

**REPORT OF PROCEEDINGS OF  
LEGISLATIVE COUNCIL**

**Douglas, Tuesday, 31st October 2000  
at 10.30 a.m.**

Present:

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

*The Lord Bishop took the prayers.*

**Apologies for Absence**

**The President:** Hon. members, we have apologies this morning from Dr Mann, who is indisposed.

**Welcome to Visitors**

**The President:** I would like to welcome into our public gallery the members of the sixth form of Ramsey Grammar School, who are joining us to watch our deliberations this morning.

**Office Accommodation for Government Use — Question by Mr Lowey**

**The President:** Turning then to our order paper, hon. members, and the first item is questions and I call on the hon. member Mr Lowey.

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

- (1) *How much office accommodation was occupied by government and its agencies in 1999;*
- (2) *how much new office accommodation has been completed, purchased or leased for use by government or its agencies during the present year; and*
- (3) *how much new office accommodation for use by government and its agencies is programmed for the next 18 months?*

**The President:** I call on the member for Council, Mrs Christian, to respond.

**Mrs Christian:** Thank you, Mr President. In broad terms the government occupied approximately 351,400 square feet of office accommodation in 1999 of which approximately 69,300 square feet was rented.

During the present year the estates and housing division of the Department of Local Government and the Environment has leased the new office development at 27-29 Prospect Hill, which is approximately 9,250 square feet.

Over the next 18 months the Department of Local Government and the Environment, in its capacity as the main provider of government accommodation, will be leasing a new office development at the former Finch Hill Church site, which is approximately 20,000 square feet, and approximately 17,250 square feet in the new office development at St George's Court in

Hill Street. The former accommodation is for the Financial Supervision Commission, the companies registry and the financial crimes unit, whilst the latter is for the Department of Education. In addition, accommodation will be provided for the census staff, the expansion of the public record office and additional space for the Department of Trade and Industry.

**The President:** Mr Lowey.

**Mr Lowey:** Yes. Mr President, would the minister not agree that it is the government's policy to diversify government departments into various places throughout the Island as opposed to Douglas and is the increase of over 50 per cent of office accommodation, which is the increase which the minister has said is going to be added to the stock in the next 18 months, all in Douglas, and how does that square with government policy to diversify government departments into the out towns?

**The President:** Mrs Christian.

**Mrs Christian:** Yes, Mr President, certainly it is one of the aims of government to explore the possibility of moving departments out of Douglas. However, that has its own difficulties which have been explored by a number of committees. The provision is, as I indicated, within Douglas in terms of the expansion for the next 18 months.

**Mr Lowey:** But would the minister not agree that that is a contradiction in terms: if it is the policy, then government should be working towards that policy?

Would the minister also agree with me that the Department of Agriculture and Fisheries, which is situated in Markwell House and is to be relocated less than 200 yards away in Hill Street, seems to me a prime candidate for one of the departments that should be relocated in the countryside and out of town?

**The President:** Mrs Christian.

**Mrs Christian:** Mr President, I would not agree with the hon. member that willy-nilly departments should be relocated out of town. It would certainly make sense in certain cases and I would agree with him that the question of the Department of Agriculture's position could well be explored. However, with regard to the departments which I have indicated, the Financial Supervision Commission, the companies registry and the financial crimes unit, for example, which are going into new accommodation, sensibly need to be based in Douglas. It is of no real benefit to place them out of town if this involves a lot of commuting for staff to carry out work which needs them to be based in Douglas.

**Mr Lowey:** Could I -

**The President:** No, well if you could just hold on, I do not want to get into a debate on how we should shuffle the various things around, but hon. member.

**Mr Lowey:** The point, I think, is germane. Can the minister explain to this Council how the proposed government new office accommodation, which proposes no new accommodation out of town, is compatible with the government's declared policy aims?

**The President:** Mrs Christian.

**Mrs Christian:** Mr President, the question of whether or not in the immediate future it is possible to place any of these departments out of town has been explored and is a matter

which is undergoing continuous review, but the fact of the matter is there is no position at the moment where office space is readily accessible out of town and suitable for some of these departments.

**The President:** Mr Delaney.

**Mr Delaney:** Mr President, bearing in mind the modern communications systems that are available, surely the personnel employed by the government, and would the minister agree with me, if they are employed with no direct contact with the public or providing back-up services, they do not need to be in Douglas, if they are purely working from their offices out there rather than dealing direct with the public over the counter?

**The President:** Yes, well again we are widening the question to the debate on the policy, but Mrs Christian.

**Mr Delaney:** It comes up in the question that was asked before.

**Mrs Christian:** Yes, Mr President, there is a lot in what the hon. member says, but the analogy is made that people who do not need to come into contact rarely applies in respect of many of these jobs. They do need to come into contact, if not with all the public, certain specific areas of it in order to carry out their work and at the same time as requiring to be in the locality where the problems that they are dealing with arise, there is this other issue, which we are constantly being reminded of today, about the environmental practice which is involved if you place everybody outside of the area in which they seek to carry out most of their work you are adding to the problems of traffic and environmental pollution and so on. I accept that that is a minor consideration in these issues, but I think analysis has shown that most of these people are in Douglas because that is where the majority of their work needs to be carried out.

**The President:** A final supplementary, Mr Lowey.

**Mr Lowey:** Yes, Mr President, this year and the next 18 months government are going to add about nearly 60 per cent to its office accommodation. What is going to happen to the existing accommodation and has the minister any figures to tell me has the government got rid of any of the office space which it is going to move out of?

**Mrs Christian:** Mr President, I do not know where the hon. member is getting 60 per cent from: it does not match with my mathematics. The accommodation which is required, no, as far as I am aware they are not getting rid of any of this accommodation. As far as I understand, it is needed for those people who government demands are employed to provide services and where you have those demands for services, you need people to fulfil the jobs that government is building upon in departments. For that reason it is necessary to provide them with office space within the town.

**Investment Business Act 1991 — Banking Act 1991 — Written Notices —  
Question by Mr Lowey**

**The President:** We will go on to item 2, hon. members, and again I call on the hon. member Mr Lowey.

**Mr Lowey:** Yes, thank you. I beg leave to ask a member of the Treasury:

(1) *How many written notices have been issued in the last 12 months under -*

- (a) *section 10 of the Investment Business Act 1991; and*
- (b) *section 16 of the Banking Act 1998;*
- (2) *have the relevant bodies been informed; and, if not,*
- (3) *what is the result of the consideration given to making a wider promulgation of the existence of such notices which was promised by the Minister for the Treasury during the sitting of Tynwald on 21st March 2000?*

**The President:** On this occasion it is the member for the Treasury, Mr Radcliffe, to respond.

**Mr Radcliffe:** Mr President, there have been no notices issues under section 10 of the Investment Business Act 1991 during the past 12 months, nor have there been any notices issued under section 16 of the Banking Act 1998 during the same period. In the light of the above answers there were no relevant bodies, therefore, to be informed of any notices during the period.

I am not aware that the wider promulgation of the existence of section 10 notices was specifically promised by the Treasury minister during the sitting of Tynwald on 21st March 2000. What was indicated, however, was that there would be a review of the commission's policy in the light of advice sought from the learned Attorney-General's Chambers. The commission has since had further correspondence and discussions with the Attorney-General's Chambers regarding the future publication of section 10 notices.

The commission has noted that the learned Attorney-General remains of the view that although the Financial Supervision Commission is empowered to make such publication as part of its general functions, the exercise of such power must be viewed with extreme caution, taking into account the particular circumstances of each case. It is probable, in fact I know it is more than probable, that the FSC will once again revert to the Attorney-General on this matter in the light of its desired wish to reinforce its policy to name and shame.

**The President:** Mr Lowey.

**Mr Lowey:** In consideration can I draw the member of the Treasury's attention to the reply given by the minister to me in Tynwald on Tuesday, 21st March 2000 and he quite clearly led the Court and myself to believe and in fact the last couple of sentences to my supplementary were 'In fact wider publication would also be consistent with the commission's wish to reinforce its name and shame policy, so maybe things are not happening as quickly as the hon. questioner would wish it to be, but it is being addressed.' So I think there is a clear indication there that it was to be addressed and that was nearly five months ago and I think the question is germane: have they readdressed it and is it not a fact that it is impossible for the public to know if somebody has been struck off the register and not allowed to practice if that is kept secret? And the relevant associations to which these chartered accountants and others belong should be informed as to the misdemeanours practised here in the Isle of Man.

Would the member of the Treasury also not agree that although it is relevant and has been said regularly by the commission that it is not their policy, can he also explain to me why the self-same commission informed an off-Island journalist as to somebody who had been struck off and yet denied that information to somebody here living on the Isle of Man?

**The President:** Mr Radcliffe.

**Mr Radcliffe:** It is a job to find a supplementary in that, Mr President -

**Mr Delaney:** It is to the last part we need an answer.

**Mr Radcliffe:** - but as I have already said in my initial answer to the hon. member, it is the Financial Supervision Commission's desire to name and shame, but in the light of advice sought and received from the learned Attorney-General's Chambers, what has been told by those chambers is that they must exercise extreme caution, taking into account the particular circumstances of each and every case, and as I also informed the hon. member, the FSC are in touch once again with the learned Attorney-General's Chambers about this name and shame which they decided to do but they have been advised that they should not be too quick on the ball, shall we say, they must review and see what effect possibly such naming and shaming could have.

**The President:** Mr Delaney.

**Mr Delaney:** Bearing in mind the answer that has been given by the member of the view that is taken by those concerned with this matter, does he think that is in the interest of the public, that they should know who is liable to con them?

**The President:** Mr Radcliffe.

**Mr Radcliffe:** Yes, of course it is in the public interest, but if the commission have been advised by the highest legal minds in the land they must be very, very careful, they obviously will not go against such advice and name anybody and everybody willy-nilly.

**The President:** Mr Attorney.

**The Attorney-General:** Mr President, I wonder if it would be appropriate for me to make one or two comments, hopefully with a view to assisting the hon. member. It is perfectly true that the Financial Supervision Commission has been in touch with me to discuss this area.

The question relates to section 10 of the Investment Business Act and that is a section which deals with the powers of the commission where people wish to be appointed as directors or other officers of businesses which are involved in investment business and so on and that section enables the commission to give written notice to an individual applicant that the commission are of the view that that particular person is not a fit and proper person, and of course that decision of the commission may be given for all sorts of reasons, often in reliance upon information which is given to the commission from supervisors in other jurisdictions and from other people who might have information of a confidential nature relating to a particular person.

Now, having said that, it is perfectly true that there is another relevant statute, the Financial Supervision Act, which empowers the commission, it does not place a duty on the commission, but it empowers the commission to publish information or give advice to the public in relation to the commission's functions under various legislation, including the Investment Business Act. So the argument would run that if the commission are empowered to publish information in relation to their functions, including their functions under the Investment Business Act and particularly section 10, why is it that the commission will not make publications of the section 10 notices? And that is a question which has caused me some very

anxious consideration. It is a balancing act, as often these things are. We have to balance on the one hand the right of the public to know if someone is not a fit and proper person to carry on investment business but equally we have the right of an individual to have his affairs kept private and confidential. Now, I know that that might strike a chord, but what I am concerned about is that sometimes the publication of a notice that someone is not a fit and proper person can have a catastrophic impact on that particular person and as I say, a person may be not fit and proper for all sorts of various reasons.

My concern from the commission's point of view is that if they want to have a name and shame policy, and I understand of course that that is indeed their policy, they should be protected by specific legislation which empowers them to do that and my appreciation of the legislation at the present time is that there is not specific power for the commission to name and shame. As and when that power is conferred upon the commission by statute, then of course they will be free to make such publications as they think fit, but in my opinion the present state of play requires the commission to treat each application with extreme caution. That is, I think, the reason why the hon. member for the Treasury has framed the answer in the way he has done.

**Mr Delaney:** A question, Mr President.

**The President:** Mr Delaney.

**Mr Delaney:** Can you tell us, bearing in mind how a short time ago we passed that legislation, when this new legislation is due to come before the branches so we can actually do what you have outlined you wish to see done, and the second question: between the person who should be named and shamed and the general public, which is the priority?

**The President:** Now then, Mr Attorney, do you wish to respond?

**The Attorney-General:** Well, Mr President, I am afraid I cannot answer the first part of the question. I do not know the timetable. All I know is that there is a policy of the commission. I do not know whether the hon. member can assist me in that respect. I really do not know what the timetable is.

But I do understand the concern of the hon. member Mr Delaney. Of course if people run the danger of being defrauded by people who are not fit and proper they may very well ask, 'But why weren't we warned about it beforehand?' I am very anxious about that. However, I am also anxious about the powers of the commission in statute to name and shame. My view is that there is not a specific power there and given the existing legislation we have to look at the interests of the person who is subject to the section 10 notice.

**The President:** Mr Lowey.

**Mr Lowey:** Could I ask the learned Attorney? If a company malfunctions it gets struck off the register and it is published in the paper and the actions that will take place with this person who is struck off, he is struck off because of a proven misdemeanour. He will not be struck off lightly, it is after due diligence. Now, meanwhile what the Attorney is really saying is that he can hide under a cloak of anonymity and practise those things, and that is not right, surely, it cannot be right, and again, although it is the proclaimed thing of the Financial Supervision not to disclose, I have before me a letter from the then chief executive, Mr Noakes, giving details of a person being struck off under a section 10 notice and this person is an off-Island journalist

in another jurisdiction. At the same time the Financial Supervision in the Isle of Man was refusing to give that information to people here on the Isle of Man who were being, or they thought were being, defrauded. That cannot be right under any circumstances and doesn't this sorry affair need to be a high priority and a fast-track solution found?

