

**REPORT OF PROCEEDINGS OF  
THE LEGISLATIVE COUNCIL**

**Douglas, Tuesday, 25th June 2002  
at 10.30 a.m.**

Present:

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

*The Lord Bishop took the prayers.*

**Apologies for Absence**

**The President:** Mr Radcliffe, hon. members, will be joining us shortly, I understand.

**Legislation – Council Consideration of Government-Sponsored Bills –  
Question by Mr Lowey**

Question 1. The hon. member Mr Lowey to ask a member of the Council of Ministers (Mrs Christian):

- (a) *Why has Council not received any government-sponsored legislation for consideration during this parliamentary session; and*
- (b) *how many government-sponsored Bills were considered by the Council in the seven-month period following the 1991 and 1996 elections?*

**The President:** We have three questions on our order paper. I call on the hon. member Mr Lowey.

**Mr Lowey:** Thank you, Mr President, I beg leave to ask the question standing in my name.

**The President:** I call on Mrs Christian, member of the Council of Ministers, to reply.

**Mrs Christian:** Mr President, if I may address the question in reverse order, in 1991-92, between the House of Keys general election and the summer recess, six government Bills were considered by Council; in 1996-97 the number was four, and this year there is only one, which is on today's agenda.

The principal reason for the shortage this time is that Bills have come forward to the Council of Ministers from departments more slowly than in previous years. In part this will be attributable to new members in departments revisiting and reconsidering the legislative proposals prepared by the outgoing administration before bringing it forward, and in part it will be due to attention being focused on other work within departments.

Since the last election eight government Bills have been approved for introduction into the branches by the Council of Ministers and these will, subject to the passage through the Keys, come before Council early in the next session.

**The President:** Mr Lowey.

**Mr Lowey:** Would the minister not agree that the policy document approved by Tynwald Court last October included the Bills that had been formulated over the last two years, and would she also not agree that although the government changed and there were new personalities, the personnel were actually the same people but just in different jobs and therefore the majority, and therefore how can that actually delay Bills that have already been approved for introduction over the past two years?

**The President:** Mrs Christian.

**Mrs Christian:** Mr President, the reason is that, contrary to what the hon. member says, personnel did change, and if you take on responsibility for a new department you may well want to look in more detail at provisions which are included, where there are new ministers in position.

**Mr Lowey:** Would the minister not agree that the Council of Ministers who approved the inclusion of this legislation are the same people? They may hold different jobs, but the majority of the Council of Ministers are still the same personnel.

**Mrs Christian:** The majority are the same personnel, Mr President, but the ministerial responsibilities in some areas have changed, and it is not surprising that where not only ministers but members of departments have changed the minister may wish to be satisfied (a) personally that they are content with the legislation and (b) that they have the support of their departmental members.

**Mr Lowey:** Wouldn't they have to be clear on that before they approved them being included in a public document which was approved by Tynwald Court, which included all the members of Tynwald?

**Mrs Christian:** Mr President, the personnel changed at election time. There were some changes in personnel, and the elected membership is not the same now as it was prior to the election.

**The President:** I do not think we are going to make any further progress on that, Mr Lowey.

#### **Minimum Wage Committee – Appointment of – Question by Mr Lowey**

Question 2. The hon. member Mr Lowey to ask a member of the Council of Ministers (Mrs Christian):

*Has the Minimum Wage Committee been appointed under Section 2 of the Minimum Wage Act 2001 and, if not, what are the reasons for the delay?*

**The President:** I call upon the hon. member Mr Lowey.

**Mr Lowey:** I beg leave to ask the question standing in my name.

**The President:** Again I call on the hon. member Mrs Christian to reply.

**Mrs Christian:** Mr President, during the May sitting of Tynwald the Minister for Trade and Industry explained that his department would shortly be taking steps to establish the Minimum Wage Committee. As the Minimum Wage Act 2001 and the associated regulations which set the rates of the minimum wage came into effect on 1st January this year, I am informed that the department does not feel that there has been any undue delay in the appointment of the committee. The department is currently in the process of identifying appropriate nominees for the rôles of chairman and employer and worker representatives and is also preparing regulations with respect to the proceedings of the committee for Tynwald approval.

**The President:** Mr Lowey.

**Mr Lowey:** Would the minister not agree that the Act was passed in the year 2000 after a very long gestation period, and would she also not agree that, as we are now half-way through the year 2002 and the Act became law in 2001, there has been a delay? If a committee was to be formed today, it would need to meet and review, and therefore it will not be able to review until the end of the year, which seems to me an inordinate length of time for any committee that is supposed to review legislation? Isn't it indicative, where a minimum wage was opposed by the government and finally accepted, of the delay and delay and delay and this is just another delay on top of another series of delays?

**The President:** Well, let us not debate the minimum wage policy; I think we have made that point before, but the delay on the appointment of the committee, Mrs Christian.

