

**REPORT OF PROCEEDINGS OF  
LEGISLATIVE COUNCIL**

**Douglas, Tuesday, 29th May 2001  
at 10.30 a.m.**

Present:

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

*The Chaplain of the House of Keys took the prayers.*

**Apologies for Absence**

**The President:** Hon. members, before we start with our order paper I can tell you that Mr Radcliffe is chipper and doing well as I understand it and the Lord Bishop is absent, apologies, away on business this morning.

**United Kingdom Specialist Hospitals — Recognition of Service to Island —  
Question by Mr Waft**

**The President:** We have two questions for oral answer. First, we call on the hon. member of Council, Mr Waft.

**Mr Waft:** Mr President, I beg to ask the Minister for Health and Social Security:

*Will your department undertake to acknowledge and pay due official recognition of the people of the Island to those United Kingdom specialist hospitals such as Clatterbridge, Alder Hey, Broad Green and others which provide such an excellent service to this Island?*

**The President:** I ask the Minister for Health and Social Security, Mrs Christian, to reply.

**Mrs Christian:** Yes, Mr President. I can reassure the hon. member that the department, on behalf of the Manx population, is grateful for the services provided by the NHS units in the North West of England and elsewhere in the United Kingdom for patients who require treatment which we cannot provide here. In this regard I am very willing to consider the hon. member's suggestion.

**Mr Waft:** Thank you, Mr President.

**MRI Scanner — Cancer Monitoring—Smoking — Question by Mr Waft**

**The President:** And then we turn to our second question and again I ask Mr Waft.

**Mr Waft:** Thank you, Mr President. I beg to ask the Minister for Health and Social Security:

- (1) *In view of the high significance placed on the early diagnosis of carcinomas, will your department provide for a Magnetic Resonance Imaging Machine within the confines of the new hospital;*
- (2) *Is your department establishing a database to quantify the prevalence of carcinomas within the Island; and*
- (3) *Has your department established a way forward in the adoption of a pro-active high profile regime for reducing the incidence of smoking within the community?*

**The President:** The Minister for Health and Social Security again to reply.

**Mrs Christian:** Yes, Mr President. To take the first part of the hon. member's question, I can confirm that provision has been included in the new hospital to accommodate an MRI scanner. With regard to a database in relation to cancers, the Director of Public Health now receives

detailed cancer registration data for the Island under a contract with Mersey and Wirral Cancer Registry which will provide the opportunity to estimate the prevalence of cancers in the population. It is expected that prevalence estimates will become available in the future with priority being given initially to the commonest cancers in particular lung, breast and colorectal cancers. Finally, Mr President, I can advise the hon. member that the draft tobacco strategy is currently before the Chief Minister's Drug and Alcohol Committee, the purpose of which is intended to provide a comprehensive strategy and implementation plan aimed at reducing the incidence of smoking in the community.

**The President:** Mr Lowey.

**Mr Lowey:** Can I ask the minister a question. In her reply she mentioned that the figures will be available in the future. Does she not agree that that is a bit nebulous. How do you describe 'in the future?' Should they not be on an annual basis, these figures? If they are released on an annual basis, the community at large do not become frightened of facing up to the realities of what is going on. Where they become frightened is that they are not given official information, but I would just like the minister if she could be more specific in the supplementary than she was in her initial reply, 'In the future' does not seem quite specific enough.

**The President:** Minister.

**Mrs Christian:** Yes, Mr President, there have been some difficulties in extracting information from the Wirral Cancer Centre in the past. We hope that has been overcome by re-entering a new formal agreement with the Mersey and Wirral Cancer Registry. They have recently provided us with cancer registration data for the years 1994 to 1999 inclusive and that gives us a basis of information to begin to work on prevalence studies. We certainly expect that the data will be provided to us on a more regular basis in the future. The prevalence estimates will become available in the near future. Perhaps the hon. member would be a little happier with the insertion of the word 'near' and we are beginning to be able to do those prevalence estimates on the basis of those five years figures which have recently been received from the Cancer Registry. But certainly I expect that data flow should be better in the future and give us an opportunity to work from those prevalence estimates.

**The President:** Apologies, Mrs Christian, but did you say 1994 was the year?

**Mrs Christian:** 1994 to 1999 we have just received, yes.

**The President:** 1994 to 1999, thank you. Mr Waft.

**Mr Waft:** Thank you, Mr President. I am a bit concerned about, as Mr Lowey has mentioned, 'the future' and also the problem of identifying carcinomas within the Island rather than the north west of England. The Merseyside Regional Area can identify the north west. Are they specifically going to identify the incidence in the Isle of Man?

**Mrs Christian:** That information, Mr President, we are receiving, nothing to do with the north west. It is the North West Register which collates the Isle of Man statistics and we are getting the Isle of Man figures from the registry.

**Mr Waft:** Thank you, Mr President. Could I also ask the minister, in view of her reply with regard to question 2(1): you mentioned, minister, to 'accommodate' an MRI machine. Accommodation means the provision of a room. As I understand it, these rooms have to be copper lined and specific to that piece of equipment. Is it the intention of the department also to provide the MRI as well as accommodate it?

**Mrs Christian:** Indeed, Mr President, it is our intention to provide it depending on budgetary provision. At the moment it will depend to some extent on what equipment can be transferred from Noble's and therefore what surplus we have in our equipment budget. I am hopeful that we will be able to provide an MRI scanner from that equipment budget when the hospital is

commissioned. However, if not, then we will have to continue to make bids for an MRI scanner, but we are at this stage certainly making provision for the room to accommodate the scanner.

**Mr Waft:** Thank you, Mr President.

### **Interception of Communications (No. 2) Bill — Third Reading Approved**

**The President:** Can we then turn to item 2 on our order paper which is the Interception of Communications (No. 2) Bill. It is down for third reading and I call on the hon. member, Mr Crowe.

**Mr Crowe:** Thank you, Mr President. The purpose of this Bill is to extend the scope of the Interception of Communications Act 1988 to cover messages sent to or by mobile telephones and also letters or packets sent by courier services. The provisions contained within the Bill allow for a warrant to be issued requiring the interception of messages sent by or to a named person, not just to or from a specific address. The Bill also makes minor and consequential amendments enabling a warrant to be directed to a courier service. Mr President, at the clauses stage, the hon. Mr Lowey raised a question on provisions substantially the same as in the 1988 Act and I am indebted to the learned Attorney for circulating a copy of the 1988 Act incorporating the amendments made by this Bill, which I believe covers Mr Lowey's query. Mr President, I beg to move the third reading.

**Mr Waft:** I beg to second, Mr President.

**The President:** Seconded by Mr Waft. Hon. members, the motion before us is that the Interception of Communications (No. 2) Bill be read for a third time. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

### **Mental Health (Amendment) Bill — First Reading Approved**

**The President:** We turn then to the Mental Health (Amendment) Bill for first reading and I call upon the hon. member, Mrs Christian.

**Mrs Christian:** Mr President, hon. members will be aware that the Mental Health Act 1998 has been introduced in various parts over a period of time and was fully brought into effect on 1st April 2000. A fundamental principle supporting the Mental Health Act 1998 is that patients who are compulsorily admitted by reason of mental disorder should be assured of an appropriate standard of care and treatment. In addition these patients should be provided with a safe, calm and therapeutic environment and the proper observation of rights and entitlements. However, during the preparation for the introduction of the 1998 Act a potential problem was raised concerning the discharge of these responsibilities, which included making arrangements for detained patients to be visited and interviewed and for complaints to be investigated. Under the provisions of the current Mental Health Act for England and Wales on which the new Isle of Man Act is based, the responsibilities are statutorily delegated from the Secretary of State to the Mental Health Act Commission. However, under section 118 of the Isle of Man Act these responsibilities are statutorily delegated from the department to independent persons nominated under section 120 of the Act. This is despite the fact that the Isle of Man now has its own Mental Health Commission. The statutory functions of the Island's commission are contained in section 119 of the Act and can be considered as relatively minor in comparison with those of its neighbouring commission. The reason for this difference is based on advice given by a local consultant psychiatrist who was involved in the consultation process at the time of the drafting, who has now left the Island. However, the Mental Health Commission, including independent representatives from the United Kingdom, believe that this situation should be changed and the department concurs with that. As a temporary solution the department has formally nominated each member of the Mental Health Commission also as an independent person under section 120. This is to ensure that it is still the commission that is seen to carry out these important functions, albeit indirectly through its members acting individually as

independent persons, but the department and the Mental Health Commission are concerned at this lack of collective responsibility and wish to correct the anomaly as quickly as possible in order to ensure a more co-ordinated approach. In the light of this, Mr President, this Bill has been prepared which will transfer certain functions under section 69, Review of Treatment, and 118, General Protection of Detained Patients, from individual persons nominated under section 120 to the Mental Health Commission. I therefore beg to move the first reading of the Mental Health (Amendment) Bill 2001.

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

**The President:** Mr Lowey seconds. Hon. members, the motion before us is that the Mental Health (Amendment) Bill be read for the first time. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

### **Civil Jurisdiction (Amendment) Bill — First Reading Approved**

**The President:** We turn then to item 4 on the order paper, the Civil Jurisdiction (Amendment) Bill, again for first reading, and I call on Her Majesty's Attorney-General.

**The Attorney-General:** Thank you, Mr President. As appears from the explanatory memorandum to this Bill, the Bill makes amendments relating to the jurisdiction of the High Court, the enforcement of judgments and other matters relating to the civil jurisdiction of the High Court. The Bill is not concerned with crime or the enforcement of the criminal law of other countries. It is concerned with civil law and in particular the jurisdiction of the court when dealing with matters which have an international flavour. Hon. members will appreciate that, as the Isle of Man plays an increasingly prominent role in international commerce, it is extremely important that the Island continues to be regarded as a reputable jurisdiction which is able to grant the appropriate remedies and relief in suitable cases. The reputation of the Island would be jeopardised if, for example, a plaintiff could not enforce a proper claim which he had under a foreign judgment against a defendant who had taken up residence on the Island or who had assets on the Island, which ought to be available to satisfy that proper claim.

Part 1 of the Bill is concerned with the power of the court to give interim relief to a plaintiff where questions as to the jurisdiction of the court have to be determined before the main proceedings have got under way. Interim relief in this context invariably means relief by way of an order of the court preserving the assets which are the subject of the claim and preventing any dealing with them until the final order is made at the end of the main hearing. Part 1 is also concerned with the power of the Manx court to direct that in Admiralty proceedings assets may be arrested and detained pending the determination of the issue between the parties in a foreign arbitration tribunal or court which is able more conveniently to deal with that issue. There is also a provision in clause 3 concerning the question whether a person can be said to have submitted to the jurisdiction of a foreign court.

Part 2 amends the existing Judgments (Reciprocal Enforcement)(Isle of Man) Act 1968 which, as its title implies, is concerned with the enforcement in the Island of certain judgments which have been obtained in the courts of foreign countries. Under the existing law, certain judgments of a small number of foreign countries are enforceable in the Island on a strictly reciprocal basis, for example, a judgment obtained in the High Court in England is enforceable here as if it were a judgment obtained in the High Court of the Island between the same parties. There is no need for the plaintiff to start proceedings afresh in the Island, he simply registers the English judgment here and it is as good as a Manx judgment. The same situation applies vice versa so far as the registration in England of a Manx judgment obtained in the High Court here is concerned. The new provisions will create a more flexible regime for the enforcement of foreign judgments insofar as the Council of Ministers will be empowered to direct that foreign judgments may be enforceable here even if the foreign country concerned does not grant

reciprocity to the judgments of the Manx courts. Furthermore it will no longer be necessary to insist that the judgment of the foreign court which is to be registered should be the judgment of a superior court. This will enable, for example, the judgments of the county court in England to be registered here. It is important to stress that under the existing and the new law the system of recognition of judgments does not apply to tax judgments. Therefore a judgment obtained in England by the Inland Revenue against Mr X for UK tax due by him is not and will not be enforceable against Mr X in the Isle of Man.

Part 3 of the Bill contains a miscellany of provisions repealing the Aliens Restriction Act 1948, amending the law in relation to the deemsters, dealing with the alternative resolution of dispute by mediation, the law relating to foreign contracts, leave to appeal and an amendment of the Legal Practitioners Registration Act.

The Bill does make some important amendments to the civil law and procedures in our courts. The amendments are supported by the deemsters and by the Law Society and I beg to move that the Bill be read a first time.

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

**The President:** Mr Waft.

**Mr Waft:** Could the Attorney perhaps clarify the situation with regards to enforcements of foreign judgments which are not reciprocal and the need for that and why our judgments cannot be under the reciprocal arrangement as we are accepting theirs?

**The President:** Mr Lowey.

**Mr Lowey:** Yes, it is very much along those lines that I too wish to comment on the Bill. At the moment I always thought it was a policy that we got this in and it was reciprocal. I find it an astounding piece of legislation that allows the Council of Ministers to decide which judgments, which courts, are allowed to be applicable in the Isle of Man and I would like to know the thinking and the reasoning behind that. I know I have an elastic mind, but I cannot for the life of me ever think of why the Council of Ministers should be getting into the position to say 'Well, we will accept that jurisdiction, although we are not in return getting that reciprocity from that particular country 'from all courts outside the Island. It could be in Russia, it could be in America, it could be wherever, subject to the approval of the Council of Ministers? I find that very, very strange. Could I also say, does the position of the small courts in the Isle of Man be weakened by this particular Bill? I would hate that because I think the small courts division in the Isle of Man has been a great success. I think it has helped the legal process no end. It has freed the High Court and the other courts from what I would call the irritable and minor offences which rightly should be done by arbitration if it can possibly be done. So I just hope that this law does not infringe upon that ability for them to do their job.

**The President:** Mr Delaney.

**Mr Delaney:** Ditto. My questions are the same as Mr Waft's and Mr Lowey's in relation to those judgments that are applicable and those that are not applicable in relation to a judgment made here which are not reciprocated. Purely that.

**The President:** Dr Mann.

**Dr Mann:** Yes, I must say my first reaction was 'How are we going to handle the reciprocity? 'But, of course, first of all, as I understand it, all we are doing we are talking about is registering a previous conviction and we are talking about very serious offences and, given the fact that we are talking about very serious offences, I think accepting the previous judgments or the recording of previous judgments is going to protect the people here in the Isle of Man. If we have a person who has attempted to murder or attempted manslaughter somewhere else and then arrives on our scene, we need to protect ourselves and our people and I think that must be the

thinking behind this. Although I would normally not support reciprocity without the equivalent, I think under these circumstances I would support the Bill.

**Mr Lowey:** Could I just tease that out a little bit further? Surely if passing this Bill you say it is judgments of all courts that means for all courts. This is a civil jurisdiction not a criminal one and therefore the civil is the most important element of this particular Bill and not the criminal and therefore I would have thought that the introduction of the conviction of murder, if I accept that argument, why then has it not deemed that we would accept it in the most serious positions, but we have left a wide open blank cheque, subject to the Council of Ministers of course. I do not think that is their role.

**Dr Mann:** Well, if you read the list, there is nothing peaceful about the list.

**The President:** Before we go any further in a two-way conversation down here, can we ask Mr Attorney to reply and if necessary I will allow members to come back thereafter.

