

**REPORT OF PROCEEDINGS OF
HOUSE OF KEYS
(LEGISLATION AND OTHER MATTERS)**

**Douglas, Tuesday, 14th May 2002
at 10.26 a.m.**

Present:

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

The Chaplain took the prayers.

Leave of Absence

The Speaker: Hon. members I have granted leave of absence to Mr Earnshaw, Mrs Crowe and, from 3 p.m. this afternoon, to the hon. member for Garff, Mr Rodan.

Expression of Condolence

The Speaker: We also extend our condolences from the House to the hon. member for Douglas South, Mr Cretney, and to all his family on the death of his mother.

Procedural

The Speaker: Hon. members we now look at the order paper and before I move on to questions, I would just like to clarify a number of issues. For dealing with the Bills on our order paper today I would propose that we take the supplementary order paper after item 2, which is the questions for written answer, and then that we proceed to item 3.1, the Barclays Private Clients International Bill for consideration of clauses. We would then, I hope, proceed to item 4.1, which is suspension of standing orders and then proceed to the Barclays Private Clients International Bill for third reading, and then go back to item 3.2, which is the Data Protection Bill for consideration of clauses. I would just advise that immediately after item 2 I do propose to take the supplementary order paper, which is the Bill for second reading, which is the Agricultural (Miscellaneous Provisions) Bill. I hope hon. members are content with that order of today's proceedings.

Questions were taken at this point and concluded at 10.26 a.m. They are published separately.

Agricultural (Miscellaneous Provisions) Bill — Second Reading Approved

The Speaker: Hon. members, we move on to the supplementary order paper and I call on the hon. member for Rushen, Mr Rimington, to take the second reading of the Agricultural (Miscellaneous Provisions) Bill. Mr Rimington.

Mr Rimington: Thank you, Mr Speaker. In the past year, my department was made aware of certain shortcomings in its legislation. Hon. members may be aware of certain court proceedings in the last year and comments by the High Bailiff and Deputy High Bailiff. The provisions of this Bill address those areas.

The first one is the amendment of the Agricultural Marketing Act 1934. My department maintains an internationally recognised licensing system for the importation of beef, sheep meat and veal. The situation which the department has come across is where a retailer has arranged to import one of these products without having the authority of a licence.

The Bill amends the Agricultural Marketing Act 1934 to address the situation in two ways: first, there is an amended provision so that a person should not have or offer one of these licensed products for sale unless there is an audit trail showing that it was obtained under authority. The new section makes it an offence to have any agricultural products for sale which have been illegally imported into the Island. Prosecution for an offence is at summary jurisdiction. The statute of limitations gives a six-month period from the date of an offence to bring cases to court at summary jurisdiction. The Act currently does not make separate provision for dealing with cases in any other way. However, offences have in some instances not come to light until outside the six-month period provided, so secondly a new section is added to extend the period within which cases can be taken. Cases will have to be progressed within six months of information about an offence coming to light. However, that can now be up to three years from the date of the actual offence.

Secondly, the amendment to the Animal Health Act 1996: offences in respect of animal welfare under the Animal Health Act 1996 do not enable the courts to ban someone from keeping animals. The Deputy High Bailiff particularly referred to this in a couple of recent cases. Where a serious event occurs which is considered to involve cruelty rather than poor animal husbandry, the department would expect a case to be brought by the police under the Cruelty to Animals Act 1997. However, my department's view is that, particularly in the case of a series of welfare offences under the Animal Health Act, even though each one in itself might individually be considered a less serious offence it would collectively establish that a person was practising poor animal husbandry which was tantamount to cruelty. This Bill introduces a new section into the 1996 Act conferring a power on criminal courts to order a person to be disqualified from having custody of livestock where the person is convicted of an animal welfare offence under the Act. This power of disqualification is similar to that contained in section 5 of the Cruelty to Animals Act 1997.

The new section provides that a person guilty of a welfare offence may be disqualified from keeping animals. It also provides an appeal procedure and offence for keeping animals in contravention of a disqualification. A further new section is added to the Act, similar to the one I have just referred to in respect of the Agricultural Marketing Act. Offences under the Animal Health Act 1996 are prosecutable at summary jurisdiction. Again, in the absence of any other provisions, the statute of limitations applies so cases have to be progressed within six months of an offence. However, some offences, such as not marking calves within a short time of their birth, have not come to light until after six months have elapsed. Where farmers have not done as they ought within the statutory period, then they have done nothing on the assumption that they will avoid detection until after the six months, thus avoiding prosecution. The Bill provides that the maximum period within which prosecutions may be taken is extended to three years from the date of the offence, with cases being progressed within six months of the information about an offence coming to light.

New penalties in the case of convictions for livestock welfare offences are also inserted. The amendment provides for a custodial sentence of up to six months as well as, or instead of, a fine.

The very last section there, the amendment to the Cruelty to Animals Act 1997 to which we referred already - section 1 of the Act makes it an offence to cause suffering by action. In a recent case against a farmer for cruelty to animals it was clear that the farmer had neglected animals, allowing them to remain untreated for disease and to starve to death. However, he had not carried out active ill-treatment of them - for example, by beating them or feeding them something poisonous. The High Bailiff's opinion was that the Act did not cover acts of omission. This Bill provides amendments to cover omissions. The amendments extend that provisions of the Act to cover circumstances where a person causes suffering to animals by an omission such as not

feeding them or allowing medical conditions to go untreated. The Bill also makes it an offence for a person to get someone else to be cruel to an animal.

Just in brief summary, all these provisions of the Bill are necessary provisions to plug deficiencies in legislation which have been brought to light, and I beg to move.

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

Mr Downie: I have pleasure in seconding this Bill, Mr Speaker, and in doing so I must advise members that I do have an interest in clause 2 and clause 3: as members will know, I am currently the president of the Manx Society for the Prevention of Cruelty to Animals, and the introduction of these two clauses, I think, will be very beneficial not just for animals in an agricultural context but this legislation will also be able to deal with issues that are a bit broader-spread, as it were: it will also involve pets and small animals as well.

Now, if I can just say that what has been a travesty in recent years, in my opinion, is when it has been identified in the courts that animals have been mistreated, kept in very, very poor conditions, and, even in some instances where a person has a previous conviction for keeping animals in this unfortunate manner, it has not been possible for a court to disqualify a person from having custody of animals. Now, this is a major omission in the Animal Health Act and, as far I am concerned, this new clause 2 will tighten that up and we will not be in the position where a person can treat his animals in an abominable way and, after he has been to court and found guilty, he just goes home and returns to the same animals that he has kept in conditions that have been far from acceptable, so I think that is something that we need to progress as quickly as possible.

Now, clause 3, which deals with neglect - the legislation as it is written means that you have to beat an animal or override it or cause it suffering in some way by doing something physical to it, but we all know that if you chain a dog up and you do not feed it and you leave it in filthy, rotten conditions, to me that is just as appalling a situation as if you go out and beat the dog with a stick every day. In my opinion it is totally unacceptable and there was a case recently, the worst animal welfare care that has ever been on the Isle of Man, where a person was convicted in a court and then, when the judgment was being made, the High Bailiff said that although he could see that there was suffering caused to these animals under the law as it was written at present in the Isle of Man, he could not physically do anything because cruelty was not part of neglecting the animals. So this particular clause, I think, should deal with that situation as well.

Now, anybody who watches the programmes on the TV through the RSPCA and other organisations who operate on very similar terms to the MSPCA will know that there are a lot of dedicated people on the Island who turn out on a regular basis, they have proper veterinary advice, they do attend premises where there will possibly be a horse or a pony who has been so neglected that its hooves are all curved in, their bodies emaciated, their ribs are poking through their skin or the hide and they are in a terrible condition. Now, sadly these situations have not been able to come before the courts, and I think it has been an issue that perhaps has been overlooked but I think we owe it to people in the animal welfare organisations and people who have a genuine care about animals to be able to bring cases before the courts when situations like this do develop.

I am very pleased to say that it does not happen on a regular basis. Animal welfare cases and cases of neglect are very infrequent in the Isle of Man and I think that is something that we can be proud of, but nevertheless we need to make sure that what legislation we have is there for the good of everyone and all of those people involved in looking after animals, not just in an agricultural setting, have the full weight of the law of the land behind them when a case does come before the courts.

So I fully support this Bill and I hope, not wishing to lead the person who is taking it, but I view it with such a priority and sense of urgency that the mover would have my support if he wanted to accelerate its process if it was at all possible.

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

Mr Henderson: Thank you, Mr Speaker. I just rise to add my voice to the support for this Bill this morning. It is very important, animal welfare legislation, and in my opinion has been too long in its making and too long in coming here. It is not the hon. minister's fault, but I think, in years gone by, it is something that should have been picked up sooner and that the welfare of animals should have been taken a lot more seriously. But I do welcome it here and I just ask the minister, whilst he is progressing this, will he keep animal welfare situations under continuous review so, if there are any other apparent omissions or problems with the legislative process in prosecuting people who are causing suffering to animals, that can be brought forward in similar format? And also, would he give regard to reviewing the new Bill of animal rights that is currently under review in the UK and ask his officers to review that over here and see if there is anything applicable there that would be worth bringing into the Isle of Man or our own version of the same to doubly ensure that animals are looked after properly. This is especially important in these areas of omission where people have been able to get away with abuse and cause the most awful suffering that you can imagine to beasts and they have been able to go back and do the same thing again, so I am really pleased that this is here this morning and hopefully this will shut the door. But can the minister confirm it will be reviewed on an ongoing process? And the Animal Bill of Rights that I speak of, would his department also look at that and, if necessary, come back with future amending legislation which I am sure this House will wholeheartedly support and push forward on?

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

Mr Singer: Thank you, Mr Speaker. I am fully supportive of this Bill. I am very pleased to see it here. We have been hoping this Bill was going to come forward and I am glad that it is now, but there are two points that I want to make.

One is on the penalties, and I would like to ask the hon. minister if he could tell me where the penalties come from, because I honestly do not believe that three months and a £2,500 fine or six months and a £2,500 fine maximum is enough; for some of the cases you hear, maybe not on the Island particularly - but there have been cases on the Island - I do not think that the penalties in this Bill are enough, because some of the treatment of animals has been quite horrendous, so I feel that perhaps that those penalties should be increased so that within the courts there is that option of increasing the penalty. These are rather low penalties for the damage and the distress that can be caused to animals.

The second thing I would ask the minister is if he could comment on the position of battery hens, because I would say that the restrictions on battery hens - the way they are kept, the fact that they are restricted so much that they cannot move around as would normally be expected of an animal - must be on the margins, in some cases, of cruelty. Again, you see cases, across not particularly on the Island, of hens that lose their feathers and they are killed by hens near them. Has the department got any view on the restrictive nature of the lives of battery hens, and could this be reconsidered as being cruel to animals? If so, what action does the department take in visiting any battery hen farms to ensure that those animals are healthy and well looked after? Of course we know they do not get any exercise; should they in fact be getting that exercise? Perhaps the minister could comment on that? Thank you.

The Speaker: Hon. member for Douglas East, Mrs Cannell.

Mrs Cannell: Thank you, Mr Speaker. My concerns are of a similar nature to the previous speaker in terms of the new provisions specified in clause 3 of this particular Bill. How will they

help the situation, as the hon. member for Ramsey has stated, for battery hen farming and also for those farmers who mix together both the raising of ducks and hens? Can the hon. minister advise if this practice is still going on where certain farmers, or at least one particular farmer that I know, imports day-old ducks and keeps them in appalling conditions together with hens? And if hon. members will cast their minds back to two or three years ago, some of us were privileged - or not, as the case may be - to see some appalling photographs of such as I am talking about here that was, at that time, still being practised on the Island. So will the new provisions laid down in clause 3 help that situation, or are we now faced with them being ineffective with the situation I describe because of the fact that Tynwald approved the new regulations in terms of battery hen farming some three, four years ago when the hon. member - I think, if my memory serves me right - for West Douglas, Mr Downie, was the then minister?

At that time, Mr Speaker, I opposed those particular regulations going through Tynwald. Although on paper they appeared to provide improved conditions for such animals, in reality, when one examined the specified cage size, it actually provided for more than three; it actually provided for four hens to be in a worse situation by having to share a tiny space that formerly was occupied by three or possibly two. So can he advise us on that? Will this new provision help that situation or will it not? We still have those regulations in force? And can he advise whether or not his department is going to review those regulations that were approved by Tynwald specifying the size of cage for such battery hens to be kept in, to improve the situation for this form of animal, bearing in mind that we are looking at cruelty to animals? I am sure, Mr Speaker, many members would agree with me that birds of every variety, particularly hens and ducks, do come under and are regarded as animals, and so therefore will these provisions kick in for that?

Can I ask him also about enforcement under clause 3? Are there going to be new enforcement procedures? It is all very well to have additional powers - and overall I welcome the provisions laid down in the Bill and will be supporting it - but it is all very well enabling the courts to impose greater sentences in terms of custody, three months or a fine not exceeding £2,500 or both in terms of someone keeping an animal who really ought not to be keeping an animal, and also in clause 3 for anybody who intentionally or unreasonably does or omits an act which causes or procures an act of cruelty to happen as a consequence or on purpose. There is no point putting that in legislation if the department is not going to up its enforcement side of it. So can he explain to us how it is going to be enforced? Will there be new procedures to ensure that this sort of abuse that we are trying to tighten up with legislation is not allowed to go on as much as it does presently?

In respect of the penalties specified as regards £2,500 or both, which is the term of custody, am I not correct in assuming that £2,500, for instance, being the penalty or the fine, would be in each case, so if an inspector went in and a court was engaged and the finding was that the particular person was keeping six dogs, six horses, six ponies or whatever and every one had been cruelly treated and had been found to be so in the court that that person would be fined six times £2,500? That is how I read it: that the penalty is per offence. So if there are six offences, 12 offences, then it would be totted up. Am I reading that right? But I would appreciate some guidance from him in terms of whether or not we can expect improved animal health for the likes of battery hens and duck farming. Thank you.