**Mrs Christian:** Mr President, the department does not accept that there has been undue delay. Notwithstanding the date which the hon. member indicates the Act was accepted, it did not become effective until 1st January this year, and the department believes that it is not unreasonable that there be the appointment of the committee during this year. It would anticipate certainly that regulations will come before Tynwald in October with a view to appointing having the committee functioning soon after that. It will be then up to the committee to consider any recommendations it wishes to make on minimum wage or changes thereto. I do not imagine that that necessarily needs to take a long period of time, and I would certainly anticipate that they should be in a position to make some recommendations before a year is out, which seems not an unreasonable period of time in which to consider change.

**Mr Lowey:** I shall probably be asking a similar question in December!

### **Draft All-Island Strategic Plan – Finalisation and Implementation – Question by Mr Lowey**

Question 3. The hon. member Mr Lowey to ask a member of the Council of Ministers (Mrs Christian):

*When will the all-Island strategic plan be finalised and what is the timetable for its implementation?*

**The President:** Again I call upon the hon. member Mr Lowey.

**Mr Lowey:** I beg leave to ask the question standing in my name.

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

**Mrs Christian:** Mr President, the Draft All-Island Strategic Plan was published in July 2001. It was the subject of extensive public consultation, the period of which was subsequently extended to the end of September 2001. This resulted in a wide range of comments and representatives from a variety of organisations and individuals and from most government departments. These are being analysed, and the Department of Local Government and the Environment anticipates being able to consider the detailed analysis of all the representations received in July.

After this a public inquiry into the draft strategic plan will be held later this year. The independent inspector's recommendations from that inquiry will then be considered by the department, which will have to decide whether to adopt the draft plan or to modify it. If it is resolved to modify the plan, interested parties will be given an opportunity to comment on the proposed modifications. The department has to consider any representations before deciding to adopt the plan for submission to Tynwald for approval. The department anticipates the plan being adopted by the spring of 2003. Its implementation will be phased over the 10-year period which it covers - that is, from 2001 to 2011.

**The President:** Mr Lowey.

**Mr Lowey:** We have a definitive timescale of 2003. Is the minister aware of staff shortcomings within the department and that that is a very optimistic forecast that she has given Council this morning?

**The President:** Mrs Christian.

**Mrs Christian:** Mr President, I am conscious that the Department of Local Government and the Environment has a number of staffing issues to resolve, but this is the advice I have been

given by them and I can only assume that they have drafted their response to the question in the light of the knowledge of their staffing situation.

### **Villa Marina – Compensation Claim – Final Settlement – Question by Mr Lowey**

Question 4. The hon. member Mr Lowey to ask a member of the Council of Ministers (Mrs Christian):

- (a) *What is the current position regarding the final settlement of the Villa Marina compensation claim;*
- (b) *what has prevented a settlement being finalised; and*
- (c) *what legal costs have been incurred by both parties to date?*

**The President:** Again I call on Mr Lowey.

**Mr Lowey:** Thank you, Mr President. I beg leave to ask the question standing in my name.

**The President:** Mrs Christian.

**Mrs Christian:** Mr President, I am advised that the current position regarding the final settlement of the Villa Marina compensation issue is that legal counsel for Douglas Corporation and the Department of Local Government and the Environment have referred the matter to the independent arbitrator, who is expected to arrange an early date for a pre-hearing on the Island. A response is now awaited from the arbitrator, but it appears likely that it will be necessary for the arbitrator to seek a ruling from the courts to ascertain the proper basis upon which the levels of compensation should be set.

With regard to part (b) of the hon. member's question, the inability of the two parties firstly to agree a level of compensation without reference to the arbitrator and, more recently, to agree the common basis for settling the issue has prevented a resolution being achieved. The Minister for Local Government and the Environment recently circulated to all hon. members of Tynwald an explanation of the reasons for the delays in bringing this matter to a conclusion and, that being the case, I do not feel it necessary for me to elaborate further on the dates of various actions.

I turn now to part (c) of the hon. member's question and would say that the department is being represented in this matter by the learned Attorney-General and it is not known what legal costs the Douglas Corporation have incurred.

**Mr Lowey:** Yes, I thank the minister for her reply. Could I just say the reason why I have got the question down is that I was told by the department three months ago that a settlement was imminent. I wrote to the department about six weeks ago - or I faxed them and asked them - and I was again told that it was imminent; today we are told that it is not imminent and that it could be a further lengthy delay because it has been referred to the courts. Would the minister agree that this is a highly unsatisfactory situation we find ourselves in? How many years ago since we acquired the Villa Marina? And it must be wrong for government, it must be wrong for the people of Douglas, (**Mr Delaney:** Hear, hear.) would the minister not agree?

**Mrs Christian:** I agree, Mr President, that it is regrettable that this whole issue has dragged on for so long. It would appear that the inability of the parties to agree even the basis on which the arbitrator should consider the arbitration position does necessitate recourse to the courts and, if that is the only way in which to get the matter resolved, then I think the determination of the parties to pursue that course is the only way in which it is going to be satisfied and that the people of Douglas and the government can resolve the matter finally. It is regrettable that this has been necessary.

