

**REPORT OF PROCEEDINGS OF
HOUSE OF KEYS**

**Douglas, Tuesday, 24th October 2000
at 10.00 a.m.**

Present:

The Speaker (Hon J D Q Cannan) (Michael); Mr L I Singer and Hon A R Bell (Ramsey); Mr R E Quine OBE (Ayre); Mrs H Hannan (Peel); Hon W A Gilbey (Glenfaba); Hon S C Rodan (Garff); Hon D North (Middle); Mr P Karran, Hon R K Corkill and Mr G T Cannell (Onchan); Messrs J R Houghton and R W Henderson (Douglas North); Hon D C Cretney and Mr A C Duggan (Douglas South); Mr R P Braidwood and Mrs B J Cannell (Douglas East); Mr J P Shimmin and Hon A F Downie (Douglas West); Hon J A Brown (Castletown); Hon D J Gelling (Malew and Santon); Sir Miles Walker CBE LLD (hc) and Mrs P M Crowe and Mr J Rimington (Rushen); with Prof T StJ N Bates, Secretary of the House.

The Chaplain took the prayers.

Dentists' Remuneration — Question by Mr Singer

The Speaker: Hon. members, turning now to our order paper I will invite the Clerk to lay papers. Sorry, we go straight to the questions. Right, we now move to the questions for oral answer. Question number 1, the hon. member for Ramsey, Mr Singer.

Mr Singer: Thank you, Mr Speaker. I beg leave to ask a member for the Department of Health and Social Security:

Is your department satisfied that the present level of dentists' remuneration enables them to provide NHS patients with a quality of work on a par with private work?

The Speaker: The member for Health and Social Security to reply.

Mr Karran: Vainstyr Loayreyder, in answering the hon. member's question may I first explain that the general dental practitioners are self-employed and are contracted to my department to provide services under the National Health Service. They receive a small fee for every patient registered with them together with an item of service fee, depending on the nature of the treatment provided.

The statement of fees to dental practitioners is reviewed on a regular basis so as to ensure that the level of payment accurately reflects the amount of work required and the expenses for the treatment.

I should perhaps make it clear that some treatments mainly of a cosmetic rather than a clinical nature are ordinarily not available on the National Health Service but on a private basis. This would include gold crowns and white fillings on back teeth.

The department does recognise developments, progress and new treatments become available and the importance of keeping in step with these changes. The department officials are presently in discussions with the professional body as far as this is concerned.

The Speaker: A supplementary, the member for Ramsey, Mr Singer.

Mr Singer: Thank you, Mr Speaker. I thank the hon. member for his answer. Could I ask him is he aware that the British Dental Association has confessed that it has been conning the public and that treatment such as crowns, root canals and dentures paid for by the state are made with cheaper, poorer quality materials and that too little time is allowed to them to do a decent job? If so, do you intend to unilaterally look at the level of dentists' remuneration on this Island to provide a dental service that we can be proud of?

The Speaker: Mr Karran to reply.

Mr Karran: Vainstyr Loayreyder, the hon. member is right, there was a concern before the last general election that I had a meeting with the Dental Association on the Island. At the present time we are in discussions with their chairman. I do not want to see a situation where dentistry is forced out of the health service. At the end of the day if we want a good service, we have to pay for it. Discussions are ongoing.

I do not want to see a situation where children, when they grow up, lose teeth simply because it was cheaper to pull teeth out than to fill them and do the remedial work that needs to be done.

So I actually agree with the hon. member, but the issue is ongoing at the present time with my primary manager.

The Speaker: The hon. member for Ramsey, Mr Singer.

Mr Singer: Can I thank the hon. member for a positive statement, although I believe our payment is parallel with the UK at the moment and perhaps it should not be, but can I ask is he aware that the present level of remuneration for dentists means that they have no choice but to reject new NHS patients who require extensive treatment, as the dentist will experience a considerable financial loss if he takes those particular patients on?

The Speaker: Mr Karran to reply.

Mr Karran: Vainstyr Loayreyder, the position is I am unaware that anybody is being turned away for dentistry work on the national health at the present time. If there are cases we would be interested to hear.

I would like to say I always remember as an apprentice how I talked to an individual who had lost the top end of his little finger because it cost 2s.6d to repair and sixpence to be chopped off and I would not like to see a similar situation as far as dentistry is concerned ever coming to these shores. Dentistry should be part of the National Health Service.

The fact is that what has happened in recent years in the adjacent isle is the fact that they did for a long time have an unwritten agenda to get rid of dentistry and we are working with the professional association at the present time, but if there are problems as far as people not being able to get on a dentist's list we would like to know at Crookall House.

The Speaker: Right, the last final supplementary, Mr Singer for Ramsey.

Mr Singer: Thank you, Mr Speaker. Could I just ask the hon. member representing the DHSS, can you tell me do we in fact have a full complement of dentists on the Island in order to look after all the population or are we short of dentists, and if so, how many more do we need to be able to provide a full service?

The Speaker: Mr Karran to reply.

Mr Karran: Vainstyr Loayreyder, it depends whether you are talking about dentists joining practices or dentists wanting to start their own practice. As you know, there is a closed shop arrangement as far as this is concerned at the present time. As far as I am aware, there is no problem as far as dentists wanting to start their own businesses. There is plenty that would be interested in that. The issue of whether they want to work for another dentist, then there may be problems as far as that is concerned.

The issue is ongoing, it is being looked at and I can give the assurance to the hon. member that I have personally had discussions with the chairman of the Dental Association on the Island. I do want to make sure that we keep a first-class dental health care within the National Health Service, but if there are problems from the hon. member or from other hon. members, do not hesitate to contact me at Crookall House.

Human Organs for Transplantation — Procedural Policy — Question by Mr Henderson

The Speaker: Question number 2, the hon. member for Douglas North, Mr Henderson.

Mr Henderson: Thank you, Mr Speaker. I beg leave to ask a member for the Department of Health and Social Security:

What is the present procedural policy adopted by your department for the donation, collection and preservation of human organs for transplantation?

The Speaker: The member for the Department of Health and Social Security.

Mr Karran: Vainstyr Loayreyder, the policy concerning the donation, collection and preservation of human organs for transplantation is governed by the Human Tissue Act 1986 and the Human Organ Transplant Act 1993 together with associated regulations.

The management and collection of organs for transplant purposes is undertaken by the department on behalf of the Mersey Regional Transport Co-ordinating Service, having regard to the provisions of the legislation, as approved by Tynwald.

Procedures carried out within the hospital service in liaison with the transport co-ordinating service cover such issues as the communications, the criteria for availability of organs, the legal aspects, the consent, the suitability of organs and other related topics. These procedures are readily available to the front-line professional staff in key areas of the hospital and are designed to ensure the correct process is followed and proper safeguards of patients' wishes and wishes of their relatives are achieved with proper documentation at every stage.

The process is initiated by the medical officer in attendance, acting in accordance with the wishes linked with the Mersey Regional Transport Co-ordinating Service.

The hospital's clinicians act and initiate the harvesting of the organs when it is appropriate. The incidence of organ donation is obviously dependent on organs being available and suitable. This is clearly unpredictable.

The Speaker: A supplementary, Mr Henderson.

Mr Henderson: Yes, thank you, Mr Speaker. I thank the hon. member for being able to give that reassurance to the people of the Island, especially those who are waiting for specialist services, but could he confirm that all emergency and medical staff are aware of the

procedures he has just informed this hon. House of and also could he answer when was the last time the department had a public awareness session on the importance of carrying donor cards?

The Speaker: Mr Karran to reply.

Mr Karran: Vainstyr Loayreyder, I know in this hon. House that I tried several years ago and successfully moved an amendment to the Highways Bill, I think it was, to do with trying to put it onto driving licences.

The issue of donor card advertisements is something that needs to be looked at. Because this question relates to another question I do not really want to duplicate, but the issue of donor cards will be raised again within my health division and if there are problems I am sure we can resolve them.

Prescription of Drugs — Question by Mr Henderson

The Speaker: Question number 3, the member for Douglas North, Mr Henderson.

Mr Henderson: Thank you, Mr Speaker. I beg leave to ask a member for the Department of Health and Social Security:

What is the present policy of your department on the prescription by registered medical practitioners of proprietary and non-proprietary drugs and medications?

The Speaker: The member for the Department of Health and Social Security to reply.

Mr Karran: Vainstyr Loayreyder, by the phrasing 'proprietary and non-proprietary' I take the question as referring to prescribing branded and generic drugs and I will answer using these more commonly used terms.

The policy of the department is to promote generic prescribing, as it is both good clinical practice and it also represents cost-effective prescribing.

The policy is supported through a range of educational activities, including general practitioners being also given an enhanced payment in order to encourage them to do more of a level of generic prescribing.

The Speaker: Mr Henderson, a supplementary.

Mr Henderson: Thank you, Mr Speaker. I thank the hon. member for clarifying the wording, which we are all familiar with, but could he further clarify what is his department's target for percentage of branded and non-branded prescription drugs and also have prescribers of prescription drugs the flexibility to prescribe proprietary brand drugs if they assess this to be the most effective form of treatment?

The Speaker: Mr Karran to reply.

Mr Karran: Vainstyr Loayreyder, the situation obviously is that this is a clinical matter and as the member for Health obviously I do not tell the doctors what they should prescribe. What we do tell them is the fact they should prescribe what is right for the patient. That is the important thing. It is no use them prescribing a cheaper drug that does not work or has side-effects and we have to then prescribe the proprietary drug secondly.

So the issue is that at the end of the day this is a clinical matter which the professionals have to deal with and we have to take in good faith that they do what they think is right.

The Speaker: A supplementary, Mr Singer, Ramsey.

Mr Singer: Thank you, Mr Speaker. Can I ask the hon. member, taking into account that proprietary drugs and generics are similar drugs, would you say that you have made any advance at all in convincing the doctors that they should be prescribing the generic drug when it is of equal efficacy to the proprietary drug, because this has been your policy for certainly two or three years, to increase generic prescribing? Can you demonstrate to us that in fact this policy is improving the number of generic drugs that are being prescribed on the Island.

The Speaker: Mr Karran to reply.

Mr Karran: Vainstyr Loayreyder, that is the case: there is more generic prescribing now. Admittedly the initiative that was brought out by the health service maybe helped to concentrate certain minds as far as that is concerned, as far as the GPs are concerned, but at the end of the day we do want a situation where people get what they need and I think it would be wrong to put a dictate out that they have to.

But we hope that the GPs realise that they are part of a team, a team that is under pressure as far as expenses is concerned and I hope that they appreciate that if I have got to spend moneys on that, I cannot spend it on other things as far as keeping a first-class health service.

The Speaker: A final supplementary, Mr Henderson.

Mr Henderson: Thank you, Mr Speaker. Could the hon. member please clarify that prescribers of branded prescription drugs have the flexibility, if they see fit, to prescribe branded drugs if they so see fit and could he also confirm or otherwise, is he aware that some non-proprietary drugs are not as effective as the branded types, such as Zantac, for example, and this is causing patients problems and loss of confidence being forced to take second-best prescriptions at some diktat from the department?

The Speaker: Mr Karran to reply.

Mr Karran: Vainstyr Loayreyder, the situation is simple. If the doctor says that they have to have whatever drug it is and it is not on the blacklist, then that drug will be issued to them. At the end of the day it is a clinical matter. Whilst obviously we want to try to keep our value for money as much as possible, at the end of the day it is a clinical matter and if the doctor feels that the proprietary drug is the best one, then that will be the drug that he will offer and that will be the drug that will be paid for by the health services. It is a professional matter, it is not a matter for myself or for Crookall House.

But that is the position at the present time and if the hon. member knows that not to be the case I would be very interested to hear about it in order to get that issue resolved.

Shortage of Human Organs — DHSS Response — Question by Mr Henderson

The Speaker: Question number 4, the hon. member for Douglas North, Mr Henderson.

Mr Henderson: Thank you, Mr Speaker. I beg leave to ask a member for the Department of Health and Social Security:

With respect to (a) their donation and (b) their transplantation, does your department have a specific procedure for responding to a shortage, either on the Island or in the United Kingdom, of particular human organs?

The Speaker: The member for the Department of Health and Social Security.

Mr Karran: Vainstyr Loayreyder, I might be duplicating one of the previous questions in answering the hon. member's question. I can advise that my department does not have a specific procedure for responding to the shortage of human organs that may arise either in the Island or in the United Kingdom. However, my department, through the health promotion unit, is keen to encourage as many persons as possible to carry organ donor cards and to enrol with the National Health Service donor register.

I must say that as a division I have referred an issue that I feel would be of benefit and that is to look at the Belgian legislation where you opt out instead you opt in, but at the present time the Council of Ministers referred this to the Social Issues Committee in May of this year and they are developing this policy and looking at public consultation to gauge what the public feel as far as this issue is concerned.

So the initiative has been taken as far as that is concerned as I personally believe the Belgian or similar legislation should be available in this country. Whilst I must say there would be no attempt to actually do any transplant procedures on the Island, it would actually go into the UK pool and hopefully that might help our own sufferers that are needing a transplant at the present time.

The Speaker: A supplementary, Mr Henderson.

Mr Henderson: Yes, thank you, Mr Speaker. Again I thank the hon. member for offering his reassurances to people of this Island, especially those who are on waiting-lists for this specialist service, but could he confirm that he will take back to his department an idea that promotion of this particular area is needed, especially when there are shortages and people are suffering at present?

Could he also confirm that his department will inform and reassure people who are on waiting-lists on a regular basis and confirm that this could be distressing for them otherwise?

The Speaker: Mr Karran to reply.

Mr Karran: Vainstyr Loayreyder, as far as I am concerned I would have brought a Private Member's Bill on this legislation, but I have enough private member's Bills. I personally believe in the Belgian legislation where you have a register and you actually opt out instead of you opt in. The issue was discussed by my department and it was agreed that I should not introduce private member's legislation and it should go to the Council of Ministers. So as far as that issue is concerned, the department is well aware of the concerns of the hon. member, just like a previous question to do with dentists.

But at the end of the day the issue is that it is done through a pool in the adjacent Island. Everything I can do to encourage more people to be on donor registers the better, but I do believe the issue of opting out instead of opting in is an issue that this House needs to do in the very near future, as I think that it is a very bad situation when you have got a loved one there that is clinically dead and you have got to make decisions as far as organ donation. I think it would be a lot better if we changed the legislation in the first place.

Winter Fuel Payments — Extension — Question by Mr Singer

The Speaker: Question number 5, the hon. member for Ramsey, Mr Singer.

Mr Singer: Thank you, Mr Speaker. I beg leave to ask a member for the Department of Health and Social Security:

Does your department propose to extend winter fuel payments to all persons over 60?

The Speaker: A member for the Department of Health and Social Security.

Mr Rimington: Mr Speaker, winter fuel payments were introduced by the United Kingdom Government in 1997, initially to pensioner households, but as a result of a subsequent judgment of the European Court of Justice the payments were extended to all households where there is a person aged over 60. The present rate is £150 per household. It is paid as a lump sum in December.

There is no comparative payment in the Isle of Man, where instead there is a pension supplement to the basic pension for those who have paid the necessary national insurance contributions in the Isle of Man. The pension supplement for a person with a full basic pension is £18.70 per week or £972 per year, £822 more benefit than the basic pension plus winter fuel payments in the UK. In addition, the rate of Christmas bonus in the Island is £75 per person, thus £150 for a couple, compared with the rate in the UK of just £10.

It is possible that the hon. member is confusing winter fuel payment, a UK benefit, with what is commonly known as the winter heating supplement. The winter heating supplement is in fact an increase in the Isle of Man income support for persons over age 60 during the 14 weeks commencing from the beginning of each January. For the January coming the increase will be £8 per week or a total of £112 over the 14-week period.

Because it is a composite part of income support it follows that to receive it a person must be in receipt of income support, which of course is dependent on a person's capital and income, thus the very structure of the benefit precludes its delivery to all pensioners. However, it is paid to all persons over age 60 in receipt of income support, not just those of pension age.

The department does have proposals to increase in real terms both the universal state pension via the pension supplement and cash for low income pensioners via income support. Proposals regarding the pension supplement will be before the Tynwald Court next month for introduction in April 2001. The proposals for income support are likely to be included as part of the 2001 benefits uprating package.

The Speaker: A supplementary, the member for Ramsey, Mr Singer.

Mr Singer: Thank you, Mr Speaker. I thank the hon. member for the answer. Would you not think, though, that what your department is actually saying or what it appears to be saying from your answer is that we already pay a pension supplement which I think we all agree is excellent, we already pay a Christmas bonus which is excellent, but we do not intend to pay any more, and so would you not agree that you are actually reducing now the difference between what the UK pensioner gets and the Isle of Man pensioner gets, and would you not also think that because the cost of fuel on this Island, particularly gas and oil, has dramatically escalated and is far more expensive than in the United Kingdom we should be looking after

our senior citizens this winter and that we should not be subjecting them to a means test and that they should get this equivalent of £150 in order to ensure that they keep their health, they remain warm and that we maintain the margin between what our pensioners get and what the pensioners in the United Kingdom get?

Mr Houghton: Hear, hear.

The Speaker: Mr Rimington to reply.

Mr Rimington: Thank you, Mr Speaker. It is always very pleasing to learn that the adjacent isle is gradually catching us up in regard of provision for old age pensioners, and I would say that the position in the Isle of Man is very good and we do in fact look after our old age pensioners far more than in the adjacent isle.

I would say that the department is sensitive always to the needs of elderly people and would bear your comments in mind regarding the increase in fuel prices. The retail price index to mid-September 2000 does in fact show quite an increase for gas and oil, but it also shows a significant decrease for electricity and a decrease for coal and solid fuels and in respect of that many of our elderly pensioners do happen to be on solid fuel rather than on gas and oil.

I would say that it is the policy of the department in respect of extra and additional support for old age pensioners to target that and people in need and not as an across-the-board increase (**Mr Cannell:** Hear, hear,) and that is the policy of the Keys, of the department, is not to give money to people who do not need it but it is to give money to people who really do need it (**Several Members:** Hear, hear.) and our income support levels are far higher than they are in the UK. Thank you.

The Speaker: The member for Douglas North, Mr Henderson.

Mr Henderson: Thank you, Mr Speaker. Could the hon. member confirm that what actually happens here on the Island, if somebody is on income support, is the fact that if there is a pension increase the income support drops, in one hand out the other, and that we should not be benchmarking with the UK all the time, we should be setting our own high standards and improving on those ourselves, never mind talking about the UK?

Also could he confirm that solid fuel prices for coal, bags of coal, are £8 to about £14 or £15 a sack which is an expensive commodity for a pensioner?

The Speaker: Mr Rimington to reply.

Mr Cretney: It is not very good for the environment either.

Mr Rimington: Quite true. Mr Speaker, I do not keep a close eye actually on the price of bags of coal like the hon. member does, I am afraid, I have to rely on the retail price index, but what I can confirm for the hon. member is that we are and have and are again looking very closely at income support and we do realise that when we increase the pension supplement in the forthcoming proposals, which have had Treasury concurrence and a briefing paper will be before members for the next sitting of Tynwald. We do realise that by increasing the pension supplement we will therefore take people out of income support who were previously on it and we will be reducing the amount of income support that is being paid out at the moment, so therefore we are paying extra attention to this very area to ensure that income support will be significantly increased to compensate for that.

The Speaker: I will take two more supplementaries. The member for Douglas North, Mr Houghton.

Mr Houghton: Yes, thank you, Mr Speaker. I thank the hon. member for the department for his replies thus far, but just to clarify a point, would he promise to take back to his department and review the winter heating supplement for an extended period during the winter and to align such increases pro rata, not fixed, but pro rata with surcharges on gas and oil prices until those prices eventually fall, sir?

The Speaker: Mr Rimington to reply.

Mr Rimington: Mr Speaker, I can quite openly say that the department is always sensitive to the requirements and needs of members and the requirements and needs of the elderly population, and, yes, certainly we will look and review the present situation, especially as we know events are happening worldwide which are likely to have a dramatic effect on the increase in oil and therefore LPG, so it would be wrong for us not to take those factors into account and keep an active watching brief on that matter, Thank you.

Mr Houghton: Hear, hear.

The Speaker: A final supplementary, Mr Singer, Ramsey.

Mr Singer: Thank you, Mr Speaker. Whilst I agree with the hon. member that there are of course pensioners who do not need a supplement, does he not agree that there are always going to be people who are just above the level of being eligible for support who do find that the increases at the present time of fuel are really hurting their pockets and would he not agree that having no means test would help these people, and can he tell me has his department looked at the possibility of no means test and giving people £150 fuel allowance and can he tell me what the estimated cost of that would be?

The Speaker: Mr Rimington to reply.

Mr Rimington: To date, the department, under guidance from Tynwald Court, has been content with the present policy and has therefore not seen fit to look closely at the winter fuel supplement as given in the UK and therefore obviously we have not costed that out. Obviously as an exercise I am sure we are quite willing to do that, but I would repeat what I said earlier, that we do see primarily the means for ensuring that people in the grey area, which I think the hon. member is referring to, those who are just above the levels of income support and are finding it difficult, is to be addressed through an improved level of income support rather than doing it across the board, and it may be of interest to the hon. member that the actual number of pensioners on income support is decreasing. In April 1993 there were 2,469 pensioners on income support and by April this year the number had declined to 1,921 which really shows that pensioners' incomes are rising and are certainly rising amongst new qualifiers as a result of the pension supplement, as a result of higher rates of the state earnings related pension scheme, which did not begin until 1978, higher private pensions and higher investment income.

So I think in conclusion it is important that we obviously do bear what the hon. member has said in mind and, looking at that grey area, would see the primary mechanism for doing that is by increased income support.

Property Service Charges Act 1989 — Amendment — Question by Mr Karran

The Speaker: Question number 6, the hon. member for Onchan, Mr Karran.

