

**REPORT OF PROCEEDINGS OF
LEGISLATIVE COUNCIL**

**Douglas, Tuesday, 27th March 2001
at 10.30 a.m.**

Present:

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

The Lord Bishop took the prayers.

Apologies for Absence

The President: Hon. members, we have apologies this morning from the hon. member Mr Delaney and from the hon. member Mr Waft.

Incinerator — Question by Mr Lowey

The President: We turn then to our order paper and the first item on the order paper this morning is questions and I call upon the hon. member Mr Lowey.

Mr Lowey: Thank you, Mr President. I beg leave to ask a member of Local Government and the Environment:

With regard to the proposed new incinerator -

- (1) what is the current position regarding the purchase of the site; and*
- (2) what is the current estimated cost of*
 - (a) construction*
 - (b) operation?*

The President: I call on the member of the Department of Local Government and the Environment, Mr Crowe, to answer.

Mr Crowe: Mr President, I am pleased to respond to the hon. member's question as follows. Firstly, regarding the purchase of the site, the compulsory purchase procedure is being followed, with an arbitrator having recently been appointed. The date of the arbitration has not yet been determined but it is anticipated that the date will be known shortly, it being a matter for the arbitrator.

Secondly, I am able to report that the estimated cost of construction and operation are as reported to Tynwald in October 2000 when authority was given to the Department of Local Government and the Environment to proceed with the scheme. The cost of construction is £38,963,320 at October 2000 prices. This figure does not include client contingencies or a provision for future inflation.

Regarding the cost of operation, again matters have not changed significantly since members of Tynwald were advised in May last year that the total cost of operation, assuming maximum permitted throughput, would be £5.9 million which, after taking into consideration income from electricity generation of £966,600, gives a net annual cost of approximately £5 million. This figure represents an availability fee of £1.6 million, plus a variable operating fee estimated at £1.4 million, together with an annual lease rental of £2.9 million.

The availability fee is the standing charge which would be made even if no waste were to be delivered to the facility. The operating fee is the cost of burning the waste and the annual lease rental is the cost of refinancing the facility. The cost of operation will be influenced by inflation, MEA tariffs, services charges and tonnage throughput.

The President: Mr Lowey.

Mr Lowey: I thank the hon. member for his reply. Mr President, could I ask a supplementary? While accepting that an arbitrator has now been appointed, could the member inform the Council why the delay? As we have all heard in the media that there could be legal objections to the compulsory purchase, wouldn't it have been in the Island's interest, if not the department's, to get this on the road as quickly as possible? Why the delay?

The President: Mr Crowe.

Mr Crowe: Thank you, Mr President. Can I just mention again to hon. members that there are a number of threads to this. The purchase of the land is one issue. There is a public inquiry next week to look at certain requests for amendments to the 1998 planning order, which is one issue that is going ahead, and regarding the reserve matters of application, I am not sure if members noticed in the *Courier* last week that an independent inspector has been appointed and requests are being written on the reserve matters. So whilst the land issue is one, there are other issues where the department are pressing on with the work they have to do.

It will happen, I am sure, that agreement will be reached through an arbitrator or he will determine what the price will be, but I do not think there is anything sinister in the situation that we find ourselves in.

Mr Lowey: Could I further ask the member of the department again, why the delay? Really he has not answered why he thinks there should have been a six-month delay or longer since Tynwald approved the compulsory purchase for the department to go ahead. It is in excess of a year and still the department has not acted. It is set up now, an arbitrator to see, but there is still the possibility.

Could I also ask, when he says there is an inspector being set up, and I did notice it in the paper last week, to vary the original application, is that another device for lowering the standards that were offered to the general public when the first inquiry was held?

The President: Hon. member Mr Crowe.

Mr Crowe: Thank you, Mr President. Yes, I believe there was a slight delay in the appointing of an arbitrator because one person was approached and discussions were held and I think that slowed things up a bit until the present arbitrator was appointed. So that might have been part of the reason. The other is, are we lowering our standards? Definitely not. The intention is to meet all the EC obligations and EC directives so that there is no lowering of standards considered at all.

Mr Lowey: I thank the hon. member for his reply, sir.

Proposed New Prison — Question by Mr Lowey

The President: We turn then to the second point on our order paper and again I call on Mr Lowey to ask.

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

What is the current position in respect of the proposed new prison?

The President: And this time I call on the member for the Council, Mrs Christian, to reply.

Mrs Christian: Mr President, the Department of Home Affairs is currently preparing a submission for the rezoning, or its equivalent in planning terms, of the site at Ballafletcher in Braddan. Once the submission has been prepared it will be submitted to the Department of Local Government and the Environment for consideration. The Department of Local Government and the Environment, if it is satisfied with the case submitted by the Department of Home Affairs, will then progress the necessary planning matters in accordance with statute.

The President: Mr Lowey.

Mr Lowey: Could I ask the minister could she inform us of what the timescale is for these applications to apply?

The President: Mrs Christian.

Mrs Christian: My advice, Mr President, is that the Department of Home Affairs expects to be in a position to make the submission by the end of May.

Children and Young Persons Bill — Third Reading Approved

The President: Hon. members we then turn to item 2 on our order paper, which is the Children and Young Persons Bill. Now, hon. members, it is down for a third reading but in fact I am well aware that Mr Crowe has tabled amendments to clauses 80 and 105. Can I suggest, hon. members, we deal with the amendments to both those clauses before we move on to the third reading of the Bill proper. Are we content, hon. members?

Members: Agreed.

The President: In that case I call upon Mr Crowe to move the amendment to clause 80.

The Crowe: Thank you, Mr President. In moving this amendment to clause 80 I have been requested to do it by Mr Waft who raised this issue two weeks ago but he is unable to be present today, and the purpose of the amendment is to reverse the effect of clause 80 so that there is a prohibition on publicity which might identify a child or young person involved in court proceedings unless the court otherwise directs. I beg to move the amendment in my name:

Page 74 line 6, for clause 80 substitute —

Identification of child or young person in media

- (1) Subject to subsection (3), no written report of any proceedings in any court shall be published in the Island, and no report of any such proceedings shall be included in a relevant programme for reception in the Island, which -
 - (a) reveals the name, address or school, or*
 - (b) includes any particulars calculated to lead to the identification, of any child or young person concerned in those proceedings, either as being the person against or in respect of whom the proceedings are taken or as being a witness therein.**
- (2) Subject to subsection (3), no picture shall be published in any newspaper or periodical or included in a relevant programme as being or including a picture of any child or young person so concerned in any such proceedings.*
- (3) Subject to subsection (4), a court may in any case by order dispense with the requirements of subsection (1) or (2) to such extent as may be specified in the order.*
- (4) A juvenile court shall not exercise the power conferred by subsection (3) unless it is satisfied that it is in the interests of justice to do so.*

- (5) *If a report or picture is published or included in a relevant programme in contravention of this section, each of the following persons —*
- (a) *in the case of a publication of a written report as part of, or of a picture in, a newspaper or periodical, any proprietor, editor or publisher of the newspaper or periodical;*
 - (b) *in the case of a publication of a written report otherwise than as part of a newspaper or periodical, the person who published it;*
 - (c) *in the case of the inclusion of a report or picture in a relevant programme, any body corporate which is engaged in providing the service in which the programme is included and any person having functions in relation to the programme corresponding to those of an editor of a newspaper;*
- is guilty of an offence and liable on summary conviction to a fine not exceeding £2,000.*
- (6) *Proceedings for an offence under this section shall not be instituted otherwise than by or with the consent of the Attorney General.*
- (7) *In this section “relevant programme” means a programme included in a programme service (within the meaning of Part 1 of the Broadcasting Act 1993)*

Mr Kniveton: I beg to second, sir.

The President: Mrs Christian.

Mrs Christian: Mr President, I am happy to accept this amendment. I think that the arguments that were put forward in favour of the clause as it was drafted were that there has to be some measure of freedom for the press, but I think that we would all accept that where children are concerned the onus should be the other way around, that there should be prohibition unless the court provides that information and publicity can be given. So from the department's point of view I am happy to accept this amendment, sir.

The President: Mr Lowey.

Mr Lowey: I would speak in support of that principle, that paramount at all times, and it has been throughout the Bill, is the wellbeing of the child and I think in this instance it is absolutely right and I think the hon. member, and the hon. member who is not moving the amendment but is moving the amendment on behalf of, are both absolutely to be commended for it.

The President: Now, hon. members, I am aware that under our standing orders the fact of putting an amendment at third reading requires six votes. In this case, hon. members, I propose to have a called vote so that in fact it is absolutely plain and straight which way we are going. Hon. members, the motion before us is that the amendment printed on your white paper and moved by Mr Crowe stand part of the Bill. Now, hon. members, I ask the Clerk to call the vote.

For: The Lord Bishop, Mr Lowey, Dr Mann, Messrs Kniveton, Radcliffe, Mrs Christian and Mr Crowe
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Against: None

The President: Hon. members, with unanimity in the Council and six votes having been cast for it, the amendment will therefore carry.

Now, can I ask the hon. member to move on to clause 105 and schedule 13, to move the amendment in his name, please.

Mr Crowe: Thank you, Mr President. This is a consequential amendment following the approval of clause 80 as amended and the rule as approved will apply to all courts and this is just a consequential amendment, so I beg to move:

Page 160, in column 3 of the entry relating to the Summary Jurisdiction Act 1989 insert —

“Section 41.”

Page 161, in column 3 of the entry relating to the Broadcasting Act 1993, for “paragraph 3(2)” substitute “paragraphs 3(2) and 9(2)”.

Page 161, in column 3 of the entry relating to the Statute Law Revision Act 1997, for “paragraph 55(2)” substitute “paragraphs 55(2) and 63(1)”.

Mr Kniveton: Yes, I beg to second, sir.

The President: Hon. members, can we follow exactly the same procedure, as we are dealing with the third reading, and I would again ask the Clerk to call the vote.

For: The Lord Bishop, Mr Lowey, Dr Mann, Mr Kniveton, Mr Radcliffe, Mrs Christian and Mr Crowe -
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Against: None

The President: Again, hon. members, with the requisite number of votes having been cast, the amendment will stand part and we can now turn our attention to the third reading proper of the Children and Young Persons Bill and in this instance I call upon the hon. member Mrs Christian to so move.

Mrs Christian: Thank you, Mr President. Hon. members, the Bill represents a very substantial reconsideration of law applying to young people and children. It brings together family law, private law and the law pertaining to state involvement with young people in one single piece of legislation.

There are considerable reforms in it in relation to the philosophy of the way in which we deal with children and young people as we go forward and it does provide some very useful new provisions in relation to children in danger and need, introducing freedoms to make assessments which were not there before, introducing a number of new protective measures, for example in terms of ouster orders. It gives powers to allow, where there are difficulties in the home, for the children to remain in place. In fact the whole emphasis is on primarily the need of the child and the requirement for those involved with children to try and work to sustain, in the first instance, family relationships and after that to take into account primarily the needs of the child in determining how their difficulties shall be dealt with.

It is also useful in that it introduces a provision for the Department of Health and Social Security to provide secure accommodation, something which has been long sought in our efforts to deal with the difficulties of disruptive and very disturbed young people. However, it is not a sink for those who create difficulties on a Friday night. It is something which will be controlled by the DHSS in terms of who shall be placed in it, but at the same time the courts will have to endorse the placing of more people in that secure accommodation.

Apart from that, it deals with regulation of children’s homes, fostering, child minding and day care, all of which we know, in today’s society, are areas where we need to have some element of control and standards applying so that people can feel a degree of security about the people who are providing those services.

Finally it deals with elements of human fertilisation and embryology and surrogacy, areas which do not really impinge on our society at the moment but for which it is necessary we have legislative provision so that we do not become an area in which different standards, or inadequate standards, apply in relation to these issues.

Hon. members, I think most questions arising from the Bill were answered at the clauses stage, and the one issue that remained outstanding was the provision of clause 80 and the consequential amendment which has been dealt with this morning. I therefore beg to move the third reading of the Children and Young Persons Bill.

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

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

Education Bill — First Reading Approved

The President: We turn our attention then to the Education Bill at item 3 on the order paper. For first reading I call upon the hon. member Dr Mann.

Dr Mann: Thank you, Mr President. Once again this is another substantial Bill with over 60 clauses and is another stage in bringing the law up to date and if I can just briefly talk about the history of education, the state education system in the Isle of Man has been governed up to now by the Isle of Man Education Act 1949 which was closely based on the United Kingdom Education Acts of 1944, the so-called Butler Act, and 1946. The UK set up a system in England and Wales under which county and county borough councils became local education authorities operating with central financial support, and a central guideline was laid down by the Ministry of Education.

The state education system in the Isle of Man has a slightly different history but by 1949 was operating under two tiers of control. The system was run by the elected Isle of Man Education Authority which was financed by an education rate and supervised by a board of Tynwald, the Isle of Man Board of Education, which provided it with additional funds out of general taxation.

The wholesale adoption of the UK 1944 and 1946 Acts was thus easily achieved, an authority and a board assuming the roles of the local education authorities and the Ministry of Education respectively, even to the extent that the state schools were actually called, and still are lately, county schools.

I think we now have to accept that the 1949 Act is over 50 years old and is now very much out of date. It has become increasingly unworkable in recent years, as the administrative structures it embodies, many of the education policies on which it is based, no longer operate.

The two-tier system of management imposed by the 1949 Act was abolished in 1986, but it is still the legal foundation on which the system is based. The former board's approval was required to the authority's proposals for change, standards of provision and other policies and an appeal made to the board for certain decisions of the authority affecting children and their parents. A merger of the two tiers which occurred in 1986 struck at the root of the system and radical changes are needed to provide a sound legal basis on which the department can operate.

There were many aspects of the original 1949 Act that had in fact never been introduced at all. It called for development plans for primary and secondary education and schemes for further education and, as far as it is known, none was ever produced. In particular, the Act intended further education to be provided in county colleges but no order has ever been made bringing that obligation into force. Instead of having a proper legal basis for its establishment, management and operation, the Isle of Man College exists solely in reliance on an interim power to provide

additional facilities. The provision of facilities at the college for secondary pupils also needs a legal foundation.

Also, no modern social services existed in 1949 and the National Health Service was in its infancy and although amendments to the Act have to some extent transferred to the Department of Health and Social Security the authority's function for providing welfare and health services for children, that role still underlines many of the educational provisions of the Act and causes particular difficulty in the interaction of social and educational services, although the current Children and Young Persons Act which we have just passed helps enormously in this respect.

The 1949 Act requires schools to be run by bodies of governors of secondary schools and managers for primary schools and we are working towards now a system where even the primary schools will have their own boards of governors.

So while the basic philosophy of providing children with education suitable for their age, ability and aptitude remains unaltered, the educational provisions of the 1949 Act have to some extent been superseded by changes in educational theory and practice and conflict between what the law requires and what happens in practice can no longer be avoided.

The scheme of the 1949 Act with regard to the provision of special educational treatment in those days was based purely and simply on medical criteria of disease and does not accord with modern practice with respect to pupils with special educational needs, which is a far wider range of provision.

Finally, of course, the department has community facilities - libraries, youth clubs and outdoor activities - which have been based on the Education (Young People's Welfare) Act 1944 and that demands revision to reflect modern needs.

Finally, legislation relating to the employment of children, which is administered by the department, is in need of radical overhaul to take account of the modern employment market, the need for vocational training and the Isle of Man's international obligations.

It is a long and quite detailed Bill and I think we will have to refer to the detail of a lot of this provision when we come to the clauses stage, but I hope that outlines first of all the brief history and secondly the crying need at this moment to bring up to date the legal provision of educational services in the Isle of Man. I beg to move.