**The President:** Mr Kniveton.

**Mr Kniveton:** Mr President, thank you. The hon. Mr Lowey has just mentioned the time that has passed since this was originally started. Can I ask the minister, will a rate of interest be paid by government to Douglas Corporation from the date of takeover to the date of final settlement, whenever it may be, to allow for loss of earnings by the corporation on that capital sum to be eventually agreed?

**The President:** Mrs Christian.

**Mrs Christian:** Mr President, I do not have that information. I should have thought it unlikely, given the inability of the parties even to agree the basis on which the matter was being considered, but I would perhaps look to the learned Attorney for confirmation of my opinion. I am sure the arbitrator may well hear arguments on both sides in that respect to take them into consideration.

**The President:** Do you wish to comment, Mr Attorney?

**The Attorney-General:** Yes, thank you, Mr President. The hon. member is absolutely right: it would be a matter for the arbitrator to consider. There is power, I think, under part 3 of the Acquisition of Land Act to award interest on the sum, but of course the arbitrator would take into account all sorts of matters, including perhaps delay on the part of one or the other. So it is a matter to be assessed.

**Mr Kniveton:** Thank you.

**The President:** Mr Delaney.

**Mr Delaney:** You say that the matter may be referred to court; do you know what part of the whole transaction is to be referred to court and what is taking them to court? Could you answer that for me first?

**Mrs Christian:** Mr President, my understanding is that the two parties cannot agree the terms of reference, as I would put it, under which the arbitrator will consider the matter - i.e. they cannot agree the common basis for settling the issue. They do not even agree the rules under which the arbitrator will operate, and again I would look to the learned Attorney to correct me if my understanding is wrong.

**The President:** May I ask Mr Attorney to reply before Mr Delaney comes back?

**The Attorney-General:** Yes, thank you, Mr President. Of course the matter has been referred to the courts and therefore I must be careful not to offend the *sub judice* rule, but you will recall that, by virtue of the 1999 Villa Marina Act, the amount of compensation payable to the Douglas Corporation was to be determined in accordance with the Acquisition of Land Act if the parties could not agree. Now, the fundamental difference, I believe, is that it is the contention of the department that the Villa Marina was and is subject to certain restrictions as to how the property can be used. It cannot be used, for example, as far as the department is concerned for the construction of high-rise development or residential development. You will recall that under the old regime the Crookall Trustees had imposed various covenants restrictive on the use of the land -

**Mr Delaney:** You are talking about the Villa Marina Act, are you?

**The Attorney-General:** We are talking about the Villa Marina Act. I am explaining, Mr President, the history of the matter, that Henry Bloom Noble Trustees had covenants imposed on the property. Equally, when the 1999 Act was passed, again so far as the department is concerned there were restrictions set out, and it is not open to the Douglas Corporation, so far as the department is concerned, to state, as their valuer has stated, that the property should be valued on the basis of residential development.

Now, when you see that on the one hand Douglas Corporation's valuer asserts that whereas on the other hand the department asserts that there are restrictions, you can see that there is a huge gap of understanding between the parties, and since December 2001 we have been trying to agree various bases of valuation which could be put to the arbitrator. Unfortunately, that has not been possible and, as I say, the matter is now to be referred by the arbitrator to the Chancery Court, and hopefully the deemster then will impose upon the parties the agreed questions.

**The President:** Mr Lowey.

**Mr Lowey:** Is there a time limit for that, for the chancery? Is there a long waiting list or can it be moved quickly? In other words, what is the timescale?

**Mrs Christian:** Mr President, I have no knowledge at all on that.

**The President:** Mr Delaney.

**Mr Delaney:** My second supplementary actually would have been *sub judice* if I was to ask it, I am pretty sure of that, but I would like to ask, bearing in mind that this seems to have taken a life of its own on - and I do know something of the original Villa Marina Act - could the minister bring to the attention of her colleagues the final cost, probably, of the legal cost in this case in relation to the valuation, as we understand it, of the site - the legal costs?

**Mrs Christian:** Mr President, I presume that the hon. member is talking about the cost to Douglas Corporation.

**Mr Delaney:** Exactly.

**Mrs Christian:** Indeed, even if it is brought to the attention of my colleagues, it will be an information fact only. It has been a matter for the Douglas Corporation to proceed in the matter as they saw fit, and whether or not that has been to the best advantage of their ratepayers is for them to determine and for their ratepayers to determine.

**Mr Delaney:** It may well affect future decisions of the corporation.

**Mr Lowey:** Could I thank the hon. minister for her replies, sir.

**Mr Delaney:** Hear, hear.

### **Data Protection Bill – First Reading Approved – Second Reading Approved**

**The President:** We then, hon. members, take the second part of our order paper this morning, which is the Data Protection Bill. It is down for first reading and I call on Mr Crowe.