Mr Karran: Vainstyr Loayreyder, I beg to ask the Minister for Local Government and the Environment:

Following the recent High Court judgment that certain service charge agreements fall outside the terms of the Property Service Charges Act 1989, does your department propose to seek to amend the Act?

The Speaker: The Minister for Local Government and the Environment to reply.

Mr Gilbey: Mr Speaker, the Department of Local Government and the Environment has considered the recent High Court judgment to which the hon. member refers and in particular those service charges which fall outside the terms of the Property Service Charges Act 1989. I confirm that when a series of amendments to this Act is brought forward later in this session a revised definition of what constitutes a service charge in terms of the Act will be included in order to deal with this issue.

Mr Karran: Vainstyr Loayreyder, a supplementary.

The Speaker: A supplementary, Mr Karran.

Mr Karran: Would the minister not agree that whilst it is good news to hear his reply, and I thank him for his reply, it would be a handy thing to find out a date as far as the proposed new amendment legislation? Will he be consulting with interested parties as far as this is concerned, as this is a growing feature within our property market now, the leasehold development? And could he just answer those two questions? Will he consult and will he also give a date when he hopes to introduce this legislation? Will it be the first sitting after the New Year or will he have to wait until after the next general election, Vainstyr Loayreyder?

The Speaker: The minister to reply.

Mr Gilbey: Mr Speaker, I did say that it would be later in this session and this session is before the next general election, and regarding consulting, it will be no more or less than other Bills and of course there is no need to consult on this particular point because this particular point is clearly a weakness in the drafting of the Act as it stands at the moment and it is quite clear what has to be done to alter that weakness.

Harcroft Housing Development — Delay — Question by Mr Karran

The Speaker: Question number 7, the hon. member for Onchan, Mr Karran.

Mr Karran: Vainstyr Loayreyder, I beg to ask the Minister for Local Government and the Environment:

What is the reason for the delay in the Harcroft housing development for first-time buyers?

The Speaker: The Minister for Local Government and the Environment to reply.

Mr Gilbey: Mr Speaker, the Springfield/Harcroft housing scheme is the Department of Local Government and the Environment's first major development for first-time buyer housing to be progressed under the strategy outlined in the Housing Policy Review 1999. New accounting procedures have been developed, including the formulation of a new form of

agreement to process these schemes, and this project has been the test-bed for other schemes that will follow.

The planning application for the scheme was submitted on 18th May 2000 and the approval notice was received on 2nd October 2000.

Approval has recently been received from the Treasury for the disposal of this land to the developer in accordance with the agreement. The developer has already commenced preparatory works for the site and following signature of the agreement, which may even take place today, the developer will proceed with the development works.

The conditions of the planning approval require the developer to undertake works to alter the site access and amend the junction of Ballaughton Meadows and Old Castletown Road before commencing works on the housing. Other than this delay I see no reason why the development should not proceed satisfactorily now that the planning process has been completed.

The Speaker: Mr Karran, a supplementary.

Mr Karran: Vainstyr Loayreyder, could the minister just give some indication of the light at the end of the tunnel as far as these individuals are concerned? When are we going to see some houses ready there for occupation to be sold off to some of these people who are desperately waiting in unsuitable accommodation at the present time? Can we have a date?

The Speaker: The minister to reply.

Mr Gilbey: As you know, Mr Speaker, I am very careful not to promise dates because it is very stupid to make promises regarding matters which *you* do not control and I cannot control such things as the speed of the developers, the weather and all kinds of other things. However, as I have intimated, work is about to start on the site and the development will be over four phases.

It is hoped that the first phase will be completed by May 2001, that is May next year, and the total development will be completed within 18 to 20 months from now and it will then have brought about the building and occupation of 55 new units.

I should also mention that shortly going out to tender are plans for the construction of 33 first-time buyers' houses at Cronk Grianagh, phase 2, and planning applications have been submitted for a total of 43 units divided between Andreas, Lonan and Castletown.

The Speaker: Mr Cannell, the member for Onchan.

Mr Cannell: A supplementary, if I may, Mr Speaker. Would the hon. minister confirm that there remains outstanding a number of people who have applied for such accommodation to be told whether or not they have been successful and if they are not so far in the position of knowing, could his department undertake to rectify that situation?

The Speaker: The minister to reply.

Mr Gilbey: Well, I did explain at the previous meeting of either this hon. House or another place the arrangements for applications and quite frankly I cannot remember exactly what I said then. So as I do not want to mislead anyone by saying anything that is inaccurate I cannot answer that question.

The Speaker: A supplementary, Mr Karran.

Mr Karran: Vainstyr Loayreyder, what assurance can the minister give to this hon. House that the date of May will not slip back further, and would the minister not agree that people outside are tired of listening to promises as far as first-time buyers' houses are concerned and no action as far as that is concerned?

Thirdly, can the hon. minister explain in more detail the recent delay as far as the Harcroft/Springfield development is concerned? What is the real reason? Surely you should have had the contract sorted out long ago as far as that is concerned.

Mr Gilbey: Well, certainly when the hon. member says he is tired of listening to promises, as I have said before, I do not make promises on these matters. I express hope as to what we will achieve and we are moving ahead as fast as we can, but having been in the building trade himself he knows perfectly well that no-one can promise with absolute certainty the completion of building operations. You hope that you will get it on the timetable proposed but it is not always the case for any number of reasons. Your second question was?

Mr Karran: What assurances can we have that May will not be allowed to slip past?

Mr Gilbey: For the reason I have said, I can give no assurance. We are doing our best. I am not going to stand here and make all kinds of promises which anyone with any sense and knowledge of building will know no-one can be certain of. You cannot be certain. We all know when we have work done on our own houses or people build their own home that you cannot promise these things.

Regarding the reason for the delay, I think it is very unfortunate that it took so long to get planning permission from the date that the application was submitted on 18th May until 2nd October. I would say that to try and speed things up the department put in the application itself which meant it went straight to an inspector, which was thought to be quicker than having a system whereby it could go to an initial hearing, then possibly be taken to review and then to appeal. I think the reason that the inspector in this case and inspectors in other cases have been slower than we would wish is because of disruptions that were unfortunately caused to the department or section of the Chief Minister's Office which deals with planning appeals and inquiries due to the very tragic death of a member of staff who largely ran that section. I think that is one of the reasons, but I can say that it is very unfortunate it has taken so long, but, again, when you have a democratic planning process I am afraid it does take longer than if we could just say, 'We're going to do it and that is that.'

The Speaker: I will take two more supplementaries. The hon. member for Garff, Mr Rodan.

Mr Rodan: Thank you, Mr Speaker. Could the hon. minister confirm that in progressing proposals for much-needed starter homes for young people and bringing forward schemes to this single-stage inquiry planning procedure the maximum consultation takes place with other departments of government with statutory responsibilities for highways, water, education and that such consultations are essential given the one-stage planning process whereby there is no opportunity, as the minister referred to, for challenging the decision at review or appeal stages?

The Speaker: The minister to reply.

Mr Gilbey: Yes, I think that, Mr Speaker, is a very helpful question by the hon. member for Garff. Of course he is absolutely right and of course this consultation takes longer and indeed it was the result of such consultation that the planning approval required, as I read out earlier, the developer to undertake works to alter the site access and amend the junction at Balloughton Meadows and the old Castletown Road before commencing works on the housing, and I think that was supported by at least one of the hon. members for the area. So this does show that consultation not only takes place but is necessary, but very sadly, like all consultation, does mean that it is slower than if you did not have that consultation.

The Speaker: A final supplementary, the member for Onchan, Mr Karran.

Mr Karran: Vainstyr Loayreyder, would the minister not agree that many outside this hon. House feel that vested interests are allowing the situation for this crisis to carry on with the support of certain elements within this hon. House as far as that is concerned? And what assurances can we have of some action as far as this is concerned and not excuses, Vainstyr Loayreyder?

The Speaker: The minister to reply.

Mr Gilbey: Well, I think that the hon. member's attacks are totally unjustified. A great deal of action is being taken. I read out five places where we are progressing with the building of first-time buyers' homes.

Mr Karran: Not a brick.

Mr Gilbey: I beg your pardon?

Mr Karran: Not a brick on a brick.

The Speaker: Minister, will you reply to the question, please.

Mr Gilbey: Yes, I certainly will, Mr Speaker. When he says there is not a brick, as someone in the trade, he knows perfectly well that, as I said yesterday in another situation, you cannot pull new houses out of a top hat like white rabbits.

Mr Karran: You have had long enough.

Mr Gilbey: It takes a considerable time between the plans to build anywhere, getting planning and the completion, but when he talks about nothing being done, he obviously is not aware that only yesterday I was at the sod-cutting ceremony for 12 senior citizens units at Snugborough in Braddan which is being developed by Braddan Commissioners. The hon. member for the area, the hon. Minister for Industry, was also present and this is just one more example of developments that are taking place.

Mr Karran: First-time geriatric houses, is it?

Mr Gilbey: Well, again, the hon. member may sneer at that but in fact it is very important to be able to provide retirement homes in areas for elderly people so that they can stay in the area where they have lived all their lives without being moved out.

Mr Karran: But that is nothing to do with the question, Vainstyr Loayreyder.

Mr Gilbey: Well, I am trying to reply to your sneering remarks.

A Member: Hear, hear.

Mr Gilbey: It is very important to these people and even if the hon. member does not appreciate these developments, they certainly do.

Mr Karran: I do.

Mr Gilbey: I can tell him that and, what is more, the fact that they leave bigger houses means that those bigger houses are available for younger people.

The Speaker: Thank you, hon. members. Question number 8 is for written answer and that is on your desk.

Ronaldsway Airport — Landing Fees — Question by Mrs Crowe for Written Answer

Question 8

The hon. member for Rushen, Mrs Crowe, to ask the Minister for Transport:

In the period October 2000 to October 2001, in respect of scheduled services at Ronaldsway Airport -

- (1) what is the anticipated gross income from the landing fees;*
- (2) what is the anticipated net income from the landing fees; and*
- (3) what is the total sum of concessions given in respect of the landing fees?*

Answer

The answer to the question is as follows:

- (1) £3,335,862.00
- (2) £1,342,283.00
- (3) £1,993,579.00

A Bill re Failure to Maintain Highways — Leave to Introduce Given

The Speaker: Item 9, Mr Singer to move.

Mr Singer: Thank you, Mr Speaker. I beg to move:

That leave be given to introduce a Bill to impose a qualified civil liability on the highway authority for failure to maintain a highway maintainable at the public expense.

I am seeking leave of this hon. House to introduce a Bill which will impose a qualified civil liability on the Department of Transport for failure to maintain a highway which is maintainable at the public expense.

The situation at present is this. If a person has an accident on a highway maintainable at the public expense due to the deterioration for whatever reason of that highway, the department is not liable. This is misfeasance. Even if a second person has an accident at the same spot due to no repair having taken place, the department is still not liable. If a person suffers injury due to an accident on a highway which has been repaired by the Department of Transport or in fact by any public body, the DoT or that public body is liable. This is malfeasance. The position is therefore if a problem occurs and the highway authority does nothing about it for whatever length of time they are not liable and any claimant would have to rely on an ex gratia payment or seek recompense through the courts.

The matter was brought to my attention by a lady who fell in Parliament Street, Ramsey at the end of June and suffered quite serious injuries. She fell at the same site that I had reported in March when a previous accident had occurred. The department had acknowledged receipt of the complaint to me but had not got round to repairing the area. This second lady consulted her advocate who told her that under the present circumstances the Department of Transport was not liable and certainly as a pensioner she could neither face nor afford going to court.

I am not suggesting that now or in the future the Department of Transport, in order to avoid liability, would deliberately ignore a problem because they have a duty to maintain the adopted highways.

In 1985 the United Kingdom Government introduced legislation which placed a total civil liability on highway authorities for the condition of the highway. The Isle of Man at that time resisted this call and, as history shows, quite rightly. The developing litigation-conscious society in the UK, with ambulance-chasing solicitors and a no win no pay attitude, encourages massive claims, contrived circumstances to enable claims to be made and therefore increases insurance premiums, and I do not wish to see what I witnessed in Devon a couple of months ago where a market stall had been set up in a main shopping centre and a firm of solicitors had employees approaching shoppers offering them leaflets and urging them to sue for whatever minor occurrence they could remember.

I can assure hon. members that this proposed Bill will not be seeking any such widespread liability to be placed on the Department of Transport but will seek to do two things: (a) reduce accidents and (b) say that 'do nothing' is not the answer.

I have read through several *Hansards* which have been produced over the past few years in which discussion on this subject was recorded. The hon. member for Douglas South, Mr Duggan, as long ago as 1985 questioned the lack of protection for pedestrians. In 1995 my present minister, Mr Downie, questioned the then Minister for Transport, Mr North, on liability for negligence claims and having heard the position explained the present Mr President, then member for Rushen, remarked, 'Now, that seems to me to be rather a silly position.' The hon. member of the Council, Mr Crowe, then member for North Douglas, asked again in 1998 and was told in a written answer that the Department of Transport was only liable when they carried out repairs negligently.

I am grateful to the hon. member with the highway responsibility, Mrs Hannan, for meeting me together with her senior officers to discuss my proposals. I found those discussions to be extremely useful and they enabled me to formulate guidelines to the extent of this proposed Bill to try to avoid placing an unbearable burden on the department yet see an improvement in the rights of the individual who uses a highway and expects it to be in an acceptable state of repair. Having had those discussions, and I am pleased to say I have had discussions also with the hon. minister this morning and, subject to members giving me permission to seek leave to introduce, I will be having more detailed discussions with the minister, I would now like to briefly explain my initial thoughts as to the areas that would be covered in seeking to impose this qualified civil liability and I would wish to do that in areas of main public use.

I would exclude public rights of way. These are not necessarily surfaced, are inevitably out in the country and used by walkers who would prepare themselves suitably for those conditions. I would envisage different criteria for towns and villages as opposed to rural areas, as most activities occur in the towns and villages. At this stage, subject to hon. members' views and those of consultees and the general public, I would suggest that the liability covers areas where the maximum speed limit is 30 miles an hour and below.

Finally, I have given consideration to when the department would become liable. I realise that when a highway deteriorates it can do so slowly. However, whilst the department does employ highway inspectors, they do have other duties and cannot spend all their time only inspecting the highway. I therefore consider, again to comments that I might receive from consultation, that the department becomes liable three months after being made aware of a problem either by its inspectors or the public. This gives the department time to inspect the area of complaint and decide according to the generally accepted criteria whether or not to undertake repairs. Whatever decision the department then takes, it becomes liable if the area is outside the set-down criteria and another accident occurs at that site, and the Bill would set out what records were to be kept by the department.

I believe my proposals strike an acceptable balance by decreasing accident risk, protecting the individual using the highway and not putting an unacceptable burden onto the highway authority who may have to make some adjustments within their working practices and priorities if this hon. House does grant me leave to introduce this Bill and then supports its various stages. I therefore seek leave to introduce a Bill as I have outlined. Thank you, Mr Speaker.

The Speaker: Mr Henderson, North Douglas.

Mr Henderson: Thank you, Mr Speaker. I wish to second this leave to introduce and reserve my remarks, sir.

The Speaker: Mr Houghton, North Douglas.

Mr Houghton: Yes, thank you, Mr Speaker. I rise to support this initiative, as it gives a clear impetus to a particular concern I have to the very serious dangers with respect to pavements which have not been properly maintained. I have pursued many circumstances whereby elderly people and children have tripped and fallen, which has resulted in many injuries which come from minor abrasions to serious fractures. I recall one occasion rushing a young child to hospital with his mother after he had stumbled and fallen, causing a horrific fracture to the child's skull.

I should make it clear at this point that once an incident has been reported to the Department of Transport the pavement has been resurfaced very swiftly or at least the area cordoned off to avert a repeat incident. However, the reporting of such incidents is often too late. The elderly cannot afford to be subjected to these potential dangerous hazards.

Whatever can be done to move forward with this initiative must be welcomed by all. I commend the hon. mover, Mr Singer, and wish him well in the progression of a Bill through the branches. Thank you very much, sir.

The Speaker: Mr Duggan, the member for South Douglas.

Mr Duggan: Thank you, Mr Speaker, sir. As Mr Singer has pointed out, I have raised this matter before. I did raise it one time with the Attorney-General in Tynwald many years ago after one of my constituents actually fell and actually broke his arm and was off work for about eight weeks, and the clarification then was that if the matter is reported, like a bad pavement, and then it is not repaired, then you can sue, but if someone actually just falls on the pavement and it has not been notified to the department or the corporation there is no claim whatsoever. So unless they have got evidence that there has been a report in about that particular pavement and someone is injured there is nothing that can be done otherwise. So it is a grey area, sir.

The Speaker: Mr Cannell, member for Onchan.

Mr Cannell: Yes, thank you, Mr Speaker. I have no difficulty with supporting the leave to introduce a Bill to try to cover the matters to which the hon. member is referring and in fact on many occasions, as I am sure we all have here, have experienced complaints from constituents and indeed possibly been involved personally in difficulties with the pavements and the roads, but I would warn against opening a great can of worms as regards the cost here because if the Department of Transport does undertake to be liable for any claims as a result of alleged highway mis-maintenance, then you are going to need a staff of about 50 people permanently going round the Island attending to absolutely everything. I am in favour of it in principle because there have been considerably deteriorations of standards of maintenance of pavements even in my own constituency. Some of the pavements are the originals from when the estates were built and they are in very, very bad shape, but I would just warn against what could be a situation where, if the department was liable for everything, every Tom, Dick and Harry would be getting in on the act.

Now, we have heard about a market stall. For those who watch the Sky channels now, you have advertising absolutely soliciting claims by the slogan 'If there's blame, there's a claim.' If there is blame, genuine blame, that is one thing, but the inducement of people to consider something that they might not otherwise have thought was blameworthy is now being connived at by people in the notion that they might make some money out of it. Again they are acting within the law and they are quite free to do that, but it is immoral to actually go round virtually touting for business on the thought that someone might have had some difficulty and I would think that the department would be in great trouble if legislation is produced to that effect.

I see the costs as being absolutely enormous and the department would be obliged, because of their liability, to make sure that they had an adequate staff to try to avoid the claims because otherwise the insurance companies who would be underwriting it all would take them to the cleaners and say 'You are not honouring your obligation to make sure that absolutely every inch of the Island is going to be inspected', and even if you only started with overhanging bushes I am sure every hon. member has got a list of 10 places. If you started on that you would have five years' work to go along before you ever started on pavements covered in moss, pavement edges badly, all the cracks in the flags of pavements and heaven knows what can go wrong.

We do not want to move into a sanitised culture surely, do we, where absolutely everybody is going to sue everybody else for what in reasonable circumstances they fail to protect themselves from doing. If someone now is going to slip on a small patch of rainwater

that has come out of a drainpipe and the Department of Transport is going to be liable for a blame cost there I just see the costs going through the roof.

The Speaker: The member for Garff, Mr Rodan.

Mr Rodan: Thank you, Mr Speaker. I was quite interested listening to the hon. member for Ramsey, and his description of the limitations to the department's liabilities and responsibilities in the area of highway maintenance, and he has told the House that the matter was first brought to his attention by an incident involving a lady, in June of this year, when she tripped on a pavement in Ramsey. Can the hon. member confirm - this is the first issue I am interested in - that for a period of two and a half years until in fact May of last year the hon. member himself was a member of the Department of Transport and had delegated responsibility for highways and delegated authority in areas and was he not aware of the situation during his time in the department? He tells us it was only brought to his attention during this year and, if he was, why was he not in a position to do something about it then through the government department of which he was a member?

However, the other issue that I think we need a little more clarity on is the exceptions that he has described. Public liability is qualified in such areas as not applying to public rights of way, a distinction being drawn between rural and town areas, and a limitation being imposed on the highway to highways where the speed limit is maximum 30 miles an hour. So I would like to ask him why that particular latter exception because I, and I am sure other members of the House, have had dealings with constituents on such matters as potholes on roads with unlimited speed limits, which are probably the majority in the Island, whereby the extent of the department's liability in that situation is where a pothole having been previously reported has not been immediately acted upon to be repaired. Where this has happened there is an issue there of liability, I understand, and I have had issues like this with constituents which I have been attempting to resolve within the department.

So I think that highlights perhaps that if this Bill is trying to address a wrong in principle, many of the occasions of that particular wrong lie outside the areas in which he intends this Bill and this legislation to apply.

Like the hon. member for Onchan, I have some concerns as well as to the potential costs to Treasury and to the government and would ask what consultation he has had with Treasury and to what extent he has identified possible ongoing costs that will fall to the department in this area because in my opinion, as the hon. member for Onchan has flagged up, this legislation is quite likely to lead to a litigation culture as we have in other countries where certain individuals and certain lawyers make a handsome living out of pursuing claims against the local or the national highway authorities in areas such as this.

Can he also tell us what would be proposed to deal with the situation whereby it is not just wear and tear or failure to maintain highways that gives rise to possible litigation but the involvement of third parties, like other statutory authorities, like the MEA or the Water Authority or Manx Telecom, other services which regularly are opening up pavements and highways and putting them back together again, presumably to recognised standards to the satisfaction of the Department of Transport. Are we going to be in a paper-chase of claim and counter-claim in the future if that work is not done properly?

So there are a number of areas that still have to be addressed before, in my opinion, the case is clear for new legislation. Certainly on the face of it, for legislation to flow from an incident this summer that was brought to his attention, it appears to me that a little bit more work has to be done before we start necessarily changing the law.

The Speaker: The member for Onchan, Mr Karran.

Mr Karran: Vainstyr Loayreyder, I will not deny anybody the right, unless there was a real fundamental issue, as far as leave to introduce, but I do think the Bill is a nonsense and in fact I never even thought about the issues that the hon. member for Garff has alluded to, with the fact that you would end up with a paper claim of who was responsible and everything else.