The President: Mr Kniveton.

Mr Kniveton: Yes, thank you, Mr President. I am happy to second this first reading. Now, as I see it, this Bill will take over the legislation which has been in place for over half a century now, which, like other Acts of that age, are usually out of date and increasingly difficult to amend. I believe this Bill is set out to reflect the current modern-day situation and hopefully will stand for decades to come without major changes.

I note that the Bill is divided into a number of sections which lay down the basic duties of the Department of Education to promote education and provide the appropriate services. It sets out the differences in primary and secondary education in the department's schools, Church schools and special schools as necessary. It ensures that parents carry out their duty by having to educate their children of compulsory age.

I also note that it is interested in the department of education providing such things as nursery schools, further and higher education and even school meals and medical services. I see that it describes the make-up of the Board of Education and explains its powers. It also covers the employment of children. Altogether I am sure we will have an interesting time when it comes to those 60 clauses. I do, of course, support the Bill as it stands, sir.

The President: Mrs Christian.

Mrs Christian: Mr President, I too support the Bill. It is interesting, I think, to consider what the mover has said about the passage of time and relating this Bill to the NHS Bill. We can see that both of those measures have needed to be updated after 50 or so years but essentially it is interesting to note that the fundamental philosophies are not really changing substantially in either in relation to the provision of education, but it is the detail and the practice which has evolved over time that now requires that the legislation be amended to bring that up to date and to take us to a position where we can look forward to slightly different ways of delivery of education.

I think too the Bill reflects, as the hon. minister also said, the working relationships between departments in terms of shared responsibilities or co-operation between departments to look at the whole child as it were, whether it is in education or health, and the Children Bill also makes provision for acknowledgement of a split of those responsibilities, for example in the area of healthcare and so on.

So I do support the Bill. It is timely that we produce a new Education Bill to take us into this new millennium.

The President: The Lord Bishop.

The Lord Bishop: Thank you, Mr President. I appreciate we are at the first reading and I do not want to get into too much tedium but obviously I have an interest, having been involved in education all my professional life since 1955 and since coming here in 1989 when you might be interested and amazed to hear that the then Minister for Education, Victor Kneale, asked me to join his department, not being entirely pro-Bishop, but then he was very keen for me to join the department, which I did and enjoyed for some time, and I also, since that date have been chairman of the education advisory committee, referred to in clause 12 as 'the Committee', which is responsible for the syllabus, the RE syllabuses in schools, and with a mix of religious leaders and professional teachers and heads of RE we have produced what we think since 1989-90 is a good, advanced RE syllabus, so I am particularly keen to point that out at this early stage because I want to make one or two comments about it.

I say that in background because I want you to be aware that we have worked very hard on the RE syllabus to incorporate in that whole schema the additional of world faiths or other faiths which are mentioned in the Bill, just to underline the fact that there is not a bias in our Religious Education Advisory Committee's approach. So we have in the Bill under the religious education section, for example, syllabus, an introduction of Islam and Hinduism, Judaism and so on.

So you will accept that I am not totally unbiased, although I am concerned for the proper placing of the Christian religion in our RE syllabus and we have waited a long time for a new Education Bill, it has been on the stocks for a good many years, and so I would want it, now that it is here, to be as straightforward and unconfusing as possible, especially in the important area of religious education which is the moral and spiritual foundation which it gives to our young people.

So I want to flag up for the mover that I remain confused by references in clauses 6 and 7 to religious instruction, whereas in the majority of cases, especially in the margins of clause 7, it refers to religious education and this might have been adjusted in another place. I have tried to read through the books in the Members' Room and I cannot really see in the debates whether they unscrambled that slight confusion, because if you have religious instruction, that is a really definite doctrinal matter, whereas religious education is what we are talking about and I am confused that the Bill seems to still have those elements in there and in maintained schools, which is now the term used for Church schools, clause 7 tells me that a teacher may be selected

to give religious instruction, whereas clause 6 tells me that no teacher shall be required to give instruction, so I am a little confused as to what is right there, but I am aware that this might well have been corrected somewhere else and probably has.

The President: Lord Bishop, I do not wish to interrupt, but it has been pointed out to me on page 7 that the word 'instruction' has been replaced by 'education' in another place and that amendment was approved.

The Lord Bishop: Thank you. Well, I could not find that as I read through the boxes in there, so I am delighted to hear that, so ignore that comment.

But I do continue to have a concern with clauses 12 and 13 and in fact I shall be bringing a very small amendment forward at the next stage to clause 12 which I shall talk about then, but this morning I just wanted to draw people's attention to clause 13. A generation of schools has maintained a daily collective act of worship. In this room I guess we were all brought up and nurtured on the collective act of worship that started the day and we are all aware of ways in which this practice has diminished over the last 15 to 20 years, mainly because of the size of schools in many places, certainly in the secondary department. Nevertheless, despite considerable changes and discussion and debates in education policy, and you all know the ping-pong ball that education has been in many legislatures and jurisdictions, that main plank of the daily act of collective worship has remained a feature of other educational policies until this Bill, which introduces a departure by saying that the department shall make arrangements for a regular collective act of worship on the part of all pupils. Now, I wonder what definition the mover will give to 'a regular act'. Does that mean regularly every week or does it mean regularly every month or does it mean regularly every year? And I have to say in practical terms, with the harassed head teachers of our major schools and with coping with the curriculum which demands more and more of their time and less and less opportunity for anything other than classroom work, it offers a wonderful opportunity of saying, 'Well, our regular act of worship will be the leavers service once a year, or the joiners service once a year, or the carol service once a year', and we have complied with the Bill, and I just wonder about the definition of the regular collective worship on the part of pupils and what that is going to mean. It seems to me that it is the thin end of the wedge for very little being done and I think that has been debated in other jurisdictions and found to be a sad reflection on the spiritual input of the school.

There is also a confusion in this clause of 13 with maintained schools or Church schools - we have two on the Island - which on the one hand are permitted by the Bill to be denominational in their approach and yet under subsection (3) of clause 13 it requires that the worship in those schools, like every other, will be of a broadly Christian character. Well, I wonder what a broadly Christian act of worship I would perform at St Thomas' or that Canon Alger would perform at St Mary's if he is complying with the law, and I am just a bit unsure what the Bill is saying to me at that stage.

Now, as far as collective worship is concerned, the department's answer, no doubt, will be that as the law has not been observed for so many years because schools ignore the requirement for a daily act of worship, wouldn't it be much more realistic and more practical to drop it? That is almost like saying that with drink-driving, because people ignore it, do we therefore abolish the ban or the law against drink-driving? And I really feel that we are pandering to the lowest common denominator here in not setting our young people or even our school education system an ideal that there ought to be some sort of main collective act of worship, and I would remind people of the wonderful comment, 'Those who aim low seldom miss', and I have a feeling that we are aiming low here rather than asking for a vision of something higher.

I believe passionately in education and in young people and on the whole I will support this very good Education Bill because it is seeking to put on a very good footing our education system for the next umpteen years and I shall certainly support the majority of clauses, but I am concerned on the religious element that we are not actually asking for the best and I want the Bill to be of the best and I think, as far as the teaching of the Christian faith is concerned, because we want to be fair to other faiths, that we are diminishing the impact of what is our heritage in the Christian way by making it very less than equal to some of the other faiths in it. So I shall be bringing forward next week a small, I think a very minor, amendment which would be satisfactory to me and I hope that I might get the members' support for that.

That apart, I shall support the department and I hope that in producing an amendment my motives will be accepted as being of the most positive and highest.

The President: Mr Crowe.

Mr Crowe: Thank you, Mr President. If I can take you back to a time when you and I were in the department and you were the then minister I think this Bill was in the formative stages at that time and it is interesting that updating legislation such as this, as with the previous Bill, takes quite some time in the preparation and I think is to be compared to the pregnancy of an elephant where the gestation period is long but maybe what we achieve is very worthwhile.

So again I am very supportive of the Bill and I would just like to comment and say that I am pleased that the Board of Education will remain. I think even in our time there was talk that was not still valid in this era and I am pleased that the department have continued in that because I think with education that extending into the community to get wider representation through a board advising the department was helpful and I hope it continues to be helpful. Thank you, Mr President.

The President: Mr Lowey.

Mr Lowey: The hon. mover has just touched on the thing. I was going to go from the spiritual, my Lord Bishop, to the secular in the sense that the mover of the Bill said it was to bring education up to date. The make-up of the board was mentioned. The Bishop said it should be straightforward and simple, and I agree with that, and Mrs Christian mentioned that the Bill was a bit of machinery, it was different ways of delivering education in the modern world, and yet we still retain what I would call the archaic and the only department of government that has it of course, and when the make-up of government was changed into ministerial systems a whole swathe of what I would call traditional ways of serving the community was directed, and I know that education was looked at at that particular time and a very strong case was made for removing it from the way it was elected, not that it was not required for servicing in governors of schools, et cetera, et cetera, but it is the direct elections that were seen to be over the top, we must cling on to the historic way of doing it, even based on House of Keys constituencies, and there was a very strong case, although it was a minority case, and I do not think it has gone away and I would have thought that in looking forward to the next century and in delivering I would be interested in the mover's reasons for why they should retain it, other than a comforting status quo.

But I think it is right. Any organisation should look at its history after 50 years. I think there has to be a case for that and I accept that it is a very, very important piece of legislation because education is the cornerstone, the foundation for society, for the years to come, and while the Bill in general I will be supporting, obviously, I just wonder why we have not decided at this stage to put in place perhaps a more modern approach to what I would call the servicing of the administration, because that is what it is, it is not education, it is the way it is administered, and that too has got to change with time, that too has changed over 50 years, and I would be interested to understand

why that stands still when we say to the teachers and every other part of the profession, 'You have got to change with modern times', but we are not changing the administration.

The President: Dr Mann to reply.

Dr Mann: Thank you, Mr President. I did not realise so many members of Council had been members of the Department of Education in the past. I had better watch out. But I thank members for their general support of the Bill in its total.

I, maybe like other members in the past, had gone back to the 1949 Act and looked at what the situation was in the Isle of Man at that time and if you look at the debate of the 1949 Act, which was supposed to be about education, almost 80 or 85 per cent of it was an argument on the religious impact of the 1949 Act. It had very little to do with the education of children, it had everything to do with how far they were going to receive their religious instruction, and of course it was a time when the provided schools, that is, provided by government, were going to be combined with the schools owned and run by the churches and the 1949 Act, in simple terms, was a deal between government and the Church schools. The government took over the maintenance and financial support, day-to-day support, of the Church schools and the churches in return had certain particular rights and privileges within the maintained schools, so to a certain extent it was excusable.

Over the years, like everything else, things are changing. One thing in the Isle of Man is still preserved very carefully and that is the committee that the Lord Bishop is currently chairman of within the department and we most certainly must take interest in the comments made by that chairman, but I would prefer the actual argument, if there is an argument, over the wording to be reserved until the time we get to the clauses because we will end up by just arguing about one or two clauses at this particular moment.

One thing, I think, has got to be seen. Many, in fact almost all, of the major Bills that are coming before us at the moment are largely enabling Bills, that is, they give powers to the various departments to issue regulations and guidance and so on, subject to Tynwald approval at each point, to enable these substantial Bills to remain up to date. We could not alter the original 1949 Act in many of the ways that we would have wished to because we did not have the powers to produce the regulations which would alter the character or the way in which the administration was carried on, and just to refer once again to the Bishop's comments, his committee will have considerable input over various enabling powers within the Bill, and I will deal with that in detail, as I say, when we come to the specific clauses, but by making these substantial Bills enabling we are planning, hopefully, to ensure that in most major departments of government these Bills, these Acts, will not get out of date to the extent that they have done in the past.

If I might just come to the point of the Board of Education which the hon. member Mr Lowey referred to, the Board of Education has been a football ever since I have been in Tynwald, I am sure it has since the hon. member Mr Lowey has been in Tynwald and most of us have been aware of major debates over the years in which various people have tried to actually remove the Board of Education.

When I came to the department I very rapidly realised that there is a function, a very necessary function, for a group of people who are very interested in administering education and who are actually necessary because even if you get rid of the Board of Education you would have to substitute some other group to perform that function. Now, in the UK that is performed by a local education authority and if you look at the way they are made up, they are an absolute nightmare. They are made up of political representatives picked out from local authorities who are not

necessarily interested in education at all but are keeping up the proportion of political representatives on each authority. Now, that system is wrong.

I am sure Mr Lowey will suggest that perhaps we could find a third system, but all I know is that at this moment we have a functioning Board of Education which, strangely enough, is functioning very well and although there is a query over the support for the actual election by the people, that argument could be made up for every local authority in the Isle of Man. In the meantime the character and function of the board have changed. Many of its powers which caused conflict with the department in the past have disappeared, their elections have been reduced, the representation has been altered. It could be queried and argued that perhaps that ought to be altered, but in practice it is working and in the old adage, why change something that is actually working?

I am sure when we come to the various clauses we will find that there could be some quite strong arguments for and against various ways in which the Bill could be used. I think in general, taking the overall situation of the Bill, I am sure that it should be supported. It does represent a considerable step forward in the legal structure of education in the Isle of Man which, I might add, has moved on very substantially in the last few years and in its present state I can say with confidence it is certainly healthy and with the support of this Bill can become even better yet. I beg to move the first reading.

The President: Hon. members, the motion before us is printed at 3 on the order paper that the Education Bill be read for a first time. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Minimum Wage Bill — First Reading Approved

The President: We turn, therefore, to the Minimum Wage Bill at item 4 on the order paper and I call upon Mr Crowe for the first reading.

Mr Crowe: Thank you, Mr President. I am pleased to move the first reading of this Bill which is intended to implement the findings of a report by the Department of Trade and Industry entitled 'A Statutory Minimum Wage' and the report was received by Tynwald in October 1999.

Hon. members will be aware of the history of this Bill, so I will concentrate on the principle of introducing a statutory minimum wage. This Bill provides the vehicle by which this principle can be put into effect, thus providing a safety net for those who have in the past suffered from unacceptably low levels of remuneration.

The Bill before us today is based on similar legislation already in place in the United Kingdom and seeks to provide a structure which, while precise, remains understandable to both workers and employers.

I would like to briefly explain some of the main provisions contained in the Bill. The primary purpose is to make provision for a minimum wage and to identify those workers entitled to it. As part of this it is necessary to amend the Agricultural Wages Act of 1952 to ensure that workers in that industry are also entitled to at least the same level of minimum wage provision as all other sectors.

The Bill also provides for the making of regulations covering a number of areas which will be subject to the approval of Tynwald.

Hon. members will understand that one of the central features of any minimum wage legislation is that it should be applicable to the majority of workers and to this end regulation will be introduced to ensure that whether a worker is paid hourly, salaried or in piece work the minimum wage legislation will apply.

The Bill allows for the actual level of the minimum wage to be prescribed by regulations to be determined by the Department of Trade and Industry and the Treasury acting jointly.

The department is currently taking views on setting the level of the initial statutory minimum wage rate and members will be aware of the Department of Trade and Industry's letter of 7th March to various groups and local authorities.

To set the rate at too low a level would fail to protect those who are among the most vulnerable in our society. On the other hand, to set a rate at too high a level could impose an unacceptable burden on businesses. It is very important to find the right balance, I would suggest, and for Tynwald to set a rate which is not so high that jobs are lost, thus excluding from the workforce those who we all wish to see better off but equally not so low as to be ineffective.