**Mr Crowe:** Thank you, Mr President. Hon. members may be aware that concern has been felt for many years about the danger to individuals arising from the quantity of information about them that is in the possession of the state and commercial entities, and this concern increased in the 1960s and 1970s when such information came to be held on computers.

A major step was taken in 1981 when the Council of Europe agreed on a convention for the protection of individuals with regard to the processing of personal data. The United Kingdom Parliament passed an Act in 1984 which implemented the provisions of this convention and the Isle of Man followed suit with its Data Protection Act of 1986.

The 1986 Act imposes obligations on data users to comply with certain data protection principles. It also requires them to register with the Isle of Man Data Protection Registrar, an office created by the Act, and gives individuals various rights in respect of data that are held about them.

The European Community in 1995 decided to impose on member states obligations wider than those of the convention. Directive 95/46 on the protection of individuals with regard to the

processing of personal data and on the free movement of such data was implemented in the United Kingdom by the Data Protection Act of 1998, which came into force on 1st March 2000.

The data protection directive is not binding on the Isle of Man, but affects the Island and other third countries in as much as a transfer of personal data from a member state to a third country is restricted unless the latter ensures an adequate level of protection for individuals. In order to give such protection in the Isle of Man and thus to permit the free movement of personal data between data controllers, in particular financial institutions in member states and the Isle of Man, the Bill adopts a scheme of control very similar to that operating in the United Kingdom under the 1998 Act.

This Bill extends the regime created by the Data Protection Act of 1986, which it replaces. In particular, the Bill applies to certain structured manual records which are not covered by the 1986 Act, as well as to computerised personal data. It introduces conditions which must be satisfied if personal data is to be processed with additional conditions for sensitive data - for example, data about ethnic origin or health. It strengthens the individual's existing rights and creates some new ones - for example, a new express right to be told who is processing data and why, and to prevent data being used for direct marketing. It brings within its scope existing access rights created by the Access to Health Records and Reports Act of 1993 and renames the registrar the Isle of Man Data Protection Supervisor. It replaces registration with new arrangements for notifying the supervisor, and it introduces new rôles for the transfer of personal data to other countries.

Mr President, there are transitional exemptions for manual data in existence when the Bill comes into force. This data is exempt from most of the data protection principles until 21st October 2007, but the data subject is given certain rights - for example, to require the data controller to correct inaccurate data. Mr President, I beg to move the first reading of the Data Protection Bill.

**The President:** Mrs Christian.

**Mrs Christian:** Mr President, I beg to second. The Island is very much an international player today in terms of a lot of its business, and I think this particular piece of legislation is very important in terms of keeping the Island in line with the jurisdictions with which it operates. I think there is some concern in the business community here that this particular piece of legislation has been somewhat slow in coming forward and that indeed we need to deal with it as a matter of some importance and urgency. I therefore beg to second.

**The President:** Okay, hon. members, the motion I would put to you is that the Data Protection Bill 2002 be read for a first time. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Mr Crowe.

**Mr Crowe:** Mr President, may I request leave to suspend standing orders to take the second reading? By asking that, I would explain that, as hon. members are aware, the EU directive was issued in 1995; the UK legislation was passed in 1998 to take effect from 1st March 2000. The Isle of Man, as well as Guernsey and Jersey are main competitors in financial services and have a need to comply with the EU directive in order that our commercial sector companies can remain competitive and bring our data protection legislation up to European standards. Guernsey is ahead of us, Jersey is slightly behind us. So at present the Isle of Man is currently out of step with Europe, and my request to suspending standing orders to take the next reading is to move the Bill a bit further forward today. Mr President, I beg to move:

*That Standing Order 22(2) be suspended to enable the second reading of this Bill to be taken.*

**Mrs Christian:** I beg to second, Mr President.

**The President:** Seconded by Mrs Christian. Are we content, hon. members?

**Members:** Agreed.

**The President:** Mr Lowey.

**Mr Lowey:** I was just going to say, in listening to the need to progress this particular legislation, it seems to me that we have had time to deal with this legislation and perhaps the mover can explain why it is that it is only today it has arrived when it had passed the Keys - when? - a month, six weeks ago?

**The President:** Mr Crowe, will you reply?

**Mr Crowe:** Mr President, I think when it completed the Keys at the previous session this is the first opportunity we have had to bring it to the Council. There was a gap.

**The President:** We had the TT break and before the June sitting of Tynwald.

**Mr Crowe:** That is right. The third reading in Keys was 28th May, which was the last sitting of Council as well, so this is the first opportunity for members, Mr Lowey.

**Mr Lowey:** Yes, but as this Bill was passed in the UK in 1998 - that is four years ago, nearly - perhaps the mover can tell us why we have been making haste slowly to comply with what I would call our obligations under the international . . .?