**The President:** Well, I think we are in danger again of widening out a question to a debate and even a policy debate on how you handle legislation. Mr Radcliffe, have you got anything that you would like to add?

**Mr Radcliffe:** Yes, I would just like, if I may, to tidy up. I am obliged to the learned Attorney-General for his contribution and hopefully clarification of some of the points which hon. members have raised.

I do know that the commission is anxious to firm up their desire to be able to name and shame at will. If new legislation is required, as the learned Attorney would suggest, I am sure the commission will seek to have that introduced and it is a question of legislative time and so on, but I think their desire, the commission's desire, is certainly there. In reply to the hon. member Mr Lowey, I would suggest, sir, that a copy of the letter could be useful to me -

**Mr Lowey:** Certainly.

**Mr Radcliffe:** - and I would be obliged and will certainly use it in furtherance of the debate here this morning.

**Mr Delaney:** Could I ask another supplementary, a short one, Mr President?

**The President:** Yes.

**Mr Delaney:** Bearing in mind what has been said here this morning and the concerns rightly expressed by the learned Attorney, can we ask the member for the Treasury to take back the concerns of this Council that this legislation should be given some priority so that we can actually be seen to be controlling these people who are dealing with our public?

**The President:** I am sure he would do that.

**Mr Radcliffe:** I am quite happy to give that affirmation that I will certainly bring members' concerns to the notice of the Treasury and will indeed press Treasury to move on new legislation if that is really required.

**The President:** And I think a final input on this particular question, the Lord Bishop.

**The Lord Bishop:** Well, I only wanted to ask the Attorney-General if the situation becomes even more difficult with the Human Rights Bill which we are considering at the moment. That must have an impact on anything that we might be asking for in this area I would have thought.

**The President:** Mr Attorney.

**The Attorney-General:** Thank you very much, Mr President, just two or three comments if I might.

There was an important issue raised by the hon. member Mr Lowey in relation to companies. Can I just say that the commission have adopted a very active campaign in relation to directors who are considered not to be fit and proper to carry on the business of companies. Under section 26 of the Companies Act the commission can bring proceedings

under the Companies Act so that individuals are declared not to be fit and proper and they can be disqualified from acting as directors of companies for several years and that is a campaign which I think hopefully would go some way to assuaging the concerns of the hon. member.

Could I also confirm that the advice I have given is that it is possible to publish the fact that a section 10 notice has been issued in relation to an individual, but it is not possible to give the reasons why the person has been considered to be not fit and proper.

That of course leads me to answer the question from the hon. member, the Lord Bishop. I feel quite sure that this is a matter which has to be reviewed in the light of the Human Rights Bill because of course article 6 of the convention requires that there should be a fair hearing and it may be that the procedures of the commission under section 10 are not fully compliant in that respect.

So there is a lot of work to be done in this area, Mr President, and I feel that we have to, as I say, treat the matter with great caution.

**Mr Delaney:** Thank you.

### **Personal Pension or Annuity — Guidelines — Question by Mr Waft**

**The President:** Okay, well we turn to item 3 on our order paper and I call on the hon. member Mr Waft.

**Mr Waft:** Mr President, I beg to ask a member of the Treasury:

- (1) *What guidelines will be made available to those members of the public who wish to set up a personal pension or annuity for their future which will keep pace with inflation, equivalent to superannuation schemes available to public sector workers; and*
- (2) *is there a possibility of Treasury setting up a joint scheme for those who are not in a superannuated position?*

**The President:** And again it is the member of the Treasury, Mr Radcliffe, to reply.

**Mr Radcliffe:** Thank you, Mr President. Can I say that no guidelines are currently issued. There are, however, new provisions being introduced in the United Kingdom which will require the disclosure to a member of his or her projected retirement income. Our Department of Health and Social Security here are reviewing the matter with a view to introducing it for the Isle of Man. The likely effect is therefore that an individual setting up a personal pension or annuity would be informed - and this is the ideal of course - would be informed annually as to the likely value at today's prices of the benefits accrued. The individual would therefore be able to reach a judgement as to any adjustment in the funding of that pension fund that would may be required in the light of change in circumstances with the advice that he would receive.

The second part of the hon. member's question seems to relate, I think, to his wish to see government establishing a pension scheme for all those Island residents who do not enjoy the benefit of an employer-sponsored pension scheme. Government, I think it is not unfair to say, already sponsors in a manner such schemes indirectly by allowing relevant tax relief and tax breaks for people who are investing for pension purposes and I think it is probably unlikely that the Treasury would support such a proposal as is encompassed within the question. However, the Treasury is currently examining the possibility of enhancing the reliefs which are

given, the relief and tax breaks, in order to provide some government incentive to Island residents to make pension arrangements for themselves.

**The President:** Okay, Mr Waft, all right?

**Mr Waft:** Mr President, just one supplementary. I would like to thank the member for his reply and his positive note with regard to enhancing reliefs and tax breaks. The problem is not the annual adjustments that might not be necessary and the UK projections for the future, my main concern is for the future of those who are not in a superannuation scheme and young people starting off in life, and would the member agree with me that there is a confusing number of options for young families to understand when planning for their own and their family's future? Government, as I understand it, is actively encouraging youngsters nowadays to take out their own pension plans for the future and they are faced with things like what is meant by endowments, term insurance, TESSAS, tax-exempt special savings accounts that pay interest-free, which is replaced by ISAs, which we cannot have in the Isle of Man, trade and endowment policies, unit trust, venture capital trust, with profits bonds, mutuals, friendly societies, gilts, index-linking, index-tracking, inflation, RPI, before or after inflation, PEPS, personal equity plans, portfolio and management, premium and net asset values, surrender values et cetera, et cetera? There is a multitude of financial advisers out there able to give them advice on that, but would it not be within the bounds of Treasury or some office within Treasury to give independent advice to young people starting off in life, and I know everybody has a different set of circumstances, but they would be getting independent advice which is not tied up with any particular scheme.

**The President:** Well, we are certainly not going to go through that list this morning (*Laughter*) but having said that, the Treasury member, Mr Radcliffe, you can respond if you wish.

**Mr Radcliffe:** Well, thank you, Mr President. The important part of course is the advice given to people initially and different companies, I think, give different advice and there are, as the hon. member said, a lot of different options available, and certainly government is looking to encourage people to make arrangements for their future.

As to government actually giving advice as such and taking the place of a financial adviser, I think if that were to be the case there would be a cost involved and probably government would seek to recoup some or all of that cost.

The hon. member has produced a formidable list of terms to do with insurance of all sorts and I would suggest that there are available, I think, leaflets which do clarify all those things. Young people are so busy with other thoughts in their minds that they do not always bother to look at leaflets and the like which are around, but certainly I will bring the hon. member's concerns and suggestion about advice from government, back to Treasury and at this moment I can do no better than that, Mr President.

**The President:** Mrs Christian.

**Mrs Christian:** Yes, a supplementary, thank you, Mr President. Whilst the hon. member has referred to the role of the Department of Health and Social Security in relation to some pension provisions, would the hon. member confirm that it by no means covers all pension provision, given that the hon. member for Council, Mr Waft, has outlined many savings plans

and so on? Would he please confirm that those areas fall outwith the DHSS responsibility, notwithstanding the DHSS is in the business of trying to encourage young people to look ahead and make their own provision, and I accept the point made by the hon. member Mr Waft that we should ensure somehow that proper advice is given, whether it be through the offices of independent financial advisers or the IPA or some other arm of the Treasury.

**The President:** Mr Radcliffe.

**Mr Radcliffe:** Yes, I can confirm what the hon. member has said, Mr President, that I do take on board the question of advice to people.

**The President:** Mr Crowe.

**Mr Crowe:** Thank you, Mr President. Would the hon. member just agree that people have to be cautious that, when investing, they have to go for approved schemes which give Isle of Man tax relief? There are a lot of advertisements for various schemes which may not necessarily generate Isle of Man tax relief so they need to fit something that is suitable to an Isle of Man context.

Would the hon. member, on a second point, just inform the Council about the UK stakeholder pension schemes which are coming in next year and as to whether the IPA are taking any measures in the Isle of Man to introduce some sort of stakeholder pension scheme which would have a parallel benefit to the UK schemes?

**The President:** Mr Radcliffe.

**Mr Radcliffe:** Thank you, sir. I think, in reply to the first part of the hon. member's questions, the important part for young people is to seek financial advice. Salesmen are good at selling their product whether it is a good one or a bad one and the independent financial adviser, I think, is essential for young people to get. It may cost a bob or two but it could well save hundreds of bobs or two at the end of it.

In reply to the second part of the hon. member's question about stakeholder pensions, I can confirm that the IPA are currently looking at this and we are certainly aware and are looking.

**The President:** Okay. Mr Waft.

**Mr Waft:** Just with regard to one item which the member referred to with regard to recouping the cost, would the member agree with me that for a young family to make the wrong decision early on in life could result in the long term with a considerable cost to the government to have to pay out to subsidise a pension where they need not necessarily have done so if they had taken the right advice in the first place?

**The President:** Mr Radcliffe.

**Mr Radcliffe:** Well, that is obvious, Mr President, that the wrong decision can cost not only the people involved with government as well and money in the long run and, as I said initially, it is essential for young people to seek the independent financial advice. It is all very well sitting in the kitchen with a salesman and saying, 'Oh, this sounds good. Tomorrow morning you have got to go and see an IFA and just find is it as good as that person said, and the essential part again is, I would say, consultation.

**The President:** Right. Okay. Well, hon. members, that concludes the question part of our order paper for this morning.

### **Human Rights Bill — Third Reading Approved**

**The President:** So we will move on to item 2 on the order paper which is the Human Rights Bill, which we have down for third reading, and I call on the hon. member Mr Waft.

**Mr Waft:** Thank you, Mr President. The Human Rights Bill 2000 gives further effect in Manx law to the rights and freedoms guaranteed under the European Convention on Human Rights which have applied to the Isle of Man since the Island ratified the European Convention in 1953.

The convention rights which already apply to the Island are covered in clause 1, schedule 1, of the Bill and the Bill provides that legislation applying to the Island, that is, Acts of Tynwald, Acts of Parliament, Church measures and all subordinate legislation, whenever enacted must as far as possible be read and given effect in a way which is compatible with convention rights.

The Bill provides that a person may seek an interpretation that legislation, whether primary or secondary, is compatible with the convention rights. If a declaration of incompatibility is made by the courts this does not affect the validity, continuing operation or enforcement of the legislation in respect of which such a declaration is made. In other words, a declaration of incompatibility is not binding on the parties to the proceedings to which it is made.

It will be a matter for government and ultimately the Island's legislature whether or not they feel that our Manx law should be amended to remove any conflict between the rights given to our people under the Human Rights Act and their own legislation. The courts cannot, because they will have no power to do so, override the authority of Tynwald and its branches.

The Attorney-General has a responsibility to advise government when a declaration of incompatibility has been made. Under the provisions of the Act it will be unlawful for a public authority to act in any way which is incompatible with the convention rights. However, there is a defence in that if, as a result of one or more provisions of an Act, the authority could not have acted differently or where one or more provisions under an Act cannot be read or given effect in a way which is compatible with convention rights and the authority was acting so as to give effect or enforce those provisions. A public authority is determined as a court tribunal and any person certain of whose functions are functional of a public nature, for example government departments, government boards and local authorities. However, neither Tynwald nor the Legislative Council nor the House of Keys nor any person exercising functions in connection with proceedings in Tynwald or any of its branches are determined as a public authority or acting as a person whose functions are of a public nature.

Under the provisions of the Bill damages may be awarded by the appropriate court against the public authority. However, the courts must take into account the principles applied by the European Court of Human Rights in relation to the award of compensation as provided under article 41 of the convention.

The Bill provides, as does the European convention which already applies to the Island, for freedom of expression, freedom of thought, conscience and religion.

There is a provision within the Bill for the Council of Ministers to permit a derogation. The Bill requires also that the explanatory memorandum of a Bill to be put before the House or the Legislative Council must provide a statement to the effect that the Bill and its provisions are compatible with the convention rights or a statement to the effect that, although the member moving the Bill is unable to make such a statement of compatibility, the member nevertheless wishes to proceed with the Bill. In either case it will be a matter for the legislature whether or not to pursue the Bill and its provisions.

Finally, there will be a considerable amount of learning required by our courts, government and other public bodies to ensure that the provisions of the Act are understood and complied with and therefore, as can be seen under clause 23 of the Bill, the Act will come into force when the Council of Ministers are satisfied that the Island is ready to progress with the provisions within the Act.

The Act can be brought into effect on such a day as the Council of Ministers determine by order and the provisions of the Act may be brought in on different days.

This is a major step forward for the Island and an important one for our people in enacting our own human rights legislation and therefore I have great pleasure in moving the Human Rights Bill 2000 be read a third time and do pass.