**The Attorney-General:** Thank you, Mr President. Perhaps I could start then by trying to justify why we have reciprocal enforcement of judgments anyway. Under the existing law, and this is law which has been in force here since 1968 and in the United Kingdom since 1933, it has been possible for the High Court here in the Isle of Man to recognise judgments which are issued by the high courts in other countries and there is a fairly small number of countries with which we have this reciprocal arrangement. Most importantly from a practical point of view, of course, the courts of England, surprisingly perhaps though not the courts of Ireland. There is no reciprocity between the Isle of Man and Ireland. Now, if I could just perhaps take an example therefore, let us say that we have a building company which undertakes building work in the United Kingdom and the building company is a company incorporated in the Isle of Man. The building company goes to England carries out work negligently or perhaps goes bust and there are claims against that Manx company. The creditors of that company who are in England may wish to enforce their claims against the Manx company. The Manx company, of course, is established here and the directors shall we say are established here. It would be very inconvenient, and I think would bring the Isle of Man into disrepute, if having obtained their judgment in the High Court in England the creditors then had to come here to the Isle of Man and start off proceedings afresh and that is why it is an arrangement which has been worked out between the two countries that the judgment obtained against the defaulting builder in England can be registered here and can be used by the plaintiffs, by the creditors, here as if it were a Manx judgment. This saves costs and it saves time and inconvenience and as I say it works very well the other way round as well. That as I say has been going on since 1968 and has not caused any problems whatsoever. I suppose it is inevitable really that there is likely to be more business coming the way of the Isle of Man rather than going the other way. It is, by definition I suppose, inevitable that the Isle of Man is going to have more to do with international matters, inter-governmental and inter-country matters here, than the Isle of Man would have an impact in other countries and therefore whilst I do understand the concerns expressed by the hon. member, Mr Waft, and the hon. member, Mr Lowey, about the lack of insistence on reciprocity, nonetheless I think it is sensible that we should accommodate claims which have been started off in other countries. If we do not we are going to, I think, get a very bad reputation as a refuge for debtors, a refuge for people who go to other parts of the world, incur liabilities and then flee to the Isle of Man and the plaintiffs have to start off afresh. This cannot be right in principle. Can I say that if, for example, we were to allow, as a result of this Bill, the Irish courts to have their judgments enforced here without having to start off afresh, I think it would be very, very sensible and likely that the Irish courts would in turn allow Manx judgments to be effected in Ireland. Let me put it another way, it is unlikely the Council of Ministers will, shall we say, extend an arrangement to Ireland unless the Irish courts are prepared to extend an arrangement to us. This is the way, as I see it, of opening the jurisdiction and to create a whole new set of arrangements between countries rather than insisting on a set list of countries with which we

have an arrangement under the 1968 Act. Under the present regime it is the deemsters who set up the list of countries with which we have a reciprocal arrangement and I know some hon. members in Tynwald are concerned about the powers of the deemsters. It might be argued that it is far better and more politically sound that the Council of Ministers, having a weather eye on what goes on, will be able to extend arrangements to other countries having obtained advice perhaps from the Attorney and from others who have knowledge of what is going on in the courts. So I do not see this as a dangerous sign. Far from it, I think it will actually promote the reputation of the Island and will help to protect litigants, protect them against delay and against unnecessary costs. A question was raised about the small claims courts and the arbitration procedure here. I entirely agree that the small claims arbitration court has been a great success. It is part of the High Court and the small claims courts judgments will be capable of being registered in England, but under the present regime, ironically, the county courts, that is the small claims courts in England are not registerable here. So this again will enable far greater reciprocity, far greater interchange of judgments between England and the Island. May I just confirm that this Bill is not concerned with criminal offences and the enforcement of criminal law or criminal judgments. We are concerned only with civil judgments and the enforcement of civil judgments. Mr President, I hope that I have dealt with the questions raised by hon. members and I hope that hon. members will support the Bill at first reading.

**The President:** Now, as I indicated, I did say that I would allow Mr Attorney to respond and if members wished to come back the choice is there. Mr Waft.

**Mr Waft:** Could I just ask on a point of clarification. Perhaps the Attorney might have a point of view of a concern that has been to some about the position of a Manx company who has a parent company elsewhere and the tendency is to ring-fence it so if anything does happen to the Manx company as a peripheral of the parent company, how does this effect that situation when the parent company disassociates themselves from the local company because it is, for instance, an "(Isle of Man) Limited" situation. It separates itself off in that situation. Will this have any jurisdiction?

**The President:** Mr Attorney.

**The Attorney-General:** Mr President, no, this Bill will have no impact at all on the concept of limited liability and the relationship of companies with their parents. No, it has no effect at all on company law.

**The President:** Okay, hon. members, the motion before us then is that the Civil Jurisdiction (Amendment) Bill be read for a first time. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

**Road Races (Temporary Amendment) Bill — First Reading Approved —  
Standing Orders Suspended — Second Reading Approved — Clauses Considered —  
Standing Orders Suspended — Third Reading Approved**

**The President:** We turn then to the Road Races (Temporary Amendment) Bill and Mr Delaney for first reading.

**Mr Delaney:** Thank you, Mr President. The Bill before the members is an emergency measure due to the ongoing foot and mouth disease in the United Kingdom. It amends as a temporary measure the Road Races Act 1982. I understand, Mr President, that the Minister for Transport has to make an order under this section to cover the hours of the road races. The Bill before the Council provides for road racing to take place on the Southern 100 course at Billown and it has come about because of the problems created by that foot and mouth problem of the mainland that the races which take place in July may have to be deferred somewhat with of the shortened hours of daylight which will occur at that time. This is a measure that has received somewhat of an emergency, three readings in the Keys to allow for the organisers of the event,

the Southern 100, who have met with the Ministers for Tourism and Leisure, Agriculture, Forestries and Fisheries and Transport and it has been agreed that provision should be made to enable the races to be held in September this year, in the event that the July races are cancelled. There is no certainty that it will be able actually imposed at this time. I also understand and I am given an assurance by the minister that the Church organisations of the Island and the leaders of the Church organisations in the area have actually been consulted and they have no objection to this particular Bill. I do understand the difficulties it may cause to some of the residents down there and I am conscious of that, Mr President. But I hope that the Council will give me the opportunity to give it three readings today, so that this small Bill, but very important Bill, can be implemented, so that if necessary, if the races are held in September, that the event can take place on the Sunday as well. Thank you, Mr President.

**Mr Kniveton:** I beg to second, sir, and in so doing I would just like to say that I hope that for future years, if this Bill goes through, this will not be treated as a precedent for Sunday racing in future. It is really only for this year, 2001, but I am happy to second for this year, sir.

**The President:** The motion, hon. members, is that Road Races (Temporary Amendment) Bill 2001 be read for the first time. Those in favour, please say aye; against no. The ayes have it. The ayes have it. Mr Delaney.

**Mr Delaney:** May I have permission to take the clauses, Mr President?

**Mr Lowey:** I beg to second, sir.

**The President:** Mr Lowey seconds.

**Dr Mann:** Are we suspending standing orders?

**The President:** I imagine that is what he is proposing to do, Dr Mann. Are we content that standing orders be suspended in order to take the second reading? It was agreed. In which case Mr Delaney, formally proposed and seconded.

**Mr Delaney:** Thank you, Mr President. May I first of all thank the members for their support. Clause 1 amends the Road Races Act 1982 to enable motorcycle racing to take place on a Sunday only during the month of September of 2001 and it reassures obviously the member of the department, Mr Kniveton, that this Bill actually is just for this year, if necessary, on a road forming part of the Billown circuit. I beg to move clause 1, Mr President.

**The President:** We must take the second reading first, but it is the same, I imagine it is the same. . .

**Mr Delaney:** Sorry, yes.

**The President:** It is the same speech you are making. Mr Kniveton are you seconding?

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

**The President:** We have had formally moved the second reading. Those in favour of the second reading, please say aye; against no. The ayes have it. The ayes have it. Now, Mr Delaney, we will take the clauses, although you have probably been through your brief.

**Mr Delaney:** I wish to move clause 1, Mr President.

**Mr Lowey:** I beg to second, sir.

**The President:** Mr Lowey seconds. Does any hon. member wish to speak to it? In that case, hon. members, the motion before you is that clause 1 do stand part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it. We will take clause 2.

**Mr Delaney:** Clause 2, Mr President is the short title of the Bill and advises that the Bill shall cease to have effect at the end of September 2001. I beg to move.

**Mr Lowey:** I beg to second, sir.

**The President:** Seconded by Mr Lowey. Hon. members the motion before you is that clause 2 do stand part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it. Having completed the clause stage, Mr Delaney, the ball is in your court again.

**Mr Delaney:** I beg to suspend standing orders again to take the third reading.

**Mr Lowey:** I beg to second, sir.

**The President:** Are we content, hon. members?

*It was agreed.*

**The President:** Mr Delaney will you formally move the third reading of the Road Races (Temporary Amendment) Bill.

**Mr Delaney:** I beg to move this emergency Bill, Mr President, for the third reading and hope to gain the support of the Council.

**Mr Lowey:** I beg to second, sir.

**The President:** We have unanimity in seconding from Mr Lowey and Mr Kniveton. Hon. members the motion before you is that Road Races (Temporary Amendment) Bill 2001 be read for a third time, thus clearing it from our agenda. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

### **Royal Bank of Scotland International Limited Bill — First Reading Approved — Standing Orders Suspended — Second Reading Approved**

**The President:** We turn then to item 6 on our order paper and on this occasion we are dealing with the Royal Bank of Scotland International Limited Bill for first reading. I call upon the hon. member, Mr Crowe.

**Mr Crowe:** Thank you, Mr President. Hon. members will be aware that Royal Bank of Scotland International Limited and Natwest Offshore Limited are now both members of the Royal Bank of Scotland group of companies following the Royal Bank of Scotland's acquisition of National Westminster Bank plc in the UK in March last year. As a result of this, a reorganisation of the international operations is proposed. The purpose of the present Bill is to transfer to the Royal Bank of Scotland International Limited certain of the businesses of Natwest Offshore Limited and the banking business of Coutts (Isle of Man) Limited. The current position is that NatWest Offshore Limited is an Isle of Man incorporated bank with branches in the Isle of Man, Jersey, Guernsey and Gibraltar. It also trades in the Isle of Man as Isle of Man Bank. NatWest Offshore Limited is also the parent company of a number of Coutts offshore subsidiaries, some of which also hold banking licences in the jurisdictions in which they operate, although they are primarily trust and investment management businesses. Royal Bank of Scotland International is a Jersey incorporated bank which has branches in the Isle of Man, Jersey and Guernsey. The proposal in this Bill is that the banking business of NatWest Offshore Limited conducted in the Isle of Man, Jersey, Guernsey and Gibraltar is transferred to the Royal Bank of Scotland International. The enlarged Royal Bank of Scotland International will continue to operate in these jurisdictions using Natwest as a trading name, as well as continuing its existing business as the Royal Bank of Scotland International Limited. Natwest Offshore will retain all the business presently conducted by it under the name of Isle of Man Bank. NatWest Offshore Limited will change its name to Isle of Man Bank Limited and will continue to trade in the Isle of Man as Isle of Man Bank. The Coutts (Isle of Man) banking business will be transferred to Royal Bank of Scotland International and RBSI will also trade under the name Coutts in relation to the banking business. The trust and investment business of Coutts (Isle of Man) will remain with the Isle of Man Bank Limited. The Bill details the issues involved in the

merger of three distinct businesses operating in the Island, but having the same overall parent company and covers all the legal and statutory matters consequent upon the merger that require to be taken into consideration.

I am sure that we all recognise in an international environment there will always be mergers and acquisitions. Situations such as this will take place with companies operating in world markets restructuring to accord with competitive pressures but also to seek growth in international markets and to provide good services for their customers. As far as the staff are concerned, the staff union representing the NatWest and Isle of Man Bank staff has been and will continue to be fully consulted about the proposals and on any implications for the staff. The Royal Bank of Scotland International Group business plans show an expectation of further growth over the next five years and with a particular emphasis on enhancing the Isle of Man Bank's commitment to the Island.

Mr President, I beg to move the first reading of the Royal Bank of Scotland International Limited Bill.

**Mr Waft:** Thank you, Mr President, could I just ask for clarification, the Royal Bank of Scotland International Bill covers the acquisition of the RBSI of the banking business of Coutts (IOM) and all the businesses of Natwest Offshore, except in the name of the Isle of Man Bank. It seems that the RBSI will take on all the business as is and all terms and conditions, liabilities, et cetera will continue on the same basis. The queries I have are what plans are there for notification and explanation to customers of the transfer of the business and any change of the branch addresses et cetera? What commitment, if any, is there to the maintenance of the current branch networks and is there potential for customer disadvantage through branch closure and confirmation perhaps that Coutts investment trust and CSB business continues unchanged and similarly the Isle of Man Bank business?

**The President:** Mr Lowey.

**Mr Lowey:** Yes, Mr President. This is the second private banking business Bill to deal with mergers that we have dealt with in recent months. It seems to becoming a habit. I can understand what the mover of the Bill has said about the need for mergers and competitiveness. What worries me is, can he assure me that what is remaining, the Royal Bank of Scotland International Limited, I would like to know where that is situated. Is that on the Isle of Man, is it in the United Kingdom or is it in Jersey, is it in an offshore jurisdiction? If that is the case, can we then ask is the reasoning behind this, that in the Isle of Man banking licences has with it what I would call certain liabilities, they have to place certain funds because if it goes wrong then depositors have some safeguards and does this reduce it? I take note of what is in clause 13, that this Bill is not expected to have any direct effect on the income and expenditure of the Government. Does that mean that it could have an indirect effect? Now the banking licences and the fees and the sums that they have to deposit are there as a safeguard for the customers and while I can understand from the company's point of view, that they need to be competitive and to reduce costs, I would hate us to be in a position in promoting this bit of legislation that we are diminishing the safeguards for the customers and I am here I think if you like, to get an assurance from the hon. mover on these particular points.

**The President:** Dr Mann.

**Dr Mann:** I think, Mr President, I must follow on from what Mr Lowey has said. I think quite clearly, reading through the Bill, there is protection for investors banking in the Isle of Man, but the wider issue of competitiveness is one that is becoming very worrying. We claim that we have relatively low costs for businesses in the Isle of Man and yet we have time after time a move to a headquarters in another jurisdiction which is said to have high costs and there must be some good reason. Obviously here the banking licence essentially is going to be for the amount of

money that is lodged with a banking supervising authority, is going to be reduced. How much longer can this sort of thing go on? I doubt whether there is a major bank, or very few major banks, in the Isle of Man where the ultimate control actually lies here. There must be a reason somewhere. I am not opposing this Bill, obviously. This is a far wider issue and this is probably entirely the wrong place to raise it, but you use the word competitiveness, international competitiveness and somewhere, somehow, we are losing the competitiveness. Perhaps we can raise it in another place, but I will support the Bill, but it is very worrying, I must admit.

**The President:** Mr Kniveton.

**Mr Kniveton:** Yes, thank you, Mr President. The hon. member, Mr Lowey makes the point that this is the second such Bill. I think from recollection it may well be the third one. Lloyds TSB, I think, was the first one. I just cannot remember the one we did a few weeks ago, but what I would be interested to know from the hon. mover is are these three Bills basically the same or is there any difference between the one today and the other two that have passed? I am just interested to know what, if any, are the main differences? Thank you.

**The President:** Mr Waft do you wish to come back again?

**Mr Waft:** I just thought that the mover might like to mention the situation with regard to the depositors indemnity scheme with regards to Jersey and the difference in the Isle of Man.

**The President:** Mr Attorney.

**The Attorney-General:** Thank you, Mr President. Just really in relation to the protection of customers on the Island, similar points to those which I raised in relation to the Halifax transfer recently. I wonder if the hon. mover could reassure hon. members that there will be no disadvantage to customers of the Isle of Man Bank group and so on, in relation to probate matters and also in relation to mortgages. We see in clause 10 of the Bill that any security held in favour of the NatWest Offshore group, which of course is effectively the Isle of Man Bank in relation to Manx mortgages, can we be assured that there will be no change of policy in so far as the enforcement of mortgages is concerned? I say that because the standard form of mortgage, which is a conditional bond of security as it is referred to on the Island, simply has an open ended commitment or obligation on the customer to repay when required to do so by the bank and one is always assured that the policy of the bank, Isle of Man Bank, is not to recall the mortgage without giving adequate notice and so on. Can I be assured that RBSI will not have a change of policy in relation to enforcement of mortgages?

