' rights, constitute an agreement or transfer which might in other circumstances require action by other parties or, for example, in a lease to be parting with possession which might in other circumstances require consent. Mr President, I beg to move clause 4 do stand part of the Bill.

Mr Waft: I beg to second, Mr President, and reserve my remarks.

The President: Mr Lowey.

Mr Lowey: Mr President, yes, I appreciate that this is part of the mechanics and the logistics of it and I can get my mind round part (1). I find it very, very difficult to the mover of the Bill to get my mind round part (2). 'The transfer of an interest in land under and by virtue of this Act shall not constitute an agreement, transfer, devolution, parting with possession or other disposition.' Devolution, I do not see where that adjective sort of fits in there. Maybe it is me, but I find it very difficult to find . . . and I know it is logistics. I do not want to get too complicated, but when we make laws we should make laws that are understandable by the ordinary man in the street (**Mr Delaney:** Hear, hear.) and I am sitting round here dealing with Bills every week of the year and I find it hard to get my mind round that. So I dread to think what people in the street would do. Perhaps he could just explain a little bit more detail what section (2) means in essence?

The President: Mr Kniveton, did you wish to?

Mr Kniveton: No, sir.

The President: Mr Crowe, then to reply.

Mr Crowe: Thank you, Mr President. I thank Mr Lowey for his comment. I think we are saying in clause 4 that in a situation where the ownership changes, so if it was me and you having a lease or an agreement and I sell my right to Mr X, the 4(1) covers that transfer by change of name in effect, name changes. If you and I and another had an agreement and Mr Waft had to do something or had to sign a consent to it, in fact if you had to sign a consent before it happened, I could not just sell it on to somebody else. It is a blocking procedure so it does not take away your original rights within that agreement. It is a saving clause to stop me taking away your rights through legislation. Nothing changes, but it saves the rights that you have.

Mr Lowey: Thank you, hon. mover.

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

Mr Crowe: Clause 5(1): this confirms that in respect of all contracts, agreements, securities, certificates, conveyances, deeds, leases, licences, notices, permits, guarantees, bonds, indemnities, mandates and other instructions and documentations which are made with, given to or addressed to NatWest Offshore are to be interpreted and construed with effect from the appointed day as if in place of the name NatWest Offshore and Coutts (Isle of Man) respectively there is reference to Royal Bank of Scotland International.

Clause 5(2) provides that subject to any other provision of the present Act to the contrary in respect of any deed, instrument or document and any contract, agreement or undertaking made before the appointed day other than matters specifically referred to in section (1) and also excluding provisions in a will, that any reference to NatWest Offshore or Coutts (Isle of Man) or to the directors, officers and employees of NatWest Offshore should be taken as a reference to Royal Bank of Scotland International after the appointed day order.

Clause 5(3) provides the same situation in respect of any such documentation other than a will which is made on or after the appointed day order in relation to NatWest Offshore in respect of the transferred business shall be deemed to be a reference to Royal Bank of Scotland International.

Clause 5(4) provides a similar provision in relation to references in any enactment, other than this Act, to NatWest Offshore or Coutts (Isle of Man) Limited or to its directors or officers or employees which are similarly to be construed as a reference to Royal Bank of Scotland International and its directors, officers or employees.

Clause 5(5) specifically provides that the Bill does not effect the validity of any trust deed, declaration, agreement, rule, instrument or other document and that includes schemes which are a pension or superannuation fund or schemes established by NatWest Offshore or Coutts (Isle of Man) for their respective employees. Mr President, I beg to move clause 5 do stand part of the Bill.

Mr Waft: I beg to second, Mr President, and reserve my remarks.

The President: The motion, hon. members, is that clause 5 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 6, Mr Crowe.

Mr Crowe: Thank you, Mr President. Clause 6 deals with the effect on court proceedings.

Clause 6(1) provides that there shall not be abatement of any court proceedings underway. Any right or liability of NatWest Offshore or Coutts (Isle of Man) respectively becomes a right or liability of Royal Bank of Scotland and with effect from the appointed day Royal Bank of Scotland International stands in the place of NatWest Offshore and/or Coutts in such litigation.

Clause 6(2) specifically states any court proceedings or arbitration in the Isle of Man by or against NatWest Offshore or Coutts (Isle of Man) does not terminate or be discontinued or in any way prejudicially affected by the change to Royal Bank of Scotland International and that the litigation or arbitration can continue to be enforced by or against Royal Bank of Scotland in place of NatWest or Coutts as the case may be.

Clause 6(3) provides that any judgement, decree or order or award made by or against NatWest Offshore or Coutts which is not fully discharged by the appointed day continues to be enforceable by or against Royal Bank of Scotland International in place of NatWest Offshore or Coutts (Isle of Man.)

Clause 6(4) provides the Act does not terminate or prejudicially effect the appointment, authority, powers or rights of any receiver or manager appointed by NatWest Offshore or Coutts (Isle of Man) Limited whether alone or jointly with others. Mr President, I beg to move clause 6 do stand part of the Bill.

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

The President: The motion, hon. members, is that clause 6 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 7, hon. member.

Mr Crowe: Clause 7 provides that all documents, records, admissions which, if this Act had not been passed, would have been evidence for or against NatWest Offshore or Coutts (Isle of Man) shall from the appointed day be similarly admissible in evidence before any court in the Island for or against Royal Bank of Scotland International. Mr President, I beg to move that clause 7 do stand part of the Bill.

Mr Waft: I beg to second, Mr President.

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

Mr Crowe: Clause 8 is the application of the Bankers' Books. The Evidence Act 1935 deals with the availability of banking records for court purposes and provides special arrangements in the courts. Bankers' books includes ledgers, day books, cash books, account books and other records used in the ordinary business of a bank including microfiche tapes and electronic and mechanical records. Mr President, I beg to move clause 8 do stand part of the Bill.

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

The President: The motion, hon. members, is that clause 8 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 9.

Mr Crowe: Mr President, clause 9(1) relates to trust property and trusteeships transferred to Royal Bank of Scotland International. It provides that any property transferred to Royal Bank of Scotland by virtue of this Act which was previously held by NatWest Offshore either alone or with any other person as the trustee of any trust deed settlement, covenant, agreement or will or as executor or as administrator of a deceased person or as a trustee or appointed by court order or in any other fiduciary capacity from the appointed day it shall be held by Royal Bank of Scotland either alone or jointly with such other person on the same trusts.

Clause 9(2)(a) specifically provides that any order of any court or any trust deed, settlement, covenant, agreement, will or appointment made before, on or after the appointed day in relation to NatWest Offshore whether alone or with any other person or any grant or letters of administration or appointed trustee, executor, guardian or custodian or appointed in any other fiduciary, that is trust, capacity does not fail by reason of the passing of this Act and as from the appointed day the reference to NatWest Offshore is to be deemed a reference to Royal Bank of Scotland International.

Clause 9(2)(b): where in any such order, trust deed, settlement, covenant, agreement, will or appointment there is authority for NatWest Offshore to charge fees in accordance with the scale of remuneration applicable to NatWest Offshore, from the appointed day the remuneration provisions take place with reference to the terms and conditions of Royal Bank of Scotland International. Mr President, I beg to move that clause 9 do stand part of the Bill.

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

The President: Mr Attorney.

The Attorney-General: Thank you, Mr President. The introduction to clause 9 says that 'any property transferred to and vested in RBSI by virtue of this Act' and it then refers to 'trust business'. I wonder if the hon. member could confirm whether or not any trust business will in fact be transferred to RBSI by virtue of clause 9 and secondly, if that is the case, is the hon. member satisfied that the transfer to the Jersey company as trustee will not disadvantage any person who has established a trust in accordance with Manx law?

The President: Mr Lowey.

Mr Lowey: Could I just underline that because is it not a fact if it does go to Jersey there is no depositor indemnity scheme in that island as opposed to the Isle of Man where there is one and that surely is a material fact?

The President: Mr Crowe to reply.

Mr Crowe: The advice I have received, and I thank the learned Attorney for his question on the transfer of Manx trusts, but this Bill does not apply to Manx trusts.

The Attorney-General: Could I just ask a supplementary on that?

The President: Yes.

The Attorney-General: Just referring then to the wording of the clause, it says, 'Any property transferred to and vested in RBSI by virtue of this Act which immediately before the appointed day was held by NatWest Offshore in respect of the business of NatWest Offshore whether alone or jointly with any person as trustee of any trust deed' and so on 'shall be held by RBSI alone'. So the first part of my question was whether in fact any property is to be transferred from NatWest Offshore to RBSI as trustee: that was the first part of my question. Is the hon. member saying that there is not any property being transferred?

Mr Crowe: Well, Mr President, could I ask counsel for the private Bill to answer this question?

The President: Hon. members, I am aware that the legal counsel is here. Can I suggest if Mr Crowe wishes that help that in fact we bring counsel forward so that in fact we get it clearly onto *Hansard*? Welcome, Mr Moore, would you like to respond thereto?

Mr G R M Moore: Mr President, I can respond. I believe that Mr Attorney is probably right. The only matters which will be referred to because we are specifically excluding in this transfer any of the business which is carried on in the Isle of Man under the business by NatWest Offshore in the name of Isle of Man Bank. That is the bulk of the trust business. There may well be, but I am not aware of any, cases where NatWest Offshore per se not trading as Isle of Man Bank may have trust business within the Isle of Man. That would be transferred.

The President: Mr Attorney.

The Attorney-General: Yes, thank you, Mr President, for the answer from learned counsel and if that is the case then if property is to be transferred in perhaps those small number of cases - and I am aware that the bulk of the business would be retained by Coutts here - but if trust business is to be transferred to Jersey, is learned counsel satisfied that the differences in Jersey law and Manx trust law will not disadvantage the beneficiaries under to the trust?

The President: And perhaps we could pick up Mr Lowey's point on that at the same time.

Mr G R M Moore: Sorry, I did not hear Mr Lowey's point. (*Interjections*) Thank you, I can deal with both those. The learned Attorney has asked about Coutts. There will be no trust business transferred from Coutts. Dealing with depositor protection, there is existing depositor protection for those people who have accounts with NatWest Offshore in the Isle of Man. There is no similar protection under the laws of Jersey, Guernsey and Gibraltar and the people whose businesses are transferred here within the Isle of Man this regulation will not change it because those who stay with the Isle of Man Bank will still in fact have Manx depositor protection.

The President: Mr Attorney.

The Attorney-General: Yes, sir, sorry to come back to learned counsel on this. I am aware that the bulk of the trust business will be retained by Coutts here in the Isle of Man -

Mr G R M Moore: Well, all of this trust business will be retained in the Isle of Man.

The Attorney-General: Yes, but I think the essence of this clause 9 as explained by learned counsel is that there may be some trusts where NatWest Offshore is the trustee and I just wanted to clarify, in those very small number of cases perhaps where NatWest Offshore is the trustee and the trust is to be automatically transferred to RBSI by virtue of clause 9, is learned counsel satisfied that the beneficiaries will not be disadvantaged?

Mr G R M Moore: A trust which is established adopting the law of the Isle of Man will remain in the Manx law. If there is a trust where NatWest Offshore has a trust which is established in another jurisdiction, I am choosing Jersey law, Guernsey law, Gibraltar law, it will still remain under that law. So a Manx trust which the Attorney is envisaging if there is any, would still remain subject to Manx law.

The President: So any trust set up under NatWest Offshore although they may be transferred to RBSI -

Mr G R M Moore: The proper law of the trust will remain Manx throughout.

The President: - the law governing that will remain as Manx law?

Mr G R M Moore: That is correct.

The President: And therefore they fall under the depositors protection scheme.

Mr G R M Moore: In a banking function, yes.

The President: Does any other hon. member wish to raise any point? Mr Delaney.

Mr Delaney: As a layman, I was just interested. If somebody from the UK has invested on the Island, now that has been transferred off, will he lose any protection?

Mr G R M Moore: Mr President, any person who has an account with the bank in the Isle of Man, the bank operation will still remain. . .

Mr Delaney: Regardless of where his domicile is?

Mr G R M Moore: Absolutely. The bank, Coutts, have business clients across the world but if they have a Manx contract it still remains a Manx contract.

The President: Mr Crowe, is there anything that you wish to add to clause 9?

Mr Crowe: No.

The President: In that case, hon. members, I put to you that clause 9 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. We turn then to clause 10, Mr Crowe, please.

