

**REPORT OF PROCEEDINGS OF  
LEGISLATIVE COUNCIL**

**Douglas, Tuesday, 28th November 2000  
at 10.30 a.m.**

Present:

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

*The Lord Bishop took the prayers.*

**Apologies for Absence**

**The President:** Hon members, Dr. Mann is still indisposed and the hon. member Mr Delaney will be coming along shortly, as I understand it.

**Bicycles and Motorcycles — Provision of Amenities — Question by Mr Crowe**

**The President:** So we turn, then, to our order paper and item 1. I call on the hon. member, Mr Crowe.

**Mr Crowe:** Mr President, I beg leave to ask a member of the Department of Transport:

*Is it the intention of the Department of Transport to encourage the use of bicycles and motorcycles by providing more dedicated parking areas for motorcycles and the provision of bicycle racks and cycle lanes where appropriate?*

**The President:** I call on the member of the Department of Transport, Mr Kniveton, to reply.

**Mr Kniveton:** Yes, thank you, Mr President. I can confirm that the Department of Transport is becoming more and more aware of the need to provide dedicated parking for motorcycles, secure bicycle racks, and, even more in recent times, spaces for scooters, which are becoming very popular.

Motorcycle and scooter parking bays have been provided at a number of locations within Douglas, including both sides of the Loch Promenade, Tynwald Street, outside road and track, and Hill Street, and presently consultations are taking place on a proposal for Derby Square. Furthermore, similar facilities are provided in Market Square, Ramsey. In addition, the department has commenced to seek, where appropriate, inclusion of facilities within new developments and, to that end, as far as Shaw's Brow car park improvements are concerned, the department has made representations to Douglas Corporation for provision to be made for motorcycles, scooters and bicycles.

Now, the Department of Transport is very keen to encourage more use of these forms of transport, not only for leisure time but, equally so, for commuting from business. I might add that I am a member of that department who has now won the support of the minister and the other member for a proposed cycle lane the full length of Douglas promenade on the walkway, using a marked-out lane for cyclists or other forms of self-propelled, but not motorised, forms of travel. Presently we are awaiting the confirmation from Douglas Corporation, and we have been so for a little while; we are waiting for their response to our proposals. I feel that this could, and should, be a way of getting to and from work and business, and at weekends and, on lighter evenings, a relaxing method of travelling the full length of the promenade from the Sea Terminal to Summerland and return.

Furthermore, potential cycle roads are being assessed in Douglas, including joining up the site I have just mentioned to include the harbour and the National Sports Centre. Provision is also being made for a new cycle lane as part of the Harcroft first-time buyers scheme linking Anagh Coar and Farmhill.

The long-term aim - and I hope not too long - is to provide dedicated cycle lanes linking Strathallan through to the railway station. Further extension of cycle lanes or routes is then to link on this main spine. However, we do have to be very careful and mindful of the difficulties in providing dedicated space on existing public highways, mainly due to restricted widths, and thus as far as possible these lanes, when formed, will be off the public highway, thus the added bonus of safety and reduced conflict with vehicles.

I must emphasise, the provision of secure cycle racks will form part of the infrastructure, and once these lanes have been carefully, but distinctly, I emphasise, marked out, then cycle racks will come onto the scene.

To demonstrate the enthusiasm of the department, the intention is to include in the forthcoming Road Traffic (Amendment) Bill an amendment to the Highways Act 1986 so that, in particular, outside of Douglas cycle paths can be dedicated roads or footpaths or as separate kinds of highway. The Act already provides for the creation of cycle tracks in association with a carriageway or footway. We want to ensure that what we are doing will be most acceptable and that, as I say, very underutilised footways, particularly out of Douglas, can become cycle paths.

Finally, can I say that the department recognises that there could be a potential reduction, with the use of motorcycles, scooters, cycles and indeed rollerblades, in the peak time or the peak travelling levels in Douglas. I believe I have emphasised to hon. members that the Department of Transport is enthusiastic and keen to encourage the use of bicycles and motorcycles in the way the question has been put to us.

**The President:** Hon. member Mr Radcliffe.

**Mr Radcliffe:** Can I ask the hon. member: these little scooter things which you see an increasing number of these days - some of those are driven by miniature motor. Are they going to be prohibited from the cycle tracks?

**Mr Kniveton:** I think I made it clear, sir, that non-motorised forms of travel would be allowed on footpaths, cycleways, whatever.

**The President:** Mr Crowe.

**Mr Crowe:** Mr President, I thank Mr Kniveton for his comprehensive reply but could I just raise with Mr Kniveton the situation in Jersey where - he may be familiar with this - lockable cycle racks are available in St. Helier on most streets, and would he agree that a similar provision should be available in the towns and villages of this Island?