**The President:** Mr Crowe.

**Mr Crowe:** Thank you, Mr President, and I thank hon. members for their comments and Mr Waft for seconding the first reading. Just as background we do have a situation where the overall parent company remains the same. What we are seeing is a change of internal restructuring of a Manx banking operation. Coutts, which is also a bank, and RBSI, which is a Jersey operation, they all have an operation in the Isle of Man, so they are all based here, so the operations will continue as is, broadly speaking, except the country of incorporation will differ when they move to RBSI which is a Jersey incorporated company. As far as notification to customers is concerned, which Mr Waft raised, the customers will be informed well in advance of the appointed day order which is due early next year, subject to this going through okay. As far as the Depositors Protection Act is concerned, the RBSI is presently on the Island, will remain on the Island and has a banking licence, as does NatWest Offshore have a banking licences and they are covered by this Depositors Protection Act, so there should not be any disadvantage to customers. Mr Lowey mentioned that this is the second private Bill where there have been changes and I think Mr Kniveton said this could be the third with Lloyds TSB and he again mentions this investors protection. Again, there should be no diminution of the safeguards towards customers by having a change of jurisdiction of one of the companies. Dr Mann raise

an interesting point about the wider issue of competitiveness and the very wide issue of very few major banks have the ultimate control in the Island. I think what we are seeing is that banking is such an international business that the control is out of this Island and out of the other islands as well. You have your control in London or New York. Mr Attorney mentions the question again that he raised at the Halifax Bill on probate matters and, of course, there should not be any change in probate. We have learned counsel hear with us today who might wish to comment on the mortgage situation and on the question of probate.

**The President:** Hon. member, we will continue with our first reading and if necessary we will bring counsel in after as, I understand you may wish to progress.

**Mr Crowe:** I think that covers the points, Mr President, and I so move.

**Mr Lowey:** Could I ask the hon. mover, because if I do not ask this now I will ask it at the second reading: he used the phrase, 'broadly as is,' the operation. Well, it is the differences that make the difference really, is it not? It is in the detail and it may be broadly, but it is those differences that this new legislation is going to allow the company to operate under that are the cardinal points, the lynch points. Could he spell out to us what those savings are? I can understand it from the company's point of view, but in safeguarding the company's point of view in the financial reorganisation of its business, does that diminish the ability of the customer, and you say, 'Well the customers will be consulted.' Well, I have not heard that yet. Will they be consulted or will they not and if that is a choice, it is a Hobson's choice. Take it or leave it. I just want to tease this out of the mover of the Bill. I would again reiterate what I have said before, the policy of the Isle of Man in getting finance, and particularly the banks here, and could I quote what the minister of the day said: 'The Government of the Isle of Man were interested in getting quality services.' I have no doubt at all that the Royal Bank of Scotland is a quality business which we welcome and would want to encourage to remain here, but we have said we wanted upfront operations, front offices and not the back office operations and this seems to me to be going from upfront to being a subsidiary of another offshore Island, which in effect in my shorthand language, that is back office business operating on the Isle of Man. Is that not a backward step?

**The President:** Mr Crowe.

**Mr Crowe:** Yes, thank you, Mr President. Again, we are shall we say in an international business operation or business environment, where decisions are made elsewhere. It is something that is not within our powers to either change or, well we could probably influence but not to change. I think what we have, and I think we have to look back at three or four years ago when we were welcoming Natwest Offshore here, where there was a change to bring business here. Now, alright this is a change where some of the business is going to Jersey, but RBSI is a Jersey bank, it still operates here and the intention is to grow the business of Isle of Man Bank so that the Island should not suffer in the long run. That is what we are trying to achieve.

**Mr Lowey:** Can I ask the mover of the Bill a direct question? Is it not a fact that this business is relocating to Jersey and is it not a fact that in Jersey they do not have a depositors indemnity scheme? How does that help the depositors in this operation?

**Mr Crowe:** What they have here is RBSI is registered in the Isle of Man as a bank in the Isle of Man and the customers of RBSI in the Isle of Man have the investors protection here, whilst they are banking here. As to the Isle of Man Bank, customers have that protection whilst they are registered here. In the other jurisdiction they would have their own protection, whatever that was.

**The President:** Hon. members, the motion before us then is that the Royal Bank of Scotland International Limited Bill 2001 be read for a first time. Those in favour, please say aye; against no. The ayes have it. The ayes have it. Mr Crowe.

**Mr Crowe:** Could I ask that standing orders be suspended to take the second reading?

**The President:** We are purely now in the hon. members' hands.

**Mr Waft:** I second, sir.

**The President:** Mr Waft seconds.

**Mrs Christian:** Mr President, would the mover indicate why he needs a suspension of standing orders?

**Mr Crowe:** The reason I am asking for a suspension of standing orders is because of the short time frame we have in the legislative programme. We only have today's sitting and we have a sitting on 26th June, so the group have asked me to try to complete all the readings by the conclusion of 26th June which is our last session because that would be the completion of the legislative programme. That is why I am asking for a suspension of standing orders.

**The President:** So we have a proposal to take the second reading today and the clauses and third reading at our next sitting.

**Mr Crowe:** Well, I could take clauses today, otherwise I can take. . .

**The President:** Let us take it step by step then. Hon. members. . .

**Mr Crowe:** Could I take the second reading today and clauses and third reading at the next stage?

**The President:** Hon. members, let us be plain. What I am dealing with is that in fact that there is a motion to suspend standing orders to take the second reading today. We will take it step by step. That is what is before you.

**Dr Mann:** If we are just taking the second reading and not the clauses because for the public to see this sort of thing pushed through in one day, this is serious business. This is not road races at Billown, this is serious business.

**The President:** Mr Lowey.

**Mr Lowey:** I would agree with the hon. member, Dr Mann, that I think it would be wrong for us to take the clauses today and on the strength of that, I will go for the second reading today.

**The President:** Mr Delaney.

**Mr Delaney:** This is a serious business I wish to discuss this with the Attorney-General, a couple of matters he has raised and matters that I have seen as an observer. There needs to be questions before this goes through, in relation to the staff and everything else.

**The President:** Hon. members then, the motion before you is that the Royal Bank of Scotland International Limited Bill be read for a second time. Those in favour. . . No, we suspend standing orders to take the second reading. Those in favour please say aye; against no. The ayes have it. The ayes have it. So then Mr Crowe, I invite you to take formally the second reading of the Bill.

**Mr Crowe:** Thank you Mr President and can I thank hon. members for allowing me to take the second reading. As earlier advised, the principle object of the Bill is to reflect the changes which flow from the acquisition of National Westminster Bank plc by the Royal Bank of Scotland plc, both UK companies. This has had a direct effect on the subsidiary operations transacting business in the Isle of Man, Jersey, Guernsey and Gibraltar. This Bill is to provide for the Royal Bank of Scotland International Limited, a Jersey company carrying on business as a licensed bank in the Isle of Man to acquire the business operations of NatWest Offshore Limited, an Isle of Man Bank incorporated in 1865 in the Isle of Man. This covers the operations presently carried on in the Channel Islands and Gibraltar and that part of its business on the Isle of Man which operates under the NatWest brand and also covers the banking business of Coutts (Isle of Man) Limited, which is a company incorporated in the Isle of Man as a licensed bank and also

conducts investment business and trust and corporate service business. NatWest Offshore Limited, Coutts (Isle of Man) Limited and the Royal Bank of Scotland International Limited are all wholly owned subsidiaries of the Royal Bank of Scotland Group plc, a UK company. Similar legislation to this Bill is being introduced in the Channel Islands and Gibraltar to reflect the acquisition of the business operations of NatWest Offshore Limited in those jurisdictions by the Royal Bank of Scotland International Limited. The Manx Bill is in a similar format to the draft clause being introduced in Jersey, Guernsey and Gibraltar. The banking business of NatWest Offshore carried on under the brand of Isle of Man Bank will remain as it is, and it is proposed that NatWest Offshore Limited will, on the appointed day order being made, revert to its previous name, Isle of Man Bank Limited. The Bill covers all the legal and statutory matters consequent upon the proposed merger of three distinct business operations operating on the Island. Mr President, I beg to move the second reading.

**Mr Waft:** I beg to second.

**The President:** Mr Delaney.

**Mr Delaney:** Bearing in mind that the mover has asked for this legislation to be moved quickly because of the limited time, can I ask when this legislation is due to be passed in the other jurisdictions that he has mentioned, Gibraltar, Jersey and Guernsey et cetera? When is it going to come before them? Have they got the same problem, the time problem?

**The President:** Dr Mann.

**Dr Mann:** Yes, I realise that the point I am about to raise comes into clauses to some extent, but I think the assurance that no action here is going to disturb any customer is really not quite right, because where you were talking about Coutts, the banking business of Coutts (Isle of Man) which is referred to in this, in one of the sections. By the passing of this Bill one would exclude immediately the trustee business of that bank. Now that bank has withdrawn without notice its investment operations. It has certainly withdrawn its executor role to people who use NatWest investments previously as executors of their wills, for instance. Now I know that does not involve personal loss, in fact probably the loss is a loss to the bank rather than to the customer, but it is some sort of indication of how the reorganisation affects people. At the drop of a hat a banking operation can withdraw unless it is actually incorporated in this Bill. This is why I do not think it is right that this Bill should be rushed through because there are people out there who are wondering what is going on. There is no financial loss, I accept that, the financial loss if anything would be to the bank not to the customer but it is the impression that is given.

**The President:** Mr Lowey.

**Mr Lowey:** Yes, again can I come back and just probe a bit further. Let us assume that this Bill goes through, what difference will that make to the customer? If the bank, the Royal Bank of Scotland International Limited is based in Jersey and I have a case for whatever reason against that bank would I have to go to Jersey to pursue the case or would the jurisdiction be here? At the moment, their jurisdiction, they are based here therefore I can deal with them here in the Manx courts. Do I have that guarantee that the same ability to get to the Royal Bank of Scotland International Limited as prescribed in this bank will be there to actually face its customers? I come back to the point that Jersey is a jurisdiction in which I have many friends and I understand their position and they are competitors of ours in the banking world, in the finance sector, and is it not a fact that that jurisdiction does not have an indemnity scheme for depositors and is that the reason why the bank is going there?

**The President:** Mr Waft.

**Mr Waft:** I have mentioned this before, Mr President. I see Bills coming from another place which would have directly or indirectly an effect on the consumer. A private member's Bill does not undergo the need for consultation to the general public as does a departmental Bill. I do

think, and this is probably one for the Council of Ministers, if they could see some way of putting some legislation in place which would refer Bills such as this to the Office of Fair Trading as part of the programme with regard to the progress of the Bill. Thank you, Mr President.

**The President:** Members of course can always refer a Bill to a committee. Mr Attorney.

**The Attorney-General:** Mr President, just really I hope by way of assisting the hon. mover of the Bill in relation to the question as to rights of action against the NatWest Offshore Group and whether or not those rights will be affected by the transfer to a Jersey company. Clause 6 of the Bill makes it perfectly clear that a claimant or a plaintiff will not be prejudiced by the transfer, so the claims will be enforceable against RBSI in the same way they would have been against its predecessors.

**The President:** Now, Mr Crowe, I am aware that you indicated before that we have in attendance now counsel who presumably was involved in the drafting of the Bill. If you are content you may answer now in reply to the second reading debate. It would be entirely up to the members of the Council whether or not they wished any questions to be answered by counsel. At this stage I invite you to reply to the second reading.

**Mr Crowe:** Well, I will answer as far as I am able or as best as I am able to the points. If there are any points that members do not feel that I have covered adequately I will ask the hon. counsel to answer any other questions. As far as Mr Delaney's point, the general action in the Island causes the particular problem in the Isle of Man and the Bills are underway in the other jurisdictions but they have more sittings in their legislature towards the end of the year so this is the reason why ours is slightly different to theirs but again we have this general election in November which affects our legislative programme. Dr Mann again raised an interesting point about Coutts (Isle of Man) where the banking business is separated from the trust and investment business which will remain on the Isle of Man and be administered from the Isle of Man and again it is making the customers aware by full explanation as to what is happening.

**Dr Mann:** Well, they are actually withdrawing the services.

**Mr Crowe:** No, the service will be continued by RBSI. It will be badged as far as I am aware by RBSI -

**Mr Delaney:** Same brand, different name.

**Mr Crowe:** - it will be the same brand but owned by RBSI rather than NatWest Offshore. This is my understanding, sir

**Dr Mann:** That was not in the letter sent to individuals.

**Mr Crowe:** I think again we have to look, in taking Mr Lowey's point of view, the question of RBSI is banking in the Villiers building, it is a registered bank in the Isle of Man, it pays its licence to the FSC it is a properly authorised and licensed bank as is NatWest Offshore as will Isle of Man Bank be. So again you have the Bankers Depositors Protection Act applicable at the present to those operations and they will continue as long as they bank in the Isle of Man. The customers have a choice as to which they bank with as you and I have any choice to bank with any bank we please and I think if they were unhappy with the change they could always seek to change their bank. As far as I can see, and I think, the clauses are such, or the provisions are such, that it is a seamless transfer that allows the minimal effect on customers. What we are trying to do is change the ownership of the bank not the effect it has on the customers. Mr Waft again raised a question about the Office of Fair Trading and I think that is outside my remit. Mr Attorney, I thank him for his question that claims are enforceable, the Bill covers all those provisions of litigation before and after the Act hopefully is passed. I think that covers the points.

**Mr Lowey:** It did not quite cover the point, I did ask the mover of the Bill is this not a back office operation as opposed to a front office? I know I am being extreme in that but he knows the point I am making.

**Mr Crowe:** I can see the point you are making but I think what I would like to think, and I started my banking career with the Isle of Man Bank many many years ago and moved on to different things in my career. I think the Isle of Man Bank at that time was owned by National Provincial Bank and then became taken over by National Westminster Bank. We had NatWest Offshore Limited. We have all these changes in banks. I think it is a continuing saga. Some go. It is a bit like the tide coming in and going out again. I think what we are seeing is changes that affect us all. I think the best thing that I would like to see is that the Isle of Man Bank Limited when it changes its name becomes a much bigger operation, continues its growth, represents its image as the Isle of Man and the premier bank. I think, whilst I see what the member is driving at, I would not agree with what he is saying in the longer term.

**The President:** Now, hon. members, I am perfectly content to put the second reading to Council at this juncture but as indicated before similarly then I sense a certain sensitivity that we should not rush too far with this one. If hon. members do wish to ask counsel any question I would be prepared to take them at this stage before putting second reading to the Council. Mr Delaney.

**Mr Delaney:** Yes, I do appreciate that the mover of the Bill had some difficulty in answering some of the questions but the gentleman at the bar of the House may be able to answer. I am interested in this. The member when answering my question, we have got a general election which I am aware but we are not up for general election I do not think yet, unless my wishes have been granted. The situation is that we will be around early in January. What stages are these Bills at I would like to know in the other jurisdictions we are talking about just to clear this 'haste' situation?

**The President:** Yes, if we stick to specifics it will be much easier. Counsel if you would wish to reply to that.

**Mr G R M Moore:** With your leave, Mr President and members, I appear on behalf of the sponsor of this Bill, Royal Bank of Scotland International. The position is that there has been legislation introduced into the Gibraltar legislature, into the Jersey legislature and in accordance with the Guernsey procedure, there the Bill has not yet or at least a fortnight ago had not been commenced. They send it in a draft form to the Home Office for preliminary approval and I understand that was in course but it is planned that all the legislation in the territories will in fact be through before December of this year with appointed day orders proposed to take place contemporaneously on 1st January 2002 and of course the point would be that Isle of Man Bank at that stage, which is a trading name of NatWest Offshore, that will still remain totally on the Isle of Man. The company will continue to be owned by RBSI group. You have got to look at the specific clause which says that the business of NatWest Offshore is in fact limited. It excludes totally the business of NatWest Offshore Limited in the Isle of Man so that will continue as is. In other jurisdictions, because this legislation mirrors the legislation in the other jurisdictions, the business of NatWest Offshore will move in those jurisdictions to RBSI but it will not in the Isle of Man.

**Mr Delaney:** When you say, Mr Moore, that it is planned that this will go through the different legislations who is it planned by?

**Mr Moore:** The lead attorneys in Jersey, the banks Jersey attorneys.

**Mr Delaney:** What about Gibraltar?

**Mr Moore:** Oh, well, they are liaising with -

**Mr Delaney:** So it is by the bank that this legislation would go through, not by the different jurisdictions.

**Mr Moore:** There is consultation with the jurisdictions.

**Mr Delaney:** That is fine.

**Mr Moore:** Absolutely. I mean I have been involved with Mr Attorney and with others and the bank has been in touch with the FSC and the Treasury here.