Mr Crowe: Clause 10 concerns supplementary provisions. Clause 10(1)(a) specifically sets out that in respect of any account in existence before the appointed day between NatWest or Coutts Isle of Man where the customer's account is transferred to RBSI on the appointed day, it gives such customer the same rights and subject to the same rights and obligations in giving rise to compensation and set off as would have been applicable as if it were a single continuing account and this is provided that nothing in the Act shall affect the right of Royal Bank of Scotland International or any customer on or after the appointed day to vary the rights and conditions relating to such account.

Clause 10(1)(b)(1) refers to the instructions, orders, mandates and notices continuing as if RBSI was in the place of NatWest Offshore or Coutts Isle of Man in respect of such matters before the appointed day.

Clause 10(1)(b)(2) is exactly the same relating to such instructions mandates after the appointed day.

Clause 10(1)(c) provides that any security which was prior to the appointed day held by or in favour of NatWest Offshore or Coutts Isle of Man for the payment or discharge of any liability after the appointed day is held by or in favour of Royal Bank of Scotland then that bank has the same rights and priorities and obligations which NatWest and Coutts would have had, so in fact it is a continuing security.

Clause 10(1)(c)(ii) provides that where the security is for future advances or future liabilities, the security given will be held in favour of Royal Bank of Scotland International and available to Royal Bank of Scotland International in respect of such future advances as if the documentation had originally been in favour of Royal Bank of Scotland International.

Clause 10(1)(d) the custody of any document goods or other property held as security, that is as a bailee or depository or custodian, from the appointed day, is transferred to Royal Bank of Scotland International who assumes the rights and obligations of NatWest Offshore and Coutts in respect of any such contract of bailment, deposit or custodianship.

Clause 10(1)(e) any negotiable instrument or order drawn given or accepted or endorsed before or after the appointed day in relation to NatWest Offshore or Coutts Isle of Man and which is expressly drawn on, given to, accepted or endorsed shall with effect from the appointed day be treated as a reference to Royal Bank of Scotland International accepting or endorsing such negotiable instrument at Royal Bank of Scotland International's place of business.

Clause 10(2) extends references to securities to those held by any agent or trustee or nominee for NatWest Offshore or Coutts Isle of Man to be read as from the appointed day being reference to Royal Bank of Scotland International. Mr President, I beg to move that clause 10 do stand part of the Bill.

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

The President: Mr Lowey.

Mr Lowey: Just a comment, Mr President, really and for clarification. In this clause, on at least three occasions, they use the phrase, 'whether in writing or not'. I presume - and one thing I have learnt when you are doing legislation you must not presume anything so if you are not sure, ask - I am asking 'whether in writing or not' - is this because of the paperless society we have got or is it new technologies for making or striking deals. I can only think of the verbal agreement which is legally binding I would have thought but now we have got all this modern technology. Does this cover that or is that the reason why it is introduced? And it is sort of repeated not once in the clause but at least three times in the clause, so I would just like clarification of that.

The President: Mr Crowe.

Mr Crowe: I am advised that it does cover verbal agreements and the new technology.

The President: In that case, hon. members, the motion before us is that clause 10 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Perhaps we could take clauses 11 and 12 together, Mr Crowe.

Mr Crowe: Thank you, clause 11 specifically confirms that the Act does not prejudice any right or liability of NatWest Offshore in respect of the business of NatWest Offshore and Coutts Isle of Man which are not transferred by this legislation.

Clause 12: this being a private Bill, Royal Bank of Scotland International pay the costs of its production.

Mr President, I beg to move that clauses 11 and 12 do stand part of the Bill.

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

The President: Hon. members, the motion is that clauses 11 and 12 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Mr Crowe: Mr President, could I ask for a suspension of standing orders to take the third reading of the Bill?

The President: Hon. members, are you content to take the third reading of the Bill?

Members: Agreed.

The President: In that case, hon. members, we will proceed straight on with the third reading. Mr Crowe.

Mr Crowe: Thank you, Mr President. I thank members for their support and their comments so far. As earlier advised, the Bill comes about as a consequence of the Royal Bank of Scotland Group's acquisition of the National Westminster Bank plc in the UK in the news last year. The purpose of the Bill is to reorganise the international operations by transferring to the Royal Bank of Scotland International parts of the business of NatWest Offshore Limited and the banking business of Coutts (Isle of Man) Limited but not the trust and investment business which will remain with the Isle of Man Bank. The banking business of NatWest Offshore Limited conducted in the Isle of Man, Jersey, Guernsey and Gibraltar is transferred to Royal Bank of Scotland International Limited which will continue to operate in those jurisdictions using NatWest as a trading name as well as continuing its existing business as the Royal Bank of Scotland

International. NatWest Offshore will retain all the business conducted under the name of Isle of Man Bank and change its name to Isle of Man Bank Limited. The Bill covers all the issues involved in the merger of three distinct businesses operating on the Island but having the same overall parent company and I would like to thank hon. members for their support today. Mr President, I beg to move the third reading of the Bill.

Mr Waft: I beg to second, Mr President, and reserve my remarks.

The President: Seconded by Mr Waft. Mr Lowey.

Mr Lowey: Yes, Mr President, I think we have come back really to what I said at the very start. I understand the need, it is not a new phenomenon, banks changing. I mean, the Isle of Man Bank is a classic where it has been bought and sold three or four times virtually in the last 50 years. However, it was sadness for me to see the main business going to Jersey. Having said that we recognise that the Royal Bank of Scotland is a big player and is very welcome in the finance sector of the Isle of Man but getting the Bill in its place I am reassured by the mover of the Bill and his legal team to say that the depositors of the few people that may be transferred will still be treated as if they were in the Isle of Man. To that extent I am reassured. It is a matter of public concern that people who have signed up to an agreement now, because the bank have decided that they are not going to continue in what I would call looking after people's estates for very good sound and no doubt commercial reasons, puts those at a disadvantage. It may only be a small number but again I think in passing legislation I think we have to take regard for the small number and that is the only area which gives me a bit of concern even now. Having said that I think the bank is right to come and get its business dealt with and scrutinised in the way that it has. I will be supporting the third reading.

The President: Do you wish to reply, Mr Crowe, at all?

Mr Crowe: Well again I thank Mr Lowey for his comments. As he says there are always mergers and acquisitions. Banks merge and bigger players take over smaller players from time to time, it is the nature of life. I think what we have to do as legislators is really to provide a framework to encourage other businesses to come to the Isle of Man to be based here. The whole thrust of our marketing is to provide well-educated people and the premises and to encourage people to come here through lower taxation so there are lots of measures being taken by ourselves in Tynwald to encourage people to come here and for businesses to start up here. As for the question of the small estate, I have noted his point. I am sure counsel for the bank has also noted that. As I have explained earlier, it was a decision taken as a commercial decision. It really is slightly outside the ambit of this Bill but I think the message we are getting and I am sure those here will recognise that advising customers is so important, keeping customers on board is so important because the customers are the heart of any business. Again I thank members for their support and comments. Thank you, Mr President.

The President: Hon. members, the motion before us is that the Royal Bank of Scotland International Limited Bill 2001 be read for a third time. Those in favour please say aye; against, no. The ayes have it. The ayes have it. That concludes the passage of that Bill, hon. members and we thank the learned counsel for his attendance this morning.

**Customs and Excise Etc. (Amendment) Bill — First Reading Approved —
Standing Orders Suspended — Second Reading Approved — Clauses Considered —
Third Reading Approved**

The President: We turn then to item 3 on our order paper and it takes us to the Customs and Excise etc (Amendment) Bill. Now it is for first reading. I call upon Mr Radcliffe.

Mr Radcliffe: Thank you, Mr President. This Bill is a recognition of the fact that it is necessary to amend the basic customs and excise law of the Island in a number of ways in order to make it more suitable to the situation the Island finds itself in and that its customs and

excise service operates in and to bring them all up to date in the face of some of the developments of recent years.

The changes involved are largely technical in nature. The most urgent item is that concerned with the amendment of the Customs and Excise Act 1993 and this is going to extend the scope of the provisions in that particular Act and will allow the Island to apply versions of United Kingdom or European Union legislation and treat them as Island law. Since the Edwards Report the need for statutory gateways between government departments and agencies has been well recognised and this need will become even greater when the Human Rights Act 2001 comes into operation. It is essential for the various bodies involved in countering fraud and other forms of criminal activity and for the good regulation of business in the Island that they are able to talk to one another. The use of the public interest argument to justify the exchange of information between agencies which could be used in at least some circumstances in the past will be far less appropriate in the light of human rights legislation where specific provisions are preferable to authorise disclosures and identify when they are allowed. The amendment made by this Bill had issued the existing arrangements in place for the customs and excise division to exchange information with the income tax division, the Department of Health and Social Security and some others.

The definition of 'assigned' matters that is matters that the customs and excise service has general responsibility for is being updated with the original and quite limited definition that dated back to 1986 now being replaced. The new definition, though it does not seek to extend the responsibilities of the service into any new areas, does provide a firm basis for its current operations and removes any doubt as to its involvement in some areas.

The amendments in clause 3 of the Bill are intended to enable the Island to keep its controls on strategic exports and related matters up to date. International commitments and the Customs and Excise Agreement demand that the Island maintains its export controls and related law in line with that of the United Kingdom and the international community as a whole. Recently both the European Union and the United Kingdom have moved to control so called intangible exports with information and software by electronic means - and we are talking there about fax, e-mail and the like. Moves are also afoot to control the provision of technical assistance to rogue regimes and insurgents and those that broker the supply of arms, equipment, training et cetera. The changes made to the main legislation which allows the applications of United Kingdom or European Union provisions relating to customs and excise matters, the Customs and Excise Act 1993 will ensure that any new measures can be adopted in the Island. When applied here, and being subject to such modifications as the Treasury thinks fit, such provisions become pieces of Island law in their own right, subject of course to amendment or indeed revocation as Tynwald should decide upon and independent of what happens to the original United Kingdom or European Union legislation. With that brief explanation I would beg to move that the Customs and Excise Act Etc. (Amendment) Bill be read a first time.

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

The President: Mr Crowe.

Mr Crowe: Mr President, we have listened to Mr Radcliffe with interest but we have before us a letter from Mr Rimington, we have correspondence from the Treasury and there seems to be either a fundamental flaw with the Bill or a fundamental point at issue. I think at this stage we should ask for some explanation as to the fundamental purpose of part of this Bill, as to whether we are getting it right or wrong, because unfortunately I have not had the opportunity to read this by the Treasury and perhaps I am not sure if other members would like Mr Radcliffe to go through it or however he wants to deal with it but there seems to be a fundamental point that we need to wrestle with.

The President: Dr Mann.

Dr Mann: I have to ask the question why it is necessary that this Bill is rushed through at this particular moment. First of all because the measures that are being introduced were actually specifically dropped from the UK Bill to allow it to be rushed through before their election. If it is necessary for the UK Parliament and the UK Government, with a vast majority they had, to actually drop the provisions of this Bill to ensure that it gets through, why are we doing before our election the complete reverse? I cannot see any particular reason why this should be rushed through at this particular moment. It could be reintroduced after our election.

The President: Like Mr Crowe I have not had a detailed chance to go through the Treasury paper and I am also aware that Mr Rimington may be trying to move in the Keys this morning as well so I think we need to be aware of what is happening.

Dr Mann: Well, could I just clarify that, Mr President? I am not interested in what Mr Rimington has written to us. I am interested in what the Treasury are saying and what the Treasury are saying is that they are moving a provision that currently is not in UK law.

The President: Mr Lowey.