**The President:** Mr Crowe.

**Mr Crowe:** Thank you, Mr President. I can only assume - and please do not shoot the messenger! - that there has been consultation with the private sector and obviously with Treasury to make sure that what we get accords with the needs particularly of the Isle of Man.

**Mr Lowey:** But if they are urgently wishing to get this through after four years of consultation, where is the urgency?

**Mr Crowe:** No, I am not saying four years of consultation. I think I mentioned the UK Act came into force on 1st March 2000, so that is just about two years. So the Isle of Man presumably have been working on this legislation to adapt it, to Manxify it, shall we say.

**The President:** Hon. members, let us not dig too deeply at the present time, because what we are trying to do is to establish whether or not we will approve suspension of standing orders to allow the member to take second reading.

**Mr Delaney:** Agreed.

**The President:** It has been proposed by Mr Crowe, seconded by Mrs Christian, that we do so. Mr Radcliffe?

**Mr Radcliffe:** The members are not exactly pouring scorn, but commenting about the length of time it has taken. There has been a lot of consultation, as the hon. mover has said, with interested parties, and what we in Treasury are particularly anxious about is that when it moves forward it will move forward without any glitches and we will just see them march straight in and everybody will be reasonably happy then - not 100 per cent happy, that never happens anyway, but there are good reasons why the Bill has been held back a little bit in order to get things correct and right for the Isle of Man.

**The President:** Dr Mann.

**Dr Mann:** Yes, could I just ask or establish one or two facts? The first one is that, irrespective of this Bill passing, there is still data protection under our existing legislation which will continue until this Bill becomes law.

**Mr Crowe:** Absolutely, Dr Mann, there is a seamless transfer proposed. The 1986 Act will run until this Bill becomes law and then there are transition provisions and there are appointed day orders - the whole gamut of bringing it into force.

**The President:** Dr Mann.

**Dr Mann:** But I find it difficult to understand. You say the delay has been due to consultation with the private sector when, in the guidance notes, we have to achieve an almost identical legislation to the UK to establish our rights of free movement. So in one way we are saying we are having a special Isle of Man Bill; all right, we have got a special Isle of Man Bill, but we could not have altered it anyway fundamentally.

**The President:** Mr Crowe, have you got any comment to that?

**Mr Crowe:** Well, we certainly can adapt it to local conditions so that all of the references and protections that the Isle of Man visitors need are built into it as far as able, but gives us this qualifying status, shall we say, that data can pass to and fro, otherwise we would not be able to accord with the EU directive and it would not help Isle of Man financial sector businesses to carry out their operations. It would put a block on the transfer of data because we would not be a qualifying area for the information.

**Dr Mann:** In terms of parliamentary time we either, by altering standing orders, do the whole lot today or we do not, and if we do part of it then we are going to be left in October with a partial Bill that we have got to catch up with. I would be in favour of suspending standing orders to take a second reading, but I do not think we ought to attempt to start going through the clauses unless we are prepared to go through the whole lot.

**The President:** At present the motion is that we suspend standing orders to allow the second reading today. That is as far as I am taking it at this moment.

**Mr Radcliffe:** That is right.

**The President:** Now, hon. members, no other member wishing to speak to that, I will put that as a motion to you that we suspend standing orders to allow the second reading of the Data Protection Bill 2002 to take place now. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

In that case, hon. members, we will go straight on with the second reading and I call on Mr Crowe.

**Mr Crowe:** Mr President, can I thank hon. members for allowing me to take the second reading. As mentioned earlier, to ensure the continued free flow of personal data to the finance sector it is essential that the European Commission find the Island's data protection legislation to be adequate.

The UK Data Protection Act of 1998 satisfied the requirements of the European Data Protection directive and, by basing this Bill upon the UK Act, this Bill should also satisfy the directive's requirement and gain a positive adequacy assessment. The concerns of small businesses, charities and voluntary organisations will be addressed in the subordinate legislation, and it is intended that the fee structure and exemptions will be reviewed and amended to remove the financial burden upon these organisations, and the notification requirements will be much simpler than the current registration requirements.

As hon. members are aware, this Bill largely follows the provisions of the UK Act of 1998 and will, when implemented, replace the Isle of Man Data Protection Act of 1986. The Bill applies to certain structured manual records as well as to computerised personal data and introduces new rules for the transfer of personal data to other countries. As earlier mentioned, there are transitional exemptions for manual data in existence when the Bill comes into force. This data is exempt from most of the data protection principles until 21st October 2007. Mr President, I beg to move the second reading.

**The President:** Mrs Christian.

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

**The President:** Now then, hon. members, does anybody wish to speak to the second reading of the Bill? Mr Lowey.

**Mr Lowey:** Could I ask the mover of the Bill: data protection is like most things on computers - I am very much an amateur, very much a babe in arms, but great emphasis has been by the mover that it will help business, and yet when I read the report here the emphasis is on greater protection for the individual rights. Most people I speak to seem to me to be complaining all the time that they are subject to an awful lot of unwanted 'junk mail', for lack of a better word. Now that obviously comes from somewhere, and so the existing data protection does not seem to be protecting them very much, because obviously their names and addresses are being made available to groups and business. Now, is the objection of the business community that they will be inhibited from using these names and addresses, or is it because they will be subject to restrictions on names and addresses on their file?