**The President:** Mr Kniveton.

**Mr Kniveton:** Mr President, I do absolutely agree. I am familiar with the Jersey set-up there and I am pleased that the hon. member has mentioned Jersey. Now, all too frequently they have come to the Isle of Man and taken away our good ideas but in this case we have been to Jersey and I think we have brought back their good idea. And their idea is a cycle way along their promenade from St. Helier to St. Auban and I would say it is about three to four miles single journey. I have sat on the promenade at St. Helier and I have observed in the evening the number of, usually, younger persons

going home from their various occupations by way of this very useful cycle way, and I am not just talking about four, five or six; I am talking about scores and scores of young people going home. Throughout the weekend and also in the evening that promenade is busy with all sorts of people, not only on the cycle way for cycling but they do use rollerblades and suchlike. I think that we could learn from Jersey and have something similar here in the Isle of Man. Thank you, sir.

### **Minimum Wage Legislation — Introduction — Question by Mr Lowey**

**The President:** We turn now to item 2 on the order paper. I call on the hon. member Mr Lowey.

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

- (1) *When will the minimum wage legislation be introduced to the branches; and*
- (2) *what is the reason for the delay?*

**The President:** Mrs Christian to reply.

**Mrs Christian:** Thank you, Mr President. The Minimum Wage Bill has been approved by the Council of Ministers and has been forwarded for introduction into the House of Keys. I would like to take this opportunity to assure the hon. member that every effort is being made to bring this legislation forward as soon as possible and, to that end, the Department of Trade and Industry has already been working on preparation of the regulations which will be required when the Bill is enacted. These will deal with such matters as the basic rates to be applied, provisions for different types of work such as salary dials and output work, and clarification of what payments can and cannot be taken into account in calculating what wage has been paid.

**The President:** Mr Lowey.

**Mr Lowey:** I thank the hon. member for her reply, sir. Would the minister not agree that the government said, in accepting an amendment in October 1999 in another place, said that they would introduce the Bill by no later than May this year, and it is nearly six months? It is not on today's agenda, and would she agree that if it is not introduced onto the branches before Christmas the likelihood of it actually succeeding in this parliamentary session is getting reduced every month that goes by?

**The President:** Mrs Christian.

**Mrs Christian:** Mr President, the point about the process that the Bill has been going through has been addressed with earlier questions both in this chamber and in other places. I would concur with the hon. member that there is a need to ensure that this is introduced as soon as possible. That, my understanding is, is being done in the sense that it has been referred to the House of Keys for introduction there. I can think of no reason why it should not be introduced before Christmas, and even if it were not - and I do not anticipate that it will not be - it is up to the will of the particular branches to accelerate it should it be introduced after that. But I do not believe that there is any reason why it should not be introduced in the House of Keys before Christmas.

**The President:** Mr Lowey.

**Mr Lowey:** I did have a second part to the question: were there any reasons for the delay?

**Mr Crowe:** Mr President, I think some of the questions in relation to delay have been handled before in the sense that the hon. member was informed that it came to the Council of Ministers in May, and at that time it was found to be in need of amendment, as the hon. member is aware, and

indeed the introduction of an additional clause. Following approval of all of that by the Council of Ministers it went to the Attorney-General's chambers and to the Home Office. Unfortunately it did not return from the Home Office until September, at which time they suggested that there were further changes which they required to bring it into line with some amendments which had occurred to their particular legislation in the United Kingdom. Now, those amendments it was, I would suggest, probably wise to introduce but not particularly relevant, I feel, to the Isle of Man situation. However, that request was followed up and it is only recently that the final form of the Bill has come before the Council of Ministers who have concurred with its introduction.

**Mr Lowey:** I am grateful to the hon. minister for her reply.

### **Rehabilitation of Offenders Bill — First Reading Approved**

**The President:** We turn, then, hon. members to item 3 on our order paper, the Rehabilitation of Offenders Bill, which is down for first reading, and I call on the Attorney-General.

**The Attorney-General:** Thank you, Mr President. The purpose of this Bill is to provide for the rehabilitation of offenders. In the context of the Bill this means that after a specified period of time certain convictions for criminal offences are regarded as spent and the convicted person is deemed to have been rehabilitated. The effect of a conviction being spent is to limit the circumstance in which that conviction may be disclosed or need be disclosed. As a general rule, a question seeking information as to a person's previous convictions is treated as not requiring the disclosure of spent convictions and the answer may be framed accordingly. It will, however still, be possible to refer to spent convictions in subsequent criminal proceedings against an offender and in proceedings relating to the welfare of minors, adoption, guardianship, wardship, marriage, custody et cetera. Moreover, there is a discretionary power vested in all courts in the Island to require evidence to be disclosed relating to a person's spent convictions where the interests of justice so require. The period of rehabilitation depends on the length and/or nature of the sentence, and certain conditions must be met before the conviction can be regarded as spent - for example, no subsequent convictions must have occurred during the rehabilitation period.

Sentences for serious offences including custody for life or a term of imprisonment exceeding 30 months, will never become spent. In order to ensure that spent convictions are not published and that officials cannot disclose information from official records it is provided that it is an offence to publish or broadcast information in respect of a spent conviction. The department may, by order, provide for disclosure to be made where it considers that that is appropriate. In addition, the department may, by order, apply the provisions of the Bill to sentences relating to military service. For the purposes of the Bill a conviction regarded by a court outside the Island is included within the definition of 'conviction'.