Mr Lowey: Could I say I take the diametrically opposed view from Dr Mann. I can see no reason why we should not do it. Either we are interested, hon. members (Thunder) I hope that is not a portent of what is to come. *(Laughter)* I am not interested in other jurisdictions, really. We really must say what we mean and mean what we say. Either we are in the business of fighting crime, whether it is commercial or whether it is customs and excise or organised crime, in a variety of ways, and I think the hon. doctor is politician enough to know that they may have had a big majority in the House but to get it through they have to have both Houses in agreement and they were not in a majority in the upper House and so therefore there has to be some sort of give but they have already indicated that they would be introducing it at the earliest opportunity into the House. What signal is the Isle of Man sending when really we are saying we really should be fighting crime. As far as I am concerned that policy is accepted, that we are in the business of fighting crime. Now as far as I am concerned prevention is better than cure. What is wrong with the Isle of Man being ahead of the game? This particular measure is not mandatory, it is permissive. It is a right there that the head of the Customs and Excise can deal with a matter if it is brought to his attention. Now if we know it is going to re-introduced in another place, and it will be as a matter of urgency, then I can see no reason at all why this Bill should not be receiving, because it is a message. It is like most legislation we put into being. It will not be exercised but the mere fact it is there will prevent things from happening. But if we refuse to do it and deal with it then I think the message going out is, we will pick and choose our time and, by the way, we will be behind other jurisdictions. I do not think that is a message that the Isle of Man ought to be giving out, when we are selling ourselves as a quality place that is super-clean and should be super-clean. I believe that this legislation is another shaft in the whole armoury against organised crime. That is what you are dealing with, you are not dealing with one person, you are looking at organised crime and I believe that this is important and I think delaying it does not help it one jot.

The President: Mrs Christian.

Mrs Christian: I think I would concur with the hon. member, Mr Lowey. The other safeguard if you like is that this introduces a discretionary power to Customs and Excise. They do not have to respond to all requests for assistance. It might send out the wrong message if they did not, if they have the power, but nevertheless it is a discretionary power and to that extent I think we are enabling by passing this legislation. I think the learned Attorney may wish to comment and maybe I am misinterpreting that, it might be a negative, if the Collector did not assist where there were grounds to do so. I am sure that he would not be put in that position. But in terms of

seeking for us to fight crime, the fact that this is enabling seems to me not to pose any difficulty in progressing with it today. However it is only a matter of minutes for us to determine we should not deal with it today and to deal with all the readings, but I think we might be sending out the wrong signals if we did hold the matter up.

The President: Mr Attorney.

The Attorney-General: Mr President, thank you very much. May I just say a few words in support of the hon. members, Mr Lowey and Mrs Christian, and also it might be helpful if I were just to speak in relation to the doubt which I think exists on the face of the papers as to the meaning of crime and criminal conduct, because that I think is at the core of this Bill. Just by way of an introduction, the Customs and Excise Department, if I can put it that way, of the Treasury, is a very active department indeed in relation to fighting serious crime, not only excise fraud but also a whole range of matters from drug trafficking to illicit photographs and so on and so forth: pornography and the whole range of serious crime. Hon. members will be well aware that there is a Customs and Excise Agreement between the Island and the United Kingdom and it is of utmost importance that there be free movement of intelligence between the investigating authorities in the Island and in the United Kingdom. Under our existing law, in the criminal justice legislation, there is a requirement for so called double criminality. In other words, under the Criminal Justice Act until very recently the Attorney General was responsible for vetting disclosures of intelligence off the Island. That power has now been removed so that the power is vested in the Police. But under the Criminal Justice Act, the Attorney-General, when considering matters of fraud and whether he should assist in supplying evidence to other countries, has to be satisfied that the alleged offence is an offence not only in the country from where the request emanates but also is an offence in the Isle of Man, and that is considered to be a safeguard. Things are changing very rapidly and in Malta in July there will be a review of the Island's position as a so-called co-operating jurisdiction of the OECD and one of the things that will be very much to the fore there is a recommendation that states should co-operate in providing information on a whole range of matters without the requirement of double criminality. In other words if a request comes in from a country on the basis that there is evidence that a person has committed an offence in that country, then the Isle of Man will be called upon to give assistance even though the circumstances would not constitute a crime in the Isle of Man. The whole new trend, if I can put it that way, is not to insist on double criminality. Of course, hon. members may be anxious that is opening up a whole range of disclosure of information to enquiring authorities, but as Mrs Christian, the hon. member, has stated there is a safety valve in so far as the Collector of Customs has to consider the matter carefully and also it has to be within the definition of an assigned matter. I hope that that explains the position, that the intention is that this legislation does not insist on double criminality and that the definition of the section is at page 3 of the Bill. If I can just refer to it again, at the bottom of page 3, 'Crime means any conduct which (a) constitutes one or more criminal offences whether under the law of the Island or of any country or territory outside the Island'. So the Collector, certainly, can give assistance under this legislation in relation to an offence under the law, say, of England even though it does not constitute an offence in the Isle of Man. I hope that clarifies that point, Mr President.

The President: Dr Mann.

Dr Mann: If I may come back, Mr President, first of all I am in no way questioning the principles of the Bill. We have international obligations, we have our obligations as far as the UK and the Customs and Excise Agreement. I am well aware of that. It is the way in which we are being asked to do it that I am questioning and I am surprised to hear the hon. member, Mr Lowey, because in so many other issues we are behind everybody else and he is desperately trying to move this ahead.

Mr Lowey: Absolutely! Catch up!

Dr Mann: But why suddenly on this one we need to be ahead whereas everything else we are about ten years behind? There are issues here that do need clarification, they needed clarification in another place. I do not think they have fully finished their clarification. I accept that this has to be. It is whether today is the right day to do it. I am also aware, not only of the interpretation of some of the wording that has been raised already, but this somehow reliance on a discretionary power. Discretionary power, if you look backwards over history, is bound at some point to be questioned and if you have a discretionary power which involves crime or finance in particular, a discretionary power should be questioned. If there is the power it should be a mandatory power. For instance, I would hate to be in the position of a senior official of the customs and excise service who has a discretionary power to decide what is an assigned matter and what is not. He may take the advice of the Attorney-General. I would say it should be mandatory that that official, for his own protection, or her own protection, actually has to seek the advice of the Attorney-General before taking action. That is a matter of not only interpretation as to how the Bill would actually work in practice. I do not think at this moment we have clarified all of these points. I am not opposed to the principle. I will support the Bill when it has been thoroughly argued through but we are taking a significant step forward. If the UK were in a position of saying 'We have done it, come on why are not you doing it?', I would say 'Let us argue it through first and then when we are satisfied we go ahead and do it in the normal course of business'. The worst that could happen is a delay of about five or six months.

The President: Mr Attorney, I think you wish to. . .

The Attorney-General: Just by way of hopefully giving some comfort to the hon. member, Dr Mann. Even though say under the amended criminal justice legislation, the police have the power to disclose intelligence off Island, they actually do that pursuant to a memorandum of understanding or a memorandum of agreement, which I have issued to them. In other words there are guidelines as to how the discretion is going to be exercised, so that if for example it is suggested that intelligence in relation to, say, a person in Iraq or Iran should be disclosed from the Isle of Man to the authorities there, the police would say, well, the Attorney-General has previously advised that because of the very poor human rights record of those countries it would not be opportune to give that information to those authorities. There are guidelines and I think equally the Collector will obtain guidelines from the Attorney General to help him exercise his discretion.

The President: Mr Waft.

Mr Waft: I think the Attorney-General did cover my point with regard to that paragraph 'Constitutes one or more criminal offences whether under the law of the Island or of any country or territory outside the Island'. That is a very wide church to be undertaking with regards to any country and now the Attorney-General has qualified to a degree when he mentions the police memorandum of understanding and he has previously advised. But that is not covered under this Bill with regards to the advisement of the Attorney-General. It is down to the Inspector of Customs and Excise. I think that I should mention that we are well served by the Customs and Excise Division and we should be supporting them in any shape or form, but I do think it should be clarified that it would only be on the Attorney-General's say so that we do discuss information.

The President: Mr Lowey.

Mr Lowey: Yes, Mr President. First of all I think this is the normal thing. The idea that the House, another place, is wanting clarification, they had a special meeting of its House last week to clarify this particular Bill. However, I am again coming back, why the delay, why should we delay it? I mean that is the essence, it will be only be four or five months. Well, the only people

that would be wringing their hands or giving two cheers to that would be the people who the Bill is designed to prevent from doing it, the crime. Crime does not take a summer holiday or a sabbatical and the reason why I am so firmly in favour, having been a former Minister of Home Affairs, I know exactly what the officers of the Customs and Excise are up against. I have to say that you should not be tying their hands behind their back. I come back to what I would call the message I want to be going out when we are dealing with this is that we are not prepared to tolerate wrongdoers. Here we seem to be wanting to defend somebody's rights: somebody's rights to do what? As far as I am concerned I believe that we should give the officers the discretionary rights if needs be to disclose information, because it is a two way street. It goes from here to there and it also goes from there to here, and we must not forget that either. I genuinely believe, myself, by delaying you do nobody a service except the wrongdoers and I am not in that business. I know this House is not in that business and the Isle of Man is not in that business but you have got to get the message right and you have got to be loud and strong in that message to go out, otherwise you really are giving the wrong impression of the Isle of Man.

The President: Well, we are going round in circles but at the present time we are still dealing with the first reading. Mr Radcliffe.

Mr Radcliffe: Thank you, Mr President. Some interesting points made by hon. members. Mr Crowe referred to the letter which is before us from Mr Rimington addressed to yourself, Mr President. I would suggest that Mr Rimington should have been moving a lot quicker than 10 o'clock last night if he is wanting to get something done about this Bill. To attempt to undermine the furtherance of the Bill be a method of this sort. . . he has had the Bill in his possession for long enough, as we have, surely if there are questions like that crossing his mind he could have rung the Collector of Customs and Excise, he could have rung anyone down in that department and got the answer. He could have raised it in the Keys and would have got an answer but instead of that 10 o'clock last night, 12 hours ago, well more than 12 hours ago, he is chewing away at it then. The hon. member, Dr Mann, has asked why rush and he makes the point that the United Kingdom dropped certain parts of their Bill. They were dropped from the United Kingdom Bill before it became the Criminal Justice and Police Act 2001 so the Bill might be swiftly enacted prior to the United Kingdom General Election. However Her Majesty's Government has indicated that they will be re-introduced in a suitable vehicle in the new parliament and I would suggest that will happen sooner rather than later. I thank Mr Lowey for his support. He makes the point that we are fighting crime, it is part of our armoury against organised crime or will be and it is essential that we have it in place not just talking about it. I thank the hon. member, Mrs Christian, for her support and I would thank the learned Attorney for the various explanations and so on that he has given us about various matters within the Bill. The hon. member, and again I return to Dr Mann, and why can't we delay the Bill? There is export control legislation and that is one of the reasons for the urgent elements of the Bill to ensure that it is in place when the United Kingdom enacts its Export Control Bill. The United Kingdom Bill will probably be in force by this time next year if not before and the delays could mean that the Isle of Man would not be able to apply various orders made under the United Kingdom Bill which would apply here. But, Mr President, the fact that should get Mr Rimington more excited than anything else that has happened up to now is the fact that in the United Kingdom there is reserve power to make orders et cetera for the Isle of Man. We could be in a position where the United Kingdom felt it was essential that legislation should apply in the Isle of Man regardless of whether we had a hand in it or not, and I would suggest that Mr Rimington and others would get really excited because if the United Kingdom did pursue this course it would certainly be seen as undermining the sovereignty of the Island and I would hate that to happen. I am sure John Rimington at 11 O'clock last night would agree with me that it should not happen either. Mr President, I move the first reading of this Bill before us.

The President: Hon. members, the motion before you then is that the Customs and Excise etc (Amendment) Bill be read for the first time. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

Mr Radcliffe: Mr President, I am going to be brave, sir, and ask for a suspension of standing orders. If this Bill, as I have said, is to be any use to us it wants to be enacted. It has been demonstrated in the Keys that this has been pushed through, it has been fast tracked as someone would say. As a member of Treasury I agree with the course that was taken on trying to get the Bill through, and I think there is every good reason why we should have this Bill in place. If it is in place, designated day orders can be made to come before Tynwald, certainly in October or whatever I think to my mind anyway and Treasury's mind, it is essential that the Bill be in place before then. I beg to move, sir, that standing orders be suspended to take the second and subsequent facets of the Bill.

The Speaker: Mr Delaney.

Mr Delaney: We were doing very well until he came to the latter part of the speech when he talked about the problems in legislation. . .

The President: Are you seconding?

Mr Delaney: Not seconding no.

The President: Well, hold fire then.

Mr Delaney: Oh I thought there was a rush to do that!

The President: Well, I have not heard anybody rush yet.

Mrs Christian: I will second, Mr President.

The President: Mrs Christian will second. Now then, Mr Delaney.