Could I also draw the attention of the mover of the Bill to the explanatory notes which came with the Bill a while ago, and I find it rather strange where on page 2 it says '6. Major Changes'. 'The Bill extends the régime created by the Data Protection Act 1986, which replaces in particular the Bill. . .' Remember these are major changes; this is the headline. The first one is 'restates the data protection principle', so that is hardly a major change if it restates the principle, and that is the first principle of the major changes: it restates the existing Bill. It then seems to me that the Bill is recreating the institution of the Data Registrar - and this is not an attack on an individual but on the set-up. It seems to me that we are creating a bigger rôle for the registrar, or she is going to be called something else now, isn't she? 'Supervisor', or whatever it is. Yes, 'supervisor'.

So can I have an assurance that this Bill is not increasing the rôle and the scope of the data protection, but is streamlining it and protecting the individual?

**The President:** Mr Kniveton.

**Mr Kniveton:** Yes, thank you, Mr President. I am reasonably happy, sir, to support this Bill. Unfortunately I was unable to attend the briefing from the legal draftsman and the registrar, which I understand was very informative, but I do thank her for sending on to me all the literature and information.

If hon. members were able to read the pink pages of the *Examiner* last evening they would have had another opportunity to read all about the European data protection directive by the registrar herself who wrote the article - all very interesting, and I look forward to even more information in the later stages of this Bill, especially as I am one, as Mr Lowey admits himself, who has never studied closely data protection. Like many I suppose I was of the belief that it was mainly about restricting access to personal particulars for medical reasons and for the distribution of what is often described, as Mr Lowey again has just said, as this junk mail, and we all do get very, very irritated and fed up with that. Certainly only the Post Office appear to be the ones making any money out of it, because most of us throw it away on receipt. So now, realising there is more to it than that and for just that little item, I hope that there will be some restriction of access to personal particulars. Perhaps the hon. mover may explain this subject to us.

I appreciate that there is, as I say, more to this Bill than just the subject of junk mail. We all read that the finance sector accounts for 41 per cent of the Island's national income and I certainly do not doubt that; therefore it must be safeguarded by every means. Certainly one of these means is the implementation of the European data protection directive. So that is good enough for me, sir, to accept this reading and progress eventually into the next stage. Thank you, sir.

**The President:** Mr Waft.

**Mr Waft:** Thank you, Mr President. Just on a similar line to Mr Lowey with regard to purposes for direct marketing, I notice in the Bill you will find that there is a way forward for someone who finds themselves on a particular list or a subject of direct marketing of some personal data, and he or she only has to give notification to the controller for them to cease doing that. Unfortunately, by the time it comes to the notice of the person who is being directed or is on a list, it has actually happened, and I can appreciate that there is a difficulty there but I would have thought there might have been some way that anybody who is into the direct marketing situation, who does buy lists for whatever reason, to be a notification to someone or other that these people are going to be marketed, because the sale of these lists can amount to quite a considerable amount of money to the people who are benefiting from them, but for the poor individual who happens to be on that list, to tell them that they have the right not to be on it if they write to the controller seems to be locking the stable door after the horse has bolted. It is out in the community then and is being passed from one hand to another.

So it is a reasoned idea of how they can stop themselves being on that list, but the fact that they are on it, there are so many people accessing these lists at the present time it would be very difficult, apart from the fact that, I believe, on the electoral roll you can say in a little box 'I do not wish my name to be on any lists' and there are many other lists that are about the place which can be accessed by marketing people who find direct finance from this.

**The President:** Mr Delaney.

**Mr Delaney:** Recently, Mr President, because I wanted to comply with the law - and I can now use in my own Mickey Mouse way a laptop computer - I asked the registrar, I wanted a copy of the registration with the intention of complying with the law to register as a data base text user, and I understand all members - and I mean all members - should be members and sign up for this thing. What I am wanting to know: somewhere through this Bill which I read I am trying to find out why government as a body, functioning on behalf of the public, cannot be registered as a job lot immediately you are elected and immediately put into the data protection rôle, because everyone will need it for the modern government of the future, the modern representation for the future, and I would like it if the member would explain to me if that is going to be the process. I spoke to the registrar about this at the time.

I was also surprised at the amount of paper I received; I thought I would get two or three papers and I would fill them in and that would be me, put the cheque in for £10 and job done. It turned out to be inches deep, the paperwork that comes with it all, and you have to be a data registrar's technician to understand what you are signing up to. I wonder if there is a simpler way that we can get round to individuals doing it.