In principle, therefore, the Bill affords recognition to people who have been convicted of a criminal offence once or more often in civilian life or in the services, in the Island or elsewhere, and who have mended their ways over a considerable period of time and have not reoffended. The Bill will not help persistent offenders or offenders who have been sentenced to more than 30 months in prison. But a person who has been convicted of a criminal offence and not been sentenced to more than 30 months in prison will become a rehabilitated person at the end of the relevant rehabilitation period, provided that he has not been convicted again during that period of a further serious offence. Mr President, with those general comments on the Bill I move that the Bill be read a first time.

**The President:** Mr Lowey.

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

**The President:** Mr Kniveton.

**Mr Kniveton:** Yes, thank you, Mr President. The Attorney-General has really confirmed to me what I can see in this Bill. It is all about how many convictions can be regarded as spent after a certain period of time, and these periods vary according to the term of that original sentence. Also, as I see it, it is to be an offence to broadcast or publish previous convictions, likewise to obtain such information dishonestly; that is also to be an offence.

I know of some people, as I believe, and I believe other people, do change and should not have convictions hanging over them for ever, and I emphasise *for ever*. Take, for example, offences committed in late teens or early twenties; those persons later marry, they settle down, they have a family and they cause no further trouble, yet they still cannot in many cases get a job, or only a job with difficulty. That, I think, is entirely wrong. They have to compete with people coming over to the Island, coming in from the UK looking for work, and those people possibly have had convictions and, as appropriate, they are now spent. So Mr President, these are all good reasons I believe, sir, to support this Bill. I certainly will, thank you.

**The President:** Mr Crowe.

**Mr Crowe:** Mr President, can I just ask the Attorney-General just as to whether this will have any effect on work permit legislation, or what will be the effect it will have?

**The President:** Lord Bishop.

**The Lord Bishop:** Yes, thank you, Mr President. I am delighted to support this. Obviously, one of the main reasons for prosecution and imprisonment is rehabilitation, not just conviction and condemnation. I just wonder if the Attorney-General could mention comment on the way the media tends to drag up all sorts of things from the past and whether this in any way protects anybody from that? I have not read it carefully, you will probably point out to me where I should have done, but I am quite concerned that very often you get all sorts of things brought up from years back, and it stops people standing for President of Tynwald, I should think (*Laughter*). But it is a concern, and I just wondered if there was any comment the Attorney-General would like to make.

**The President:** Mr Waft.

**Mr Waft:** Thank you, Mr President. Just as government is one of the largest employers on the Island, just for clarification, with regard to executive release and release of prisoners who have served the half of the sentence and they are allowed out under sort of licence period. Does the sentence cease when the executive release is implemented, when they are out on a sort of licence period, or is it when the actual licence period finishes before the rehabilitation period starts? And also, with regard to employers, the knowledge that they have actually committed any offence - the only clarification they can get, I would think, is either from the prospective employee or the police, and they do not always have the ability to check on some of these past offences anyway. So whether they have completed their time with rehabilitation or in effect actually had any offence against them is purely within the realms of the police service to say yes or no, they have had a conviction. I just wondered if the Attorney-General might clarify that.

**The President:** Mr Lowey.

**Mr Lowey:** Yes, sir, it is amazing what 10 years will do. It was over 10 years ago when I had the privilege of succeeding you, sir, as Minister for Home Affairs; we actually thought it was a good idea then. It had been introduced into the UK and the initial results had been quite successful. We thought it should apply here for the very reasons outlined by my hon. friend, Mr Kniveton, that for someone in the Isle of Man to apply to go into the army, for example, they had to declare all of their convictions, even from their young rebellious days, such as riding a bike without lights. I am guilty of that, sir, and that disqualifies me from a lot of things! But if you had a criminal record in those days - and it had to be declared - you were not allowed to join the armed forces. In the UK the same person in the UK for the same crimes would not have had to declare them and was getting in. There was a discrimination there against the local person. However, when it was introduced first it was rejected in another place. I am delighted, because the experiment in the UK, if I can use that word, has been tested over the last 10 or 15 years and, by general consent, it has been successful and it is as, my Lord Bishop says, all about giving people chances. There is stick and there is carrot, and I think this is one where you can say, 'Well, you have proved yourself right, and move on.' So I think the ethos is right and I welcome the Bill and I will be supporting it, sir.

**The President:** The Attorney-General to reply.

**The Attorney-General:** Thank you very much, Mr President. I am very grateful to hon. members for their comments and general support of the Bill. In particular, I note and fully agree with the observations made by the hon. member, Mr Kniveton: people do indeed change and I believe it is entirely right that these convictions of long standing, which truly are stale and spent, should not hang over people for ever. And certainly in the context of employment I quite agree that it can work terrible hardship, particularly in a small community.