**The President:** Mr Waft.

**Mr Waft:** Mr Moore, concern has been expressed about the public indemnity for the banking legislation and would you like to comment on the differences between Jersey and the Isle of Man in this regard?

**Mr Moore:** I am not fully acquainted with the position in Jersey. The situation is that those customers of NatWest Offshore who bank in the Isle of Man, those who bank with Coutts in the Isle of Man, they have the benefit of Manx depositor protection. Those who are customers of NatWest in Jersey, Guernsey, Gibraltar, Sark and Alderney, they rely on the respective protection of those jurisdictions and nothing will change. Those who will remain with NatWest Offshore, Isle of Man Bank Limited as from next year, and those who are dealing. . . well, the people who deal with Coutts (Isle of Man) as bankers here they will become customers of RBSI (Isle of Man) and will be under the protection as they are now of the Manx depositor protection.

**Mr Waft:** The depositors compensation scheme does not have a similar comparative within those other jurisdictions.

**Mr Moore:** In some it does. It is different, yes. But that is the current situation. There would be no change.

**Mr Lowey:** But what about new business?

**Mr Moore:** New business will continue to be protected here.

**Mr Lowey:** If it is done through here?

**Mr Moore:** As now. The Isle of Man Bank will continue to -

**Mr Lowey:** It is only the ownership, it is the ownership of property and business. I come back to what I would call, is it a shell, is it a limited company?

**Mr Moore:** No, no. NatWest Offshore Limited -

**Mr Lowey:** All the property is being transferred to the parent company which will be the Royal Bank of Scotland International.

**Mr Moore:** The only property which will change hands, real estate, is 1 Prospect Hill which will become Royal Bank of Scotland International Isle of Man branch 'trading as NatWest'. That is the only branch that will change.

**The President:** Mr Attorney.

**The Attorney-General:** Thank you. I wonder if I could just deal with the timetable first of all for this legislation. The learned advocate has referred to the position in Guernsey and a draft Bill has been produced to the Home Office in the usual way. The same position of course applies in Jersey. They also have the position where they present their legislation in draft to the Home Office and I wonder are the two out of kilter or are they running contemporaneously, Jersey and Guernsey? Is there any reason for the difference in approach?

**Mr Moore:** They are running out of synchronisation. Maybe the lawyers in one jurisdiction are more efficient in getting it organised. I have no personal involvement but I just know that in

Guernsey it has been held up. There are different firms of Attorneys acting. Mourant du Feu & Jeune - Reg Jeune will be familiar to many of you, his firm are dealing with the Jersey side.

**The President:** Mr Attorney.

**The Attorney-General:** Thank you very much, Mr President. Just really I hope with a view to reassuring hon. members, I wonder if learned counsel could refer to the position in relation to mortgages on Manx property and the enforcement of mortgages and also whether there will be any change in relation to probate matters because both of those are consumer matters which are of concern to hon. members.

**Mr Moore:** I can respond to Mr Attorney. The position is that the Manx business, the mortgage portfolio, I believe will all be with Isle of Man Bank and that will continue to be with its own board of directors here a Manx company, company number 1. So I have no reason to believe that there will be - I have had no indication that there will be any change in the policy of Isle of Man Bank to handling the mortgages. On probates I did listen to Dr Mann's comments. In the profession we were aware that Coutts had declined to act in certain trusteeships before the Royal Bank of Scotland, no it is a couple of years ago, they started to change some of their economic activity and I am aware that in recent weeks there have been letters sent to people saying that their executors, you know, please consider whether you want to appoint us executors or you have appointed us or our predecessors whether you want us still to act.

**Dr Mann:** They do not say that. They say they are not going to. Full stop. Go to your lawyer and get a codicil or whatever it is -

**Mr Moore:** No, they are still carrying on. Their banking side will go to RBSI, their trust side will in law stay where it is with Coutts (Isle of Man) Limited.

**Dr Mann:** Well, that is not in the letter. The letter actually says that they are ceasing to do it.

**Mr Moore:** I think it is executorship, is it not?

**Dr Mann:** Yes. And in this Bill it confirms that.

**Mr Moore:** No, it says it does not affect wills in the clauses.

**The President:** Hon. members, I am sure we will reach that when we reach the clause stage. Can I say, thank you, counsel for coming this morning and apologies you could not be heard from the outside -

**Mr Lowey:** Technical problems.

**The President:** - but we will overcome that in due course.

**Mr Moore:** It is novel to be in this seat, thank you, of the Lord Bishop.

**Mr Delaney:** He would not miss it.

**The President:** Now, hon. members, the position we have reached is on item 6 on your order paper that the Royal Bank of Scotland International Limited Bill following a suspension of standing orders be now read for a second time. Those in favour please say aye; against, no. The ayes have it. The ayes have it. I take it, Mr Crowe, that if members are content we will take the clauses and third reading on the order paper for our sitting on 26th June.

**Mr Crowe:** That is the signal I am getting from members.

**The President:** So on the order paper for 26th June will be the clause and third reading stage of the Royal Bank of Scotland Bill.

## **Road Traffic (Amendment) Bill — Second Reading Approved — Consideration of Clauses Commenced**

**The President:** We turn then to item 7 on the order paper which is the Road Traffic (Amendment) Bill for second reading. I call on the hon. member, Mr Kniveton.

**Mr Kniveton:** Yes, thank you, Mr President. I do not propose for the second reading of this Bill to go through all the various points within the Bill as I did at the first reading. (**Dr Mann:** Hear, hear.) I feel that most of them are quite self-explanatory, perhaps a few may just be arguable but nevertheless real in today's terms and I think that is what it is all about: real in today's terms. In the Members' Room last week when I spoke to someone regarding the Bill, he said, 'Well it's a Bill but really there are 30 plus little Bills within this main Bill.' When I think about it, how true that is. There are just about 30 different subjects welded to introducing amendments to existing road traffic and highway legislation which hopefully I will be going into detail at the clauses stage. As I say, I do not propose to run through all these matters now and, with your agreement, I think it is appropriate today that I simply propose that the Road Traffic (Amendment) Bill be read a second time.

**Mr Waft:** I beg to second, Mr President.

**The President:** Seconded by Mr Waft. Hon. members, the motion before you is that the Road Traffic (Amendment) Bill be read for a second time. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

**Mr Kniveton:** Mr President, I will be happy to go on to the clauses stage if you will permit.

**The President:** We will continue with the clauses stage, clause 1, sir.

**Mr Kniveton:** Thank you. Clause 1 enables the Department of Transport to control traffic to and from construction sites by enabling a traffic regulation order to be made prohibiting the use by specified classes of motor vehicle of specified roads for the purpose of access to a specified site. It also introduces a procedure under which a developer can get prior clearance to the use of roads for the purpose of access to his site. And just two quick references to sub-clauses. In sub-clause (2) inserts a new section 2A which a developer can get prior clearance to the use of roads for the purpose of access to his site. That is a new insert. And finally I would draw members attention to section 2A(8): it gives the applicant a right of appeal to the High Bailiff against the department's decision. I beg to move, sir.

**Dr Mann:** I beg to second.

**The President:** Seconded by Dr Mann. Mr Lowey.

**Mr Lowey:** Where it says it gives the right to a person to get access to the land, does that mean it has an access? And let me point out what I would call a serious flaw, and I hope this law does not legitimise what is actually going on in the Isle of Man at the moment whereby, in the Mount Murray dip, there is access created knocking down a hedge almost on the bottom of the dip which I deem to be a dangerous spot. Does that mean now that that is legal that they can knock hedges down and get access to assist them in their building?

**The President:** Mr Kniveton to reply.

**Mr Kniveton:** Mr President, that very point is covered in a further clause. I just cannot put my hand on it at the moment. I am aware, the department is very aware of what is going on and we are keen to stop it. I trust that you will be patient with me and allow me to bring that forward at the appropriate stage.

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

**Mr Kniveton:** Clause 2, sir, introduces a new power for the department to make an order closing a road to traffic in order to permit filming to take place. I think it is essential that I should mention section 3A(4). It limits any restriction on pedestrian access to 15 minutes at a time. Section 3A(5) limits any restriction on vehicular or animal traffic to (a) an hour at a time if the traffic is controlled by a constable in uniform, or (b) 15 minutes at a time and 15 minutes in any half hour in any other case. Section 3A(6) provides for an alternative limit to any restriction of vehicle or animal traffic where the department is satisfied that the circumstances are exceptional: (a) 24 hours at a time and 24 hours out of any 72 hours in the case of through traffic; or (b) 4 hours at a time and 4 hours out of any 24 hours in any other case. I beg to move, sir.

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

**The President:** Mrs Christian.

**Mrs Christian:** Mr President, can I say that it is certainly necessary that there be some powers introduced in respect of this and at least it has the virtue that any order has to be publicised in the newspapers. I think that there has been considerable trying of the public's patience in many areas where filming is concerned where unofficial road closures have been effected and people have been fobbed off by those who purport to have some sort of authority and have no authority at all. They have created, I think, unfortunately some considerable irritation with the film industry which is not what we want to have. We do want to encourage the film industry but we do want them to recognise the inconvenience that they very often put other people to. So whilst I recognise that it may be necessary to have these intermittent and short period road closures, at least now if this is accepted they will have to be notified to the public in advance.

**The President:** As they should be on the Old Castletown Road. Mr Kniveton to reply.

**Mr Kniveton:** I think Mrs Christian has helped to clear the matter up considerably. This is what this new legislation is all about. It, still has to be published but, having said that, then there are restrictions on the times of road closures and notification to those affected must still be given. I beg to move, sir.

**The President:** Hon. members, the motion before you 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. Clause 3.

**Mr Kniveton:** Clause 3, sir, enables an order imposing a speed limit on a road to specify different speed limits at different times. I beg to move, sir.

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

**The President:** Mr Waft.

**Mr Waft:** It says variable speed limits and sometimes I would suggest the public do not know where they are with speed limits. They are driving along, they find they are in 50 or 40 or 30. It seems to change quite rapidly around the Island and I would suggest that some people might think they are on a speed limit that is not actually the speed limit for that road. For the size of the Island the numbers of different speed limits we have is becoming a bit of a nonsense and I would suggest that that could be looked at.

**The President:** Mrs Christian.

**Mrs Christian:** I just wonder if the hon. mover could give some indication what the background to the introduction of this is, please.

**The President:** Mr Kniveton.

**Mr Kniveton:** Yes, taking Mrs Christian's point first, sir, I would give an example of Kewaigue where we have a speed limit down through Kewaigue yet when the flashing lights come up at the school then there is a variation and there is a reduction in the speed limit. The reduction in the speed limit is as I say indicated by flashing lights. That is the variation within a speed limit. Going on to Mr Waft's point, various speed limits throughout the Island: well, I suppose we have inherited that situation possibly, probably. Probably one day we will get round to looking at not necessarily an all Island speed limit but a tidying up operation and I think this is due as Mr Waft has indicated. I beg to move, sir.

**The President:** I am sorry, hon. member, I am interested in your comment in relation to the flashing lights. I understood, and forgive me if I am wrong, the flashing lights at the schools, and there are numerous of them around the Island not just at Kewaigue, that it was current law. Are you indicating that this is new?

**Mr Kniveton:** No, that is current law, sir. That is now tidying up of a speed limit within a speed limit. That is what this particular clause is about.

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

**Mr Kniveton:** Yes, sir, clause 4. This clause obliges the driver of a vehicle showing a disabled person's badge to produce it to a constable or traffic warden if required. I beg to move, sir.

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

**The President:** Seconded by Mr Lowey. Mr Crowe.

**Mr Crowe:** Mr President, I presume this is to cover situations where people use the badges illegally. Is the badge for the car or is it for the person? I think this is the doubt that people have. Could the mover clarify whether the disabled badge is for an individual because the accusation is sometimes made that the drivers are not disabled? Thank you.

**The President:** Mr Kniveton to reply.

**Mr Kniveton:** Yes, sir, from my experience of this and from my knowledge of this subject, the badge goes to the person. I can be quite capable of driving a car but I can carry a disabled person and I believe, unless Mrs Christian can tell me different from her department, that is the situation. It is the disabled person who carries the badge.

**Dr Mann:** That is right.

**Mrs Christian:** Am I allowed to comment?

**The President:** Yes, Mrs Christian.

**Mrs Christian:** It is my understanding though that it does not have to be the disabled person who is actually driving the car as long as the disabled person is a passenger.

**Mr Kniveton:** Yes, that is what I am saying.

**The President:** It must be a passenger.

**Mr Kniveton:** Absolutely.

**The President:** Hon. members, the motion before you 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, dealing with fixed penalties.

**Mr Kniveton:** Right, sir, thank you. Clause 5, this clause gives the Department of Transport powers to appoint 'parking controllers' to police on-street and of-street parking. It also corrects a

cross-reference in the Road Traffic Regulation Act 1985 under which fixed penalties can be imposed. Just one sub-clause, section 33A gives the Department of Transport power to appoint 'parking controllers' who will have corresponding powers to those of the police to issue fixed penalty notices for specified offences. I beg to move clause 5, sir.

**The President:** Mr Lowey.

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

**The President:** Mr Lowey seconds. The motion, hon. members, 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. Clause 6.

**Mr Kniveton:** Yes, thank you, sir. Clause 6 provides for evidence of speed cameras and similar devices to be admissible in proceedings for certain traffic offences and gives the department power to install such devices. Sub-clause (1) inserts a new section under which evidence of speed cameras and similar evidence will be admissible in prosecutions for certain traffic offences. Section 58A enables a record produced by a device of an approved type, for instance a camera, accompanied by a signed certificate of the police as to the circumstances when and where the record was made, can be used as evidence in proceedings for certain traffic offences. This covers a record made by a device, for instance a photograph, a reading by the device, for example a vehicle's speed. A list of offences, sir, under section 58A are jumping traffic lights, speeding and contravening a temporary speed limit. I beg to move, sir.

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

**The President:** Mrs Christian.

**Mrs Christian:** Mr President, the hon. member has listed certain circumstances where such evidence can be admitted. I wonder whether or not he has any view on whether speed cameras could be used in areas where there are no speed limits, but where excessive speed might be considered dangerous driving?

**The President:** Mr Crowe.

**Mr Crowe:** Thank you, Mr President. Could the hon. mover just confirm, is it the owner of the vehicle that would be prosecuted or the driver of the vehicle that would be prosecuted because presumably the photograph of the car disappearing down the road would be of the number plate rather than anything else?

**The President:** Mr Kniveton to reply.

**Mr Kniveton:** Yes, sir. I am at a loss really on Mrs Christian's question. Speeding outside speed limits I suppose you are referring to, dangerous speeding. I suppose if it was found to be so it would be an offence, but I cannot give a positive answer to that question. Perhaps the Attorney-General may, sir, himself come in on that one, but can I just finish off Mr Crowe's question. It is the driver who is prosecuted for the car not the car owner and I would say that if the car owner, through the registration, is approached by the police regarding an offence he is pretty sure to quickly say 'I was not driving, my brother was.' So that is the arrangement there, otherwise he has got to explain himself. I would be obliged, sir, if the Attorney-General would answer the first part, speeding -

**The President:** Mrs Christian.

**Mrs Christian:** Mr President, I accept that it does not cover that situation at the moment, but there is an ability the department make amending orders to what it does apply to and I just wondered if they might have considered other areas?

**The President:** Mr Attorney.

**The Attorney-General:** Well, Mr President, I cannot really add to what the hon. member, Mrs Christian, has said. Clearly there is a power in the new 58A(3) for the department to amend the list of offences to which speed camera evidence can be relevant and I suppose, if there were to be a particularly dangerous part of the Island, the department may be well advised to extend the list to refer to dangerous driving and so on.

**The President:** Hon. members, the motion before you is that clause 6 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 7.

**Mr Kniveton:** May I take the new clause 7A with this, sir? I think it is appropriate.

**The President:** Right.

**Mr Kniveton:** Pedestrian crossings and the other one is school crossings, 7A is school crossings. There is a new clause moved in another place on behalf of the department?