My other little piece deals with what Mr Waft and other members have talked about in relation to computer lists. Like other members, I am into two or three little charities, my own pet charities. I was amazed to find that supporting these charities that they flog on the list to other charities, and now I am rather embarrassed to find that every charity in the world thinks I am a hit man - 'Get hold of him, he is all right for this' - and I think it is destroying charities, because people only have so much, they know who they are going to give to - it is between them and their hip pocket - and when all these other people jump on the bandwagon it gives a bad look, a commercial look about it, if I can use that expression, and I wondered whether there was going to be somewhere to contain this situation, as has been asked for, where people can flog you on as a potential hit for businesses. I think it should be done, because it is becoming such an insensitive way of doing business in marketing terms and I think charities particularly should not be allowed to do it.

**The President:** Mrs Christian.

**Mrs Christian:** Mr President, I think we have had an illustration from members that Pandora's box has already been opened in terms of access to data, but what I think we have to recognise is that this particular piece of legislation gives powers - and I appreciate the process may be very slow - to start to pull that back to the situation where our names and addresses are not on every list that is circulating throughout the commercial world, but there seem to be two aspects to the legislation which are going to be useful to the individual, and one is that, that this issue of personal data being used for direct marketing is going to be tightened up on. We have had the illustration with the changes that are going to be made in respect of the electoral roll and our ability to give an indication of whether or not we would allow our names to go for use for other purposes, and I suspect that a large majority will say, 'I do not want my name circulated in a wide way,' but that is a positive change.

The other aspect of it, I think, is the concern of the financial sector, which is doing legitimate business to feel confident that they are not going to be subject to a challenge from another jurisdiction on this issue of what are adequate levels of protection in the Isle of Man. We do know that we will continue to have the existing data protection legislation in place - and it has not happened in the intervening period, thank goodness - but I think there are elements of business out there who do feel vulnerable until such time as we bring our legislation into line with that in the United Kingdom and elsewhere to ensure that the levels of protection are the same and cannot be challenged as a basis for refusing to send business to the Island.

**The President:** Mr Lowey to come back?

**Mr Lowey:** Yes, I just have one query; I have asked the mover - he has had a lot of questions - but the only comment that I have had publicly, really, on this particular piece of legislation revolves around sports clubs in the Isle of Man. Cricket and football were the ones, but I can apply to rugby and athletics and any club and that is the Bill applies not only to computerised personal data but also to personal data - and I am using the phrases in the book here; it says 'held in structured manual files' and I am told that even a local football club that has the names and addresses of its members will be subject to this. Now remember, most of these people that run sports clubs or amateurs that are voluntary, honorary positions, if they get a file like Mr Delaney has, are going to have to put that . . . and the only reason they have files is primarily to make sure that they know who the members are. They have got to be registered members with the club and all for the sport's sake, and here we are, putting another layer because they have a book with their names in and are going to have to be covered under this Bill.

Now we have got to be careful what we are doing here - what is the purpose of registering them? There has been no problem as far as I am aware of these being used because they are small numbers anyway, of being used or, in the case that we are illustrating this morning, abused, and yet here we are including them in it. That does seem to me to be an unnecessary incursion into an area where there is no demand, no need and certainly no need for international recognition, so that argument does not hold water on this particular case. Perhaps the mover would like to query that one for me or clear that one up for me.

**The President:** Mr Crowe, perhaps you could reply, then.

**Mr Delaney:** Have a look at your computer!

**Mr Crowe:** Right, well, I thank hon. members for their questions and I thank Mrs Christian for her support. I think we have got to start with the basic premise that we are out to protect the individual, to protect the basic right to privacy and this is what any forward-thinking government should be doing. So that is cardinal rule one, to protect the individual.

The other point, as Mrs Christian said, was to ensure that our financial sector and other commercial companies are given an adequate level of assessment so that information can

pass freely back and forward so that countries passing information here know that they accord with our rules which are the same as everybody else's rules. So I know this question of unwanted junk mail is a difficult area. There is a preponderance of it and it comes through the mail, it comes through the fax, it is a big problem to us all, and one of the protections in the Bill - when we get on to the clauses stage I will be able to explain it more fully - is that the voters lists will be able to have an opt-out clause so that instead of the present voters list with your name and address and you tick the box that all the facts are correct, there will be an extra box that says 'I do not wish to have my information given to any direct marketing companies.' So you will have an opt-out clause and I think, as Mrs Christian said, this will cover and stop and 'roll back', in fact - I think, were Mrs Christian's words - some of the problems that we have today.

On the title and the rôle of the registrar becoming supervisor, I think the title is more in accord with European wording, but I think the job will have a bigger rôle because the rights of the individual and the work involved will be greater, so I think the rôle will become bigger, but what we are trying to do is enable the data protection registrar, or 'supervisor' as she or he will be known, to simplify the procedures. I think that just covered Mr Lowey's points.