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

**The President:** Mr Crowe.

**Mr Crowe:** Mr President, just two articles that struck me in the UK newspapers this week which I might comment upon and one of them was yesterday's *Daily Mail* which said "Britain is the only country in the EU which takes European human rights law seriously, a senior judge said yesterday. Lord Justice Sedley, an Appeal Court judge who is training 4,000 judges in the workings of the new Human Rights Act, said the way the country was changing its legal system to bring it into line with EU rules was 'unique'. He also warned that European legislation would heavily influence the majority of future court cases. The statement from such a senior figure will reinforce critics of the Act, which became law four weeks ago. They believe European Union rules have always been brought to bear more heavily on Britain than on any other country."

The other comment again was by Fenton Bresler in *The Daily Telegraph* on Saturday and he is a noted legal commentator and in fact it picks up slightly on the hon. Mr Lowey last week talking about offences that could be relevant to the Isle of Man and the two interesting cases that he talked about where human rights are at odds with legislation, one in Scotland relating to article 6, which is the right to a fair trial, and concerns a drink-driving case, and the second one in Birmingham concerns a dangerous driving case, and both were resting on establishing who was driving a car in the respective actions and the Scottish case has gone to the Privy Council for a ruling.

So these sorts of things are important, that we have to be aware that they come right down to every aspect of law on the Isle of Man. In fact Fenton Bresler picked something up in the UK legislation which I think is relevant to ours in the interpretation and he says there is a saving grace, and I seem to agree with what he is saying, that under clause 3(1) it says so far

as it is possible to do so Acts and subordinate legislation must be read and given effect in a way which is compatible with the convention rights.

So I think with the problems that might ensue in the future there can be, shall we say, a measure of balance there and I think is very important that we recognise that. So maybe it is not all cut and dried. There again there is further interpretation of an interpretation clause.

So with those comments I support the Bill. I am very happy that it be brought into Isle of Man legislation and look forward to seeing the results of the Act in operation.

**The President:** Mr Kniveton.

**Mr Kniveton:** Yes, thank you, Mr President. Without going into the details as set forth by Mr Waft I believe it is worth reminding ourselves and indeed any interested parties, listeners, that the Isle of Man has been signed up to the Convention on Human Rights since 1953. I firmly believe that much of what this Bill is all about is that it is now considered the correct time, indeed rather overdue perhaps, to recognise the importance of making these rights more directly accessible under the convention by enabling people to enforce them in the Island's courts rather than going through a great delay and indeed the expense involved in taking cases to the European Commission and Court at Strasbourg and I believe that that is really the meat of this Bill.

Perhaps a very, very important clause, as has already been referred to by Mr Waft I think it was, in my opinion is the last one, clause 23, which states that the actual date of coming into force rests with the Council of Ministers. I believe this is an overall safeguard.

In the UK the Act came into force this month, October, after waiting some two years during which time the opportunity has been taken to carefully scrutinise all areas of legislation which will be seriously affected. I believe that it is vitally important that the same thing happens here on this Island.

A lot of work lies ahead with our learned Attorney-General and I am sure we realise that. He will be looking at so many difficulties. So I believe that this third reading should be approved with the knowledge that so many issues are considered before enactment. Thank you, sir.

**The President:** Mrs Christian.

**Mrs Christian:** Mr President, the hon. member Mr Kniveton has alluded to the fact that the human rights provisions have applied for many, many years, but it is undoubtedly the case, I think, that in passing this particular piece of legislation we are winding down the focus on the issues which are covered in here and it will mean, I think, that more people will be looking to the human rights provisions in the legislation in respect of their own particular circumstances. Now, that in many ways is right and appropriate, and as the hon. member says, it will give them the right to appeal to Manx courts for judgments under this legislation. However, I feel that there still will be a right for them to go to Strasbourg ultimately and if they are not satisfied here one can see that there may be individuals who will pursue the matter further.

I think there is a certain ambivalence about this legislation with many people, partly because they feel that it is right that we embrace the human rights convention, but there is a fear about the way in which some of these provisions might be interpreted and whether or not the interpretation of the rights will accord with what we as a community feel about a particular

situation. I think we are all perhaps a little bit concerned about how the clauses on public authorities might be interpreted. It is an area which is not clear-cut and will be the subject of judgments and I think that makes people a little bit concerned about how these judgments will be arrived at. It will involve court cases in order to establish certain principles and so there is a concern about that.

But at the same time I think that we ought to remember that, whilst people very often quote articles from the human rights legislation, they tend to quote, where there is more than one paragraph set out in the articles, the main one, the one about rights, but we do not very often hear - and I think that I probably referred to this at an earlier reading - perhaps the second part of any particular article which balances that up with certain responsibilities or abilities to prescribe those rights by law and to modify them to some degree. For example, if we look at article 11, freedom of assembly and association, everyone has the right to the freedom of peaceful assembly and to freedom of association with others including the right to form and join trade unions for the protection of interests. We often hear, for example, about those rights of freedom to peaceful assembly, but we do not often hear about the next bit which says, 'No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety.' So they are not absolute freedoms, they can be constrained by other pieces of legislation, and I think we probably need to remind ourselves of that.

I think our concerns might be the nature of European judgments coming from different kinds of legal backgrounds and the fact that judgments made at the European Court are setting precedents for our deemsters in terms of their interpretation of the law and there may be views held about whether or not European judgments sit comfortably with how we would view a certain matter.

But nevertheless I think that it is appropriate to bring it into our primary legislation. I think it will be necessary for a huge amount of training to go on in order to prevent cases arising in the future which can be avoided by proper training before the legislation is implemented and I feel quite sure it is going to be some time before the appointed day orders are made in respect of many of these clauses.

**The President:** Mr Waft, would you like to reply to the debate? Oh, Mr Lowey, sorry.

**Mr Lowey:** I support the Bill and I agree with my hon. friend when he says that most of these rights anyway have been in operation here in the Isle of Man by convention, since 1953, and I agree with my hon. colleague Mrs Christian when she says education needs to be done at central government, local government and a whole variety of levels and that is why I think government has already started these seminars educating people about human rights. I am in favour of that.

I do not believe we need to reinvent the wheel in the Isle of Man because I do believe precedents have been set. Our law is based on precedent. In the criminal law we regularly refer to cases that have been set because our law is based on United Kingdom law and I am sure a lot of this legislation will be based on decisions made elsewhere.

My only caveat is I have the right at the moment to dine at the Ritz. (*Mr Delaney interjecting*) I have that right if I can afford it. It is not much of a right, though, is it? And my view of this particular piece of legislation is, while we put a lot of emphasis on the individual

right, that is, if you can afford to do it, if you are wealthy you can exercise your right, but if you are poor and you have got to go to a lawyer I do not suppose it is going to be very easy to exercise that right and I believe a right that cannot be exercised freely seems to me not to be much of a right.

So I have a caveat there as I have expressed before, and I do not think you can under this Bill get legal aid, for example, to exercise it.

**The Attorney-General:** You can.

**Mr Lowey:** I am corrected and therefore I accept without reserve the assurance from the learned Attorney that you can have, therefore my caveat is somewhat watered down. I am very pleased to hear that, sir.

As I said, this Bill has been around a long time. I believe it is in operation in Scotland and the world has not come to an end, and it has just come into operation in the United Kingdom and although the weather has turned bad, perhaps the Lord Bishop will be able to assure me that it is not divine retribution. But, however, having said that, I think this Human Rights Bill should be enacted and the key to this particular Bill is why should Manx people have to go to Brussels to exercise their rights when they have courts here in the Isle of Man that can do it as a first port of call? And I believe that is the justification for this piece of legislation.

**The President:** Right, now, Mr Waft.

**Mr Waft:** Thank you, Mr President. I would like to thank the hon. Mr Crowe for his support and the fact that he mentions the articles in the newspapers. They do come up from time to time with regard to human rights laws and various cases before the courts in the UK and they are always items of interest in the way that they are dealt with. I think that will be coming more and more to the fore as soon as this human rights legislation is absorbed by the general public as what they can and cannot do, so testing the situation at the moment.

I thank Mr Kniveton for his support. He also mentioned the courts and the need not to go to Strasbourg and he mentioned the actual timing of the Bill and when it will actually come into force.

I thank Mrs Christian for her support as well. More people will be looking to human rights provisions, I would certainly agree with her on that, and the right to go to Strasbourg even so, having exhausted these courts, and the ambivalence that some people feel with regard to this Bill I can well understand, and the fear as to how they are interpreted and they will be subject to judgment and there will be a time during which there will be in establishment principles of what can and cannot be taken on board with regard to human rights and how they will be used by the public, where they can and cannot be used, and she also went on to explain some of the problems which need to be realised and mentions also the training. That has been mentioned in the past, that there is significant training to be undergone, especially by local authorities and lots of other areas within the Isle of Man.

I thank Mr Lowey for his support. He mentions also the need to go to Strasbourg in the past has been by this Bill and it can be taken on board on the Isle of Man, and he mentions dining at the Ritz and legal aid. I would point out that this Bill does encompass (*Mr Delaney interjecting*) the situation with regard to legal aid but the actual size of the limitations of legal aid does not come under this Bill, it needs to be addressed in another area of legislation.

I would to thank all the members for their support.

This Bill brings into consideration within the Isle of Man the processes which might have had to go to the European Court. It mentions the right to life, the prohibition of torture, prohibition of slavery, enforced labour, the right to liberty and security, the right of fair trial, no punishment without law, the right to respect for private and family life, the freedom of thought, conscience and religion, freedom of expression, freedom of assembly and association, the right to marry, prohibition of abuse of rights, the limitation and use on restricted rights. These are the rights that we are enacting. They are the headings and of course the detail of those rights and what people have are then spelt out under those articles. It seems to me very important in considering this that this is clear.

This is not a charter to give criminals the right to rule and criminals can still be apprehended under the law. There are already provisions that restrict the activities of the police. We hear of them every day. They can only hold somebody for so long without going to a JP. Even then they can only hold them for so long without going to court. These are already in being. The Bill will not alter that. Whether or not a person is guilty of an offence the courts will determine but it is the duty and responsibility of those in authority to make the case, the police to make the case, the Attorney-General to make the case, the lawyers to make the case and the person has the right to be defended. What will happen is that if justice does do its job, then those who have committed acts against society can be dealt with.

The penalties, because this does not stop us inflicting penalties on people, are determined by Tynwald in its legislation and the courts and then take their guidance from the law and we pass and determine the maximum level of that penalty.

So all these things are in place in hundreds of pieces of legislation the Isle of Man has enacted here, as it does elsewhere.

There will be implications from this legislation because the courts will then take into account any case put before them based on our law, as they now can do and do under the convention. What it will mean is an individual from the Isle of Man, whether it is a child, whether it is an adult, will not only have the option of going to Strasbourg to have their case heard, they will be able to have it heard here in the Isle of Man in an English-speaking jurisdiction but still, if they wish, they can then exercise that right with the European Court at a later date.

So I hope that we will support this important piece of legislation. It is a major step forward for the Isle of Man and it gives me great pleasure to move that this Bill be read a third time and do pass.

**The President:** Now, hon. members, the motion before us is that the Human Rights Bill be read for a third time. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

### **Criminal Justice Bill — Second Reading Approved — Consideration of Clauses Commenced**

**The President:** We turn then to item 3 on our order paper, the Criminal Justice Bill. It is down for second reading and I call on the Attorney-General.

**The Attorney-General:** Thank you very much, Mr President. At the first reading last week I hope that the purpose of the Bill was made clear and I am most grateful to hon. members for their support thus far.

I have really nothing further to add by way of introduction to the Bill and I hope that I will not be considered presumptuous in asking if hon. members would agree that Council now resolves into committee to consider the clauses and I so move, Mr President.

**Mr Kniveton:** I would like to second, Mr President.

**The President:** Hon. members, the motion before us is that we effectively take a second reading and we now dissolve into committee to take clauses.

**Mr Delaney:** Just a question on procedure.

**The President:** A question, Mr Delaney.

**Mr Delaney:** I was interested in moving a slight amendment to this Bill in relation to the word 'curios' on knives when we come to the clauses dealing with knives where we can have them as antiques or curios and I am waiting for an interpretation of that word. Doesn't that cover anyone having a knife really if he has got it as a curio? And I was looking at putting an amendment to that but if they are prepared to accept an amendment at the third reading I will do that.

**The Attorney-General:** By all means, Mr President, if the hon. member is keen to make an amendment I am perfectly happy to accommodate that.

**The President:** Okay. Well, we will move on then, hon. members. Are you agreed that we should take it in committee and deal with the clauses? We are accepting a second reading. Those in favour say aye; against no. I do not think there is anybody against, so we will move on. Okay. In that case we will take clause 1 and schedule 1.

**The Attorney-General:** Yes, thank you, Mr President. This clause, clause 1, introduces schedule 1 which contains provisions for the registration with the police of certain sex offenders. Schedule 1 requires those convicted of or cautioned in respect of specified sex offences to notify the police of their names and addresses and any subsequent changes.

The schedule describes the offenders who are the subject of the requirements and specifies the duration of the requirements. It describes the information which offenders have to supply, how the information should be supplied and in what timescale. Failure to comply with the requirements is an offence and special rules are included for young offenders. The schedule also enables the Department of Home Affairs to make orders applying the schedule to similar offences committed outside the Island.

So if I may refer hon. members to schedule 1 and paragraph 1, the requirement to notify is intended to cover paedophiles and other sex offenders such as those involved in child prostitution or child pornography.

Paragraph 1 specifies the circumstances in which a person becomes subject to the notification requirements set out in the schedule. The schedule does not create a public register.