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

Mr Karran: Vainstyr Loayreyder, I think the hon. member has brought up an interesting point, but I think you would find that the issue would be whether the court case was on individual charges or not or if they were taken on one charge as far as the group of animals is concerned.

I have to say, I was unaware of the loopholes within the law until this recent case last year. It is a sad reflection that it has taken that case in order to highlight the loophole that was in the

legislation, and one of the issues that we raised when becoming the new member of the department was that the issue that I wanted the loophole sorted out. (*Interjection*) I think what is important is that when organisations like the MSPCA get these sorts of loopholes in the legislation and they see them - and they are more at the coal face than us - I think it would be handy if it would not take such a bad case to be highlighted, and I think that is maybe a reflection on us all if people have not made representation in the past and they have known such a loophole, so I have to say that I am happy that we are facilitating it and the new minister of only 18 months' experience in this hon. House is sorting out this problem (*Laughter*). I think that it is important when these loopholes come about, and obviously we do need people to make representation on that issue.

The other issue that does concern me: I think that we can gloss over the Agricultural Marketing Act 1934 and I think that we are in for a rough time ahead and it is something that members will have to deal with at a later date, and maybe it will be needing to be dealt with if there is going to be any sort of future as far as the agricultural industry is concerned.

I am happy today that this was excluded off the agenda paper and that is the reason why we see that procedure today and I am happy to see that that is the case and I hope that that will be the procedure that will be adopted, not just for the benefit of the executive, but for the benefit of any private members if a second reading was missed off the agenda paper to do so as far as a private member's Bill is concerned.

Vainstyr Loayreyder, I just think that if hon. members are keen on looking at the contents of the clauses within the Bill, we must not allow the parliamentary procedure to be bandwagoned into suspending standing orders to rush this through if hon. members are concerned about battery hens and about whether the fine structure is right.

The Speaker: Hon. member for Ayre, Mr Quine.

Mr Quine: Thank you, Mr Speaker. I am supportive of the principles that underlie these amendments; I have no problem with that. I was just going to ask the minister - I think this is important for the record - if he would advise us as to the extent of the consultation which has taken place in relation to these amendments, not least, of course, with the agricultural industry itself.

The second, I think, is just a comment I would make, and that is, looking at 2(3), which of course refers to the actual offence themselves and the penalties, I think the position as I read that is that the penalties that are stipulated there relate to the number of counts, so for each count that penalty could be attached and it would be for the court to determine whether it would be concurrent or consecutive.

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

Mrs Hannan: Thank you, Vainstyr Loayreyder. I am up on my feet, really, because of the comments of some of the members in relation to cruelty and raising hens and having them in close proximity. I think we have to remember, or at least have to appreciate, that this has come about because of us, the general public, wanting cheap food. This is not something which I think farmers and people like that who are involved in the food industry necessarily relish, the public wanting cheap food, and to supply food people have to make a profit. If they do not, they go out of business and I would suggest, because of some of the changes that we have adopted in the Isle of Man, international conventions, but applied here or at least the imposition of these parts of the convention have been brought in which have seen that many of these new standards have, in actual fact, seen many farmers cease trading in this particular area.

But I think we have to recognise the part that we play in demanding cheap food. What happens is, if people cannot get food for a very low sum, they will buy somewhere else. So they

will buy the cheapest that they can get and, in actual fact, the amount that people are spending on food has decreased over the years.

The changes that have come about in farming have been - some of them - economic and, if people are not going to buy the food that we produce, they are going to buy the food that is produced somewhere else and not necessarily of the same welfare standards as we have introduced in the Isle of Man. We have only seen recently about the outbreak of foot-and-mouth in the United Kingdom and the state of the animals and the farm where the food was being produced there and actually encouraged the advent or at least encouraged the movement of foot-and-mouth right round Great Britain. So I do not think it is just ourselves who is producing food where the actual cruelty or standards of welfare could be criticised; this is happening everywhere where people are trying to make a living to provide cheap food for the public who demand cheap food, and therefore it is very difficult to bring some of these welfare issues to the fore. I am not saying they should not be to the fore; it was I who introduced the welfare initiatives when I was Minister for Agriculture, and I was pleased to do that, although I was criticised because I gave a lead-in time to the farmers in the hope that they would be able to afford, over a period of time, to increase their standards of welfare with regard to animals being intensively reared, and also for egg production. So I think it is beholden on us to recognise that we could do more, and if we do want to change people's attitude towards this and also be able to provide food locally, I believe the last, or at least one of the last, poultry rearers has gone out of business because of the hygiene standards that have been imposed upon people raising poultry for human consumption -

Mr Singer: Quite right.

Mrs Hannan: But, you see, in other areas these conditions are not imposed. These poultry are brought in here and we do not know what sort of standards, what sort of welfare that they are raised in, but we are quite happy to pay the lower rates for them than to pay the higher rates for properly raised, properly welfare-facilitated places where they are reared. Also, we live in a capitalist society where people are expected to make some sort of profit to be able to survive, and it is very difficult for these particular farmers - all farmers at the moment. I think the minister in his winding up will make it quite clear that it is very difficult for farmers to make ends meet at the moment, and yet we are saying standards should increase where the public are expecting to pay less and less for food, even although we are as a society much wealthier than we have been in the past when people paid a lot more for their food.

I think there needs to be a rational discussion, not taking the farmers out and saying 'They are cruel and we care about welfare.' If we do, we should be investing in better conditions, we should be giving much more support to farmers to preserve the environment that they are working in than we are to provide a lot of food that is then exported. To my mind the only people that come out with any profit in the whole of this is the meat plant, the creamery and the UK and possibly France that buys in some of our food production. They buy it cheap and it is subsidised by the Manx taxpayer. If we are not satisfied with the conditions that they are raised under, then we should be putting more money into the welfare and not into extra production. Thank you, Vainstyr Loayreyder.

The Speaker: Hon. member for Glenfaba, Mr Anderson.

Mr Anderson: Thank you, Mr Speaker. I had not actually intended to speak this morning but I am brought to my feet to really re-emphasise something the hon. member for West Douglas said: that people seem to be majoring on the third clause of this Bill, and I think it needs emphasising that it is a very rare occasion that these measures are needed and, generally speaking, the industry does conform to the guidelines laid down exceptionally well. This one incident that took place last year has got the industry a lot of bad press, and I think the other side

of the equation needs putting that generally speaking the industry is very responsible and does take its responsibilities very seriously.

I would welcome the provisions within this Bill and I think maybe we are glossing over clause 1, which is very important to the industry and will seek to extend the powers to the department to make sure that under the Agricultural Marketing Act, where there is importation of illegal meat products they can be traced and people can be prosecuted further down the line than is now possible.

So on balance, Mr Speaker, I welcome the measures that are contained in this Bill, but would just like to emphasise that clause 3, which we seem to be majoring on, is for a very few within the industry, but I do agree it does need tightening up. Thank you, Mr Speaker.

The Speaker: Hon. member for Rushen, Mr Rimington, to respond.

Mr Rimington: Thank you, Mr Speaker. I would like to thank all the members for their contributions, which have made it a very useful and informed debate.

First of all I would like to thank Mr Downie for his very positive support. Obviously, as predecessor in the position of Minister of Agriculture, Fisheries and Forestry he was instrumental in bringing this legislation forward and indeed to explain and tackle the issue of consultation as well. I do not think this is an area, actually, where consultation was particularly appropriate. If you find the law to be deficient in a matter of animal cruelty there is not a great deal of area for consultation there; you actually need to just get ahead and fix that loophole which became apparent, and that is what the Chief Veterinary Officer did immediately after the ruling in court. The Attorney-General's Department was consulted immediately and the process was set in motion. Indeed the legislation was already framed and had been discussed and all the various drafts gone through by the time it came in front of me, and all my job was to read through it and be content with it and sign it off, which is what I did.

Obviously, Mr Downie, in his position with the MSPCA, has got a very real and active interest in that field and obviously all members will share his opinions in relation to animal cruelty and the tightening-up of this legislation.

I can give the assurance to my colleague, Mr Henderson, again a previous member of the department, that, yes, we will continue to review all aspects of animal welfare and, if further provisions are needed to be made, then we will do so. I was not aware of the detail of this Bill of animal rights, but I will obviously raise that issue and make sure that that does not go by unnoticed, and if there are any relevant parts of that Act or things we need to take on board, then they should be looked at.

I thank Mr Singer for his support and he does raise the question of penalties which was also raised by another member and nicely answered by the hon. member for Ayre as well, which primarily would be a matter, I suspect, for the courts to decide whether offences should be concurrent or consecutive. But as to the actual three months and six months and the figure of 2,500, I took that as read as probably being consistent with what it is elsewhere, but I agree, I will go back and find out and see precisely where those particular figures were brought into being and try. . . and obviously it would be helpful if I could let you know as soon as possible, in a matter of days rather than when we get to the clauses stage.

I would also like to thank the hon. member for Peel, Mrs Hannan, for discussing the issue of battery hens, which has been raised by the hon. member, Mr Singer and the hon. member, Mrs Cannell, because, yes, it is an issue, but it is an issue which does not have any clear solutions to it. A very close friend of mine is one of the last few people involved with battery hens - only a small outfit. The next notch up of tightening your regulations means he will go out of business because he cannot afford to capitalise and just completely revamp; he does not have those economies of scale, yet, at the same time, if his eggs are not available to the local market,

as the hon. member has pointed out, they will be coming in on the containers from the UK or elsewhere -

Mr Downie: Thailand.

Mr Rimington: - from anywhere, indeed, and not subject to our regulations or our scrutiny at all, and that will be another little element of Manx agriculture which will die away. The egg industry on the Isle of Man has already suffered greatly. And, yes, there is a point to be made, and I welcome the member making it, about how in our modern society we expect all our food to be cheap and we must lay some blame for that upon the collective power of the supermarkets who have driven the prices of agricultural products down to the detriment of the people who produce them. People complain when there are little marginal increases, but I think if you want good wholesome food you need to pay a good wholesome price, and I think the general health of the nation would be better if we acknowledged that. I do thank her for trying to illustrate that particular balance.

I would not like to, just in relation to the hon. member for Peel, delve into the question of our support systems for agriculture at this point in time. I think I will probably try and restrain the debate into these matters of animal welfare rather than the Marketing Acts in relation to the imported meat.

The hon. member for Douglas East, Mrs Cannell - yes, I cannot answer the issue on ducks, because I had not actually taken that on board mentally. Will have to come back to you on that particular issue. But in another place quite recently we did put through a whole new animal welfare code which covered battery hens, poultry, pigs and all animals in that respect, and those regulations are consistent and an update of everything that is taking place throughout the United Kingdom and the European Union. So our industry has to abide by those regulations and it would be an offence for them not to be party to those regulations. She does, quite rightly, ask about enforcement. Yes, again, enforcement is obviously a balance. The veterinary officers of the department, who are the enforcement agents there, generally act on the information provided where the offence may or is alleged to have taken place, and they act upon that. By and large they are not doing the rôle of a police force in going round and inspecting every premise in relation to that, but one has to bear in mind that they are going round to farms as a matter of their everyday business throughout the year. Whether that is testing on tuberculosis or whatever, they are obviously very closely involved in the industry and not much passes them by, but obviously many times they actually have to act on information provided.

I think I have answered the points that the hon. member for Ayre has brought up on the issue of consultation. As far as I was aware, because it was before my time, I do not think it was an area for great consultation because the matters of substance there were just something that needed to be done and holes that needed to be plugged rather than bringing in new policies. It would just be the deficiencies in the existing legislation.

Obviously I thank Mr Anderson for his support and for his affirmation that the agriculture in the Isle of Man is well run and, to repeat the point Mr Downie made, these offences are few and far between but they do occur and therefore we need the legislation to put that in place. Mr Anderson brought up the point, which is quite correct, that the first clause on the importation of meat and the power to properly regulate that is very important for the agricultural industry.

Mr Speaker, I beg to move the second reading of the Agriculture (Miscellaneous Provisions) Bill 2002.

The Speaker: Hon. members. the motion before the House is that the Agriculture (Miscellaneous Provisions) Bill) 2002 be now read a second time. All those in favour say aye; against, no. The ayes have it. The ayes have it.

**Barclays Private Clients International Bill — Clauses Considered —
Standing Orders Suspended — Third Reading Approved**

The Speaker: Hon. members, we now move on to item 3.1, which is the Barclays Private Clients International Bill, and I call on the hon. member for Malew and Santon, Mr Gelling, to give consideration of clauses.

Mr Gelling: Thank you, Mr Speaker. If I could have your permission, sir, perhaps to take clause 1 and 2 together? They are both short clauses, Mr Speaker.

The Speaker: Proceed.

Mr Gelling: Clause 1 specifies that the Act will be known as the Barclays Private Clients International Act 2002. The company is currently called Barclays Finance Company (Isle of Man) Limited. As part of the reorganisation it is intended that the company will change its name to Barclays Private Clients International Limited.

Clause 2 is the interpretation, and the interpretation section contains certain defined terms which are used throughout the Bill. The purpose of this is to provide such definition as to avoid complicated explanations appearing throughout the whole text of the Bill, Mr Speaker. So on that basis I would wish to put forward to the House that clauses 1 and 2 become part of the Bill, sir.

The Speaker: Hon. member for Ramsey, Mr Bell.

Mr Bell: I beg to second, Mr Speaker.

The Speaker: No. Hon. members, I put before you that clause 1 and clause 2 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clause 3.