In so far as the question raised by the hon. member Mr Crowe, clause 4 of the Bill makes it clear that - if I can look at clause 4, sub-clause (2) where a questioner seeking information with respect to a person's previous convictions, et cetera, is put to him otherwise than in proceedings before a judicial authority - so this would be, say, a questionnaire from the work permit committee - in those circumstances the clause makes it clear that you do not have to answer the question in such a way as to disclose a spent conviction. So if you really have a conviction which, by virtue of this legislation, is deemed to be spent, you do not have to disclose it in your work permit application.

In so far as the question put by the Lord Bishop in relation to the comment by media and so on, again I wholeheartedly agree with his concern about that, and clause 3 of the Bill makes it perfectly clear that any person who publishes or broadcasts any matter which indicates that a rehabilitated person has been convicted of a spent conviction will himself be guilty of an offence. So that, I think, makes it perfectly clear.

In relation to the question raised by the hon. member Mr Waft, an interesting question in relation to executive release, I do not think the position is expressly dealt with in the Bill but my reading of the Bill - and I will check this for the second reading, Mr President - is that the essential point is the actual term of the sentence which is imposed on somebody. So if we look at the table at page 12 of the Bill, if you are sentenced to a term of imprisonment not exceeding six months your rehabilitation period is seven years and it really does not matter whether you are released on executive release early. The fact is that you have been sentenced to a sentence of custody not exceeding six months and the full rehabilitation period of seven years is applicable. As I say, I will check that but that is my reading of the Bill.

**Mr Waft:** Sorry, but just on a point of clarification, Mr President. In 9 of page 13 it says, 'a period beginning with that date and ending when the sentence ceases or ceased to have effect.' Well, what I am asking is, when does a sentence actually cease to have effect? When they are released on executive release or when they would have served the term had they so served it?

**The Attorney-General:** If we can just look at the clause, clause 7 of the schedule states the various rehabilitation periods, so 'the rehabilitation period applicable to a sentence specified in column 1. . . is the period specified in column 2. . . in relation to that sentence, or, where the sentence was imposed on a person who was under 17. . . half that period reckoned from the date of the conviction in respect of which the sentence was imposed.' So that, I think, is clear. Then paragraph 8, 'The rehabilitation period applicable to an order discharging a person absolutely for an offence shall be 6 months from the date of conviction', so if you go before the court and the court obviously considers that there are very extenuating circumstance for the offence and you have an absolute discharge, then you have got a very small period of rehabilitation of only six months. And then paragraph 9, 'Where in respect of a conviction a sentence to which this paragraph applies is imposed, the rehabilitation period applicable to the sentence shall be one year from - (a) the date of conviction; (b) or a period beginning with that date and ending when the sentence ceases or ceased to have effect.' And so that particular regime, under paragraph 9, applies only where there are very minor sentences imposed - conditional discharge, probation and so on. So that clause 9 regime does not apply generally to the process of rehabilitation and certainly has no reference to executive release.

**Mr Waft:** It would just be when the sentence actually ceases to have effect - is it when he walks through the gate on licence or when. . . ?

**The Attorney-General:** I think, Mr President, just to answer that point, the actual ending of the sentence does not really matter for the great range of sentences because the important thing is you ask what period of sentence was actually imposed? It does not matter when it finishes. What period of sentence was imposed? If you get six months, then, even if you are released early, your rehabilitation period is still seven years and so on.

In so far as the other part of the question from the hon. member, Mr Waft, clause 8 of the Bill makes it clear that a person who discloses spent convictions in the course of his official duties - and that, of course, would include a policeman would be guilty of an offence. So the police must not give information to prospective employers in relation to spent convictions.

In so far as the support from the hon. member Mr Lowey is concerned, I am most grateful for that and grateful to him for seconding the first reading, and of course, as he rightly says, the UK Act has been in force for some long time now and is considered to be a most useful and welcome piece of legislation. So in those circumstances, Mr President, I move that the Bill be read a first time.

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

### **Contracts (Rights of Third Parties) Bill — Second Reading Approved — Clauses Considered — Third Reading Approved**

**The President:** So we will then turn to item 4 on the order paper, the Contracts (Rights of Third Parties) Bill, second reading this time, again in the hands of the Attorney-General.

**The Attorney-General:** Thank you very much, Mr President. As I mentioned at the first reading, the object of this Bill is to reform the rule of so-called privity of contract under which a person can only enforce a contract if he is a party to it. The rule as it is at the moment means that if a contract is made that for the purpose of conferring a benefit on someone who is not a party to the contract, that person, who is known as the third party, has no right to sue for breach of contract. That can cause injustice and hardship in some cases as it frustrates the intention of the parties to the contract. It has long been criticised by the courts and was criticised by the Law Commission when they were looking at the amendment of the legislation in the United Kingdom.

The Bill closely follows the Contracts (Rights of Third Parties) Act 1999 of the UK Parliament. The Bill sets out the circumstances in which a third party is to have a right to enforce the term of the contract, the situations in which the term may be varied or rescinded and the defences available to the promisor when the third party seeks to enforce the term.