I cannot believe the hon. member can be that naive as far as his input to this hon. House is concerned. He does not do himself any favours to give an input about 'Oh well, it might and it might not.' He knows well what is going to happen as far as this issue is concerned.

The issue of trying to do something whilst you are in the department has been raised by the hon. member for Garff. My concern is that as far as I am concerned there are desperately needed changes in the DoT. As a socialist it is one of the areas where I could quite easily privatise when I see the situation of the Department of Transport. It needs a complete management review. But I do not think that this piece of legislation is the way forward.

The fact is that what we are seeing here today is a typical mainland mentality as far as this is concerned: 'That's what happens in the United Kingdom, then we'll do it in the Isle of Man.' The fact of the matter is if the member had been bringing a piece of legislation to bring forward the New Zealand legislation, which would have covered a number of things that kept the parasitic lawyers out of the equation, I would have had a lot more sympathy with the hon. member.

But the fact is if we want to really deal with the issues of injustice and maladministration, then he would have been better bringing a piece of legislation in order to get the legal aid system working better, because at the moment you either have to be very rich or very, very poor to be able to use the court system on a non-criminal basis within this country, and he would have been far better if he was really wanting to look at the whole issue of justice and fairness and accountability as far as the departments are concerned.

I am not going to vote against leave to introduce but I do not think I will support the Bill unless there are some major, major safeguards as far as the Bill is concerned. I think everybody in this hon. House has concerns about the Department of Transport and I think -
(Interjections)

The Speaker: You have the floor, hon. member.

Mr Karran: - whether to go down this road I honestly do think that, whilst it is gimmicky, it does not solve the problem. I will support the Bill. I will support the introduction of the Bill because I believe in the right of members to do so because we have already seen this hon. House being tied back by the executive with this crackpot proposal that we have recently proposed in standing orders where we have to get the government now to support any suspension of standing orders in order to move any amendments outside the period. But that is a separate issue.

Mr Brown: The house determined that.

Mr Karran: Vainstyr Loayreyder, I would say that this hon. House should give the hon. member his clearance as far as this is concerned, but I think they should be looking for a more original way of dealing with the fundamental issue as far as making departments more accountable and not just following the United Kingdom, because this idea that it is going to somehow not involve a litany of litigation is just nonsense, absolute nonsense, and those resources, instead of repairing the road and looking after the state, will be paid out to parasitic lawyers and we should not be following the United Kingdom who followed the USA.

I hope that maybe some members will look up the New Zealand legislation and will look at the legal aid at the present time. They are the areas we need to address in order to make sure that the civil actions are affordable to those middle people, about 85 per cent of the population who are not either very, very poor or very, very rich.

The Speaker: Mrs Crowe to take her seat. The member for Onchan, Treasury minister.

Mr Corkill: Thank you, Mr Speaker. Quite a number of the points have been covered, but to add to the debate, the hon. member for Ramsey is seeking leave to introduce and obviously as members of this House we try to accommodate as much as possible individual members' wishes with regard to this aspect of introducing Bills to the House.

I would encourage the hon. mover to speak with the Treasury with regard to the cost of such a measure because I do believe the impact on the government insurance will not be insubstantial, that there will be an effect, and that feeling is based on a real aspect which I came across on holiday once when I was in Scotland, where in my car I actually drove over a pothole, did not see where it was, broke the wheel, went down to the local garage about 30 miles down the road, got the wheel fixed and the man in the garage said, 'You will claim for this, won't you, sir?' and I said, 'Well, yes, I've got insurance - what's the damage, what's the bill?', and he said, 'No, no, no not your insurance, Ross and Cromarty Council are responsible for this', and I said, 'Well, I wasn't looking where I was going and I drove over the pothole and this is what's happened' and he said, 'Well, here are the forms, sir' and he put a form in my hand which I duly filled in, sent off to Ross and Cromarty Council. By return of post I got a cheque for £150 courtesy of the taxpayers in that area of Scotland, thank you very much. Now, I was very pleased: I did not have to claim on my insurance.

So I do this by way of illustration because I think when it comes to individuals, someone who is elderly, who is frail, who injures themselves on the footways, or children as some of the examples that have been put forward, then obviously our sympathies are there, and I think it is getting this balance and I would ask the hon. member to really consider the balance of what he is trying to achieve because certainly I was brought up with the view that the individual has a certain amount of responsibility for their own welfare. Now, that is on one hand and yet on the other hand we have got frail people who perhaps do twist an ankle because of a pothole or whatever. On the other hand you have got the other example where I was well insured for my vehicle and I could have claimed at my own expense for the repair of my vehicle.

So I do think that the word 'qualified', 'qualified' civil liability, which is what the hon. member is asking for, is very, very important in this motion and it is only because of that 'qualified' word being there that I can actually support the motion to introduce.

I would just like to stick up for the guys who are in the DoT because there has been a bit of knocking in here this morning and at the end of the day they work in all weathers, all year round, very often repairing holes in the roads -

Mr Karran: They are not the problem: it is the management. (**Messrs Cretney and Henderson:** Hear, hear.) It is the management. Don't try and bring it down to the men.

Mr Corkill: - which the Water Authority have dug up, and the utilities, Mr Speaker.

The Speaker: Hon. members, can we keep to the -

Mr Karran: The management.

Mr Corkill: We can always do better, but certainly I have always found encouragement is better than knocking.

So just for the hon. member, as he develops this Bill, I do hope, as he has been to the Department of Transport and they have already started to talk about issues with regard to the proposed Bill, I think also if he could come along to Treasury we would be very happy to talk to him about the potential costs.

The Speaker: The member for Douglas West, Mr Shimmin.

Mr Shimmin: Thank you, Mr Speaker. A number of the previous speakers have already covered some areas, so I will not go over those again.

The move for leave to introduce has an attraction and certainly many of us will support the leave to introduce in an area where we have all got some personal experience of constituents who have experienced difficulties in these areas.

My main concern would be - and I do not want to be the spectre who raises this, as an increasing amount of times in the future it will be raised - I do believe that the member moving the leave to introduce attempted to persuade the House by using arguments about the limited nature of this, with regard to in towns and areas below a 30 mile an hour speed limit. I do consider that the Human Rights Bill which has gone through this House is going to put forward an awful lot of pressure upon those people who fall outside of his area of selection, and I believe that is one where these people have similar rights to everybody in towns and I do consider that an attempt to try and persuade the House that this might be attractive I think would actually leave itself wide open to criticisms and allegations in this area.

I think we could all sympathise with the motives of the member. I do have concerns that we are going to be put into a position, if we have a Bill before us and we then choose, for reasons that are sound, not to support the hon. member, where that will be portrayed as if we were less than caring towards the people who it affects. I do believe that there is merit to investigate it further. I think we all share the motives. I do think it would be extremely difficult for the member to come forward with a Bill which will actually be one which the majority of this House can support, sir.

The Speaker: The member for Castletown, Minister for Transport.

Mr Brown: Thank you, Mr Speaker. I have been very interested in the comments that have been made by members because I think we all believe that, if we can, we should endeavour to provide some form of protection / liability where persons have accidents

because of lack of maintenance or whatever on the highway. I do, however, believe that this is a very important matter which needs to be very carefully thought out.

Now, it is correct to say that the hon. member for Ramsey, Mr Singer, has approached and met with Mrs Hannan, who has responsibility for highways and traffic within my department, and Mr Hannay, and given a brief outline of part of what he expects to put into the provision. Because of the importance of this issue and because the department is presently finalising a Road Traffic (Amendment) Bill, which we hope to have introduced into this place before the end of this year, the current year, I have in fact contacted the hon. member in writing, because he was off the Island at the time, last week, to say we need to talk about this issue, whether or not leave to introduce is given by the House, because clearly that is a matter for the House and not a matter for my department, because it is an important issue.

I would make the point that people have been successful, as I understand it certainly, in claiming over the years from the Department of Transport, in its many guises before that, in terms of where persons have fallen.

I think we have to be very careful in any provision that we are not discriminatory and I think that is an important issue, and part of what the hon. member for Ramsey, Mr Singer, has stated already has the potential of being discriminatory, in other words, 'You were the first to fall, so hard luck, but you're the second so you can claim', and I think that is really something we need to talk through on what is very, very important for the public.

So I hope to be able to have further discussions with the hon. member, or detailed discussions really, whether or not the House gives leave to introduce today. The other reason for that is of course it would be much tidier, if we are able to, to incorporate any such measure in the department's Road Traffic (Amendment) Bill which, as I say, I hope to bring before the House before the end of this year, as it means that we do not have another piece of legislation separately provided, but that is a matter that really, subject to what happens today, we will endeavour to try and tidy up.

We may not be able to reach agreement. The principle of what the hon. member says I do not think any of us have a problem with, it is actually making it work, and whatever we do I think it is important that we have a practical, sensible and fair system because otherwise we will create more anomalies than is possibly our intention.

We need to carefully consider this because of its implications and the implications are not just for my department, the implications are of course ultimately for the taxpayer.

I would like to clarify one issue. Members may well be of the view that it does not matter because the costs will be picked up by government's insurers. I would suggest in the vast majority of cases that would not be the case. In the vast majority of cases on such claims it is likely that the costs will be borne by the taxpayer because government's indemnity provides a substantial provision for government departments to have to pay before the insurance becomes effective, so therefore I think it is something like £8,000 or £10,000 per claim would be borne by the taxpayer. I think that it may be more but basically I think that is what it is.

I acknowledge the recognition by the hon. member for Ramsey when he makes the point that he does not want to incorporate a system similar to the UK, and I think that is right because we are aware that in the United Kingdom they have what you call professional

claimers who deliberately go round when they need money - and this may sound daft, but they actually do - and make sure they fall and put a claim in and they are in many cases quite successful, and the other danger of course is that some highway authorities in the UK actually spend more money paying out on claims than repairing the highways. Our priority is to repair the highways.

So I think that there needs to be very careful consideration about this. It is certainly an issue we should not rush. That is not making an excuse, but it is an issue we should not rush.

The other point I would make is that with regard to pavements it was raised about the problems with many of the pavements. I would make the point that the government has only been responsible for highways throughout the Isle of Man, which has brought in the towns and villages, for, in relative terms, a short period. The problems we have have been there for decades and we have been endeavouring to catch up on that and we have prioritised in recent years more funds going into pavement repairs than there used to be. So we are trying to catch up. I take the point that, where suddenly a pothole appears or damage, that is an issue that we need to look at.

I would finally just make the point that I do find, while I understand what the member is trying to do, at this stage a potential difficulty in saying if it is in a town you can claim but if it is in the country, in a village or a parish you cannot, and I think that is a very important factor that we have to examine before we go forward with this issue.

I do support leave to introduce in principle. However, whether or not the department and myself especially, as minister and as a Member of the House of Keys, would be able to support the final detail that may come forward is a matter for later on. Mr Speaker, I have no problem in supporting leave to introduce.

The Speaker: Mr Henderson, Douglas North.

Mr Henderson: Thank you, Mr Speaker. In supporting the leave to introduce this morning I think there has been a very honest move in placing before this hon. House something that needs addressing, and I do not believe for one minute that the hon. member for Ramsey who is moving for leave to introduce is basing it just on one example. He is only too aware of all the issues regarding the problems he is trying to address, not least of all when he was member of the department, when he was heavily canvassed by both myself and my colleague for North Douglas, Mr Houghton. If anybody is more aware of the problems and has obviously tried to address things and now has managed to do so, then it is Mr Singer himself and I do not swallow the argument 'Why now and not before?' I am sure, and I know, the hon. member has tried and tried very hard to look at these issues.

Now, it strikes me as funny in as much as this seems to have polarised the House in some ways. There is the gang that believe in the vicious lawyers who are going to be circling like piranhas waiting to gather up all the claims and then there is the other side of the House who have experienced all the problems that the hon. member has tried to allude to, least of all myself, and no-one in here can honestly tell me they have never had problems with the issues which the hon. member Mr Singer is referring to, especially to footpath and pavement accidents.

Now, the hon. member for Ramsey, in moving for leave to introduce, made it perfectly clear - and I cannot understand what the problem is with some of the hon. members, especially Mr Cannell for Onchan - that there were exemptions, and this is one of the reasons why this is worthy of support to get to, certainly, the reading stage, and the exemptions were clearly spelt out. It is up to the department, after a three-month period, if they fail to act on notification of a problem. It is not a case of professional falling over people suddenly moving claims. That is not what the hon. member for Ramsey said at all. It is a case, if there is an issue reported and there is a failure to address the issue in three months. Now, that is very important and everyone here must understand that. It is not a case of throwing the floodgates open and every lawyer in the UK can come prancing in here and think all their Christmas Days have arrived at once with litigation. That is not true. In fact if there is a worry about the time limit that the hon. member has been discussing I would be quite happy to support forthcoming amendments to look at maybe four months or whatever he wants. So it is unfair for hon. members to point the finger of accusation there and also about bringing a UK mentality into the Isle of Man with regard to this issue.

It has been a long-standing problem, it does require addressing and it needs some positive input and, here we are, we have an honest attempt to try and do that.

I think regarding the issue of accountability I cannot believe it really because you cannot shirk your responsibilities as a public department either, and some hon. members seem to think it is a sliding issue. There are sets of accountabilities that you have to stick to and that is the end of it. This particular legislation or leave to introduce will help to highlight that only.

I think regarding the issue of the Bill trying to address one particular area rather than another, what the hon. member is trying to do there is trying to make it work, not trying to make it too complicated. If you throw the net so wide that it becomes so all-embracing, then I think we may have problems. Let us go step by step, stage by stage. If there is a way of addressing rural issues, then I am sure that can be worked in as we progress along, but I would hate for things to stumble on the fact that the net has been cast far too wide and is causing far too many problems. The idea of it addressing the 30 mile an hour and below scenarios makes it very relevant to the built environment and that is where most of the problems are emanating from. Rural issues could form a second stage on another day.

There were other issues talked about but I think I have covered the main one which is the litigation issue and, as I say, Mr Singer has obviously thought very carefully about how to introduce this and what measures need to be done and how to have the brakes on the thing so that the doors are not thrown wide open and far from it in fact and it gives the department a chance to address something so that they can be notified, can act and within a reasonable amount of time so that it will not pull staff off from this job and that job, an important highways job. Or it may be that there could be an amendment made to say, 'Yes, we're aware of it, we can't do it in three months but we could do it in maybe four months or whatever.' There are ways around everything. There is a positive attitude to address things and there is the old attitude that we quite often see, 'Oh, we can't possibly do that.' I say let us have a look at it and go for the positive side of things and let us see how we can. Thank you, Mr Speaker.

The Speaker: The member for Glenfaba, Mr Gilbey.

Mr Gilbey: Mr Speaker, I should like to pay tribute to the officers and workforce of the Department of Transport. (**Several Members:** Hear, hear.) All of us want them to do work in our sheadings or constituencies and they cannot always do it as quickly as we would like, or they would like but they always try and I have always found them helpful and co-operative.

Now, I agree with the hon. members for Castletown, Garff and the three hon. members for Onchan in what they have said, and the question of weather was mentioned. Now, weather can cause vast amounts of damage to roads which can take months or even years to repair. Let us think of the damage to the road at Gansey, the peat slides onto the Mountain Road, other landslides, the appalling amount of potholes that can be caused by heavy rain or a combination of rain and snow and frost. Not only do these weather conditions cause unexpected and considerable damage but the need to repair that damage can delay other programmes and now for these reasons I think any time limits such as those being suggested by the hon. member for Ramsey, within which time limits work has to be undertaken, are totally unrealistic and unreal. The department cannot be tied to time limits for various pieces of work because they never know from one day to another what disasters may strike which need urgent action. Who can say there is not going to be a landslip this very night? Bad weather is forecast. I therefore believe that the factor of damage that can be caused by weather makes the whole proposition totally unrealistic and unacceptable.

The Speaker: The member for Peel, Mrs Hannan.

Mrs Hannan: Thank you, Vainstyr Loayreyder. It is safe to say that I have had talks with the member seeking leave to introduce on this particular piece of legislation and in a way I do not think it was terribly helpful to be on the radio one day saying he is introducing and the next day asking for a meeting with the department because I do feel that each member moving should be responsible and should seek as much information as possible. The member did not contact me prior to this to say that this repair had not been reported, so I could not then take this up and it was just one he was talking about at that particular time, and maybe the mover could enlighten us as to how many more there were during his time in the department looking after roads.

But government does have a responsibility. I would like a lot more money, finances, reserves, personnel to be able to carry out the work that my particular division would want to do. I think most members round here will know that they have approached the Department of Transport for various things to be done and it does take time because we have to fit it in with everything else that we want to do. We have not got the funds to do it, we have not got the resources to do it exactly when we would like to do it.

Also we have road users, and this relates to highways as well as pavements. So you have increased weightloads on roads, along with the very useful comments made by the Minister for the Environment about the very environmental conditions which affect the roads and which take people off various jobs and put them onto something else because the public wish to travel on a particular road, it is more convenient for them in relation to the mountain. Are we going to have claims there? In that particular instance we have not cleared the mountain and therefore people are inconvenienced. Would we have claims there?

There are all these issues and I feel this is a very simplistic approach to someone falling in the street, but it does open the door for very many other aspects of roads and roads management.

Now, someone has said we should be outside the 30 mile an hour area maybe looking at pavements or whatever, but if we want every pavement in the Isle of Man to be exactly the same standard, then it would cost us a fortune. The conditions in the country, I would say, are different to the town. There are pavements that are not made up to the same standard as they are in the town because the conditions are different, but if that is what members are wanting we would need very much increased funds and personnel to be able to do that.

One of the concerns I think that a lot of people in here would have and anybody who fell and then reported an issue is that the first person cannot make a claim but the second person can, and it might not be exactly the same situation where that person fell. Who is to decide whether that person fell in exactly the same place? Someone comments, 'I've fallen here, somebody else has fallen there some time before: was it reported, can I make a claim?', and it might not be exactly the same place. It might be that something else has gone over it, a heavy vehicle has gone over the pavement and caused some damage, because if you look around and see how many vehicles actually park on pavements and then the Department of Transport is expected to come along and keep those pavements up to a very good standard and it is the government that has the claim, not the vehicles that continually either park on the pavement or go over the pavement. So I am not sure that we are actually looking at equality here because who decides that it is the same place? And I do not think we can legislate for that.

I thank the member for Onchan raising the New Zealand legislation because it is something that we will look at within the department because if he feels it could be helpful to the department, of course we will look at it.

But I have to voice my very grave concerns at the member for Onchan's outburst with regard to the management of the Department of Transport. The Department of Transport, and particularly highways, is a particularly high-profile public position. Everyone wants to see their roads improved, everyone wants to see and does not agree with various things. They are at the forefront of everything that is happening on the roads to get people to and from work, to and from the shops, also leisure facilities and everything else, and within the resources that we have to our hand, then I believe that they do an extremely good, efficient job and I know that at the drop of a hat they will meet members. It takes them away from their existing jobs but they feel that that is a very important conduit between the Department of Transport and the public and therefore I am extremely concerned that somebody who calls themselves a socialist, who purports to relate to ordinary people should attack people who actually cannot answer some of these claims which he and other people make from time to time. The work that goes on on the roads is extremely important, as I have said, and I do not think it bodes well at all for members to make the sort of claims that have been made this morning.

As I have said, this is not an easy situation by any means. The situations are different, but when we are relating to the first person that reports or has a serious injury, someone said about a child falling and having a fractured skull. Now, that really concerns me greatly. Yes, people do have different injuries, but if that person was the first person to fall and have a fractured skull and be very seriously injured for a particular time they would not get any compensation but somebody who fell and maybe sprained their ankle might be able to say,

'Well I've had a fortnight off work and therefore I should be compensated.' So we do need to be very careful.

The Speaker: The member for Ayre, Mr Quine.

Mr Quine: Thank you, Mr Speaker. It sounds as if we are having a debate at second reading without the Bill in front of us because there has been an awful lot of speculation and suggestions that it could be this, it could be that, and I do think in fairness to the motion that is before us we need to come back and just address that. It is leave to introduce and quite clearly the member in relation to many applications for leave to introduce has given us a wealth of information, more than perhaps he need have given us, but I believe what we need to do is just to concentrate on the underlying principle or perhaps you could say principles, and as I understand it, what is the proposition before us is that he brings forward a Bill which would require an authority, given notice of a fault, to correct that fault within a period, suggested as three months, and if that fault was not corrected and if somebody had an accident following the expiry of that period of notice, then that person would have a right to lodge a claim. I do not think that that is earth-shattering. Then secondly of course any person who would lodge a claim would be up against normal requirements to prove his case for damages in the ordinary way. So I really do not see what is so exceptional about this.

The problem of course is that we do not have the full content of the Bill before us and therefore we have had this speculation, but I would suggest we should wait until we can have the Bill and before that point is arrived at, as again the hon. mover of the motion has made quite clear, there is further consultation to take place. That is where the meat comes on the bone, that is put on the bone and that is where we can, and he will no doubt at that stage, take on board the concerns and the worries that have been voiced here today and try to come up with a Bill that as far as possible takes these on board. We will then have our opportunity for to say yea or nay to that Bill.

So to me I think this debate has gone well beyond the issues and unnecessarily so. But there are just two things that I would mention because this may be of relevance when the Bill is being drawn up.

The first thing of course is that we have to bear in mind that in relation to 'roadworks', whether they be the DoT's roadworks or whether they be the Water Authority's roadworks or whoever, a lot of these works are now carried out without formal planning approval, they are covered under an exemption order, so I think again the counterbalance to that may come through legislation of this sort, but that point needs to be made: these roadworks, many of them now, are not subject to a formal planning procedure.