Sub-paragraph (1) makes a person subject to the notification requirements where convicted of an offence specified in paragraph 2 of the schedule, as is a person who is found not guilty of one of those offences on the grounds of his insanity or the fact that he is under a disability. The court must direct that a person is subject to the notification requirements.

Sub-paragraph (2) deals with cases where a person is cautioned by the police in respect of a scheduled offence and admits the offence but is not prosecuted. If at the same time that the caution is given a prescribed notice is given to the individual, that person will be subject to the notification requirements.

Sub-paragraph (3) enables the court or the prescribed police notice to prescribe the period for which the notification requirements will apply up to the maxima set out in the table.

Sub-paragraphs (4) and (5) deal with cases where a person is dealt with in respect of two or more scheduled offences. For the purpose of determining the maximum for the purposes of paragraph 3 consecutive terms of custody are aggregated and concurrent terms are calculated on the basis of the longest sentence. For example, concurrent sentences of two and three years for scheduled offences shall be treated as a single sentence of three years.

Sub-paragraph (6) deals with cases where a person who was under a disability is subsequently tried. This might occur where a person is found unfit to plead but recovers and is subsequently tried. The finding of a disability is then disregarded for the purposes of the operation of this paragraph of the schedule.

Sub-paragraph (7) defines the relevant date which is used principally in the second column of the table.

Sub-paragraph (8) treats a direction by a court that a person is to be subject to the notification requirements as a sentence passed on conviction. This will enable an appeal against the decision.

Sub-paragraphs (9) to (11) deal with the review of a direction by the police that a person is to be subject to a notification requirement when cautioned for a scheduled offence. There is an appeal to the High Bailiff and there is also a right of appeal against the decision of the High Bailiff.

Sub-paragraph (12) requires orders which prescribe the form of notice to be delivered by the police under sub-paragraph (2)(b) to be laid before Tynwald.

Paragraph 2. This paragraph itemises the offences which are to be scheduled offences and in respect of which notification requirements under this schedule will apply. The biggest category of offences is that which is taken from the Sexual Offences Act 1992. Offences under schedule 3 to this Bill which deals with indecent photographs of children, the importation of indecent photographs et cetera, offences of printing, selling et cetera, indecent or obscene publications, burglary with intent to commit rape are also listed. In addition conspiracy, attempts and incitement to commit the specified offences will attract the notification requirements.

Sub-paragraph (2) qualifies the list of scheduled offences. The notification requirements will not apply in respect of offences involving intercourse with young people or incitement to commit incest if it is a first offence and the offender was under 18. In addition the notification requirements will only apply to a prohibited importation in respect of indecent photographs or

pseudo photographs of a person which give the impression or predominant impression that the person shown is a child.

Sub-paragraph (3) applies the definitions in schedule 3 to the Bill for the purposes of sub-paragraph (2)(b) of this paragraph. The definition of 'pseudo photograph' is of particular importance in this context.

Paragraph 3 sets out the information which must be supplied by offenders to the police and the manner and timescale in which that information is to be supplied in order to meet the notification requirements.

Sub-paragraph (1) specifies the details to be notified, the name, address, nature and place of employment and the name and business address of the employer. Notification must be given within two days of the relevant date or where the offence was committed. Before the schedule comes into operation it must be notified within two days following the commencement of the schedule.

Sub-paragraph (2) requires notification of changes to those details within two days.

Sub-paragraph (3) requires the information passed to the police to include date of birth, name on the relevant date and home address on the relevant date.

Sub-paragraph (4) deals with practical issues where a person is unable to notify the police because the person is in custody, in hospital or outside the Island. In such cases notification must be given within two days of release of custody, release from hospital or arrival in the Island.

Sub-paragraph (5) enables notification in person or in writing.

Sub-paragraph (6) obliges the police to give written acknowledgement of notification, and sub-paragraph (7) defines 'home address' and 'qualifying period'.

Paragraph 4. This paragraph makes it an offence to fail to notify the necessary details or any change of details without reasonable excuse. In addition it will be an offence to notify information which is known to be false. The maximum penalty is £5,000 and/or six months' custody. Proceedings for an offence will be before the summary courts. The offence of failing to notify is committed on the day of the first failure and the offence continues until there is compliance.

Paragraph 5 deals with young offenders. This paragraph makes special provision for young sex offenders and reduces the maximum periods for which they may be subject to the notification requirements, enables parents and guardians to comply with notification requirements on behalf of the young offender and limits the penalty for an offence under the schedule to a maximum of £5,000 without the option of custody.

Whilst accepting that some young offenders may have a greater chance of rehabilitation the Bill includes young offenders within the notification requirements on the basis that the requirements are intended as a means to secure public protection from those who have committed serious sex offences rather than as a punishment.

Paragraph 6 provides that proof that a person was convicted of or cautioned in respect of a scheduled offence may be given by production of a certificate. In the case of a conviction the certificate will be given by the court and in the case of a caution by the police the conviction

will be given by the constable who undertakes the caution. A certificate to be given by the police must be in a form prescribed by order made by the Department of Home Affairs which must be laid before Tynwald.

Paragraph 7 enables the department to make orders applying the schedule to offences committed outside the Island. Such orders cannot come into operation unless approved by Tynwald. That provision will enable the mutual operation of the notification system principally with other parts of the British Isles but also with other countries or territories if specified in the order.

Paragraph 8 provides an interpretation of schedule 1 and sub-paragraph (1) provides definitions for certain expressions.

Sub-paragraph (2) deals with cases where a court of summary jurisdiction is satisfied that a person did the act charged but is suffering from mental illness or severe mental impairment. In such cases the court may authorise the admission of the person and detention of that person in hospital.

Sub-paragraph (3) expands the meaning of being found to be under a disability.

Mr President, that, I believe, deals with the schedule 1 of the Bill and I move that clause 1 and schedule 1 do form part of the Bill.

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

**The President:** Mr Crowe.

**Mr Crowe:** Thank you, Mr President. Firstly if I just may set the scene for clarification, the amendment and the new clauses in my name are being introduced at the request of the Department of Home Affairs and with the support of the Attorney-General's department, so if I can just turn to the amendment to clause 1 and schedule 1, the purpose of this amendment is that the sex offenders registered should include those persons who are currently in the system, in other words those persons who are serving a sentence of imprisonment or a term of service detention who are subject to a community order in respect of a sexual offence to which schedule 1 of the Criminal Justice Bill 2000 applies. As the Bill is currently drafted only those sex offenders who are convicted after this element of the Act comes into force will have to register. Therefore in order to ensure sex offenders who are, for example, in prison can be required to register when they are released an amendment to schedule 1 is required and this amendment will provide the necessary powers for the police to apply to the courts to require any offender who is currently in the system to register. Mr President, I beg to move:

Page 45: at the end of the Schedule add -

**“Transitional.**

9. (1) A person becomes subject to the notification requirements if
  - (a) at the commencement of this Schedule he has been -
    - (i) convicted of a scheduled offence but has not been dealt with in respect of the offence; or
    - (ii) found not guilty of a scheduled offence by reason of insanity, or to be under a disability and to have done the act charged against him

in respect of such an offence, but has not been dealt with in respect of the finding; and

- (b) after the commencement of this Schedule the court, when dealing with him in respect of the offence or finding, by order directs that he is subject to the notification requirements.
- (2) Where a person becomes subject to the notification requirements under sub-paragraph (1), paragraphs 1(3) to (8) and 2 to 5, 7 and 8 of this Schedule have effect (with the necessary modifications) in relation to that person as if he had become subject to the notification requirements under paragraph 1(1) and for that purpose, in this Schedule -
- (a) the reference to “relevant date” in paragraph 3(1) shall be construed as meaning the date of a direction made under sub-paragraph (1)(b) of this paragraph; and
  - (b) references to a direction by the court under paragraph 1(1)(b) shall be construed as including a reference to a direction under sub-paragraph (1)(b) of this paragraph.
10. (1) A person becomes subject to the notification requirements if -
- (a) at the commencement of this Schedule he is -
    - (i) serving a sentence of custody, or is subject to a community order, in respect of a scheduled offence;
    - (ii) subject to supervision, having been released from custody after serving the whole or part of a sentence of imprisonment in respect of such an offence;
    - (iii) detained in a hospital, or is subject to a guardianship order, having been convicted of such an offence; or
    - (iv) detained in a hospital, having been found not guilty of such an offence by reason of insanity, or to be under a disability and to have done the act charged against him in respect of such an offence; and
  - (b) after the commencement of this Schedule a court of summary jurisdiction consisting of the High Bailiff makes an order directing that the person is subject to the notification requirements.
- (2) A constable may by complaint apply to the court for a direction under sub-paragraph (1)(b).
- (3) An application for a direction under sub-paragraph (1)(b) shall -
- (a) be heard in the presence of the person in respect of whom the declaration is to be made; and
  - (b) be heard in private,
- unless the court otherwise orders.

- (4) Where a person becomes subject to the notification requirements by virtue of sub-paragraph (1), paragraphs 1(3) to (8) and 2 to 5, 7 and 8 of this Schedule have effect (with the necessary modifications) in relation to that person as if he had become subject to the notification requirements under paragraph 1(1) and for that purpose, in this Schedule -
  - (a) the reference to “relevant date” in paragraph 3(1) shall be construed as meaning the date of a direction made under sub-paragraph (1)(b) of this paragraph; and
  - (b) references to a direction by the court under paragraph 1(1)(b) shall be construed as including a reference to a direction under sub-paragraph (1)(b) of this paragraph.
- (5) A person who would fall within sub-paragraph (1)(a)(i), (iii) or (iv) but for the fact that, at that commencement, he is unlawfully at large or absent without leave, on temporary release or leave of absence, or on bail pending an appeal, shall be treated as falling within that paragraph.
- (6) In this paragraph, “community order” means -
  - (a) a curfew order under section 28 and Schedule 5 of this Act;
  - (b) a probation order under the Criminal Justice Act 1963 [XIX p.975];
  - (c) a community service order under Schedule 3 of the Criminal Law Act 1981; or
  - (d) a combination order under section 7 of the Criminal Justice (Penalties, Etc.) Act 1993 [c.18].”.

**The President:** Mrs Christian.

**Mrs Christian:** I beg to second, Mr President. I think this is a useful provision. I think there are people who think it should go beyond that even but that is a difficult issue to deal with in terms of how much retrospectivity you might put into any piece of legislation, but this has a reasonable argument behind it in that the sentence is being served at the time when the Bill will be hopefully implemented.

My only question to the mover is that there are a number of offences listed here for which registration is demanded. Are the people who are sentenced for these particular offences going to be clearly informed of the requirement to register? I know that ignorance of the law is no excuse but I would hope that in the mechanisms in court there would be some way of making it clear to these people that they have a duty and responsibility to register and that we do not lose them from the register for some argument that they were not aware that they had to do this. I would just like some confirmation that there will be some sort of mechanism there that makes it absolutely clear to them that this is required of them.

**The President:** Mr Lowey.

**Mr Lowey:** Yes, Mr President, I have no difficulty at all in supporting the amendment and the clause as published and I am glad that the mover of the Bill said it was a register, not a public register, for practical reasons, I think, but that then of course brings me to the queries I

have got. Who will actually set up the list? I have looked in the amendment and I do not know whether it is the police or the Department of Home Affairs, and that brings me to another question and I must ask myself, in the future development of this thing, who will then have access to those lists and when somebody has been convicted or put on the list for 10 years or whatever who will oversee that their names come off the list and is there a watchdog set up? It may very well be and I have looked hard and long through the schedule to see and I notice it says by order of the court. It may be in the orders that these mechanical things will actually be.

But I have not the slightest doubt it is right and proper that people convicted of sexual offences should be kept on a register and that they should be kept an eye on and they certainly should not be put in or allowed to be in positions of trust, especially where young people are concerned.

I think the Bill even with this is right, it is just that with the mechanics, if we are setting them up, we must make sure that the logistics of the legislation are right, and I think Mrs Christian has a very good point where she actually says we have to make sure that we are not waiting, everybody is waiting for somebody else to do something, in other words the machine is put into operation and those that are convicted know they have to do certain things.

**The President:** Mr Waft.

**Mr Waft:** Thank you, Mr President. There is just one item of concern, the reason that brought me to speak, which was with regard to the registration of a sex offender and as we mentioned in the schedule with regard to young offenders. In the Children and Young Persons Act the age at which somebody can be named is stated there categorically. If the situation arises where this person needs to be on a register how does that marry up with being on a register and yet being unable to be named because of the Children and Young Persons Act? Where does that marry up? Thank you, Mr President.

**The President:** Right, Mr Attorney.

**The Attorney-General:** Thank you, Mr President. I am grateful for the questions raised by the hon. members.

Mrs Christian raises a very important point about a notification to the offender and in that respect paragraph 1 of schedule 1 makes it clear in clause 1(1)(b) that it is for the court by which a person is convicted to make an order directing that the person is subject to the notification requirements. Now, of course the offender will be present in court and undoubtedly will have an advocate with him or her and I feel quite sure that the importance of this will be specifically brought home by the deemster when a sentence is passed and the advocate will be under a duty to make the implications of that absolutely clear. Moreover in relation to a caution, because of course the registration requirements can be triggered off if a caution is administered and the person admits the offence, there again the person concerned will be served with a notice, a specific notice, which gives directions that the person is subject to the notification requirements.

So I hope that the combination of firstly specific directions or specific orders made by the deemster in open court in respect of people who are convicted and secondly the service of a written notice where persons are not convicted but a caution is given will be sufficient to bring home to the offender the requirements of notification.