Mr Gelling: Clause 3, Mr Speaker, is appointed days and this section provides that the day or days on which the undertaking or any specified part of the undertaking of the Isle of Man branch of the transferor company is to be transferred to and vested in the company are to be appointed by a decision of the transferor company. Now, hon. members, this provision is to enable flexibility as to the timing of the transfer of each appointed undertaking and allows the process to be completed in stages. In previous legislation of this kind the authority has been vested in the Council of Ministers, but because it may prove necessary to effect the transfer process in a number of stages owing to the value of the undertaking, the relative complexity of the corporate structure and the timing of the transfer of the undertakings across the Crown dependencies, this mechanism is considered to be the most efficient method of effecting the transfers. Therefore, Mr Speaker, the mechanism is the same as that which is proposed by Barclays in relation to UK legislation, which will also facilitate the Barclays and the Woolwich merger. So therefore I propose that clause 3 be part of this Bill, sir.

The Speaker: Hon. member for Ramsey, Mr Bell.

Mr Bell: I beg to second, Mr Speaker.

The Speaker: Hon. members, the clause before you is that clause 3 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Hon. member for Malew and Santon, clause 4.

Mr Gelling: Yes, clause 4, Mr Speaker, is the vesting of appointed undertakings actually in the company, and this provides that the appointed undertaking will be transferred to the company on the relevant appointed day. On the dates appointed pursuant to the section 3 the appointed undertaking will be transferred to the company in saying that this will be done without further assurance. The section provides that the operation of the Act is absolute without further steps having to be taken. The effect of the transfer is that the appointed undertaking is transferred so that the company is substituted in place of the transfer of company as if it were the same party in law. Consequently, Mr Speaker, any asset or liability of an existing company

will become an asset or liability of that company. Then, in 4(2), this provides that the transferor company will assist the company in securing the transfer of the appointed undertaking to it, were this to prove necessary. So I propose that clause 4 become part of this Bill, sir.

The Speaker: Hon. member for Ramsey, Mr Bell.

Mr Bell: I beg to second, Mr Speaker.

The Speaker: Hon. members, the motion before the House is that clause 4 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Hon. member for Malew and Santon, clause 5.

Mr Gelling: Clause 5, Mr Speaker, provides as to trust property and the provisions for that trust property and wills, and this subsection provides that any property which is transferred to the company which was previously held by the transferor company, either alone or jointly as trustee, will be transferred only to the extent required to ensure that the company will continue to be interested in the property in the same capacity as the transferor company.

Sub-clause (2) of this clause provides that references to the transferor company in any court order or document relating to trust property are, from an appointed day, to be construed as references to the company.

Sub-clause (3) of this particular clause deals with wills in a manner similar to that in which other trust property is dealt with in the preceding subsections. The subsection extends the Act to include wills made prior to an appointed day where reference is made to the transferor company as executor, trustee or recipient of property. In such a case the company is substituted in place of the transferor company.

Sub-clause (4) of this particular clause: in both sections (2) and (3) these exclude references to the scale of fees of the transferor company. This is to ensure that, as a result of the operation of these provisions, the company becomes entitled to collect fees for trustee services previously provided by the transferor company. It is only entitled to charge the same fees as were charged by the transferor company.

Sub-clause (5) provides that no gift made under a will shall be set aside by reason of the operation of this Act. I therefore propose, Mr Speaker, that clause 5 become part of this Bill, sir.

The Speaker: Hon. member for Ramsey, Mr Bell.

Mr Bell: I beg to second, Mr Speaker.

The Speaker: Hon. members, the motion before the House is that clause 5 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Hon. member for Malew and Santon, clause 6, please.

Mr Gelling: This is rather a longish one, Mr Speaker, so I beg members' indulgence. Clause 6, supplementary provisions as to transfer and vesting. This section generally is intended to provide supplementary provisions by which the transfer to and vesting in the company of an appointed undertaking of the transferor company will be effected.

If I could go then to sub-clause (2) this provides that every contract which is in existence as at an appointed day and to which the transferor company is a party will be deemed with effect from an appointed day to be a contract to which the company is a party instead of the transferor company.

Sub-clause (3) extends the scope of the Act so that any reference to the transferor company will be deemed to be a reference to the company after an appointed day where such reference appears in any statute or any existing contract to which the existing companies are not a party.

Sub-clause (4) supplements subsection (3). Whereas that section deals with statutes and contracts, this provision makes it clear that references in any other documents to the transferor company shall, after the relevant appointed day, be deemed to be references to the company.

Sub-clause (5) excludes the operation of section 6(2)(b) relating to the substitution of references from documents concerning scales of fees and charges and terms and conditions.

Sub-clause (6) makes it clear that any offer or invitation made by the transferor company is from and after an appointed day to be treated as an offer or invitation made by the company.

Sub-clause (7) relates to accounts between a customer and the transferor company and it provides that any such account will immediately become an account with the company on the same conditions as the account previously on the books of the transferor company.

Sub-clause (8) makes it clear that the preceding subsections do not effect any right of the transferor company and the company or the relevant customer to vary the terms on which an account is actually kept.

Sub-clause (9) indicates that after an appointed day the company will have the same rights of variation in relation to fees and charges as were enjoyed by the transferor company.

Sub-clause (10) provides that any instructions, orders, directions, power of attorney given to the transferor company will be deemed to be an instruction, order, direction, power of attorney, given to the company with effect from the appointed day.

Sub-clause (11): under this subsection any negotiable instrument or order for payment of money which is drawn on, given to, or accepted or endorsed by the transferor company will, from an appointed day, be deemed to be a negotiable instrument.

Sub-clause (12): this provision makes it manifest that claims and demands addressed to an existing company after an appointed day are to be treated as having been addressed to the company.

Sub-clause (13): this subsection provides that any document, records or goods held by the transferor company from an appointed day be held by the company in the same capacity on the same terms as the transferor company.

Sub-clause (15) is supplemental to the preceding subsections.

Sub-clause (16) provides that any liability between the transferor company and the company will continue notwithstanding the terms of the Act.

Sub-clause (17) extends the foregoing provisions to include any security relating to future advances or liabilities.

Sub-clause (18) provides that any property or liability of the transferor company will become the property and liability of the company.

Sub-clause (19): the provision relates to rights of action and remedies that become enforceable against the company as a result of subsection (18) after the appointed day.

Sub-clause (20) makes it clear that any proceedings for the resolution of a dispute by or against the transferor company that are pending or current immediately before an appointed day are therefore or thenceforth to be continued by or against the company.

Sub-clause (21) provides that the company is substituted in any judgment or award obtained by or against the transferor company relating to an appointed undertaking and not fully satisfied prior to an appointed day.

Sub-clause (22) makes it clear that the company has the benefit, but is subject to all the obligations of the transferor company. Sub-clause (22) confirms that the company will on an

appointed day become the data user of any data comprised in the appointed undertaking to be transferred in place of the transferor company, and sub-clause (22)(c) makes it clear that the company will be under the same duty as to the confidentiality and privacy of any person as the transferor company.

The last section, sub-clause (23), makes it clear that any consent given by a data subject to the transferor company or any subsidiary or holding company of the transferor company or subsidiary of the holding company is deemed to include a reference to the company, subsidiaries of the company, any holding company of the company or subsidiary of the holding company.

Mr Speaker, I beg to move that clause 6 with all those sections be part of this Bill, sir.

The Speaker: Hon. member for Garff, Mr Rodan.

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

The Speaker: Hon. member for Ramsey, Mr Bell.

Mr Bell: Mr Speaker, I have three short amendments to propose for this section. They are all typographical errors:

Clause 6(2)(b)
page 8, line 37 -
for '(4)' substitute '5'.

Clause 6(11)(b)
page 11, line 9,
for 'any' substitute 'a'.

Clause 6(19)
page 12, line 36 -
delete from and including 'and any legal proceedings' to the end of the sub-clause.

This, as members can see if they read the Bill, is because this particular section has been repeated, so I beg to move these small amendments, Mr Speaker.

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

Mr Shimmin: I beg to second, Mr Speaker.

The Speaker: Hon. member for Malew and Santon, do you wish to respond?

Mr Gelling: Only in as much as these were found after the second reading and are obviously quite acceptable because it is the fine tuning of this clause and I beg to move that the clause be part of the Bill, sir.

The Speaker: Hon. members, in relation to clause 6 we have an amendment standing in the name of the hon. member for Ramsey, Mr Bell. I put to you the amendments first. All those in favour say aye; against, no. The ayes have it. The ayes have it.

I now put before you the clause as amended, clause 6. All those in favour say aye; against, no. The ayes have it. The ayes have it. We now move on to clause 7. Hon. member for Malew and Santon.

Mr Gelling: Yes, thank you, Mr Speaker. Clause 7 is the contracts of employment and this subsection makes it clear that contracts of employment with the transfer of company which are governed by Isle of Man law or the performance of which substantially takes place in the Isle of Man are to be transferred to the company and to be treated as the same contracts when transferred to the company. And (2) provides that the individuals who hold office in the transferor

company will not automatically hold the same offices, such as directorships, in the company. I therefore move that clause 7 be part of the Bill, sir.

The Speaker: Hon. member for Ramsey, Mr Bell.

Mr Bell: I beg to second, Mr Speaker.

The Speaker: Hon. members, I put before you the motion that clause 7 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Hon. member for Malew and Santon, clause 8.

Mr Gelling: Clause 8 is the retirement benefit schemes, and this section provides that if by reason of the law of the United Kingdom the company will not be able to provide any benefits previously provided to employees by the transferor company, then the company must provide benefits of equivalent value to the affected employees. Mr Speaker, I beg to move clause 8 to become part of this Bill.

The Speaker: Hon. member for Ramsey, Mr Bell.

Mr Bell: I beg to second, Mr Speaker.

The Speaker: Hon. members, the motion before you is that clause 8 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Hon. member for Malew and Santon, clause 9, please.

Mr Gelling: Yes, thank you, Mr Speaker. Clause 9 provides that the production of a copy of the Act printed by authority, together with a copy of the minute appointing the relevant appointed undertaking, will for all purposes be conclusive evidence of the transfer of property and liabilities comprised in an appointed undertaking from the transferor company to the company.

Sub-clause (2) provides that the Act will serve to operate as a stock transfer in respect of transfers of securities to the company under the Stock Transfer Act 1965.

Sub-clause (3) provides protection for persons dealing with either the company or the transferor company in relation to property forming part of an appointed undertaking, and in these circumstances the third party does not need to investigate whether or not the property has actually transferred to the company.

Sub-clause (4) provides that a certificate given by the company will act as conclusive evidence for the purpose of certifying whether an asset or liability has been or will be transferred by virtue of the Act.

Sub-clause (5) states that the provisions relating to transfer and evidence cannot serve to avoid any liability of the company or the transferor company. I therefore beg to move that clause 9 be part of the Bill, sir.

The Speaker: Hon. member for Ramsey, Mr Bell.

Mr Bell: I beg to second, Mr Speaker.

The Speaker: Hon. members, the motion before you is that clause 9 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clause 10, sir.

Mr Gelling: If I may, could I take clauses 10 and 11 together, sir?

The Speaker: Well, we have an amendment on clause 10, so I would prefer you to take it separately, please.

Mr Gelling: Sorry, yes. Clause 10 the evidence and documents. This section provides that all books and documents which before an appointed day would have been evidence in respect of any matter for or against the transferor company will be admissible in evidence in respect of the same matter for or against the company. This section essentially provides that where the

transferor company is involved in a matter which requires the production of documentary evidence, the same documentation will be admissible as though it related to that company, sir. I beg to move.

The Speaker: Hon. member for Garff, Mr Rodan.

Mr Rodan: I beg to second, Mr Speaker.

The Speaker: Hon. member for Ramsey, Mr Bell.

Mr Bell: Mr Speaker, once again another typographical error and a small amendment:

Clause 10

Page 16, line 3 -

insert the words 'in relation to the appointed undertaking' after the words 'transfer of company'.

I beg to move, Mr Speaker.

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

Mr Braidwood: I beg to second, Mr Speaker.

The Speaker: Hon. member for Malew and Santon, anything to respond?

Mr Gelling: Only that, once again, I am content with the amendment, sir.

The Speaker: Hon. members, we have a motion for the House that clause 10 be amended and is in the name of the hon. member for Ramsey, Mr Bell. All those in favour of the amendment say aye; against, no. The ayes have it. The ayes have it.

We now put clause 10 as amended. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clauses 11 and 12, sir, if you wish to take them together.

Mr Gelling: Yes, thank you. Clause 11 is the application of Bankers' Books Evidence Act 1935 and it provides that any bankers' books maintained by the transfer of company prior to an appointed day will be transferred to and vested in the company and that entries in such books will be deemed to have been entries in the books of the company.

Clause 12 which is the savings in respect of transfer and vesting of property, makes it clear, for the avoidance of any doubt, that the Act will not operate so as to prejudice or otherwise affect any contract, security or interest in hand held by the transfer of company and transferred to the company. It also provides that the Act will not result in further security registrations being required, constitute a breach of any obligation or allow the termination by any party of any contract which the party should not otherwise have been able to terminate. So the purpose of this particular section is to ensure that any persons who dealt with the transferor company will be in no better or no worse position after an appointed day than before the same.

Sub-clause (2) of clause 12 extends most of sub-clause (1) to subsidiaries of the transfer of company and the company. I beg to move that clauses 11 and 12 be part of this Bill, sir.

The Speaker: Hon. member for Ramsey, Mr Bell.

Mr Bell: I beg to second, Mr Speaker.

The Speaker: Hon. members, the motion before the House is that clauses 11 and 12 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Member for Malew and Santon, clauses 13 and 14.

Mr Gelling: Thank you, Mr Speaker. Clause 13 makes it clear for the avoidance of doubt that the transferor company and the company will still be subject to banking and similar legislation relating to their businesses.

Clause 14 is the vesting of Channel Islands' undertakings, and this section seeks to confirm to the extent required of the transfer to the company of the Channel Islands undertaking affected by virtue of the legislation to be enacted in Jersey and Guernsey and the timing for the entry into the operation of the Channel Islands legislation is expected to co-ordinate with the appointed day order under the Act. I therefore beg to move that clauses 13 and 14 stand part of the Bill, sir.

The Speaker: Hon. member for Ramsey, Mr Bell.

Mr Bell: I beg to second, Mr Speaker.