The second point that I would make is of course that if in truth we have concerns about this type of legislation being exploited by the legal fraternity, and I cannot say that I can see the case for that because the type of legislation that is being mooted here is much more narrow based, but if we have those concerns, then I suppose we should be looking at boards and structures such as the Criminal Injuries Board where we have them dealt with separately without the involvement of lawyers. So there are other ways to confront those sorts of issues and I am sure they will come out as the hon. mover of this motion brings them forward.

The hon. member for West Douglas, Mr Shimmin, of course has mentioned the question of the human rights aspect. Well, I am not perhaps the greatest proponent of that particular

position but I can see where he is coming from and I think it might apply in one of two directions, and I think the suggestion from the hon. member is that if we go to differentiate between town and country there may be some conflict of principle there. But I would also suggest that it would be worth examining, against the backdrop of this legislation as and when it perhaps is brought into force, if we were not to take on board redress for people who suffer injury under the circumstances envisaged in this Bill, at least in those circumstances that that in itself could be an issue of human rights, so all of that needs to be taken on board and I am sure the hon. member will take it on board as he progresses his Bill. Thank you, Mr Speaker.

The Speaker: The member for Middle, Mr North.

Mr North: Mr Speaker, I do not want to get into the debate. I think as long as we look at this one sensibly there is a matter, an issue to be addressed here and I think we have to confront it, but I would like to see the hon. member, if he gets leave for this, really talking seriously to the Department of Transport which I think, in the Bill that is coming up later this year, will expedite everything because I am sure the department would be able to address the issue to the satisfaction of the hon. member for Ramsey, to save a lot of the problems that have been highlighted here, and I think if he is given leave to really discuss it with them, because I think a clause in the amendment the forthcoming highways amendment Bill would help, and I hope that the Department of Transport would welcome that relationship with the member and come up with something that is sensible.

It is something that I do know a little about, as was mentioned, having worn that poisoned chalice for five years of trying to help all members with a limited budget.

The Speaker: Mr Singer to reply.

Mr Singer: Thank you, Mr Speaker. I think with the remark by the hon. member for Ayre that we can now avoid the second reading of this Bill.

Two points I made initially. The first thing was to reduce accidents, and that is, I know, a policy of the Department of Transport, to reduce accidents, and secondly, I said that to do nothing is not the answer, and certain members, the hon. member Mr Gilbey particularly, seem to be saying that the situation is that we should be doing nothing. Now, that is a matter for members' judgement.

But I would like to thank Mr Henderson for his support, reiterating that I am not criticising the Department of Transport. I have a great amount of respect, having been there for two and a half years seeing how they do work, I have a great amount of respect for them.

I would also again make it quite clear that a few members have raised the matter of full civil liability. That is the point that I am deliberately trying to avoid.

I thank Mr Houghton for his support and when I was in the department I did try and divert finance to the two areas where I felt that work was needed, and certainly the pavements, I hope, throughout the whole of the Island were improved, the condition of the pavements, by not only using our workforce but by putting work out to the private contractors as well.

Mrs Hannan: You need money for that.

Mr Singer: I thank Mr Duggan for his comments. I know that he has been particularly concerned about this and he was worried, I think, about there being no reports and the

problem was identifying. Well, one of the conditions would be that the department kept reports of complaints.

Mr Cannell talked about opening this can of worms. I think there would be a need, as I said, to change some of the practices within the department. They would have to make arrangements perhaps to inspect and repair, but I am deliberately trying to avoid this blame and claim situation because you hear, as has been mentioned, of somebody falls over and they say to the brother, 'I've just fallen over - go and fall over: you'll get a claim', and they say to the sisters and the family, 'Go and claim', and you have a list of claimants. That we certainly do not want, but we have to balance safety with the reduction of accidents.

Now, Mr Rodan talked about the limitation of liability and he said about me having this brought once to my notice. This is not true, but this particular case which I based it round is because I was involved in both cases at the time and I was aware that I was the one who had made this complaint and I had had acknowledgement from the department that they were going to look at it and in fact within a period of time they had not and somebody fell over and seriously injured themselves. Now, I have got another similar case here; people have written to me from all over the Island.

I do not think it is a particularly fair comment, 'Well, why didn't you do this before?' I think any member of any department who brings forward a Bill could be asked, 'Why didn't you do this before?' The fact is it arises at a certain time and legislation comes forward, otherwise we would have all perfect legislation and there would be no need to bring any legislation forward.

Members may wish to extend liability to people who fall over for the first time. I certainly do not believe that is right. I think that that would put a great burden onto the department and I am trying to avoid this litigation culture by limitation and delaying the department's responsibility or time in assuming responsibility.

As far as statutory authorities are concerned, once they have repaired a problem, then they are liable, so that is something I explained earlier as well.

Mr Karran was talking about keeping the lawyers out. I agree with him. I will certainly look at this New Zealand legislation to see what it says.

Mr Gilbey was talking about the workforce and I would say I agree with him. I have got no criticism of their work. I think they work very hard, they are limited in their numbers and they work very hard. But to raise the matter of the Mountain Road and Gansey - certainly the Mountain Road would be excluded from this legislation because that is certainly not 30 miles an hour or below. I do not think Gansey is 30 miles, I think that is more than 30 miles an hour. I am looking to introduce legislation in the highly populated areas where people are and I do not think that to do nothing is an option.

I will certainly speak to the Treasury and I take note of what the Treasury minister says, but I believe that the overall cost would be related to DoT performance and I think that that performance can be adjusted because of the time limits, and I think when I go to Ross and Cromarty I will remember the lesson that you learnt.

Mr Corkill: I will tell you where the pothole is.

Mr Singer: So we have a balance to achieve and Mr Shimmin did talk about the human rights situation. That is something I will certainly look at. Mr Quine mentioned there could also

be a civil rights view that when somebody falls a first time there should be a total civil liability. That is what we will have to look at as well. That may be another human rights situation.

Mr Brown - I thank him for his contribution and I did say to him that I am happy to go and talk to him, talk to the department. I am happy if the Road Traffic (Amendment) Bill comes forward. I am happy for this legislation to go with that. The only thing I would say and I did say directly to him is that when I was in the department we were talking about this and it has not come forward yet. I know there are opinions whether it will or whether it will not before the end of the session and I would not like my Bill to fall if the Road Traffic (Amendment) Bill did not come forward in time for it to be completed before next year, but I am happy if members do give me permission for this to run in parallel and if it can be included in the Road Traffic (Amendment) Bill, I am happy to do that.

Mrs Hannan did mention the discussions we had and she did actually raise a couple of points here that she did not raise at the time of our meeting and I certainly think that Mrs Hannan raised the matter of the Mountain Road again, and that is a red herring as far as I am concerned as to what I am proposing, and I think she also raised country roads as well, and I have made it quite clear that those would not be included, and also the fact of if it is in a different place, if somebody falls in a similar place. Well, that is not included. There will be no liability if somebody falls in a different place. The complaint would be recorded as to where the accident had happened by the inspector who then has three months to make a decision from the receipt of that complaint or four months, or whatever members might think, to make a decision after he has seen it himself. So I do not think that is particularly relevant.

I thank Mr Quine for his contribution. The intention is to repair when one is aware. It is not a case of considering the first person's right to claim or the second person's right to claim, it is making sure that accidents are prevented.

I take note also of his comments about the planning procedure and the possibility of using the Criminal Injuries Board which I think are relevant matters which require discussion.

I think I have explained to Mr North that it is my intention and I hope that I am looking sensibly with this Bill to protect the department, to protect the government and also to protect the people who use our roads, who are entitled to be offered that protection.

So, Mr Speaker, I move the leave to introduce as mentioned and I will take into account and I thank all the members who contributed.

The Speaker: Now, hon. members, you have the motion before you that leave be given to introduce a Bill to impose a qualified civil liability on the highway authority for failure to maintain a highway maintainable at the public expense. Those in favour please say aye; those against say no. The ayes have it. The ayes have it.

Bills for First Reading

The Speaker: Item 10, item 11, the Clerk.

The Secretary: The Gaming, Betting and Lotteries (Amendment) Bill, Mr Bell; the Adoption (Amendment) Bill, Mr Cannell.

Betting Offices Bill — Clauses Considered

The Speaker: Item 12, the Betting Offices Bill, Mr Bell, for consideration of clauses, clause 1.

Mr Bell: Thank you, Mr Speaker. If I could just say a few words before I move the clauses, this Bill had its first and second readings in 1999 but as a result of concerns raised by the industry and developments in technology the clauses stage was delayed while my department consulted with the companies that are already operating out of the Island and those who wish to do so. As a result of this consultation amendments are to be moved on the Bill which will provide for a simplified licensing procedure, an appeals procedure, a continuation of those licences granted prior to the Bill coming into force, the added benefit that restricted licence holders will be able to operate out of more than one premises, and the removal of ceilings on the number of either licence that can be issued at any one time.

A new Bill could have been drafted but as there are a growing number of major Bills due to be considered shortly it was felt that by saving the two weeks already incurred by the first and second readings we can hasten the passage of this Bill to assist the passage of more pressing legislation.

After that explanation if I could move first of all clause 1 and schedule 1. Clause 1 replaces section 15 of the 1988 Act which requires a licensed bookmaker to hold a betting office licence for any premises where he takes bets, with a new section requiring a public betting office licence for premises where bets are taken from punters in the Isle of Man or the United Kingdom and a restricted betting office licence for premises where bets are taken from punters anywhere else in the world. It also introduces schedule 1 which makes further amendments to the licensing system.

Sub-clause (1) substitutes a new section 15 in the 1988 Act. Section 15, subsection (1) restates the existing section 15, subsection (1) which requires a licensed bookmaker to hold a betting office licence granted by the Isle of Man Gaming Control Commissioners for any premises where he takes bets.

Section 15, subsection (2) provides that a betting office licence is to be either (a) a public betting office licence for bets for persons on the premises, that is, the ordinary betting shop, or with other persons in the Isle of Man or United Kingdom, that is, a public betting office is for over-the-counter bets or telephone bets with punters in the Isle of Man or the United Kingdom; or (b) a restricted betting office licence for bets with persons outside the Isle of Man and the United Kingdom, that is, international telephone betting.

Section 15, sub-clause (3) is an anti-avoidance device to prevent the holder of a public betting office licence taking bets from a person abroad by going through an agent in the Isle of Man or the United Kingdom, or the holder of a restricted betting office licence taking bets from a person in the Isle of Man or the United Kingdom by going through an agent abroad. In those circumstances the bet is treated as laid by both the principal and the agent so that the licensee will commit an offence under sub-clause (4), and section 15 sub-clause (4) makes it an offence for a licensed bookmaker (a) to take a bet anywhere other than at a licensed betting office or (b) to take a bet from a person abroad at a public betting office or from a person in the Isle of Man or the United Kingdom at a restricted betting office.

Section 15, sub-clause (5) gives a bookmaker a defence against taking bets from a person with whom he is not allowed to deal if he has taken all reasonable steps to ascertain the punter's whereabouts.

Sub-clause (2) introduces part 1 of the schedule which makes further amendments to the 1988 Act schedule 1 to fill in the details of the new dual system of betting office licensing.

Paragraph 1 inserts a new paragraph 4A requiring the Gaming Control Commissioners to obtain the consent of the Department of Home Affairs before it grants a restricted betting office licence.

Paragraph 2 revises the criteria on which the commissioners are to determine an application for a betting office licence, limits the number of restricted betting office licences to 10 and restricts the present requirements as to access to and location of the premises to public betting office licences. Restricted betting offices will not be open to the public so those requirements are irrelevant.

Paragraph 2 restricts the present limit of three licences per licensee to public betting office licences.

Paragraph 3 imposes a new limit of one licence per licensee in the case of restricted betting office licences and enables the commissioners to refuse to renew such a licence if the licensee has not carried on international betting on the premises in the previous 12 months.

Paragraph 4 limits to public betting office licences the commissioners' power to refuse a licence on the grounds of suitability of the premises or the number of premises in the area.

Paragraph 5 gives the Council of Ministers a new power to alter the maximum of 10 public or restricted betting office licences by order, that is, subject to Tynwald approval.

Paragraph 3, subsection (1) prescribes a new fee of £25,000 for the grant or renewal of a restricted betting office licence and (2) provides for a reduction on a sliding scale where a new licence is taken out part way through the year.

Paragraph 4 restricts the right of appeal to a court of summary jurisdiction against the refusal of a betting office licence to public betting office licences.

Mr President, I beg to move clause 1 and schedule 1 of the Bill.

Mr Duggan: I beg to second, sir.

The Speaker: The member for Onchan, Mr Cannell.

Mr Cannell: Yes, thank you, Mr Speaker. In connection with clause 1 schedule part 1 I wish to move an amendment which has been circulated:

Page 4, omit paragraph 1.

Page 4, after paragraph 1 insert -

"Application in respect of several premises

1A (1) After paragraph [4A] insert -

"Application in respect of several premises

[4B.] Where -

- (a) *an application for a restricted betting office licence is made in respect of 2 or more separate premises, and*
 - (b) *the Commissioners are satisfied that all those premises are occupied by the applicant for the purpose of a single business consisting of effecting betting transactions as mentioned in section 15(2)(b), the Commissioners may direct that all those premises shall be treated as single premises for the purposes of the application and of any licence granted pursuant to the application.”.*
- (2) *In paragraph 14, after paragraph (3) insert -*
- “(3A) Without prejudice to sub-paragraph (1)(b) (and to paragraph [4B] as applied by sub-paragraph (4)), where by virtue of a direction under paragraph [4B] a restricted betting office licence is in force in respect of 2 or more separate premises, the Commissioners may, on an application made to them in that behalf, do all or any of the following -*
- (a) *revoke the direction;*
 - (b) *amend the licence so that it will cease to apply to some of those premises;*
 - (c) *where the Commissioners are satisfied that such premises and any other premises to which the licence will continue to apply are occupied by the applicant for the purpose of a single business consisting of effecting betting transactions as mentioned in section 15(2)(b), amend the licence so that it will apply to premises other than those in respect of which the licence was issued.”.*

Page 4, for paragraph 2 substitute -

“Grounds for refusal to grant or renew licence

2. *For paragraph 11 substitute -*

“Grounds for refusal to grant or renew licence

- 11.** (1) *The Commissioners shall refuse an application for the grant or renewal of a licence in respect of any premises -*
- (a) *if they are not satisfied that on the date with effect from which the licence would come into force, or, as the case may be, would be continued in force, the applicant will be the holder of a bookmaker’s permit;*
 - (b) *if they are not satisfied that the premises are or will be enclosed;*
 - (c) *if, in the case of an application for a public betting office licence, they are not satisfied that there are or will be means of access between the premises and a street otherwise than through other premises used for the effecting with persons resorting to those other premises of transactions other than betting transactions; or*
 - (d) *unless, in the case of an application for a public betting office licence, the premises are, in the opinion of the Commissioners, suitable both as to facilities and location for use as a public betting office and that all licences, permissions*

or other authorities requisite for their use as such under any other enactment have been duly obtained.

- (2) *The Commissioners shall refuse an application for a public betting office licence on the ground -*
 - (a) *that, having regard to the lay-out, character, condition or location of the premises, they are not suitable for use as a public licensed betting office; or*
 - (b) *that the grant or renewal would be inexpedient having regard to the demand for the time being in the locality for the facilities afforded by public licensed betting offices and to the number of such offices for the time being available to meet that demand; or*
 - (c) *that the premises have not been properly conducted under the licence.*
- (3) *The Commissioners may refuse an application for renewal of a restricted betting office licence if it appears to them that so much of the business of a bookmaker as consists of effecting betting transactions with persons outside the Island and the United Kingdom has not been carried on to any substantial extent on the premises during the immediately preceding 12 months.”.*

‘Details are that the amendment will permit restricted betting office licence holders to operate out of more than one site. The Bill currently prohibits restricted betting office licence holders from operating out of more than one site. The restriction was originally introduced for the purpose of limiting betting shop licence holders to one set of premises, in other words one shop.

It makes sense for operators of betting shops to have one licence per shop, as each shop is entirely separate, but it does not make any sense to prohibit international telephone betting operators to operate out of one site because it then would prevent them from having more than one call centre.

The ability to operate more than one call centre will allow operators to set up small call centres in areas where employment opportunities are less diverse and will permit individuals who wish to work for short periods or at unusual times to take advantage of this employment opportunity in the area in which they live without the need to travel into the main premises.

Mr Speaker, I beg to move the amendment.

Mr Duggan: I second, sir.

The Speaker: Right, I have the amendment now seconded, in which case I call upon the mover of the amendment. Has he anything to say further?

Mr Cannell: No, sir, I will rely on the remarks I made introducing it.

The Speaker: The mover of the Bill, Mr Bell.

Mr Bell: I will only say, Mr Speaker, that the department have consulted widely on this and we obviously are fully in support of this new move.

The Speaker: Therefore, hon. members, I put the amendment in the name of Mr Cannell. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. I

now put the clause as amended. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 2

Mr Bell: Mr Speaker, this clause gives the Gaming Control Commissioners new powers to prescribe rules for the operation of restricted licensed betting offices.

Sub-clause (1) is introductory.

Sub-clause (2) restricts the existing rules for operating betting offices to public licensed betting offices.

Sub-clause (3) gives the commissioners, with the consent of the Council of Ministers, power to make regulations as to the conduct of restricted licensed betting offices, including provision for the appointment and functions of an accountant to supervise their operation, and sub-clause (4) extends the defence of due diligence to cover offences against regulation under sub-clause (3) above.

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

Mr Duggan: I beg to second, sir.

The Speaker: Does the mover have anything further to say, sir?

Mr Bell: No.

The Speaker: Clause 2 of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 3.

Mr Bell: Clause 3, Mr Speaker, extends the powers of a criminal court under the 1988 Act, section 18, to cancel a bookmaker's permit on his conviction to certain offences which at present covers (a) offences under part 2, that is, betting of the 1988 Act, and (b) any offence involving fraud, dishonesty or violence causing actual bodily harm, to cover any offence carrying a custodial sentence.

I beg to move clause 3 stand part of the Bill.

Mr Duggan: I second, Mr Speaker.

The Speaker: Anything further, Mr Bell?

Mr Bell: No, Mr Speaker.

The Speaker: I therefore put to the House clause 3. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 4, Mr Bell.

Mr Bell: Clause 4, Mr Speaker, contains supplemental provisions.

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

Sub-clause (2) provides for the Bill come into force on an appointed day.

Sub-clause (3) introduces part 2 of the schedule which makes consequential amendments.

Paragraph 5, section 11, sub-clause (1) prohibits the use of premises for betting with persons resorting to the premises. Section 11 sub-clause (2)(a) provides an exemption for a licensed betting office and this paragraph limits the exemption to a public licensed betting office.

Paragraph 6 inserts new definitions of 'betting office licence', 'public betting office licence', et cetera in section 48, sub-clause (1).

Paragraph 7 requires Tynwald approval to an order of the Council of Ministers varying the maximum number of public or restricted betting offices under schedule 1, paragraph 11, sub-clause (3).

Paragraph 8 is consequential on clause 1, sub-clause (1) above.

Sub-clause (4) provides that an existing betting office licence remains in force as a public betting office licence for the rest of its term, that is on 31st May after commencement, and sub-clause (5) defines the term 'the 1998 Act' used in this Bill.

Mr Speaker, I beg to move that clause 4 stand part of the Bill.

Mr Duggan: I beg to second, Mr Speaker.

The Speaker: Mr Cannell, the member for Onchan.

Mr Cannell: Yes, Mr Speaker, I wish to move an amendment in this regard and it is in respect of clause 4, schedule part 2 which will remove the restriction on the number of public and restricted betting office licences that can be granted.

The Bill as currently drafted limits the number of restricted and public betting office licences to 10 of each type. A restriction on both licences provides an artificial ceiling and is likely to lead to the loss to the Island of the relocation of highly reputable companies in the international telephone betting field.

There has been considerable interest expressed in setting up international telephone betting business in the Isle of Man and provided the businesses meet the strict approval criteria, there does not seem to be any good reason to put a ceiling on the number of restricted betting office licences.

As regards lifting the restriction on public betting office licences, it is felt that the number of betting shops should be restricted by consumer demand rather than by the setting of an artificial ceiling on numbers. The increasing population may well lead to public demand for additional betting shops in other areas and I now move this amendment:

Page 3, line 21; for subsection (4) substitute -

“(4) Any betting office licence in force immediately before the commencement of this Act shall have effect as follows -

- (a) where immediately before such commencement the holder was carrying on a business consisting only of effecting betting transactions as mentioned in section 15(2)(b) of the 1988 Act (as amended by this Act), as a restricted betting office licence,*
- (b) in any other case, as a public betting office licence, granted or renewed in accordance with Schedule 1 to the 1988 Act as amended by this Act and expiring on the date on which it would have expired if this Act had not been passed.”.*

Page 6, omit paragraph 4.

Page 6, omit paragraph 7.

Mr Duggan: I beg to second, sir.

The Speaker: Mr Cannell, have you anything further to say, sir?

Mr Cannell: No, sir.

The Speaker: I put now to the House the amendment. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. I ask the mover of the Bill to respond.

Mr Bell: I have nothing further to add, Mr Speaker. I have lost my way here but I would just thank hon. members for the support for the Bill and to say that extensive consultation has taken place on this and I hope we have satisfied all concerns.

The Speaker: I now put clause 4 as amended. Those in favour please say aye; against, no. The ayes have it. The ayes have it. That completes the clauses on the Betting Offices Bill 1999.

Contracts (Rights of Third Parties) Bill — Clauses Considered

The Speaker: I move now to the next item on the agenda which is item 13, Contracts (Rights of Third Parties) Bill, and I call upon the hon. member for Onchan, Mr Cannell.

Mr Cannell: Thank you, Mr Speaker. Again, just by way of information because of the recess which there has been since the moving of the previous stage of this Bill, it is based on the Contracts (Rights of Third Parties) Act 1999 of the UK Parliament which amended the law of England, Wales and Northern Ireland and implemented the recommendations of the Law Commission in its report on privity of contract. The Bill sets out the circumstances in which a third party is to have a right to enforce a term of the contract. So clause 1.