There are other rather technical aspects of the Bill dealing with the law of contract which I will endeavour to deal with as we move, hopefully, to clauses, but at this stage, Mr President, I move that the Bill be read a second time.

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

**The President:** Does any hon. member wish to speak to the second reading? No? In that case, the motion is that the Bill be read a second time. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Now, Mr Attorney, I understand you will be moving to go to committee stage.

**The Attorney-General:** Yes, Mr President, thank you. I would move that we move to committee and consider the clauses of the Bill.

**The President:** Hon. members, the move is that the whole Council sit as a committee stage. Agreed?

**Members:** Agreed.

**The President:** In that case I call on the Attorney-General to move the first clause.

**The Attorney-General:** Yes, I am most grateful, Mr President. Clause 1 gives the central purpose of the Bill and sets out the circumstances in which a third party has the right to enforce a term of the contract.

Sub-clause (1) sets out two cases in which the third party may enforce a term of a contract, firstly, where the contract expressly so provides, and secondly, where the term purports to confer a benefit on the third party.

Sub-clause (2) excludes the case of a contract term purporting to confer a benefit on a third party if it appears from the contract as a whole that the contracting party did not intend him to have the right to enforce it.

Sub-clause (3) requires that for sub-clause (1) to apply the third party must be expressly identified in the contract by name, class or description, but makes it clear that the third party need not be in existence when the contract is made. This allows contracting parties to confer rights upon, for example, an unborn child, a future spouse or a company that has not yet been incorporated.

Sub-clause (4) makes it clear that the right of a third party to enforce the contract is subject to the contract's terms and conditions. It is open to the parties to limit or place conditions on the third party's right.

Sub-clause (5) makes it clear that the courts may award to a third party seeking to enforce his rights all the remedies which are available to a person bringing a claim for breach of contract ordinarily. The normal rules of law applicable to those remedies apply to the third party's claim.

Sub-clause (5) makes it clear that the Bill is to apply so as to enable a third party to take advantage of an exclusion or limitation clause in the contract as well as to enforce positive rights.

Sub-clause (7) defines the terms 'promisor' and 'promisee' as used in the Bill. They usually mean, respectively, the person making a promise and the person to whom the promise is given. So, Mr President, I move that clause 1 do stand part of the Bill.

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

**The President:** Mr Crowe.

**Mr Crowe:** Mr President, can I just ask how this will work in relation to the building industry, where there seem to be a lot of contracts and sub-contracts and sub-sub-contracts? Is this particularly designed to improve the situation in the building trade or is it maybe of general assistance to sub-contractors who may suffer loss when a contractor goes down?

**The President:** Mr Radcliffe.

**Mr Radcliffe:** Could I ask the learned Attorney - it is just the wording in clause 1(3) which intrigues me rather. The third party 'as a member of a class' - it seems to be a fairly broad statement there; is it a class of religion, a class of whatever? It seems, as I say, rather intriguing to me anyway. Also, could I ask: some people make verbal contracts in this life in the presence of others; do they have any force in law providing there are witnesses there as to what was said?

**The President:** The Attorney to reply.

**The Attorney-General:** Thank you very much, Mr President. The hon. member Mr Crowe raises a very interesting point and in fact the problems which relate to building contracts were specifically concentrated on by the Law Commission when they looked at this because, as the hon. member rightly points out, there can be very many contracts and sub-contracts in relation to the building of a house, and let alone when we get to contracts relating to the building of office blocks. As we can see through the window, there are many, many contractors and sub-contractors, and also, of course, you often have architects and surveyors who are making warranties about the fitness of their work and they enter into a warranty with the original employer, but, when the original employer sells the building on to a third party, the third party cannot enforce the warranty against the architect or the surveyor. That clearly is wrong, and what happens at the moment is that the professionals, the architects and the surveyors, have to enter into so-called collateral warranties, separate deeds, making it clear that their duties of care extend not only to the original employer but to subsequent employers and subsequent owners of the property. So this Bill will make it clear that if those professionals, for example, the architects and surveyors, are intended to be brought into the contractual situation by the original parties, they will indeed be caught by their warranties to the original employers, so it is a very good example, actually, of how the new legislation will work in practice and make commercial life a lot easier.

In so far as the question raised by the hon. member, Mr Radcliffe, I quite agree that on the face of it the use of the word 'class' is intriguing. I think quite often in law 'class' means a class of people who fall within a certain definition, and in this particular context it would mean, for example, 'all my nephews' or 'all my cousins' or 'all my grandchildren who have yet to be born' - this sort of thing, so in other words a class of people who have a common relationship to the contracting parties so, as I indicated in my opening, it is quite possible for A and B, the 'promisor' and the 'promisee', to make a contract for the benefit of, say, A's grandchildren; they are members of a class, and if A and B intend that they should benefit, then the grandchildren as a class can enforce the contract.

In so far as verbal contracts are concerned, yes, this Bill will apply equally to verbal contracts as to written contracts. Verbal contracts, of course, are just as enforceable as written contracts but they are sometimes a lot more difficult to prove, and of course there are certain contracts that have to be in writing such as those relating to land.