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

**The President:** Now hold on. Just get it right now so that I am correct. You have moved or you are suggesting, sir? No, that is what I said. Mr Lowey is jumping in. You are suggesting that we move both clause 7 and new clause 7A.

**Mr Kniveton:** Thank you, sir. Clause 7: this clause enables regulations under section 7 of the Road Traffic Regulation Act 1985, which deals with pedestrian crossings, to apply with modifications the corresponding regulations in force in Great Britain. Section 39 of the Road Traffic Regulations Act enables regulations under section 9, school crossings, and section 15, traffic signs, to apply the corresponding British regulations and this clause makes similar provision for regulations under section 7. Now if I may move, sir, to clause 7A, this is a new clause moved in another place on behalf of the department and it is entitled for want of a better expression 'Stopping of vehicles at School Crossings.' This clause amends section 9 of the Road Traffic Regulations Act 1985. Section 9 provides for school crossing patrols and requires vehicles to stop when a lollipop person is indicating that school children are crossing the road at a prescribed place within the hours of 8 a.m. to 5.30 p.m. Under the present law a crossing patrol has no power to stop traffic for anyone other than children to cross. The amendments to subsections (1), (2) and (4) of the section 9 of the Road Traffic Regulations Act will authorise a school crossing patrol to stop vehicles to let any person cross the road at the same place and within the same hours as is prescribed for school children to cross. The amendment will help in particular elderly persons by making it legal for school crossing patrols to stop traffic to let them, not just children, cross the road, sir. I beg to move those two clauses.

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

**The President:** Mrs Christian seconds 7 and 7A. The motion, hon. members, is that clause 7 and 7A, which I have on a white paper, be approved. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Perhaps we could take clauses 8 and 9, Mr Kniveton.

**Mr Kniveton:** Yes, thank you, sir. I will take clause 8 first. This clause enables certain provisions of road traffic legislation which apply to roads to be applied to car parks. Sub-clause (1) inserts a new section in the Road Traffic Act, 79A, and section 79A enables the department by order to apply any provisions of the Road Traffic Act and any of the provisions of the Road Traffic Regulation Act which deal with traffic signs to any off-street parking place specified in the order, subject to modifications set out in the order. The order will require Tynwald approval. Section 79A(2) requires the consent of the owner of the parking place to any such order, except where it is provided by the department or a local or other public authority under the Road Traffic Regulations Act. Moving to clause 9, sir, schedule 3. This clause with certain repeals in

schedule 3 rationalises the standard controls on parking in the Road Traffic Act 1985, sections 18 and 19, which apply where no traffic regulation order or parking place order is in force. Sub-clause (1) imposes new controls on parking near road junctions and inserts a new section 18A in the Road Traffic Act. Section 18A makes it an offence for a motor vehicle or trailer to be left on a road within seven metres of its junction with another road. I refer members to sub-clause (3). It amends the Road Traffic Regulation Act, section 19, which makes it an offence to park a vehicle dangerously. I beg to move those two clauses, sir.

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

**The President:** Mr Crowe.

**Mr Crowe:** Thank you, Mr President. Presumably clause 8 is really public car parks, not private car parks?

**The President:** Mr Kniveton to reply.

**Mr Kniveton:** Yes, thank you, Mr President. This clause enables the owner of a parking place, where the owner of that land says 'I would like you,' for whatever reason, to designate his land within the order as an official car park under the terms of the Act, which then traffic controllers can actually manage and put fixed penalty fines et cetera on. I would suggest, sir, that because the department has to provide an order which then requires Tynwald approval it will be a requirement of the department that adequate signage is actually placed on such a car park to advise the public that they are going into an area that is controlled under the Road Traffic Regulation Act 1985 and not to do so would be unreasonable to the public. Thank you, sir.

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

**Mr Kniveton:** Clause 10, sir. This clause enables the plated weight and other plated particulars of a goods vehicle to be determined in certain cases without the vehicle having to be examined. It also makes it an offence to forge a plate or plating certificate or to make a false statement when applying for plating. The plating weight of a goods vehicle is the maximum permitted laden weight of the vehicle which is shown on a plate fixed to the vehicle. If the vehicle is weighed on a weigh bridge and the laden weight exceeds the plated weight an offence is committed and the vehicle can be banned. I beg to move clause 10, sir.

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

**The President:** The motion, hon. members, is that clause 10 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 11, Mr Kniveton.

**Mr Kniveton:** Mr President, clause 11 replaces the existing arrangements under which the use of old or rare motor vehicles on a road can be authorised even though they do not conform to modern construction regulations. The present paragraph 3 of schedule 2 of the Road Traffic Act requires such an authorisation to be made by order specifying the person to whom the authorisation is granted and the vehicles or description of vehicles to which it relates. The clause substitutes a new paragraph 3(3) under which an order made by the department will merely (a) enable the department to issue permits to bona fide collectors, authorise them to use specified vehicles or specified descriptions of vehicles, (b) authorise the use on roads of vehicles under such, permits subject to specified restrictions and conditions, (c) provide for the forms of permits, their production to the police and other officials and their surrender to the department in prescribed circumstances. I beg to move clause 11, sir.

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

**The President:** The motion, hon. members, is that clause 11 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 12.

**Mr Kniveton:** Yes, sir, clause 12. This clause brings the controls of the sale of motor cycle helmets, vehicles and vehicle parts more closely into line with consumer safety legislation by (a) giving trading standards inspectors powers to make test purchases, search premises et cetera in relation to helmets, vehicles and vehicle parts and (b) giving authorised examiners of the department similar powers in relation to vehicles and vehicle parts. Sub-clause (1) is the important one. It inserts a new paragraph 4 in the Road Traffic Act 1985, schedule 1, applying specified provisions of the Consumer Protection Act 1991 to the enforcement of the Road Traffic Act 1985 which makes it an offence to sell or offer for sale a motorcycle helmet which is not of a type prescribed by regulations under sub-clause 24. Part V of the 1991 Act deals with the enforcement of Part II, consumer safety and Part III misleading price indications and gives the Isle of Man Office of Fair Trading and trading standards inspectors certain powers. I beg to move, sir.

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

**The President:** The motion, hon. members, is that clause 12 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 13.

**Mr Kniveton:** Yes, Mr President, this clause extends the powers of an authorised examiner to prohibit the use of a motor vehicle when he finds, when testing it, that it is unroadworthy to cover tests carried out in connection with the registration or licensing of vehicles. It also extends the powers to test motor vehicles under the Road Traffic Act 1985 to cover trailers as well. I beg to move, sir.

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

**The President:** The motion, hon. members, is that clause 13 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 14, Mr Kniveton, please.

**Mr Kniveton:** Yes, Mr President. This clause enables a police officer to demand the name and address of a person believed to have committed an offence involving a mechanically propelled vehicle used off the road. I beg to move clause 14, sir.

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

**The President:** The motion, hon. members, is that clause 14 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 15.

**Mr Kniveton:** Yes, this clause imposes restrictions on the clamping of motor vehicles parked without permission on private land by requiring warning notices to be exhibited and limiting the charges which may be imposed for removing a clamp. I particularly refer members to sub-clause (1), section 28A(3). It forbids anyone clamping or anyone attaching a clamp, "immobilisation device", to a motor vehicle on land to which this section applies unless there is displayed on the land in the prescribed manner a notice in the prescribed form warning that vehicles may be clamped and may not be released except on payment of a stated sum which again must not exceed a prescribed amount. Prescribed means prescribed by regulations made by the department under the Road Traffic Act. Such regulations will require Tynwald approval. I beg to move, sir.

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

**The President:** Now, Mr Delaney.

**Mr Delaney:** Yes, sir, this one is of interest. It will be interesting for Mr Lowey because I remember years ago when it was raised, wheel clamping. The prescribed notification that

wheel clamping will happen to persons who offend against the parking in a private car park. Could the mover at this time tell me, because it seems you have confusion in your own department, what exactly the wording is and what the powers are to wheel clamp in the Isle of Man and what is the penalty at the moment?

**The President:** Mr Waft:

**Mr Waft:** Yes, I would just like clarification, Mr President, on the wheel clamping, whether it is down to the department or the police only or can private people with private parks, such as shopping precincts, et cetera, have the ability to immobilise vehicles under this legislation or are they allowed to continue to do so at will in their own private circumstances?

**The President:** Mr Kniveton to reply.

**Mr Kniveton:** I think the subject Mr Waft and Mr Delaney have covered in the first sentence of this clause. This clause imposes restrictions on the clamping of motor vehicles parked without permission on private land.

**Mr Delaney:** But it also covers, if you look further down, the prescribed notification. The notification has to be given to the public in a form, it has to be given to the public, of what the situation is. At the moment they all vary and I want to know exactly what it is supposed to be to make it legal.

**The President:** Mr Kniveton.

**Mr Kniveton:** Yes, I am not sure of the prescribed form, but the notice will be displayed. Notices must be displayed, all the same notices must be displayed. There are no statutory powers at present to undertake wheel clamping. That is my impression.

**Mr Delaney:** Thank you, that is what I wanted to clarify.

**The President:** Hon. members, the motion before you is that clause 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 turn then to clause 16 and schedule 1.

**Mr Kniveton:** Yes, sir, to clause 16 there is of course an amendment to which I would draw members' attention. This clause introduces schedule 1 which makes various amendments to the Road Traffic Act 1985 dealing with driving tests and licences. The principal changes are to enable certain matters, for instance minimum ages, to be prescribed by regulation to enable a system of compulsory basic training for motor cyclists to be introduced and to require an overseas licence to be surrendered on the issue of a Manx licence. Paragraph 1 substitutes for the Road Traffic Act 1984, section 4, which specifies the minimum ages for driving various classes of vehicles, a new section 4 under which the minimum age will be specified by regulations made by the department, but subject to Tynwald approval. I would draw attention to paragraph 2 which provides the definition of 'learner motor cycle' that will in future be defined by regulation. It also introduces the definition of 'moped' which subject to the specified restrictions on motive power will also be defined by regulations. The existing definition of 'learner motor cycle' in the Road Traffic Act, schedule 3, is repealed by schedule 3 within this clause. I would like to just draw attention to the amendment in another place. This amendment inserts in paragraph 4(3) of schedule 1, on driving licences, two extra sub-clauses 2(c) and 2(d) to paragraph 2 of schedule 3 to the Road Traffic Act. The effect of these amendments is to transfer the provisions -

**The President:** Just hold. Sorry, Mr Kniveton, to stop you in full steam as it were, but you are referring to schedule 1

**Mr Kniveton:** Regarding clause 16, theoretical driving tests.

**The President:** Right, okay, thank you, continue.

**Mr Kniveton:** The effect of this amendment is to transfer the provisions relative to compulsory passing of a theoretical driving test from those relating to grant of a provisional driving licence to those relative to taking a practical test of competence to drive. Accordingly the theoretical driving test regulations will be augmented to set out the requirement for a theoretical test to be passed before a holder of a provisional licence can take the practical test of competence to drive vehicles of a class specified in the regulations. This amendment was introduced, I understand, because driving instructors were having to wait for candidates to pass the theoretical test before they could take out a provisional licence and so begin to learn to drive with a driving instructor. When this amendment and new regulations come into effect, candidates will be able to take out a provisional licence first and driving instructors will be able to instruct their pupils even before they have passed the theoretical test. The amendment does not prevent a candidate from taking the theoretical test before a provisional licence is taken out as at present, if he or she so wishes, but it will no longer be compulsory to do so. The candidate can take the theoretical test before or at any time while he or she is actually learning to drive.

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

**The President:** Hon. members, the motion before us then is that clause 16 and schedule 1, to which you have been notified of the amendments, do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 17, Mr Kniveton.

**Mr Kniveton:** Thank you, Mr President. This clause makes various changes in the law relating to vehicle licensing and registration, principally, sir, to enable the department to refuse a licence for a goods vehicle without production of a plating certificate and to refuse, limit or cancel the registration of vehicles which are not used in the Isle of Man. I beg to move, sir.

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

**The President:** Mr Crowe.

**Mr Crowe:** Mr President, could I ask the hon. mover will there be some transitional provision? because for those goods vehicles which are on the roads at present which might have a life of five or 10 years or longer, is there some transitional way that they can be allowed to continue or was the earlier plating rule brought in that would insist that there was a plating of a vehicle within a certain period. It is just in order that the businesses can carry on without too much upheaval is what I am looking for.

**The President:** Mr Delaney.

**Mr Delaney:** Yes, I am just looking for an explanation of (4) at the bottom 'to refuse to register a vehicle where it is not satisfied that it is to be used or kept on a public road in the Island.' Now are we preventing people registering their vehicles here and using them elsewhere? Is that part of our job to control the motor regulations in another jurisdiction? Line 25, Mr President.

**The President:** I have the line, I was just trying to read the paragraph.

**Mr Kniveton:** I was going to ask Mr Crowe if he will, sir, just to repeat his question, if he does not mind, the first question.

**Mr Crowe:** I think the practice has grown up, certainly with people, students, taking Manx registered vehicles off the Island and using them at University and I think whether this is something that you are trying to stop or does it have wider implications, I am not sure.

**Mr Delaney:** Can I come back, Mr President.

**The President:** Mr Delaney.

**Mr Delaney:** He asked me to clarify, I just want to clarify, because a vehicle can be taken off this Island, registered and run for at least six months in Ireland or Britain as I understand without registration and the students, as have been pointed out, that does happen. Are we now saying that we think that is the case that we are going to say 'We are not going to register' and who will supply the information to determine that?

**The President:** Mr Kniveton to reply.

**Mr Kniveton:** Right, sir. In the first instance, Mr Crowe's question, 'What will happen if this becomes an Act and so on.' Plating will be done by application, an application form of the details of the vehicle, within the first year. Not immediately, within the first year. Mr Delaney's question I think much applies to that question as well, within the first year, if I have understood him on that one, although the practice is to prevent the flagging out of freight vehicles to the Isle of Man. This is the practice to just stop these various vehicles coming in without plating. It will not effect Manx residents as I am advised.

**Mr Delaney:** Sorry, Mr President, but it says here, 'to register a vehicle when it is not satisfied that it is to be used or kept on a public road in the Island.' So therefore the vehicle is going to be on roads that are not on the Island.

**Mrs Christian:** Mr President, I wonder if the mover could just clarify that this section applies to heavy goods vehicles only, or not, as the case may be? Because as it refers to another piece of legislation it may not be clear to us.

**The President:** The question is does that cover all of the vehicles or just goods vehicles? I think it covers goods vehicles.

**Mr Kniveton:** In the introduction to the clause, it refers to 'refuse a licence for a goods vehicles without production of a plating certificate.'

**The President:** The answer effectively is that the Licensing and Registration of Vehicles Act 1985 is relevant to goods vehicles, not to private motor cars.

**Mr Kniveton:** Yes.

**Mr Delaney:** The question still holds good. Why do we have jurisdictions of vehicles outside the Island. That is my question.

**Mr Kniveton:** Mr Attorney-General are you able to clarify that position?

**The Attorney-General:** Mr President, this must be a matter of policy for the department, but presumably the position is that the department would feel very uncomfortable about having vehicles registered in the Isle of Man and then being used for carrying goods and so on outside of the Isle of Man, where the department does not have any continuing ability to monitor them and to keep an eye on them, to see what they are being used for and so on. It could bring again the Isle of Man into disrepute if you have a Manx registered goods vehicle doing all sorts of things outside the Island. But it is for the department, I am sorry I cannot really give very much more than that.

**The President:** Mr Delaney, you are still not happy, I feel.

**Mr Delaney:** Yes, because the jurisdictions that we are talking about, well certainly in Europe, they all have vehicle tests, most of them each year, whereas we are probably the opposite side, we are on the weaker side of it, if you want to put it that way, and here we are, saying that other people, we are not prepared to do that, even though we know they are going have an MOT every year after a couple of years of age. It seems to me it is like having to crack a very small nut.

**Mr Kniveton:** I am sure the department will take up this point, as outlined by yourself. It does refer to heavy goods vehicles. I thank Mr Attorney for his point.