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

Mrs Hannan: Thank you, Vainstyr Loayreyder. I wonder, could I ask the mover of this legislation about job security in the Isle of Man? We know there are changes taking place with Barclays Bank in relation to the introduction of this legislation, but does that mean that all the work that is provided here at the moment is secure? Has there been a change in offshore banking, in which I believe Barclays do have quite a large section? And in relation to this particular part of the legislation, what will now happen in the Channel Islands in relation to their offshore banking, their private clients, in actual fact their Barclays Bank arrangements? We are expecting the Channel Islands to move legislation which changes the position of the Channel Islands in relation to Barclays Bank, but it seems strange that if it was us that had to move legislation to facilitate the move of Barclays Bank out of here, then I am sure we would not be doing it with good grace, and I wonder what is happening in the Channel Islands with regard to doing this where the vestige of buildings and properties is changing. So I wonder if the mover could make that quite clear about job security: whereas we are getting a lot of front-of-house activity, are the backroom jobs that are here still secure?

The Speaker: Hon. member for Malew and Santon to respond.

Mr Gelling: Yes, thank you, Mr Speaker. In reply to the hon. member for Peel, indeed I certainly have been assured that there will be no redundancies at all in the Isle of Man from this particular move. However, what I would say is there will probably be additional staff coming in from the decision-makers, probably City of London or somewhere, because all decisions will then be made in the Isle of Man because that becomes the front office. The two Channel Islands will become branches of the Isle of Man company and therefore they will operate still very similar and I would suggest they are still very concerned to do business through those two islands, but the difference is, of course, that the Isle of Man becomes the head office. So as I say, as far as the Isle of Man is concerned, it is a very good thing because we have with good grace already passed legislation through this House to enable banks to move the other way to headquarters in Jersey. We passed it through very quickly, very speedily, very similar to what we have done today, and therefore I have every confidence that the Channel Islands legislators will do the same. So I see no problem in them being able to complete the whole move. There will be no redundancies. Security of jobs, securities of pensions - that has all been consulted with the staff, and I understand that everyone is satisfied. So therefore I beg to move, with those assurances to the hon. member for Peel, that clauses 13 and 14 stand part of the Bill.

The Speaker: Hon. members, the motion before the House is that clauses 13 and 14 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clause 15, sir.

Mr Gelling: Yes, a very important clause, clause 15, Mr Speaker, and that confirms that the costs and the expenses involved with this Act will be paid by the company. That is extremely important and therefore I propose that that particular clause stand part of this Bill, sir.

The Speaker: Hon. member for Garff, Mr Rodan.

Mr Rodan: Mr Speaker, I beg to second.

The Speaker: Hon. member for Ramsey, Mr Bell.

Mr Bell: Again, Mr Speaker, once more a typographical error. In line 41 I move:
Insert the word 'transferor' before the word 'company'.

This is to clarify that the petitioner has to pay all the costs.

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

Mr Braidwood: I beg to second, Mr Speaker.

The Speaker: Hon. member for Malew and Santon, anything to respond?

Mr Gelling: No, sir.

The Speaker: Right, hon. members, the motion before the House is an amendment in the name of the hon. member for Ramsey, Mr Bell, for clause 15. All those in favour of the amendment say aye; against, no. The ayes have it. The ayes have it.

I now put before you clause 15 as amended. All those in favour say aye; against, no. The ayes have it. The ayes have it. Hon. members, that concludes the clauses stages of the Barclays Private Clients International Bill 2002.

I now call on the hon. member for Malew and Santon to move item 4.1, suspension of standing orders.

Mr Gelling: Thank you, Mr Speaker, and thank you for your guidance earlier on in bringing this on the agenda directly after the clauses, and I would thank hon. members for the way in which they have co-operated in seeing this through its clauses in a very speedy fashion. I would therefore, because there has been nothing contentious actually raised, feel that I am confident enough to ask that standing orders be suspended to permit us to take the third reading at this sitting as we did indicate at the very offset of this particular legislation we hoped to do. I beg to move:

That Standing Order 158(1) be suspended to permit the third reading of the Barclays Private Clients International Bill at this sitting.

The Speaker: Hon. member for Ramsey, Mr Bell.

Mr Bell: Mr Speaker, I beg to second, and I would just like to point out that, although the Bill itself has been non-contentious thus far, it is a very important Bill as far as the Isle of Man is concerned, it is very good news for the Isle of Man. Barclays Bank are working to a very tight timetable to put these new arrangements into place and I would urge hon. members to give their full support to this suspension to enable us to assist what is a very positive development for the Isle of Man.

The Speaker: Hon. member for Malew and Santon to respond.

Mr Gelling: Nothing, Mr Speaker.

The Speaker: Hon. members, the motion before the House is that standing order 158(1) be suspended to permit the third reading of the Barclays Private Clients International Bill at this sitting. All those in favour say aye; against, no. The ayes have it. The ayes have it.

I call on the hon. member for Malew and Santon, Mr Gelling, to take the third reading of the Barclays Private Clients International Bill.

Mr Gelling: Again, Mr Speaker, my thanks to hon. members and yourself for enabling us to get the third reading on this agenda this morning. I would just like, really, to sum up in saying that the whole purpose of the Bill is to allow for the reorganisation of Isle of Man and Channel

Islands operations of Barclays Bank PLC and its subsidiaries. The reorganisation will result in a Manx company currently named Barclays Finance Company (Isle of Man) Limited, but to be renamed Barclays Private Clients International Limited, becoming the main operational entity for Barclays across the Crown dependencies, with branches of the Manx company being located in Jersey and Guernsey. The reorganisation can thus be seen to be an extremely positive development for the Isle of Man and the kind of development which, I am sure all hon. members will agree, we have all worked long and hard to achieve. In concurring with what the hon. Treasury minister has said, it is something that already is creating interest - let us put it that way - from other large banking organisations who have taken notice of the decision of Barclays and are already making enquiries in the Isle of Man. So it is good news. As I say, I know that Barclays in London are extremely delighted in the way in which the Isle of Man has gone forward with this, and I can only say that I am quite sure that the interest will develop as it becomes more widely known in the way in which Barclays had made their decision to locate here.

So with that remark and in thanking hon. members for their support, I would like to move that the third reading of the Barclays Private Clients International Bill 2002 be taken today, sir.

The Speaker: Hon. member for Ramsey, Mr Bell.

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

The Speaker: Hon. members, the motion before the House is that the Barclays Private Clients International Bill be read a third time. All those in favour say aye; against, no. The ayes have it. The ayes have it.

Data Protection Bill — Consideration of Clauses Commenced

The Speaker: Now, hon. members, we revert to item 3.2 on our order paper, which is the Data Protection Bill for consideration of clauses. I call on the hon. member for Ramsey, Mr Bell.

Mr Bell: Mr Speaker, clause 1 defines a number of fundamental terms used in the Bill, in particular 'personal data', 'processing', 'data controller' and 'data subject'. Basically, 'personal data' is recorded information concerning an identifiable living individual; 'processing' covers not only working on data but also obtaining, recording, holding, retrieving, consulting, disclosing and destroying it; 'data controller' is the person in charge of the personal data; 'data subject' is the individual to whom the data relates.

Sub-clause (1) defines the above terms and other important terms used in this Bill.

Sub-clause (2) explains further what is meant by certain terms used in (1) above so, of course, (3) makes it clear that collecting personal data on the Island still counts as processing, even though it could be stored in a computer or a manual database outside the Island.

Sub-clause (4) provides that where personal data is processed pursuant to a legal requirement, they are treated as being processed by the person subject to the requirement. Mr Speaker, I beg to move that clause 1 stand part of the Bill.

The Speaker: Hon. member for Malew and Santon, Mr Gelling.

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

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

Mr Karran: Vainstyr Loayreyder, with this clause and subsequent clauses of the Bill, what I am concerned about are the checks and balances as far as data protection is concerned. As I said recently, I think in this House, about having several attempts to try and get hold of legal draftsman to no avail, I am concerned about the issue of the checks and balances within this legislation. I am concerned that we have created to a certain extent a tiger by its tail; I do not think that there have been sufficient safeguards put into this clause and subsequent clauses as

regards the protection of the individual. I believe it is very difficult to get the balance right, but I feel and I believe there are safeguards that need to be put in this legislation, but I am not happy that we have a situation where pieces of legislation can go through and we have not got the facilities of the legal draftsman to be able to do our job as far as this House is concerned to get the information from them.

I will not be voting against every clause in this Bill, but just as a token of what I believe is wrong - the fact of the lack of a legal draftsman being able to give us that information - I shall be voting against this clause in the principle that we have to get the legal draftsman's arrangements sorted out as far as this House is concerned, because I believe there are problems within this legislation as far as making sure that we have not got a tiger by its tail and we have got some proper accountability than this jelly effect that we see far too often where no-one is actually responsible or can be brought to be accountable when things are obviously unjust and wrong in this piece of legislation.

The Speaker: Before I call on the next hon. member, could I just have it absolutely clear from the hon. member for Onchan, is he indicating that he could not get any assistance whatsoever from the Attorney-General's department, the legal draftsman, in relation to the Bill before the House at the moment?

Mr Karran: Vainstyr Loayreyder, I tried several times. I believe that the legal draftsman is off the Island at the present time as far as this piece of legislation is concerned. My concern is that I am not prepared, as I said when we brought the ministerial Act in -

The Speaker: I do not want all that, I just want an answer to the question. Can I ask then, hon. member, that you advise the Secretary of the House of the procedures you endeavoured to do and we will take the issue up with the Attorney-General's department?

Mr Karran: I have raised this issue before in this hon. House, Vainstyr Loayreyder.

The Speaker: Hon. member, I am talking about this specific Bill.

Mr Karran: Yes, several Bills. I managed to get an hour in the other day on the Matrimonial Proceedings Bill. There is a problem in this House and I am not prepared to be a nodding dog in this House.

The Speaker: Hon. member, you are not a nodding dog unless you want to be. Can I say that, as far as I am concerned, I just want to find out whether or not any member of this House is having difficulty in getting advice from the Attorney-General's Chambers. You are indicating you are; we will then take the matter up with the Attorney-General.

Mr Karran: Thank you.

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

Mrs Hannan: Thank you, Vainstyr Loayreyder. There is another problem with drafting, and that is the problem of inclusion. This is a piece of legislation which has obviously been put together in consultation with the Registrar, who just happens to be a woman, and yet all this legislation states 'he'. In relation to the people that are mentioned in the legislation it is all 'he', and this a problem that relates to the legislative draftsman. It is an issue which I have raised with the previous Chief Minister in the past, nothing has happened and it seems strange that in the year 2002 we cannot draft legislation which is inclusive and not just purely male in orientation. I would hope that something can happen in relation to the putting together of legislation in the future which relates to us all, and I think we should all be included. Thank you, Vainstyr Loayreyder.

The Speaker: Hon. member for Ramsey, Mr Bell.

Mr Bell: In reverse order, Mr Speaker, I note the point made by the hon. member for Peel; it is a point that she has made on a number of occasions before. We have been assured, though, on a number of occasions that in legislative terms 'he' does mean 'she' and it really is for the legislative draftsman who puts this together to frame it as he feels in the first instance appropriate. It does not, though, in any way diminish the rTMle of the woman under this legislation.

As far as Mr Karran is concerned, the hon. member for Onchan, he is merely repeating the comments he made at the second reading. If in fact, as you yourself said, Mr Speaker, the hon. member is not getting support from the legal draftsman, or the level of support that he feels appropriate, then there are other channels for the hon. member to pursue. I did make the offer to him at the second reading when he raised this issue that if he was still having problems to contact me or contact the Registrar direct, and we would do our best to help in whatever way we could in expanding, perhaps, on some of the information which has been issued. The hon. member chose not to pursue that and therefore there is nothing more I can do to help him on that; he will really have to take up the offer that you yourself have made of making representations to the Attorney-General's department.

The main thrust of this legislation - where the hon. member says there is no accountability, the main thrust of this Bill is really to reenact what is already in place, so the accountability does not change at all, we have a registrar, there is a tribunal to which appeals can be made and indeed ultimately on a point of law it could go to the High Court for further consideration. So there is a very clear, well-established appeals channel for people who are dissatisfied with decisions which are made on this area. I do accept totally the hon. member's point that there is potentially, if we are not careful, a monster which could get out of control on data protection if we do not make it work within parameters. I do believe, though, that the legislation as presented to us today does keep us within those parameters and does give government firm control on what is happening. I beg to move.

The Speaker: Hon. member for Peel.

Mrs Hannan: Could I raise a matter Vainstyr Loayreyder, under standing order 89 which says that I can speak again on an issue but may not introduce a new matter or interrupt a member who is speaking, could I just mention that this legislation has been approved by the Council of Ministers. It is not a matter for the legislative draftsman; it is a matter for the Council of Ministers how legislation is drawn up. It quite clearly states on the back, 'Approved by the Council of Ministers for introduction into the House of Keys', and therefore it is not a matter for the legislative draftsman; it is a matter for the Council of Ministers. I reserve my. . .

The Speaker: The point is made, hon. member, but I would also acknowledge that the response given by Mr Bell in relation to, I think, the Interpretation Act is, in fact, also correct. It is an issue I know you feel strongly about, and I think maybe you would like to make representations to the government. Hon. members, the motion before the House is that clause 1 stand part of the Bill. All those in favour say aye; against, no. They ayes have it.

A division was called for and voting resulted as follows:

In the Keys-

For: Messrs Anderson, Quine, Rodan, Quayle, Rimington, Gill, Henderson, Duggan, Braidwood, Mrs Cannell, Messrs Downie, Shimmin, Bell, Singer, Corkill, Gelling and the Speaker - 17

Against: Mrs Hannan and Mr Karran - 2

The Speaker: Hon. members, the motion carries in the House, with 17 votes for and 2 votes against. Hon. member for Ramsey, Mr Bell, clause 2, sir.