**The President:** Hon. members, the motion before us is that clause 1 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. We turn then to clause 2. Mr Attorney.

**The Attorney-General:** Thank you, Mr President. Clause 2 limits the right of the parties to a contract to vary or rescind the contract after the contract has been made when the contract intends to benefit the third party.

Sub-clause (1) provides that where a third party has a right under clause 1 the contracting parties may not, without his consent, then agree to alter the terms of the contract or cancel it in a way which affects his right. But this only applies where the third party has either told the parties that he agrees to it or the third party has relied on the contract and the other parties know it or, thirdly, the third parties have relied on the term and the party must have known that he would rely.

Sub-clause (2) makes it clear that the agreement of a third party under clause 1(a) can be either expressed - that is, in words - or implied by conduct, but if it was communicated by post or e-mail, for example, it must have been received by the party to the contract.

Sub-clause (3) provides that sub-clause (1) is subject to an express term of the contract which gives the parties the right to vary or rescind the contract without the third party's consent or provides that the third party consent is to be required in specified circumstances different from that set out in sub-clause (1).

Sub-clause (4) gives the court or arbitrator the power to dispense with the requirement for the third party's consent where it cannot be obtained because he cannot be found or he is mentally incapable.

Sub-clause (5) gives the court or arbitrator the power to dispense with the requirement for the third party's consent where it cannot be ascertained whether he has in fact relied on the term, and sub-clause (6) provides that where the court or arbitrator dispenses with the third party's consent it may do so on conditions. Mr President, I move that clause 2 stand part of the Bill.

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

**The President:** The motion, hon. members, is that clause 2 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. We turn then to clause 3, Mr Attorney.

**The Attorney-General:** Thank you, Mr President. This clause provides that defences and so-called set-offs and counterclaims, which are defences in contract, may be raised in any proceedings by a third party to enforce a contract term.

Sub-clause (1) introduces the object of the courts.

Sub-clause (2) enables the promisor, in a claim by the third party, to rely on any defence or set-off arising out of the contract and which is relevant to the term being enforced and which would have been available to him had the claim been made by the promisee.

Sub-clause (3) provides that a party to a contract can raise a defence or set-off against a third party if an express term of the contract entitles him to raise it against the other party.

Sub-clause (4) makes it clear that the promisor also has available any defence or set-off and any counterclaim not arising from the contract which is specific to the third party.

Sub-clause (5) makes sub-clauses (2) and (4) subject to any express term of the contract which narrows those defences.

Sub-clause (6) ensures that an analogous approach to that set out in sub-clauses (2) to (5) applies where the proceedings are brought against the third party and he seeks to avail himself of, for example, an exclusion clause. Mr President, I move that clause 3 do stand part of the Bill.

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

**The President:** Mr Waft.

**Mr Waft:** I would just like to ask, Mr President, it was mentioned earlier about duties of care with regard to groups that set up and, once the building is completed and that building changes hands to a third party, the same warranty that was given to the original owner carries on to that party. But if the people who gave the warranty are no longer in business - in other words, the business has been dissolved and was only there for the creation of that building - where does that leave the third party who now owns the building?

**The President:** Any other hon. member wish to speak? Okay, in that case, Mr Attorney, can you reply to the point raised by Mr Waft?

**The Attorney-General:** Yes, Mr President. The example I gave in relation to the building development actually was an example of a situation where the third party - that is, the architect or surveyor - was not be able to enforce the contract but was actually being brought into the contract as someone who owed a duty of care. So if, in your example, hon. member, the original developer, shall we say, goes into liquidation, if it is a company the architect's duties to the successor to the person who buys the building will still apply - in other words, the architect will still be liable to that person who buys the property. The fact that the original developer, the original builder, has gone into liquidation will not affect the architect's duties to the subsequent owner of the property.

**Mr Waft:** Just for clarification, Mr President, on the other side of the coin, if the subsequent owner of the building would like the warranty to be acted upon and the actual firm or group of architects, surveyors et cetera who had built the building had gone into liquidation, what would be the situation?

**The Attorney-General:** Yes, Mr President, the position there would be that unfortunately the subsequent owner of the property would have a remedy but would have no right of recovery. I mean,

this Bill does not seek to impose any additional rights on parties in so far as liquidations and recovery are concerned; it simply gives you a right of recovery. Whether you can actually enforce the recovery is another thing altogether.

**The President:** Right now, hon. members, the motion before us is that clause 3 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. We turn then to clause 4.

**The Attorney-General:** Thank you very much, Mr President. Clause 4 provides that the rights conferred by clause 1 are additional to any other rights the promisee has in relation to the enforcement of the contract term which benefits a third party. Mr President, I move that clause 4 do stand part of the Bill.

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

**The President:** The motion, hon. members, is that clause 4 stands part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 5, Mr Attorney.