Regulations approved by Tynwald will also cover the very technical detail of the administration of a minimum wage, including matters relating to the valuation of benefits in kind, the treatment of deduction from earnings, record-keeping, wage statements, enforcement and appeals, amongst other things.

Hon. members may wish to know that certain categories of worker are proposed to be excluded from entitlement to a minimum wage. These include share-fishermen and self-employed groups, those in detention of any kind, the members of religious communities and members of the armed forces and reservists whilst they are serving. It is considered to be inappropriate to include any of these categories within the scope of the Bill.

There are also certain other circumstances where the enforcement of a minimum wage is not considered to be in the best interests of either the employer or the worker. For example, in areas such as voluntary work or casual work undertaken for a friend or neighbour it is not considered appropriate that such informal arrangements should be subject to an enforced minimum wage.

I trust that hon. members will confer their support on this measure which is a most important step forward for low-paid workers in the Isle of Man.

Mr President, I beg to move that the Minimum Wage Bill be read for the first time.

Mr Radcliffe: I beg to second, sir.

The President: Mrs Christian.

Mrs Christian: Mr President, I support the Bill. I think that there will obviously be debate as to where the minimum wage is set and what we have to bear in mind is that we do have a benefits structure which assists those on low incomes. Now, there is often an argument put forward that a man or a woman should be able to earn enough to keep their family. I think it does recognise, though, that an employer pays on the basis of the work done, not on the size of a person's family, and society then comes in to support the family through the family income supplement structure. However, I think it is appropriate that there is a proper balance between those two things and in seeking to establish a minimum wage one would hope to see a recognition that society in general should not be supporting employers who do not pay adequately for the job that is done but at the same time recognising that an employer should not be expected to pay on the basis of the size of a person's family. Those two things need to be balanced and I am quite sure, when establishing a minimum wage, that recognition will be given to that. It is not for society in its wider sense, for the taxpayer to support people who do not pay proper levels of remuneration. At the same time I am quite sure that there will be concern that as employees believe there should be a structure recognising contribution responsibility, levels of effort and so on, we would not wish to

introduce a structure which simply moves everybody up the scale, creating inflation and which does not in fact then benefit the person at the lower end.

So all these matters need to be taken into consideration, I think, in determining the actual pitching of the minimum wage.

However, I think that the Bill does the right thing in establishing that we should have a minimum wage and sets out the procedures for an employee to challenge where such a minimum is not paid and at the same time defining where it is appropriate to have exceptions from the provision and I think in that regard it is appropriate in relation to voluntary workers that the volunteer force out there should not be dispersed or dispensed with or in some way undermined by charities and so on having to pay a minimum wage and I believe it is appropriate then that defined voluntary workers should be exempt, but basically I have no problem with supporting the Bill.

The President: Hon. member Mr Kniveton.

Mr Kniveton: Yes, thank you, Mr President. An interesting Bill which has caused quite a lot of outside comment during its passage in another place. I certainly am not going to be specific as to a figure for a minimum wage, that is to say, a certain minimum per hour. That, as we have heard, will be a matter for Treasury and the Department of Industry; certainly it will probably be their responsibility. I believe if this Bill does complete its passage it is intended, as I say, the Department of Industry will eventually bring the minimum wage regulations for the approval of Tynwald and I do hope that that will be done before the July sitting.

In the meantime, as I understand it, the Bill is primarily enabling legislation to deal with the mechanism for the workers to enforce the minimum wage, the power of officers to enforce the minimum wage, and particularly the right not to suffer or be dismissed for whatever reason relating to a minimum wage. I think it is essential that the department looks at the anticipated consequences of the difficulties arising from the levels which might create difficulties for employers, just as much as employees, and of course there are the different bands of possible workers we must consider, especially including younger persons, persons in training, then of course the standard rate.

From the information we have been given there have been a lot of companies who have been consulted on this subject and I have noted, I believe I am correct in saying, there are no objections from those companies to this Bill, so thus in the meanwhile I will of course support the first reading. Thank you, sir.

The President: Mr Lowey.

Mr Lowey: Thank you, Mr President. I quite understand the mover of the Bill wanting to start with the green paper which in his opening remarks says, 'This Bill is promoted by the Department of Trade and Industry.' Let us get something quite clear. It is not promoted by the department, it was instructed, or the Council of Ministers, by Tynwald to do it. The resolution was placed by myself in 1997, January, two years to report, and the minority report was amended and taken on board by the Council of Ministers which gave it to the department. So I think when we are writing history, history is always subjective. That is not a plea that this is a measure that was promoted by myself initially, but somehow the idea that the department is suddenly interested in the minimum wage is not quite what it seems: slightly misleading.

However, foundations, I think, are important and I do take the point that Mrs Christian said, that when you are setting the rate of the minimum wage the economics of the country come into play. It always surprises me that we can increase the wages of the top earners and that is not inflationary, but when we start talking about increasing the wages for the lower end, somehow the

world is going to stop. I do not need to underline what I mean in recent days. I think that speaks for itself.

Now, Mrs Christian also mentions about a state subsidy for employers with the balance and it is not for employers to pay for families. I accept that and I think most people would accept that, and it is quite right that we should have safety nets et cetera in place and have done for a good number of years.

It always amazes me again that we forget and let me remind hon. members of the Council. In this year's budget we gave £8.7 million to employers to assist the economy. That was on top of £3 million the year before, £2 million the year before that, and I supported it because it is right that we should employ employers to employ and keep the economy going, but wage costs are not the sole costs to employers and yet it seems to me to be a paramount concern that if we try to put a floor, a glass floor in so people do not fall below it, somehow the economy would come to an end. These are the same arguments that were used in the debate by the majority report of that, that jobs would be lost. The same arguments we used in another country adjacent to us and the result is that since they introduced the minimum wage they have created a million more jobs. So that argument was flawed when it was issued, was flawed when it was stated in the Isle of Man and I think will be flawed in the future. So I think most of us would accept that a minimum wage is now an acceptable part of the structure.

Can I come to the Bill itself. I mentioned at the beginning that the Bill is mostly enabling. I have no objection to omitting people who are on training and the charity workers and all the rest. I think the mechanics are reasonably laid out. In fact this Bill goes further than the UK in that it structures a minimum wage for people from 16, 18 or what have you. So I do not have any objections to that. The one thing that I do think, though, is that it will be flawed in the foundation if it is the department and the Treasury who will set the initial level and will, from time to time, review it, and I will give you two reasons why and the main reason is the main opposition to this legislation came from the Treasury. The Treasury minister was on the committee, as was my good friend Sir Miles Walker, who is an eminent member of the Treasury, and if my friend Mr Waft was here he would tell you that the officials of the Treasury were less than helpful to the committee in the compilation of this, in fact we had to remind them that they were dealing with a committee of Tynwald and when we asked for some information it should have been supplied. So I think that is reason enough why they should not be in the driving seat. It is a bit like putting Dracula in charge of the National Blood Transfusion Service. I do not think it would be appreciated by the low paid that the very people who have been vocal, and I have no objection to that, openly hostile to the proposition over the years and even right up to the very end are now going to be given the job of setting terms and conditions. First of all I do not think it is fair on them and secondly I do not think it is fair on the recipients.

So I will be seeking to amend the first clause of the Bill to set up an independent committee to deal with it, a bit like the Agricultural Wages Board, one from employers, one from employees and an independent chairman. They would take advice, obviously, as to the economic conditions, inflation and all from the Treasury. It would remove government from it.

Now, as far as I am concerned I think that would be a much better proposition than that which is relayed in the Bill, but to speed things up I do not mind them setting the initial figure because I do believe that I do not want this delayed any longer than it has been. It is five years now and I have to say I liken the attention and the priority that low pay has received to some of the other fast-track legislation that we have seen at the other end of the scale. Perhaps I am being a little bit cynical but I do believe that this Bill, once it has been in operation for a year or two, again just like redundancy pay, we will wonder what all the fuss was about.

But I do think it has been proven in another country that one and a half million people have had their lives improved and if we use the ratio of a thousand to one, at least 1500 people on the Island will benefit from this type of legislation and I believe that it is long overdue and I am glad to see it here and, as I say, I will be seeking to amend clause 1. I have been in touch with the parliamentary draftsman to see if he can draft me an amendment and it will be circulated to members before the next meeting but, in welcoming the Bill, it has been a long time coming.

The President: I call on Mr Crowe to reply.

Mr Crowe: Thank you, Mr President, and can I first of all thank Mr Radcliffe for seconding the Bill and Mrs Christian again for setting out clearly her support for the Bill and the points she has made, and again I thank Mr Kniveton for his comments and he talks about the regulations, and I would advise the regulations are well advanced and, subject to the Bill going through this branch satisfactorily, we would be looking to have it at least by the July sitting.

I thank Mr Lowey for his contribution. Again, I tried to avoid the history but he knows the history better than I do because he was in the hot seat with all the discussions and the select committee, et cetera. I think he made some interesting comments about the foundations are important, the economics are important, and I think the question of getting it right and that we are having enabling legislation.

I thank him for picking up on that this Bill in the Island is better than the UK one because of the ages we have included, so he has positively contributed there and I thank him for that.

Again, an interesting point he raises about the setting of it and the monitoring of the future minimum wage and I think the objective of having the Treasury and the DTI do this is the Treasury have, shall we say, the information with the economic affairs division who are monitoring and updating all the pay scales and seeing how the levels of pay affect the economy of the Isle of Man, which is their role, so that is, I would guess, the reasoning for the Treasury being involved, and the DTI have the contact with the unions and the private sector and again they would, shall we say, have their fingers on the pulse to keep this. But I do hear your moving an amendment and then I can only consider that at the time.

But I think that covers all the points, Mr President, so if I could move the first reading.

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

Income Tax Bill — First Reading Approved

The President: We turn then to the Income Tax Bill. It is again a Bill for first reading and I call on the hon. member for Council, Mr Radcliffe.

Mr Radcliffe: Thank you, Mr President. This Income Tax Bill is a routine updating of the income tax legislation to take account of a temporary taxation order approved by Tynwald at the time of the budget in February 2000, a year ago. There are also in this Bill three amendments which address the potential avoidance of tax and two minor corrections to Provisions and the Income Tax Act which makes no change to the effect of the law.

I would like just briefly to give members a flavour of what the clauses are about and would say that clause 1 replaces and confirms the Income Tax (Child Benefit) (Temporary Taxation) Order 2000 which was approved by Tynwald on 15th February 2000 and this confirms the abolition of tax relief in respect of child benefits. Hon. members will recall that the imposition of income tax and child benefit has been counterbalanced by an increase in the amount of benefit payable in respect of each child.

Clause 2 of the Bill clarifies the meaning of 'termination payment' in section 48A of the Income Tax Act of 1970 to make it clear that the term does not include a payment which is already chargeable to income tax under any other provision of the Income Tax Acts.

Clause 3 amends schedule 1 to the Income Tax Act of 1980 to improve the powers of the Assessor of Income Tax to deal with avoidance schemes. Hon. members will be aware that new legislation is being prepared to deal with the taxation of companies and that new legislation is part of Treasury's taxation strategy and is broadly in accordance with the recommendations of the company taxation working party report of 1995, six years ago almost. That report recommended the introduction of legislation to cater for any artificial arrangements which, during or immediately before a transaction period to the new company taxation regime, might result in a reduction of a company's income tax liability or a delay in payment. The amendments in clause 3 will bring about to schedule 1 of the Income Tax Act of 1980 and this will achieve the simple anti-avoidance measures proposed by that working party.

Clause 4 amends section 106B of the Income Tax Act of 1970 to permit the Collector of Customs and Excise to pass information to the Assessor of Income Tax for the purpose of any proceedings connected with a matter in relation to which the Assessor performs duties. The flow of information from the Assessor to the Collector is already provided for in section 106A of the Income Tax Act of 1970 and this new provision will allow information to flow in the other direction.

Clause 5 makes two minor corrections to existing provisions in the Income Tax Act of 1970 and makes no change in the effect of the law, and clause 6 is a matter of interpretation, and clause 7, of course, provides for the short title.

I would just say to hon. members that this short Income Tax Bill confirms the temporary taxation order approved as part of the 2000 budget, it tidies up a couple of minor problem areas and it prepares the way for the major update of our income tax legislation which is in keeping with the taxation strategy approved by hon. members in Tynwald of October 2000.

I beg to move the Bill be read a first time, sir.

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

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

Halifax International Bill — Second Reading Approved — Consideration of Clauses Commenced

The President: We turn then to 6 on our order papers, hon. members, the Halifax International Bill for second reading, and I call on the hon. member Mr Radcliffe again.

Mr Radcliffe: Thank you, Mr President. At the first reading stage last week there was general approval, I think, of the Bill; there were no real concerns really of hon. members. The learned and hon. Attorney-General raised a point or two which I will deal with perhaps at the end of my summary if you will abide with me.

But the purpose of the Bill is to allow for the reorganisation of the Isle of Man operations of two subsidiaries of Halifax plc and these are Halifax International (Isle of Man) Limited, a Manx company, and Halifax International Limited, a Jersey company operating through a branch in the Isle of Man.

The Halifax Group has a long-established presence on the Island through a branch of the UK parent and the Isle of Man subsidiary High Street banking operations as well as through CMI, that is, the Clerical Medical group of companies.

In total there are some 280 people employed by Halifax Group on the Island. Total deposits and funds under management or administration within the Isle of Man operations of the group are in excess of £5.2 billion.

This Bill is the consequence of a commercial decision to merge the group's banking operations in the Isle of Man and Jersey into a single company with a presence in both islands. Among the reasons for this decision are that it will enable the group to utilise its capital more efficiently and permit a simple management structure and sophisticated computer system to be operated across both islands. The integration of the business is expected to secure the continued presence of the group on the Island, to improve customer service and to give account holders in the Isle of Man and elsewhere a wider range of financial products and services from which to choose.

There is at present no public Act of Tynwald which deals with bank mergers. The current main legal techniques of effecting such mergers involve using consensual arrangements, companies legislation providing for amalgamation and reconstruction, and private Acts of Tynwald.

The recognised way to unite two banking undertakings is to transfer one to the other and the need to have a Bill in these circumstances derives from the fact that the bank may not transfer a customer's money to another body without the consent of that customer. Therefore to unite the Manx company with the Jersey company would require the written consent of all account holders of the Manx company. Given the large number of customers and relationship which the Manx company has and this is in excess of 13,000, of whom about half of them are Manx residents, consensual arrangements are considered to be impractical.

The companies legislation cannot be used because it only applies to Manx companies, so therefore this private sponsored Bill will be an Act of Tynwald. This is considered the most appropriate means of achieving the merger, eliminating as it does much of the expense and risk associated with the consensual techniques to which I referred earlier.

The proposed method of dealing with the merger has been put to the Financial Supervision Commission which has raised no objections, and as I indicated earlier, following the reorganisation the banking business of the Halifax Group would be conducted in the Isle of Man by a branch of the Jersey company. However, this will not result in any disadvantages for the group's customers on the Island. There will continue to be a high-profile operation in the centre of Douglas which will trade under the name of Halifax International and customers will enjoy at least the same facilities in this regard as they have at present.

The operations will be subject to detailed banking regulations both here and in Jersey and, in particular, customers' deposits in the Isle of Man will still be protected under the terms of the Isle of Man Depositors' Compensation Scheme, and that is not an unimportant fact to take into account.

In addition, it is envisaged that in due course the combined company will be able to offer internet banking services and extend the range of savings products that are available to customers.