Mr Delaney: I am just getting on with what I was saying, that where he got to the last part of the speech, if we don't do it the British Government do it, you can say 'Goodnight, Kathleen' to the Isle of Man, just that impression. When the puppet-master twitches for any reason the puppet jerks. The situation here is that by just saying to us here in this assembly that if we do not do it there is a threat, there is a danger that they will do it. If we ever send that message out we will not have anything anyhow because the situation will be we will always have this hanging over our heads: if we will not do it, they are going to do it. I do not accept that the British Government - and I am amazed to find that the Treasury is stating here - what really have we got here, are we all puppets? Is that what we are? Only passing legislation that we know they will accept over there, and if we do not pass it they will step in? I have never accepted that in 25 years and nobody has ever proved to me that that would happen. If that is what we are doing then we had better tell the people out there, the election is coming on the 22nd November, we had better tell them out there don't bother going to the polls, Westminster will sort it out anyhow, because that is the message we will be sending out through this. I think this should be held up. There is no rush on it as has been said I think it should be held up. There is no real reason why we should have the second reading. I accept the bit about preventing crime, I accept that, but I also accept the Attorney-General at the end of the day, and like someone when the head of customs is not there and they have got some junior officer answering the phone, and somebody thinking, 'Oh aye we are covered on this one here', whoever is standing in for him and does it. We have had it before. The situation is that I believe it should go through the normal course.

The President: Mr Lowey.

Mr Lowey: Speaking in support of the suspension of standing orders, there are times when we suspend standing orders for practical reasons and there are other times where we do it if you like for expediency. This is for practical reasons, not expediency. I do not accept the

principle that the threat of the UK actually doing it, because they can do it. Make no mistake they can do it. We regularly give them permission to do it on our behalf. Rather than enact legislation ourselves we get it over and it covers the whole spectrum - social security legislation. My colleague, Dr Mann, said that I have always been fighting to get us up to scratch and not ten years behind. If it was only ten years I would. . . I am only raising on many social after 19 years in some cases, but that is for another day, I agree. But I do believe that the Isle of Man has got a good reputation internationally. This is the thing that we have got to get out of our minds that somehow. . . My colleague, Mr Waft, said it encompasses an awful lot of countries out there. But the Isle of Man is doing a lot of business and trade with an awful lot of countries. We were expanding that in recent months to international gambling. We are doing that with other countries further afield so the suggestion that the Isle of Man is now, if you like, retained within our boundaries is a myth. We are an international centre. Therefore it is vitally important internationally to be seen to be a thing of excellence, that we are not prepared to permit what I would call wrong doing. I am sorry it seems repetitious but by delaying it what are you achieving? What are you going to achieve? You are going to achieve absolutely nothing but give comfort to somebody who might, who might. The one thing is certain: if it is in place then if they do it we have got something to fight them with. If you do not do it and they continue to do something wrong or do something wrong for the first time, you have not a hope of doing anything, so therefore there is everything to gain and nothing to lose. I believe that you should suspend standing orders and take the various readings of this Bill.

The President: Mr Waft.

Mr Waft: Yes, just a slight comeback. When Mr Lowey mentioned my name with regard to a broad church and an international centre, I would not condone anybody to think that we would agree with all the international courts of justice throughout the world. For heavens sake, there must be some recognition that there are some countries who certainly would not be alligned to. For instance to, the laws and regulations of Taliban in Afghanistan or what is happening in Iraq or Iran, as has been said. There is a limitation, I would have thought, is the interchange of communications between different countries throughout the world and that is why I think it is essential that the Attorney-General does have input into the condition where we are faced with having to divulge information, for the good conduct of international fighting of crime and I think we would all agree with that. I am a bit concerned when the mover did mention about perhaps we could be acting in the future under duress to have this Bill put through. I would think we are acting on our own behalf to do what we think is right and not what the UK Government would think is right or wrong. I will support the mover in that we go along the route that he requests, purely on our own recognition of the need for this legislation to be in place and not the need to be acting because the UK might force us to at a later date. Thank you, sir.

The President: Mr Attorney.

The Attorney-General: Thank you, Mr President. I felt that I just had to say one or two words in response to the points raised by the hon. member, Mr Delaney on the powers of the United Kingdom to legislate for the Island. Of course, the constitutional position of the Island is such that there is a reserve power for the United Kingdom to have regard to our international obligations. In the final analysis if the Island refused to bring its legislation up to the required international standard or norm then indeed the United Kingdom has that residual power to legislate. But can I say that, in this particular context, I can assure hon. members that as long ago as I think October of last year I was invited to attend meetings at the Home Office to discuss developments in relation to strategic arms controls and so on and particularly the problem about so called dual use goods where goods can be exported which have a dual use, namely civil and military. I do not think for one moment that the authorities in the United Kingdom have any intention whatsoever of legislating for us in this area. They want to move with us and co-operate with us and there is an extremely good relationship between the Home Office and the

Attorney General's Chambers in relation to drafting the necessary orders which prohibit the export of goods which can bring the Island into terrible disrepute. It would be a dreadful thing if the Island were to be used as a back door for the import and export of goods which could be used in armed conflicts and bring the Island right down in reputation. The second point Mr President, if I may: hon. members have referred to the requirement for the Attorney-General's consent. As I explained briefly at the start of this debate, the Attorney-General's consent has actually been removed as a requirement in the criminal justice legislation so that now intelligence can be disclosed off-Island without the Attorney-General's consent. As it has only just gone through in the latest Criminal Justice Act, it would, I think, be inconsistent and illogical to impose the Attorney-General's consent in this context when we have just removed it in the broader context of all crimes of money laundering. Of course, the reason why the AG's consent was removed from the legislation was to comply with international obligations. The FATF, Financial Action Task Force, Report on the three islands, the Isle of Man, Jersey and Guernsey, expressed disquiet about the Attorney-General's consent and felt that there should be a more liberal disclosure of information. I just make those points hopefully again with a view to clarifying matters as obviously a matter of policy for hon. members to decide.

The President: Mr Crowe.

Mr Crowe: Thank you, Mr President. Can I just ask the learned Attorney, do the police and the Income Tax Division have the powers now which were, or the Bill that recommended that we give to the Collector of Customs and Excise or are we giving Customs and Excise an additional power over and above what the income tax or the police have to disclose information?

The Attorney-General: Mr President, these are new powers, new gateways, for the Collector to disclose information and, again, could I respectfully suggest that the longer the delay there is in implementing this legislation, the more Customs will be restricted in its ability to disclose information, say to the Financial Supervision Commission. It is ironic, I think, that Customs may have very valuable information on a particular person, say an applicant for a corporate service provider's licence, and it cannot disclose that information to the commission who is deciding that licence. So the quicker we get these gateways into place, the quicker the Collector can disclose information to the FSC, the better.

The President: Mr Delaney.

Mr Delaney: My question was purely listening and thanking the Attorney-General for the information on that, but would he not agree with me for example, quoting the arms for Iraq situation where the Customs and Excise in Britain to give export licences for what somebody did not know the difference between a pipe and a long-range artillery piece. There was only a connection we had with that sort of thing might have been when a company in the Isle of Man was a holding company and that was the situation that may arise but, as far as the British Government is concerned, they have that right in relation to international agreements but not into our local legislation. Here we could be actually starting to impound and giving the impression to British Government they can go further than the actual thing we think we have given them which is international rather than to local all legislation that we may wish to bring in.

The President: Mr Attorney, do you wish to comment on that?

The Attorney-General: Yes, Mr President. Just to re-iterate, I feel sure that the Island must move with the UK on the international front and we want to avoid Isle of Man companies being used in scandals such as the arms for Iraq scandal.

Mr Delaney: I agree with that. You have answered the question in part, I think.

The President: Hon. members, we are actually discussing whether or not we will suspend standing orders to move forward. I can tell you that I have just received a note, so I might as well. . . as I have circulated a letter from Mr Rimington before and I appreciate the point it is not really

before Council but I will read it to you. Mr Rimington writes saying that 'The Council has a late memorandum from the Treasury which accepts the correct interpretation of the legislation as written. However, the minister's brief through the stages of the Bill was incorrect and he avoided answering this and therefore the Bill was progressed on an explanation that was different from the actual text. That is my only concern and Mr Quine might feel rather cheated on his amendment.' Hon. members, you can make what you like out of the correspondence which we have had in relation to this Bill this morning. Now, Mr Radcliffe, do you wish to say anything on suspension of standing orders?

Mr Radcliffe: No, again some interesting points made, not all together to do with the suspension of standing orders either. The notes I have would suggest that there is a certain element of support for suspension of standing orders to take the second and subsequent stages of the Bill. I thank again the learned Attorney-General for the explanation he has made explaining that there is a very good relationship with the UK with regard to orders but I would say that at the end of it all, if they so desired and decided that it was in the best interests of everyone that reserve power to make orders is there and could be used. I am not necessarily saying it will be used but certainly is there and can be used if need be. Mr President, I am not going to rattle on about other things. I beg to move the suspension of standing orders to take the second reading and subsequent stages.

The President: Hon. members, the motion before us is that the standing orders be suspended to allow us to progress to second, clauses and the third reading this morning. Those in favour, please say aye. Against, no. The ayes have it. The ayes have it. So we will progress then with the second reading of the Customs and Excise Etc. (Amendment) Bill. Mr Radcliffe.

Mr Radcliffe: Thank you, Mr President. Clause 1 of the Bill inserts new sections 174A to 174C into the Customs and Excise Act and these new sections are concerned with the disclosure of information (a) by the. . . Oh, I have not had a seconder, have I?

Members: *(Interjections) (Laughter)*

The President: Hon members, if we can, what we have dealt with according to our Order Paper was the first reading of the Customs and Excise Etc. (Amendment) Bill which was approved. We then sought suspension of standing orders, which you have agreed to, to take the remaining procedure of the Bill through, so we really need to deal with the second reading. Mr Radcliffe.

Mr Radcliffe: Right sir, well the second reading, I beg to move the second reading of the Bill. There is little more to be said than what I said when I was talking on the first reading of the Bill *(Laughter)* and it is very fresh hopefully in peoples' memories still. I beg to move the second reading of the Bill.

Mrs Christian: I beg to second.

The President: Mrs Christian seconds. Hon. members, the motion before you is that the Customs and Excise etc. (Amendment) Bill be read for a second time. Those in favour, please say aye. Against, no. The ayes have it. The ayes have it. Now we can move on to deal with the clauses individually, Mr Radcliffe, if you so wish Clause 1.

Mr Radcliffe: I am obliged, Mr President, and thank you very much and in the wild enthusiasm of the moment I apologise for missing out that particular part of the proceedings. Clause 1 deals with disclosure of information and inserts new sections 174A to 174C into the original Act. These sections are concerned with the disclosure of information (a) by the Customs and Excise Division of the Treasury to other enforcing authorities in the Isle of Man and (b) by other enforcing authorities in the Island to the Customs and Excise Division.

The new section 174A allows the Customs and Excise Division of the Treasury to disclose information (a) for the purpose of a criminal investigation being carried out in the Island or elsewhere, (b) for the purpose of criminal proceedings in the Island or elsewhere or to enable or assist specified authorities in performing functions laid to them.

Subsection (1) provides that the section applies to information and documents held by the Treasury, Collector of Customs and Excise or any officer of that division which relate to an assigned matter. An assigned matter is one that falls within the scope of the definition in section 184 of the Customs and Excise Management Act 1986 or specified as being such in another statute and being one for which the Treasury's Customs and Excise Division is responsible and being one which attracts certain general powers and penalties under customs and excise law. Assigned matters include matters concerned with customs duties, excise duties, VAT, import and export controls, licencing and prohibitions, et cetera. It should be noted that clause 2 of the Bill before us seeks to amend section 184 of the 1986 Act so as to more adequately define the term 'assigned matters'.

Subsection (2) of clause 1 provides that obligation to secrecy imposed by a statute or otherwise prevents the disclosure of the information in documents referred to in subsection 1 for the following purposes: for the purpose of a criminal investigation being carried out in the Island or elsewhere, for the purpose of criminal proceedings in the Island or elsewhere or to enable or assist specified authorities in performing functions related. The term used to describe the authorities to which information may be disclosed is an enforcing authority and this is defined in section 174C.

Subsection (3) requires the authority of the Collector of Customs and Excise for any disclosures made under section 174A.

Subsection (4) provides that information or documents disclosed to another agency or authority by virtue of subsection (2) shall not be passed on by the recipient agency or authority without the consent of the collector and for one of the purposes mentioned in subsection (2).