Mr Bell: Mr Speaker, clause 2 and schedules 1, 2, 3 and 4. This clause introduces eight data protection principles, which are the basic principles or guidelines governing the processing of personal data, and imposes on all data controllers the obligation to comply with them.

Sub-clause (1) introduces part 1 of schedule 1, which sets out the eight principles: (1) personal data must be processed fairly and lawfully; (2) personal data shall be obtained only for one or more specified and lawful purposes and not processed for any other purpose; (3) personal data must be adequate, relevant and not excessive in relation to those purposes; (4) personal data must be accurate and up-to-date; (5) personal data must not be kept longer than necessary; (6) personal data must be processed in accordance with the data subject's rights; (7) measures must be taken against unauthorised or unlawful processing, and accidental loss or destruction, of personal data; and (8) personal data must not be transferred to any other country unless that country gives adequate protection to data subjects.

Sub-clause (2) introduces part 2 of schedule 1, which interprets some of those principles.

Sub-clause (3) introduces schedules 2, 3 and 4. Schedule 2 supplements the first principle in schedule 1, which is that personal data must be processed fairly and lawfully, setting out conditions for processing, one of which must be satisfied if the principle is to be treated as complied with. Schedule 3 specifies special conditions, one of which, in addition to schedule 2, must be satisfied in the case of processing of sensitive personal data. Schedule 4 specifies cases where the eighth principle does not apply, the eighth principle being that personal data must not be transferred to a country outside the Isle of Man unless that country gives adequate protection to data subjects.

Sub-clause (4) imposes a general obligation on a data controller to comply with the data protection principles, subject to any exemptions in part 4.

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

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

The Speaker: Hon. member for Douglas East, Mrs Cannell.

Mrs Cannell: Thank you, Mr Speaker. In respect of this business about personal data not being transferred to another country unless that country gives adequate protection to data subjects, I take it that it actually falls under schedule 1, in particular 'The eighth principle: transfer of data abroad'. Clause 21 in the schedule actually lists the nature of the personal data, the country or territory, and so on and so forth, and then, of course, at number 22, towards the bottom of page 60, it says, 'The eighth principle does not apply to a transfer falling within any paragraph of schedule 4, except in such circumstances and to such extent as the Council of Ministers may by order provide.' Am I reading that correctly, then: that it is the Council of Ministers who will decide whether or not to oblige another country that is seeking information on any particular individual in respect of the provisions laid down in the Act?

And then looking at 23 underneath, I wonder if the hon. minister could clarify for me what 'within the European Economic Area' means? We all know about the countries that come under the European Union, but the European Economic Area - how many countries does that extend to, how big an area are we talking about, and how is it actually defined?

And am I correct in assuming therefore, going back to the first question under the eighth principle, that it would be the Council of Ministers of the day that would consider applications from countries abroad as to data information and the transfer of that; it will not be the people employed to oversee the implementation of this, but it will be the Council of Ministers? And will that be taken just by the Council of Ministers or will it be informed or forwarded on to members? I just wonder how that function is actually going to work.

The Speaker: I call on the hon. member for Ramsey, Mr Bell, to reply.

Mr Bell: To the best of my knowledge, Mr Speaker - and there are a number of instances, I think, through this Bill where the Council of Ministers can take decisions - in all those cases those decisions have to be ratified by Tynwald. I could be wrong, but I think that is right across the Bill, and the issue that the hon. member refers to is the same: that any changes in the designated countries which are approved by the Council of Ministers, I understand, will need Tynwald ratification.

The European Economic Area - I cannot remember all the countries in it now, but I think it also covers countries like Norway, Iceland and a number of other countries, which are associated with the European Union but are not actually full members of the European Union. But the directive which comes from the European Union in terms of being able to transfer information across boundaries insists that the data protection legislation in any of those countries is at least the equivalent of what they currently enjoy within the European Union, so that this information cannot, in fact, be transferred into a country which does not have proper protection for the individual and then be disseminated in an unacceptable way to third parties beyond that. If the hon. member wants any further detailed explanation, perhaps she should come and see me afterwards and I will arrange for greater detail. That is my understanding of the situation, Mr Speaker. I hope that answers the member.

The Speaker: I would just clarify that most of the orders are covered under clause 61. When the member gets to it, I am sure he will clarify the point made by the hon. member for Douglas East, Mrs Cannell. Right, hon. members, the motion before the House is that clause 2 and schedules 1, 2, 3 and 4 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Hon. member for Ramsey, Mr Bell, can we take clauses 3 and 4?

Mr Bell: As many as you like, Mr Speaker.

The Speaker: And schedule 5, please.

Mr Bell: Mr Speaker, clause 3 provides that a data controller is only covered by the Bill if he is established in the Isle of Man or uses a computer in the Island for processing data.

Sub-clause (1) provides that a data controller is covered by the Bill if (a) he is established in the Isle of Man and processes data in the context of his business, or (b) uses a computer in the Island for processing data, except where it is only passing through the Island, for example a data link between Britain and Ireland via the Isle of Man.

Sub-clause (2) requires a data controller established outside the Isle of Man who uses a computer in the Island to nominate a local representative established in the Island.

Sub-clause (3) explains what is meant by 'established in the Island' in the previous two sub-clauses: (a) ordinary residence in the case of an individual; (b) incorporation under Manx law in the case of a company; (c) formation under Manx law in the case of an unincorporated body; or (d) maintenance of a branch, agency or regular practice in the Island.

Clause 4 and schedule 5 continue the Isle of Man Data Protection Registrar and the Isle of Man Data Protection Tribunal in existence, renaming the registrar the Isle of Man Data Protection Supervisor: sub-clause (1) continues the Isle of Man Data Protection Registrar in existence, but renamed the Isle of Man Data Protection Supervisor; sub-clause (2) provides for the supervisor to be appointed by the Governor in Council; sub-clause (3) continues the Isle of Man Data Protection Tribunal in existence; sub-clause (4) provides for the tribunal to consist of five members appointed by the Governor in Council; sub-clause (5) requires the chairman and deputy to be legally qualified; and sub-clause (6) introduces schedule 5, which makes supplemental provision as to the supervisor and the tribunal.

Mr Speaker, I beg to move that clauses 3 and 4 and schedule 5 stand part of the Bill.

The Speaker: Hon. member for Malew and Santon.

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

The Speaker: Hon. members, the motion before the House is that clauses 3 and 4 and schedule 5 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clause 5, sir.

Mr Bell: Clause 5, Mr Speaker, entitles the data subject to information about any personal data concerning him or her.

Sub-clause (1) sets out the rights of the data subject against any data controller, subject to the following provisions: (a) a right to be told of any personal data being processed and relating to him; (b) a right to a description of that data, including why it is being or to be processed and to whom it is being disclosed; (c) a right to the data itself and to the source from which it came; and (d) in the case of automatic processing for evaluation purposes, a right to know the logical process by which the evaluation is carried out.

Sub-clause (2) provides that the data controller is not required to supply the above information unless it is requested in writing.

Sub-clause (3) excuses the data controller from supplying details if he needs, and has asked for, further information as to the applicant's identity or to find the data.

Sub-clause (4) excuses the data controller from supplying details if to do so would identify a third party, unless that party has consented or it is reasonable to supply the details without his consent. Sub-clause (5) makes it clear that sub-clause (4) covers information which would identify the third party as a source of the data, and also that it does not excuse a failure to supply so much of the information sought as will not identify the third party.

Sub-clause (6) expands on the question as to whether it is reasonable to seek a third party's consent to disclosure of information identifying him.

Sub-clause (7) makes it clear that a request for information about data may be either limited or general, and sub-clause (8) requires the data controller to respond promptly, and in any case before the end of the prescribed period.

Sub-clause (9) enables an application to be made to the High Court for an order enforcing compliance with the above requirements. If the court thinks the failure was unjustified and the data controller knew, and ought to have known, that, it can impose a fine of up to £5,000.

Sub-clause (10) enables the court, in proceedings under sub-clause (9), to require production of the data so that it can make up its own mind.

Sub-clause (11) provides that a penalty under sub-clause 9(b) is to be dealt with as a fine, and sub-clause (12) defines various terms used in this clause.

Mr Speaker, I beg to move that clause 5 stand part of the Bill.

The Speaker: Hon. member for Malew and Santon.

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

The Speaker: Hon. members, the motion before the House is that clause 5 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. If we can take clauses 6 and 7 together, sir.

Mr Bell: Clause 6, Mr Speaker, makes further provision about request for information under clause 5.

Sub-clause (1) enables regulations to be made so that a request for information falling within one paragraph of clause 5, sub-clause (1) is to be treated as covering information within another.

Sub-clause (2) requires the data itself to be supplied as a permanent copy unless this is impossible or would require too much effort or the data subject agrees. It also requires an explanation to be given of anything which is unintelligible.

Sub-clause (3) enables the data controller to ignore repeated requests for information already supplied to the same applicant unless a reasonable time has elapsed since the last supply.

Sub-clause (4) provides that what is a reasonable interval depends on the nature of the data and why and how often it is processed.

Sub-clause (5) provides that the right under clause 5, sub-clause (1)(d) to know the logical process by which any decision is taken does not extend to trade secrets.

Sub-clause (6) requires information to be supplied as at the time the request is received, but it may take account of a subsequent amendment or deletion, provided it is unconnected with the request.

Sub-clause (7) explains what is meant by information identifying a third party: it covers not only information actually naming him, but also information which the applicant could use, with other information he has or might obtain, to identify him.

Clause 7 makes special provision for requests to credit reference agencies: they are assumed to be limited to data relevant to the applicant's credit rating, but any reply has to include a statement of his rights under the Bill. Sub-clause (1) is introductory.

Sub-clause (2) enables a request under clause 5 to be limited to data relevant to the applicant's credit rating, and it is assumed to be limited unless he states otherwise, and sub-clause (3) requires a response to a request to be in a form setting out the applicant's rights under the Bill as prescribed by regulations.

Mr Speaker, I beg to move that clauses 6 and 7 stand part of the Bill.

The Speaker: Hon. member for Malew and Santon.

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

The Speaker: Hon. members, the motion before the House is that clauses 6 and 7 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clauses 8 and 9, hon. member.

Mr Bell: Clause 8, Mr Speaker, gives a data subject a new right to stop any processing which is causing or will cause him or someone else unwarranted and substantial damage or distress.

Sub-clause (1) entitles an individual, by a notice to a data controller, to stop any processing of personal data about him which is causing or is likely to cause him or another substantial damage or substantial distress which is unwarranted.

Sub-clause (2) excludes the above right where one of the conditions 1 to 4 in schedule 2 is satisfied, that is where the processing is (1): with the data subject's consent; (2) required by a contract to which the data subject is a party, or preliminary to such a contract; (3) a legal obligation of the data controller; or (4) in the data subject's vital interests.

Sub-clause (3) requires the data controller to reply to a notice under (1) within 21 days, either saying that he is complying or will comply with it, or if not, explaining why not.

Sub-clause (4) enables an application to be made to the High Court for an order enforcing compliance with the above requirement, and sub-clause (5) makes it clear that not acting under sub-clause (1) does not affect any other right or remedy of the data subject.

Clause 9 gives a data subject a new right to stop a data controller processing personal data for the purpose of direct marketing.

Sub-clause (1) entitles the data subject, by a notice to a data controller, to stop any processing of personal data for the purpose of direct marketing to him.

Sub-clause (2) enables an application to be made to the High Court for an order enforcing compliance with the above requirement; and sub-clause (3) defines 'direct marketing' - it must be directed at a particular individual, so hoardings, newspaper advertisements, web site banners, et cetera do not count.

Mr Speaker, I beg to move that clauses 8 and 9 stand part of the Bill.

The Speaker: Hon. member for Malew and Santon.

Mr Gelling: I beg to second, Mr Speaker.

The Speaker: Hon. members, the motion before the House is that clauses 8 and 9 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Hon. member for Ramsey, Mr Bell, can we take clauses 10, 11 and 12?

Mr Bell: Clause 10, Mr Speaker, gives an individual a new right to require a data controller to ensure that automated decisions involving his personal data are not the only basis on which decisions affecting him are made. Alternatively, the data controller must notify the individual that this has been done and give him a chance to request a review.

Sub-clause (1) enables an individual to serve a notice on a data controller requiring him to ensure that automated decisions involving his personal data are not the only basis on which decisions affecting him are made.

Sub-clause (2) requires the data controller, where no notice has been served under sub-clause (1), to notify the individual that a decision has been taken on the basis of an automated decision and give him the right to demand a review.

Sub-clause (3) requires the data controller, where a review has been demanded under sub-clause (2)(b), to respond within 21 days, stating what steps he intends to take.

Sub-clause (4) excludes an 'exempt decision' from the above rights. Basically, these are decisions where there is a contractual relationship between the parties or the person taking the decision is acting under statutory powers and either the data subject's request is granted or his legitimate interests are safeguarded.

Sub-clause (5) defines an 'exempt decision'.

Sub-clause (6) specifies one set of conditions. The decision must be taken: either (a) as preliminary to, or to perform, a contract with the data subject; or (b) under statutory powers.

Sub-clause (7) specifies the other set of conditions: (a) a request of the data subject is granted; or (b) his legitimate interests are safeguarded.

Sub-clause (8) enables an application to be made to the High Court for an order enforcing compliance, ordering the person taking the decision to reconsider or to make a new decision not based only on automated processing.

Sub-clause (9) makes it clear that an order under sub-clause (8) does not affect any rights of third parties.

Clause 11 gives an individual who suffers damage, or damage and distress, as a result of any contravention of the Act by a data controller a right to compensation, unless the data controller shows that he took reasonable care. Compensation may also be payable for the stress alone in limited circumstances.

Sub-clause (1) gives an individual a right to compensation where he suffers damage as a result of any contravention of the Act by a data controller. This Act would be enforced by action in the High Court in the usual way. The court may order rectification, et cetera of the data.