Hon. members may well and probably will ask why the decision was taken to merge the Manx company with the Jersey entity rather than vice versa. There are a number of reasons. The balances and number of UK expatriate customers in Jersey are currently significantly higher than on the Island, although the group is aware of the Isle of Man's growing and strengthening reputation as a centre of excellence in the international financial area. The group already has a significant number of Manx companies as a result of the Clerical Medical operations and it was

felt that some diversification might be desirable. Members should not, however, think that the group is in any way less committed to the Isle of Man than it is to Jersey and this commitment is well demonstrated, among other things, by the employee numbers here on the Island being significantly higher than in Jersey and the managing director of the combined company, together with finance and technology specialists, are and will remain resident in the Isle of Man.

Given the many advantages that the Isle of Man enjoys, it is expected that there will be considerable opportunities for the business on the Island to be expanded even further and this should result in additional employment opportunities for Manx workers at a number of different levels.

For the avoidance of any doubt I can confirm that there will be no redundancies and none of the local employees will be disadvantaged in any way as a result of the transfer of their employment. The only real thing that will change will be the identity of the employer. The independent union of Halifax staff has been advised and confirmed that it has no objections to the proposals.

The Island has developed an almost unparalleled reputation as an international finance centre which is well regulated but also facilitative to the legitimate commercial requirements of the institutions that have established themselves here. The Halifax group of companies, which directly and indirectly contribute significantly to Manx tax receipts, is a large international financial concern but it is also extremely important to the domestic market. For example, Halifax mortgages represent some 23 per cent of total residential mortgage lending in the Isle of Man, so they have quite a place in that field.

I would ask the hon. members to give the Bill their wholehearted endorsement, and if I could just revert back to the comments that the learned Attorney-General made last week, interesting points, and I am advised that it is envisaged that existing bank accounts of customers of Halifax International (Isle of Man) which are transferred to Halifax International Limited pursuant to the legislation will continue to be operated and maintained in the Isle of Man, so accordingly, upon the death of an account holder a Jersey grant of probate will not be required, and I have a copy of legal advice given which confirms that, in my hand as well. It has been confirmed to me that all account holders will be notified in advance of the Act coming into effect of the transfer of the accounts to the Manx branch of the Jersey company and such a transfer will not affect the ability of such customers to reserve interest on their deposit's gross without deduction of Manx income tax and I can confirm that clauses 7 and 8 of the Bill are included to protect the employee's rights upon the transfer of their employment to Halifax International.

With those additional details, Mr President, I would beg to move that the Bill be read a second time.

The President: Hon. member Mr Kniveton.

Mr Kniveton: Yes, sir, I am happy to second that second reading. I was not here at the first one but I have studied it, obviously, and unless somebody can tell me otherwise, I see no problem with this Bill regarding the Halifax. Reorganisation by companies in the finance sector must and, I am sure, will come about from time to time; I am sure it will. We have had, from memory, other similar Bills enacted concerning banks and finance companies and I believe the last one, from memory, was Lloyds TSB. I seem to recall that and talking about staff being guaranteed their jobs and so on. Reading through the clauses, they appear to be straightforward and I have no reason to believe that I will have nothing else but support for this Bill.

The President: Dr Mann.

Dr Mann: I support this Bill. I have no reason to object to the Bill, but I was quite intrigued by one of the reasons given for the merger and that is that there was more efficient use of capital and is it that a merged bank would only have a capital requirement under one regulating authority, whereas the two banks individually would have two capital requirements? And in that case, is the capital requirement in Jersey less than the capital requirement in the Isle of Man, and is the regulation primarily from Jersey in co-operation with the Financial Supervision Commission here or not? Those are my questions that are raised by you mentioning it in your introductory remark.

The President: Hon. member Mr Lowey.

Mr Lowey: Thank you, Mr President. Yes, I am surprised to discover that we have no formula on the Isle of Man to deal with bank mergers or financial house mergers. That seems strange considering we have a Department of Trade and Industry and these mergers are, in the United Kingdom, referred to the Department of Trade and Industry because somebody has to look after them.

The banks and the finance houses - I expect them to look after their own businesses and to look at it on commercial fronts. I mean, savings for the company. That is the idea of the merger, it does mean savings for the company, and most of them tend to mean redundancies. I am pleased to hear about clauses 7 and 8 and the reassurances from the mover of the Bill in this particular instance.

However, again, having said that, what happens to the customers? And I tell you why I raise this and why customers' accounts can be transferred at a whim. It has happened to me recently on insurance. Now, I was insured by a major UK company which had been taken over once, then it was taken over again last year and then you can imagine my chagrin when I had a bump earlier this year to discover that in the transfer from one company to another I had had imposed on me a surcharge for the first hundred pounds and I am fully comprehensive. Yes, they sent me bumf and there written somewhere in the little print was this additional cost on me. (*Interjection and laughter*) Indeed.

Having said that, I have to say that in this instance no individual customers got in touch with me, but I do think that there is an important principle here that people who sign up with one company under one set of rules in mergers will somehow be worse off and I believe that there should be a proper structured arrangement for this, not to be told around here that the Financial Supervision Commission have looked at it. My own view of the Financial Supervision Commission is that if you are an individual they do not want to know you and if you try to get any advice from them they will tell you it is nothing to do with them, although all the finance houses advertise to the general public, 'This is licensed by the FSC', and one tends to think that they are there to look after the individual, when they are not, and so I am not reassured to be told that the Financial Supervision Commission have some say in the matter because they are looking at it purely on the day-to-day running of the company and not from the consumer and that is where the Department of Trade and Industry, in my view, should have a say in whether these mergers should go ahead, just like they do in the UK. I think they should be mirrored in their responsibilities. If they have got the same title, then they should do the same job.

Having said that, I am reassured by the hon. mover of the Bill when he says that clauses 6 and 7 dealing with employees' rights are there to strengthen and protect and I welcome that.

The President: Mrs Christian.

Mrs Christian: Mr President, one recognises that these companies are seeking to merge in the best interests of the parent companies and so on and we do know that there is another

mechanism by which this could be achieved, albeit a much more cumbersome mechanism as far as the banks are concerned.

The hon. member Mr Lowey has made an important point, that those who are investing here continue to be protected in the same way as they have been hitherto, and I think that this is an absolute necessity if we are to support this legislation.

I have to express a personal disappointment really that we see these mergers happening and they always are in the direction of the other island and not in the direction of this one, and I suppose that Treasury and the Financial Supervision Commission have an eye on that and a responsibility to look at our commercial situation and examine why that is happening. I may be wrong, but I believe there is no investor protection in the Channel Islands and maybe that is an element that influences it. But I would imagine that the Channel Islands also have a mechanism where they could effect such a transfer to the Isle of Man, notwithstanding that the majority of the account holders are there. I do not believe it would be impossible for a transfer to work the other way. But I just wonder whether we are, in a commercial area, getting things right when this is happening so often, where we feel that the Isle of Man is becoming the back office, notwithstanding that CMI and other organisations - Halifax - have a lot of employees here.

So whilst I recognise that we want to assist these companies to make the commercial changes that they seek to make, I am disappointed that it is happening in the way that it has gone.

The President: Mr Attorney.

The Attorney-General: Thank you, Mr President. Mr President, just following on from the comments made by other hon. members, I think what impresses me so much about this situation is the very real connection which the Isle of Man bank has with the Island and its people. We have heard that the bank on the Island employs 280 people, that there are some 7,500 customers and, very significantly, some 23 per cent of the mortgage book in relation to mortgages on the Isle of Man are maintained by the Isle of Man bank. Therefore I cannot help but register again my concern about the protection of customers.

I heard with great interest the comments by the hon. mover that it was not possible to obtain the consent of all those customers, the 7,500-odd customers, because the legislation at present does not permit the merger of banking companies and that it was not possible or practical to obtain consent of customers. Therefore again may I just ask the hon. mover for reassurance for the customers' point of view that they will be given, as it were, a full information package that will explain precisely the implications of this.

I was particularly interested again to hear the reassurance about the Jersey grant of probate. Certainly when I was in practice as an advocate it was quite a concern for persons who were, say, beneficiaries under a will where the deceased person had as part of his or her estate a bank account in Jersey. It was very expensive in many ways for the estate to obtain the grant of probate, and as I say, as I see it, and perhaps the law or the practice may have changed since I was in practice, but certainly here we have a situation where the customer before the Bill had an account with an Isle of Man bank, he now has an account with a Jersey bank and when that customer dies, in the ordinary way, as I have understood it, a Jersey grant would be obtained.

I think also taking up the point made by the hon. member Mrs Christian, as I understand it she is absolutely right when she says in Jersey there is no depositor compensation fund. This is something that was taken up and remarked upon by Mr Edwards in his Edwards review and this again is where the Isle of Man scores very heavily in the context of investor protection.

So, Mr President, it does seem to me that this will have the effect of the Isle of Man operation being reduced to a back office operation and the front office perhaps attracting the more vivid

customers perhaps and the more vivid operation being moved to Jersey. That is not my main concern. My main concern is about investor protection and I would ask the hon. mover to comment on that.

The President: I call on Mr Radcliffe to reply.

Mr Radcliffe: Thank you, Mr President. I am obliged to hon. members for their comments and particularly to the hon. member Mr Kniveton for his support. As he has rightly said, there have been in the last few years other Bills of a very similar nature which have dealt with mergers of one sort or another. They have been, I would say, certainly not to the detriment of the Isle of Man, that is for sure.

The hon. member Dr Mann and his comments about, as I read it from the brief, to make better use of capital and so on. The capital will stay the same for the Jersey company. The saving arises and the savings will arise because there will be no longer two companies each needing to be separately capitalised, and that, I hope, gives the reassurance that he is seeking. On that one it makes more sense to just have the one set of costs and so on.

The terms of customers' accounts will remain the same following the transfer. I think it was the hon. member Mr Lowey who raised the question of the customers being aware of what is going on. The customers will be advised in advance and in detail of the transfer and will not be prejudiced but indeed they could be said to be benefiting from the transfer. The same level of protection will apply to customers with accounts in the Isle of Man, as I said, as we have now for the Manx holders.

In answer to, I think it was again, the hon. member Mr Lowey, the bank accounts of existing customers of the Manx company will continue to be maintained in the Isle of Man, not in Jersey, and we will go back again to the learned Attorney's point about probate. Jersey probate certainly will not be required.

The depositors compensation scheme will apply to accounts maintained in the Isle of Man, so I would reiterate that because there is a fear that because this merger takes place, some of that protection will be lost.

Again, consultation, as I say, will take place with the customers, unlike the insurance company which I deal with, or dealt with as well, no notice of any sort regarding changes. There will be notices to every customer regarding changes in this.

The hon. member my friend on my right, Mrs Christian, asks about protection of customers, and I hope I have reassured her on that one.

She asked the question of why businesses would seem to be going to Jersey. In this particular case I do not think that is really pertinent as in some others.

The question of why people leave the Isle of Man - I think there are many, many questions tied up in there. Very often the decision-makers and shakers do not look in this area of the world anyway. They live much further south than we are here in the Isle of Man. They perhaps do not always realise the advantages of our climate and so on here. They think an annual meeting is far better way down in the south where the sun is guaranteed almost to be shining than coming north where it can be a little bit grey at times.

The Lord Bishop: You're not biased, Norman, are you?

Mr Radcliffe: No, I am not biased of course. *(Laughter)* The Treasury do worry, but we do not worry unduly over these transfers because we certainly would not go out of our way to offer tax

advantages of any and every sort to people to remain on the Isle of Man. If they cannot live with us, I think we are far better without them, quite honestly.

The learned Attorney-General - as he rightly said, the consensual approach to all the customers in the Island was not practical anyway.

The reasons and explanations - a very full pack will be sent to all holders of Manx accounts, advising them of the reasons why and obviously the advantages of remaining with Halifax anyway and the investor protection certainly is here and guaranteed on the Island.

I think I have covered the points raised by hon. members, Mr President, and I beg to move the Bill be read a second time.

The President: So, hon. members, the motion is printed at 6 on the order paper, the Halifax International Bill, for reading a second time. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Now, hon. members, if you are in agreement we will continue straight on with the clause stage as a full committee.

Members: Agreed.

The President: The Bill seems to have been printed in a different manner from what we are oft accustomed to, in that the short title and interpretation and such matters appear at the start of the Bill. However, there we are. Perhaps, hon. member, that being the case, I could ask you to take clause 1, 2 and 3.

Mr Radcliffe: Thank you, Mr President. Yes, it is, as you rightly, unusual to have the short title first and the interpretation second, a little bit the reverse of what happens with the many other Bills, but, however, this is a private Bill, so why can't it be a little bit different in its format as far as that goes.

Clause 1 just deals with the short title and specifies that the Act will be known as the Halifax International Act of 2001.

Clause 2 deals with interpretation and contains certain defined terms which are used throughout the Bill and the purpose of providing such definitions is to avoid complicated explanations appearing throughout the text of the Bill.

Clause 3 deals with the appointed day and this appointed day will be appointed by order of the Council of Ministers. The Act will only become effective on an appointed day as determined by the Council of Ministers, following a request from Halifax International Limited and they are going to ask for the appointed day order to be made when they are ready.

I beg to move, sir, that clauses 1, 2 and 3 stand part of the Bill.

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

The President: The motion, hon. members, is that 1, 2 and 3 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Four, 5 and 6, Mr Radcliffe, please.

Mr Radcliffe: Thank you, sir. Clause 4 deals with the vesting of the undertaking of the transfer or company in the company.

Clause 4 (1) provides that the undertaking of Halifax International (Isle of Man) Limited, referred to elsewhere as 'the transferor company', will be transferred to the company on the appointed day.

Clause 4 (2) provides that the transferor company will assist the company in securing the transfer of the undertaking to it where this may prove necessary. Under general principles of

public international law, the law of the Island cannot be enforced in any country outside the Island. Accordingly, any part of the undertaking governed by the law of any country outside the Island will normally fall outside the scope of an Act of Tynwald. In such a case the transferor company must take further steps to secure the transfer and vesting of such property in the company in accordance with applicable governing law.

Clause 5 deals with provisions relating to trust property and again we mention wills.

Clause 5 (1) provides that any property which is transferred to the company which was previously held by the transferor company, either alone or jointly as trustee, will be transferred only to the extent required to ensure that the company will continue to be interested in the property in the same capacity as the transferor company.

Clause 5 (2) provides that references to the transferor company in any court order or document relating to trust property shall be from the appointed day construed as references to the company.

Clause 5 (3) extends the Act to include wills made prior to the appointed day where reference is made to the transferor company as executor, trustee or recipient of property. In such a case the company will be substituted in place of the relevant company.

Clause 5 (4) provides that no gift made under a will shall be set aside by reason of operation of this Act.

Clause 6 deals with provisions dealing with transfer and vesting. It is generally clause 6 that is intended to provide supplementary provisions by which the transfer to and vesting in the company of the undertaking of the transferor company will be affected.

Sub-clause 6(1) is an introductory provision really.

Clause 6(2) provides that every contract which is in existence as of the appointed day and to which the transferor company is a party will be deemed with effect from the appointed day to be a contract with the company as a party instead of the relevant company.

Clause 6 (3) extends the scope of the Act so that any reference to the transferor company will be deemed to be a reference to the company at the appointed day where such reference appears in any statute or any existing contracts to which the transferor company is not a party.

Clause 6 (4) excludes the operation of clause 6 (2)(b) relating to the substitution of references from documents concerning scales of fees and charges.

Clause 6 (5) makes it clear that any offer or invitation made by the transferor company from and after the appointed day is to be treated as an offer or an invitation made by the company.

Clause 6(6) relates to accounts between a customer and the transferor company and provides that any such account will immediately become an account of the company on the same conditions as the account previously on the books of the transferor company.