**The President:** It appertains where in fact it would be unfortunate if heavy goods vehicles registered on the Isle of Man and deemed to be unsafe are being used in the UK. Hon. members the motion before you is that clause 17 do stand part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it. We will turn then to the registration of trailers at clause 18, Mr Kniveton.

**Mr Kniveton:** Clause 18, Mr President. This clause provides that trailers as well as motor vehicles will have to be registered and display number plates, unless exempted by the department. I beg to move sir.

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

**The President:** The motion, hon. members, is that clause 18 do stand part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it. Clause 19.

**Mr Kniveton:** Clause 19. This clause makes it an offence to sell or supply a number plate which does not conform with regulations. It inserts a new section, section 12A, in the Licensing and Registration of Vehicles Act 1985. Section 12A makes it an offence to sell or supply a number plate, registration mark, which does not conform with the regulations under the Licensing and Registration of Vehicles Act 1985, as to its size, shape and character. I beg to move clause 19, sir.

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

**The President:** Mr Crowe.

**Mr Crowe:** Could I just ask the hon. mover, is this to stop favoured number plates being sold separate to a vehicle? I think if I wanted MAN 5 or something, I would have to go out and buy it. Does this stop me buying a dedicated number plate? Do I have to buy the car with the number plate? Is this what they are trying to say, or have I misread it?

**Mr Kniveton:** I think you have misread it there.

**The President:** Can I first of all say that we have still got Mrs Christian.

**Mrs Christian:** Mr President, I am not clear what is new about this I was always felt, perhaps wrongly, that there were rules and regulations with regard to the description and prescription of how number plates should appear. It seems to me that there is growing deviation from the approved format. I have never heard of anybody actually being prosecuted. I wonder if the mover could expand a little on what the actual change is. Certainly there are many manipulations of numbers and so on so that they spell words or. . .

**A Member:** BIG MAN.

**Mrs Christian:** Yes, BIG MAN or MANIC or whatever it may be. They are not relevant to this particular clause perhaps but there are a lot of UK registrations around the Island which seem to me to have been here a long time and I wonder if the mover could indicate how long it is actually before people should change to Manx registration and whether anybody is pursued in respect of such changes.

**The President:** Mr Waft.

**Mr Waft:** Yes, Mr President, I think that the spacing and numbering of registration marks can indicate something entirely different from what was the intention of the department and they can customise them in certain ways. There is some legislation to control that. I would say also that from time to time the way registration marks are formed take on a different shape and size and they need to be continued within the legislation to keep them up to date. For instance, we

had the three legs incorporated some time ago on the side of registration and I think this is necessary. It should be within a Bill.

**The President:** Mr Kniveton.

**Mr Kniveton:** Yes, Mr President, there are some wonderful number plates about, the way the numbers are turned around, 'Isle of MAN' all sorts of things that go on, but to Mr Crowe, dedicated numbers, they do not come into this Bill. It is a separate entity. If there is a number available, Mr Crowe, and you desire it you can go and pay your £58 whatever it is and get that number plate. So it has really got nothing to do with this Bill. Tampering with number plates, that is a matter that has been raised. These can sometimes cause a problem, but I can advise that the police do stop motorists with number plates that are, shall we say not compliant with the law as it stands. The police can take action. What will be different, and what this change does, of course, is to make it an offence to supply number plates. So the guys up the road and various others up there who are making these number plates to customers orders are quite wrong and it will be illegal for them to do so. There is a compliance how a number is set out and where you put your dashes and where you put your spaces. There are regulations on that. So they will be committing an offence and the offence is to sell an irregular number plate to a customer. I hope, Mr President, that has answered all the queries on that, but I can tell members that recently the department has negotiated with the UK authorities, very interestingly, that we are able to retain our MAN and MN registrations. They wanted to take them of us and mix them into their own counties, but we have fought that one off and if we are discussing number plates that is an interesting enough subject. I beg to move, sir.

**The President:** Mrs Christian wishes to come back.

**Mrs Christian:** Just another point, Mr President, not to do with the clause but MAN is a registration in Vietnam. *(Laughter)*

**Mr Kniveton:** Mrs Christian mentioned one point which I omitted when she talked about UK registration cars on the Island. I understand they are permitted six months, after which time they have got to come over to us and pay their duties.

**The President:** I sometimes think that personalised number plates, or altered number plates, mean that the vehicle is more instantly recognisable than trying to read the licence plate. Hon. members the motion before us is that clause 19 do stand part of the Bill. All those in favour, please say aye; against no. The ayes have it. The ayes have it. Clause 20.

**Mr Kniveton:** Now this clause 20, sir, extends the requirement to have a third party insurance so as to cover motor vehicles used in public places other than roads. This one clause amends the Road Traffic Act 1985 as follows: paragraph (a) amends section 20 which obliges a driver who has been involved in an accident to produce his insurance certificate if required by any person to cover accidents in public places as well as on roads. Paragraph (b) amends section 43(1) (b) which enables the police to require a person to produce his insurance certificate if he was driving on a road when an accident occurred to cover driving in public places, as well as on roads. Paragraph (c) amends schedule 5 which requires drivers to have a third party insurance when driving on roads that covers driving in public places as well as on the roads. I beg to move, sir.

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

**The President:** Hon. members, the motion before you is that clause 20 stand part of the bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it. Clause 21, hon. member for Council.

**Mr Kniveton:** Yes, may I take clause 22 with this? I think it is appropriate, sir. Clause 21, this clause supplements section 2 of the Highways Act 1986 under which the department can

delegate highway functions to a local authority so as to enable the department and local authorities to enter into ad hoc agreements for maintaining or improving specific highways. Section 2 (5) gives power to enter into agency agreements for the construction of new highways and improvements of existing highways, but under section 2(2) such an agreement operates as a delegation of the department's functions to the local authority, which acts as the department's agent. This clause, inserting a new section 2A in the Act, enables a local authority to act as a contractor. I beg to move clause 21.

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

**The President:** Hon. member, we want to take 22 as well.

**Mr Kniveton:** I am sorry, yes, sir. Clause 22 amends section 2 of the Highways Act 1986, under which the department can delegate its highway functions to a local authority, so as to enable the department to suspend the delegation on two months' notice if it considers that the local authority is not operating satisfactorily, with a right for the local authority to go to arbitration. I beg to move clause 22, sir.

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

**The President:** The motion, hon. members, is that clauses 21 and 22 do stand part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it. Clause 23.

**Mr Kniveton:** Clause 23, sir. This is where we come to the earlier point raised by the hon. member, Mr Lowey, regarding Mount Murray. This clause makes it an offence for any person to carry out unauthorised works on in highway which cause an obstruction or danger, or damage the highway, and gives the department power to reinstate the highway at that person's expense. I beg to move clause 23, sir.

**Mr Lowey:** I beg to second, sir, and can I make no apologies for raising the matter because I think the Mount Murray site is one of those areas where it seems to me it has been like the Wild West. The law seems to have gone by the book when it comes to the Mount Murray, whether it is roads, whether it is building, whether it is planning. You name it, anything goes and it should not be.

**The President:** Hon. members, the motion before you is that clause 23 do stand part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it. Clause 24.

**Mr Kniveton:** Yes, clause 24, sir. This clause requires any person bringing mud on to roads to erect warning signs and to remove the mud as soon as possible and gives the department a default power to reinstate the highway at that person's expense. It inserts a new section 48A in the Highways Act 1986. Section 48A sets out the circumstances in which the section operates, that is that were vehicles are driven from land on to a highway and deposit mud on it or on a nearby highway, so as to endanger or inconvenience vehicular traffic. Section 48A(2) requires the responsible person to put a warning traffic sign at each end of any highway affected and to take reasonable steps within a reasonable time to remove the mud. The responsible person is the occupier of the land or, if the vehicles are trespassing or the occupier cannot be identified or found, the driver of the vehicle or the person employing him. Section 48A (4) gives the department power to remove the mud itself if the responsible person fails to do so within a reasonable time and to recover the costs from him. I beg to move clause 24, sir.

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

**The President:** Mr Crowe.

**Mr Crowe:** Will there be some reasonableness factor built into this? I am thinking here of farmers who are ploughing a field and in my lifetime they presumably have been allowed to put a bit a mud on the road. There must be some reasonableness factor. I think what we are

targeting here are the building sites and the heavy construction sites and I think the building across the road is probably a classical example of Athol Street and so on. How you temper this between large, small and insignificant, is something I would be interested in hearing on.

**The President:** Mr Lowey.

**Mr Lowey:** Surely the operative word there is 'dangerous' and there comes a time where a large collection of mud in wet conditions are dangerous and I think we must recognise and educate people to bring a shovel and clear it up. Not every speck of mud is in that category, but I do think the reasonableness will be in the office of the person, which in this case is the law of the policeman who will use his common sense.

**The President:** Mr Kniveton, do you wish to add anything?

**Mr Kniveton:** No, Mr Lowey has covered the point there. We cannot truly differentiate between developers and farmers and I would agree, Mr Crowe, that this legislation is primarily to sort out the construction sites, the development sites. The introduction of this new clause is quite specific, in that we have found from recent experience that we have a difficulty in enforcing the present legislation, specifically where we have had problems with the developers, as I said, who have been bringing soil on to the highways and we have to endeavour to try and get them to co-operate with us, but they do not and in fact we find ourselves in a very, very difficult situation trying to deal with the issue. I would say, Mr President, that our primary purpose on all of this is, as Mr Lowey said, public safety and the highways. Because of the increase in vehicles that we have on our highways, we have to ensure that our highways are kept in a reasonable condition. I would say that I believe that to be more important today, than maybe it has been in the past. I beg to move.

**The President:** Hon. members the motion before you is that clause 24 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 25, Mr Kniveton, please.

**Mr Kniveton:** Yes, clause 25, sir. This clause improves the controls on the placing of skips, scaffolding, et cetera, in highway, principally by enabling the department to impose a fee or charge. Subclause (1) amends the Highways Act 1986, section 53(2), which enables the department to impose conditions on a permission to deposit a builder's skip in the highway, so as to include power to charge a fee. Subclause (2) amends the Highways Act 1986, section 55, which requires the licence of the department for the erection of a scaffolding or other structures in the highway connected with building, demolition or repair work. Section 55 (1A) enables the department to impose conditions on such a licence, including a condition requiring payment of a fee to be prescribed by regulations made by the department, but subject to Tynwald approval. The existing words in subsection (1) enabling a licence to contain terms are repealed by schedule 3, sir. I beg to move.

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

**Mr Delaney:** Mr President, I welcome this clause as an original practicer of metal, tubular scaffolding on this Island, which gave me a very good living for several years. I welcome it. It is a long time overdue. When this is brought in, in the regulations, the thing that has to be ensured is the public liability insurance. It is the one thing. I mean, it frightens me. There are 14 different companies at the moment erecting scaffolding around this Island, on and off the highways. I am always amazed how I and others have managed to get away without a serious accident and I would hope, and I will move it some time if it is not done, that anybody who wished to erect a hoarding, and I would suggest putting a skip on the highway, that they have to produce public liability insurance. People are not aware of the dangers, Mr President, that erecting and striking of scaffolding on and over a highway can be a danger to the public. We, at the moment, seem to have got away with it with some minor incidents but at some time in the future, as sure as eggs

are eggs, there will be a major disaster and the row will start then, who is going to sort out the financial side for anybody injured or killed, leaving relatives, or indeed even the men erecting it. I would suggest and hope that this will be done under regulations. I do welcome it, I think it is a long time overdue.

**The President:** Mr Waft.

**Mr Waft:** I would just make comment, Mr President, that there seems to be some slight overlap here with regards to the Health and Safety Executive and the controls imposed by planning, executive, with regard to the situation around building sites. The fact is that we only have one enforcement officer, there is one person for the whole of the Island, no matter how much rules and regulations are laid down, if they are not enforced, it does not seem to be of any use whatsoever. I would just question whether the enforcement controls are actually in place to be able to carry out the regulations that we impose with regard to this.

**The President:** Mr Kniveton.

**Mr Kniveton:** Yes, Mr President, I will take up exactly and agree with Mr Delaney on the public liability insurance. Certainly it is essential and I am sure that within future licences this sort of thing is going to be taken into consideration. We have, we know, within the Island, a huge abuse of the skip situation and the scaffold situation. Contractors are quite prepared to use our land in which to dump their materials or whatever when there is, in many cases, space on whoever's land they are working on. They do not use it because it is easier to use our land, it is easier to lift the skip and things like that and this is one of the reasons why this particular clause is coming in. As far as Mr Waft is concerned, enforcement, we do within the DOT have an enforcement officer who checks on all these permissions granted and who will continue to do so to ensure that the conditions of the licence are adhered to. I beg to move, sir.

**The President:** Hon. members, the motion before you is that clause 25 do stand part of the Bill. All those in favour please say aye; against no. The ayes have it. The ayes have it. Clause 26, Mr Kniveton, please.

**Mr Kniveton:** Clause 26 makes it an offence for a motor trader to park a vehicle bearing a 'For Sale' sign on a vehicle on a highway. It inserts a new section 55A in the Highways Act 1986. Section 55A makes it an offence to park a vehicle on a highway if it bears a 'For Sale' sign or similar device indicating that it is for sale. This is a summary offence carrying a maximum fine of £1,000. Section 55A(2) gives a defence to the private seller. The accused must show that he was not selling the vehicle in the course of his business. I beg to move, sir.

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

**The President:** Mr Crowe.

**Mr Crowe:** Mr President, can I just ask the mover, we all see cars being driven around with a little white sticker in the rear window saying 'For sale , phone 9995' or something or parked by the roadside. The impression that I am getting from this clause is that it is targeting a trader who carries on a business, but it is not targeting the individual because the defence seems to be that the motor vehicle is not for sale in the course of a business carried on by any person. Could the mover just confirm that you are targeting the trader, not the individual?

**The President:** Mr Kniveton. Sorry, Mrs Christian.

**Mrs Christian:** Yes, Mr President, I just wonder if there is anywhere a clear definition of what constitutes a business. I think that the reason for this clause is that it has been found that there are individuals who are regularly selling cars by placing them on the highway with signs. Now, whether these people have other occupations as well, I would not know, but I just wonder whether there is a clear definition of business in the context of people who on a regular basis stick cars in public places with labels on them.

**The President:** Mr Kniveton.

**Mr Kniveton:** Yes, sir, a very interesting one and one what goes on around us. It is targeted primarily at the trader. Too often now we see car dealers with their forecourts packed and two or three on the road with a label on. That is going to eliminate this. As far as the independent person is concerned, I can confirm that the provision of section 26 and the new provision under subclause (2) of 55A is to define that a person who is selling cars as a private individual and can prove that he is just selling one a week or something like that, or less than one a week, then he is not in business. But if he starts selling regularly one a week or something like that, then he is in business. Mrs Christian, have I covered your point?

**Mrs Christian:** Less than one a week but more than one, it sounds like a typical definition.

**Mr Kniveton:** Mrs Christian, you must not sell your car every week or you run a business.

**The President:** Hon. members, the motion before you is that clause 26 do stand part of the Bill. Those in favour please say aye; against no. The ayes have it. The ayes have it.

### **Procedural**

**The President:** Now, hon. members I am conscious of the clock, I had hoped that in fact we would see this through, but I think the speed at which we are making progress, I doubt if we will. So I think it is an appropriate time in which for a few short moments to sit in private if we can, please.

*The Council sat in private and then adjourned.*

### **Road Traffic (Amendment) Bill — Consideration of Clauses Concluded — Standing Orders Suspended — Third Reading Approved**

**The President:** Hon. members, we are in the middle of our deliberations on the Road Traffic (Amendment) Bill and we had reached clause 27, so I call on Mr Kniveton to move clause 27.

**Mr Kniveton:** Thank you, clause 27. Just slightly before going on to clause 27 I would like to make another statement on clause 3 in case anybody has picked me up wrongly on it.

**The President:** On clause 3?

**Mr Kniveton:** Yes, if you give me the appropriate moment.

**The President:** In that case, sir, before we reach clause 27 if you wish to go back over clause 3, I think it would be appropriate to do it at the commencement.