The Speaker: Clause 1.

Mr Cannell: Mr Speaker, clause 1 gives effect to the central purpose of the Bill. It sets out the circumstances in which a third party would have the right to enforce a term of the contract.

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

Sub-clause (2) is also from the United Kingdom 1999 Act. It excludes the case of a contract term purporting to confer a benefit on a third party if it appears from the contract as a whole that the contracting parties did not intend him to have the right to enforce it.

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

Sub-clause (4) makes it clear that the right of any third party to enforce the contract is subject to the contract's terms and conditions. It is open to the parties to limit or place conditions on the third party's right, for example by providing that he can only enforce it by way of arbitration and not litigation.

Sub-clause (5) makes it clear that the courts may award to a third party seeking to enforce his rights under sub-clause (1) above all the remedies available to a person bringing a claim for breach of contract, for example in the matters of damages, injunctions, specific performances, et cetera. The normal rules of law applicable to those remedies, for example the rules relating to causation, remoteness and the duty to mitigate one's loss, apply to the third party's claim. However, it should be noted clause 7(4) does not make the third party a party to the contract.

Sub-clause (6) makes it clear that the Bill is to apply so as to enable a third party to take advantage of an exclusion or a limitation clause in the contract as well as to enforce positive rights, for example where a term of contract between A and B excludes or limits A's liability to B for loss or damage caused by negligence and states that the exclusion or limitation is for the benefit of A's servants and agents. It can be enforced by any servant or agent of that party A, and finally on this first clause, sub-clause (7) defines the term 'promisor' and 'promisee' as used in the Bill. They usually mean, respectively, the person making a promise and the person to whom that promise is given and in this context they include, respectively, the party against whom and the party by whom any contract term is enforceable.

Mr Speaker, I formally move clause 1 of the Bill.

Mr Gelling: I beg to second, Mr Speaker.

The Speaker: Does the mover have anything further to say? I put clause 1 of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 2, sir.

Mr Cannell: This clause, Mr Speaker, limits the right of the parties to a contract to vary or rescind the contract so as to affect the position of third parties.

Sub-clause (1) provides that where a third party has a right under clause 1, the contracting parties may not, without his consent, agree to vary, in other words alter the terms of the contract, or to rescind, in other words to cancel the contract, in a way which affects his right but with regard to sub-clause (3) to come. This only applies where (a) the third party has told the party to be bound by the relevant contract term that he agrees to it, or (b) that the third party has relied upon the term and that the party knows it, or (c) that the third party has relied on the term and that party must have known that he would. For example, A owns a house and has a son B and a sister C. A and B agree that B will convert the house into three flats and A will let one to B and another to C. When the work is done C sells the house and gets ready to move in. Up to now A and B cannot agree that C will not have the flat if A knew or must have known that she has relied upon the contract. This remedies that situation and of course it may sound a little confusing but it is to bring in to play the rights of a third party which previously have been excluded. They are direct lifts from the United Kingdom 1999 Act.

Section 2 (1) makes it clear that the agreement, to be otherwise known as the assent, of the third party under (1)(a) can be either expressly in words or implied by conduct but if it was communicated by post or by e-mail et cetera it must have been received by the party.

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

Sub-clause (4) give the court or arbitrator the power to dispense with the requirement for the third party's consent under sub-clause (1) where that cannot be obtained because he cannot be found or he is found to be mentally incapable.

Sub-clause (5) gives the court or arbitrator the power to dispense with the requirement for the third party's consent under sub-clause (1) where it cannot be ascertained whether he has in fact relied upon the contractual term, and finally on clause 2, sub-clause (6) provides that where the court or arbitrator dispenses with the third party's consent it may do so upon certain conditions, for example, as in sub-clause (1), A and B wish to vary the contract to remove C's right to a flat as she is senile and has gone into a home. The court could then allow A and B to vary the contract provided C is given suitable recompense.

Mr Speaker, I wish to formally move clause 2 of the Bill.

Mr Gelling: I beg to second, Mr Speaker, and reserve my remarks.

The Speaker: I put it that clause 2 stand part of the Bill. Those in favour please say aye; those against, no. The ayes have it. The ayes have it. Clause 3.

Mr Cannell: This clause provides that defences, set-offs and counterclaims can be raised in any proceedings by a third party to enforce a contract term.

Sub-clause (1) is introductory; (2) to (5) apply where the third party seeks to enforce the contract term, again from the United Kingdom 1999 Act.

Sub-clause (2) enables the promisor, in a claim by the third party, to be able to rely on any defence or set-off arising out of the contract and relevant to the term being enforced which would have been available to him had the claim been by the promisee. For example, by fraud A induces B to enter into a contract under which C will receive certain benefits. If C tries to enforce the contract, B can set up A's fraud as a defence even though C was not, at the time, a party to the fraud.

Sub-clause (3) provides that a party to a contract can raise any defence or set-off against a third party if an express term of the contract entitled him to raise it against the other party and further examples are given.

I think I will go over to sub-clause (4) which makes it clear that the promisor also has available any defence or set-off and any counterclaim not arising from the contract which is specific to the third party. Perhaps it is appropriate to name an example in this case, where A might agree with B to pay C the sum of £1,000. C already owes A £600. A is only bound to pay C £400. This does not make the third party a party to the direct contract.

Sub-clause (5) makes (2) and (4) subject to any express term of the contract which narrows the defences et cetera available under sub-clauses (2) or (4) and sub-clause (6) ensures that an analogous approach to that set out in sub-clause (2) to (5) applies where the proceedings are brought against the third party and he seeks to avail himself of, for example, an exclusion clause. A note should be made that this does not make the third party a party to the contract under sub-clause clause 7 (4).

Mr Speaker, I formally move clause 3 of the Bill.

Mr Gelling: I beg to second, Mr Speaker, and reserve my remarks.

The Speaker: The motion is that clause 3 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 4.

Mr Cannell: This clause, Mr Speaker, provides that the right conferred by clause 1 is additional to any right the promisee has in relation to the enforcement of a contract term which benefits a third party. For example, A and B enter into a contract under which B and C will receive certain benefits. C's new statutory right to enforce the contract under clause 1 does not affect B's common law right to enforce it as well, but subject to clause 5 for double the liability on that, again from the United Kingdom 1999 Act. I formally move clause 4 of the Bill, Mr Speaker.

Mr Gelling: I beg to second, Mr Speaker.

The Speaker: Hon. member for Onchan, Mr Karran.

Mr Karran: Vainstyr Loayreyder, could the mover of the Bill just explain to this hon. House, when we talk about this piece of legislation, will this clause and other clauses actually deal with people who are tied up in trust as far as a will is concerned where they cannot sell the property, it is held in trust for the generation afterwards but they will not repair the building? And I would just like to know if the mover can just clarify that point that this clause and subsequent clauses will deal with the likes of the individual where it has missed a generation as far as the ownership is concerned, but the fact is that the person who is living there cannot afford to repair it and is virtually trapped in a conditioned property at the present time in the fact that they do not own the property. The beneficial owners of the property have no inclination to repair the building so the old dear is penalised as far as that is concerned. I just wonder if the mover could just clarify so that I can report back to that individual case.

The Speaker: Mr Cannell to reply.

Mr Cannell: Mr Speaker, clearly this is a very technical Bill being moved here and I think that perhaps some further advice might be required upon it. Suffice to say I do appreciate my hon. colleague from Onchan's enquiry on this and indeed I think many members have had similar enquiries and what we are dealing with here is to actually bring into the principle of law of contract in the Isle of Man that only those persons who have contracts can enforce it. Now, previously that has not been the case.

As regards the individual circumstances of the hon. member's enquiry, I am not in a position to give a firm resolution to that for the terms of this Bill. Suffice to say that I do appreciate what he has said about it. I shall find out about that. Perhaps that is not as satisfactory as might be the case but in fact the entire legislation is based on the fact that the third parties to any contract have previously not been able to have the protection that they enjoy, for example in construction contracts where the main contractor will often undertake responsibility for their client for the entire project. I know it is not quite in the field that the hon. member for Onchan, my colleague here, has actually said, but in fact it does give a great deal of protection to those who previously have been disenfranchised.

I am sorry I am not perhaps as lucid on this as I might have liked, but I do appreciate the difficulty and I am sure he might allow me and the hon. House might allow me the licence to get particular enquiries made in this regard.

The Speaker: Hon. members, the motion is clause 4 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 5.

Mr Cannell: This clause provides that where the promisee has recovered damages or an agreed sum from the promisor in respect of either the third party's loss or the promisee's expense in making good that loss, the court or arbitrator may reduce any award to the third party enforcing a term under clause 1 to take account of the sum already recovered.

Now, examples have been given to me in these briefing notes but in fact we are talking about A B and C here and I am sure it is all getting extremely confusing but examples are available for any hon. member who would wish to query this?

I can assure all hon. members that these are a method of bringing to the Isle of Man protection for certain persons and they are from the United Kingdom Act. I would be the last person to suggest that we should blindly copy every piece of legislation from the United Kingdom, but in this case it is viewed as fitting for our population, so. I formally move clause 5.

Mr Gelling: I beg to second, Mr Speaker, and reserve my remarks.

The Speaker: The motion is that clause 5 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 6, sir.

Mr Cannell: Clause 6 sets out a number of exceptions to the new statutory right under clause 1.

Its sub-clause (1) ensures that the Bill does not undermine the existing law on who can enforce negotiable instruments which can be enforced by a third party, for example the endorsee of a cheque at common law.

Sub-clause (2) accepts the contract under section 20 of the Companies Act 1931 which states, 'Subject to the provisions of this Act, the memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by each member, and contained covenants on the part of each member to observe all the provisions of the memorandum and its articles.'

Sub-clause (3) prevents a third party, for example a customer of an employer, acquiring a right under the Bill to enforce a term of a contract of employment or a similar contract against an employee or worker.

Sub-clause (4) defines terms used in subsection (3) in that they cover apprentices, agency workers and home workers as well as employees, and sub-clause (5) excludes certain contracts relating to the carriage of goods under which third parties already have rights under special rules of maritime law or under international conventions, but this does not prevent a third party from taking advantage of a term excluding or limiting liability. In particular it enables clauses extending an exclusion or limitation of liability of a carrier to servants, agents and independent contractors engaged in the loading and unloading process to be enforced.

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

Sub-clause (7) defines the terms of (6) by reference to the 1996 Act, and finally on clause 6, its sub-clause (8) defines the international conventions relating to the carriage of goods by road and air referred to in sub-clause (5)(b) above by reference to the relevant United Kingdom Acts which are applied to the Isle of Man by order in Council, carriage by road or by order under the Airports and Civil Aviation Act of 1987 Tynwald for the provision of carriage by air.

Mr Speaker, I formally move clause 6 stand part of the Bill.

Mr Gelling: I beg to second, Mr Speaker, and reserve my remarks.

The Speaker: The motion is that clause 6 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 7, sir.

Mr Cannell: This clause contains supplementary provisions relating to third party rights.

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

Sub-clause (2) prevents a third party from invoking section 5(2) of the Misrepresentation and Unfair Contract Terms Act 1980 to contest the validity of a term excluding or limiting the promisor's liability under the Bill to the third party for loss or damage other than injury or death caused by negligence.

Section 5(2) states, 'In the case of other loss or damage' - for example, loss or damage other than death or personal injury - 'a person cannot so exclude or restrict his liability for negligence except in so far as the term or notice satisfies the requirement of reasonableness.'

Sub-clause (3) of clause 7 applies the standard limitation periods for actions for breach of contract to actions by third parties under the Bill. Members may be a little surprised at this. I must say I thought it was seven years, but it is quite adamant here that it is six years from the date on which the cause of action accrued in the case of a simple contract - Limitation Act 1984, section 5 - but 21 years from the date on which the cause of action accrued in the case of a contract contained in a deed.

Sub-clause (4) ensures that references in the Bill to the position of if the third party had been a party to the contract do not mean that the third party should be treated as a party to the contract for other purposes. For example, the Misrepresentation and Unfair Contract Terms Act 1980, section 6, applies as between contracting parties where one of them deals as a consumer or on the other's written standard terms of business. So sections 1(5), 3(4) and 3(6) do not mean that contracting parties in section 6 include a third party with a right under clause 1.

Mr Speaker, I formally move clause 7 do stand part of the Bill.

Mr Gelling: I beg to second, Mr Speaker, and reserve my remarks.

The Speaker: The motion is that clause 7 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 8, sir.

Mr Cannell: Yes, this is the final clause, Mr Speaker, and it gives the Bill its short title and makes transitional provisions for contracts made before or within six months after it is passed.

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

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

Mr Speaker, I crave your and hon. members' indulgence for the liberty of presenting this Bill and formally move its final clause 8.

Mr Gelling: I beg to second, Mr Speaker.

The Speaker: Hon. members, the motion is that clause 8 stand part of the Bill. Will those in favour please say aye; those against no. The ayes have it. The ayes have it.

Constitution Bill — Reference to a Committee — Debate Commenced

The Speaker: Now, item 14, hon. members, the Department of Health and Social Security have asked that this Bill be deferred for a further week. So we will now move on to item 15 on the order paper, the Constitution Bill, and the first person I call is the hon. member for Castletown, Mr Brown.

Mr Brown: Thank you, Mr Speaker. I beg to move:

That standing order 154(2)(b) and (3) be suspended to enable the amendment to clause 1 tabled by the hon. member for Ramsey, Mr Singer, on 6th August 2000 to be moved at this sitting.

Unfortunately there was an administrative error and I look to the indulgence of the House to enable this matter to be put before the House at the appropriate time. I beg to move.

Mr Henderson: I beg to second, sir.

The Speaker: The hon. member for Onchan, Mr Karran.

Mr Karran: Vainstyr Loayreyder, what concerns me about this is it just highlights - I will support the suspension of standing orders - the crackpot standing orders that we have recently brought about and I just think members need to reflect on this, that the danger is - and I know the hon. member for Castletown says he is dealing with this as Deputy Speaker - the fact of the matter is if the executive was to be against any of these suspensions of standing orders, then the situation would be that that would stop any debate and any movement as far as this is concerned and I think it takes away from this hon. House that we have to go for the suspension of standing orders in the first place and I do hope that, whilst I will support the proposal in front of us, the Standing Orders Committee are reviewing this proposal because I find it rather disturbing that we could have a situation where a genuine mistake like this has happened and that it could stop a legitimate point of an amendment being put forward if there was a situation of a substantial block vote in this House against it and I think that is wrong. It is not good for democracy and it is not good for parliament to be stuck into such crazy proposals as we have recently done as far as the standing orders are concerned.

The Speaker: Mr Brown to reply.

Mr Brown: Yes, thank you, Mr Speaker. As hon. members know and the hon. member for Onchan, Mr Karran, only too well knows, the matter regulating the House is a matter only for this House and it is the House who has determined its own standing orders.

I would say that this issue is not a matter that has come from the executive, which I see the hon. member every time snipes at, forgetting of course that he is part of it. In terms of the situation there has been a genuine oversight and I am sure that certainly the vast majority of the House would take the view that where a genuine misunderstanding or a genuine mistake has been made, which can happen because at least most of us are only human, then the House will allow for the situation to be rectified and whether or not the amendment gets support is another issue. I would hope and I am sure members will support this.

The Speaker: The motion before the House, hon. members, is that standing orders be suspended to allow the amendment of Mr Singer to go before the House. Will those in favour of the motion please say aye; against, no. The ayes have it. The ayes have it. I now move and call upon the hon. member for Onchan, Mr Corkill.

Mr Corkill: Thank you, Mr Speaker. First of all can I apologise to the House for circulating two motions and I would ask the Court to disregard the first one which refers to a committee of three. I intend to move and speak to a proposal to move the Constitution Bill 2000 to a committee of five, elected by this House.

There are many and varied views expressed in relation to this Bill that my hon. colleague from Onchan has put forward. Mr Cannell's Bill is coupled with the fact that there is also a Council of Ministers committee examining a way forward as a result of previous directions from this hon. House and I can see also a long list of tabled amendments, so I feel obliged to ask very seriously that this House considers moving this subject to a committee of five for their consideration because I believe it is going to be the only way forward. I do fear that such a volume of amendments will result in an outcome that no-one is content with. This Bill has become a target, as has been seen.

I do believe there is a great potential for mistakes, a potential for some unpredictable side-effects regarding our parliamentary structure. By sending it to a committee it will give time for the Council of Ministers to produce their ideas, because what I am really concerned about is that we have a dual process happening at the moment. I am most concerned about this duality.

Obviously, as all members do, I have the option to vote against the Bill and its clauses one at a time, but rather than that I would propose that we do go to a committee and I suggest a committee of five to try and get a way forward.

On many occasions over the past months and years many hon. members, including myself, have made much sway of the Isle of Man's political stability, this stability as seen in the international context. Now, in my view, that stability is more important than ever before. It is our strength, not shared by some other jurisdictions, and it is not just a matter of internal rearrangement, as important as that is. We do need to examine from time to time our constitutional situation, I fully support that, but we must not do it in a vacuum and not appreciate that others from outside are also looking in.

I ask hon. members to support the proposal because I do believe it is the safe, stable way forward. It is not a matter of running scared, it is a very serious issue.

Hon. members, as we do run through our last of five years, the last year out of our five years as members of this hon. House, I believe we should be more conscious than ever of the way in which our parliamentary structure protects the public from excesses of change in a short period of time.

It is very difficult, the situation that we are all faced with and there is no tidy solution to where we have arrived at. The issues have been driven forward in a number of avenues. We have a Bill before us today, we have Bills in the background and we have a plethora of amendments. I see no other way forward other than to form a committee to try and get a consensus Bill put to this House for us to consider singly, but as we stand, although there is a Bill before us and I respect the hon. member Mr Cannell has put this Bill before us for our consideration, because of previous debates we must all be aware that there are other aspects going on in the background and to have a proper debate and proper decisions which are stable, long-lasting decisions, I do not believe we are in a position to do that today, quite simply.

I am faced in my own mind with voting against or voting for a committee to keep the subject alive, to keep the debate alive in terms of producing a Bill, modernising our structure, but I do not believe we are in the best position to actually achieve and I go back to my original statement: I believe we are heading to a Bill when no-one is satisfied and we are in a position where we may well do the public of the Isle of Man a great disservice. Mr Speaker, I beg to move the motion to go to a committee of five members, which is standing in my name and which has been circulated to hon. members:

That the Constitution Bill, together with the amendments tabled to it, be referred to a committee of five members for consideration and report.

The Speaker: The hon. member for Ramsey.

Mr Bell: I beg to second, Mr Speaker.

The Speaker: The member for Ayre, Mr Quine.

Mr Quine: Thank you, Mr Speaker. I must say first of all that I am somewhat surprised that we should have a motion to go to a committee. I think very few subjects have been examined at such length as this particular one and I fear that the end product of going to a committee will not be to produce a more definitive piece of legislation for consideration by this hon. House, but I fear the object of the exercise is to make it run out of time so that we can go, certain members at least, into the general election and say, 'Well, I really did have a position on this, but I didn't get a chance to express it.' So what I would like to move is, if you wish another motion, procedural as it is, the effect of which is to say well, if we are going to have a committee, and that is a matter for to be decided, that it should report not later than 5th December 2000 sitting. In other words it has got to be a very short, sharp exercise to take on board what we have got here, what we have got in terms of the Bill before us, what we have got in terms of amendments and any other bits and pieces of documentation, but not to allow this to become an excuse why we do not confront this issue prior to the general election.

So I can go along with five members having a look at this over a very short period of time, because the documentation is there, and trying to find some consensus, trying to pull it together to some extent, but what I cannot go along with is an open-ended amendment that it goes to a committee for five members without it having a definitive deadline that leaves us with a realistic chance of considering this legislation before we run out of time.

So consequently - I trust it has now been circulated to members - I would like to, in effect, just add on to the motion which you have before you, leaving it at five members, but saying not later than 5th December 2000. Failing that, if that does not find favour, then my view is that we should confront the issues now. They are quite clear. The fact that there may not be a strong consensus running in one direction is not something new for this hon. House. That is why we deal with matters on the floor quite often and what comes out at the vote becomes what may or may not go through to a piece of legislation. But I have this great fear, I have this great concern that behind this motion is not, and this is with due respect to the hon. mover Mr Corkill, an intent to come to some final decisions that will assist us in deliberating upon this matter but a manoeuvre that is going to effectively take this off the political agenda before the general election. The issues are clear, we should confront them and if we cannot do it by allowing ourselves a very short period to pull the documentation together, then we should continue today and decide one way or another on the floor of this hon. House. So I would like to move that motion, sir:

After 'report' add 'no later than 5th December 2000 sitting'.

The Speaker: Mr Rimington.

Mr Rimington: Thank you, Mr Speaker. I would support the original -

The Speaker: Excuse me, are you seconding the amendment?

Mr Rimington: No.

The Speaker: Mrs Cannell, the member for Douglas East, are you seconding?

Mrs Cannell: Thank you, Mr Speaker. I am happy to rise to my feet to second the amendment in the name of the hon. member for Ayre, Mr Quine, and in so doing I am also of the same sort of view, because this hon. House put together, selected a committee of five members to actually consider the future role of the Legislative Council and consequential matters. That committee, your committee, sat for two years deliberating and came back with some very firm recommendations which carried majority support. Now, that is a fact whether we like it or not.

Equally the change in standing orders to enable members to be circulated with amendments prior to the sitting at which they will be considered I thought was rather a proactive move because it enabled members to fully consider what was being proposed in amendments before they actually came to this floor. There has been criticism over the last two or three years that to amend on the hoof, as it were, in terms of legislation sometimes produces inadequate or undesirable or ineffective legislation for the Isle of Man and so therefore the standing orders were amended.