Clause 6(7) indicates that after the appointed day the company will have the same rights in relation to fees and charges as were enjoyed with the transferor company before the appointed day.

Clause 6 (8) provides that any instruction or a direction, power of attorney et cetera given to the transferor company will be deemed to be an instruction et cetera to the company with effect from the appointed day.

Clause 6 (9) ensures that any negotiable instrument or order for payment of money which is drawn on, given to, or accepted or endorsed by the transferor company will again, from the appointed day, be deemed to be given or accepted by the company.

Clause 6 (10) makes it manifest that claims and demands addressed to the transferor company after the appointed day are to be treated as having been addressed to the company.

Clause 6 (11) provides that any document, records or goods held in the company or to the order of the transferor company will, from the appointed day, be held by the company and so on.

Clause 6 (12) relates to security interests and again the transfer from transferor company to the company.

Clause 6 (13) provides that the company will be entitled to enjoy no more and no less than those securities, rights and obligations originally enjoyed by the transferor company.

Clause 6 (14) provides that any liabilities between the transferor company and the company will continue.

Clause 6 (15) extends the foregoing provisions to include any security relating to future advances or liabilities.

Clause 6 (16) provides that any property or liability of the transferor company will become the property and liability of the company to the intent that any third party will continue to have the same rights, powers and remedies against the company as would have been available against the original party.

Clause 6 (17) relates to rights of action and remedies and is similar in effect to sub-clause (16).

Clause 6 (18) provides that the company will be substituted in any judgment or award obtained by or against the transferor company and not fully satisfied prior to the appointed day, and clause 6 (19) makes it clear that enforcement notices may be served by the data protection registrar on the company in respect of a breach of the data protection principles by the transferor company. It also confirms that the transfer pursuant to and information disclosed in anticipation of the Act will not amount to a breach of duty or confidentiality or contravention of the data protection principles.

Mr President, I beg to move, sir, that clauses 4, 5 and this huge clause 6 be part of the Bill.

The President: Mr Lowey seconds.

Mr Lowey: Oh, I long for the Bishop, you know, the Ten Commandments, but clause 6 has got 19 sub-clauses on the transfer of the Halifax.

Can I seriously ask the hon. member to take me, as a layman, through clause 4 which I think is very, very important. Am I right? Does clause 4 say without further assurance after the appointed day order, that is the end of the consultation with the customers? It says there, 'On the appointed day the undertaking shall, by virtue of this Act and without further assurance'. Now, if there are 7,500 customers and they have not had a response from most of them by that time, on the appointed day order they cease to have any rights as to whether that account goes or not. So I would like an assurance that the appointed day order will not come into force until such time as the customers have been consulted, and is it right, and again it is conferred in that particular one? I can understand if I have made a will and deposited it with these people and with a Manx company and then this company becomes a Jersey company. I can understand when everything is going hunky-dory and it is straightforward. What happens if there is a dispute? Is the jurisdiction in which it will be heard the Isle of Man or where the headquarters of this company is, which is in

Jersey and will that not inflict added costs on the person who is in dispute? Because I am sure the company is going to say, 'You come and fight the case where we are resident', and not the reverse, they are not going to assist by coming up here and defending in the Manx courts. Now, I just want a definition on that, please.

The President: Mrs Christian.

Mrs Christian: Mr President, in respect of clause 4, again on the question of wills, and we seem to have different advice from the learned Attorney and the mover of the clause, I wonder if it is appropriate if we could seek to adjourn consideration of that clause until we have a clearer understanding of the advice which the mover is giving us on that. Is it the fact that the Bill itself does not provide for treatment of wills as it stands in the Isle of Man or is it the fact that the Bill does provide that they continue to be treated as if they were Isle of Man laws? I am not entirely clear about that or whether it is some other provision which controls that particular issue? I am concerned that if we proceed with that particular. . . Sorry, it is clause 5, isn't it, not clause 4, clause 5, that we might be relying on an intention rather than on statute. But if we are doing that I would like to understand that that is what we are doing and it is not at all clear to me at the moment whether it is the Bill that provides that any will which is currently a part of the consideration of the transferor company shall continue to be treated as though it were an Isle of Man.

The President: Now, Mrs Christian, are you proposing that in fact we adjourn, as it were, or are you just saying that we should stop on this particular clause?

Mrs Christian: I am proposing that we adjourn consideration of that particular clause and consider all the rest, Mr President, until we have an explanation as to the situation.

The President: Because Mr Lowey was making a similar point but basically on clause 4.

Mr Lowey: Yes, indeed, because I think it is contained in clause 4 but I could be misreading that. It seems to me that once we have got the appointed day order, everything then ceases, that is gone, and I think we are selling ourselves short there as opposed to further down. But I take the point of Mrs Christian. I think it is important.

The President: Before we get further down this road, perhaps, Mr Attorney, you might be able to throw some light on it.

The Attorney-General: Yes, well, thank you, Mr President. Mr President, I do not in any way wish to give the impression of being hostile to the Bill as such and I will certainly do everything I can to assist the hon. mover of the Bill, I hope consistently with the advice which has been given to him, although I have not seen the advice. Could I perhaps comment on clause 4, if that is of any assistance.

The President: Yes.

Mr Lowey: Clause 4, Mr President, uses words which I think have a particular legal significance, so, 'On the appointed day the undertaking shall, by virtue of this Act and without further assurance, be transferred to, and vest in, the Company', and it is the use of the words there 'without further assurance' which I think is causing concern to hon. members, particularly Mr Lowey. I do not think, in fact I am fairly certain, that the words there 'further assurance' do not refer to giving comfort or assurance to depositors in the ordinary use of the word. What it means is that the undertaking of the Isle of Man company is going to be transferred to the Jersey company without the need for any other legal transaction, without any other legal deed or assignment. So those words 'without further assurance' have a particular technical meaning and the Bill is saying

that you do not need to have any deed of conveyance or assignment or anything like that: once this Bill becomes law the undertaking passes to Jersey without anything further to be done.

In relation to clause 5 (3), and this is a clause upon which I did have some anxiety myself, if I can just briefly refer to it, 'Any will made before the appointed day which has not been proved in the Island before the appointed day'. So just pausing there if I may, of course what we are concerned about there is a will which has not been proved in the Island, in other words has not been admitted to probate in the Isle of Man. So again, typically, probate of a will is required where the person who dies, dies domiciled in the Isle of Man or he or she has estate in the Isle of Man, and so again the use of the word 'proved' is used in a technical sense.

So going on again with the clause, 'and any will made on or after the appointed day, being a will which appoints the Transferor Company to be a trustee,' - so which appoints the Isle of Man company to be trustee - 'or recipient of any property as trustee, shall be construed and have effect as if for any reference therein to the' Manx company as trustee, there shall be reference to the Jersey company as trustee. So again we have got a situation in clause 5 (3) where without any further thing having to be done, the Jersey company, the Jersey bank, sits in the shoes of the Isle of Man bank or company.

Now, the point which I am anxious about, and perhaps the hon. member, the mover, has an opinion on this, the point which concerns me is whether, as a result of that, someone dies in the Isle of Man, domiciled in the Isle of Man, with an account here at the Isle of Man bank. We know that the trustee is now not the Isle of Man bank, but is the Jersey bank. Does the Manx domiciled testator who dies, does his estate, his executor, have to go to Jersey and get a Jersey grant of probate in respect of that Jersey will? It is now a Jersey will, not a Manx will, and that is the issue I would like to have some comfort on because, as I say, my understanding is that a Jersey grant would be required.

The President: Or residence?

Mr Crowe: Mr President, should we then adjourn at this point for the learned Attorney to debate with Mr Radcliffe's legal people on the clarification.

The President: I think the point which has been made, Mr Crowe, entirely and by Mrs Christian earlier, but perhaps, Mr Radcliffe, do you wish to comment before we make that decision?

Mr Radcliffe: Yes, I would suggest, sir, that the learned and hon. Attorney-General is perhaps worrying unduly. Accounts in the Isle of Man would be Isle of Man assets and not Jersey assets, so therefore it is a matter of general law that Jersey probate would not be required because the asset is not a Jersey asset. But I have asked for the assurance that I am given, that on the death of existing depositors whose deposits will be with the Manx branch and new depositors with the Manx branch it would be only a Manx grant of probate and not a Jersey grant of probate that would be required. On the basis that the deposits are with the Manx branch and therefore the contract between the depositors and Halifax International Limited is a contract covered by Manx law the legal advisers to the promoters of the Bill confirm that such deposits will be regarded as Manx assets and therefore that a Manx grant of probate and no other will be required to administer them.

I would hate to be drawn into a great argument here on the floor of this House this morning and in the interests of clarity I think I would say that I would be quite happy to confer with the learned Attorney and representatives from the promoters of the Bill to clarify this point once and for all and to inform hon. members in advance of the next reading of this Bill that such should take place.

The President: I think, hon. members, looking at it, it might be advisable if we held over the further consideration of 4, 5 and 6 until our next sitting next week and we would also put on the order paper, if that is the request, that we continue with the third reading, in other words finish the clauses and the third reading next week if hon. members are happy with that.

Mr Radcliffe: Could I just comment before we wind it up with that. The hon. member Mr Lowey was again on about customers and his experience with this particular insurance company. Customers, I can assure him, would be advised well in advance and in detail of the transfer before it comes into effect. Now, you cannot force everyone to respond to that but certainly people will have their chance and the customers will have the chance then, after having that information, to close their accounts, if they wish, before the transfer takes place. So certainly assurances are there for customer satisfaction, shall I say, anyway that they have the chance to close their account if they say, 'I don't want anything to do with this particular company now.' They can close their account and go elsewhere, so that cover is there.

There is little more I can say, Mr President, but I would give an assurance that this conference will take place between the learned Attorney, myself and the promoters of the Bill and in fact I would like members to have at least a day or two in advance the information, or the solution which we arrive at anyway, so that members will have that information at their fingertips before we consider the Bill again next time.

The President: Hon. members, so that in fact it is plain for *Hansard* and for yourselves what the procedure will be, I propose at this stage to stop further discussion on clauses 4, 5 and 6 which we have commenced upon. We will continue that discussion on those clauses and the remaining clauses next week and also be prepared to take the third reading of the Bill at the same time and further to that, hon. members, whilst I did invite the hon. mover to take 4, 5 and 6 together, we will take them, for the purpose of division, separately. Agreed, hon. members?

Members: Agreed.

The President: In that case, hon. members, we will hold that Bill over till the following week.

Trustee Bill — Second Reading Approved — Consideration of Clauses Commenced

The President: We will turn then to item 7 on the order paper and deal with the Trustee Bill which is down for second reading and I call upon the Attorney-General to move.

The Attorney-General: Yes, thank you, Mr President. I believe that hon. members were broadly content with this Bill which I outlined at the first reading on 13th March. It was recognised that it was important that we should keep abreast of developments in this area which is of great significance in the financial and commercial sectors of the Island's economy.

The office of trustee is one which should not be undertaken lightly. Trustees have responsibilities to their beneficiaries and their mandate is emphasised in clause 1 of the Bill. A duty of care to exercise such care and skill as is reasonable in the circumstances applies to all trustees in accordance with the provisions of schedule 1 to the Bill unless it appears from the instrument creating the trust that the duty is not meant to apply. That duty of care is fundamental to parts 1 to 4 of the Bill.

Part 5 deals with remuneration, and part 6 with miscellaneous or supplementary matters all of which will be dealt with in greater detail in the consideration of clauses.

Mr President, with those brief comments may I move that this 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 Trustee Bill be read for a second time. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. With Council's approval we will turn to the clauses stage of full committee and we will move to clauses 1 and 2 with schedule 1, Mr Attorney, if we can.

The Attorney-General: Thank you, Mr President. Clause 1 defines the new duty of care which will be imposed on all trustees when acting as such in place of the duties which are found in the current case law.

Clauses 1 and 2 create a new, precisely defined, statutory duty of care. The duty may be excluded or modified by the terms of the trust.

Sub-clause (1) defines the new statutory duty of care. The circumstances where the duty will apply are defined in clause 2. To comply with the new duty a trustee must show such skill and care as is reasonable in the circumstances of the case, having regard to his special knowledge, experience or professional status. The new duty will provide a standard against which a trustee will be evaluated in the exercise of his powers taking into account the particular circumstances of the case.

Sub-clause (2) calls this duty 'the duty of care'.

Clause 2 defines when the new duty will apply by reference to schedule 1. In general terms the new duty will apply to any exercise by a trustee of a power to invest trust funds, to acquire land, to appoint agents, nominees or custodians, to settle claims, to insure trust property and to fix the value of a reversionary interest or trust property, but as I have said, it will not apply if the trustee instrument provides that it should not apply.

Mr President, I move that clauses 1 and 2 and schedule 1 do stand part of the Bill.

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

The President: Seconded by Mr Lowey. The motion, hon. members, is that clause 1, clause 2 and schedule 1 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Perhaps we could complete part 2, 3 to 7, Mr Attorney.

The Attorney-General: Yes, thank you, Mr President. Clause 3 creates the general power of investment under which trustees will, subject to certain safeguards and to any restrictions in the trust instrument, have the same power to invest trust funds as if they were absolute owners of the funds. The power is subject to the following safeguards: (a) trustees will remain subject to their fundamental duties, for example the duty to act in the best interests of the present and future beneficiaries and to avoid any conflict of interest; (b) the new duty of care; and (c) clauses 4 and 5 impose specific duties to have regard to the need for diversification and suitability of investments and to obtain and consider proper advice where appropriate.

So sub-clause (1) gives trustees, subject to the safeguards and limitations in clauses 3 to 7, the same power to invest trust assets as if they own the assets themselves rather than holding them on trust.

Sub-clause (2) of clause 3 calls the new power 'the general power of investment'.

Sub-clause (3) excludes the power in the case of investment in land which is covered instead by clause 8, but it does apply to investment in loans secured on land, that is, mortgages.

Sub-clause (4) defines 'loans secured on land' in sub-clause (3).

Clause 4 creates an additional duty on the trustees to consider standard investment criteria in exercising any power of investment.

Sub-clause (1) provides that in exercising a power of investment, whether under clause 3 or otherwise, a trustee must have regard to the standard investment criteria which are set out in sub-clause (3). It should be noted that the general duty of care applies in relation to the application of the standard investment criteria by a trustee.

Sub-clause (2) requires a trustee to keep the investments of the trust under review and to consider whether, in the light of the standard investment criteria in sub-clause (3), they should be varied.

Sub-clause (3) defines the standard investment criteria as (a) the suitability of a particular investment to the particular trust, for example the size and risk of the investment, the need to maintain income or capital growth or both; and (b) the need to diversify the investments to the extent that that is appropriate in the circumstances.

Clause 5 creates an additional duty on trustees to take proper advice in exercising any power of investment.

Sub-clause (1) requires a trustee, when considering how to invest trust funds, to obtain and consider proper advice in view of the standard investment criteria which were set out in clause 4.

Sub-clause (2) of clause 5 imposes a similar duty on a trustee in reviewing the investments of the trust.

Sub-clause (3) qualifies the duties under sub-clauses (1) and (2). Trustees need not take and consider advice before making any investment or change in investments to obtain advice if the trustee reasonably concludes that it is unnecessary or inappropriate to do so, for example if the proposed investment is small so that the cost of obtaining advice would be disproportionate or if the trustees themselves have the necessary skill and knowledge.

Sub-clause (4) defines 'proper advice' by reference to the relevant ability and experience of the adviser as reasonably believed by the trustees.

Clause 6 provides that the general power of investment in clause 3 is in addition to any express power but subject to any statutory restriction.