**Mr Kniveton:** Yes, thank you, sir. Certainly, if I have misled anybody, and I do not really know, but I just want to make sure that people are really correct or picked me on it, variable speed limits. Now the purpose is to allow a reduced speed limit to apply at certain times on a stretch of road when the conditions of that road change so requiring drivers to slow down from the speed which would be normally acceptable. This proposal arose from the interest of road safety of children in the vicinity of schools but other circumstances might also be appropriate use of a variable speed limit. For example, there may be a 30 mile an hour speed limit on a road which happens to pass a school and for most times of the day that 30 mile an hour speed limit is an acceptable speed limit. There may be a crossing patrol and there may be a pair of amber flashing lights. At those times when the crossing patrol or the flashing lights are in use the speed limit would be reduced to 20 miles per hour on the road past the school. The reduced speed limit would be indicated by a traffic sign which would say such as a speed limit of 20 miles an hour when lights are flashing. Now the wig wag flashing lights near schools are only advisory at present, that is the important thing. They do not at present have the effect of reducing the speed limit on that road when the lights are flashing. Clause 3 will enable regulations to be

made to do so. I think I said they flash at the moment and, I got carried away a stage too early on that particular clause and I do apologise if I have misled anybody.

**The President:** Thank you, hon. member, for the explanation. We will turn then to clause 27.

**Mr Kniveton:** Yes, and can I also take the new clause 27A with it, it is relative. New means of access from highways.

**The President:** Yes.

**Mr Kniveton:** Clause 27 initially, sir. This clause amends the road works code in schedule 4 to the Highways Act 1986 so as to give the department power to direct statutory undertakers as to the timing of non-emergency roadworks and to issue a code of practice as to road works and traffic control during the road works. The road works code, which we are going to call it, regulates the exercise by the department and statutory undertakers, for example the MEA, the Water Authority and Manx Telecom, of their respective statutory power to carry out road works including provisions for the protection of other undertakers' apparatus affected by road works. Sub-clause (2) inserts a new paragraph 2A in schedule 4 enabling the department to give directions to statutory undertakers requiring them to carry out road works only at certain times if they will otherwise cause serious disruption to traffic. The procedure is to be laid down by regulations made by this department, subject to Tynwald approval. Contravention of a direction is a summary offence carrying a maximum fine of £1000. Sub-clause (3) inserts a new paragraph 10 in schedule 4 enabling the department to issue a code of practice as to road works carried out by statutory undertakers and traffic control during such road works. The code is to be laid before Tynwald and, like the Highway Code, will not itself create any liability but can be taken into account in any legal proceedings. That is clause 27 and I now move on to clause 27A. It was moved in another place on behalf of the department, new means of access from highways, and if I may say this really in addition to what I said earlier is what Mr Lowey was looking for at the Mount Murray. This clause inserts a new section 73A in the Highways Act 1986. It is intended to prevent a developer or anyone creating a new access for vehicles from a public highway to adjacent land unless the department has given its permission. There is at present no power for the department as highway authority to prevent dangerous or inconvenient accesses from highways being opened up for vehicles. The only protection is through the town and country planning process which is cumbersome and inappropriate when the considerations should be primarily road safety and secondarily traffic management. Only thirdly should they be a matter of land use and development. Ordinarily the planning process is adequate protection but it is a case of shutting the stable door after the horse has bolted as far as access being opened from the highway is concerned when the developer lays in the carriageway access to land without having sought planning permission to do so. The clause empowers the department to serve notice on an offending developer or the owner or occupier of the land requiring him to close the access within the time specified in the notice if he has not got the department's permission or planning approval for the access to the highway. The unauthorised opening of a carriageway access on a highway will be an offence under section 115 of the Highways Act with a penalty of a fine on summary conviction of up to £1000. I beg to move that additional clause 27A, sir, and previously clause 27.

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

**The President:** I think I have the elastic mind of my colleague, Mr Lowey. In relation to your new means of access, if an agriculturalist, shall we say, widened a 10 foot gate to say 15 foot to enable his combine to go through, would that be considered a new access?

**Mr Kniveton:** I think that is very reasonable, sir.

**Mr Delaney:** Charge him double.

**Mr Kniveton:** We are not charging for it.

**The President:** You would not have to apply to have a new access?

**Mr Kniveton:** No, I would not think so.

**The President:** Hon. members, the motion before you is that clause 27 and 27A do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 28.

**Mr Kniveton:** This clause replaces section 78 of the Highways Act 1986 and transfers from local authorities to the department power to licence pavement cafes, kiosks and street furniture for the display of goods or posters. Sub-clause (1) substitutes section 78 and inserts a new section 78A. Sub-section 78(1) allows the department to grant a licence to a person (a) to provide a pavement cafe on the highway or (b) to erect kiosks and street furniture for the display of goods or photos. Sub-section 78(2) restricts the placing of cafes in a carriageway or to prevent access to premises or another highway, the passage of pedestrians along a footway, highway maintenance or access by statutory undertakers to their apparatus. Finally, sir, sub-section 78(3) requires the department to consult the local authority and any statutory undertakers affected on and give publicity to any proposal to grant a licence and consider any objections. I beg to move clause 28, sir.

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

**The President:** The motion, hon. members, is that clause 28 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 29.

**Mr Kniveton:** Yes, sir, this clause inserts in section 82 of the Highways Act 1986, which enables the Department of Tourism and Leisure to erect bus shelters on highways, a new subsection (6) requiring that department to consult the Department of Transport before exercising its powers. The powers were transferred to the Department of Tourism and Leisure from the Department of Transport by the Bus Shelters (Transfer of Functions) Order 1999 and I think it is appropriate to say at this stage to congratulate the Department of Tourism for the great job they have done in the bus shelters I think it is nice to see proper bus shelters serving a proper purpose. I beg to move clause 29, sir.

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

**The President:** Mrs Christian.

**Mrs Christian:** Whilst welcoming bus shelters, and many of the youngsters who wait or have hitherto waited for buses in the pouring rain are very grateful for having bus shelters, it is a pity in my view that the design could not be more sympathetic to the rural areas. I can think of one or two examples of very nice rustic bus shelters in rural areas but the bright green and yellow stands out in an uncomfortable way in my view. However, I am quite sure that the functional service that they are providing is welcomed.

**The President:** Mr Kniveton to reply, sir.

**Mr Kniveton:** Yes, I think the reason for that, Mrs Christian, is that the Department of Tourism and Leisure have rapidly put up all these bus shelters which were not in existence. They are uniform. I hope that one day they will pick out the proper place, like St Johns, a grand bus shelter there all done in Manx stone, very appropriate for the area and sooner or later I hope we will get round to doing that but in the meantime there was a rush, I know, to put up these bus shelters. I beg to move, sir.

**The President:** Hon. members, the motion before you is that clause 29 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 30, hon. member.

**Mr Kniveton:** Yes, this clause introduces schedule 2 which makes amendments to the Highways Act 1986 and the Road Traffic Act 1985 so as to allow for the creation of two new kinds of highway which do not at present exist in Manx law; (a) a cycle path, that is to say a highway on which there is a public right of way for pedal cycles, with or without a right of way on foot; and (b) a bridle path, that is to say a highway on which there is a public right of way with horses and on foot and also a right of way for cyclists, provided they give way to pedestrians and riders. Going on to the various paragraphs, paragraph 3 amends section 12 which requires or enables the department to provide footpaths, guard rails, et cetera, in the highway to protect pedestrians so as to enable it to erect guard rails to segregate cyclists on a cycle path or cycle track from pedestrians. Paragraph 6 amends section 91 which enables the department to make a public path order creating a public path, cycle path or bridle path so as to enable such an order to be used to widen an existing cycle path or bridle path. Paragraph 7 inserts new sections 91A and 91B in the Highways Act 1986. Section 91A(1) enables the department to make an order converting an existing public footpath into a cycle path; 91A(2) enables the department to make an order converting an existing public footpath into a bridle path; 91A(3) requires Tynwald approval to such an order and applies the same procedures as to public notice, objections, et cetera; 91B(1) gives cyclists a right to use a bridle path for cycling but requires them to give way to riders and pedestrians. Mr President, I beg to move clause 30.

**The President:** And the schedule 2?

**Mr Kniveton:** And schedule 2, sir.

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

**The President:** The motion, hon. members, is that clause 30 and schedule 2 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 31.

**Mr Kniveton:** Yes sir, this clause gives the department an express power to work minerals for the purpose of exercising any of its functions under the Highways Act 1986, for example, to get road stone for highway maintenance. It inserts a new section 106A in the Act and section 106A(1) gives the department power to work and get minerals and to carry on any activity ancillary to working and getting the minerals, for example, stone crushing and reinstatement of quarries; 106A(2) is a saving for the Minerals Act 1986 under which minerals belong to the Department of Trade and Industry and lays down various procedures for authorising mineral workings. Mr President, I beg to move clause 31.

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

**The President:** Hon. members, the motion before you is that clause 31 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 32.

**Mr Kniveton:** Yes, sir. This clause gives the Bill its short title, provides for its commencement and repeals the superseded provisions in schedule 3. Sub-clause (1) gives the Bill its short title, sub-clause (2) provides for its commencement on an appointed day or days and sub-clause (3) introduces schedule 3 which repeals various provisions superseded by the Bill. I beg to move, sir.

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

**The President:** Hon. members, the motion before you is that clause 32 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

**Mr Kniveton:** If it is acceptable, sir, I am prepared to move the third reading, suspension of standing orders.

**Mr Crowe:** I beg to second.

**The President:** It is entirely up to hon. members that decision as to whether it should be progressed or not.

**Members:** Agreed.

**The President:** Hon. members, in that case with the acceptance that we should suspend standing orders to take the third reading of the Road Traffic (Amendment) Bill, I call on Mr Kniveton to so move.

**Mr Kniveton:** Yes, thank you, Mr President. I do thank members for their assistance in that position. Mr President, I have enjoyed taking this Bill through its stages. I believe it has been a very interesting Bill and I hope hon. members have also felt likewise, particularly as it covers so many traffic subjects in every day life today. I do thank hon. members for their support. Through this Bill members have agreed to bring many subjects into the twenty-first century. So many subjects had fallen behind in road traffic. As I said at an earlier stage, this was like bringing 30-odd small Bills together and presenting them all instead as clauses. Mr President, there is little more I can say except that I move the third reading of the Bill and that it do pass. Thank you.

**Mr Waft:** I beg to second, Mr President.

**The President:** Mr Waft seconds. Hon. members, the motion before you is that the Road Traffic (Amendment) Bill be read for a third time. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

**Airports and Civil Aviation (Amendment) Bill — Second Reading Approved —  
Clauses Considered — Standing Orders Suspended — Third Reading Approved**

**The President:** We then turn to item 8 on our order paper, which is the Airports and Civil Aviation (Amendment) Bill. Again, it is in the hands of Mr Kniveton for second reading, sir.

**Mr Kniveton:** Thank you, sir. The Airports and Civil Aviation (Amendment) Bill 2001 is a Bill by the Department of Transport which will amend the Airports and Civil Aviation Act 1987 and inserts a new section 11A into the Airports and Civil Aviation Act. The new section will enable the department to make application orders which apply European Community instruments dealing with civil aviation matters to the Isle of Man as part of Manx law. The powers are similar to those in force in relation to sea fisheries and Customs and Excise. Mr President, I beg to move the second reading of the Airports and Civil Aviation (Amendment) Bill.

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

**The President:** Hon. members, the motion before you is that the Airports and Civil Aviation Bill be read for a second time. Those in favour please say aye; against, no. The ayes have it. The ayes have it. I think that takes us to the clauses stage and perhaps Mr Kniveton you could move clauses 1 and 2.

**Mr Kniveton:** I do thank you, Mr President, for that. I cannot say it is exciting stuff but it is necessary. Clause 1 will insert a new section 11A in the Airports and Civil Aviation Act 1987. The new section will enable the department to make orders applying as part of Manx law European Communities instruments dealing with civil aviation. The clause takes account of the fact that an increasing amount of civil aviation regulation is to be undertaken by the European Community. European Community legislation applies to the Isle of Man only to the extent set out in protocol 3 annexed to the 1972 accession arrangements of the United Kingdom and others. The protocol does not apply to legislation regulating civil aviation. The new section will enable the department to ensure that the law in the Isle of Man will keep pace with developments in Europe, which applies to the UK. The new section is consistent with the existing provisions of the 1987 Act which enable the application of the United Kingdom civil aviation legislation to the Isle of Man. The power conferred on the department will only apply in respect of community instruments which have effect in the United Kingdom. The new section 11A, sub-clause (1) enables the

Department of Transport to apply as part of the law of the Island community instruments which deal with airports and civil aviation. The clause lists the specific subject matters of community instruments which may be applied to the Island. 'Community instrument' is defined in the European Communities (Isle of Man) Act 1973 as meaning any instrument issued by a community institution. Sub-clause (2) enables consequential modifications to be made to other legislation as a result of the application of a community instrument under the section. The legislation which may be modified by an order includes Acts of Tynwald, orders, regulations, rules, bye-laws and similar instruments. The power does not permit the amendment of the enabling powers in the new section. The power is common to enabling powers which permit the application of non-Manx legislation as part of Manx law. A simple example of circumstances which this power of modification might be used would arise where European Community air safety regulations are applied to the Isle of Man and are intended to replace provisions contained in air navigation regulations having effect in the Isle of Man. In such case it would be necessary to modify the air navigation regulations to the extent necessary to make them consistent to the applied community instrument. Sub-clause (3) will give the department two alternatives as to the form in which an order under which the new section may be drafted. Paragraph (a) permits the order to take the form of a traditional application order and set out the exceptions, adaptations and modifications subject to which the community instrument applies to the Island. This means that an order will not set out the full text of the community instrument as it has effect in the Isle of Man. Paragraph (b) permits a different style. Rather than specify exemptions, et cetera, to which the community instrument is subject, it may set out the whole text of the community instrument incorporating all exceptions, et cetera, to which it is subject. This is a more convenient style for the reader of the applied legislation and is expected to be the format adopted in the majority of the cases. There may be occasions when the paragraph (a) which I referred to earlier, the earlier format, will need to be adopted but it will not be common. Sub-clause (4) applies to orders made in the format under sub-clause (3)(a) where the order simply contains the exceptions, et cetera, subject to which the instrument applies to the Island. There will be an obligation on the department to produce a modified text of the applied instrument. Sub-clause (5) obliges the department to provide copies of the text of an applied instrument which has been produced under sub-clause (4) to members of the public. A reasonable charge may be imposed. In this context 'reasonable charge' means a charge which is broadly equivalent to the cost of production of the copy of the text. Sub-clause (6) requires all orders under the new section to receive Tynwald approval before they come into operation. The requirement is consistent with the procedure set out in section 11(4) of the Airports and Civil Aviation Act 1987 in respect of orders applying the UK aviation legislation to the Isle of Man. Mr President, I beg to move this clause as part of the Bill.

**Mr Lowey:** I beg to second, sir -

**The President:** Clauses 1 and 2, and the short title. Mrs Christian.

**Mrs Christian:** Mr President, this is indicative of the globalisation of many issues that affect the Island and whilst it is, I suppose, necessary that we do adopt the standards which are set by Europe, it is also appropriate that we incorporate them in a way which applies to the Island here. I do think it is useful that the text is going to be set out in full showing the amendments. I can imagine there may well be a lot of reading in all of this somewhere. 'You know what comes out of Europe.' They could be very substantial documents, I guess, but it is much easier to read them in that format, however long they may be, than trying to just read orders which set out the exceptions and then you have to go back and revert to the original. So that at least should make them readable to those who need to consult these documents and I therefore am quite happy to support both clauses in bringing our aviation law into line with Europe on the basis which the Island itself supports.

**The President:** Mr Lowey.

**Mr Lowey:** And it is also, if I may follow on from my colleague, Mrs Christian, the price one has to pay for when one stands independent. One has to keep in line with our neighbours and especially on air traffic, rightly so, but it is part of the price we as a legislature must pay from applying the thing to the Isle of Man which is a thing really of the past. In this instance we have to implement our own legislation to mirror that which is going on around us. So I have no doubts at all that it is right and proper that we do it and, yes, it will mean an awful lot of reading in the future for somebody.