**The Attorney-General:** Thank you, Mr President. This clause provides that where the promisee has recovered damages or an agreed sum from the promisor in respect of either the third party's loss or the promisee's expenses in making good that loss, the court or arbitrator must reduce any award to the third party enforcing a term under clause 1 to take account of the sum already recovered. For example, A and B enter into a contract under which B and C will receive certain benefits. If B brings an action against A to enforce the contract and C brings a similar action, any claim by him is reduced by the amount already recovered by B. That is probably as clear as fog, Mr President, (*Laughter*) but I move that clause 5 do stand part of the Bill.

**The President:** You will find out very shortly, I think! Mr Lowey.

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

**The President:** The fog appears to have lifted! In that case, hon. members, the motion is that clause 5 stands part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 6.

**The Attorney-General:** Thank you, Mr President. Clause 6 sets out a number of exceptions to the new statutory right under clause 1.

Sub-clause (1) ensures that the Bill does not undermine the existing law on who can enforce negotiable instruments which can be enforced by a third party - for example, where a cheque is endorsed over a common law.

Sub-clause (2) accepts a contract made under section 20 of the Companies Act 1931, which provides that the memorandum and articles of a company bind the company and the members to the same extent as if they respectively had been signed by each member.

Sub-clause (3) prevents a third party - for example, a customer of an employer - acquiring a right under the Bill to enforce a term of contract of employment or a similar contract against an employee or worker. For example - and again I am afraid I have to use letters here - if A agrees with B to do repairs on B's house and the work is done badly by A's employees - we will call those C and D - and let us say that A has left the Island, B cannot sue the employees C and D for damages for breach of their contract of employment with A.

Sub-clause (4) defines terms used. They cover apprentices, agency workers and home workers as well as employees.

Sub-clause (5) excludes certain contracts relating to the carriage of goods under which third parties already have rights under special rules of maritime law or under international conventions. But this does not prevent a third party from taking advantage of a term excluding or limiting liability. In particular, it enables clauses extending an exclusion or limitation of liability of a carrier to servants, agents and independent contractors engaged in the loading and unloading process to be enforced by them.

Sub-clause (6) defines the scope of sub-clause (5)(a). It applies to freight contracts covered by part 1 of the Merchant Shipping (Miscellaneous Provisions) Act 1996 and also electronic contracts to which part 1 of the 1996 Act could be applied by regulations under that Act. For example, a contract for the carriage of goods by C evidenced by an electronic bill of lading.

Sub-clause (7) defines terms in sub-clause (6) by reference to the 1996 Act.

Sub-clause (8) defines the international conventions relating to the carriage of goods by road and air referred to in sub-clause (5)(b) above by reference to the relevant UK Acts which are applied to the Island by order in Council in relation to carriage of goods by road or by order under the Airports and Civil Aviation Act 1987 of Tynwald in relation to carriage of goods by air. Mr President, I move that clause 6 do stand part of the Bill.

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

**The President:** Hon. members, the motion before us, then, is that clause 6 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 7, Mr Attorney.

**The Attorney-General:** Thank you very much, Mr President. Clause 7 contains supplementary provisions relating to third party rights.

Sub-clause (1) ensures that the Act does not affect any existing right or remedy of a third party at common law or by any other statute.

Sub-clause (2) ensures that a third party cannot invoke section 5(2) of the Misrepresentation and Unfair Contract Terms Act 1980 to contest the validity of a clause excluding or limiting the promisor's liability under the Bill to the third party for negligently caused loss or damage other than personal injury or death.

Sub-clause (3) applies the standard limitation periods for actions for breach of contract to actions by third parties under the Bill - that is, six years from the date on which the cause of action accrued in the case of a simple contract and 21 years from the date on which the cause of action accrued in the case of a contract contained in a deed.

Sub-clause (4) ensures that references in the Bill to the position if the third party had been a party to the contract do not mean that the third party should be treated as a party to the contract for other purposes. Mr President, I move that clause 7 do stand part of the Bill.

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

**The President:** Mr Crowe.

**Mr Crowe:** Mr President, could I just ask whether this legislation is retrospective? Does it apply to contracts that are currently in force or will it kick in, shall we say, on an appointed day order and then everything from that day forward?

**The President:** Mr Attorney?

**The Attorney-General:** Thank you, Mr President. That point, I think, is covered in clause 8, which we will come to in just a moment. I do not know if we can leave it to then or shall I answer it now?

**Mr Crowe:** Leave it to then, please.

**The President:** Yes, the motion then, hon. members, is that clause 7 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. We turn then to clause 8, short title and commencement.

**The Attorney-General:** Thank you, Mr President. This clause gives the Bill its short title and makes transitional provisions for contracts made before or within six months after it is passed.

Sub-clause (1) gives the short title.

Sub-clause (2) provides that the Bill does not apply to contracts made before or within six months after it is passed - that is, the announcement of Royal Assent to Tynwald - except as is mentioned in sub-clause (3), which provides that the Bill will apply to a contract made within six months after it is passed if the contract provides expressly that the Bill is to apply to it. So, Mr President, I move that clause 8 do stand part of the Bill.