Sub-clause (2) gives a right to compensation for distress as a result of any contravention of the Act in three cases: (a) where the claimant also claims for damages under sub-clause (1); (b) where the compensation relates to processing for the special purposes, that is for journalism, artistic or literary purposes; and (c) where a High Court finds that a failure to provide access to data under clause 5 was unjustified.

Sub-clause (3) gives a data controller a defence to claim under sub-clause (1) and (2) if he can show that he took reasonable care to comply with the relevant requirement.

Clause 12 enables the data subject to apply to the High Court for an order requiring the data controller to rectify, block, erase or destroy inaccurate data. The court may also make an order if the data subject is entitled to compensation for damage under clause 11 and there is a risk of further contraventions.

Sub-clause (1) enables the High Court, on the application of the data subject, to order the rectification, blocking, erasure or destruction of inaccurate data.

Sub-clause (2) qualifies the power under sub-clause (1) where the data accurately records information supplied to the data controller, whether by the data subject or anyone else: (a) if schedule 1 paragraph 15 has been complied with, that is if the data controller has taken reasonable steps to ensure its accuracy, and the data records record the fact that the data subject has told him that he thinks it is inaccurate, the court can instead order the data controller to include the data subject's version; (b) otherwise, the court can order compliance with schedule 1, paragraph 15, with or without an order under sub-clause (1) above.

Sub-clause (3) enables the court, where it has made an order under sub-clause (1) or where it finds that inaccurate data have been corrected, blocked or erased, to order the data controller to notify third parties to whom the data has been disclosed, if this is reasonably practicable.

Sub-clause (4) enables a data subject, if he is entitled to compensation for damage under clause 11 and there is a risk of further contraventions, to apply to the High Court for an order that the data controller rectify, block, erase or destroy the data.

Sub-clause (5) makes similar provision to sub-clause (3) where an order under sub-clause 4 has been made, and sub-clause (6) makes it clear that whether notification under sub-clauses (3) or (5) is reasonably practicable will largely depend on the number of people to whom the data had been disclosed.

I beg to move that clauses 10, 11 and 12 be part of the Bill, Mr Speaker.

The Speaker: Hon. member for Malew and Santon.

Mr Gelling: I beg to second, Mr Speaker.

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

Mrs Hannan: Could I ask the mover: obviously somebody has a problem with data and they go to the High Court, but where does the tribunal come in in relation to this? Can they order the

rectification, blocking, erasure or destruction of any data in relation to the particular concerns of somebody who has data being used in this way?

The Speaker: Hon. member for Ramsey, Mr Bell, to reply.

Mr Bell: Yes, Mr Speaker. My understanding is that that is the case and that appeals to the High Court beyond the tribunal are on a point of law rather than the issue itself.

The Speaker: Right, hon. members, the motion before you is that clauses 10, 11 and 12 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clause 13, hon. member.

Mr Bell: Mr Speaker, clause 13 defines 'registrable particulars' and other terms used in this part. Sub-clause (1) defines 'registerable particulars'. They are: (a) the data controller's name and address; (b) his representative's name and address; (c) a description of the personal data and the data subjects; (d) the purposes of the processing; (e) a description of the persons to whom the data may be disclosed; and (f) any countries outside the Isle of Man to which data may be transferred.

Sub-clause (2) defines terms used in relation to regulations under this part.

Sub-clause (3) provides that a data controller's address is its registered office, or his or its principal place of business in the Island in the case of any other commercial entity. I beg to move that clause 13 stand part of the Bill.

The Speaker: Hon. member for Malew and Santon.

Mr Gelling: I beg to second, Mr Speaker.

The Speaker: Hon. members, the motion before the House is that clause 13 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clauses 14, 15 and 16, hon. member for Ramsey.

Mr Bell: Clause 14, Mr Speaker, forbids the processing of personal data unless the data controller is entered in the register kept under clause 16. This applies only to data held on computers, except in limited cases.

Sub-clause (1) prohibits the processing of personal data unless the data controller is entered in the register kept under clause 16 or is treated as entered by notification regulations.

Sub-clause (2) excludes the prohibition in sub-clause (1) where the data falls outside the classes in clause 1, sub-clause (1)(a) and (b), that is that it applies only to where information is: (a) being processed on a computer; or (b) recorded so that it can be processed on a computer. There is one exception to this: assessable processing of manual data, that is processing which is designated by an order under clause 19 as particularly likely to cause substantial damage or distress or significantly prejudice the data subject's rights and freedoms.

Sub-clause (3) enables notification regulations to designate processing of computer data as exempt from the prohibition in (1) above if it is thought unlikely to prejudice the rights and freedoms of data subjects.

Sub-clause (4) exempts processing in connection with a public register.

Clause 15, Mr Speaker, provides for the notification of registrable particulars to the supervisor by data controllers and enables notification regulations to make further provision for notification.

Sub-clause (1) requires data controllers wishing to be entered in the register to give notification to the supervisor. Sub-clause (2) requires the notification to specify, in accordance with notification regulations, the registrable particulars, and a statement of security measures may be taken to comply with the seventh principle, which states 'measures must be taken

against unauthorised or unlawful processing and accidental loss or destruction of personal data.’

Sub-clause (3) enables notification regulations to allow the supervisor to decide on the form of notification and the details required under clause 13(1)(d) to (f) and under sub-clause (2) above.

Sub-clause (4) enables notification regulations to provide for notification by partnerships and other joint data controllers.

Sub-clause (5) requires a notification to be accompanied by a prescribed fee.

Sub-clause (6) enables notification regulations to provide for refunds of fees.

Clause 16 provides for the maintenance of the register of data controllers by the supervisor for the duration of entries in it and for its inspection.

Sub-clause (1) requires the supervisor to maintain a register of data controllers who have notified their processing under clause 15(1) and to make an entry in respect of every new notification.

Sub-clause (2) requires the entry to include the registrable particulars, as notified under clause 15, and any other information specified in notification regulations.

Sub-clause (3) enables notification regulations to specify the time when an entry is deemed to be made.

Sub-clause (4) requires an entry to be cancelled on the expiry of the relevant time unless a prescribed renewal fee is paid.

Sub-clause (5) says that ‘the relevant time’ is 12 months or some other period prescribed by notification regulations.

Sub-clause (6) requires the supervisor to make the register available for public inspection free of charge and enables him to provide other facilities for access to the information in the entries, for example putting them on the web site.

Sub-clause (7) requires the supervisor to supply copies of register entries, if required, on payment of a fee if one is prescribed.

Mr Speaker, I beg to move that clauses 14, 15 and 16 stand part of the Bill.

The Speaker: Hon. member for Malew and Santon.

Mr Gelling: I beg to second, Mr Speaker.

The Speaker: Hon. members, the motion before the House is that clauses 14, 15 and 16 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clause 17, hon. member for Ramsey.

Mr Bell: This clause enables notification regulations to require changes in processing to be notified to the supervisor.

Sub-clause (1) enables notification regulations to require changes in the matters specified in clause 16(2) to be notified to the supervisor for the purpose specified in sub-clause (2) below.

Sub-clause (2) provides that such changes are to be notified to ensure that names and addresses and details of the data controller’s acts and intentions are kept up-to-date and that the supervisor is kept informed about security measures.

Sub-clause (3) applies clause 15(3) to regulations under sub-clause (2) above, that is: they may allow the supervisor to decide on the form of notification and the details required.

Sub-clause (4) requires the supervisor to make the necessary amendments to the register entries on notification pursuant to regulations under sub-clause (1). I beg to move that clause 17 stand part of the Bill, Mr Speaker.

The Speaker: Hon. member for Malew and Santon.

Mr Gelling: I beg to second, Mr Speaker.

The Speaker: Hon. members, the motion before the House is that clause 17 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clause 18, hon. member for Ramsey.

Mr Bell: Mr Speaker, this clause makes it an offence not to notify processing as required by clause 14(1) and any changes in processing as required by regulations under clause 17(1).

Sub-clause (1) makes breach of prohibition against processing computer data while unregistered an offence. This carries a maximum fine of £5,000 on summary conviction, or an unlimited fine at general gaol.

Sub-clause (2) makes contravention of regulations requiring changes in processing to be notified as an offence. The penalty is the same as under sub-clause (10).

Sub-clause (3) gives a defence of due diligence to a charge under sub-clause (2).

I beg to move that clause 18 stand part of the Bill, Mr Speaker.

The Speaker: Hon. member for Malew and Santon.

Mr Gelling: I beg to second, Mr Speaker.

The Speaker: Hon. members, the motion before the House is that clause 18 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Hon. member for Ramsey, Mr Bell, clauses 19, 20, 21 and 22.

Mr Bell: Clause 19, Mr Speaker, provides for processing which is particularly likely to cause substantial damage or distress or significantly prejudice the data subject's rights and freedoms to be subject to special scrutiny by the supervisor, who must stop it for up to 42 days while consideration is given to its compliance with the data protection principles.

Sub-clause (1) defines 'assessable processing' as processing designated by an order made by the Council of Ministers as particularly likely to cause substantial damage or distress or significantly prejudice the data subject's rights and freedoms. Such an order requires Tynwald approval.

Sub-clause (2) requires the supervisor to consider any notification under clause 14(1), or under regulations made under clause 17(1), to see whether the processing is 'assessable processing', and if so, whether it will comply with the Bill.

Sub-clause (3) requires the supervisor, if he identifies any processing as 'assessable processing', to inform the data controller within 28 days whether he thinks it will comply with the Bill or not.

Sub-clause (4) enables the supervisor, by a further notice, to extend the period in sub-clause (3) by up to 14 days.

Sub-clause (5) prohibits any processing of assessable data until the period or extended period under sub-clauses (3) and (4) has expired or the supervisor has given the data controller a notice under sub-clause (3). Contravention is an offence under sub-clause (6), and sub-clause (6) makes contravention of sub-clause (5) above an offence. This carries, again, a maximum fine of £5,000 on summary conviction, or an unlimited fine at general gaol.

Sub-clause (7) enables the periods in sub-clauses (3) and (4) to be altered by an order made by the Council of Ministers, once again subject to Tynwald approval.

Clause 20 and schedule 6 enable the supervisor to refer a notification to the tribunal for a ruling as to whether the processing would contravene any of the data protection principles and enables the tribunal to order cancellation or variation of the relevant entry.

Sub-clause (1) enables the supervisor to refer any notification under clause 14, or regulations under clause 17, to the tribunal if he thinks it will contravene any of the data protection principles.

Sub-clause (2) requires the supervisor to consider whether the processing will cause damage or distress in deciding whether to refer a notification under sub-clause (1).

Sub-clause (3) enables the tribunal, on a reference under sub-clause (1), to order the cancellation or variation of an entry if it considers the processing will contravene any of the data protection principles.

Sub-clause (4) introduces schedule 6, which deals with the tribunal proceedings under this clause, and sub-clause (5) allows a right of appeal from the tribunal to the High Court on a point of law.

Clause 21 enables provision to be made by order under which data controllers can appoint their own independent data supervisors to operate a compliance audit and may then be given exemptions, for example from notification.

Sub-clause (1) enables the Council of Ministers to make an order providing: (a) for data controllers to appoint independent data supervisors who will operate a compliance audit; and (b) for exemptions, for example from notification, for data controllers who appoint such supervisors and comply with other specified conditions.

Sub-clause (2) enables an order under sub-clause (1) to prescribe the relationship between the supervisor and supervisors appointed in accordance with the order, for example requiring the latter to supply information.

Clause 22, Mr Speaker, requires data controllers who process data which is exempt from notification under clause 14 to give individuals, on request, similar details to those which would have been notified under clause 14 in relation to the processing.

Sub-clause (1) requires data controllers carrying out processing of data to give individuals details of the processing within 21 days of a written request. This only applies if the data is exempt from notification under clause 14. Non-compliance is an offence.

Sub-clause (2) specifies the details which have been given under sub-clause (1): they are the registrable particulars.

Sub-clause (3) enables notification regulations to give exemptions from the obligation under sub-clause (1).

Sub-clause (4) makes non-compliance with a request under sub-clause (1) an offence. This carries a maximum fine of £5,000 on summary conviction, or an unlimited fine, again, at general gaol, and sub-clause (5) gives a defence of due diligence to a charge under sub-clause (4).

So I beg to move that clauses 19, 20, 21 and 22, Mr Speaker, stand part of the Bill.

The Speaker: And schedule 6.

Mr Bell: I am sorry, and schedule 6.

The Speaker: Hon. member for Malew and Santon.

Mr Gelling: I beg to second, Mr Speaker.

The Speaker: Hon. members, the motion before the House is that clauses 19, 20, 21 and 22, along with schedule 6, stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. We take, then, clause 23, sir.

Mr Bell: Clause 23, Mr Speaker, provides that the data protection principles in parts 2 and 3 do not apply to processing, which is exempt under this part, and defines 'the subject information provisions' and 'the non-disclosure provisions' for the purposes of this part.

Sub-clause (1) makes it clear that, where a data protection principle or any provision of part 2 or part 3 refers to personal data or processing of personal data, it does not cover data or processing which is exempted under part 4.

Sub-clause (2) defines 'subject information provisions'. They are: (a) the first principle - personal data must be processed fairly and lawfully, as explained in schedule 1; and (b) clause 5, which requests from the data controller information about personal data and processing.

Sub-clause (3) defines 'the non-disclosure provisions'. They are any provision listed in sub-clause (4) to the extent to which it forbids the disclosure concerned, and sub-clause (4) lists the non-disclosure provisions referred to in sub-clause (3).

Sub-clause (5) makes it clear that, subject to any exemptions under part 4, the subject information provisions override any statutory requirement for secrecy or legal obligation of confidentiality.

So, Mr Speaker, I beg to move that clause 23 stand part of the Bill.

The Speaker: Hon. member for Malew and Santon.

Mr Gelling: I beg to second, Mr Speaker.

The Speaker: Hon. members, the motion before the House is that clause 23 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Hon. member for Ramsey, clause 24, please.

Mr Bell: Clause 24 provides a general exemption from all the requirements of the Bill in the case of national security, subject to a right of appeal to the tribunal.