We have had the amendments circulated by the different hon. members for considerable time. I indeed have gone through them, I am happy with some and not with others, but that is why we are here, is it not, is to consider legislation, to consider amendments, to take a

decision, an informed decision, informed being that we have been provided with the substance of the amendments prior to this sitting of the House.

Now, I have got a feeling, and I more or less echo the sentiments by the previous speaker, the mover of the latest amendment, that I think really what this House or a proportion of members in this House are trying to do is send the issue to Coventry. When one bears in mind the length of time it takes to consider a Bill in this form - in its green form, the readings, the clauses, the third reading and then it has to go up to the Legislative Council, where they may decide to sit on it anyway - I think it is quite appalling that this House really should refer it to yet another select committee.

With all due respect, members may qualify their positions or their feelings or views on this by saying, 'Hang on, some of these amendments are actually quite different to what is contained within the Bill as being proposed by Mr Cannell, the hon. member for Onchan, but nevertheless we have had the time to fully consider these amendments before it comes to debate today. So why are we not wanting to get on with it? (**A Member:** Hear, hear.)

I support, if the House is of the view that it should go yet again to a select committee, then let us get on with it and let us get back in good time to enable this legislation to run its course and to come to fruition before this House folds, because to do otherwise I feel would be evading our responsibility.

The Speaker: Mr Rimington, the member for Rushen.

Mr Rimington: Thank you, Mr Speaker. I rise to support the move that it be referred to a committee of five members and not to support that they should report no later than 5th December which I think is really highly unrealistic and a bit of a joke in that you could not possibly give due consideration to such a major issue in such a short space of time.

First of all I would like to give recognition to the hon. member for Onchan, Mr Cannell, for being one of the two members of this House who have put the issue of constitutional reform in his manifesto and progressed that issue. Now, we may or may not like the end product of that

The Speaker: Hon. member, we are debating a procedural motion that it goes to a committee, we are not debating the content of the Bill or its clauses, sir, a procedural motion whether we go to a committee or not.

Mr Rimington: Thank you, Mr Speaker. Well, I would just support that. May I ask, Mr Speaker, and I am sure you will give me guidance if I go astray, that should the Bill go to a committee we do look carefully at why we are considering changing the constitution and that is the point that I feel has been missing. I have read the previous select committee reports on the issue and I have found them introspective and rather too much of an exercise in abstract thought and they actually do not give any clear indication why the Isle of Man needs to move forward in constitutional changes.

I do take the point by the hon. member for Ayre that we need to look carefully and not duck the issue, but I do not think 5th December is a realistic alternative. I would hope that the committee, when so constituted and if it is so constituted, would try and bring at least some interim report out so that it can be considered prior to the general election. I will say no more, sir. Thank you.

The Speaker: The member for West Douglas, Mr Shimmin.

Mr Shimmin: Thank you, Mr Speaker. I think we have all been here long enough to realise what is going on today, both with the original move by the member for Onchan, Mr Corkill, and then the amendment by Mr Quine and as far as I am concerned I see no merit in the approximately five weeks for a report to be compiled by a committee. I also see no benefit in a committee at all. I think we have got this far. I think this is manoeuvring. We have got the information. I would prefer members to bite the bullet and say let us talk about it today, sir.

The Speaker: The member for Ramsey, Mr Singer.

Mr Singer: Thank you. I very much agree with the last speaker in the fact that we have got a Bill in front of us now. It may well fall because of the number of amendments, but if so, after we have discussed it, then if it falls, it falls, but certainly I think an open-ended amendment as put by the Treasury minister means that the Bill will fall. There is no doubt that it will fall and there are people in here who may wish to see it fall, but I think the majority in this House and in fact in the other place wish to see constitutional change as far as democratically elected, popular elected members are concerned.

What did concern me was what appeared to be a threat by the Treasury minister and I think it was a threat that was not necessary in which he said that we are a stable jurisdiction and a constitutional change could well be seen from the outside as destabilising, and I do not think that is right. I think the fact that we are stable, the fact that we should be able to discuss constitutional change and in a democratic manner is the situation. If it is not, if constitutional changes fall through in a non-democratic manner, then we have concern, but I think, as the jurisdiction that we are now, that the public will welcome discussion, that the public would want to see us advance because the constitution does not stand still, and I think if we do not report back or the committee does not report back by the date that the hon. member for Ayre suggested, then the whole thing is going to be dead. So either we go for that or I agree with the last speaker that we discuss the matter and if it falls, so be it, but at least we have discussed it.

The Speaker: The member for Castletown, Mr Brown.

Mr Brown: Yes, thank you, Mr Speaker. As members are aware, I oppose this Bill on the grounds that it is going to downgrade the Keys and of course destroy its sovereignty and therefore I will not be supporting this going to a committee. My view is that the amendments are straightforward, they are quite clear and members have got to make their mind up in public so the public can see exactly what it is that they are doing.

I find it absolutely ironic that members are so focused on having the Legislative Council popularly elected that they are willing to destroy the very House they are part of and they are absolutely crazy and the sooner the public know it the better.

The Speaker: The member for Onchan, Mr Cannell.

Mr Cannell: Yes, Mr Speaker, I do not accept that last comment that the endeavour which I have placed into producing this Bill, which has gone through its first reading, its second reading and now is provisionally down to have its clauses read, is the result of an action by a crazy person. I do not care to be labelled crazy when a considerable amount of endeavour has been put into this.

A Member: Hear, hear.

Mr Brown: I did not mention you.

Mr Cannell: I also did not care to say, Mr Speaker, that the inference that any attempt here to read this Bill's clauses will form the destabilisation of the Manx Government. I do not accept that, sir. We are always talking about our competitors and frequent mentions are made of the Channel Islands. They have made similar addressing of cases such as this -

Mr Brown: You are joking.

Mrs Hannan: No, they have not.

Mr Cannell: Oh, yes they have.

Mr Brown: Have you seen their system?

The Speaker: Hon. member, you have the floor, sir.

Mr Cannell: - and I therefore say that it is unfair to suggest that something which has had all summer, during the recess to be considered, should now be given the elbow by a concerted endeavour by the Council of Ministers via its hon. Treasury minister.

Mr Brown: A point of order, Mr Speaker. I would ask the hon. member where he gets that information. This is a Bill that is before the House. My view and the view of the Minister for the Treasury are different.

The Speaker: With respect, sir, this is not a point of order in standing orders and I think you are well aware of that, sir. Carry on, Mr Cannell.

Mr Cannell: Mr Speaker, you would need to be extremely naive if you did not notice the whispering campaign that was going on to produce just such an amendment and I would humbly suggest and with the greatest respect that this is government at its most unacceptable.

We have had every opportunity for this to be considered to whichever stage it cares to be at and we now arrive at the 59th minute of the eleventh hour and we are still juggling about as to how to squash it because there is a general election next year.

The Council of Ministers has had their own committee considering this matter and took the opportunity to write to me, strangely, to ask for my views on the matter. I responded to the Council of Ministers to say my views were well known and I just, by the way, happened to have a Bill concerning it before the legislature, whereupon I was invited to submit my views to the Council of Ministers committee. That has not occurred. So now we have at the last possible opportunity an attempt to shunt it off into the sidings. Well, I do not accept that.

If I have to make a choice I will go for a select committee, reporting by 5th December, but my view is that there should be no committee. We are always being told we are responsible members of government and can face up to our options. I am quite prepared to take my chance with my Bill here and if it fails I shall fall on the sword and say, 'It wasn't for want of trying', but I do not want it to be shoved off into a siding where if I was a member of those who are attempting to do this I would actually have the public, who are not so gullible as they might believe, to actually say this was a deliberate attempt to prevent democratic methods of legislation being progressed.

A Member: Hear, hear.

The Speaker: Hon. members, it is almost lunch-time. I have two members indicating to me they wish to speak, the hon. member for Garff and the hon. member for Rushen, Sir Miles Walker. Are there any other members that wish to speak? I therefore suggest that we take a lunch break now, reassemble at 2.30 and that the hon. member for Garff is the first to speak. Thank you, hon. members.

The House adjourned at 1 p.m.

Constitution Bill — Reference to a Committee — Motion Carried

The Speaker: We will continue with the motion for placing a Constitution Bill to a committee, and the first person to speak is the hon. member for Garff, Mr Rodan.

Mr Rodan: Thank you, Mr Speaker. I rise to support the move of this Bill to a committee, and the reason I support that, while being one who is strongly in favour of constitutional reform, is that I believe that on this particular Bill there simply has been inadequate consultation.

Now, that may seem an odd thing to say when the issue has been debated here there and everywhere for a long period, but I will explain what I mean by that. First of all, we must remember that we are dealing with a private member's Bill, and this Bill is before us because the select committee report of late last year was taken up by the executive to progress and rests currently, with the Council of Ministers.

I think we well remember the hon. member for Onchan saying, in wishing to defer his own legislation, that he was prepared to hold it in reserve in the event that the Council of Ministers did not come forward with their legislation. Now, some would say that he jumped the gun because the first reading was last June. I have the greatest respect for the hon. member for Onchan and I applaud the way he has seized this when many others would not have seized it, but the question I would ask is: what consultation has taken place over the summer by the hon. member? The way I approach this question of constitutional reform is from the stance that any proposals for change have to be well researched - and let us remember the select committee itself sat for 18 months taking evidence - and the consequences for the related matters have to be thoroughly thought through and not addressed in a piecemeal sort of fashion, and this is why further consultation is absolutely essential.

I myself have not been consulted over the summer by the promoter of this legislation and yet my constituency is one that is proposed to be split in three, in effect, with one member for the Maughold part and two members for the part to be called South Garff. I am also aware that the Department of Education has not been consulted, and yet there is a proposal to increase the number of members of the Board of Education from 15 to 20, one per constituency. 'All very well,' one might think, but that will have great consequences for the administration of education and the disposition of committees. There has been no consultation with the department on that.

The select committee report itself, while promoting reform, went to great lengths to acknowledge that the lead time for replacing the present arrangements by the election of all elected members of Tynwald at a general election would be considerable, and I quote, 'It would be important to have careful and extensive consultation in the necessary primary legislation to include interim arrangements.' Now, that is not going to be possible before

October 2001, which is the date given in this private member's Bill. Such matters as the procedure that would be adopted for electing members of Tynwald to be the subject of a standing orders committee report, the consequential procedural changes that would be needed to sittings of Tynwald Court would have to be taken on board - such things as the number of sittings, the frequency, the nature of the business - now, I do not know whether the standing orders committee has been consulted over the summer on these consequential measures that need to be put in place, but I very much doubt it.

The Council of Ministers committee, slow moving though it is, has at least sought the views of members as part of the consultation. This is absolutely essential when we are dealing with a major reform of this nature. Now, it may not be quick enough for some people, and I am frustrated that it is not coming forward rapidly to bring about the necessary changes, but I believe that if rushing without consulting on the consequences of this legislation - I would rather it was delayed but came in properly. If we are going to do it let us do it right and not in a rushed piecemeal fashion.

So the question therefore is, should this go to a committee? And my view is it should. And should that be a committee that sits for a short time or a long time? Now, if we are serious about reform and want to do it properly, a committee will need to address these matters, particularly the matters that have been flagged up in the select committee report on the mechanics of the changes in Tynwald that would flow from any reform.

The committee will ideally have got all that in place to our knowledge and satisfaction prior to us progressing with legislation. With the best will in the world that is not going to happen quickly, and therefore the argument would be for a committee with no fixed period to report; it will report when it has done its job as thoroughly as possible and explored all the avenues. However, what a short sitting committee could do, one to report by the 5th December, as the hon. member for Ayre Mr Quine's amendment would have, would in fact be able to identify the time scales that would be needed for these consequential changes to be brought in. In other words, without wishing to pre-empt in any way what the committee might be saying, that committee might well envisage this legislation being brought in at a different time than is stated in the Bill at present. If it does that, it will have done a very useful and essential job, and for that reason I will be supporting a committee, and I am especially minded for a committee to report by the 5th December.

The Speaker: Sir Miles Walker, member for Rushen.

Sir Miles Walker: Thank you, Mr Speaker. It is difficult to keep out of the debate on the Bill and stick to the procedural aspect of the resolution that is in front of us.

The Speaker: Well, try! *(Laughter)*

Sir Miles Walker: I will try, Mr Speaker, but it is still, as I say, quite difficult. We are debating whether or not this Bill should go to a committee. There are seven pages of amendments of various types in front of us. Common sense would say that the best way to sort out that rash of amendments is at a committee stage. Now, for my part I hope that the ultimate destination of this Bill is the dustbin. I am on record, and I think at each stage of debate I have made it very clear what my views are as regards this sort of 'reform'.

Now, the evolution of our constitution has taken place over very many years bit by bit and we have ended up with a system that is distinctive to this Island of ours. What this Bill does is not to evolve the situation a little bit further, it is to turn the whole thing on its head, and the hon. member for Castletown talked about destabilisation in its wider sense, and I have to say I think he has got a point, and I align myself with his comments on that particular aspect.

It is quite clear that the piece of legislation that we have in front of us is inadequate. It has been ill-thought out and there are a number of areas in it which, if it were to become law and not amended before that happened, I think would be subject to ridicule. There are bits in that Bill that do not make sense, and so some sort of amendments are needed and I am sure the hon. mover of the Bill would accept that.

Perhaps it is not surprising that this Bill is as it is at this stage. If we think of it as being conceived by Victor, gestated by Edgar and given birth to by Geoff, (*Laughter*) I think we are probably bound to end up with a bit of a mismatch. (*Interruption and laughter*)

My difficulty in knowing what I want to do with the Bill is to decide how best to get it there - that is, the dustbin. (**Mr Duggan:** Hear, hear.) Do I vote for it to go to committee, knowing full well that if it does receive a majority support of the members of this House, then it needs amending in certain fundamental ways? Do I vote for it to go to a committee hoping that the length of time it will stay in that committee will see the thing delayed beyond the next election, which is, I suppose, a second best to putting it in the dustbin in the near future? Or do we let it proceed along the floor of this House, facing the amendments as they are proposed one by one and dealing with them in that way and then, when we come to third reading, sitting back and having a look at it at that stage and deciding that it is probably not worth the paper it is written on anyway? Whatever way we proceed, seems to me, to be full of flaws.

To try and deal with it within a committee within a period of five weeks, I think, is impossible. I do not think that is practical at all unless it is to come up with some sort of a timetable, as has been suggested by the hon. member Mr Rodan, but we know how difficult it is to get committees together. Committees are of five people to deal with this sort of legislation; probably it would meet twice before the 5th December, if we really accept the situation as it is.

So I think the best thing to do with this Bill is to send it to a committee but not confine it with time. As I say, I hope it will run out. If we are going to try to confine it with time we will not get it right anyway, but it is important legislation. It is not something we should accept with a sort of shrug of shoulders. It is our constitution we are talking about.

Mr Cannell: It has got a committee already.

Sir Miles Walker: We are talking about, as the hon. member for Castletown says, doing away with the House of Keys as we know it, doing away with the Legislative Council, doing away with your seat, Mr Speaker, in the situation we have known it in the past - the honourable position of Mr Speaker will be with us no more; finding a new solution to the President of Tynwald, a new presiding officer - all those issues are in this Bill. This is not evolution; this is turning the thing on its head. I have to say I think it is bad for us, (**A Member :** Hear, Hear.) I think it is bad for the community.

I would thank the church for drawing attention to the situation of the Bishop. Some of us have tried to do that during the preliminary stage of this Bill and almost been flippantly told it is an unimportant matter. I believe it is a fundamentally important matter. It is part of our constitution; we ought to have a sensible adult debate about it, not be buried in a deluge of paper and then hoping that people will be persuaded to change their minds. But I applaud the way that the community has risen to that one. I am sorry that they have not identified the other problems within this Bill -

Mrs Hannan: That is right, yes.

Sir Miles Walker: - because we could get another deluge of paper and perhaps change a few more people's minds, and it seems to me that that would be a common-sense thing to happen.

So I do think that the best way of dealing with this is to send it to a committee, not to confine it by time. I hope it runs out but it may not, and if it does not and it comes back here it will be, I think, in a better state than it is at the moment. So that is the way I am prepared to take it, Mr Speaker.

The Speaker: Member for Onchan, Mr Karran.

Mr Karran: Vainstyr Loayreyder, I will support it going to a committee and I will support the time date, but I understand that the situation is that that will almost certainly be only an interim report. But I am happy to accept that an interim report comes by the 5th December as far as the piece of legislation is concerned.

I think the problem we have to realise is, I have always agreed that with stability and the fact that I have never managed to successfully pick a Chief Minister yet has not made any difference to the fact that once they have not got their post, then you work with whoever is in the job for the benefit of the people of the Isle of Man and not yourselves or your career. But there is a balance between stability and actual stagnation, and I think what many people in this hon. House do not want is stagnation.

I believe that the hon. member for Rushen is quite right in the fact that the reality is, even if this Bill was to get through its stages in this House, it is dead in the water. I mean, there are massive fundamental problems with this Bill and this is why I have put so many amendments to this Bill in order to try and get it back into the realms of reality and away from fantasy that it is in at the present time. I admit that my amendments are maybe seen as extreme by some people, but I do believe that if they were investigated in committee I think that they would see the rationale and the sensibleness of it.

I think it should go to committee. I think that I am happy to support the time, date to try and get something moved as far as that is concerned, but I do agree with them that we want a balance between stability and the situation with some that do not want to see any movement at all. But, at the end of the day, I think that if we are really talking about being realistic and honest with our general public we have to support it going to a committee because otherwise it is going to go nowhere, and I think that would be wrong for the general public outside to say that we are going to vote it through only to find it goes to the living dead — I mean, to the Legislative Council, (*Laughter*) and then we have the situation where it is going nowhere.

I think, if we can put down the foundation stones of getting it right, that is the important thing. The important thing is to get it right, and we have not got it right in this Bill. Hopefully, with it going to a committee, they might see other ways as far as it is concerned, and make it more in touch with reality. I would support it going to a committee.

The Speaker: Member for Peel, Mrs Hannan.

Mrs Hannan: Thank you, Vainstyr Loayreyder. I would like to support the last three speakers in this. This is a major piece of constitutional legislation. As the members have said, it will change the very constitution of this House, the Legislative Council, Tynwald itself and also other bodies. One thing that this legislation does not address is voting, election by the people. It does not bring in democratic election. It is prepared to stay with this -

A Member: First past the post.

Mrs Hannan: - disgraceful piece of legislation which allows some people to have one, two and three votes, and therefore if this piece of legislation goes to committee, I hope that whoever is on this committee will address this fact. We have got human rights legislation which is coming in in a few years' time and I would hope that everyone will be treated the same equally throughout. And therefore there are a number of issues which this legislation does not address. By its very nature it is such a slim piece of legislation it does not address many of the issues which should be addressed and therefore it has to, at some time, go to a committee and I do hope that, simply because it is such a major change of legislation, it should go to committee, it should consult, it should take advice and it should report and not necessarily in five weeks; I mean, five weeks is ridiculous. I do not know of any committee that has reported in five weeks. So I would hope that members, if they do feel moved, do send it to a committee so that these issues can be addressed.

The Speaker: Member for Douglas North, Mr Henderson.

Mr Henderson: Thank you, Mr Speaker. I, like the previous speaker, think this is a huge, complicated piece of legislation that has come before us today topped out with amendments to go to committee and go to committee with a time date. I am struggling with the issue for many reasons, and certainly with the strategic implications of the arrangements of this Bill and what they will have should it go through this hon. House. Some of the implications are fairly straightforward, some are not, and some of the more indirect implications have been highlighted by the hon. member for Garff, Mr Rodan.

This morning we had a look at the Contracts Bill 2000, and the reason I highlight that is because there was a clause in there that a question was raised about that could not be answered for whatever reason, but the point is that we proceeded to approve that clause with an issue which was not answered and unclear, when in fact perhaps it would have been better to do something else with the clause other than pass it.

I find myself in the same situation this afternoon in a lot of respects, a complicated slab of legislation that is going to have far-reaching effects, more so than the Health Services Bill that we have awaiting us and numerous other large weighty Bills. I do not think anyone here realises to the fullest extent what is going on, and I would urge caution in that respect.

Certainly, one of the things which does concern me is clause 1, where we lose the Bishop's vote. I am not happy with it and other areas where the constituencies are being

carved up. If we move it to a committee with a time date, that gives us approximately four weeks for the unfortunate victims to contemplate this rapidly and come to some sort of conclusions to place before us, and then we are back to square one. Or we can go to an un-time-dated committee -

Mr Quine: And never see it.

Mr Henderson: - and never see it again, that is possible, yes -

Mrs Crowe: Quite right.

Mr Henderson: - but at the same time I am minded to perhaps go more for that because it might just give it a little bit more time to be considered. I think it does need that, and for myself I will not be railroaded down the track of 'Oh, we have got to get this done, it is undemocratic going to committee.' There are rules in the standing orders which allow for various procedures to be followed, and the committee procedure is one of those rules. There is nothing undemocratic about it, it is here, it is allowed to be moved and I think that something that allows further consideration for something as large as this has got to be worthy of us to consider this afternoon, especially when some of the facts are not as clear as I would like them. Thank you, Mr Speaker.

The Speaker: Hon. member for Douglas West, Mr Downie.

Mr Downie: Thank you, Mr Speaker. I will be brief. I intend to support this Bill going to committee. I think that the situation we appear to be pushing ourselves towards is a bit similar to entering the Valley of Death and riding with the six hundred. I think some members fail to realise the tremendous implications there are in pursuing this Bill in its present form, not to mention the breaking down of the traditional constituency barriers, change in the boundaries for election and opportunity to provide additional constituencies for areas like Douglas where we have had a population expansion, and an opportunity to have this whole issue looked at by a properly drawn up and constituted boundary commission.