In so far as notification or the access to the list is concerned, it will be a list, as I understand it, which will be available for inspection by the police principally. They will have access to the register and it will assist them greatly in respect of the protection of the public in so far as commission of sex offences is concerned.

In so far as the question raised by the hon. member Mr Waft is concerned, I am aware of course that young people are not able to be named in public court, in open court, but the essence of this register is that it is a private register and therefore if Master X or Miss X were to be convicted of a serious sex offence, that would not become public as a result of the court proceedings, nor would it become public as a result of the entry of that person's name on the list.

**The President:** Hon. members, the motion before you is that clause 1 and schedule 1 stand part of the Bill and to that we have the amendment moved by Mr Crowe which in effect is transitional and puts in a new clause 9 on page 45. Those in favour of the amendment as moved by Mr Crowe please say aye; against, no. The ayes have it. The ayes have it.

Clause 1 and schedule 1 as amended then. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

We will turn then to clause 2 and schedule 2.

**The Attorney-General:** Thank you, Mr President. Clause 2 introduces schedule 2 which makes provision for the prosecution in the Island of sexual offences committed outside the Island. Schedule 2 makes it an offence for a resident of the Island to commit certain sexual acts abroad against children. The actions concerned are those which, if done in the Island, would amount to one of the sexual offences specified in paragraph 5 of the schedule. The actions leading to the prosecution must also amount to offences in the place where they were committed. Provision is also included in the schedule for conspiracy and incitement to commit sexual offences outside the Island.

So paragraph 1. This paragraph extends the jurisdiction of courts in the Isle of Man to deal with certain serious sexual offences which are committed outside the Island if the conditions in the paragraph are fulfilled. The normal rule of law is that Isle of Man courts will not have jurisdiction in relation to crimes committed outside the territory of the Island.

Sub-paragraph (1) declares an act done by a person outside the Island to be an offence under the law of the Island if it constituted an offence in that country and would constitute an offence if it was done in the Island.

Sub-paragraph (2) limits proceedings for sexual offence committed outside the Island to persons who are or become resident in the Island.

Sub-paragraph (3) deals with cases where, under the law in force in the other country or territory, an act is not described as an offence but nonetheless attracts a punishment under that law such an act is to be treated as an offence for the purposes of sub-paragraph (1)(a).

Sub-paragraph (4) is intended to crystallise defence and prosecution submissions at an early stage. This will avoid delays at the hearing if the court is attempting to determine whether a foreign country or territory has the same offence. The procedure will be that the court will assume that there is an equivalent offence in the other country or territory unless the defence serve a notice that the defence is of the opinion that there is no equivalent offence showing

the grounds for the opinion and requiring the prosecution to show that there is an equivalent offence.

Sub-paragraph (5) permits the court to allow the defence to require the prosecution to show that there is an equivalent offence in the other country or territory even where a notice under sub-paragraph (4) has not been served. This gives the court sufficient discretion to waive the notice where justice requires that to be done.

Sub-paragraph (6) provides that in the Court of General Gaol Delivery the question of whether there is an equivalent offence under the law of another country is to be decided by the deemster alone. This is because it is a matter of law rather than a matter of fact and normally will be proved by evidence from lawyers who are experts in the law of the other country.

Paragraph 2 applies section 330 of the Criminal Code 1872 so that it applies to an agreed course of conduct to commit acts which, if done in the Isle of Man, would amount to one of the sexual offences set out in paragraph 5 of the schedule. The offences must also be offences in the place where they are intended to be committed.

The paragraph sets out the conditions on which section 330 will apply. The problem against which this provision and paragraph 3 are directed is so-called child sex tourism, for example a person in the Island entering into arrangements with a person outside the Island to undertake the acts outside the Island.

Subsection (1) applies that section if the conditions set out in the subsequent sub-paragraphs are satisfied.

Sub-paragraph (2) requires the agreed course of conduct to involve an act or happening which is intended to take place outside the Island.

Sub-paragraph (3) requires the act or event to constitute an offence under the law of the other country or territory.

Sub-paragraph (4) requires the agreement to fall within section 330 of the Criminal Code if all the elements of the offence were committed in the Island.

Sub-paragraph (5) requires that a party to the agreement or his agent did something in the Island in relation to the agreement before its formation, or a person became a party in the Island, or a party or his agent acted in pursuance of the agreement in the Island. One of these requirements is essential to give a proper connection between the agreement, the parties and the Isle of Man.

Sub-paragraph (6) applies the offence of conspiracy under section 330 of the code as if the sexual offence in the other country or territory were an offence under the law of the Island.

Paragraph 3 deals with the offence of incitement to commit an offence. Whereas conspiracy requires two or more co-conspirators, incitement can be committed by a single person. In general terms an incitement is influencing the mind of another to commit an offence. The offence itself will not have been committed at that stage. The offence arises under section 336 of the code which provides, 'Whoever shall solicit or endeavour to procure any other person to commit a felony or misdemeanour. . . shall be guilty of a misdemeanour.'

In addition to the general offence of incitement in section 336 there are in the statute book a number of specific offences, for example incitement to commit incest under section 8 of the Sexual Offences Act 1992.

Sub-paragraph (1) sets out three criteria for the application of the paragraph. First the act must amount to incitement to commit one of the scheduled offences outside the Island and the particular sexual offence must be an offence under the law in the other country.

Sub-paragraph (2) declares that the charge of incitement to commit the sexual offence outside the Island is to be triable in the Island.

Sub-paragraph (3) specifies where communications of any sort are to be treated as done a message which is sent or received in the Island is treated as done in the Island for determining whether an incitement has taken place in the Island.

Paragraph 4. This paragraph contains supplementary provisions for both paragraphs 2 and 3.

Sub-paragraph (1) is a similar provision to that in paragraph 1(3) of the schedule.

Sub-paragraph (2) is similar to paragraph 1(4).

Sub-paragraph (3) defines the expression 'relevant conduct' by reference back to the agreed course of conduct in the case of conspiracy and, in the case of incitement, what the accused had in view.

Sub-paragraph (4) is similar to paragraph 1(5) of the schedule.

Sub-paragraph (5) is similar to paragraph 1(6), and sub-paragraph (6) makes it clear that British citizenship is irrelevant for the purposes of guilt.

Sub-paragraphs (7) to (9) provide interpretative provisions for references in other statutory provisions to conspiracy or incitement to commit a sexual offence to which schedule 2 applies. The effect is that references in other legislation to conspiracy or incitement to commit acts which amount to those offences in the Isle of Man are to be taken to include conspiracy to commit the same act out of the Island.

Paragraph 5 is an interpretation section.

Sub-paragraph (1) specifies the sexual offences to which the schedule applies.

Sub-paragraph (2) makes it clear that the schedule will only apply in respect of an act done or event occurring after the schedule comes into force.

Mr President, I move that clause 2 and schedule 2 do form part of the Bill.

**The President:** Mr Kniveton.

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

**The President:** Mr Crowe.

**Mr Crowe:** Thank you, Mr President. Could I just ask the learned Attorney then? If an Isle of Man resident goes on holiday or to a foreign country and commits an offence and returns to the Isle of Man, the offence would be tried in the Isle of Man unless the court of that

country or the police determine that the courts. Would like to determine that case in their own courts. Where does the boundary lie in a situation such as that?

**The President:** Mrs Christian.

**Mrs Christian.** Yes, could I just ask? Welcoming this particular clause, I think it is very proper that the Island has such a provision. I am not entirely clear, though, why this schedule applies to travel agencies, for example, outside the Island. Under paragraph 3 it certainly applies to, I think, people resident in the Island, but where would any action for incitement take effect? If, for example, the travel agency was in the United Kingdom, would it be possible to pursue them in the Isle of Man? Although it does say, 'Any act of incitement by means of a message (however communicated) is to be treated as done in the Island if the message is sent or received in the Island.' I imagine that refers partly to computer communications, whether e-mail or telephone or whatever else, but I wonder if the learned Attorney could just give some clarification on that particular point, please.

**The President:** Mr Lowey.

**Mr Lowey:** Yes, I welcome this particular clause too. I think it is going to be extremely difficult to enforce but it is right that the Isle of Man should prevent ourselves from becoming if you like a refuge, and would the Attorney agree that in the schedule if an Englishman or anybody committed an offence in a foreign country and then came to live in the Isle of Man and there is no reciprocity in bringing that particular person back to that country to stand trial they could use the Isle of Man as a bolthole? In other words it would be wrong for the Isle of Man to become a bolthole for these people to say, 'Well, I wasn't here resident in the Isle of Man but I'm here resident now and you haven't got a ...' I take it that has been dealt with in the clause as spelt out by the Attorney-General.

**The President:** Mr Waft.

**Mr Waft:** I would support the general thrust of this clause. I am reminded of the hon. Mr Corrin some years ago who thought that this should be brought in and he would be delighted to see it now being brought to fruition.

I am glad to see that the need for a conviction needs to be an act which is similar to the same situation as it would be in the Isle of Man because different islands and different countries all have different areas of legislation with regard to these types of acts taking place and it is relevant that this should be included, that it has to be an offence in the Isle of Man also. Thank you, Mr President.

**The President:** Mr Kniveton.

**Mr Kniveton:** I feel, sir, that this is going to be a difficult one to enforce. I look for the example and I follow the hon. member Mr Crowe. A male or indeed a female commits an offence off the Island in another country. That country wishes that accused person to stand trial. I ask the Attorney-General what are the ways and means then of that country asking the Isle of Man to set up a trial and indeed then what evidence does that country have to substantiate their case? Is it through documents, affidavit or indeed attendance on the Island? I think that is the question in my mind. Thank you, sir.

**The President:** Mr Attorney.

**The Attorney-General:** Thank you very much, Mr President. I am very grateful to hon. members for their interesting questions in relation to this particular clause and schedule. Perhaps I could answer all of the questions because I think they touch on a common theme and if I may be forgiven just for giving a composite answer, as it were.

As I mentioned in my address on this particular clause, it is really concerned with the very unseemly practice of so-called sex tourism and of course the difficulty here is that you might have a resident of the Isle of Man who goes abroad thinking that the chance of him being caught and detected in his involvement with children is likely to be very remote, whereas if he were to try commit the same acts in the Isle of Man or perhaps in countries nearer to home he would be likely to be caught, so there is obviously a very real mischief which the legislation is seeking to address.

Now, of course it is true also that sometimes the police forces in other countries may not be considered to be as efficient as the police forces in the Island and in the British Isles. On the other hand, of course, we know that in some countries they are very, very efficient indeed.

I quite accept that there will be difficulties of obtaining evidence but I think the important thing is this, that if evidence does come to light, if someone is caught being involved in sex tourism either as an offender himself, a principal offender, or perhaps trying to encourage others to perhaps go on a holiday and to become involved in this sort of activity, then if that evidence is available, these people must be charged and, hopefully, convicted here in the home court, and the public require that people who do that should be dealt with in the home court.

Now, I would like to reassure particularly the hon. member Mr Lowey that the Isle of Man is certainly not to be a bolthole. Provided that the evidence comes to light and is given in the courts in the Island, let us hope that a conviction will be obtained. I suspect that if a contested matter comes before the courts, the witnesses will actually have to come to the Isle of Man and will have to give evidence in person and of course will be liable to be cross examined and so on, and that of course will be expensive, it might be very distressing for young children from a foreign country to come here to give evidence. On the other hand we might be able to take advantage of video linking and let us hope that that is something which might be available as well.

I do accept that it is a difficult area but I think it is also very important that we try to do our very best to stamp it out.

**Members:** Hear, hear.

**The President:** If I may be permitted, hon. members, before we put it to the vote, Mr Attorney, just for my own purposes really, accepting Mr Lowey's argument that that the Isle of Man should not be a haven, or a bolthole to use his words, is there a timescale between the commission of the offence and the time in which it could be taken in an Isle of Man court?

**The Attorney-General:** I think there must be an answer to that, Mr President, somewhere in this Bill.

**The President:** Well, perhaps we can come across that later, hon. members, and I have no intention to be. . .

**The Attorney-General:** I think, Mr President, the general rule is this, that time starts to run, as it were, in summary offences really within six months of the date when the evidence comes to the knowledge of the prosecutor, but in so far as offences which are triable in the Court of General Gaol Delivery, there is actually no limitation period.

**The President:** In that case, hon. members, I am happy to put to you clause 2 and schedule 2. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. We move on to clause 3 and the third schedule.

**The Attorney-General:** Thank you very much, Mr President. Clause 3 introduces schedule 3 which makes provision in relation to the possession, sale, et cetera of indecent photographs and so-called pseudo photographs of children. The schedule creates new offences in relation to the taking, distribution, possession or publication of indecent photographs of children. Powers of entry, search, seizure and forfeiture are conferred on the police. The provisions apply in respect of photographs, negatives, photographic images on computers, film and computer-generated images which appear to be photographs.

So can I turn to paragraph 1 of the schedule. This paragraph makes it an offence to take, distribute, show or possess indecent photographs or pseudo photographs of children under the age of 16 or to publish any advertisement to the effect that the advertiser distributes or shows such photographs. Mere possession of such photographs is made an offence.

The expressions used in this paragraph are defined in paragraph 7 and penalties for the offences are contained in paragraph (6).

Sub-paragraph (2) in effect defines 'distribution' for the purposes of the schedule. This can be simply parting with possession or offering or exposing it for acquisition.