Subsection (5) of clause 1 provides that the consent of the Collector for information passed on by Customs and Excise under terms of subsection (4), maybe either specific or general in extent.

Subsection (6) provides that section 174 is not to be taken to permit the disclosure of information to or by Customs and Excise if such disclosure is prohibited by the Data Protection Act 1984.

Subsection (7) defines information or documents held on behalf of the Treasury or the Collector as including those held by a person who supplies services to either of them and are held in connection with the provision of such services. This provision covers situations where an outside person or body is acting on behalf of the Treasury or the Collector. The information or documents that they hold, insofar as relates to the service they are providing for the Treasury or the Collector, is subject to the same rules as are actually held by the Treasury or Collector. So they cannot just do their own thing.

Subsection (8) provides that nothing in subsection 174A is to be taken to prejudice any other power that allows the disclosure of information or documents. This ensures that pre-existing legislative provision, such as income tax and social security legislation, that allow the disclosure of information to Customs and Excise are not compromised by the new provisions.

The new section 174B deals with disclosure of information to customs services by enforcing authorities. Section 174B allows an enforcing authority to disclose information to the Customs and Excise Division in order to enable or assist the division in relation to an assigned matter.

Subsection (1) provides that section 174B applies to any information held by, or on behalf of, an enforcing authority. Again, as I said earlier, enforcing authorities are defined in section 174C.

Subsection (2) provides that no obligation to secrecy or otherwise shall prevent the disclosure of information or documents by the enforcing authority, to Customs and Excise in order to enable the Treasury, the division or an officer of Customs and Excise to discharge their functions in relation to any assigned matter. An assigned matter is one that falls within the scope of the definition in section 184 of the Customs and Excise Management Act 1986 or specified as being such in another statute and being one for which the Treasury's Customs and Excise Division is responsible and being one which attracts certain general powers and penalties under customs and excise law. Assigned matters include matters concerned with customs duties, excise duties, VAT, import and export controls, licencing and prohibitions, et cetera. It should be noted that clause 2 of the Bill seeks to amend section 184 of the 1986 Act so as to more adequately define the term assigned matters.

Subsection 3 provides that when information is provided to the Customs and Excise Division by an enforcing authority, then it can only be disclosed by the division to another agency or authority for the purpose of an assigned matter and with the consent of the enforcing authority that provided the information.

Subsection (4) allows that consents to disclosures provided for by subsection (3), maybe either general or specific in their extent.

Subsection (5) provides that nothing in section 174B authorises disclosures that would be prohibited by the Data Protection Act 1984.

Subsection (6) provides that references made in subsection (1) to information held on behalf of an enforcing authority include relevant information held by a person who provides services to that authority and which is held in connection with those services.

Subsection (7) provides that the provisions of section 174B are not intended to compromise any pre-existing legislation allowing for the disclosure of information to Customs and Excise.

The new section 174C deals with matters supplementary to sections 174A and 174B and it is in this section that these are definitions of some of the terms used in the preceding sections and it also lists those agencies and bodies which are enforcing authorities for the purpose of sections 174A and 174B. For the purposes of section 174(2) a crime is defined as being conduct which would constitute a criminal offence or offences if committed on or outside the Island. The terms 'criminal investigation' and 'criminal proceedings' in section 174A(2) are to be interpreted accordingly. Now I move on to the enforcing authorities and they are listed as being the Financial Supervision Commission, the Insurance and Pensions Authority, the Police, the Isle of Man Office of Fair Trading, the Gaming Control Commissioners and any other person who may be prescribed in an order made by the Treasury. The named agencies and bodies have all consented to their inclusion in the Bill. 'Police' means the Chief Constable and members of the Police Force in the Isle of Man and other pre-existing legislation allows for exchanges of information with the Income Tax Division and the Department of Health and Social Security, so there are certain sections already in dealing with disclosures. Mr President, I beg to move sir that clause 1 stand part of the Bill.

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

The President: It having been seconded by Mrs Christian, can I just make plain for my own purposes, not for any other purposes, but I take it Mr Radcliffe that when you were referring to A, B and C, in actual fact it is B, C and D.

Mr Radcliffe: I am sorry, sir.

The President: I think that is the way it follows on the Bill anyway.

Mr Radcliffe: Yes, that is the way it follows on the Bill, yes.

The President: As long as we are clear on that point. Mr Crowe.

Mr Crowe: Yes, thank you, Mr President. Can I just ask the hon. member as to what failsafe mechanisms are built into this. What defences are in the Bill for somebody shall we say unwittingly caught up in something. It occurred to me you might have an Isle of Man resident selling computers to shall we say a company in the Middle East but they end up in Afghanistan or something like that. Now the offence would appear to be a crime in Afghanistan for dual use goods where you are selling computers which could be used for military use in Afghanistan. Now, presumably then, Afghanistan would write to the Manx Customs and Excise and ask for information of the Manx company selling to the Middle East. Presumably then the Manx company or the Manx individual would not be prosecuted in the Isle of Man for selling unwittingly goods that ended up in the wrong place. I am not sure. . . it is really a question of what defences does somebody have in the Isle of Man against a legitimate or innocent action which could be seen as a crime in a foreign country.

The President: Mr Waft.

Mr Waft: There is a fine line I think, Mr President, that we walk when we talk about gateways of information and in your next breath you talk about human rights and data protection. The difference is, of course, the criminality involvement with regard to the gateways having to be open to provide information in different areas. It is listed in clause 174B(6). It says there 'Nothing in this section authorises the making of any disclosure which is prohibited by any provision of the Data Protection Act 1986' or 1984 as the case may be' and that Data Protection Act does not even allow one department to convey information to another department so how they are going to get any information to third world countries or other countries around the world and not break the Data Protection Act legislation. . . I am a little bit concerned as to when they refer to assigned matters. Perhaps the reasons for the measures to be lifted for them. It is certainly a very, very grey area and great care will have to be given in giving information, especially when we have heard that there is no referring to the Attorney-General in regard to this. Thank you, sir.

The President: Mr Radcliffe to reply.

Mr Radcliffe: Thank you, sir. I can deal with Mr Waft's point about Data Protection Act. Certainly if anything is to be divulged there certainly has to be great care taken in disseminating whatever information may or may not be available. Mr Crowe asked about defence against an offence. I think the onus is perhaps surely a little on whoever should be a provider of goods or services to ensure that they do not go where they should not go. I have to say that there is nothing too specific in this Bill as it stands. I have not got the main Customs and Excise Act before me. Perhaps learned Attorney, who I see consulting book there, could be of guidance perhaps on that one to me and to the Court, sir.

The President: Mr Attorney.

The Attorney-General: Thank you, Mr President. I am looking at section 152 of the Customs and Excise Management Act 1986 which provides that, subject to various exceptions, no proceedings for an offence under the Customs and Excise Acts shall be instituted except with the consent of the Attorney-General. So I suppose that because obviously these offences would have very significant implications for the accused person, any prosecution would be carefully scrutinised by the Attorney-General to ensure that proceedings would not be instituted if the person had a genuine defence.

The President: Mr Radcliffe, is there anything further you wish to add?

Mr Radcliffe: Yes. I think the only comment I would make perhaps and we deal again with Mr Crowe's point: the offence would be to knowingly provide goods or services which are going to be contravening law somewhere. If you are well aware that they were going to Afghanistan or whenever you would then be committing an offence but if you sold innocently to a third party and it then went on from there, you would not be liable in that case. I beg to move, Mr President.

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

Mr Radcliffe: Thank you, Mr President. Clause 2 deals with assigned matters and the clause replaces the definition of assigned matters in section 184(1) of the Customs and Excise Management Act 1986 with a more comprehensive one, one that seeks to cover all the matters that should or may be treated as assigned matters. 'Assigned matters' means matters that the Treasury is responsible for but for which it assigns that responsibility to its Customs and Excise Division. The term attracts various general powers and penalties in the 1986 Act and was conferred on matters by section 184(1) by being described as such in other statutes or occasionally are held to be such by decisions of the courts. The definition of the 1986 Act has been found to be quite restrictive and does not provide an adequate description of the type of matters which should rightfully be considered assigned matters. In this way it opens the way to doubts and indeed challenges the role and the powers of Customs and Excise Service on the Island and the intention of the amendment is for the removal of any doubts. The equivalent provisions in the United Kingdom's Customs and Excise Management Act 1979 are far more broadly drafted and the amendment to the Manx Act seeks to provide a similar breadth whilst recognising the somewhat different position and status of the Customs and Excise Division in comparison to Her Majesty's Customs and Excise. The wording to be replaced in the 1986 Act reads as follows: 'Assigned matters' means any matter in relation to which the Treasury is, for the time being, required to perform any duties in pursuance of any statutory provisions relating to customs and excise or to the prohibition or restriction on the import or export of goods or to value added tax'. Among the matters which are assigned matters are various matters. It covers a fair range. The revised definition consists of four paragraphs. Paragraph 1 is effectively the same as the wording of the original definition found in the 1986 Act. Number 2, this paragraph ensures that there is no doubt as to the following matters being assigned matters and there is a fair list here falling under section 1 of the Customs and Excise Act 1991. I can recite them if members wish me to but I say it is a comprehensive list. Number 3, this is a catch-all provision designed to ensure that any function that an officer of Customs and Excise is required or empowered to perform under any legislation is treated as being an assigned matter. Number 4, paragraph (d) of the definition allows for the Treasury to add to the list of what is to be considered an assigned matter. Procedure would involve the use of an order subject to the positive approval process in Tynwald. I do not think there is much more I wish to say on clause 2, Mr President. I beg to move, sir, that clause 2 stand part of the Bill.

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

The President: Mr Crowe.

Mr Crowe: Thank you, Mr President. Can I just ask the hon. mover about sub-clause (d), an order made by the Treasury. Presumably there are other parts to that legislation which would need the approval of Tynwald.

The President: Mr Radcliffe to reply.

Mr Radcliffe: Yes, I did say, Mr President, that it allows for the Treasury to add to the list to be considered an assigned matter, but the procedure would involve use of an order subject to the positive approval process in Tynwald, so the safeguard that you are desiring to see is certainly there. I beg to move, sir.

The President: Hon. members, the motion before us is that clause 2 do stand part of the Bill. Those in favour, please say aye. Against, no. The ayes have it. The ayes have it. We turn to clause 3, Mr Radcliffe.

Mr Radcliffe: Thank you, sir. Clause 3 deals with an amendment of the Customs and Excise Act 1993. This clause amends section 1 of the 1993 Act and inserts a new section 3A. The intention is to ensure that the powers in the Act to apply United Kingdom legislation apply equally to measures concerned with the export of goods and services by intangible means and to developments in strategic export control legislation relating to such things as arms brokers, the provision of technical assistance by Island based companies, et cetera.

Subsection (1) of clause 3 provides that the Customs and Excise Act 1993 is to be amended in accordance with the provisions in clause 3.

Subsection (2) amends section 1 (3) of the 1993 Act and paragraphs (da) and (db) are added to section 1 (3) which allow for the application in the Island of any United Kingdom legislation which is concerned with the supply of services in the United Kingdom or elsewhere and the buying or selling of goods in the United Kingdom or elsewhere. The intention of these new paragraphs (da) and (db), that are identified in the Bill, is to allow for the application of measures concerned with (a) controls on intangible technology transfers, that is the supply of information et cetera by electronic means, and (b) controls on the activities of those supplying or facilitating technical assistance, training, brokerage services and other matters, which it is intended will be dealt with by changes to a strategic export law in the near future. I did mention that in the initial comments on the Bill. The changes will enable the Island to apply measures proposed in the Export Control and Non-Proliferation Bill 2001 of Parliament as well as those measures already being adopted by the European Union as regards control on the export of dual use items, that is items which have both a civil and military application and, in particular, items connected with the development or manufacture of weapons of mass destruction. The amendment will allow the Island to continue to comply with the requirements placed on the Island by the Customs and Excise Agreement 1979.

Subsection (2) (b): in paragraph (g) of section 1(3), two new paragraphs were added, (iv) and (v). These allow the Treasury to apply Community legislation relating to the supply of services and the buying and selling of goods. The intention is that this will permit the application of Community instruments in the same way and for the same purpose as subsection 2(a) above allows for in relation to United Kingdom legislation.