I feel that hon. members will see common sense today - I sincerely hope so - and they in turn will support the issue going to a committee, and if that committee can possibly look into this issue and also, at the same time, have regards for the findings of the Council of Ministers committee which is also looking at constitutional matters, perhaps between them they can produce a draft Bill that could be available to come before this House again in the not-too-distant future. So I support the move to a committee.

The Speaker: I call upon Mr Quine to reply.

Mr Quine : Thank you, Mr Speaker. I do not think anything has changed. We have those who for one reason or another are quite happy to stay in the political rut in which they are embedded and we have those who want to change, and of course the obstacle to bring about that change is that we have to try and make a reasoned case for what the Bill is, or what our amendment to the Bill is going to be.

Now, quite frankly, as I said before, I really do not want to see this go to committee at all. We had a select committee sitting for two years, more than two years, an interim report, a full report; we now have a Council of Ministers committee looking at the same thing, and now we want a committee to examine the two committees. This makes no sense whatsoever. The Bill is there. Yes, there are refinements that are needed to that Bill, and I am quite sure the

amendments will address those in very large part. I do not agree with some of the matters of detail which have been raised. They are matters of detail; they can be dealt with later. So I would ask hon. members, or comment, should I say: it is really decision time; you are either committed to bring about reform of the Legislative Council or you are not, and if you are not you are either going to vote for a committee without any date attached to it, because there is only one product from that, and that is it will see out this House and it will get you an easy passage through the general election because you will be able to say 'I am for reform. I just could not get around to it.'

Mrs Crowe: That is you, Edgar, not us.

Mr Quine: What we want to do - we know where we want to go on this. As far as I am concerned we want reform. You have had your committee looking at it. Do not send it to either committee. I am perfectly happy with that. Get it on to the floor and let us deal with it clause by clause and then individual members can, on division, can pin their flag to the mast. So if it is to go to committee I would ask you to put it there on the basis that I have got here, and that is we get something back to this House by 5th December. Otherwise it is going to be a complete waste of time and will serve no purpose going to an open-ended committee. It is just a guillotine for the exercise.

The Speaker: Mr Corkill, member for Onchan.

Mr Corkill: Thank you, Mr Speaker. I have no intention of going back through individual debates. I will stick with the procedural issue. The very fact is, of course, that accusations have been made through the debate that in some way the Council of Ministers have got a block vote, and the next very speaker up on his feet was the hon. member, Mr Brown, from Castletown, who wants to kick the whole Bill out. We have other members in this hon. House who want the Bill to survive.

At the end of the day we have a situation where I have put a proposal forward for a committee. I think the hon. member Sir Miles summed it up, that 'every way forward was flawed', I think he said. Going to a committee is one of those flawed options, but to my mind it should be the one that attracts the most support, given the circumstances today, where we have heard everybody's agendas, because most of those agendas are in the amendments but unfortunately some of those agendas are in other forums outside of this hon. House at the moment because, by the very actions of the select committee which looked at this for a period of 18 months, they landed it on to the Council of Ministers.

It is not the Council of Ministers' fault that this issue is being debated behind closed doors as it is often seen. The committee there is wrestling with a situation that was presented to it, and of course to have some concept that perhaps there is a unified view in the Council of Ministers on this issue, any more than there is a unified view within this House, is absolute bunkum because it does not exist, but whereas there are those who wish to have reform, there are also those members who wish to have stability. That does not necessarily mean inertia. I personally have thought about this Bill on and off throughout the summer months and for long periods of time have thought that the best thing to do was to vote the Bill out, as other members have stated, but by putting forward an option of a committee I thought I was doing at least a service to hon. members that we will have an option to co-ordinate this debate.

Now, time may run out, elections may come and go; that is the democratic process, but at the end of the day we owe it to the public of the Isle of Man that when we come to this hon. House we have something which, as the hon. member for Garff made the point, has had some in-depth consultation. The trouble is we have got consultation going on in different compartments and it is not coming together, and my view is that the only option under those circumstances is to propose a committee.

We have all heard our views. I will not reiterate the pros and the cons because hon. members have made their minds up, I am sure, but to wrap up my comments, Mr Speaker, to suggest that perhaps certain members want to go back to the electorate to say that they are reformers when they have got some false agenda, I think, is a bit disingenuous of the member for Ayre because I for one in my first manifesto stated that I thought the Legislative Council should be an elected body. (**Members:** Hear, hear.) By the time I put my second manifesto out I made the point that I had changed my mind, and there is nothing wrong in changing your mind about issues as long as you are honest and up front about it, because having served on a select committee in the last five-year House, chaired by the then Speaker, Speaker Cain, it became clear to me that it was not a single issue and that the Bishop's vote, the Legislative Council being elected and the voting system and the boundaries that we are elected within are all complicated, cohesive situations that we cannot pick at and change one at a time; we need an overall view, and I believe that this Bill, Mr Speaker, does not present that opportunity to members, but hopefully a committee will present in the future an opportunity for us to debate a piece of legislation which is cohesive to start with, may still be amended, may be voted for or against but, at the end of the day, is structurally cohesive and I do not believe that this Bill as it stands is, but rather than vote against the Bill, let us keep the debate alive, because it is healthy to debate our constitution, but it is not healthy to rush and I therefore beg to move that we produce a committee of five members to take this further, Mr Speaker.

The Speaker: Right, now, hon. members, we have the motion that the Constitution Bill, together with the amendments tabled to it, be referred to a committee of five members for consideration and report, and to that we have the amendment by Mr Quine to report no later than 5th December 2000 sitting. Will those in favour of Mr Quine's amendment please say aye; against, no. The ayes have it.

A division was called for and voting resulted as follows:

For: Messrs Quine, Rodan, North, Cretney, Duggan, Mrs Cannell, Mrs Hannan, Messrs Singer, Karran, Cannell and the Speaker - 11

Against: Sir Miles Walker, Mrs Crowe, Messrs Rimington, Brown, Houghton, Henderson, Braidwood, Shimmin, Downie, Bell, Corkill and Gelling - 12

The Speaker: Hon. members, the amendment fails, 11 votes in favour and 12 votes against.

I now put the motion, moved by Mr Corkill and which you have printed in front of you. Will those in favour please say aye; against, no. The noes have it.

A division was called for and voting resulted as follows:

For: Messrs North, Sir Miles Walker, Mrs Crowe, Messrs Rimington, Houghton, Henderson, Cretney, Braidwood, Downie, Mrs Hannan, Messrs Bell, Karran, Corkill, Gelling and the Speaker - 15

Against: Messrs Quine, Rodan, Brown, Duggan, Mrs Cannell, Messrs Shimmin, Singer and Cannell - 8

The Speaker: Hon. members, the motion carries, 15 votes in favour and 8 votes against. We will now elect five members to form the committee. I will take nominations one by one and proposed and seconded. Can I have a nomination, please?

Mr Bell: Could I nominate the hon. member for Rushen, Sir Miles Walker.

The Speaker: Sir Miles Walker - seconded?

Mrs Crowe: Could I nominate the hon. -

The Speaker: No -

Mr Shimmin: I second Sir Miles Walker.

The Speaker: Nomination?

Mr Braidwood: With spiritual guidance, Mr Speaker, I wish to propose the hon. member for Ayre, Mr Quine.

Mr Duggan: I would second that, Mr Speaker, sir.

Mr North: I propose the hon. member for Ramsey, Mr Singer.

Mr Gelling: I will second that, Mr Speaker.

Mrs Cannell: Mr Speaker, may I nominate the hon. member for Onchan, Mr Cannell?

The Speaker: Cannell is nominated.

Mr Singer: Seconded, Mr Speaker.

The Speaker: Seconded.

Mrs Crowe: Could I nominate my hon. colleague, Mr Rimington?

Mr Karran: I would be pleased to second that.

The Speaker: I now have five nominations: Sir Miles Walker, Mr Quine, Mr Singer, Mr Cannell, Mr Rimington.

Mr Cretney: Could I nominate the hon. member for East Douglas, Mrs Cannell, please, Mr Speaker?

Mr Karran: I will second that.

Mr Rodan: I propose Mr Braidwood, sir.

Mr Henderson Seconded.

Mr Singer: I move Mr Corkill.

Sir Miles Walker: I second Mr Corkill.

The Speaker: Right, shall we close nominations?

Members: No! (*Interjections and laughter*)

The Speaker: Order! The member for Ayre.

Mr Quine: Thank you, sir. May I nominate the hon. member for South Douglas, Mr Cretney, sir?

Mr Cretney: No!

Mrs Cannell: I beg to second, Mr Speaker.

Mr Cretney: I had two years of it!

Mr Brown: I propose the hon. member for Peel, Mrs Hannan.

Mr Karran: I will second Mrs Hannan.

Mr Braidwood: I propose nominations close, Mr Speaker.

Mr Duggan: I second that, sir.

The Speaker: Sir Miles Walker?

Sir Miles Walker: Yes, I would like to propose the hon. member for Castletown, Mr Brown, sir.

Mrs Crowe: I would like to second that, please, Mr Speaker.

The Speaker: Hon. members, we now have 11 nominations and seconded. Are we agreed that nominations are now closed. (*Interjections*)

Members: Agreed, yes.

Mr Brown: It only took them seven hours at Westminster to get a speaker yesterday!

The Speaker: Hon. members, when you get the voting papers we will read out the nominations.

The Secretary: Mr Speaker, hon. members, the names of the members who have been nominated and seconded are, in alphabetical order: Mr Braidwood, Mr Brown, Mrs Cannell, Mr Cannell, Mr Corkill, Mr Cretney, Mrs Hannan, Mr Quine, Mr Rimington, Mr Singer and Sir Miles Walker.

The Speaker: I nominate Mr Houghton and Mr Bell as tellers.

A ballot took place.

The Speaker: Right, hon. members, the voting was as follows: Mr Braidwood, 6 votes; Mr Brown, 11 votes; Mrs Cannell, 4 votes; Mr Cannell, 13; Mr Corkill, 6 votes; Mr Cretney, 12 votes; Mrs Hannan, 9 votes; Mr Quine, 13 votes; Mr Rimington, 13 votes; Mr Singer, 12 votes; Sir Miles Walker, 11 votes. As there are 23 members in the chamber a majority of 12 carries, so those elected are Mr Cannell, Mr Cretney, Mr Quine, Mr Rimington and Mr Singer.

Mr Singer: Can I thank members for their confidence, sir.

The Speaker: Thank you, hon. members.

Rehabilitation of Offenders Bill — Second Reading Approved

The Speaker: We will now move to the next item on the agenda: item 16, hon. members, the Rehabilitation of Offenders Bill, second reading, and I call upon the hon. member for Ramsey, Mr Bell.

Mr Bell: Mr Speaker, the purpose of this Bill is to provide that after a specified period of time certain convictions for criminal offences would be regarded as spent and the convicted person rehabilitated. The Bill does not create a legal fiction that a rehabilitated person is to be treated as if his conviction never existed.

The effect of a conviction being spent is to limit the circumstances in which a spent conviction has or needs to be revealed. Therefore, where a question is posed seeking information as to a person's previous convictions, the question is treated as not relating to spent convictions and the answer framed accordingly. It will still be possible to refer to spent convictions and subsequent criminal proceedings and in other such proceedings relating to welfare of minors, adoption, guardianship, wardship, marriage, custody et cetera.

The period of rehabilitation is clearly set out and depends on the offence and on certain conditions being met in order for the conviction to be spent. These include requirement that no subsequent convictions shall occur during the rehabilitation period.

Sentences for serious offences including life or a term of imprisonment exceeding 30 months will never become spent. In order to ensure spent convictions are not published and that officials cannot pass on information from official records, provision is provided to make it an offence to publish or broadcast or pass on official records in respect of a spent conviction. The department can, however, provide for exemptions from such disclosures as appear to it to be appropriate.

The Bill also prevents a civil proceeding being taken in respect of the disclosure of spent convictions. In addition, the department is also provided with the power to apply the provisions of the Bill to sentences relating to military service. This will allow any changes to the military law in the United Kingdom which does apply to the Isle of Man to be speedily taken into account by order. Convictions from outside the Island are also provided for, including cases where a person is not convicted but a finding of guilt is entered, for example in juvenile proceedings.

This Bill will provide rehabilitation for people who have, by their good behaviour over a considerable period of time, demonstrated that their anti-social behaviour is at an end and that they are now responsible members of the community. Mr Speaker, I move that this Bill be read a second time.

Mr Duggan: I second, Mr Speaker.

The Speaker: The member for Ayre, Mr Quine.

Mr Quine: Thank you, Mr Speaker. I am a little bit disappointed that we did not have a more expansive introduction of this Bill and I am sure other members are very conscious of the fact that we, of course, had a House of Keys select committee that looked into this and reported, albeit several years back, and I would have thought that to bring back a Bill such as this - really the issue should have been picked up from that select committee report at least to explain to us why certain things are in or are not within the Bill. So to that extent I am a little

disappointed, but no doubt the hon. member for Ramsey, when he sums up, will cover the matters which I or others may raise.

Hon. members who do recollect, or have recently read perhaps, the earlier report of the Keys - there were several criticisms of the Bill that came forward at that time. The first criticism was that it will encourage lying and dishonesty; that was one criticism. The other criticism was that it would discriminate against persons subject to other legal processes for which rehabilitation did not apply. In other words, a person who committed certain criminal offences could have his record wiped clean at a certain point in time, but a person who may be subject to other forms of legal process - their convictions remain with them for ever and a day. So that was a further criticism. The third criticism was that it would remove an important deterrent to crime and the fourth criticism was that it would increase the likelihood of the general public falling victims to crime.

Now, I know in relation to those criticisms it does not apply across the board; we are only talking about a certain element, certain categories of crime, but I think it is as well, when we are at the second reading stage, to clearly identify at the outset what the basic criticisms of legislation of this type, as proposed here, are.

In paragraph 5 of the select committee report it suggested that future legislation should be based on certain principles. I have had some exchange of correspondence with the Home Affairs about those principles and it has been demonstrated to me that for practical reasons not all of them can be taken on board within this new legislation, and I readily accept that, but again I think it is important that we get fixed in our mind what those principles which were stipulated in the report were recommending.

First of all it was recommended that when we bring forward new legislation we should be even-handed between criminal convictions and other forms of convictions. It recommended, of course, that we should have legislation which is simple and easy to follow, and I think, if you look at one or two of the paragraphs within the actual schedule - I suggest members have a look at paragraph 3 to schedule 1; see how you get on understanding that as a simple and easy exercise in draft legislation. Again, that legislation should build into it somehow, or at least minimise, this question of the incentives for rehabilitation, should try to avoid this resorting to legal fiction, should be administratively viable, which I think has been taken on board, and it should contain a sanction against knowingly giving information - that was another one of the principles that was recommended, although that was actually in the Bill - and the right to apply for dispensation from disclosing information in certain circumstances. Perhaps that should be spelt out a little more strongly. So I would suggest, hon. members, that it is useful just to reflect on what the problems were and what the principles were when we left this subject the last time.

Turning to the Bill that we have before us, I do not have any difficulty with the objectives of the Bill. I think the objectives are quite laudable, given the level of these offences. They only apply to those who do not get sentenced to more than 30 months; I have no difficulty with that level. I do question, of course, how attainable these objectives may be, because we all know that you just have to look at the figures for recidivism to see that it is going to be of marginal value, but if there is some value, fair enough, let us consider it. And I think - a point which I do notice in this new Bill and I am sure the minister, the hon. mover, will confirm this - the concerns that were inherent in the earlier Bill about convicted persons, where they were

subject to orders and that sort of thing, breach of order; under the earlier Bill a breach of order was not considered to be a breach of the conviction and they were allowed to carry on notwithstanding these breaches of the orders. It seems to me, if one looks at clause 1, that that seems to have been addressed because clauses 1, 3, 4 and 5 are no longer there, but I would ask the minister to confirm for me that we have got around that particular problem.

Mr Bell: Sorry, Mr Speaker, the door was open; I did not hear the point that the hon. member was making. Could I just ask him to repeat it? Sorry, Mr Quine.

Mr Quine: Yes, certainly, I am pleased to do that. I was referring to the problem which was inherent in the earlier Bill where, in terms of the circumstances giving rise to a cancellation, a striking out of the period of rehabilitation, it excluded the question of orders, people in breach of conditions for probation; that sort of thing was being disregarded, and it appeared to me, insofar as clauses 1(3) and 1(4) and 1(5) are not repeated, as far as I can see, in this new Bill, that at least we have got over that particular problem and I welcome that.

There has obviously been some adjustment and simplification of the rehabilitation periods and I am perfectly happy with that. I think that has probably strengthened the Bill in respect of our desired objective to have it a little bit simpler than what it was and more readily understandable.

There are two further points which do concern me a little bit, and that is: it is proposed that a person who discloses information about a person's spent conviction should be liable to a criminal offence in his own right and, if he does that wilfully, I can see why he should answer to the law for such an infringement, but what I think will be a problem is, how does one know that a conviction in respect of one of a defendant, a convicted person - how does the man in the street know that it is spent? You see, it is not as if it was brought before a court and the court said, as a matter of a court order, 'This conviction is now spent.' It is going to expire virtually by time and within the knowledge of the offender but perhaps not within the knowledge of others, and it seems to me that unless you are able to say, 'Well, persons subject to a spent conviction - this is where the record stands and this is how you can ascertain that' - if you do not do that, then I think there is rather a weak case for making this a criminal offence. It might be that a lesser remedy, one based in civil law, might be appropriate because we are talking about different standards of proof and so on, but it just seems to me that unless it can be explained to us how the man in the street is to know that this person has a spent conviction - he may know that he was convicted because that could be a matter of public record, but how was he able to follow that through and know from a public record that it is now a spent conviction and therefore he must not refer to it?

So I do think we need to have a look at one or two of these matters, and I appreciate also that the hon. mover may not be able to give us direct information on this at this particular hearing, but I do trust that he will, rather than wait for the clauses stage, come back to us, or at least come back to me because I would certainly be interested and other members may well be interested, and try to give us some further information on these particular points. But just to sum up on it, sir, I have my reservations about rehabilitation of offenders, and I think I made that clear when we had the earlier Bill in front of us. Having said that, I know what we are trying to achieve and I have no difficulty with those objectives, but I do feel that if we are going to put this type of legislation in being then it must be workable. We cannot have something which is going to be complicated and difficult or something where we are going to lead people

into infringements of it virtually by the fact that we have not got the records and the access to the information that they need to avoid it. So I am happy to give it my endorsement today at second reading and take it on a clause-by-clause basis, but it is a matter which I would be looking at very closely indeed. Thank you, Mr Speaker.

The Speaker: Hon. member for Douglas East, Mr Braidwood.

Mr Braidwood: Thank you, Mr Speaker. I am going to look at it in a more simplified manner, because I am looking at the individual. My own personal view is that I am very pleased to see this Bill introduced (**Mr Karran:** Hear, hear.) because I feel that sometimes there is a sort of Damocles hanging over these individuals because they have committed their offence when they were late teens or early twenties. They are now settled, they are married, they have a family, and they have lived for 10 years, say, with no problems with the police; they have been model citizens. But when they apply for a job they still have to put down the conviction which happened when they were in their teens or their early twenties and which stops them from having that job, and they are prejudiced against people coming from the UK who have had their convictions quashed because there has been the Rehabilitation of Offenders Bill in the UK for a number of years, and that person can get the job. I feel this Bill is long overdue and without doubt I will be supporting it at the clauses and third reading stage, Mr Speaker.

The Speaker: Hon. member for Onchan, Mr Karran.

Mr Karran: As the chairman of the previous committee, which was given an impossible chance to survive, I welcome this piece of legislation and I applaud the minister for bringing it forward. I think it is an absolute scandal that we have a situation where people who are applying for jobs from outside this country and who are quite innocently allowing themselves to use the legislation in adjacent isles are leaving our own people at a disadvantage. As I said, 'By the grace of God.' when I originally moved the proposal in 1992; I said there are very few of us boring youths that have never been caught for doing anything wrong. I do not think we ever did do much, to be honest with you, but the fact is, at the end of the day I believe that this House is right to support this piece of legislation, I believed it was right in 1992 and I believe it is right today. What annoys me more than anything, as I said in the debate then, was that the very people who are shouting against this sort of legislation are the very people who would be able to give the right advice to their children and the likes so that they would not end up in court in the first place or using the old school tie.

I wish the member well as far as this is concerned. I think this idea that somehow you actually augment dishonesty - I think you augment dishonesty now, to be honest with you, because the fact is that people just do not own up to silly little things. I know myself I can go through a number of my classmates who you would not have left with yesterday's paper as far as trusting them with anything but who are now respectable responsible, first-class citizens in this country now, but if you were to have looked at their criminal record before they were 20 you would not have left them with yesterday's paper; you would have wondered what they would have done with it. So this idea that they need to have this over their heads for years is wrong; I think it is wrong to put Manx citizens on a disadvantage as far as that is concerned. I think that the committee looked at the report. We were in the minority to start off; the majority of them had made their decision, they did not want this piece of legislation, and it was not informed to us that we would have got the backing of the Council of Ministers, otherwise we

would never have allowed that injustice to go ahead and lose the report in the first place, so as far as I am concerned I hope it does, but I do hope that they move with the Bill and the Minister of Home Affairs realises this is only one of a number of measures that need to be sorted out if we are to try and break the circle of crime and to encourage people out of crime, and I do hope that he will look at the issue of whether we can get some more facilities such as David Gray House in order to help the initial stages for this piece of legislation, to get them out of that circle of crime in the first place, to give us that decent period of time so that then they can become fully productive members of society, because I can go through many of my classmates at school who are now first-class citizens of this country who ended up residing in Victoria Road many years ago.

The Speaker: Member for Douglas West, Mr Shimmin.