So sub-clause (1) of clause 6 provides that the power will be available to all trustees in addition to any limited express power of investment vested in them but subject to any limitation imposed by the trust instrument or by legislation.

Sub-clause (2) makes it clear that where the instrument setting up the trust is contained in legislation it is treated as a statutory provision and not as a trust instrument.

Clause 7 provides that clauses 3 to 6 generally apply to trusts in existence when part 2 comes into force.

So sub-clause (1) provides that clauses 3 to 6 apply to existing trusts, that is, trusts in existence when part 2 comes into force.

Sub-clause (2) makes it clear that a restriction on investments which applied before the Trustee Investments Act 1961 came into force but was overridden by that Act is not revived to restrict the new general power of investment.

Sub-clause (3) provides that where (a) a pre-1961 trust instrument gives the powers of investment the equivalent to powers for the time being authorised by law or (b) a post-1961 instrument gives the powers of investment conferred by the 1961 Act, the trustees have the general power of investment in clause 3.

So, Mr President, I move that clauses 3, 4, 5, 6 and 7 do stand part of the Bill.

Mr Lowey: I beg to second, sir.

The President: Mr Crowe.

Mr Crowe: Could I just comment by saying it is absolutely clear that what we are doing is to provide greater responsibility for anybody acting as a trustee but as a quid pro quo to give greater flexibility as far as investing, but essentially what you are saying, Mr Attorney, is that you have got to take proper advice, and I think that is a key to anybody acting as trustee, that they do take proper advice, and I was interested again in clause 6 where the general power, is subject of course to the trust instrument which could override the general power and in clause 7 again I was quite taken as to the drafting of this, where you have to be so careful in any legislation that you do not revive something that has been overtaken by an earlier Act, but it does allow the general provision of the 1961 Act, so I think there was some very careful construction to achieve the object without destroying part of what you were trying to achieve.

The President: Mrs Christian.

Mrs Christian: Mr President, I think that the provisions are useful in particular in relation to allowing trustees to determine whether or not they need to seek advice and obviously there is a clear indication here that there are many small trusts in the Island who possibly have a Post Office account and it really would not be worth their while, apart from making local enquiries about alternatives, seeking a great deal of professional advice in those areas, but perhaps that leads me to a wider question and perhaps one I should have raised under the first and second clauses. Whilst ignorance of the law is not a defence, I just wonder, regarding existing trustees or even new trustees, by what mechanism they will be made aware of the changes that are embodied in this piece of legislation. I suspect that there are many small trusts and so on where people are invited to become trustees, people of integrity who do so and read the trust documents and observe the requirements of the trust, but perhaps many are not aware of the overriding trust legislation. I suspect that that is the case and I wonder if the learned Attorney could comment on what education process might be embarked upon and by whom, if he felt such was appropriate, to bring to the attention of trustees, whether they be in large trusts or small ones, the changes that are embodied here.

The President: In the Southern Area Health Committee, members of the House are trustees, yes. Mr Attorney.

The Attorney-General: Thank you very much, Mr President, for those interesting comments from hon. members. Yes, well as the hon. member Mr Crowe points out, the taking of advice is absolutely crucial and clause 5(1) makes it clear that before exercising any power of investment a trustee must, subject to the exception in sub-clause (3), obtain and consider proper advice. So that is clearly important.

The exception, which is relevant also to the question raised by the hon. member Mrs Christian, is, I think, very sensible, that clearly if the circumstances do not justify the taking of advice, and inevitably, I suppose, the advice will have to be paid advice, it is not necessary for the trustee to take advice and the example about the small Post Office investment account is very appropriate.

I am obliged to the hon. member Mr Crowe for pointing out the careful drafting. Unfortunately in this case I do not think we can take the full benefit of that in so far as the Bill is carefully moulded on the UK provisions but it is an important provision, clause 7.

Mrs Christian raises a very interesting point about how trustees should be made aware of their new obligations and there is no doubt about it, that there are many lay persons, that is, non-professional trustees, who look after trusts, whether it is under wills or whether it is under deeds

or charitable trusts, very many lay persons who assume the responsibility of trustees, and as I mentioned in my opening comments, the office of trustee is not one that should be undertaken lightly. There are inherent risks in acting as a trustee and the irony of it is that quite often the lay person does not receive a penny for his worry and the many attendances at meetings and so on which go with the office.

In so far as the education process is concerned, that is something, I think, I will have to consider. I would like to think that perhaps the Law Society might have a useful role or perhaps the Office of Fair Trading or both in disseminating some sort of overview of the new obligations. It is certainly something I will consider carefully, Mr President.

The President: Hon. members, the motion is that the whole of part 2, that being clauses 3, 4, 5, 6 and 7, all stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Part 3, acquisition of land, 8, 9 and 10, Mr Attorney.

The Attorney-General: Yes, thank you, Mr President. Clause 8 gives trustees a new power to acquire and deal with land on behalf of the trust. The new general power of investment introduced by clause 3 has only a limited application to land and is in any event restricted to investment. Trustees of land in England and Wales have had power since 1996 to acquire land in the United Kingdom for any purpose, that is, as well as or instead of investment, and that power is extended to all trustees by the Trustee Act 2000 in the UK.

So sub-clause (1) gives trustees the power to acquire freehold or leasehold land in the Isle of Man or the United Kingdom as an investment for occupation by the beneficiaries or for any other reason.

Sub-clause (2) defines 'freehold' or 'leasehold' land by reference to the appropriate legal characteristics applicable in each of the relevant jurisdictions.

Sub-clause (3) gives trustees who have acquired land all necessary powers of dealing with it effectively for the purpose of exercising the trustees' functions. It should be again noted that the general duty of care imposed by clause 1 applies to the exercise of the new statutory power to acquire land under this clause and also to the exercise of any power to acquire land under the trust instrument and in both cases when exercising any power in relation to the land.

Clause 9 makes provisions similar to clause 6 in relation to the general power of investment in clause 3, that is, the power to acquire land in clause 8 is in addition to any express power that is subject to any statutory restriction.

Clause 10 excludes the power to acquire land in clause 8 in the case of trusts of settled land but otherwise applies it to existing as well as future trusts. Settled land is referred to in sub-clause (1) and 'settled land' is defined in the Settled Land Act 1891.

Sub-clause (2) provides that clause 8 applies to existing trusts, that is, trusts in existence when part 2 comes into force.

Mr President, I move that clauses 8, 9 and 10 do stand part of the Bill.

The President: Mr Lowey.

Mr Lowey: I beg to second, sir. Could I get my weekly ration of Latin instruction. I hope it is Latin and not just a quaint Scottish custom, but I have to draw attention to the mover of the Bill again: 'dominion utile'. I have never seen or heard of it before and I hope it is Latin and then I will get an explanation of what it is or is it a quaint old Scottish custom?

The President: Mr Attorney.

The Attorney-General: All of those things, Mr President. Funnily enough I overlooked that one. I think I am now really grappling or trying to delve up some schoolboy Latin but I think 'dominion utile' must mean the ownership - that must be the dominion - and the 'utile' must be the use of the ownership. How those two things go together is quite beyond me but perhaps, Mr President, I can come back to that.

Mr Lowey: I am sure you are right. *(Laughter and interjection)*

The President: Mr Crowe.

Mr Crowe: Mr President, could I just ask, and I cannot help on the Latin, I am afraid, really why it is restricted to land in the Isle of Man and the UK? Is there a particular reason for that?

The President: Mr Attorney.

The Attorney-General: Yes, well, Mr President, I think the reason for that is that trustees are entitled, in reliance on the statutory power, to invest in land in the Isle of Man, England and Wales, Scotland because I think that the general concepts of ownership of freehold and leasehold land are common to each jurisdiction, in other words a trustee of an Isle of Man trust would not have much difficulty, it is to be hoped, in investing in land in England, Wales and Scotland, provided he steers clear of dominion utile, but I think that if he wanted to invest in land in another far-flung part of the world, then it would be necessary for him to have express power in the trust deed and if there was not an express power the trustees could pass a resolution amending the trust deed so that express power could be given.

The President: Hon. members, the motion then is that part 3 - clauses 8, 9 and 10 - do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Now, hon. members, I am aware that the clock is at the top of the hour and we still have quite a way to go. Are we content to adjourn at this point and we will continue our sitting at 2.30. Thank you, hon. members.

The House adjourned at 12.58 p.m.

Trustee Bill — Consideration of Clauses Concluded

The President: Hon. members, we were dealing this morning with the Trustee Bill and we had reached part 4. Can I invite Mr Attorney to take clauses 11, 12, 13, 14 and 15.

The Attorney-General: Yes, thank you, Mr President. Part 4 deals with agents, nominees and custodians.

Clause 11 gives trustees wider powers to delegate certain of their powers to agents, for example banks, advocates, accountants, stockbrokers and estate agents. The Law Commission in England considered that, as trustees need to undertake tasks of an increasingly specialised nature, some of the restrictions under the then current law seriously impeded the administration of trusts and concluded that in relation to trusts other than charities it was out of date to treat powers of investment and similar powers of management as in all respects fiduciary and therefore non-delegable, so the Bill makes special provision for charitable trusts.

These powers of delegation and appointment are subject to the duty of care created by clause 1 and will apply to all trusts except pension trusts and authorised unit trusts.

So sub-clause (1) enables trustees to delegate any or all of their delegable functions to an agent.

Sub-clause (2) defines the delegable functions of trustees, other than charity trustees, as any function except (a) a function relating to the distribution of the trust assets, (b) a power to

allocate fees or other payments to capital or income, (c) a power to appoint a trustee and (d) a power conferred by the trust instrument or an enactment to delegate a trustee function or to appoint a nominee or guardian.

Sub-clause (3) defines the delegable functions of charity trustees as (a) any function consisting of carrying out a decision that the trustees have taken, (b) investment of funds and their management, (c) fund-raising, except from a business which is the main charitable activity of the trust, and other activities which are prescribed by order of the Council of Ministers. This is to allow an element of flexibility.

Sub-clause (4) defines what is meant by a 'trade' which is an integral part of the carrying out of the trust's charitable purpose in sub-clause (3) (c) which therefore cannot be delegated to agents. This covers (a) a business which is an object of the trust, for example running a fee-paying school, and (b) a business run by beneficiaries of the trust, for example a workshop for the blind.

Sub-clause (5) requires Tynwald approval to an order under sub-clause (3) (d). It should be noted that trustees do have power under clause 32 to pay an agent reasonable remuneration and expenses.

Clause 12 defines the persons who may act as agents for the trustees under clause 11.

Sub-clause (1) provides that generally trustees may delegate any delegable functions to any person whomsoever, including one of the trustees, subject to sub-clauses (2) and (3). It should be noted again that when choosing an agent, the trustees are under the duty of care which is imposed by clause 1 of the Bill.

Sub-clause (2) requires a delegation under clause 11 to two or more persons of a particular function to be to those persons jointly, not separately.

Sub-clause (3) prevents a delegation under clause 11 to a beneficiary and that prevents a conflict of interest, and sub-clause (4) allows trustees to appoint a nominee or custodian appointed under clauses 16 or 17 as an agent under clause 11. For example, a bank which is holding securities as custodian can also be appointed as an investment manager.

Clause 13 provides that, subject to exceptions, an agent authorised to act under clause 11 is subject to any specific duties or restrictions attached to the function which is delegated.

Sub-clause (1) provides that an agent appointed under clause 11 to exercise functions on behalf of trustees is subject to the same specific duties or restrictions as applies to the trustees in exercising that function.

Sub-clause (2) provides an exception in the case of an expert agent. If the agent is the kind of person from whom the trustees would be expected to take advice either under the general law or under a specific statutory requirement, he is not himself required to take separate advice. For example, if an expert in investments is appointed as investment manager, he is not himself required to take expert advice under clause 5. The reference to specific duties does not include the duty of care imposed by clause 1 of the Bill. That duty is limited to trustees and does not apply to an agent in the performance of the agency. Nevertheless agents will owe a separate duty of care to the trustees under the general law of agency.

Clause 14 provides that generally trustees are free to delegate functions to an agent under clause 11 or otherwise and such terms as they think fit, subject to certain restrictions.

So sub-clause (1) allows trustees to delegate their functions to agents on such terms as the trustees think appropriate, for example as to remuneration, but subject to the duty of care under clause 1.

Sub-clause 2 restricts the trustees' powers to set the terms of any delegation in the three cases specified in sub-clause (3). They are allowed to agree these terms only if it is reasonably necessary, for example because fund managers will only act on terms limiting their liability and allowing them to act despite a conflict of interest.

So sub-clause (3) lists the cases covered by sub-clause (2). Trustees may not normally delegate on terms which (a) permit the agent to appoint a substitute, (b) restrict the liability of the agent or his substitute to the trustees or any beneficiary, or (c) permit the agent to act where a conflict of interest may arise.

Clause 15 imposes special restrictions in relation to the delegation of asset management function.

Sub-clause (1) provides that the terms of an agreement authorising the agent to exercise asset management functions on behalf of the trustees must be in writing or evidenced in writing.

Sub-clause (2) prevents the trustees delegating their asset management functions unless (a) they have first prepared a policy statement giving guidance on the exercise of those functions, for example as to regular reviews, the balance between capital growth and income and so on, and (b) the terms of appointment require the agent to secure compliance with the statement in force for the time being.

Sub-clause (3) requires the trustees to frame any policy statement under sub-clause (2) (a) in the best interests of the trust. It should again be noted that the duty of care under clause 1 applies to the preparation of the policy statement.

Sub-clause (4) requires the policy statement to be in writing or at least evidenced in writing, for example in minutes of a meeting, and sub-clause (5) defines 'asset management functions' as functions relating to the investment of trust assets and the acquisition, disposal and management of trust property.

So, Mr President, I move that clauses 11, 12, 13, 14 and 15 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. Just commenting on clause 12, sub-clause (3) where there is a very real provision to prevent the beneficiary acting as agent as well as trustee, otherwise he could be in charge of the whole thing, I think, so a very safe precaution, and on clause 15 again, which is a very sensible and practical issue, to have the agreement in writing so there is absolutely no doubt as to who is responsible for what.

The President: Mrs Christian.

Mrs Christian: Yes, Mr President, I would endorse that too in the sense that where you can delegate functions to other people or bodies and appoint agents, could the learned Attorney confirm that it is for the trustees to set out how they cancel or nullify such a delegation. I presume that is, for example, under clause 14 part of the terms of the agreement that they would come to, but it must be important that they can remove them in the event that they do not perform properly or stick to the terms of their appointment in relation to the trust functions, but other than that it seems reasonable, as indeed I think the DHSS delegate their authority for national insurance investment in the Treasury -

Mr Radcliffe: We do a good job there. *(Laughter and interjection)*

Mrs Christian: - so we should be looking at the agreements to see what the instructions are.

The President: Mr Attorney.

The Attorney-General: Yes, thank you, Mr President. I am obliged to the hon. member Mr Crowe for his comments in relation to clause 12 (3) and 15.

In so far as the point raised by the hon. member Mrs Christian on terms of agency - 'How do you bring an appointment of an agent to an end?' - the hon. member is absolutely right: the terms would ordinarily be put into some sort of delegation agreement or management agreement and there invariably is a provision in there that notice can be given to the agent so that you can, say, give a month's notice or possibly longer, maybe up to six months' notice, depending on the actual function which is delegated, and often again there will be a provision requiring some sort of performance to a given standard. So, yes, that is absolutely right.

The President: Hon. members, the motion before us is that clauses 11, 12, 13, 14 and 15 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. We deal with the nominees and custodians then, 16, 17, 18, 19 and 20.