Subsection (3) inserts a new section 3A into the 1993 Act. This is an interpretation section and defines words and a phrase included in the amendments made to section 1 of the Act. 'Buying' is defined as including such things as hiring, accepting as a gift or otherwise acquiring something as well as actual purchase. 'Selling' is to be interpreted in the same broad manner. The amendment to section 1 of the Act allows for the application of United Kingdom or Community legislation, which among other things refers to the buying and selling of goods. This allows for the application of measures concerned with, for example, the control of arms dealers operating in the Island. I do not think there are any at the moment but it allows for the control if they should set up here in the Island, or elsewhere in the context of strategic export controls. The supply of services is also given a broad definition which includes all forms of supplies and all forms of services.

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

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

The President: Mrs Christian.

Mrs Christian: Whilst I support the clause, I do think that generally speaking people might have difficulty with that interpretation of the word buying. (**A Member:** Absolutely.) It seems to be

absolutely contradictory in terms of normal language, though I accept and hope that the mover will confirm that these interpretations apply only in relation to this piece of legislation. Otherwise it is so contradictory as to be unintelligible to the lay person.

The President: Mr Crowe.

Mr Crowe: Yes, thank you, Mr President. Obviously this clause has to be very wide as a 'catch all' for every instance, but the intention is to extract information where a suspected crime is taking place. It just intrigues me as to why the use of any computer software is put in the clause rather than computer software that could be used for criminal purposes. Is there any reason for all computer software being included?

The President: Mr Lowey.

Mr Lowey: I accept what Mrs Christian said about the clause but again I think she would agree that the mover of the clause actually pointed out arms sales and the like. We have already had experience of that in the past, with arms deals being done by an Isle of Man company in Africa, as well as the secondary arms to Iraq affair, where the Isle of Man jurisdiction. . . I say it was not used, it was abused, and it was not an accident. They did not pick the Isle of Man because it was a spot in the middle of the Irish Sea, it was trying to avoid and evade and I do not think the Isle of Man. . . we did not like it and I believe that this particular clause now actually deals with that situation and that is what life is about, is it not? It is about learning lessons. You like to think that there will no doubt be places where people can hide and do shady transactions but the Isle of Man is not going to be one of them. So I think the clause here is very wide, it has to be, but I think the saving grace in all of this is the record of the Isle of Man Customs and Excise in the way they have exercised their functions in the past. If it had been one where we did not have confidence in them, we would hardly be giving them added powers. I believe they exercise their powers with prudence and with discretion and thought, to the letter of the law, and I believe they will discharge these new duties with the same diligence. I think in that regard the good name and reputation of the Isle of Man will be safeguarded and I have no hesitation in supporting the clause.

The President: I take Mrs Christian's point. I think that the buying and the supply of services in this interpretation clause is not just applying to this green Bill in front of us, it will apply to the Customs and Excise Act 1993 in totality, I think that is the difference. Mr Radcliffe to reply.

Mr Radcliffe: Thank you Mr President. The point made by my hon. friend, Mrs Christian: definitions, as I understand it, apply only to this Act but I think there is a wider definition there. The hon. member Mr Crowe was asking about any computer software and so on. The definition is to cover possible evasion of export controls but that definition is just for this Bill. It says any software, not all software, and as I say the intention is that people will not be able to skate around various controls regarding export and so on. The hon. member, Mr Lowey, and the fact that the Isle of Man has been used on occasions as a base for arms dealers: certainly none of us liked that one.

Mr Lowey: No, we did not.

Mr Radcliffe: If we can deal with that sort of situation and ensure that it does not happen again, it must be good for everyone. I beg move, sir, that clause 3 stand part of the Bill.

The President: Hon. members, the motion before you is that clause 3 do stand part of the Bill. All those in favour please say aye; against no. The ayes have it. The ayes have it. We will take the final clause, clause 4, Mr Radcliffe, please.

Mr Radcliffe: Thank you, sir. Clause 4 provides for a short title to the Bill and for the commencement to be by appointed day order. I beg to move, sir, that clause 4 stand part of the Bill.

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

The President: The motion hon. members is that clause 4 do stand part of the Bill. Those in favour please say aye; against no. The ayes have it. The ayes have it. We have then reached item 4 on our order paper which is the Civil Jurisdiction Bill. . .

Mr Radcliffe: Mr President sir, can I ask for the suspension of the appropriate standing order?

The President: We did not need that, did we, because I already covered that before. Apologies, Mr Radcliffe, we need to take the third reading of the Customs and Excise (Amendment) Bill.

Mr Radcliffe: Thank you, sir. This Bill is one which is a desirable Bill. Some would say it has been rushed in every corner. I must say in defence of Treasury that they are not usually in the habit of trying to promote Bills within Keys and Council in quite such a rush as this one. But there are good reasons for this Bill to be in place and enacted and to be in law, Mr President. We have covered all the points which are certainly of interest to members. I have endeavoured to answer the queries raised by members and I think the Bill is certainly a desirable one. It is for the Island's good name and I beg to move, sir, that the Bill be read a third time and do pass.

Mr Lowey: I beg to second, sir, and just add that as far as I am concerned this is a competent message, not one of expediency. It is certainly one of practicality which has come from the standing that we would like the Isle of Man to be recognised in the wider world.

The President: Mr Crowe.

Mr Crowe: Sometimes it is said that we should make haste slowly, just in case we get something wrong which we may regret.

Mr Lowey: We are not dealing with social legislation now.

Mr Crowe: But I think the hon. mover has argued a case as to why he feels that this legislation should be on the statute book and I think we have given that support from his logical reasoning and I am sure we will all support the third reading.

Mr Delaney: I will support it.

The President: Mrs Christian.

Mrs Christian: Perhaps if I might just have a second bite at the buying cherry, Mr President, because as you very rightly pointed out this relates to the whole of the Act, to the whole of the Customs and Excise provision. Whilst we have been focusing very much on criminal activity here today and how we handle that and whilst I accept that it might be the case that in order to bypass customs and excise regulations people might purport to be giving as a gift for criminal purposes instead of complying with the law, I would be concerned in relation to small businesses and so on: borrowing something or supplying of services, whether supplied for a consideration or not, might become big issues. I guess that they are or ought to be recorded now but it would not surprise me if, in small companies sometimes, somebody borrows something and it is not recorded in their VAT return I do not know. It does seem to me that our focus here should be on the big fish, the real criminal activity. Maybe I am misinterpreting this but I think, Mr President, it has alerted us to the fact that we are dealing with the gamut of customs and excise provision here and that, in relation to that, most people might not think accepting a gift is buying in those terms. I do not whether, Mr Radcliffe, would care to make any comment on it or whether I have perhaps interpreted this too widely or not widely enough.

The President: Mr Delaney.

Mr Delaney: I will support it. I do not want to cause any upset to the British Government and I do not want to wake up and find a gunboat in the bay. I am sure the Home Office, now they have been transferred, Mr Wills, the member for North Swindon, I do not want to give him any how's-your-father. I will support it.

The President: Mr Waft.

Mr Waft: Yes, Mr President, just one small point that there was mentioned of the exportation of arms: I would like to remind hon. members that the United Kingdom is about the third largest exporter of arms in the world (**Mr Delaney:** Hear, hear.) and that is legal exportation. In the run of things sometimes those arms eventually, when they have been from one country to another country to another country, do fall into the wrong hands and that is a thing that needs to be tightened up.

The President: Mr Attorney.

The Attorney-General: Yes, thank you Mr President. Just to respond to the point raised by the hon. member Mrs Christian. Of course, I entirely agree that there is a very strained interpretation put on the word used there - 'buying' - but, Mr President, could I just put it in the context of the Act which is affected by that. It is not the Customs Management Act which we are concerned with there which creates the offences. We are concerned here in extending a category of legislation which can be extended to the Isle of Man under the Customs and Excise Act 1993. The 1993 Act does not create any offences. The Customs and Excise Act 1993, as I say, deals with the power of the Treasury to apply as part of the law of the Isle of Man certain legislation made under the equivalent statutes in England. So, in other words, I do not think there is very much harm done by, say, referring to an Act of Parliament which deals with buying of goods or services because what we are saying here is that by referring to 'buying' you can also refer to 'borrowing' and 'hiring' and so on. It is just really a shorthand way of referring to the legislation which is being extended to us. It does not create any offences as such. I think that is a saving grace, but I do understand the point made by the hon. member, Mrs Christian.

Mrs Christian: I thank the learned Attorney for that explanation.

The President: Mr Radcliffe.

Mr Radcliffe: I thank the learned Attorney. The note I have in front of me talking about 'buying' it is defined as including such things as hiring, accepting as a gift or otherwise, acquiring something as well as actual purchase. I think the learned Attorney has explained that. I thank other members for their support, Mr President, and again would beg to move that the Bill be read a third time and do pass.

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

Civil Jurisdiction Bill — Second Reading Approved — Clauses Considered — Standing Orders Suspended — Third Reading Approved

The President: We now then turn to item 4 on our order paper, the Civil Jurisdiction Bill for second reading and it is in the hands of the Attorney-General.

The Attorney-General: Thank you, Mr President. I believe that this Bill was broadly acceptable to hon. members at the first reading. There was some concern with reference to Part 2, which relates to overseas judgements. Hon. members were concerned that the Island might be giving up the right to insist on reciprocity in relation to the enforcement of judgments of foreign courts. I explained that under the existing law, made in 1968, judgments of the High Courts of a small number of countries including England and Wales may be enforced in the High Court of the Isle of Man without the necessity of a re-hearing in the Island, on the basis that judgments of the High Court of the Island may similarly be enforced in those countries. I have

explained that there are deficiencies in the existing system, particularly in regard to the requirement that it is only judgments of the High Court of the relevant country which may be enforced. For example, judgments of the Circuit Court in England may not be enforced in the Isle of Man under the 1968 Act and the best that a plaintiff can do, albeit that he has obtained a judgment in the Circuit Court, is to use that judgment as evidence against the defendant in proceedings which are brought in the Isle of Man against the defendant. The plaintiff still has to go through the costly process of starting proceedings afresh in the Island. Under the proposed new system, the Council of Ministers may direct that the courts of a given country shall be recognised courts for the purpose of enforcement under the 1968 Act. In other words provided that the plaintiff obtains a judgment in a recognised court of the particular country, the plaintiff may register that judgment so that it may be treated as if it were a judgment obtained in the High Court in the Island and is enforceable as such. I consider that the proposed new procedure will encourage opportunities to develop a system of registration of judgments with those countries with which the Island does business on a regular basis. No doubt the Council of Ministers will carefully scrutinise any proposed relationship with a country which wishes to establish such a system of enforcement of judgments and reciprocity may well be an important issue, but it need not be the only issue. Consideration of the human rights records of the country and its compliance with international norms in the context of efforts to combat serious crime might also be equally relevant. A modern flexible approach would seem to be appropriate in this context. I hope, therefore, that hon. members will be satisfied that Part 2 of the Bill achieves a useful object. Otherwise I would reiterate that the Bill makes some important amendments to our civil law and procedures, those amendments are supported by the Deemsters and by the Law Society, and I therefore move that the Bill be read a second time.

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

The President: Hon. members the motion before us is that the Civil Jurisdiction Bill 2001 be read a second time. Those in favour please say aye; against no. The ayes have it. The ayes have it.

The Attorney-General: May I move that Council resolve into Committee.

The President: Are we content to move to consider the clauses?

It was agreed.

The President: Can we take them individually or are we going to take them in parts?

The Attorney-General: If I make take them individually, Mr President.

The President: Okay, clause 1.

The Attorney-General: Sorry, I will try to be as brief as I can. It is a rather complicated Bill, but I will do my best. Yes, Mr President, clause 1 deals with interim relief and it inserts two new sections in the High Court Act 1991. Interim relief in this context means any form of relief for any party which falls short of an order deciding the substantive point at issue. The interim relief most commonly sought is an injunction, an interim injunction which prevents the other party in the proceedings from undertaking some action which would be prejudicial to the applicant. The object is to maintain the availability or value of an asset pending the final outcome of the proceedings.

The new section 56A which we see in clause 1 of the Bill permits the High Court to give interim relief, even where the only issue before the court is the question of whether the court has jurisdiction to deal with the matter in dispute between the parties. The new section will enable the court to safeguard assets which are important to the main issue. The new subsection (2) ensures that any existing power to give interim relief is not to implied as abolished or otherwise

affected by the new section. The new power of the High Court is an addition to the existing powers of the court.