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

**The President:** Mr Delaney.

**Mr Delaney:** I was just going to ask if the Attorney was going to take the third reading.

**The President:** Well, we will get the clauses stage finished first, Mr Delaney. Hon. members, the motion before us is that clause 8 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Now, that concludes our order paper. Mr Attorney?

**The Attorney-General:** Well, Mr President, if hon. members would be so kind I would ask that the Bill might proceed to a third reading if only so that I do not labour you with technical aspects of contract law next week. But it is entirely up to hon. members. There is no urgency in it but I think it would be convenient if hon. members would allow that. (**Mr Delaney:** Hear, hear.)

**The President:** Hon. members, I am in your hands on this particular item.

**Mr Delaney:** Take the third reading.

**A Member:** Agreed.

**The President:** Hon. members, we have a motion, then, that the Contracts (Rights of Third Parties) Bill - that we take the third reading this morning. Are we agreed, hon. members? Those in favour please say aye; against, no. The ayes have it. (*Interjections and laughter*)

Before Mr Attorney starts and just to be devil's advocate - and I should not really do this, hon. members - I thought it was interesting when dealing with clause 6(6) that Mr Attorney referred to sub-clause (5)(a) where in fact you would note, if you are dealing with that particular matter, that it is

written out in full; it does not refer to (5)(a) at all, it refers to a contract for carriage of goods by sea and it actually should refer in my book to (5)(a), but never mind.

**Mr Delaney:** We can cover that in the third reading. *(Laughter)*

**The President:** That is me being pedantic! Mr Attorney, take the third reading.

**The Attorney-General:** Yes. Mr President, I hope I have not fallen into a trap here but I will do my very best to guide members on the third reading. As I mentioned both at first reading and this morning, the Bill is based on some legislation passed last year in the United Kingdom. It was the product of a very extensive Law Commission report and I am afraid it is in many ways a very technical piece of legislation but, as I understand it, I think the guiding purpose behind the Bill is that the law of contract should give effect to the reasonable expectations of parties to the contract. We certainly would not want burdens to be imposed on third parties without their consent, but there is no reason either in law or for policy reasons why, if the parties to a contract wish to confer a benefit on a third party - that is, a benefit not a burden - that contract should not be enforced, and of course, as we indicated earlier on in the second reading in response to the example made by Mr Crowe, particularly in modern commercial life, whether it is insurance or whether it is building contracts, it is very often within the expectation of the parties to the contract that third parties either should have rights or, if the third parties are put on notice, they should have burdens such as the architects or the surveyors which we looked at earlier.

I did at the first reading stage indicate that it is very important that the commercial law of the Isle of Man keep abreast of developments. Quite often we have on the Island contracts which are made by parties outside the Island but are expressly governed by Manx law. People choose to do business in the Isle of Man because our law keeps up to date and it is understood by lawyers not only in the United Kingdom but in other jurisdictions. So for that reason alone, and I do apologise for the complexity of some of the clauses, I think it is important that the Bill should move forward and I am very grateful to hon. members for considering the third reading at this stage. So I move, Mr President, that the Bill be read a third time.

**The President:** Mr Lowey.

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

**The President:** Mr Crowe.

**Mr Crowe:** Thank you, Mr President. I am happy to support the third reading. I think it is clear that it has a limited benefit because if you are a third party you are expressly provided for in the contract, or you are given a clear indication that you would be a member of a class. I think in the interpretation you would be certainly be able to take a court action against the two main parties to the contract, and of course there are quite major exclusions under clause 6, major exceptions, so I think it is obviously meant to cover a hole in contract law, and I think from everything I have heard today it should be supported and go through on the third reading, Mr President.

**The President:** Mr Waft.

**Mr Waft:** I would support this Bill, Mr President, but just for clarification, with regard to 'may by words or conduct' with regard to the implications somebody who acts in a particular way, that with regard to the rights of estoppel - I think that is the phraseology which runs through the Bill - I think part of this is already in being at the moment. Is that right?

**The President:** Mr Attorney to reply then.

**The Attorney-General:** Thank you very much, Mr President. I am very grateful to the support given by the hon. member Mr Crowe.

In relation to the point raised by the hon. Mr Waft, he is absolutely right in referring to estoppel in so far as that means that if people conduct themselves in such a way that other people rely on the way you conduct yourself and they change their position on the faith of that, people should not be allowed to get out of their obligations, and certainly -

**Mr Delaney:** Which party? The person who has changed their. . .?

**The Attorney-General:** Yes, if someone indicates by words or conduct that they are going to confer a benefit on you and you act in reliance on that, I, or the person who is exercising that conduct, should not be allowed to escape from my obligations, because I have led you all to believe -

**Mr Delaney:** Politicians are going to be in trouble, aren't they?

**The Attorney-General:** So that is a well-established principle of contract which in many ways does flow through this Bill as well.

**The President:** Hon. members, the motion before us, then, is that the Contracts (Rights of Third Parties) Bill 2000 be read for a third time. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Now, hon. members, that concludes the business on our order paper before us this morning and the Council will now sit in private.

*The Council sat in private.*