Sub-clause (1) exempts any personal data from all the requirements of this Bill if the exemption is required for the purposes of safeguarding national security.

Sub-clause (2) provides that, subject to an appeal under sub-clause (4), a certificate given by the Chief Minister in relation to particular personal data shall be evidence that the exemption given by sub-clause (1) is required for the purpose of safeguarding national security.

Sub-clause (3) enables a certificate under sub-clause (2) to describe personal data generally, rather than identifying it specifically, and to extend to future data as well as to existing data.

Sub-clause (4) enables a person directly affected by a certificate under sub-clause (2) to appeal to the tribunal.

Sub-clause (5) enables the tribunal to cancel the certificate if it considers that the Chief Minister did not have grounds for issuing it. The tribunal is to apply the same rules as the High Court when carrying out a judicial review.

Sub-clause (6) provides that, where a data controller relies on a certificate under sub-clause (2) in proceedings under the Bill, for example an appeal to the High Court, the certificate under sub-clause (2) is conclusive that the exemption claimed applies to the data in question unless the tribunal decides otherwise on an appeal under sub-clause (7).

Sub-clause (7) enables a party to the proceedings, other than the data controller, to appeal to the tribunal, and the tribunal can decide that the exemption claimed does not apply to the data.

Sub-clause (8) provides that the authenticity of a certificate under sub-clause (2) does not have to be proved. A document appearing to be such a certificate is presumed to be such unless it is proved that it is not.

Sub-clause (9) makes it clear that any enforcement power in part 5 cannot be used in relation to personal data which is exempted by sub-clause (1) from part 5.

Sub-clause (10) applies schedule 6 to appeals to the tribunal under sub-clause (4) or sub-clause (7).

Mr Speaker, I beg to move that clause 24 stand part of the Bill.

The Speaker: Hon. member for Malew and Santon.

Mr Gelling: I beg to second, Mr Speaker.

The Speaker: Hon. members, the motion before the House is that clause 24 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Hon. member for Ramsey, clause 25, please.

Mr Bell: Clause 25 gives three more limited exemptions in the case of personal data processed for police or taxation purposes: (1) the first principle - that is fair and lawful processing to a limited extent - and subject information rights are excluded so far as they may prejudice police work or taxation; (2) non-disclosure rights are excluded so far as they may prejudice police work or taxation; and (3) subject information rights are excluded in the case of processing for the purpose of risk assessment in taxation or benefits.

Sub-clause (1) excludes, so far as they may prejudice work or taxation: (a) the first principle, except as explained in schedule 2 and schedule 3; Sub-clause (1)(b) refers to clause 5 - requests to the data controller for information about personal data and processing.

Sub-clause (2) extends the above exemption to data processed for statutory purposes which derives from police sources.

Sub-clause (3) exempts personal data from the non-disclosure provisions where disclosure is for police or taxation purposes and non-disclosure would prejudice those purposes.

Sub-clause (4) exempts personal data which are processed by government or a local authority for the purpose of risk assessment in relation to taxation or the payments of benefit, where data relating to a large number of persons is run through a computer to identify anomalous cases for further investigation, and sub-clause (5) defines the bodies which may claim the exemption under sub-clause (4).

Mr Speaker, I beg to move that clause 25 stand part of the Bill.

The Speaker: Hon. member for Malew and Santon.

Mr Gelling: I beg to second, Mr Speaker.

The Speaker: Hon. members, the motion before the House is that clause 25 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clause 26, hon. member for Ramsey.

Mr Bell: Clause 26 enables exemptions from the subject information provisions to be granted by order in the case of personal data relating to health, education or social work.

Sub-clause (1) enables the Council of Ministers, by order, to exempt from the subject information provisions personal data relating to data subjects' physical or mental health or to modify those provisions.

Sub-clause (2) enables the Council of Ministers, by order, to exempt from the subject information provisions personal data relating to pupils or former pupils at schools and colleges which is held by the proprietor of, or teacher at, the school or college or by the Department of Education.

Sub-clause (3) enables the Council of Ministers, by order, to exempt from the subject information provisions personal data relating to clients of the DHSS or voluntary social work bodies or to modify those provisions.

Mr Speaker, I beg to move that clause 26 stand part of the Bill.

The Speaker: Hon. member for Malew and Santon.

Mr Gelling: I beg to second, Mr Speaker.

The Speaker: Hon. members, the motion before the House is that clause 26 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Hon. member for Ramsey, Mr Bell, clause 27, please.

Mr Bell: Clause 27 exempts from the subject information provisions personal data processed for the purpose of carrying out regulatory functions by, for example, the Financial Supervision Commission or the Insurance and Pensions Authority.

Sub-clause (1) exempts from the subject information provisions personal data processed for the purpose of carrying out regulatory functions for purposes specified in sub-clause (2), so far as access would prejudice those functions.

Sub-clause (2) lists the purposes for which relevant functions are carried out, that is: (a) financial protection; (b) regulation of charities; and (c) health and safety at work.

Sub-clause (3) specifies the functions in question: (a) those conferred by statute, which covers regulatory activities of departments, statutory boards, local authorities and also statutory self-regulatory authorities; (b) other functions which are of a public nature and exercised in the public interest. This covers functions of the Attorney-General et cetera.

Sub-clause (4) exempts from the subject information provisions personal data processed for the purpose of carrying out regulatory functions of the Isle of Man Office of Fair Trading under the Fair Trading Act of 1996, for example in relation to anti-competitive practices.

Mr Speaker, I beg to move that clause 27 stand part of the Bill.

The Speaker: Hon. member for Malew and Santon.

Mr Gelling: I beg to second, Mr Speaker.

The Speaker: Hon. members, the motion before the House is that clause 27 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Hon. member for Ramsey, clause 28, please.

Mr Bell: Clause 28 gives exemption from most data protection controls for processing for journalistic purposes and for purposes of literary and artistic expression.

Sub-clause (1) exempts data from almost any data protection control if it is processed only for journalistic purposes or for purposes of literary or artistic expression and: (a) processing is with a view to publication; (b) the data controller reasonably believes that publication would be in the public interest, including freedom of expression; (c) he reasonably believes that the control

in question would conflict with journalistic purposes or purposes of literary or artistic expression.

Sub-clause (2) lists the controls to which the exemption applies.

Sub-clause (3) provides that, in deciding whether the data controller's belief that publication is in the public interest is reasonable, one may have regard to the code of practice designated for the purpose by an order of the Council of Ministers, which again requires Tynwald approval.

Sub-clause (4) requires the High Court to stay proceedings under clauses 5, 8, 10, 11 or 12 to enforce a control listed in sub-clause (2) where an issue of freedom of expression arises, that is where it is claimed or the court thinks that the personal data are being processed for journalistic purposes or for purposes of literary or artistic expression and had not previously been published by the data controller. This is to enable the supervisor to make a decision under clause 41 on whether the personal data are being processed for any of these purposes, a decision which the supervisor or the tribunal on appeal under clause 44 is to make, not the court.

Sub-clause (5) provides for the duration of a stay under sub-clause (4). It ceases when the supervisor makes a decision under clause 41 on whether the personal data are being processed for any of the special purposes or when a claim that they are being processed for those purposes is withdrawn.

Sub-clause (6) defines 'publish' as covering any way in which material is made available to the public.

I beg to move that clause 28 stand part of the Bill, Mr Speaker.

The Speaker: Hon. member for Malew and Santon.

Mr Gelling: I beg to second, Mr Speaker.

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

Mrs Hannan: Could I ask for clarification on this particular clause with relation to journalism: does it mean that we are going to have a spate again of naming everyone who has been involved in any sort of minor accident or whatever - or even serious accidents - where they are named before members of the family have been informed? I am not sure what it relates to when it relates to journalism, and I think I would like clarification on that. Thank you, Vainstyr Loayreyder.

The Speaker: Hon. member for Ramsey, Mr Bell, to reply.

Mr Bell: Yes. As I understand it, Mr Speaker, the new legislation will not change the status quo as far as that is concerned - the rights of the individuals will still be respected - but there will be, as I understand it, no further restrictions put on the ability of a journalist to report what the journalist believes to be in the public interest. But as I understand it, the situation the hon. member is concerned about will remain as it is today.

The Speaker: Hon. members, the motion before the House is that clause 28 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clause 29, hon. member for Ramsey.

Mr Bell: Clause 29, Mr Speaker, gives a number of specific exemptions covering personal data processed for research purposes, allowing it to be used for purposes other than those for which it was obtained and to be kept indefinitely, and excluding the data subject's right to information.

Sub-clause (1) defines 'research purposes' as covering statistics and history, and lays down conditions which must apply where any of the following exemptions is claimed: (a) the processing is not concerned with actions directed at particular individuals, for example so that they cannot apply to research by an insurer into the causes of death of a policyholder's ancestors; and (b) the processing will not cause a data subject substantial damage or distress.

Sub-clause (2) excludes processing for research purposes alone from the second principle, that principle being 'personal data shall be obtained only for one or more specified and lawful purposes, and not processed for any other purpose', provided the conditions in sub-clause (1) are fulfilled.

Sub-clause (3) excludes processing for research purposes alone from the fifth principle, that is: 'personal data must not be kept any longer than necessary', again provided that the conditions in sub-clause (1) are fulfilled.

Sub-clause (4) excludes processing for research purposes alone from a data subject's right to information under clause 5, provided the conditions in sub-clause (1) are fulfilled and the results of the research do not enable the data subjects to be identified.

Sub-clause (5) provides that disclosure of personal data for research purposes or to, or at the request of, the data subject or his representative and disclosure believed to fall within those classes does not prevent the processing of the data falling within research exemptions.

Mr Speaker, I beg to move that clause 29 stand part of the Bill.

The Speaker: Hon. member for Malew and Santon.

Mr Gelling: I beg to second, Mr Speaker.

The Speaker: Hon. members, the motion before the House is that clause 29 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clauses 30 and 31, hon. member.

Mr Bell: Clause 30 excludes from the controls relating to subject information accuracy and non-disclosure any data which the data controller is required by law to publish, for example in the companies register or the deeds registry. It applies: (a) to the subject information provisions; (b) the fourth principle, that is 'personal data must be accurate and up-to-date'; and (c) the non-disclosure provisions.

Clause 31 exempts from the controls relating to disclosure of personal data any disclosure which is either required by law or made in connection with legal proceedings or obtaining legal advice.

Sub-clause (1) exempts any disclosure required by law from the non-disclosure provisions. This covers: requirements of statute - information required to be included in an income tax or VAT return or in a notice which a public authority has to give or publish; any rule of law, for example the obligation of an applicant for insurance to make full disclosure of material facts; and an order of court, for example an order for discovery of documents in legal proceedings.

Sub-clause (2) gives a further exemption where a disclosure is required for, or in connection with, legal proceedings, for example disclosure to one's own advocate or to the other side, or for obtaining legal advice, that is by client to advocate, or for similar legal purposes.

Mr Speaker, I beg to move that clauses 30 and 31 stand part of the Bill.

The Speaker: Hon. member for Malew and Santon.

Mr Gelling: I beg to second, Mr Speaker.

The Speaker: Hon. members, the motion before the House is that clauses 30 and 31 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clause 32, hon. member.

Mr Bell: Clause 32 gives a wide exemption for processing of data which is required by the privileges of Tynwald or the branches, for example preventing a direction or an order being given to the Clerk of Tynwald relating to data under the control of Tynwald. The exemption applies to: (a) the first principle, that is 'personal data must be processed fairly and lawfully'; (b) the second principle - 'personal data shall be obtained only for one or more specified and lawful purposes, and not processed for any other purpose', the third principle - 'the personal data must be adequate, relevant and not excessive in relation to those purposes', the fourth principle - 'personal data must be accurate and up-to-date', and the fifth principle - 'personal data must not be kept longer than necessary'; (c) clause 5 - requests to the data controller for information about personal data and processing; and (d) clause 8 - the right to stop processing which will cause damage and distress, and clause 12(1) to (3), that is the application for a court order to rectify, block, erase or destroy inaccurate data.

Mr Speaker, I beg to move that clause 32 stand part of the Bill.

The Speaker: Hon. member for Malew and Santon.

Mr Gelling: I beg to second, Mr Speaker.

The Speaker: Hon. members, the motion before the House is that clause 32 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clause 33, hon. member.

Mr Bell: Clause 33 gives a general exemption from all data protection controls for an individual in respect of the processing of personal data for personal or household purposes. I beg to move that clause 33 stand part of the Bill, Mr Speaker.

The Speaker: Hon. member for Malew and Santon.

Mr Gelling: I beg to second, Mr Speaker.

The Speaker: Hon. members, the motion before the House is that clause 33 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clause 34 and schedule 7, hon. member.

Mr Bell: Clause 34 introduces schedule 7, which gives a number of further exemptions from the subject information provisions: paragraph 1 - references given for employment or similar purposes are exempt from clause 5 only and not from the first principle; paragraph 2 - data relating to the armed forces, if relevant to their duties; paragraph 3 - data relating to judicial appointments and honours; paragraph 4 - also data relating to other crown appointments, if specified in an order made by the Council of Ministers; paragraph 5 - forecasting or planning in connection with business management; paragraph 6 - financial information which is either price-sensitive or might have serious economic or financial affects; paragraph 7 - information relating to negotiations with the data subject; paragraph 8 - examination marks; paragraph 9 - personal data in examination scripts; paragraph 10 - personal data subject to legal professional privilege, that is advocate-client confidentiality; and paragraph 11 - personal data which would incriminate the person disclosing the data, except in relation to an offence under this Bill.

I beg to move, Mr Speaker, that clause 34 and schedule 7 stand part of the Bill.

The Speaker: Hon. member for Malew and Santon.

Mr Gelling: I beg to second, Mr Speaker.

The Speaker: Hon. members, the motion before the House is that clause 34 and schedule 7 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clause 35, sir.

Mr Bell: Clause 35 enables the Council of Ministers, by order, to make further exemptions from the subject information provisions and the non-disclosure provisions. Such orders are subject to Tynwald approval.