The new section 56B deals with circumstances where the jurisdiction of the court is doubtful rather than non-existent, which is what 56A was concerned with. The new section gives the court the power to give interim relief if proceedings have been or are to be commenced in a country or territory outside the Island. Subsection (2) reflects the caution of the High Court in dealing with these cases. The court may refuse to grant relief if its own lack of jurisdiction over the dispute makes it inexpedient to grant the relief. The court is unlikely to allow itself to be drawn into disputes in which it has absolutely no jurisdiction and in respect of which there is no justification for a Manx High Court to grant any interim relief. The new subsection (3) defines the expression 'interim relief' for the purposes of section 56B. The first part of the definition defines interim relief widely to cover all the forms of interim relief which the court has power to grant. It does not, however, include a power for the arrest of property because in essence interim relief is intended only to secure matters pending the outcome of the main action. The arrest of property is something which might normally follow the completion of the main action. The second exception relates to provision for obtaining evidence. If a court outside the Island wishes to obtain evidence, such as by examining witnesses and so on, these are sufficiently catered for by other means. Mr President, I move that clause 1 do stand part of the Bill.

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

The President: Mr Crowe.

Mr Crowe: Can I just ask the learned Attorney if he could just give an example of what sort of injunction would apply. I mean would it be, for instance, that a bank account may need to be blocked or something like that? Could he just describe a circumstance that this clause would apply to?

The President: Mr Attorney to reply.

The Attorney-General: Yes, thank you, Mr President. As I explained, I think at the first reading, often here the Court is concerned with matters which have an international flavour, so we might have a situation where, say, a bank in the Middle East were to have a claim against someone who is resident in the Isle of Man and the bank alleges that there has been a fraud committed, say in America, and the plaintiff bank is obviously trying to recover money of which it has been defrauded. So it comes to the court in the Isle of Man because it knows that the defendant is resident here and although the proceedings might properly be started off in America, or in the Middle East, the court wants to ensure that the bank account which the defendant has here is frozen so that, if it is successful in America or the Middle East, as the case may be, and a judgement is obtained, the bank knows that the assets have not been frittered away in the meanwhile by the defendant. Quite often Mr President we have the so called Moravia injunction which freezes the assets pending the outcome of the main trial.

The President: Hon. members, the motion before you is that clause 1 do stand part of the Bill. Those in favour please say aye; against no. The ayes have it. The ayes have it. Hon. members I am aware of the position of the Court clock. It seems that we will certainly not be able to complete this particular measure in sensible time at lunchtime, so the Council will now adjourn and resume its deliberations at clause 2 at 2.30. Thank you, hon. members.

The Council adjourned.

Civil Jurisdiction Bill — Consideration of Clauses Concluded — Third Reading Approved

The President: Right, hon. members, we have made a start on our clauses stage of the Civil Jurisdiction Bill and we have reached clause 2. Mr Attorney.

The Attorney-General: Yes thank you, Mr President. Clause 2 introduces a new section 8A to our existing High Court Act and the new section will apply where Admiralty proceedings are stayed or dismissed in favour of arbitration or trial in some other jurisdiction. In such a case the new section will provide statutory authority for the court to order that any property arrested or security or bail given in the proceedings is to be retained as security for the enforcement of an arbitration award elsewhere or the judgment of a foreign court. Compliance with two criteria is required. Firstly, the court must stay or dismiss the proceedings if they should properly be submitted to arbitration, for example, where a shipping agreement contains a clause providing for arbitration, or if they should be dealt with by a court outside the Island. The second criterion is satisfied if in the Manx proceedings, property has been arrested or bail or other security has been given to prevent arrest or obtain release from arrest. If those two criteria are satisfied the court may make one of two orders. Either, firstly, any property arrested will be retained to cover the arbitration award or the judgment of the foreign court provided that the judgment will finally be enforceable in the Island and, secondly, the court can in effect make the stay or dismiss the Manx proceedings conditionally on the provision of security to satisfy the final arbitration award or foreign judgment.

The proposed new subsection (2) permits the court to attach conditions to an order under the new section 8A. For example, the conditions may seek to ensure that the arbitration proceedings or the foreign legal proceedings will be commenced or pursued promptly.

The new subsection (3) will require the application of the same practice and law in respect of property retained under the new section 8A as would be applied to property retained for the purposes of proceedings in a Manx court. Mr President, I move that clause 2 do stand part of the Bill.

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

The President: Mr Kniveton.

Mr Kniveton: I do not know whether I have missed it, Mr President, but I am looking at the example of the success of our Manx shipping register where we have a Manx registered ship but it is owned in another country and yet it is held in yet a further foreign port. Where is the claim enforced in that one, then, can I ask, Mr President?

The President: Mr Attorney.

The Attorney-General: Well, yes, Mr President, that is perhaps a good example. If, for example, there were to be some dispute as to whether the Manx ship had paid its proper port dues in the foreign port and the Manx ship was here in the Isle of Man, a question might arise as to whether the Manx ship ought to be arrested here so that again if the harbour authorities in the foreign port were successful in claiming the dues there would be some security for that judgment. The section will say that the High Court here could say, 'Well we will release the ship from the jurisdiction of the Isle of Man provided that the owners of the ship lodge security here with the court pending the outcome of the foreign claim.' Does that answer it?

Mr Kniveton: Yes, if there is no claimant - I am suggesting, Mr President, that say that vessel is in fact owned by a French company and although it is Manx registered yet the claim is coming from some Middle East country, does that alter in any way whatsoever, Mr President, thank you?

The Attorney-General: No, Mr President, the answer to that is no.

The President: Right, okay, hon. members, the motion before us is that clause 2 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 3.

The Attorney-General: Thank you, Mr President. The effect of this clause is to allow a defendant to object to the jurisdiction or the exercise of jurisdiction of a foreign court without running the risk of being regarded by the Manx court as having submitted to the jurisdiction of the foreign court. On occasions it may be necessary to argue that a court does not have jurisdiction to deal with a particular matter and that class of circumstance is catered for by clause 3.

Sub-clause (1) states the purpose of the clause which is to ensure that a judgment of a foreign court will not be recognised or enforced in the courts here if there has been no submission to the jurisdiction of the foreign court.

Sub-clause (2) deals with the circumstances in which a person is not to be regarded as submitting to the jurisdiction of a foreign court and there are three circumstances: (a) an appearance before the court to contest the jurisdiction, in other words to say, 'Well even though I have appeared, you the foreign court do not have jurisdiction over me.'; secondly, appearance before the foreign court to object to the proceedings because the dispute should be submitted to arbitration or the courts of another country could more appropriately deal with the matter; and, thirdly, appearance before a foreign court for the protection or release of property which has been seized or threatened with seizure. Mr President, I move that clause 3 do stand part of the Bill.

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

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

The Attorney-General: Thank you, Mr President. Clause 4 introduces Part 2 of the Bill to which I referred in the second reading. The clause introduces amendments to the 1968 Act, which provides that judgments for a sum of money which are issued by foreign courts may be registered in the High Court in the Isle of Man and enforced in the Island as if they were judgments of the Isle of Man High Court. There are certain limitations under the existing law, the principle of which are, firstly, the Council of Ministers must have prescribed the countries and courts from which judgments will be accepted - there are at present only a handful of countries which have been prescribed; secondly, the foreign court must be a superior court; thirdly, there must be substantial reciprocity; fourthly, judgments will not be enforced if they are for taxes, fines or other penalties; and, fifthly, registration will not apply in respect of awards granted in foreign arbitration proceedings. So the proposal introduced by the new clause is that the 1968 Act will be amended. The effects will be as follows: the foreign court in future need not be a superior court - and as I have explained this will enable for example judgments of the circuit courts, formerly the county courts, in England and Wales to be classified as courts which we can recognise; secondly, substantial reciprocity will not be a requirement; thirdly, awards made in foreign arbitration proceedings will be permitted to be registered as if they were a judgment of a foreign court; and, fourthly, the amendments will permit the registration of orders by foreign courts for the making of interim payments. The new provisions will not mean that the Isle of Man courts will be required to register judgments from courts throughout the world. It will still be necessary for the Council of Ministers to make orders under the amended provisions specifying the countries and courts from which judgments and awards will be recognised. Mr President, I move that clause 4 do stand part of the Bill.

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

The President: Mr Crowe.

Mr Crowe: Thank you, Mr President. The mere mention of reciprocal, obviously we would expect a quid pro quo and I would expect that countries where we impose a foreign judgment

would similarly apply a Manx judgment in their own courts. Have you ever had any experience where there has been any difficulty on Isle of Man orders being enforced in foreign courts?

The President: Mr Waft.

Mr Waft: Could I just ask with regard to the holding assets would these clauses cover the freezing of assets of an individual who may be subject to examination under the Court of Justice of Human Rights in Europe and what facility have we for reciprocal arrangements there?

The President: Mr Attorney to reply.

The Attorney-General: Yes, thank you, Mr President. In answer to the questions raised by the hon. member Mr Crowe: he asked whether there had been any difficulty in enforcing Manx judgments in other countries. At the present time there are only very limited circumstances in which Manx judgments can be enforced in foreign countries by the registration process and ordinarily a successful plaintiff here still has to go to the foreign court and prove his case even though he may have got a perfectly good judgment here. A good example of that, I think, in practice is the terrible difficulty that is faced by people who have claims against persons who are resident in the Republic of Ireland. I have known several cases where judgments have been obtained here in the Isle of Man and the defendant then, as it were, escapes to the jurisdiction of the Republic of Ireland and the Irish courts will not recognise the Manx court, so that puts a terrible burden on the plaintiff. Again, hopefully, as I mentioned at the second reading, there will be the possibility of developing networks with other countries and perhaps the Republic of Ireland will be one of the first we should look at and I would hope that the Council of Ministers would perhaps insist on reciprocity when a country is so close to us to make it a workable relationship.

The hon. member, Mr Waft, in his query in relation to the European Court of Human Rights: that is an international court established by treaty and the judgments of that court would not qualify for treatment as judgments of the High Court of other countries. It is an international court not a national court, so we are not going to have any reciprocity or special arrangement with the European court.

The President: Now, hon. members, the motion before us is that clause 4 do stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 5, Mr Attorney.

The Attorney-General: Yes, Mr President. This clause 5 deals with a technical rule in relation to the currency which may be applicable where a person obtains a judgment. The present rules relating to the calculation of currency are inflexible so that, on the date of registration of a judgment here in the Isle of Man, a conversion into sterling is made and that is the amount that is collected. So if, for example, there were to be a judgment against somebody here in French francs that judgment would have to be converted into sterling at the time the judgment is actually entered by the court. The amendments which are suggested by this clause will mean that judgments which are registered are likely to be registered in the foreign currency and any conversion which takes place will be calculated as at the date of payment and not as at the date when the judgment is entered. Paragraph (b) of subsection (1) makes a similar provision in respect of the registration system set up for the enforcement of arbitration awards under the Convention on International Investment Disputes and subsection (2) repeals provisions in the Bills of Exchange Act 1883 which sets rigid rules for the date on which currency conversions are to take place. Mr President, I move that clause 5 do stand part of the Bill.

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

The President: The motion, hon. members, is that clause 5 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Part 3, clause 6.

The Attorney-General: Thank you, Mr President. Clause 6 is a short clause which repeals the two remaining provisions of the Aliens Restriction Act 1948. Those provisions at present, and somewhat surprisingly, prevent membership of juries in the courts of the Isle of Man and membership of the Civil Service where the person concerned is not a British National. Those restrictions are, of course, now anachronistic. Many non-British citizens have lived in the Island for many years - again, for example, citizens of the Republic of Ireland - and it is inappropriate and is discriminatory to exclude them from membership of juries and of the Civil Service. I move that clause 6 do stand part of the Bill.

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

The President: The motion, hon. members, is that clause 6 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 7.