The Attorney-General: Thank you, Mr President. A somewhat related topic then, nominees and custodians.

Clause 16 gives trustees new powers to appoint nominees to hold trust property on behalf of the trustees in cases where the trust instrument contains insufficient express powers to do so. In the absence of express authority in the trust instrument or statute, trustees can neither vest property in nominees nor place trust documents in the custody of a custodian. To do so would result in a breach of trust. So that was considered to be unduly restrictive and prevents many trustees from participating in the benefits of modern investment management.

Sub-clause (1) of clause 16 gives trustees, therefore, the power to appoint a person to act as their nominee and to vest the relevant assets in the nominee.

Sub-clause (2) requires the appointment of a nominee to be in writing or evidenced in writing, and sub-clause (3) excludes the power to appoint a nominee where under statute or the trust instrument the assets are vested in a custodian trustee, i.e. a trustee whose function is to hold property, the management of which is undertaken by separate managing trustees.

Clause 17 gives trustees new powers to appoint a custodian to undertake the safe custody of any property of the trust or any related documents or records. These powers are conferred on trustees of all trusts except pension trusts and authorised unit trusts and trusts which have a custodian trustee.

Sub-clause (1) enables trustees to appoint a custodian of any trust property, documents or records.

Sub-clause (2) defines what is meant by custodian, namely a person who undertakes the safe custody of some or all of the assets of the trust or of any related documents or records.

Sub-clause (3) requires the appointment of a custodian to be in writing or evidenced in writing, and sub-clause (4) excludes the power to appoint a custodian where, under statute or the trust instrument, the assets are already vested in a custodian trustee. Again it should be noted that the trustees do have power under clause 32 to pay a custodian reasonable remuneration and expenses.

Clause 18 requires a custodian to be appointed in the case of bearer securities unless the trust instrument or statute provides to the contrary.

So sub-clause (1) obliges trustees to appoint a custodian of bearer securities, i.e. stocks or shares, payments on which may be made to the bearer, the holder of the instrument.

Sub-clause (2) excludes this obligation where the trust instrument or statute provides to the contrary.

Sub-clause (3) requires the appointment of a custodian under this clause to be in writing or evidenced in writing, and sub-clause (4) excludes the duty to appoint a custodian where the assets are vested in a custodian trustee.

Clause 19 provides that for the better protection of the beneficiaries the persons who may be appointed a nominee or custodian under clauses 16, 17 and 18 are restricted to specialist persons or bodies.

Clause 20 makes similar provision in relation to the appointment of nominees and custodians as clause 14 makes in relation to the appointment of agents. Generally, trustees are free to appoint nominees and custodians on such terms as they think fit, subject to restrictions as to sub-delegation by the agent, any limitation on the agent's liability, and situations of conflict of interest. Again the appointment is in any case subject to the duty of care under clause 1.

So, Mr President, I move that clauses 16, 17, 18, 19 and 20 stand part of the Bill.

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

The President: Mr Radcliffe.

Mr Radcliffe: Could I just ask the learned Attorney about 17 (2)? I am sure I heard you say, sir, that a custodian, if he undertakes the safe custody of some or all. Did I hear correctly? The reading here says he undertakes the safe custody of the assets, presumably all the assets. I just wonder if he could clarify that.

The President: Mr Attorney.

The Attorney-General: Yes, sorry, Mr President, I intended to say, if I did not say it, some or all of the assets. So clause 17 (2) defines what is meant by a custodian as a person who undertakes the safe custody of some or all of the assets of the trust or of any related documents or records.

Mr Radcliffe: But it could be said that he should have custody of all the assets, from the way this is written.

The President: It does not have the word 'all'.

The Attorney-General: It does not have them all, no. I think the point is, Mr President, that if a person holds himself out, or more likely a company holds itself out, as being willing and able to look after trust assets or documents of title in safety and receives a fee for that, then it will be treated as a custodian trustee.

The President: In fact I think it says, doesn't it, 'For the purposes of this Act a person is a custodian in relation to assets if he undertakes the safe custody of the assets'. Presumably those assets that he is taken control of.

The Attorney-General: Yes, that is right.

Mr Radcliffe: I am obliged.

The President: Hon. members, the motion before us is that 16, 17, 18, 19 and 20 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clauses 21, 22 and 23.

The Attorney-General: Thank you, Mr President.

The President: Sorry, Mr Attorney, do we also need the schedule here, or have we had the schedule?

The Attorney-General: The schedules come in later on, Mr President.

The President: It is referred to in 23.

The Attorney-General: We have introduced schedule 1, Mr President, in clause 2.

The President: You introduced schedule 1 earlier. That is right.

The Attorney General: Mr President, this section deals with the review of and liability for agents, nominees and custodians.

Clause 21 introduces clauses 22 and 23 which require trustees to keep their appointment of agents, nominees and custodians under review and exempt trustees from personal liability for the defaults of those agents, nominees and custodians. It should be noted that sub-clause (3) of clause 21 disapplies clauses 22 and 23 where they are inconsistent with an express provision of the trust instrument or other legislation.

Clause 22 provides that where this clause applies, it requires trustees who have appointed agents, nominees and custodians to keep their appointment and performance situation under review and, if circumstances make it appropriate, to consider whether to exercise any power of intervention. When carrying out their duties under this clause trustees are subject to the duty of care under clause 1.

So sub-clause (1) of clause 22 requires trustees who have appointed agents, nominees or custodians to keep under review the terms of the appointment and how the person appointed is performing. If circumstances make it appropriate they must consider whether to exercise any power of intervention and if the trustees do consider that there is a need to exercise a power of intervention they must do so.

Sub-clause (2) makes special provision where an agent is authorised to exercise asset management functions. The duty under clause 22 (1) includes a duty to consider whether the current policy statement is being complied with, to consider whether it should be revised or replaced, and if so, to revise or replace it accordingly.

Sub-clause (3) applies clause 15 (3) and (4) to any revision of a policy statement under sub-clause (2) (c), that is, the trustees must act in the best interests of the trust and the policy statement must be in or evidenced in writing.

Clause 23 defines when a trustee will be liable for the acts or defaults of any agent, nominee or custodian or his permitted substitute.

Sub-clause (1) makes it clear that a trustee who satisfies the duty of care, that is, under clause 1 and schedule 1, paragraph 3, in relation to the appointment and review of the appointment of an agent, custodian or nominee will not be liable for the acts and defaults of the appointee.

Sub-clause (2) governs the liability of trustees for the acts or defaults of any permitted substitute of an agent, nominee or custodian and trustees will only be liable for the acts or defaults of a substitute agent, nominee or custodian if they failed to comply with the duty of care

under clause 1 when agreeing that a substitute could be appointed or when reviewing that appointment.

So, Mr President, I move that clauses 21, 22 and 23 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 21, 22 and 23 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Twenty-four to 27.

The Attorney-General: Thank you, Mr President. Clause 24 provides that appointments of agents, nominees or custodians under part 4 are not invalidated by any failure of the trustees to respect the limits of their powers. It will facilitate dealings by third parties with agents, nominees and custodians appointed by trustees so that third parties will not need to satisfy themselves that the trustees have complied with requirements of the Bill.

Clause 24, although it protects third parties, does not relieve trustees of any of their obligations under the Bill. They will still be liable for any loss incurred by the trust as a consequence of an appointment which is outside their powers and in addition the agent may also be liable as if the function in question is not properly delegable under clause 11.

Clause 25 provides that part 4 of the Bill applies equally to a trust with a sole trustee as to a trust with a body of trustees, except that a trust corporation which is a sole trustee need not appoint a custodian of bearer securities under clause 18.

Clause 26 provides that the powers to appoint agents, nominees and custodians under part 4 are in addition to any other powers of the trustees but are subject to any limitations in the trust instrument or legislation, and clause 27 provides that part 4 applies, irrespective of the date of the creation of the trust.

So Mr President, I move that clauses 24, 25, 26 and 27 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 24, 25, 26 and 27 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Now, Mr Attorney, the whole of part 5, 28 to 33 inclusive.

The Attorney-General: Yes, certainly, Mr President. Part 5 deals with remuneration and clause 28 of that part amends the rules for interpreting a so-called charging clause in a trust instrument so that trust corporations and professional trustees can charge for their services in wider circumstances than at present.

Sub-clause (1) provides that the new rules of interpretation will apply in favour of trust corporations and trustees acting in a professional capacity where there is a charging clause in the trust instrument, unless there is express provision in the trust instrument excluding their operation.

Sub-clause (2) provides that the services for which a trust corporation or a trustee acting in a professional capacity may be entitled to payment include services which are capable of being provided by a lay trustee.

Sub-clause (3) restricts the application of sub-clause (2) in the case of charity trustees. Except where it is a trust corporation, a trustee cannot charge for services which could have been provided by a lay trustee where (a) he or it is a sole trustee or (b) where a majority of the other trustees have not agreed that he or it can be paid.

Sub-clause (4) reverses the present rule of law that payments under express charging clauses are treated for many purposes as a gift and not as remuneration for services rendered so that in future they will not be treated as a gift, for two purposes. Firstly, a charging clause in a will is not to be invalidated if the professional trustee or his spouse is a witness to the will, and secondly, the trustee's charges are payable in priority as administration expenses before legacies and other gifts by the deceased's will.

Sub-clause (5) explains what is meant by a trustee, other than a trust corporation who acts in a professional capacity, that is, he must be in the business of acting as trustee, for example (a) bank trust company or undertaking the management of trusts and (b) what is meant by a lay trustee, that is, someone who is not a trust corporation and is not acting in a professional capacity.

Clause 29 implies a professional charging clause in all trusts which do not make provision for remuneration of professional trustees, except in the case of charities, which are covered by clause 30.

Sub-clause (1) confers upon every trust corporation which acts as a trustee the right to receive reasonable remuneration from the trust fund for any services that it provides to or on behalf of the trust, unless the right is excluded by the operation of sub-clause (5). The right applies even if the trust corporation is a sole trustee but does not apply if the trust is charitable.

Sub-clause (2) provides that any other trustee of a non-charitable trust is entitled to receive reasonable remuneration for any services he provides on behalf of the trust, with the following exceptions or provisos: he must be acting in a professional capacity, and the right does not apply to a sole trustee, and all the other trustees must agree in writing.

Sub-clause (3) defines 'reasonable remuneration' in relation to the provision of services by a trustee as what is reasonable in the circumstances, having regard to the nature of the services provided, the nature of the trust and the attributes of the trustee. In particular, a trust corporation, which is a licensed bank, may make any reasonable charges for the provision of banking services in the course of or incidental to the performance of its functions as a trustee.

Sub-clause (4) provides that remuneration may be paid even if the services provided could have been provided by a lay person. Sub-clause (5) specifies that the new power of remuneration will be excluded by any provision about the trustee's entitlement to remuneration in the trust instrument or in legislation.

Sub-clause (6) makes it clear that if a trustee is appointed as an agent, nominee or custodian he is not prevented from benefiting from the operation of sub-clause (1) or sub-clause (2).

Clause 30 enables regulations to be made by the deemsters to provide for the remuneration of charitable trustees who are not caught by clause 29.

Sub-clause (1) enables the deemsters to make regulations for the remuneration of charitable trustees who are trust corporations or act in a professional capacity.

Sub-clause (2) makes it clear that regulations under sub-clause (1) may allow for the remuneration of a charity trustee even if he is appointed an agent, nominee or custodian, and sub-clause (3) requires Tynwald approval to those regulations.

Clause 31 restates the present law as to the entitlement of a trustee to be reimbursed his expenses incurred in carrying out his duties.

Sub-clause (1) provides that a trustee is entitled to be repaid his expenses out of the trust funds provided that they were properly incurred, and sub-clause (2) makes it clear that a trustee who is appointed an agent, nominee or custodian for the trust is not excluded from that right.

Clause 32 makes provision for the payment by trustees of reasonable remuneration and proper expenses to agents, nominees and custodians who are not trustees.

Sub-clause (2) of that clause gives trustees power to pay reasonable remuneration to an agent, nominee or custodian if he is engaged on terms which provide for him to be remunerated, and sub-clause (3) gives trustees power to pay the expenses properly incurred by such person in exercising his functions as such.

Clause 33 provides that clauses 28 to 32 operate in relation to services provided or expenses incurred after those clauses come into force but do apply to existing trusts as well as new trusts, with a saving for charging clauses in wills of persons dying before that time.

Mr President, I move that clauses 28, 29, 30, 31, 32 and 33 do stand part of the Bill.

The President: Mr Lowey.

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

The President: Mrs Christian.

Mrs Christian: Mr President, could I just ask who might challenge the trustees if they felt that the remuneration was not in order and not reflective of the services which were provided? One hears about large companies these days where they regard some of the remuneration of the fat cats as being out of proportion but nobody seems to be able to control the issue, and I wonder what the situation would be in relation to trusts.

Mr Kniveton: But the same thing, Mr President, is reasonable charges or reasonable remuneration throughout. I presume it is the same one, but who is the referee in the end?

The President: Mr Crowe.

Mr Crowe: Yes, Mr President, the beneficiaries would be able to take an action, wouldn't they? But maybe the learned Attorney would be able to comment.

The President: Again, Mr Attorney, reply please.

The Attorney-General: Yes, well thank you, Mr President. I think the hon. member Mr Crowe is absolutely right, that it is for the beneficiaries to challenge the trustees. They are the people who are likely to be affected in their pocket.

In relation to charitable trustees, of course the Attorney-General would have the right to police rates of remuneration and he could bring an action, as indeed the beneficiaries under an ordinary trust, as it were, could bring an action in the the Chancery Division of the High Court to challenge trustees who have overspent. I think in practice beneficiaries are actually quite astute at keeping trustees' fees and expenses under review, but as I say, if they do not gain satisfaction from the trustees they can always take the matter to court.

The President: Hon. members, the motion then before us is that clause 28, 29, 30, 31, 32 and 33 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. We come across part 6 and clauses 34 to 37.

The Attorney-General: Thank you, Mr President. Yes, part 6 deals with miscellaneous matters and supplementary matters.

Clause 34 creates a new power for trustees to insure any property of the trust.

Sub-clause (1) substitutes a new section 17 in the Trustee Act 1961 which will remain as our principal piece of legislation governing trusts.

The new section 17(1) will confer a power upon all trustees to ensure any trust property, whether land or personal property, against such risks and in such sums as they think fit. Trustees will be able to pay the insurance premiums out of the income or the capital. The new duty of care under clause 1 applies to the exercise of this power, for example in selecting the insurer and deciding on the types and level of cover.

The new section 17(2) restricts the power in the case of bare trustees and they are subject to any directions which are given by the true owners.

Section 17(3), the new section 17(3), defines what is meant by a 'bare trust' where the trustees hold merely as nominees for the true owners who are all of full age and capacity.

Section 17(4) provides that if a direction is given under subsection (2) the trustees may not delegate the power to insure to an agent under clause 11. This is so that the beneficiaries can ensure that the directions they have given are in fact complied with.

Section 17(5) defines 'trust funds' for the purpose of 17(1), and sub-clause (2) of clause 34 makes a consequential amendment of the Trustee Act 1961, that is, to section 18(1) which provides that insurance moneys received by trustees against loss or damage of trust property must be treated as capital, not income.

Sub-clause (3) applies sub-clauses (1) and (2) to existing as well as to new trusts.

Clause 35 applies the Bill to personal representatives, that is, executors of wills and administrators of persons who die intestate, so that generally they will have the same powers and duties in respect of a deceased's estate as trustees have in respect of a trust established by someone during his lifetime.