Mr Kniveton's points - I thank him for supporting the Bill - the *Examiner* article he mentions gave a flavour as to what is being attempted. He mentioned medical records, and in the Bill there is a question that is listed as to what is sensitive information, what can be obtained and what cannot be obtained, so again it is protecting government so that very confidential information cannot be just given out willy-nilly. So there are checks and balances in here to protect the individual, allow the companies to give freedom of information, or freedom of movement of information, but again protect all the sensitive records on health and education and all these sorts of things.

Mr Waft - I thank him for his comments. He mentions a direct marketing and all this problem. There is this voters list again that I have mentioned.

Mr Delaney - interesting point as to why government should not just register members so that they have a blanket registration. There is an interesting clause in our legislation - and I know Dr Mann mentioned that we are largely following the UK legislation - but in clause 58 the immunity of prosecution previously enjoyed by statutory boards, bodies and governments will be removed so government, departments, will have to stand at the same ways as the private sector, so there is cover there. There is reference to Tynwald records in the Bill and I will explore that in the clauses stage when we get to it, Mr Delaney.

This question of charities selling on to other charities - it should not be happening, it is happening, but I think if a complaint was lodged then something could be looked at to see if this could be stopped.

Mrs Christian's points - direct marketing and the need for accord with the European Union - it is covered.

Mr Lowey on the question of structured manual records - an interesting point. This personal data covers structured manual records so it is not all manual records, it is records that would identify a person in a file. I have not researched this point you covered; I will bring it back and answer that more fully.

I think that covers all the points that were raised, Mr President, and by doing that if I could -

**Mr Delaney:** Can I ask for a point of clarification?

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

**Mr Delaney:** I thank the member for his response, but on the clause he has quoted surely that gives us less clarification on the situation and makes us more liable . . . I am looking at the other side of it. I think automatically we should have been protected, because we have to have

this information to do any good for anybody, but now we are going to have less protection because we are going to be treated like everybody else. That is the point I would make.

**The President:** Dr Mann.

**Dr Mann:** Yes, to a certain extent one is on one hand trying to protect the collection of data, but, for instance in health service records, anybody on the network can access the information.

**Mrs Christian:** Mr President, may I correct that? There are keys to certain aspects of health records which some people can access, but not everyone can access all of it.

**Dr Mann:** The point I was making is that it does not matter who registers; it is the people they employ. They can actually disperse the information around.

**Mr Crowe:** Presumably the confidentiality clauses - you are talking of a GP's surgery, that sort of thing where -

**Dr Mann:** Manual records, at least, were only accessed by people - (*Interjection by Mr Delaney*) What I am saying is, how do you protect the individual (**Mr Delaney:** Keys.) from the employees of the organisations that are registered?

**Mr Crowe:** Well, I think that is an honour contract or even a written confidentiality contract between a GP and his staff, and -

**Mrs Christian:** Of course there are security keys to prevent access by everybody.

**Mr Crowe:** But Mr Delaney's point - I know it says that legislation applies to data controllers so when dealing with constituents the controller is the individual member of Tynwald, not government as a body. If we can explore more of that in clause 58 when we come to it I think it is probably the best thing, Mr President.

**Mr Lowey:** That is simplifying life, isn't it? (*Laughter and interjections*)

**The President:** Whilst I am happy to have conversation, it does make it plain if we do try to have some structure to it. We do make better progress, so if anybody wishes to add anything further to the second reading?

**Mr Delaney:** I never got an answer. I know what we have done, but he has still not answered the question: instead of all the individuals once you are elected or the government staff, why can't we have a block cover so that as part of it you are automatically listed as being a member of the data protection rather than all apply individually? More paper! I mean, 33 pieces of paper after the general election are going to have to be filled in by members to register if you want to look at it that way - this new Tynwald, new bodies. Why not just do it *en bloc* and say, 'This is covered'. Everyone who becomes a member is covered.

**The President:** Mr Crowe.

**Mr Crowe:** Well, as I said, I will explore that at the clauses stages. I cannot give something off the cuff, but you put a proposal, should block cover be implemented? It is something I will -

**Mr Delaney:** Well, an amendment might be the answer; then look for an amendment.

**The President:** Mrs Christian, did you wish to comment further?

**Mrs Christian:** Mr President, my only concern would be that members may not all wish to register for the same purposes, but I understand the point that the hon. member is making. I would just say that they were very helpful at the office in terms of dealing with the mass of paper that a registration involves.

**Mr Delaney:** I never said they were not, but the point is you have to do it.

**The President:** Okay, hon. members, let us deal with it formally. Those in favour of the Data Protection Bill 2002 being read for a second time please say aye; against, no. The ayes have it. The ayes have it.

Now I think, hon. members, we will rest the case at that stage. It just remains for me to say that the Council will adjourn to a sitting of Tynwald on the 5th and then of course to the July sitting, which will be on 9th July, and at the present time we will conclude here this morning and sit in private now to consider the Council of Ministers' papers.

*The Council sat in private.*