Mr Shimmin: Thank you, Mr Speaker, I will be brief. I too wish to add my comments of support to the minister. During my time on Home Affairs I was aware that he was trying to progress this Bill towards the House. I do believe it is overdue, I do believe that the comments so far would give an indication I think the House is now ready for this type of legislation. I believe as an educator that the benefits to the young people of this Island who do on occasions make mistakes and that mistake should not follow them for the rest of their lives. I do believe this is sensible, practical, it has been proven elsewhere to be of benefit and I do wish him all the best for going through this Bill, sir.

The Speaker: Minister to reply.

Mr Bell: Thank you, Mr Speaker, and can I thank those members who have made comments about this Bill. If I could just say initially that members may well be aware of the policy direction that my department has been moving towards over the last four years. We have introduced a range of measures which we believe give much greater protection to the community. We have just recently finished the Criminal Justice Bill that has gone through here and a number of other measures have gone through to tighten up on criminal activity on the Island as well as reinforcing the police in the process. I believe that will bear fruit and indeed is already starting to bear fruit.

We have included in the Criminal Justice Bill a range of measures which are half-way houses that we hope, if applied properly, will prevent the need for a range of people to have to go to prison such as tagging, curfews et cetera, a non-custodial sentence. That has been pursued through probation, and again we are finding out that we are seeing some results.

The third strand of our policy, though, we are seeing today, and that is the recognition that those people who have committed whatever crimes, or relatively minor misdemeanours, in fact, usually in their younger lives deserve a second chance. (**Two Members:** Hear, hear.) It is very easy for us to be sanctimonious in this hon. chamber and say that 'once a criminal, always a criminal'. Most of us, as representatives of a wide range of constituents on the Island, know that that is not the case. We have all known young people who through youthful exuberance circumstances of their quality of life a range of reasons have slipped into trouble have brushed up against the criminal justice system. We also know a large number of those people by their early twenties, as the hon. member for East Douglas has said, have matured, have grown up, they have settled down, perhaps, with wives, girlfriends and become model citizens, but the shadow of that conviction hangs over them then for the rest of their lives. In

many cases it prevents them getting a decent job; it can in some cases prevent them from travelling. We believe strongly, and I personally as minister believe strongly, that the time has come to recognise that whilst on the one hand we do need a firm hand against criminals, that needs to be balanced by a recognition that we should be doing our best to rehabilitate those people who are capable of rehabilitation and in fact not achieving the reverse by putting the obstacle of a criminal conviction in the way of them achieving a normal life and in many cases, perhaps, forcing them back into a life of crime again because they cannot get out of the trap that they are in.

Hon. members, I am sure, will have read the legislation. Although we have done our very best to strike a balance between all the various arguments that were put forward last time - and the hon. member for Ayre, I understand, was chairman of the committee which investigated the Rehabilitation of Offenders Bill last time - we have taken on board all those points, we recognise the difficulties and we have tried to come back with a compromise Bill which will probably not satisfy everybody in this hon. Court but one which we believe will give a considerable measure of hope to those people currently trapped by a previous criminal record.

The rehabilitation periods, as hon. members will have seen, will not be easy to achieve. For example, our sentences of custody for a term not exceeding six months, which is really a fairly minor misdemeanour in the criminal justice system, will require a period of good behaviour of seven years before they can be rehabilitated. Now, we believe that anyone who can achieve a clean record for seven years deserves a second chance, (**Mr Henderson:** Hear, hear.) deserves to be considered in a more mature light and not to be labelled as a criminal for the rest of their lives. As I say, none of us are perfect and most of us know young people in particular, and particularly at the moment, if we look at the minor drugs offences which are caused, it is only fair to give these people a second chance and give them a chance to get back on their feet again, and this is what this Bill is trying to achieve. As I say, I do not believe for a moment that it will be seen as perfect in everybody's eyes, but it is an honest achievement to achieve rehabilitation in appropriate cases.

The hon. member for Ayre, Mr Quine, has complained first of all that my explanatory introduction was too short. I can only apologise for that; it could have been considerably longer if he wished me to go into every detail. I am sure at this time of the day on a Tuesday members would not want me to go through line by line in explanation of this particular Bill. I would say, though, that quite sincerely I recognise that the hon. member has some concerns still and I make the same request to other members: if they are still unsure of certain aspects of this Bill, if they would like to raise their concerns with me before the clauses stage I will be more than happy to arrange for a further explanation of the issues which they have raised with me.

The point which the hon. member also refers to is the illegal fiction aspect. Now, again we have done our best to draft this Bill in such a way, as best we can, that we avoid illegal fiction. This has been the main stumbling block and the main obstacle that has been put in the way of any rehabilitation legislation over the last few years. We believe we have achieved a satisfactory compromise in this. If members are still unhappy with it, then again I would appreciate it if they would come to me before the clauses stage to see if there is a further explanation needed.

The hon. member has also stated two further reasons for concern in supporting this Bill: firstly, it will remove an important deterrent to crime, and secondly, that the public will be in increased danger of falling victim to crime. Now, I have to say that I totally disagree with that; I think the reverse will be the case. By encouraging people to rehabilitate themselves or be rehabilitated I believe, in fact, it gives the public wider protection. By not offering young people in particular who have been caught in the criminal justice system an opportunity to redeem themselves, as I have said, there is a danger of them slipping back into crime again because there is no other avenue out, and I think that is of much greater danger to the public than being open with people to give them a second chance and, as I say, a chance to redeem themselves, so I do not agree with the points that the hon. member has made on that.

The member again makes comment on the need for the legislation to be simple and easy to follow. This is not necessarily a simple and easy-to-follow exercise that we are trying to achieve; we are trying to achieve a balance between a range of varying viewpoints, from those who would lock every criminal up in prison straightaway and throw away the key to those who have a considerably more liberal outlook. We have tried to make this Bill as simple and as easy to follow as we possibly can, and the reaction from our consultation process has given me comfort that we have, as best we can, achieved that.

The only other point that the hon. member has made - and I have to say I will need to double check on this one before I give him a firm answer - is the penalty for disclosure and the liability to a criminal discharge if in fact disclosure is made. Now, I fully accept the point that the hon. member is making, that particularly in a small community like the Isle of Man, no matter how much we do not necessarily highlight individuals' convictions, on the street people know who has been convicted of what crime and that particular mud sticks forever, I think, with many people and it is possible, I am sure, for an individual to inadvertently give away the information that someone has in fact been subject to a criminal conviction. There is a strong penalty in the Bill to prevent that but I will have to just get further advice on that particular point as to the position of someone who inadvertently, through local knowledge or gossip or whatever, could give away a particular conviction. It is obviously not the intent of the Bill to catch someone in that position, but I would need to get advice on that and explain it to him. I will try and get him the answer before the clauses stage but, if not, I will certainly give him at the clauses stage.

Otherwise, I would like to thank hon. members for their support, those who have spoken. Rehabilitation is a very important weapon, I think, in our fight against crime to encourage people back onto the straight and narrow again, to recognise that no-one is perfect, people do deserve a second chance, and that this government now is mature enough to recognise that and, whilst being strong and taking strong measures against those who do slip into criminal activity, we are compassionate enough to recognise that often people do grow out of those tendencies and will grow into the model citizens who we all admire and respect.

It is an important Bill it is a very important part of our three-pronged approach to the law and order situation on the Island, I would urge hon. members, whilst recognising that this Bill has been rejected in the past, to recognise the change in circumstances to take a broader more mature approach to this particular issue and give the second reading of this Bill their full support, Mr Speaker.

The Speaker: Hon. members, the motion is that the Rehabilitation of Offenders Bill be read a second time. All those in favour please say aye; against, no. The ayes have it. The ayes have it.

Residence Bill — Second Reading Deferred

The Speaker: Item 17 on the order paper, the Residence Bill, has been deferred.

Constitution (No. 2) Bill — Second Reading Lost

The Speaker: Item 18, the Constitution (No. 2) Bill. Hon. member for Ayre, Mr Quine.

Mr Quine: Thank you, Mr Speaker. The issues embraced by this Bill are really, I think, quite straightforward and I will be as short and to the point as I can.

As matters presently stand, the President of Tynwald is ex-officio a member and presiding officer of the Legislative Council. In Tynwald, when the Court is voting as one body he has a casting vote. When the Legislative Council votes as a branch of Tynwald he has a casting vote, as he does when the Legislative Council sits alone.

Now, this situation gives rise to a possible conflict of interest as a consequence of the incumbent holding the positions of President of Tynwald and President of the Legislative Council. I think this is demonstrated by the fact that he has a casting vote where Tynwald votes as one body and where the Legislative Council in Tynwald votes separately. A further possible conflict could arise where there is an impasse between the Keys and the Council in approving legislation. A Bill passed by the Keys on two occasions in successive sessions can go forward for Royal Assent without the Legislative Council approval if signed by 13 members of the Keys, or 16 if we are talking about a constitutional matter, and if it is signed by the President of Tynwald who, as I say, is also the President of the Legislative Council.

So to my mind the most obvious solution is to divorce the President of Tynwald from the Legislative Council, which would necessitate the Legislative Council electing a chairman from the remaining membership. This would address both my concerns, as I have outlined already.

Now, as far as this Bill is concerned, as I say, it has only got the five clauses and basically what this does in clause 1 is remove the President from the Council, and in clause 2 it creates the office of chairman of the Legislative Council and provides for his appointment and tenure of office. Clause 3 and the schedule deal with the transfer of certain functions from the President to the chairman of the Legislative Council, because he would be acting in a different capacity.

So basically that is the Bill. I believe the matter addressed in it is quite straightforward. It really is an issue now of whether the members of this hon. House feel that it is worthy of being pursued. I believe it is; I think it is unfair to put the President of Tynwald in this situation and I think it is a small but significant change which would be important. Therefore I beg to move that it receives its second reading, sir.

The Speaker: Member for Douglas North, Mr Houghton.

Mr Houghton: I beg to second, sir.

The Speaker: Mr Karran.

Mr Karran: Vainstyr Loayreyder, this Bill is a bit of nonsense, in my opinion. I believe that we have seen other Bills on this order paper where they are supposed to have nice chats and somebody goes off to be a Member of the Legislative Council that is elected and the President and do nothing. I believe that this Bill is a matter of making another wig for another presiding officer. We have got enough presiding officers in this country as it is now, in my opinion. If the hon. member would have been coming back and saying we are going to really. . . instead of tinkering with these less important issues, he brings the red herring about the Royal Assent. The real insult is that a democratically elected government of this country can be vetoed, by a procedure which only developed about 50 years ago as far as the Royal Assent is concerned, by some third division civil servant making a recommendation to a second division civil servant who makes a recommendation to a first division civil servant in another country.

While I have the greatest respect for the hon. member on many issues, I think he has completely switched off as far as this issue is concerned. I think this is only tinkering. If the hon. member was going to be following some of the proposals that I would have like to have seen, I personally would have liked to have seen an elected President, preferably not called a President, keeping the head of state as the UK Queen as Lord of Mann. I would have liked to have seen some sort of recognition as some sort of chief or *Kiannoort* so that he would have been elected on a mandate. If this Bill had come back with the election of a chief to preside as the President of Tynwald with a mandate of 10 years with a situation where maybe they cannot be re-elected again I would have been a lot happier. Just to try and create more business for the wig industry is no way to amend the legislation, in my opinion. (*Laughter*)

I do hope that the hon. member will actually think about my points. I believe that what we should be seeing if we are doing anything with the President of Tynwald is he should be elected by the people of the Isle of Man, he should take over all the roles of the Governor of the Isle of Man. Instead of paying him £30,000 or £40,000 and paying another quarter or a third of a million on the costs of keeping a Governor I think we would have been far better to have seen a Bill to have elected the President of Tynwald by the people of this country.

This Bill does not attract any worthiness as far as even giving a second reading is concerned, in my opinion. Then he could have had an argument then with the present set-up with the Legislative Council where the Legislative Council voted against the democratically elected House of Keys in Tynwald; then, if it did not get the vote of the President or the chief or whatever we were going to call him - because he would not be a president like in a republic - then we could have had some way of legitimising the input from the Legislative Council in my opinion.

I do think that this House needs to be more switched on. I mean, I know many of my things do seem rather far-fetched, just as we have just seen with the previous piece of legislation for the Rehabilitation of Offenders Bill, how it was something that was impossible and it should not happen and all the rest is concerned.

I believe that if this Bill gets a second reading it should go to a committee and it should look at the role of the President, look at the role of the Governor and come back with actually something that is more important than creating another seat and another person with a wig on, as far as I am concerned, because I see nothing in this Bill. I believe that if we elected the chief or whatever you want to call him - because I think presidents get mixed up with heads of

state - of Tynwald, he could then have all the functions of Royal Assent and he could take over from the duties of the Governor.

I would have liked to have seen more vision as far as this piece of legislation is concerned and I do hope that hon. members either put this to the bin or it goes to a committee at a later date. I supported the hon. member with his point and I understand that it will be far-reaching ideas for this hon. House, but just think about them maybe if it does go any further, what needs to be done as far as electing the presiding officer of the House of Keys on an all-Island franchise, and I am sure that we can manage it to come up with a system that can be identified with the Isle of Man. Just because it has not been done in the adjacent Island or in many of these other Commonwealth countries we can come up with a system where we could elect the presiding officer from the Island and give him all the roles apart from the role of being sovereign, in my opinion.

The Speaker: Hon. member for Peel, Mrs Hannan.

Mrs Hannan: Thank you, Vainstyr Loayreyder. I can understand the concern that the mover of this legislation is coming from but there are much easier ways of doing it. I mean, it could have been for the Legislative Council to vote a vice-chair of the Legislative Council so that when Council had to sit whilst Tynwald is sitting there was a definite transfer of responsibility from the President of Tynwald to the chair of Council, and therefore I do not see the necessity for producing another position within Tynwald and also removing the responsibilities from the President of Tynwald.

If we want someone to chair Tynwald we have to give them other responsibilities. We cannot just say, 'That is your job. Once a month you come in and you chair Tynwald.' I think it is a very good use of the personnel that we have within Tynwald as a whole, within Council, to have the President of Tynwald both chairing Tynwald and the Legislative Council, and therefore I consider that this piece of legislation that is before us is really redundant. It really needs just a common sense look at the divisions of power within each individual area, and therefore I do not see a problem with the President of Tynwald presiding over the Legislative Council but when they have to sit - the very odd occasions when they do have to sit - separately, one of the members could either be the deputy, the vice-chair or whatever who would then take over the role to leave the President of Tynwald presiding over Tynwald and not having to make other decisions.

There are other areas too where the President of Tynwald does have to be separate to make decisions, and I would have thought that the higher the body that would be where his position would be with the deputy coming in and making the decisions with Council. Therefore I do not see that there is necessarily a need to bring in this to form yet another area where someone is reimbursed to the same extent and, as the member for Onchan has said, regalia and all the rest, when I think it is very simple to approach this particular area, the concerns that the member for Ayre has with regard to somebody being left with this responsibility, and therefore I do not see the necessity for this legislation and, Mr Speaker, I shall be voting against it.

The Speaker: Sir Miles Walker.

Sir Miles Walker: Yes, Mr Speaker, it is not very long ago since we did away with the Legislative Council electing its own chairman or President, as we called it in those days, and I

believe the decision to combine the presidency of Tynwald with the President of the Legislative Council was a right one, and it was at that time, and you will remember yourself, Mr Speaker, as being the member, I think, in charge of the Bill, that a deal of consideration was given to whether we should have two or three presiding officers and what the role of each of those shall be. Certainly I was persuaded at that time that the route we took was the correct one and I think I remain persuaded that that is the case. I supported, I think, the hon. member when he was looking for leave to introduce this Bill and, if my memory serves me correctly - and I think it does - it was at the time when the Legislative Council had in fact thwarted the House of Keys on the constitutional issues that we were talking about earlier today, and I believe that that was the issue that got the hon. member to move on this Bill.

In retrospect we talk about checks and balances, we talk about the check or the balance to the executive and we talk about the checks and balances within Tynwald between the House of Keys and the Legislative Council. I think it is clear to me that the will of the Keys will predominate over an issue that is serious and with which the Keys are consistent, and no matter what the prevarication of the other place is, if the Keys keep their eye on that rabbit and they argue the case, then that will prevail, and I think it right, when dealing with constitutional issues, that there are the right checks and balances within Tynwald and the Legislative Council and other people do have the opportunity to say, 'Hold on, think again, back to the drawing board,' or whatever the phrase may be. So I think I am not persuaded that there is a need to change the present situation.

Also, I think it a bit difficult for us to really home in or concentrate on the situation that is being put forward by the hon. member in this Bill having just been through the previous debate, which seems to me to be in conflict with this. It seems to me that we would be better, if we are not going to vote out this Bill, and I think we should do that, in fact to adjourn this consideration until we are clear what is going to happen with the other piece of legislation which covers very much the same sort of issues. So, Mr Speaker, I am voting against this Bill this afternoon.

Mr North: Mr Speaker, just very briefly, I am sure what the previous speaker has said, the hon. member for Rushen, at the time was the right decision. I just feel, and have done for some time, that this is as the mover of the Bill has said, a positive move forward. It is not a major issue but if you are looking many, many years ahead I think this is a sensible move and I do not think having another presiding officer in Legislative Council creates any major problems whatsoever.

The Speaker: I call upon the mover, Mr Quine, to reply.

Mr Quine: Thank you, sir. I would just first of all remind members of what the issue is, because I think that is really what they are voting on. They are either voting on the basis of saying this situation which I have outlined and which I am going to repeat for the record is acceptable parliamentary practice, and if it is the will of this hon. House that that is acceptable parliamentary practice, then that is something which we will live with happily because it is the will of this hon. House. But I just want to make sure and want to make absolutely clear in the minds of members, what are the issues? Then, if you vote them out, that is fine.

As I said, the President of Tynwald is ex officio; he is a member and a presiding officer of the Legislative Council. In Tynwald, when the Court is voting as one body, he has a casting

vote, so he has got, if you wish, those two hats to reconcile. When the Legislative Council vote as a branch of Tynwald, he has a casting vote as he does when the Legislative Council sits alone.

Now, the situation gives rise to a possible conflict of interest as a consequence of the incumbent holding the positions of President of Tynwald and President of the Legislative Council. He is sitting with both responsibilities and with casting votes and, as I have said, this is demonstrated by the fact that he has a casting vote when Tynwald votes as one body and when the Legislative Council in Tynwald vote separately - two different functions wearing two different hats within Tynwald.

Then the further point is really, to my view, not such a critical issue, and that is of course, although I am sure to say it is important in constitutional terms, where there is an impasse between the Keys and the Council in approving legislation; a Bill is passed by the Keys on two occasions in successive sessions, it can go forward for Royal Assent without the Legislative Council approval if signed by 13 members or 16 if it is constitutional if the President also signs it - if. If the President of one of the parties to the conflict, the President of Tynwald who is President of the Legislative Council chooses to sign it, I do not believe that that is logical or sensible or represents sound constitutional practice. If hon. members believe that that is fine and that that is an acceptable procedure, then I will lose no sleep over the matter at all; it will have been put, I hope, clearly to this hon. House and they will have taken that decision.

Now, Mr Karran first of all said that this is only tinkering with it. We know Mr Karran's view about Royal Assent and how he would reform this whole situation, how he would deal with the position of the Governor and other matters in relation to Royal Assent for legislation but, quite honestly - and I am sure the hon. member knows this - he is not even going to get on the starting blocks with that. We are not an independent territory and he has got no chance whatsoever to proceed on that basis -

Mr Karran: Too many knighthoods would be lost!

Mr Quine: - and, quite frankly, if the hon. member would even take the trouble to go and refer to the Ladybird Book on constitutional law he will at least grasp that much; that is wholly impractical. As for the wig industry, I am not aware that it gives rise to any additional wigs, although I could do with a spare one if there is one going!

All we are talking about here is one of the remaining members of the Legislative Council assuming the chairmanship when it sits separately as the Legislative Council. I cannot see what is difficult about that; we did it before and for different reasons it was changed.

The hon. member for Peel - I think there were two points that she made there. She would like to approach this in a different way by looking at the division of powers. Well, I presume that would be open to the hon. member in the passage of this particular Bill, because of course at the back of the Bill there is a schedule that deals with the transference of powers which would be consequential upon this Bill taking effect. I think the other position she was concerned about was that this would give rise to further payments. That is not the way I look at it; the way that I look at it is that if we are talking about presiding officers, certainly in terms of the President of Tynwald, that should very soon become an honorary position. That is how I look at the President of Tynwald position.

Sir Miles, he spoke very properly about the checks and balances, and I think that term demonstrates precisely what this Bill is all about. It is precisely that: it is providing those checks and balances so you do not have one person wearing two hats, because that from a public perspective does not stack up at all. He said he was not persuaded that change was needed and I respect his view on that, but it does not alter the fact that the case for change is clear; the case for change, in my view, has been spelt out. Those risks which are inherent in this procedure are there, they are clearly there, and if hon. members wish to leave those risks there and to disregard them that is a matter entirely within their own purview, but at least it will have been put to you and it will be your vote that decides that. I believe that this merits change and that is why I have brought forward this Bill. Mr Speaker, I beg to move that this Bill be read a second time.

The Speaker: The motion is that the Constitution (No. 2) Bill is read a second time. All those in favour please say aye; against, no. The ayes have it.

A division was called for and voting resulted as follows:

For: Messrs Quine, Rodan, North, Henderson, Mrs Cannell, Messrs Downie, Singer and Cannell - 8

Against: Sir Miles Walker, Mrs Crowe, Messrs Rimington, Cretney, Duggan, Braidwood, Shimmin, Mrs Hannan, Messrs Bell, Karran, Corkill, Gelling and the Speaker - 13

The Speaker: Hon. members, the Bill fails to be read a second time - those in favour 8, against 13.

Hon. members, that brings us to a close today's business. The House will now stand adjourned to Tuesday next, 31st October, at 10 a.m. in this chamber.

The House adjourned at 4.23 p.m.