Sub-paragraph (3) requires the Attorney-General's consent for proceedings to be taken under the schedule.

Sub-paragraph (4) provides defences to charges of distributing or showing or having possession of indecent photographs or pseudo photographs of a child. The three defences are, firstly, there is a legitimate reason for distributing, showing or possessing the material, presumably - for example, exceptional medical or educational purposes - secondly, that the person had not seen the material and did not know or have cause to suspect that the material was indecent - presumably this would be an entirely innocent possession - thirdly, that the photograph was sent to the person without his request and he did not keep it for an unreasonable time, for example an unsolicited photograph sent to an e-mail address which is deleted on discovery.

Sub-paragraph (5) modifies the Children and Young Persons Act 1966 which in appropriate cases will enable a child to be removed to safety where an offence under this schedule has been committed.

Paragraph 2 is intended to limit argument about whether a child was, at the material time, under the age of 16. The court will be entitled to look at all the evidence and if it appears that the child was then under 16, to make that assumption.

Paragraph 3 is a technical paragraph in relation to corporations and imposes personal liability on officers of companies and other forms of body corporate where the officer or a person who purported to act as such gave his consent to the commission of an offence by the

body corporate, or if the offence was committed with the connivance of or was attributable to the neglect of that officer.

Sub-paragraph (2) and sub-paragraph (3) deal with those companies which do not have boards of directors or where we are concerned with so-called limited liability companies where they have attributes of partnership and some attributes of a company.

Paragraph 4 deals with entry, search and seizure. The paragraph gives the police power of entry with a justice's search warrant to seize articles believed to be or to include indecent photographs or pseudo photographs of children.

Sub-paragraph (1) applies the powers contained in this paragraph where a justice of the peace is satisfied that there is indecent material on any premises. The constable must provide information on oath to the justice to show that there are reasonable grounds for so suspecting.

Sub-paragraph (2) enables the justice to issue a warrant to enter and search. Force may be used to effect entry and the warrant authorises seizure and removal of what are believed to be indecent photographs or pseudo photographs of children.

Sub-paragraph (3) requires anything seized under the authority of the justice's warrant to be brought before the justice, and sub-paragraph (4) extends the usual meaning of 'premises' to include stalls and vehicles.

Paragraph 5 deals with forfeiture and provides a procedure for the determination of whether items seized under paragraph 4 are to be forfeited, in which event they are to be destroyed.

Sub-paragraph (1) deals with the commencement of forfeiture proceedings. A summons is issued to the occupier of the premises or the user of a stall or vehicle to appear before the court to show why the items should not be forfeited.

Sub-paragraph (2) entitles the court to order the items to be forfeited if satisfied that they are indecent photographs or pseudo photographs of children. An order can be made if the person summoned does not appear.

Sub-paragraph (3) - a person claiming to be the owner of the items is entitled to appear before the court to argue that they should not be forfeited, and sub-paragraph (4) provides a right of appeal to the High Court.

Sub-paragraph (5) allows the court to order the payment of costs where a forfeiture order is not made, despite the complaint.

Sub-paragraph (6) provides for cases where there has been a seizure under the schedule and in addition a person is convicted in respect of the seized items. In such cases the court is obliged to order forfeiture.

Sub-paragraph (7) allows the time for making an appeal to expire before a forfeiture order takes effect. Where there is an appeal the forfeiture order will not take effect until the conclusion of the appeal.

Sub-paragraph (6) deals with punishments and enables the courts of both summary jurisdiction and the Court of General Gaol Delivery to deal with proceedings under this schedule. On conviction before the Court of General Gaol the maximum penalty is five years'

custody and/or a fine of any amount, and on conviction before a court of summary jurisdiction the maximum penalty is six months custody and/or £5,000.

Paragraph (7) is an interpretation clause and provides for the meaning of certain expressions used in the schedule.

Mr President, I move that clause 3 and schedule 3 do stand part of the Bill.

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

**The President:** Mrs Christian.

**Mrs Christian:** Mr President, again raising high profile cases in recent times in another jurisdiction which make people very much aware of the marketing transactions that go on and the transference of images of children through modern communications media. I am not quite clear, and I wonder if the learned Attorney could explain, under schedule 3, 2 in respect of evidence. It does say, 'In proceedings under this schedule a person is to be taken as having been a child at any material if it appears from the evidence as a whole that he was then under the age of 16.' So that allows those who are taking action to assume that the child is under 16. What if it appears that the child is over 16 but is in fact under 16? It is very difficult at some ages to determine just how old a young person is. Would it be absolutely necessary in those circumstances to have categorical evidence that the person was over 16 or under 16. It covers one situation but not the corollary, it seems to me, and the other point is that we have a lot of different definitions of what a child is in terms of age, whether it is 18 or 16. I just wonder if the learned Attorney could give some indication of why it is 16 in this case and why it might not be under 18.

Finally, given that there are so many advances and changes in technological areas relating to the transition data, and we are dealing here with primary legislation, is there any secondary mechanism whereby we could update the schedule should further technological developments occur which would somehow or other create a loophole for the transmission of this kind of data?

**The President:** Mr Attorney, would you like to reply?

**The Attorney-General:** Thank you, Mr President. Yes, paragraph 2 of the third schedule - that is a most interesting point which the hon. member has raised. I think that the mischief, if you like, which the paragraph seeks to avoid is this, that if a person is in fact over the age of 16 although he or she appears to be under the age of 16 and therefore triggers off an offence, the court is entitled to look at all the evidence, and presumably would look at the photographs, would look at maybe tapes or would look at other evidence which might be available and perhaps even would be able to look at the child either in person or on a video and would be able to say, 'Well, although this person in fact is 17, it is clear to us all that he or she is very immature and appears to be under 16 and it must have been obvious to the offender that that was the case.' In those circumstances I think the object is that the accused should not get off, as it were, by sheer luck in other words, by sheer luck that the person was in fact over 16 even though he or she appeared to be under 16. I think that is the mischief of the clause and I think that that is entirely sensible. I hope I have answered that.

**Mrs Christian:** If I may, Mr President, I fully appreciate that. I just wonder what action can be taken if a photograph or an image of a person who may in fact in practice be under 16,

but someone has made a judgement by looking at the photograph that this person appears to be over 16, are they then exempt from the provisions of the schedule?

**The Attorney-General:** Mr President, if there is clear evidence that the person in fact is under 16 -

**Mrs Christian:** Then you would have to identify the person and have proof of age.

**The Attorney-General:** Yes, indeed. If that proof of age, Mr President, is available, then that can be used as almost conclusive evidence against the offender. What we are saying is that this paragraph 2 is designed to cover the other situation where the offender might otherwise get off because the person was in fact over 16 although he appeared to be under 16.

**Mrs Christian:** So it relates to the actual effect of the image: if it appears to be a child.

**The Attorney-General:** That is right.

**The President:** Proof of age would take precedence on all occasions.

**The Attorney-General:** It would, sir.

**Mrs Christian:** Right, thank you.

**The President:** Hon. members, the motion before us then is that clause 3 and - apologies.

**Mrs Christian:** Mr President, I wonder if I might ask the Attorney to respond on the data question, as to whether or not we can amend the provisions in some secondary manner.

**The Attorney-General:** Yes, I am sorry about that, Mr President. I am not aware from my reading of the Bill that there is any way we can amend the schedule by some subsidiary legislation. Perhaps I can just consider that in time for the third reading. It may be something that we should usefully incorporate.

**Mrs Christian:** Thank you.

**The President:** This time then, hon. members, the motion before us is that clause 3 and schedule 3 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Now we take clause 4.

**The Attorney-General:** Thank you, Mr President. Mr President, clause 4 inserts a new section 39A in the Sexual Offences Act 1992 and abolishes the existing presumption of sexual incapacity of a boy under the age of 14 years. This long-standing presumption has in fact been modified in the 1992 Act under which it was declared that a boy should not be taken to be incapable of rape by reason only of being under the age of 14 years, and that provision did not result in complete abolition of the presumption because it can apply in other cases involving sexual intercourse. This provision completely abolishes the presumption. Mr President, I move that clause 4 do stand part of the Bill.

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

**The President:** Does any hon. member wish to speak to clause 4? In that case, hon. members, the motion is that clause 4 stand part of the Bill. Will those in favour please say aye;

against, no. The ayes have it. The ayes have it. Mr Attorney, I do not know whether it is practical, and the choice is entirely yours, but could we take 5, 5A 6 and 7, sir?

**The Attorney-General:** Certainly, sir.

**The President:** Or would you prefer not?

**The Attorney-General:** No, that this fine, Mr President. Clause 5 amends section 14 of the Nursing and Residential Homes Act 1988 by inserting a new section 14A. The section makes it an offence to ill-treat or intentionally neglect persons who are, for the time being, resident in a nursing home or a residential home. The offence can be committed by a variety of persons involved with the ownership, management and running of the home.

Subsection (1) of the new clause 14A creates an offence of ill-treatment or intentional neglect of persons who are resident in nursing homes or residential homes. Although there are currently offences involving assault which could cover some of the grounds of this offence, ill-treatment or intentional neglect will not in all cases be the appropriate offence under the existing law.

Sub-clause (2) of the new section 14A specifies the persons who are liable to prosecution. They are the proprietor of the home, manager, officer, employee, or other person employed in the home and any person providing care or services for residents in the home.

Subsection (3) of the new section prescribes the penalties for offences under the new section. On conviction before a High Bailiff or magistrates, the maximum penalty is six months and/or a maximum fine of £5,000 and on conviction before the Court of General Gaol Delivery the maximum penalty is two years custody and /or a fine of any amount.

Subsection (4) of the new section limits proceedings to cases taken by the Attorney-General or taken with the consent of the Attorney-General.

You wanted to move, Mr President, to 5A. Clause 5A is an amendment made in another place, the effect of which is to amend the Sexual Offences Act 1992 and in particular section 9. In fact it is the only amendment to section 9 of the Sexual Offences Act 1992. The effect of the clause will be that in section 9 of the Sexual Offences Act 1992 in subsection (1) (a) for the age of 21 substitute 18 and in subsection (4) (a), again for the age of 21 substitute 18.

To complete the group of three, moving to clause 6 of the Bill, clause 6 amends section 31 of the Criminal Code 1872 which makes it an offence to make written threats of murder. The new wording, which is based upon the report of the Law Commission in England on the codification of criminal law in England and Wales, extends the section to include oral threats and updates the language of the section. Under the new section the threat can be to cause death or serious injury. It can be written or oral and the threat can be against the person to whom it is issued or a third person. Circumstances must show that there was an intention for the other to believe that the threat would in fact be carried out.

If I could turn to clause 7, clause 7 abolishes the ancient rule known as the 'year and a day' rule in homicide offences. The rule applied to offences involving death and suicide and required the death of the person to occur within one year and a day of the offence. The rule was probably intended to ensure that the act or omission caused the person's death. In homicide cases it will still be necessary to show that death was caused by the particular act or omission complained of. So sub-clause (1) abolishes the rule and sub-clause (2) applies the

abolition only in cases occurring after the commencement of the subsection. The act or omission in question must have occurred after sub-clause (1) comes into force.

Mr President, I therefore move that clauses 5, 5A, 6 and 7 do stand part of the Bill.

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

**The President:** Mr Crowe.

**Mr Crowe:** Could I just ask the learned Attorney in regard to clause 5 as to what is the current situation? I notice that you are bringing in a new criminal charge against people for neglect et cetera in nursing and residential homes, but what would be the position if such an event occurred today?

**The President:** Mr Lowey.

**Mr Lowey:** Yes, sir, clause 6. I think, Mr President, you know of my love affair with the Criminal Code of 1872 and the word 'felony'.

**Mr Delaney:** It is bedtime reading for you, isn't it?

**Mr Lowey:** However, we are altering the 1872 law and substituting this and perhaps the learned Attorney could tell me. We are substituting for the words from 'Whosoever' to 'any person' substitute 'A person who without lawful excuse makes to another a threat to cause the death of, or serious injury to, et cetera. What lawful excuse, never mind without lawful excuse, could you think of that would permit me to issue a threat to murder or maim or whatever?

**Mr Delaney:** You're a single man, Eddie, you're a single man!

**Mr Lowey:** It is a form of words I keep saying to my learned friend, the Attorney, when we are writing the law in language of today and here we are saying, 'A person who without lawful excuse'. Well, that means there must be some lawful excuse to issue those words or threats and I cannot conceive of one, so why don't we get a form of words that means what they say?

**The President:** Mr Waft.

**Mr Waft:** Thank you, Mr President. Just one springs to mind when you are doing away with perhaps the 'year and a day' situation. I am thinking about the members of the armed forces who were exposed to certain radiation on Christmas Island many, many years ago. That could be referred back to a death that possibly could occur from something that took place many years ago. How would that relate to the situation in this Bill?

**The President:** I think it might be advantageous, Mr Waft, if you were to repeat your question to Mr Attorney.

**Mr Waft:** Yes, it was with regard to the abolition of the 'year and a day' when a person dies when it is something that happened possibly within the last year. If we did away with that I wondered what the situation would be with the members of the armed forces who were exposed to the radiation with regard to the nuclear explosions on Christmas Island and the situation at that time and as a result of that exposure have subsequently died.