The Attorney-General: Thank you, Mr President. Clause 7 deals with Deemsters and subsection (1) of the proposed new provision amends section 3 of the High Court Act 1991. Paragraph (a) introduces a new subsection 3(a). The new subsection will enable the Second Deemster to exercise the functions of the First Deemster and the Clerk of the Rolls in specified circumstances, namely where the office of First Deemster, who of course is ex-officio Clerk of the Rolls, is vacant or where the First Deemster is absent or unable to act for any reason. Paragraph (b) inserts a new subsection 7(a). This is a new power for the Governor to appoint Deputy Deemsters. The appointments may be on a full-time or part-time basis but it is anticipated that the arrangements will be on a more permanent basis than the current practice of appointing Acting Deemsters. The period of office and the conditions will be settled by the Governor. A Deputy Deemster when acting as such will have the same status and the same powers as a judge of the High Court, that is a Deemster. Paragraph (c) makes a minor change in terminology to subsection (8). The change recognises the existing practice of appointing Acting Deemsters rather than Acting Judges of the High Court.

Subsection (2) amends section 3 of the Interpretation Act 1976. It will replace the definition of 'Deemster' to take into account 'Deputy Deemsters' and 'Acting Deemsters'. The definition of 'Deemsters' is new. It is used in the statute book as meaning traditionally the First Deemster and the Second Deemster acting together. It is usually used where there is a power for the Deemster to make rules of court or other rules of procedure. The traditional meaning of the expression 'Deemsters' will continue rather than including 'Deputy' or 'Acting' Deemsters.

Subsection (3) confirms that any person appointed as an Acting Judge of the High Court before the section comes into operation is to continue to hold office as an Acting Deemster.

Subsection (4) makes a consequential amendment to the Advocates Act 1976. Under that Act the Deemsters and an Acting Deemster have functions in relation to complaints against advocates. The function will now also be exercisable by a Deputy Deemster.

Subsection (5) amends section 15(1) of the High Court Act 1991. Under that section, rules of court may be made under which the Civil Jurisdiction of the High Court can be exercised by the Chief Registrar or other officer of the court or a special referee. The amendment adds to that list a person nominated by the First Deemster. This will allow the First Deemster to nominate persons such as, for example, the High Bailiff or Small Claims Arbitrator to undertake particular functions of the court as permitted by rules of court. Mr President, I move that clause 7 do stand part of the Bill.

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

The President: Mr Kniveton seconds. Mrs Christian.

Mrs Christian: Mr President, I am suffering a little confusion, and perhaps the learned Attorney could help, as to the distinction between 'Acting Deemster' and 'Deputy Deemster'. Do I

understand from what he has said that Deputy Deemsters are Acting Deemsters or acting as Deemsters for specific purposes only and not in the whole range of Deemster's functions and that an Acting Deemster can be a Deputy Deemster, or have I got it completely confused? *(Laughter)*

The President: Mr Waft.

Mr Waft: Just an aside. Perhaps the Attorney-General might be able to help me. I wonder with regard to the Isle of Man and the jurisdiction of the United Kingdom, the waiting time for trials both civil and criminal to take place, are they similar or are we worse than the UK? It is not in there but I thought he might be able to answer *(Laughter)*

The President: Mr Attorney.

The Attorney-General: Well, Mr President, perhaps I will try the easier one first. Waiting time: in answer to the question from the hon. member, Mr Waft, I think that the experience of litigants in the Isle of Man High Court is that there is very little waiting time indeed. The Deemsters have been able to cut down dramatically on the waiting time. I think there was a time when you had to wait anything up to 18 months to two years for a case to come before the Deemsters. That is now much reduced, certainly on the civil side although unfortunately on the criminal side there is quite a waiting time because of the sheer volume of cases in 'Operation Safe' and so on and so forth. But generally speaking in the civil jurisdictions, which is what we are talking about here, waiting time is much curtailed and I think we are a lot better off than the UK.

Turning to Acting Deemsters and Deputy Deemsters: clause 7 inserting (b) at line 25 'the Governor may appoint Deputy Deemsters to hold office for such period and subject to such conditions as the Governor may specify. Such appointee shall have all the status and jurisdiction of a judge of the High Court.' So the position is that at the present time we have an Acting Deemster, who is currently Mr Tattersall QC, and he is as it were the more permanent member of the Staff of Government Division, our court of appeal, and he would be the person who would ordinarily deal with appeals sitting with the Deemster who did not deal with the matter at first instance. So we have a two-man appeal court presided over often by Mr Tattersall, the Acting Deemster. However, there are cases where, for example, our Deemsters, Deemster Cain and Deemster Kerruish, are not able to deal with a matter because they may have dealt with it at first instance or the matter may be particularly complex. It might deal with a particularly difficult area of the law and Mr Tattersall might not be available because of commitments. In those circumstances the Governor can appoint Deputy Deemsters and there is a panel, as I understand it, of Deputy Deemsters and the Governor, I think in consultation with the First Deemster, would say, 'Well Mr X and Miss Y would be ideal to deal with this case because it deals with trust law or something' and so there will be a panel of Deputy Deemsters. So there is certainly a difference between an Acting Deemster, who is the permanent position on the appeal court, and then Deputy Deemsters who are appointed on an ad hoc basis to deal with particular matters. That is as I understand it, Mr President.

The Lord Bishop: Would it be true to say that an Acting Deemster comes from outside and the Deputy Deemsters from inside or is that not so?

The Attorney-General: No, Mr President. Both the Acting Deemster and the Deputy Deemsters are now really appointed from outside the Island, although it must be said under the new law it would be possible for the Governor to appoint a Deputy Deemster from, say, the members of the Manx bar.

The President: The motion, hon. members, before us is that clause 7 do stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 8.

The Attorney-General: Thank you, Mr President. Clause 8 deals with the alternative dispute resolution by mediation. It introduces four new sections into our High Court Act which are supplementary to the system of mediation which came into force by the rules of court in 1997.

The new section 17A introduces sections 17B to 17D. Subsection (2) ensures that the new section applies only in respect of mediation where the reference is made after the new section 17A comes into operation.

The new section 17B is intended to place mediation sessions in the same position as proceedings in the High Court insofar as the law of defamation is concerned. This is designed to ensure that the parties and the mediator are not stifled by fears about making relevant comments which might subsequently be claimed to be defamatory. Subsection (1) grants judicial privilege to mediation sessions and documents produced for the purpose of a mediation session and disclosures made under the new section 17C. Subsection (2) imposes a statutory prohibition on the admission in evidence of anything said or admitted in the mediation session. This is intended to support the principles behind mediation that it is a discussion in a private and confidential venue with the intention of reaching a settlement by agreement. Without this safeguard parties might be reluctant to make any admission or to say anything which might prejudice the ultimate result of the case if it goes to a hearing before the Deemster or perhaps some later proceedings. Subsection (3) provides the same protection as in subsection (2) but in this case in respect of documents. Subsection (4) exempts specified evidence and documents from the protection of subsections (2) and (3). The protection will not apply if all the persons present at the mediation session and all the persons identified in the document consent to the admission of the evidence or document and, secondly, the protection will not apply where a disclosure has been made by the mediator as permitted by section 17C. Subsection (5) defines 'mediation session'.

Section 17C sets out the circumstances in which a mediator may disclose information obtained in the course of a mediation.

Section 17D provides protection for mediators and seeks to place mediators in a similar position to a Deemster in respect of High Court proceedings. Subsection (1) of 17D prevents a mediator being sued in respect of his acts or omissions which are done in good faith for the purpose of a mediation. In this context 'an action' means an action for damages and subsection (2) allows a court to set aside proceedings on the application of a mediator where the proceedings are invalidated by subsection (1). The court may award costs as it thinks fit. Mr President, I move that clause 8 do stand part of the Bill.

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

The President: The motion, hon. members, is that clause 8 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 9.

The Attorney-General: Thank you, Mr President. Clause 9 amends the Contracts (Applicable Law) Act 1992. There is also a schedule to the Bill which amends that Act. That Act gave effect in the Isle of Man to the Rome Convention on the choice of law for contracts. The amendment in the Bill does not change the principles which are applicable under the 1992 Act but gives effect to the arrangements for the accession of Spain, Portugal, Austria, Finland and Sweden to the Rome Convention. The main function of that 1992 Act was to enable parties to choose a particular law to govern their contracts where there are various jurisdictions involved and it also sets out the rules which apply if the parties do not choose that law. Mr President, I move that clause 9 do stand part of the Bill.

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

The President: The motion, hon. members, is that clause 9 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. We turn to 10.

The Attorney-General: Mr President, clause 10 deals with the rules regarding appeals. The clause introduces a new section 19A to our High Court Act and will enable rules of court to set out circumstances in which a right of appeal may be exercised only with the leave of the High Court. The provision is based upon a 1999 Act of Parliament. The need for leave to appeal in appropriate cases will prevent appeals against orders where the purpose of the appeal is simply to delay final implementation of a judgment which has been given. The provisions will not prevent legitimate appeals.

Subsection (1) will enable rules of court and appeals will go to the Staff of Government Division, which is our appeal division.

Subsection (2) sets out specific matters which may be included in those rules.

Subsection (3) prevents an appeal against a decision to give or refuse leave but allows a person to make further applications for permission to appeal to the same or another judge or court.

Subsection (4) defines a right of appeal as including certain applications which might not have been otherwise treated as a right of appeal.

Subsection (5) ensures that the powers in the new section 19A do not prejudice any other provisions which deal with leave to appeal. Mr President, I move that clause 10 do stand part of the Bill.

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

The President: The motion, hon. members, is that clause 10 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Can we take clauses 11 and 12 together.

The Attorney-General: Thank you, Mr President. Clause 11 deals with the power to make rules of court. The present power is subject to Tynwald approval which must be obtained before the rules of court can come into operation. This clause introduces the negative resolution procedure in place of the existing procedure.

Clause 12 deals with alterations to the Legal Practitioners Registration Act 1986. Paragraphs (a) and (b)(ii) transfer administrative functions under that Act from the First Deemster to the Chief Registrar. This will enable the First Deemster to review decisions of the Chief Registrar in accordance with the new section 4A. Paragraph (b)(i) amends section 3 of the 1986 Act to ease the administrative problems which have arisen on the renewal of registration. For example an English solicitor has to produce a certificate of insurance and a practising certificate from the English Law Society when he wishes to have his registration renewed under the 1986 Act. Those documents are not always immediately available. The new provision will provide some leeway for the Chief Registrar when dealing with renewals. Paragraph (c) introduces a new section 4A into the 1986 Act which will introduce a right to a review where a person has been refused registration or has had his registration revoked. Reviews will take place before the First Deemster.

Subsection (2) of the new section governs the making of an application and provides a time limit of one month.

Subsection (3) empowers the First Deemster to confirm vary or reverse a decision of the Chief Registrar.

Subsection (4) allows for an appeal from a decision of the First Deemster to the Staff of Government Division.

Subsection (5) requires the Staff of Government Division to treat an appeal from the First Deemster in the same way as an appeal from the High Court. Mr President, I move that clauses 11 and 12 do stand part of the Bill.

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

The President: The motion, hon. members, is that clauses 11 and 12 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Finally, clause 13.

The Attorney-General: Thank you very much, Mr President. Clause 13 provides a short title for the Bill and sub-clause (2) provides that the Act come into operation by means of an appointed day order made by the Council of Ministers. I move that clause 13 do stand part of the Bill, Mr President.

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

The President: The motion, hon. members, is that clause 13 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Now, hon. members, I also want to make it plain for *Hansard* purposes that in fact we have also accepted the two new schedules 4 and 5 with clause 9.

Mr Delaney: Are we taking the third reading? Are we asking for a suspension of standing orders?

The Attorney-General: Well, Mr President, thank you very much for reminding me about the schedules, I am grateful for that. Could I ask that standing orders be suspended so that we can move to this.

Members: Agreed.

The President: Yes, okay, with your agreement, hon. members, with the agreement then that we should suspend standing orders to take the third reading of the Civil Jurisdiction Bill, I call on the Attorney-General to so move.

The Attorney-General: Yes, thank you very much, Mr President. May I formally move the third reading of the Bill. I have endeavoured to give as much information as I can at the first and second readings and hopefully in looking at the clauses today, Mr President.

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

The President: Hon. members, the motion then before us is that the Civil Jurisdiction Bill 2001 be read for a third time. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Hon. members, the Council has completed its order paper and the adjournment will be to the sittings of Tynwald Court on Tuesday, 10th July at 10.30 a.m. and Tuesday, 16th October at 10.30 a.m. We had better not forget July 5th.

The Attorney-General: Is anything on then? *(Laughter)*

The President: Hon. members, I would like if Council could sit in private for a few minutes, please. Thank you.

The Council sat in private.