**The President:** Mr Kniveton to reply.

**Mr Kniveton:** Mr President, I do thank Mrs Christian and Mr Lowey for their expressions of support and the way they have set it out. There is a lot of reading in all this as they have explained and I do thank them.

**The President:** Hon. members, the motion before you is that clauses 1 and 2 of the Airports and Civil Aviation Bill do stand, in other words the complete Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

**Mr Kniveton:** Mr President, I would be happy if members agree and you agree, sir, to take the third reading of this Bill.

**The President:** It is entirely in members hands. If members are content, Mr Kniveton is proposing the suspension of standing orders to take the third reading. Let us do it formally, those in favour please say aye; against, no. The ayes have it. The ayes have it. We will take the third reading, Mr Kniveton.

**Mr Kniveton:** Right, sir. It is much repeating what has been said of course but I do thank you, sir, for that. The Airport and Civil Aviation Bill 2001 is a Bill that is promoted by the Department of Transport and the Bill will amend the Airports and Civil Aviation Act 1987. It will enable the department to make application orders which apply European Community instruments dealing with civil aviation matters to the Isle of Man as part of Manx law. Mr President, I beg to move that the third reading of the Airport and Civil Aviation (Amendment) Bill 2001 be approved.

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

**The President:** Mr Lowey seconds. Mr Waft.

**Mr Waft:** Just for a point of clarification, Mr President, for my own benefit. Would this alter the situation now where an airline would in effect if they decide to change the routes or put any different aircraft on or indeed new aircraft coming in and the set-up with regard to Heathrow, et cetera, and the slots, would they be now having to comply to the European Community for that to proceed or is it still under the enactment of the Civil Aviation Authority to decide on what they can do and what they cannot do?

**The President:** Mr Kniveton.

**Mr Kniveton:** Mr President, a quick answer to that, so far as I am aware, is that it does not. Slots and such like do not come into this particular Bill. They are entirely different subject. That is all I have to say on that one, sir.

**The President:** Okay? Hon. members, the motion before you is that the Airports and Civil Aviation Bill be read for a third time. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

**Electricity (Amendment) Bill — Second Reading Approved —  
Standing Orders Suspended — Third Reading Approved**

**The President:** The final item on our order paper is number 9, the Electricity (Amendment) Bill for second reading, Mr Lowey.

**Mr Lowey:** Thank you, Mr President. The object of this bill, which is promoted by the Department of Trade and Industry, is to enable the Manx Electricity Authority to lay gas pipes for the purpose of supplying gas to its generating stations. It is unlikely that the MEA would use its powers to compulsory purchase land, we would seek to use its powers to compulsory purchase rights in land. This Bill replicates the authority that the MEA have at the moment for putting power cables in and this is really just to give them the opportunity to put in a pipe line to supply the main energy to its power stations. Mr President, the Bill is simple, it is two clauses and I do not think I need to elaborate much further on it than that. I beg to move the second reading of the Electricity (Amendment) Bill 2001.

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

**The President:** Mrs Christian.

**Mrs Christian:** Just to say that the Bill is to be welcomed if it is going to facilitate the introduction of gas lines to the Island, gas supply. It is perhaps to the lay person a strange thing that we need to have a statutory authority to dig holes in the ground to put a gas pipeline in but we are advised that that is necessary and so it is good to see the Bill before us so that this matter can be progressed.

**The President:** Hon. members the motion before you is that the Electricity (Amendment) Bill 2001 be read for second time. Those in favour, please say aye; against no. The ayes have it. The ayes have it. Mr Lowey.

**Mr Lowey:** Can we move into committee, Mr President, to deal with the clauses of the Bill?

**Members:** Agreed.

**The President:** Hon. members, in that case if you are happy that we should move straight on to the clause stage, then I will ask Mr Lowey to take clauses 1 and 2.

**Mr Lowey:** Thank you, Mr President. Clause 1, this clause inserts a new section 15A into the Electricity Act 1996 to give the MEA express power to lay gas pipes with ancillary apparatus to carry gas to its power stations and also to lay, at the same time, gas supply pipes and conduits for electricity and telecom cables. The principal effect of this is to give the MEA the power to acquire compulsorily, either the land in which the pipes are to be laid or the legal right to lay the pipes on that land, but without ownership of the land. The MEA has power to acquire land compulsorily for the purpose of any of its functions under the Statutory Boards Act and making the laying of such pipes a function of the MEA automatically gives it that power for that purpose. I do not intend, Mr President, to itemise all the sub-clauses, but they are mirrored in the supply of energy which is in the Electricity Act, so it is not giving them more rights, it is just extending it to the laying of gas pipes. Clause 2 is the short title of the Bill and therefore I beg to move clauses 1 and 2 stand part of the Bill.

**Mr Waft:** I beg to second, sir.

**The President:** Seconded by Mr Waft. Mr Crowe.

**Mr Crowe:** Mr President, could I ask the hon. mover, he mentioned that you need not necessarily acquire the land, you can just dig trenches through the land. Now I know that MEA when they have wires crossing the land, or cables, there is a wayleave agreement and will a similar thing apply?

**Mr Lowey:** I can assure the hon. member that is the intention of the Authority, to go in for the same sort of financial arrangements, wayleaves. They have in the power. Energy is to be put forward with a gas pipeline under the land. The Authority exercises its power with due diligence, it likes to get the consent of the landowner for obvious reasons. It is only as a last resort that they have to compulsorily acquire, but I do think that the formula is in being and I am sure that same formula, or something similar, will be with the landowners. I think it is incumbent on the department and the MEA to have good working relationships with the people whose land it will affect. I think that is understood and I hope the Authority is already getting on with what I would call the connections on personal levels to allow it to go ahead in the short timescale that is available to it.

**The President:** Mrs Christian.

**Mrs Christian:** Yes, Mr President, can I just say that I think it is also useful that the Bill allows the MEA to run alongside the gas pipelines, conduits for electricity lines and telecommunications apparatus. There is no doubt that in the future if we need the telecommunications to be strengthened and perhaps through land lines rather than overhead lines is going to be very important and it is sensible to make provision where we are creating underground routes to make provision for carrying other than the gas pipelines, so that is to be welcomed.

**The President:** Well, Mr Lowey.

**Mr Lowey:** I would concur with everything that Mrs Christian has said and it is interesting to note that the telecommunications suppliers have certain rights of access to land at the moment anyway. But you are absolutely right, let us have the disruption once and get the conduits in, which then can be simplified and I think that is the right way to do it.

**The President:** Hon. members the motion before is that clause 1 and 2 of the Electricity (Amendment) Bill be approved. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

**Mr Lowey:** Mr President, could I go for the hat trick and ask Council if they would suspend. It is an uncontentious Bill, there is a timescale on it and it would be beneficial to the Authority to have it clear its parliamentary hurdles at the earliest opportunity. I would ask for the suspension of standing orders to take the third reading.

**Mr Delaney:** Agreed.

**The President:** Hon. members are you agreed that we take the third reading? You are? In that case, I call upon Mr Lowey to take the third reading of the Electricity (Amendment) Bill.

**Mr Lowey:** Thank you Mr President. I have nothing really to add to what I have already said. Therefore I would formally move the third reading of the Electricity (Amendment) Bill 2001 do pass. I beg to move sir.

**Mr Waft:** I beg to second, sir.

**The President:** Seconded by Mr Waft. Mr Delaney.

**Mr Delaney:** I would have just hoped that my colleagues would have moved an amendment to change the title to the Bank of Scotland! *(Laughter)*

**The President:** Hon. members the motion before you then is that the Electricity (Amendment) Bill be read for a third time. Those in favour, please say aye; against no. The ayes have it. The ayes have it. That draws to a conclusion the order paper for today. I would have to say that whilst Mr Lowey used the word 'non-contentious', I think items 8 and 9 are probably less contentious than what item 7 was for the suspension of standing orders. However, Mrs Christian.

**Mental Health (Amendment) Bill — Standing Orders Suspended —  
Second Reading Approved — Clauses Considered — Standing Orders Suspended —  
Third Reading Approved**

**Mrs Christian:** Yes, Mr President, as the members are willing to suspend standing orders I wonder if it would be in order for me to seek your indulgence and the indulgence of Council to consider the further readings and clauses of amendments of the Mental Health (Amendment) Bill, which in itself is, I hope, a non-contentious measure, for which we would like to ensure that the Bill does meet an early conclusion in order to give the people who are acting at the moment, in a temporary manner, the security of a statutory backing. May I, Mr President seek to suspend standing orders in respect of the second reading of the Mental Health (Amendment) Bill.

**Mr Waft:** I second that, Mr President.

**The President:** I am content hon. members if that is what you wish to do. It seems to me that in fact we could take the second reading and perhaps leave the clauses and third reading to the next stage, or were you wishing to address it further? Let us see how it goes. Well, hon. members, the proposal is that we suspend standing orders to revert back to the Mental Health (Amendment) Bill and to continue at this stage the second reading. Those in favour, please say aye; against no. The ayes have it. The ayes have it. So we will therefore move on to the second reading of the Mental Health Amendment Bill.

**Mrs Christian:** Thank you, Mr President. The Bill as I indicated earlier this morning is to bring in line the functions of the Mental Health Commission with the function of the Mental Health Commission in the United Kingdom in respect of receiving reports of special treatments and so on to ensure that the Mental Health Commission has the proper authority, is in fact vested with the authority to carry out these functions in the future. I did outline in some detail at the first reading, the functions of the Bill, therefore I simply wish to move the second reading at this point.

**Mr Waft:** I beg to second sir.

**The President:** Seconded by Mr Waft. The motion, hon. members, is that the Mental Health (Amendment) Bill 2001 be read for a second time. Those in favour please say aye; against no. The ayes have it. The ayes have it. We move on to the clause stage, in which case, hon. member, clauses 1 and 2 together.

**Mrs Christian:** Thank you. Clause 1 transfers to the Mental Health Commission certain functions under the Mental Health Act 1998 which are currently the responsibility of independent persons appointed by the department under section 120 of the Act. Subclause 1 substitutes a new subsection (3) under section 69 of the Act, which will require the department to consult with the Mental Health Commission on any report received from the patient's registered medical officer under section 69 (1) of the Act. Subclause (2) substitutes a new subsection (1) under section 118 of the Act which will require the department to arrange for the Mental Health Commission to visit and interview detained patients and to investigate complaints. Subclause (3) amends section 117 of the Act which gives certain persons the right to visit and interview any patient detained in a mental nursing home and to inspect any records relating to the patient's treatment. This now includes any person authorised by the Mental Health Commission to investigate complaints and generally keep an eye on detained patients under section 118. Subclause (4) amends section 121 of the Act which lists the functions of the independent doctors and other experts under the Act. The list is amended in allowing the transfer of functions previously referred to in subclauses (1) to (3). Clause 2 provides the short title and commencement of the Bill. I beg to move that clauses 1 and 2 do stand part of the Bill.

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

**Mr Waft:** Mr President, I would just like to point out that we should underline the fact that it is a very serious issue to detain someone against their will, whether it is under legislation or whatever, and we should not treat this too lightly, especially with regard to the Human Rights Act which will shortly be in being. There must be sets of regulations which they must adhere to for instance, the situation with regard to the problems they have at the prison. There are rights, everybody has a right and the Mental Health Commission must have cognisance of the new fundamental rights that will be in due process. So I would suggest that they take very great care when they exercise their duty. I am sure they will, but it is just that the new legislation which we have to comply with and they will have to comply with and the new legislation coming out of Europe will have to be complied with and just to be aware of that for the future. Thank you.

**The President:** Mr Crowe.

**Mr Crowe:** Could I just ask how many members are there in the Mental Health Commission? Do you have their names?

**The President:** Before Mrs Christian replies, for my own purposes, perhaps Mrs Christian you could tell us, if you know, does this Bill also apply to juveniles, or is it purely to adults in detention, bearing in mind Mr Waft's point? Mrs Christian to reply.

**Mrs Christian:** Yes, Mr President, can I say that I endorse entirely the views expressed by the hon. member, Mr Waft. I think it is because these are such serious issues in relation to detention that we are seeking to make these amendments to give the Commission the authority to carry out this review work. It is rather a more strengthened situation than giving the individual members of the commission that responsibility and it is their view that they would wish us to make this change and I fully endorse what they want to do. I feel quite sure, and the department will certainly be making sure, that any procedures which are applicable in relation to detention do have cognisance of the human rights legislation and I have no doubt that the Commission itself will also be very cognisant of the human rights legislation. There are codes which apply to all of these situations and I feel quite sure that the codes will be updated in line with any changes in that particular area. With regard to the membership of the Commission, I think from memory there are three lay people and two professionals on the Mental Health Commission. At the moment the two mental health professionals are United Kingdom professionals in order to sustain their independence from the local professional body. The lay people include Mrs Mary Cringle. We are short one lay person. We did have Mr Weldon Williams who has recently stepped down and we have yet to replace him and the third person is. . . his name escapes me but he was the Industrial Relations Officer. . . Derek Harper is the other member of the Commission. With regard to the position of juveniles, I think, Mr President, this also covers juveniles. Anybody who is detained, and juveniles can be detained in the same way as adults. I believe that it covers juveniles as well.

**The President:** In that case, hon. members, the motion before us is that clauses 1 and 2 do stand part, in fact make up the whole, of the Mental Health (Amendment) Bill. Those in favour please say aye; against no. The ayes have it. The ayes have it.

**Mrs Christian:** Mr President, I am loathe because we are dealing with all these Bills in one day to seek suspension, but I will do so and will not be in any way offended if members say no, particularly as I have answered a question in terms of saying I believe this to be so. There may be some concern about that and you may prefer that I confirm that interpretation before the third reading. So I will leave it with you. I will seek to suspend standing orders, Mr President, in order to consider the third reading. If members are in any way doubtful, I will quite understand they do not accept that. But I will in any case circulate information to members if what I have said is not correct.

**Mr Waft:** I second the suspension of standing orders. I am sure the department will investigate thoroughly the probity of the situation that they are in.

**The President:** I raise it because I wondered in fact if it does not may be it ought to. That way in relation to your human rights legislation. Hon. members, the motion before you is that we suspend standing orders to take the third reading of the Mental Health (Amendment) Bill. Those in favour please say aye; against no. The ayes have it. The ayes have it. Mrs Christian.

**Mrs Christian:** Thank you, Mr President. In moving the third reading I seek the support of members of Council to allow us to make this change as soon as possible. The Mental Health Commission members certainly would wish to see this change made within a very short timescale, if that is possible, so that they have the benefit of acting as a body to carry out functions which have been outlined in relation to the Bill, rather than them being appointed as individuals, which they have very willingly agreed to do, but with some reservations over the recent weeks. I therefore beg to move the third reading of the Mental Health (Amendment) Bill 2001.

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

**The President:** Mr Kniveton seconds. The motion hon. members is that the Mental Health (Amendment) Bill be read for a third time. Those in favour please say aye; against no. The ayes have it. The ayes have it.

#### **Education Bill — Report of Conference — Council Amendment to Clause 12 Withdrawn**

**The President:** Now that draws us to the conclusion of our order paper, hon. members, but as we did break into private at lunch time, I would wish to clear in a formal manner the position with regard to the Education Bill. Following our amending of clause 12 to delete the word, 'broadly', the House of Keys did not accept that amendment and subsequently then a committee of three members from each branch met in conference to seek a solution. The report from our Council deputation was to the effect that the Bill had been well received by Council and they did not wish to jeopardise its progress and delay it any further. I have written to the members of the House of Keys indicating that Council regretfully are prepared to withdraw the amendment, deleting 'broadly' whilst hoping that the members of the Keys appreciate the rationale behind the proposal. Hon. members with your concurrence to the withdrawal of the amendment the Bill can now progress to its next stages and signing in Tynwald. Are we agreed hon. members?

*It was agreed.*

**The President:** In that case that puts it in a clear and I think formal manner the position with the Education Bill for Hansard and that clears it completely. Council will now adjourn to the sitting of Tynwald Court on Tuesday 19th June at 10.30 and thereafter to Tuesday 26th June again at 10.30. Thank you, hon. members.

*The Council sat in private.*