**The President:** Mrs Christian.

**Mrs Christian:** There are some varied clauses here, all of which I think are very interesting. I wonder if the learned Attorney would in clause 5 - and I welcome clause 5 as the strengthening of the provision of very vulnerable people in nursing and residential homes - just clarify in (2) (b) where persons subject to the provision are defined, amongst other things, as manager, officer, employee or any other person employed in the home. It sounds a little bit contradictory there. If you are an employee, presumably you are the management of the home, and that is the first one. Does it mean, where it says 'any other person employed in the home', it can be a self-employed person who is contracted to work in the home or an employee of a third party who is not involved in the matter? I wonder if he could just clarify that particular issue.

I certainly welcome clause 7 in the light of the developments of forensic science and medical matters so that this extension from the 'year and a day' rule is now possible.

**The President:** Now then, I appreciate Mrs Christian's point that in inviting Mr Attorney to move 5, 5A, 6 and 7 they were varied headings in the sidenotes but it was all in part 2 and it was my intention to try to move on a little.

**Mrs Christian:** I do not wish, Mr President, they be moved separately, unless there is something in the Attorney's answer.

**The President:** Well, I was going to make the point, bearing in mind that comment, to the Attorney that if he wished to take them separately I would be happy to do so because I appreciate that you have got a mixed answer to come forward.

**The Attorney-General:** Well, Mr President, I will try to answer them as best I can in the current state of the questioning. First of all in relation to clause 5, the question put by the hon. member Mr Crowe, as I mentioned briefly in my speech, under the existing law if a person were to ill-treat or intentionally neglect someone that person could, I believe, be exposed to prosecution for an assault and depending on the gravity of the injury or the effect, then of course the assault could be actual bodily harm or grievous bodily harm depending on the circumstances.

It is recognised that people who are in nursing homes are particularly vulnerable, as has been mentioned by hon. members, and therefore it is particularly important and appropriate that we create a new offence with heightened penalties, as it were, which reflect the gravity of the offence.

In relation to clause 6, the hon. member Mr Lowey has as usual posed a difficult question in relation to the criminal code. All I can say in so far as the wording is concerned is that apparently this is the modern wording which flows from the findings of the Law Commission in England. So we are not that far behind, albeit that the wording is in the criminal code.

It is a real puzzler as to what 'lawful excuse' we could find, but I suppose that if a deemster were to impose a sentence of death the other person would certainly believe that it would be carried out, and of course this would only apply in war time perhaps or if the offence was . . . It is very, very difficult to think of an example, but 'without lawful excuse' often does appear in our criminal statutes, Mr President.

**Mrs Christian:** Mr President, might I ask if the learned Attorney could comment? If the police threatened, for example, or warned that they might shoot, would that be a lawful excuse to threaten serious injury?

**The Attorney-General:** It could well be, Mr President, without wanting to commit myself. That is certainly something that would have to arise for consideration. I cannot give a response to that, I am afraid, Mr President.

In relation to clause 7, the interesting question again posed by the hon. member Mr Waft, the 'year and a day' rule, I think we have to have regard to clause 7(2) which states that the abolition of the 'year and a day' rule only applies where the act or omission occurred after the clause takes effect. Now, unfortunately whatever happened in Christmas Island it certainly happened before this clause takes effect and therefore even if there were some causal link between the radiation and the death, I am afraid that clause 7(2) would not avail the deceased persons or their relatives.

**Mr Delaney:** A question there, Mr Attorney.

**The President:** Mr Delaney.

**Mr Delaney:** Wasn't this 'year and a day' also connected at one time and maybe still is to the Wills Act dealing with the length of time before a will, an estate is actually distributed?

**The Attorney-General:** I think there, Mr President, the position is that you quite often see notices that warn people that an estate is going to be administered or distributed unless claims are lodged against the estate within one year -

**Mr Delaney:** That is what I mean.

**The Attorney-General:** - but I think that is rather different. It is one year from the date of grant of probate or grant of administration.

I think finally, Mr President, in relation to the question raised by the hon. member Mrs Christian in relation to clause 5(2)(b), I entirely agree with her that the words 'or any other person employed in the home' is designed to catch independent contractors who are employed under a contract of services rather a contract of service as an employee.

**The President:** Right, well, hon. members, the motion then before us is that clauses 5, 5A, 6 and 7 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. In that case, hon. members, I invite the Attorney to take 8 and 9.

**The Attorney-General:** In fact, Mr President, perhaps we could look at clauses 8, 9, 10 and 11 if you wish.

**The President:** I would like to, but I understand that Mr Delaney might be querying clause 10.

**Mr Delaney:** Yes, I will be, Mr President. That is the contentious one as far as I am concerned.

**The Attorney-General:** Thank you, Mr President. This clause and in fact all the clauses up to clause 16 deal with new offences relating to so-called combat knives. The offences are contained in clauses 8 and 9 and exemptions and defences are contained in clauses 10 and

11. Clauses 12 to 14 deal with rights of entry, seizure and forfeiture and 15 deals with the personal liability of officers of bodies corporate. Clause 16 contains definitions.

So clause 8 makes it an offence to market knives in a way which indicates or suggests that they are suitable for combat or in a way which is likely to stimulate or encourage violent behaviour involving the use of the knife as a weapon. A knife as defined is an instrument which has a blade or is sharply pointed.

Sub-clause (3) indicates examples of cases where there is an indication or suggestion that a knife is suitable for combat. It may be the name or description of the knife, some description on the knife or packaging and in any advertisement which applies to the knife.

Subsection (4) defines what is meant by marketing a knife. It means sale, hire, offer or exposure for sale or hire or possession for the purpose of sale or hire.

Subsection (5) provides penalties for an offence under the section on conviction before a High Bailiff or magistrates. The maximum penalty is six months and/or a fine not exceeding £5,000 and again on conviction before the Court of General Gaol Delivery a maximum penalty of two years custody and/or a fine of any amount.

Clause 9 makes it unlawful to publish any written, pictorial or other material in connection with the marketing of any knife where that material indicates or suggests that the knife is suitable for combat or is otherwise likely to stimulate or encourage violent behaviour involving the use of the knife as a weapon. Publication includes all forms of publication including electronic publication.

Again sub-clause (2) specifies the penalties.

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

**Mr Delaney:** Yes, Mr President.

**The President:** Mr Delaney.

**Mr Delaney:** A wonderful Bill, this, until you got to this piece. This mealy-mouthed bit of legislation looking to what is happening in the modern world and what is going to happen in the future is what we are doing here. The fact is that you can go into a shop still in the Isle of Man and buy what they call a Bowie knife, you can buy a machete, you can buy all these knives which cannot be for any other purpose unless there are herds of wildebeest up in Marown, a skinning knife.

I cannot understand why we even allow people to specifically sell those knives. I understand the argument will come back to me that everyone has a right of choice and the human rights and all this. It incenses me to try and stop the use of such weapons when there is no need for anyone to carry one. I can understand a slaughterman carrying one, I can understand someone in the garden having a pruning knife, I can understand a fisherman, to save his life, carrying a knife up to a certain length, but I cannot understand a blade that length being sold in a shop and being allowed to be imported back into the Isle of Man because the word is a 'curio'. Now, if you look at the definition of 'curio', it is a curiosity all right because anyone that buys one, to me, is a curiosity.

I was lucky enough to be trained in the army in the use of a knife and I know that you do not need 10 inches of blade to kill a man or anybody else, but the point is that you can buy

them and we are passing law which makes somehow we are trying to make it difficult for people by the wording. I think as you go through this section dealing with offences in relation to knives it is time that we really meant what we said and we say no, it is an offence to have anything over four inches long.

**The President:** Could I just hold the hon. member temporarily. If we are dealing with the offence, that is fine, but your exempt trades and the antique or curio comes under clause 10. We are currently dealing with clause 9.

**Mr Delaney:** I take your point, Mr President, but I am trying to use it to say it two or three times. I am taking the opportunity as we start on knives now to make it clear that we are now being mealy-mouthed about the whole subject. I would rather it be clear to the public we are not going to accept anybody walking round Douglas for any reason that we would like to try to give them, that he has a need to carry a Bowie knife, and the other part dealing in this as we get to this clause and further down is that in armed services. I understand anyone doing an operation in the Isle of Man, an exercise from the military, carrying a knife - and very few do, by the way - but I cannot understand, because it has been manufactured for military service, having a situation where we are prepared to accept that as some sort of excuse. There is no need for anybody to have one and I wish to hear an argument from somebody that there is. If somebody will give me an argument I would love to hear it.

**The President:** Mr Lowey.

**Mr Lowey:** Could I ask in clause 8 where it says, 'A person is guilty of an offence if he markets a knife in a way which - (a) indicates, or suggests, that it is suitable for combat; or (b) is otherwise likely to stimulate or encourage violent behaviour involving the use of the knife'. So unless I put a picture or write something on it I can display a knife in a window, a big knife, a short knife, cross knives, any sort of knife in the window and that would be all right. But it does seem Irish - that is racism - it does seem strange to me that you can display knives for sale and sell them to people, but at the same time if you put a picture and say these are used by the Gurkhas or whatever you could then be guilty of an offence.

I tend to agree at the end of the day with my friend: if you are going to have them, do not have them at all. I do not think there should be a justification for knives, except gardening and that sort of thing and in the garden or farmers, if you go out without your knife on a farmyard, then you are really at a loss because there are a thousand and one things in a day that it comes into use for, but there are practical reasons for those and they do not need to be on display, and all of us can take you to a shop in Douglas now that is called a sports shop and see knives of horrendous descriptions that can be bought today and that is not going to be banned under this legislation, which does seem strange.

**Mr Radcliffe:** Mr President, could I just make a short comment?

**The President:** Mr Radcliffe.

**Mr Radcliffe:** We are dealing with knives as knives, but we have all read in the paper about offences with knives being committed by kitchen knives and certainly there are some shops which sell that sort of thing in sets and believe me, if a person was coming for me with one I would be going as hard as I could the other way.

**Mr Delaney:** Can't cook, won't cook!

**Mr Radcliffe:** There is no restriction whatsoever on the sale of those sorts of things, then, presumably in sets, where some of them are 10, 11 inches long, and others of course are more miniature blades with three or four inches on them, but certainly some of these heavy-duty knives, shall we say, which are used in cookery are dangerous in the extreme in the wrong hands and yet there seems to be no control whatsoever on the sale of those sorts of things.

**The President:** Mrs Christian.

**Mrs Christian:** Mr President, I think the hon. member has highlighted the difficulty here in drafting legislation to cover intent more than anything else. There are legitimate uses for very -

**Mr Delaney:** Give us one.

**Mrs Christian:** - frightening instruments, never mind if they are kitchen equipment or not. There are legitimate uses of knives in the kitchen and one could say, 'Well, you should control the sale of kitchen knives', but it is this difficulty of getting the line between what is a legitimate purpose and somebody abusing the use of that instrument for an illegitimate purpose, and I do sympathise with the draftsman trying to handle this, (**A Member:** Hear, hear.) but I do not think that there is anything wrong essentially with clauses 8 and 9 as they have been put before us. They do try to deal with at least the advertising message that goes out with any knife, whether we have in mind a kitchen knife or whether we have in mind some other more conventional weapon. So I could certainly support clauses 8 and 9 on the grounds that they do try at least to eliminate any aggressive or violent message which is to go with the sale of knives.

Again on clause 9, I come back to this question of publication and the learned Attorney in his comments did refer, I think, to electronic means of publication. The question of identifying who was doing the publishing on the internet, for example - would this provision cover someone who is advertising in the Isle of Man for sales within or without? How do we handle those people who are situated outside the Isle of Man and are sending these messages down the line to the Isle of Man? Presumably unless we have a service provider in the Isle of Man who is conscious of some message coming down the line which is in breach of this provision there is not a lot we can do about that. I wonder if the Attorney could comment on that, please.

**The President:** Mr Waft.

**Mr Waft:** Thank you, Mr President. I think I can understand where this clause is coming from, but at the same time I think you have to try to achieve a bit of balance here. Schoolchildren, schoolboys especially, have always had scout knives and jackknives and penknives and many adults carry small knives about their person for one reason and another without being a butcher or a fisherman. That has always been the case.

I think when we do enact legislation such as this we need to make sure that in effect what we are trying to do with this legislation actually assists the police in the furtherance of their duties to eliminate the knives (**Mr Delaney:** Hear, hear.) that are carried within the fraternity of areas at night when they can be unsuitable and very, very dangerous. If it is a fact that it does assist the police there will be a certain amount of care when we do make it an offence with regard to the packaging that does come in sometimes from the UK. It does exhibit packaging and how do we stand with regard to the United Kingdom law and will perhaps just

taking the packaging off not prohibit the sale of the same kind of knife or flick-knife or whatever?

The legislation does not appear to be too onerous to me, but at the same time if we are just paying lip-service to it, it does not seem to be worth the paper it is written on. Thank you, Mr President.

**The President:** Mr Crowe.

**Mr Crowe:** Mr President, I think it is clear, or it seems to be clear, it is the marketing and if your marketing is provocative and claiming it is suitable for combat or encouraging violent behaviour, well then it is absolutely clear that what you are doing is totally wrong. I do not think it comes into whether you are using a knife for fishing or kitchen knives, I think it is really down to the marketing aspect of this and whether you are encouraging people or inciting people to commit a crime on the basis of anything you say or write or publish.

**The President:** The Lord Bishop.

**The Lord Bishop:** Yes, the problem really about this is highlighted with a recent case of the person who murdered somebody with a screwdriver and in no way do I see an outcry for the banishing of screwdrivers, but it was an unlawful use of that weapon that committed the thing and I think it is the unlawfulness of the use of the thing that these two clauses tries to make some inroads into. It is never going to be easy and there will people who will misinterpret it.