Clause 36 governs the application of the Bill to occupational pension schemes established as trusts under Manx law. Generally part 1, the duty of care, has limited application; part 2 and 3, investment and acquisition of land, do not apply; part 4, that is, remuneration, does apply with modifications. This is because pension funds are already covered by the UK Pensions Act 1995 to a limited extent. Certain provisions are applied to the Island by an order under the Pension Schemes Act 1995 and further provision will be made by the current Retirement Benefits Schemes Bill.

Clause 37 excludes parts 2 to 4, which are investment, acquisition of land and appointment of agents, nominees and custodians, in the case of authorised unit trusts.

So, Mr President, I move that clauses 34, 35, 36 and 37 do stand part of the Bill.

The President: Mr Lowey.

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

The President: Mr Crowe.

Mr Crowe: Mr President, I would like to move an amendment to clause 36 and members actually have a copy of the amendment in front of them. There is just a slight change and I ask for their forbearance on this. It should read 'after "Part 1 does not apply" and then we add "to the trustees of any pension scheme".' So where it says 'pension scheme' it should not have read that, it is 'of any pension scheme.'

Now, as an explanation, if these words are not included it removes any duty of care under the relevant provisions of schedule 1, whereas it is only intended to disapply them in the case of

pension trustees and in that case they have special provisions made in the Pensions Act 1995 and the Retirement Benefits Schemes Act of 2000. So this is, shall we say, a tidying-up to make the correct intent of the Bill as proposed and it is with the support of the learned Attorney that I am moving this amendment. So if I can move the amendment, Mr President:

Page 18, line 10, after 'Part 1 does not apply' insert 'to the trustees of any pension scheme'.

Mr Radcliffe: I beg to second.

The President: Mr Radcliffe seconds. Mr Attorney, do you wish to reply to that?

The Attorney-General: I am very grateful to the hon. member, Mr President, for moving that amendment which is an important one and was omitted, I think, by oversight. Could I also say, Mr President, I inadvertently, in introducing clause 36, referred to the Retirement Benefit Schemes Bill. Of course it is now an Act.

The President: Right. Now, hon. members, so that we have it clear, I will put to you that clauses 34 and 35 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Now, having reached clause 36, hon. members, so that we have the amendment in the name of Mr Crowe. Will those in favour of the amendment please say aye; against, no. The ayes have it. The ayes have it.

The clause as amended, hon. members. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. And then we will complete this little movement by the Attorney by having clause 37. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Okay, so we have reached clause 38 and I think we could probably take 38 and 39, Mr Attorney.

The Attorney-General: Yes, Mr President, thank you. Clause 38 amends section 1 of the Perpetuities and Accumulations Act 1968 so that in respect of a will of a person dying before 1st January 2001 or in respect of any other instrument made before that date the perpetuity period is 80 years in accordance with the existing law. In any other case the perpetuity period is to be 150 years.

The perpetuity period is linked to the so-called rule against perpetuities which provides in broad terms that a gift which is to take effect in the future, in order to be valid must vest within a certain period, which is normally 80 years from the date of the creation of the instrument, otherwise the vesting is said to be too remote and the disposition is void.

Clause 39 is a clause which simply defines various terms used in the Bill.

So, Mr President, I move that clauses 38 and 39 do stand part of the Bill.

The President: Mr Lowey.

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

The President: The motion, hon. members, is that 38 and 39 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 40 and schedules 2, 3 and 4.

The Attorney-General: Yes, thank you, Mr President. Clause 40 introduces schedules 2, 3 and 4 which contain minor and consequential amendments, transitional provisions and savings and repeals. Mr President, I move that clause 40 and those three schedules do stand part of the Bill.

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

The President: Hon. members, the motion is that clause 40 and the remaining schedules 2, 3 and 4 do stand part of the Bill. Will those in favour please say aye; and against, no. The ayes have it. The ayes have it. And finally, 41 and 42.

The Attorney-General: Thank you, Mr President. Clause 41 enables the Council of Ministers to make an order making further consequential amendments of Acts or subordinate legislation in consequence of or in connection with parts 2 or 3. Such an order will be subject to Tynwald approval.

Clause 42 gives the Bill its short title and provides for its commencement.

Sub-clause (1) of clause 42 gives the Bill its short title. Sub-clause (2) provides that it is to come into force on a day or days to be appointed by order of the Council of Ministers, except for clauses 38 and 41 and this clause which will come into force on the day Royal Assent is announced.

Sub-clause (3) enables an order under sub-clause (2) to include further transitional provisions if required.

So, Mr President, I move that clauses 41 and 42 do stand part of the Bill.

The President: Mr Lowey.

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

The President: The motion, hon. members, is that 41 and 42 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. That completes our deliberations on the Trustee Bill for today.

Genetically Modified Organisms Bill — Second Reading Approved — Clauses Considered

The President: We turn then to item 8 on our order paper, the Genetically Modified Organisms Bill for second reading, and I call on Mr Crowe.

Mr Crowe: Thank you, Mr President. In moving the second reading of this Bill I would firstly like to comment on the two issues raised at the first reading, and Mr Lowey asked whether it had any potential effect on fish farming and if I may just quote from my briefing papers, 'The question that he raises is something of a red herring (*Laughter*) - I take no credit for that pun - as the Act provides enabling powers, though suggesting some of the parameters within which secondary legislation may be couched. Clause 1(3)(a) provides that for the purposes of the Act an organism is genetically modified if modification is by means of any prescribed artificial technique and clause 1(4) sets out broad areas which may be included in techniques which may be prescribed.' Mr Gumbley points out that 'prescribed' in this context means prescribed by regulations made by the Department of Agriculture and these are subject to Tynwald approval. If it were decided that a technique used in fish farming should be prescribed in regulations as leading to an organism or a subsequent derived form which is genetically modified, then the Bill would potentially have an effect on fish farming. However, there is no reason to believe that fish farming currently employs techniques that would come within this area. So it appears, whatever they do, it is a natural thing, not a genetically modified thing, so it should not have any effect on fish farming.

Now, if I could just move on to Dr Mann who had a query where he talked really about how would this be enforced, and again if I could just outline the briefing that I have had, in general terms the Bill is aimed at ensuring that major international firms do not deliberately bring GM crops for trialling or carry out experiments involving genetic modification to animals in the Island or bring into the Island crops or animals which have arisen from such experiments. The concern is

that escapes may lead to unforeseen consequences with the Island's ecology. Such companies are high profile and their activities and connections tend to be known.

At grass-roots level the department would rely on information from learned journals and government and other agencies, labelling or other sources as to whether certain products of GM constituents which have not had approval from the Community, so that it is permitted within a member state of the European Communities.

Seed grown is subject to certification. Only certificated seed is approved seed for the purpose of entry onto the EU common catalogue. There are international requirements about how such seed is labelled.

It is a defence for persons charged with offences to show that they did not know or had no reasonable cause to believe that there was a GMO present. However, it is up to defendants to show due diligence by putting the relevant question to the supplier. Simply not checking or asking about it is not an excuse. Whilst it is not, therefore, a requirement for labelling to declare the presence of GMOs, as packaging and labelling will be carried out elsewhere, or for the supplier to declare that no GMO is present, it is up to the person receiving items to take reasonable steps to ensure that the law is not broken and this will include checking the EU common catalogue and labels and making appropriate enquiries of suppliers.

So those were the two points, and as I mentioned at the first reading, this Bill is important for Manx agriculture, as it seeks to prevent the import, release, propagation or supply in the Isle of Man of genetically modified organisms and I would beg to move the second reading, Mr President.

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

The President: The motion, hon. members, is that the Genetically Modified Organisms Bill 2001 be read for a second time. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. If we are content again, hon. members, we will take the clauses as a committee sitting as a whole Council. In that case, hon. members, I ask the hon. member Mr Crowe to take clause 1.

Mr Crowe: This clause, Mr President, defines the term 'genetically modified organism' for the purposes of the Bill. The definition is taken from part 6 of the UK Environmental Protection Act of 1990 which introduced a system of controls of GMOs to implement EC directives 90/219 and 90/220. That system differs from this Bill in that it allows for the release of GMOs subject to strict controls, whereas this Bill prohibits their release entirely, except for GMOs the marketing of which is permitted within the EC.

Sub-clause (1) defines 'organism' widely so as to include substances containing biological matter. Sub-clause (2) defines 'biological matter' as covering tissue, cells and genetic material, including matter produced by cloning.

Sub-clause (3) defines what is meant by a 'genetically modified organism': its genes or those of its ancestors have been changed by an artificial technique which is prescribed, that is, prescribed by regulations made by DAFF and again they would be subject to Tynwald approval.

Sub clause (4) sets out the kind of artificial technique which may be prescribed by regulations for the purposes of (3) above. They do not include natural processes or techniques assisting them, such as breeding or in vitro fertilisation, and sub-clause (5) makes clear that the techniques within (3) and (4) are not limited to laboratory operations acting directly on organisms and include indirect operations such as those induced by viruses.

Mr President, I beg to move clause 1 do stand part of the Bill.

Mr Radcliffe: I second, Mr President.

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

Mr Crowe: This clause sets out the main prohibitions in the Bill covering practically all activities relating to GMOs, but with various exceptions and defences, principally an exception for GMOs the marketing of which is permitted by EC legislation.

Sub-clause (1) prohibits specified activities relating to GMOs.

Sub-clause (2) makes it an offence to contravene any of the prohibitions.

Sub-clause (3) gives a defence of ignorance. The accused is to be acquitted if he shows that he did not know a substance was a GMO and had no reason to think it was.

Sub-clause (4) gives a further defence in the case of a GMO the marketing of which is permitted in the EC. Without this defence the Bill would be in breach of EC law by imposing a restriction on the free movement of goods.

Sub-clause (5) gives a defence in the case of possession of a GMO, and sub-clause (6) sets out the penalties for contravention of any of the prohibitions.

Sub-clause (7) limits private prosecutions for offences under this clause, as prosecutions can only be brought by DAFF or by or with the consent of the Attorney-General.

Sub-clause (8) enables regulations to contain exemptions from the prohibitions or to set up a system under which DAFF can grant exceptions. It also sets out cases in which GMOs can be monitored in the EC.

Mr President, I beg to move that clause 2 stand part of the Bill.

Mr Radcliffe: I second and reserve my remarks.

The President: Mrs Christian.

Mrs Christian: Mr President, this is interesting in the sense that it sets up a prohibition, but certainly in the United Kingdom I think that people were caught out by using seed from Canada which in fact had been modified.

I suppose what we can say is that this does raise the profile and perhaps moves local people to ask the question, but whether they get the right answer or not is a difficult issue and having a defence is one thing, but it does not prevent the stuff from being used here and then if there is damage to be brought about by the use of untested materials, then that damage is already done. However, I hope that by and large people will seek to ask the questions so that as far as possible everyone will know what the nature of the material is that is coming in, and clearly there are some materials which are regarded as being acceptable. If they have the European stamp on them we are apparently accepting that as the appropriate measure of suitability, and I think we are dragged into that by virtue of the free trade provisions in our relationship with the EU.

The penalties could be certainly fairly hefty in relation to using unapproved materials and that, I guess, is appropriate.

It is difficult to understand how they can test any of these materials on a commercial scale without there being risks in the environment which surrounds them. I really do not know how that

is done - perhaps I should be reading more scientific papers - but it is hard to imagine how you would get a commercial test for any of these materials.

I think that the fear of this is in our concern of the transportation by artificial means of genes from one kind of species to another, which does seem very other - worldish and science-fictionish, but it is something that is happening more and more and so I think we need to tread slowly and carefully. That is not to be critical of scientific development, but just to explore it in a very controlled manner.

The President: Mr Crowe, do you wish to reply, sir?

Mr Crowe: Just to thank Mrs Christian for that. I think we would all share her concern, not just in this Bill, but in experimentation with living animals or living organisms or any crops of any sort. We are embarking on techniques where we have no idea what the end result will be and I think what we are trying in this Bill is to say, 'Well, look, in the Isle of Man we do not really want any of these seeds or trials or whatever. We want to protect the way it is at present', and I think by having this legislation in place, at least if others wish to experiment and maybe it works, then maybe with due authorities, and again Mrs Christian mentions the EU stamp of approval and we have obligations there, then only then would we even entertain bringing them here, but I think that is quite a long way off, Mr President.

The President: Hon. members, the motion before us is that clause 2 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 3 and the schedule.

Mr Crowe: Mr President, this clause introduces the schedule which contains powers of entry, testing, inspection, seizure and destruction for the purpose of enforcing the prohibitions in clause 2. They are based on those in part 6 of the UK Environmental Protection Act of 1990.

Paragraph 1 gives to persons authorised by DAFF various powers in relation to premises.

Paragraph 2 enables DAFF to require any person involved in the importation of GMOs to provide information about his activities.

Paragraph 3 enables an authorised person to seize and destroy any GMO found on any premises except one the marketing of which is permitted in the EC. He must give a written report on the seizure to someone in charge of the premises and the owner of the genetically modified organism. The cost of seizure and destruction can be recovered from any person responsible for the GMO being on the premises.

Paragraph 4 creates various offences connected with obstruction et cetera of an authorised person. Obstruction and non-co-operation are summary offences but fraud is triable either way and carries more serious penalties.

Paragraph 5 is a drafting provision. Mr President, I beg to move that clause 3 do stand part of the Bill.

The President: Mr Radcliffe.

Mr Radcliffe: I would second, sir, yes.

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

Mr Crowe: Mr President, this clause gives the court, on convicting a person of an offence under clause 2, power to order him to take specified steps to remedy his offence.

Sub-clause (1) gives the court, on convicting a person of an offence under clause 2, power to order him to take specified steps to remedy his offence within a specified time.

Sub-clause (2) enables the court to extend the time for compliance with an order under sub-clause (1), and sub-clause (3) provides that a person against whom an order is made is not liable in respect of any continuing offence under clause 2 during the time specified in the order.

Mr President, I beg to move clause 4 do stand part of the Bill.

Mr Radcliffe: I second, sir.

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

Clause 5.

Mr Crowe: This clause is a standard form provision under which a director of a company is himself liable for any offence committed by the company for which he is responsible.

Sub-clause (1) is a standard form provision enabling a director or other officer of a company in charge to be prosecuted for an offence committed by the company for which he was responsible.

Sub-clause (2) applies to the case of a body managed by its members, for example a co-operative society. In that case the actual managers can be prosecuted for offences for which they are responsible.

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

Mr Radcliffe: I second, sir.

The President: Clause 5 is moved and seconded by Mr Radcliffe. Hon. members, the motion then is that clause 5 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Six and 7, hon. member Mr Crowe.

Mr Crowe: Thank you, Mr President. Clause 6 defines terms used in the Bill.

Sub-clause (1) defines specific words.

Sub-clause (2) gives a wide meaning to reproduction in relation to organisms to cover replication and the transfer of genes.

Sub-clause (3) defines what is meant by the words 'release' and 'escape' in relation to GMOs.

Clause 7 contains supplemental provisions.

Sub-clause (1) gives the Bill its title.

Sub-clause (2) provides for commencement of the Bill on an appointed day or days. This is to allow regulations to be made, and sub-clause (3) requires Tynwald approval to regulations.

Sub-clause (4) provides that the Bill applies to the territorial sea of the Isle of Man.

Mr President, I beg to move that clause 6 and 7 do stand part of the Bill.

Mr Radcliffe: I beg to second, sir.

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

Now, hon. members, that draws to a conclusion our order paper for today. The Council will now sit in private, but the adjournment will be till Tuesday, 3rd April next, at 10.30 a.m. in our own chamber.

The Council sat in private.