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

**The Attorney-General:** Thank you, Mr President, and thank you to hon. members for their comments in relation to these clauses.

Mr President, I would suggest that the two clauses do in fact represent a compromise again, the compromise being between the sale of knives which undoubtedly could be fatal. It could be used in a very dangerous, if not fatal, way in the hands of someone who is intent on doing something unlawful, such as the set of kitchen knives raised by the hon. member.

But I think the other point is this, that the clauses are saying that they are designed to prevent people, as the hon. member Mr Crowe says, selling in a provocative way. I think that is a very good way of putting it, that if someone is clearly encouraging people to use a knife for combat or for violent behaviour, as those expressions are defined in clause 16, then that is unusual and provocative behaviour which deserves to be punished by the criminal law. I do not think it could possibly be the case that hon. members would seek to criminalise people who were selling kitchen knives in a department store.

**Mr Delaney:** Nobody is talking about that at all, Mr Attorney. We are talking about Bowie knives and kukris.

**The Attorney-General:** Now, of course, Mr President, there are all sorts of knives and there are Bowie knives and there are flick-knives, there are very evil-looking knives indeed and what we are really saying in these sections is this: is it in fact what the public want, that these knives be prohibited completely -

**Mr Delaney:** Yes.

**The Attorney-General:** - or should they not be reserved for those people who have a very specialised use for them? And I would suggest, Mr President, that there are people who could use those specialised knives in a very expert way for entirely proper purposes and they should not be criminalised.

A very interesting question again was raised, I believe by the hon. member Mrs Christian, in relation to the advertising by people outside the Island to people within the Island. As we saw earlier on in relation to this Bill, the Manx courts do not have jurisdiction generally over people who commit offences outside the Island and I doubt very much that an advertiser outside the Island would be amenable to the criminal law here.

A screwdriver, to take up the point by the Lord Bishop, actually could be a knife as defined by this -

**Mr Delaney:** It is sharpened.

**The Attorney-General:** - because it would be a sharpened implement and, as I say, it all depends on the intent of the person who is actually handling the knife.

I think, Mr President, that clauses 8 and 9 represent a fair compromise and I would move that they stand part of the Bill.

**The President:** Hon. members, before I put that as a motion to the House I would make it plain for the purposes of *Hansard* that in fact they have been seconded by Mr Kniveton. Will those in favour then of clauses 8 and 9 please say aye; against, no. The ayes have it. The ayes have it. We then have 10 and 11.

**The Attorney-General:** Thank you, Mr President. Clause 10 provides for a defence where a knife is marketed or material is published in connection with the marketing of a knife for use by the armed forces, as an antique or curio or as falling within such categories as may be prescribed. The defence will only apply if it was reasonable for the knife to be marketed in the way that it was and there were no reasonable grounds for suspecting that a person into whose possession the knife might come, in consequence of the way in which it was marketed would use it for an unlawful purpose. The same defence is provided in respect of offences under clauses 8 and 9.

Sub-clause (3) defines 'prescribed' for the purposes of sub-clause 1(a)(iii) and 2(a)(iii) as meaning prescribed in regulations made by the Department of Home Affairs.

Clause 11 provides for a defence where the person who is accused does not know or suspect and has no reasonable grounds for suspecting that the way in which the knife was marketed or the material was published amounted to an indication or suggestion that the knife was suitable for combat or was likely to stimulate or encourage violent behaviour involving the use of the knife as a weapon. The clause also provides for a defence where the persons charged took all reasonable precautions and exercised all due diligence to avoid committing the offence. Those defences apply in respect of offences under both clauses 8 and 9.

Sub-clause (3) of the clause provides a defence that the person charged took all reasonable precautions and exercised all due diligence to avoid committing the offence. An example of taking all reasonable precaution might arise where a shopkeeper issues instructions to his staff not to market knives in a way which indicates that they are suitable for combat. A prosecution which arose out of circumstances where one of the shopkeeper's staff

had flouted those instructions without the shopkeeper's knowledge or authority might well attract the defence.

Mr President, I move that clauses 10 and 11 do stand part of the Bill.

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

**The President:** Mr Crowe seconds, yes. Mr Delaney.

**Mr Delaney:** I mean, just take this clause now, we have got one part of the clause laughing at the other. Where we say 'for use by the armed forces of any country' what do you think they have manufactured these knives for? It is not for cutting blackberries. They are used for killing people and if somebody has got one, the only reason he has got one in the armed forces is to kill somebody with it or injure somebody with it and then we are saying further on there 'don't market it for an unlawful purpose.' Killing is unlawful to me, so I cannot see how we can get over that.

But I am interested also where we say 'as an antique'. Well, maybe you can accept an antique or curio, where we look at (ii) in clause 10. A curio, so you can turn round and everyone will say, 'Look at that, that there was manufactured by the KGB or somebody else for killing people with. It is a curio.' You will see them in Spain, for example - unfortunately I see too many of them - where they have got all these knives there which people can bring back into the country, and working on this, because it is a curio. I do not see what is curious about it. It says what it does and what it was meant to do, it was meant to kill people and I cannot see the point if you can have a clause and try to make it more difficult for people because they are advertising it and it was manufactured for armed services. If it is manufactured for services of the British military services I can understand it by a person who is still in the military service, but not a knife that has been organised for some hotpot army somewhere and people because it was manufactured for them, that hotpot army, it is quite legal to have it. I just do not see the sense in it and, I am sorry, I am not convinced that we are actually doing anything at all on this clause. The fact that it will take the card out from the window where the knife is which will say, 'This is not for combat', that is going to solve the problem of making less weapons on the street, which our police now are facing more and more and have to wear body armour? And one of the arguments about kitchen knives - reasonable people know kitchen knives can injure, we know they can make a knife, but what we are trying to do is take these weapons off the street or the curiosity that goes with people buying them. Now, we just do not seem to be doing that. We are doing nothing at all in real terms. Not a thing we are doing.

**The President:** The Lord Bishop.

**The Lord Bishop:** Yes, Mr President. It is an interesting point, but having myself been trained by the Royal Marines in the use of arms and small arms and knives it seemed to me that part of the reason I went along with the training was that the impact of the teaching was that you knew how to be responsible in the use of very dangerous weapons, and it is interesting, I think, if you looked at statistics that those who are trained to kill are the least likely to do that (**Mr Delaney:** Hear, hear.) because they know the implications of that training.

Secondly, I happen to have a Gurkha knife which was given to me for service with the Gurkhas, and these weapons are pretty lethal and well sharpened by their owners, but the one given to me has been silvered, the blade is a silver blade because it is a ceremonial kukri with

a ceremonial handle and that is given to a person because of some service they have done for the forces or the Gurkha people and that to me is a precious possession. It is not on great display in my house, but I own it and have it and I never withdraw it from its sheath, Mr President, because -

**Mr Delaney:** Not allowed by the rules.

**The Lord Bishop:** - once you do that you have to use it, but, no, you can actually with a ceremonial one because it is a lovely silver finish, but it does underline the point that the hon. member is making, that it is possible to have a curio or an antique which is not an offensive weapon.

**The President:** Mr Crowe.

**Mr Delaney:** Sorry, can I just bring in a point, Mr President. We are talking about you have got the curio, you cannot buy it from a shop, that is the point.

**The President:** Mr Crowe.

**Mr Crowe:** Thank you, Mr President. Yes, picking up the Lord Bishop's point, I think again we have to be clear as to what I see as the meaning of this and I think we have to allow antique dealers to genuinely conduct their business or trade if they are selling battle-axes or swords or knives or daggers or whatever it is. There has to be a genuine business reason that an antique dealer can sell something like that, otherwise you are going to inhibit antique dealers from their normal course of trade.

The other thing, as the Lord Bishop says, is the genuine collectors who collect military emblems such as knives and swords or whatever it is, or even bayonets, which are genuine collectors and they should be allowed to collect military weapons if they have a mind to do so. I think it comes down again to-

**Mr Delaney:** It is not collecting them, it is selling them.

**Mr Crowe:** I know, but this is the defence, Mr Delaney-

**Mr Delaney:** For selling them.

**Mr Crowe:** - that you can say that you are using it either as an antique dealer or as a genuine collector, so I feel comfortable with this, Mr President.

**The President:** Mr Lowey.

**Mr Lowey:** I do not feel comfortable at all. For a start, if we take the 'antique or curio', you are right: this clause is a defence for a person charged with an offence to prove that the knife was marketed. Let me give an example. A disembowelling knife for-

**Mr Delaney:** Hara-Kiri.

**Mr Lowey:** Hara-Kiri. I knew it was something like that. Is that the name of the knife or the hara-Kiri? What other purpose is there for that knife, a disembowelling knife, and if it is marketed as that is it reasonable to assume that you could have used it for the purposes for which it was built? I find it very strange.

I recognise the point that people collect these things and all the rest of it, but I think our aim here as legislators surely must be to try and prevent more weapons being out. I know we

will never ever do it totally but I think it is the message that we are giving out that I think is wrong. I mean, I am sure it was of no comfort to, who was the Liberal MP who was slashed with a ceremonial Japanese sword? It is no comfort whether it was a modern weapon or not, but that really should not be in the public domain. It had to come into the public domain somewhere. It had to be bought, it had to be purchased.

I find by doing this, by allowing this, we seem to be legitimising and saying it is all right to have these things in circulation. I prefer the other way, that they should not be in circulation at all unless there is a specific reason. Now, we do it with guns, we say, 'To have one of these things you must be licensed and you must keep these weapons under lock and key', and if this is a curio for those sorts of things which I have illustrated, then they should be under lock and key. I do not think that is unreasonable either, but I do not think we are doing it in this particular piece of legislation. I think we are on one hand trying to be reasonable, but by being reasonable we are letting the very thing we are trying to control, the genie, out of the bottle.

**The President:** Mr Waft.

**Mr Waft:** Thank you, Mr President. The Attorney-General might clarify something I asked previously with regard to the packaging and advertising of the knives. They are usually bought from the UK or somewhere similar. Is similar legislation there in being at the moment or are the shopkeepers going to have to look at all the stuff that they get with regard to the sale of knives and all the packaging on the Island or is there any difference in the legislation?

**The President:** Can I ask the Attorney to reply to the debate.

**The Attorney General:** Thank you, Mr President. If I can deal with the last question first from the hon. member Mr Waft, I am afraid I do not know what the present state of play is in England and I will check that, if I may, and report back to the next sitting of Council.

May I just take a point made by the hon. member Mr Lowey, just to paraphrase what he said really, which was that these knives should not be in circulation unless there is an explanation for them or a justification (**Mr Delaney:** Hear, hear.) but that of course is precisely what this section is doing. It is saying that it is all right for someone to sell, that is, to market knives, provided that they fall within the three categories referred to 10(1)(a)(i),(ii) and (iii). Now, it seems to me that you could apply exactly the same logic to, say, the sale of a shotgun. What could be more lethal than a shotgun? But of course we do authorise people to purchase shotguns provided that they have a lawful excuse for doing so.

**Mr Delaney:** You can't walk off the street, Mr Attorney, and do it.

**The Attorney General:** Well, nor indeed, if I may, through you, Mr President, may we walk through the street with a great big Gurkha knife or a great big bowie knife because we would be guilty of having an offensive weapon on our person in a public place and that is an offence under the existing law. So, just to pursue my analogy in relation to the shotgun, this lethal weapon is permitted to be sold provided that we have a lawful excuse. We might have land on which we have permission to shoot and it might be shown that we have no previous convictions for violence and so on and so forth.

It strikes me that, as the Lord Bishop says, people in the armed forces are likely to purchase knives, not with a view to going round the streets and causing terrible problems for the police, but for using them in a trained way and in a perfectly lawful, legitimate way, equally

the person who has the antique or curio gorkha knife. What I understand from some hon. members is that it is all right to have them in your possession but you must not buy them. Well, someone has to buy them at some stage and it strikes me that if it is all right to have the antique or curio knife in your private home, it must be all right to buy it from a legitimate owner.

Mr President, I would move that clauses 10 and 11 do stand part of the Bill.

**The President:** Hon. members, the motion before the House is that 10 and 11 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it.

*A division was called for and voting resulted as follows:*

*For: The Lord Bishop, Mr Waft, Dr Mann, Messrs Kniveton, Radcliffe, Mrs Christian and Mr Crowe - 7*

*Against: Messrs Lowey and Delaney - 2*

**The President:** With 2 against, hon. members, the motion carries in the House.

Now then, hon. members, looking at the clock we have turned 1 o'clock by quite some way. We still have a long way to go on this Criminal Justice Bill and I am entirely in your hands. We could, as I understand it, in this august body take the remaining clauses and third reading on the one sitting, so we could adjourn it, although I am happy to continue this afternoon should you wish. I am in your hands. If you are happy to continue I certainly am happy to continue this afternoon, but I leave it to you.

**Mr Crowe:** Mr President, I have got two meetings, if we could adjourn.

**The President:** Are we happy to adjourn, hon. members, and take the remaining clauses and the third reading?

**Mr Delaney:** Agreed.

**A Member:** No problem.

**The President:** In that case we will take the remaining clauses and the third reading at the one stage and we will adjourn then to Tuesday next of the 7th November at 10.30. Thank you, hon. members.

*The Council adjourned.*