Sub-clause (1) enables the Council of Ministers, by order, to make further exemptions from the subject information provisions in relation to disclosures which are prohibited or restricted by statute, where it thinks that the prohibition or restriction is more important than subject information.

Sub-clause (2) enables the Council of Ministers, by order, to make further exemptions from the non-disclosure provisions.

Mr Speaker, I beg to move that clause 35 stand part of the Bill.

The Speaker: Hon. member for Malew and Santon.

Mr Gelling: I beg to second, Mr Speaker.

The Speaker: Hon. members, the motion before the House is that clause 35 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it.

Hon. members, we will now adjourn until 2.30 in the afternoon.

The House adjourned at 12.59 p.m. and resumed its sitting at 2.30 p.m.

Data Protection Bill — Consideration of Clauses Concluded

The Speaker: Now, we continue with our consideration of the Data Protection Bill 2002, and I call on the hon. member for Ramsey, Mr Bell, to take clause 36, please.

Mr Bell: Mr Speaker, clause 36 gives the supervisor power to serve an enforcement notice on a data controller, requiring him to take specified steps to comply with the data protection principles.

Sub-clause (1) gives the supervisor, if he is satisfied that the data controller is contravening one or more of the principles, power to serve an enforcement notice on him, requiring him: (a) to take specified steps within a specified time, or to stop taking specified steps after a specified time; or (b) to stop processing personal data or specified classes of personal data, or to stop processing them for a specified purpose or in a specified way, after a specified time.

Sub-clause (2) requires the supervisor to take into account, before serving an enforcement notice, whether the alleged contravention has caused, or will cause, damage or distress.

Sub-clause (3) deals with the case where the enforcement notice requires the rectification, blocking, erasure or destruction of inaccurate data. It can also cover data containing an expression of opinion based on inaccurate data.

Sub-clause (4) deals with the case where the inaccurate data accurately records information supplied to the data controller. The notice can either: (a) require rectification; or (b) require compliance with schedule 1 paragraph 15 and include a statement of the true facts.

Sub-clause (5) enables an enforcement notice under sub-clause (3) or (4) to order the data controller to notify third parties to whom the data has been disclosed, if this is reasonably practicable.

Sub-clause (6) requires an enforcement notice to specify the data protection principle alleged to have been breached and include details of the right of appeal under clause 44.

Sub-clause (7) requires the time for compliance specified under sub-clause (2) to be not less than the appeal period, and if an appeal is lodged, it need not be complied with until the appeal is determined or withdrawn.

Sub-clause (8) enables the supervisor, in special cases, to require urgent compliance with the notice, and in that case the time cannot be less than seven days, but the notice must contain a statement of reasons. An appeal to the tribunal lies against this statement.

Sub-clause (9) enables notification regulations to provide for the effect of an enforcement notice on a registered entry under clause 16.

Sub-clause (10) draws attention to the restrictions in clause 42(1) on the supervisor's enforcement powers in relation to processing for journalistic purposes or for purposes of literary or artistic expression.

Mr Speaker, I beg to move that clause 36 stand part of the Bill.

The Speaker: Hon. member for Malew and Santon.

Mr Gelling: I beg to second, Mr Speaker.

The Speaker: Hon. members, the motion before the House is that clause 36 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clause 37. Hon. member for Ramsey.

Mr Bell: This clause enables the supervisor to cancel an enforcement notice and entitles a data controller to request cancellation on the grounds of a change of circumstances.

Sub-clause (1) enables the supervisor to cancel or vary an enforcement notice if he thinks it need not be complied with or need not be complied with in full in order to secure compliance with the principles.

Sub-clause (2) entitles a data controller to request cancellation or variation of an enforcement notice on the grounds of a change of circumstances. An appeal to the tribunal lies against its refusal.

Mr Speaker, I beg to move that clause 37 stand part of the Bill.

The Speaker: Hon. member for Malew and Santon.

Mr Gelling: I beg to second, Mr Speaker.

The Speaker: Hon. members, the motion before the House is that clause 37 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clause 38, hon. member.

Mr Bell: This clause requires the supervisor to carry out an assessment of any data processing at the request of any person affected.

Sub-clause (1) entitles any person who thinks he is affected by any data processing to ask the supervisor to carry out an assessment to determine whether the processing is being carried out in accordance with the Bill.

Sub-clause (2) requires the supervisor, on a request under sub-clause (1), to carry out an assessment of the processing, provided he can identify the person making the request and the processing. How the assessment is to be carried out is up to the supervisor.

Sub-clause (3) sets out the factors the supervisor is to take into account in deciding how to carry out an assessment: (a) how substantial the basis of the request is; (b) any delay in making the request; and (c) whether the person making it could make an application to the court under clause 5(9).

Sub-clause (4) requires the supervisor to notify the person making a request under sub-clause (1) whether he has made an assessment and, if appropriate, his conclusions.

Mr Speaker, I beg to move that clause 38 stand part of the Bill.

The Speaker: Hon. member for Malew and Santon.

Mr Gelling: I beg to second, Mr Speaker.

The Speaker: Hon. members, the motion before us is that clause 38 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Hon. member for Ramsey, if you will take clauses 39 and 40, please.

Mr Bell: Clause 39, Mr Speaker, enables the supervisor to serve an information notice on a data controller, requiring information about data processing.

Sub-clause (1) enables the supervisor to serve an information notice on a data controller, requiring information about data processing within a specified time, either in order to carry out an assessment under clause 38 or, independently, in order to ensure compliance with the principles.

Sub-clause (2) requires the notice to state that it is made either following a request under clause 38 or independently, in that case with reasons for thinking the information relevant.

Sub-clause (3) requires the notice to include details of the right of appeal under clause 44.

Sub-clause (4) requires the time for compliance specified under sub-clause (1) to be not less than the appeal period, and if an appeal is lodged, it need not be complied with until the appeal is determined or withdrawn.

Sub-clause (5) enables the supervisor, in special cases, to require urgent compliance with the notice, and in that case the time cannot be less than seven days, but the notice must contain a statement of reason. An appeal to the tribunal lies against this statement.

Sub-clause (6) exempts the data controller from the requirements of the notice so far as they relate to matters subject to legal professional privilege, that is advocate-client confidentiality arising under the Bill.

Sub-clause (7) provides that sub-clause (6) extends to a client's representative, that is the director of a company, who deals with the advocate.

Sub-clause (8) enables the supervisor to cancel an information notice.

Sub-clause (9) draws attention to the restrictions in clause 42(1) on the supervisor's enforcement powers in relation to processing for journalistic purposes and for purposes of literary or artistic expression.

Clause 40 provides for the supervisor, in certain circumstances, to serve a notice in order to ascertain whether the exemption for journalistic purposes or for purposes of literary or artistic expression applies.

Sub-clause (1) enables the supervisor to serve a special information notice on a data controller, requesting information within a specified time for the purpose specified in sub-clause (2), in two cases: (1) where a request for an assessment has been made under clause 38; or (2) where there has been a stay of proceedings under clause 28(4) and the supervisor thinks that the data either: (1) is not being processed for journalistic purposes or for purposes of literary or artistic expression; or (2) is not being processed with a view to the publication, by anyone that is, of material which has not already been published by the data controller.

Sub-clause (2) specifies the purposes for which a notice can be served to ascertain whether the exemption for journalistic purposes or for purposes of literary or artistic expression

applies, that is whether: (a) the data is being processed only for those purposes; or (b) it is being processed with a view to the publication of material which has not already been published by the data controller.

Sub-clause (3) requires the notice either to say that the supervisor has received a request under clause 38 or to give his grounds for suspecting that the data is not being processed as mentioned in sub-clause (1)(b).

Sub-clause (4) requires a notice to include details of the right of appeal.

Sub-clause (5) requires the time for compliance specified under sub-clause (1) to be not less than the appeal period, and if an appeal is lodged, it need not be complied with until the appeal is determined or withdrawn.

Sub-clause (6) enables the supervisor, in special cases, to require urgent compliance with the notice, and in that case the time cannot be less than seven days, but the notice must contain a statement of reasons. Again, an appeal to the tribunal lies against this statement.

Sub-clause (7) exempts the data controller from the requirements of the notice so far as they relate to matters subject to legal professional privilege.

Sub-clause (8) provides that sub-clause (7) extends to a client's representative, for example the director of a company, who deals with the advocate.

Sub-clause (9) enables the supervisor to cancel an information notice.

Mr Speaker, I beg to move that clauses 39 and 40 stand part of the Bill.

The Speaker: Hon. member for Malew and Santon.

Mr Gelling: I beg to second, Mr Speaker.

The Speaker: Hon. members, the motion before us is that clauses 39 and 40 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clauses 41, 42 and 43, hon. member.

Mr Bell: Clause 41 enables the supervisor to make a determination that personal data are not being processed solely for journalistic purposes and for purposes of literary or artistic expression. This is normally a precondition to enforcement action in respect of processing for those purposes.

Sub-clause (1) enables the supervisor to make a determination, in writing, that data either: (1) is not being processed for journalistic purposes or for purposes of literary or artistic expression; or (2) is not being processed with a view to the publication of material which has not already been published by the data controller. An appeal to the tribunal lies against this determination.

Sub-clause (2) requires notice of the determination under sub-clause (1) to be served on the data controller, containing notice of the right of appeal under clause 44.

Sub-clause (3) provides that the determination does not come into force until the end of the appeal period, and if an appeal is lodged, it does not come into force until the appeal is determined or withdrawn.

Clause 42 restricts the supervisor's power to serve an enforcement order or information notice where data is processed for journalistic purposes or for purposes of literary or artistic expression to cases where a determination has been made under clause 41 or, in the case of an enforcement notice, the high court has given leave.

Sub-clause (1) provides that the supervisor cannot serve an enforcement notice under clause 36 where data is processed for journalistic purposes or for purposes of literary or artistic

expression unless: (a) a determination has been made under clause 41; or (b) the high court has given leave under sub-clause (2).

Sub-clause (2) provides that the High Court is not to give leave under sub-clause (1)(b) unless it is satisfied: (a) that the supervisor has reason to suspect that there is a contravention of substantial public importance; and (b) that the data controller has been notified of the application for leave, unless the case is urgent.

Sub-clause (3) provides that the supervisor cannot serve an information notice under clause 39 where data is processed for journalistic purposes or for purposes of literary or artistic expression unless a determination has been made under clause 41.

Clause 43 makes it an offence not to comply with a notice under part 4 or to give false information in response to such a notice.

Sub-clause (1) makes non-compliance with an enforcement notice, an information notice or a special information notice an offence. This carries a maximum fine of £5,000 on summary conviction, or an unlimited fine at general gaol.

Sub-clause (2) makes a false statement in response to an information notice or a special information notice an offence. The penalty is the same as under sub-clause (1).

Sub-clause (3) gives a defence of due diligence to a charge under sub-clause (1).

Mr Speaker, I beg to move that clauses 41, 42 and 43 stand part of the Bill.

The Speaker: Hon. member for Malew and Santon.

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

The Speaker: Hon. members, the motion before the House is that clauses 41, 42 and 43 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clauses 44 and 45, hon. member.

Mr Bell: Clause 44 gives a right of appeal to the tribunal against an enforcement notice, an information notice or a special information notice.

Sub-clause (1) entitles a person on whom an enforcement notice, an information notice or a special information notice has been served to appeal to the tribunal.

Sub-clause (2) entitles a person who asks for cancellation or variation of an enforcement notice under clause 37(2) on the grounds of a change in circumstances, and is refused, to appeal to the tribunal.

Sub-clause (3) entitles a person on whom a notice is served, with a statement of reasons for it to come into force before expiry of the appeal period, to appeal to the tribunal.

Sub-clause (4) entitles a person on whom a determination under clause 41, relating to the special purposes is served to appeal to the tribunal.

Sub-clause (5) applies schedule 6 to appeals to the tribunal under sub-clauses (1) to (4).

Clause 45 sets out the powers of the tribunal on an appeal under clause 44.

Sub-clause (1) requires the tribunal, if it finds that an enforcement notice, an information notice or a special information notice was unlawful or involved a wrong exercise of the supervisor's discretion, to allow the appeal or substitute another notice or decision; otherwise it is to dismiss the appeal.

Sub-clause (2) makes it clear that the tribunal can review any finding of fact on which any decision of the supervisor was based.

Sub-clause (3) enables the tribunal to cancel or vary an enforcement notice where an appeal is brought under clause 44(2) on the grounds of a change of circumstances.

Sub-clause (4) enables the tribunal, on an appeal under clause 44(3) against a notice coming into force before expiry of the appeal period, to quash or limit the statement and amend the notice accordingly.

Sub-clause (5) enables the tribunal, on an appeal under clause 44(4), to cancel a determination under clause 41 relating to the special purposes.

Sub-clause (6) gives a right of appeal to the High Court, on a point of law only, against the decision of the tribunal.

Mr Speaker, I beg to move that clauses 44 and 45 stand part of the Bill.

The Speaker: Hon. member for Malew and Santon.

Mr Gelling: I beg to second, Mr Speaker.

The Speaker: Hon. members, the motion before the House is that clauses 44 and 45 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clause 46, hon. member.

Mr Bell: Clause 46, Mr Speaker, introduces schedule 8, which gives the supervisor and his staff powers of entry and inspection.

A deemster can issue a warrant to enter and search for evidence of the commission of an offence under the Bill. Notice of an application for a warrant must be given to the data controller unless there is good reason not to do so. Two certified copies must be issued with any warrant.

A person exercising a warrant has to use reasonable force. A warrant must be executed at a reasonable hour unless this would defeat the object. The occupier must be shown the warrant and supplied with a copy, or else a copy must be posted on the premises. A receipt must be given for anything seized, and a copy must be given if requested.

Matters exempt on grounds of national security may not be inspected or seized. Matters subject to legal professional privilege may not be inspected or seized. If any material is exempt, a person may supply a copy of so much of it as is not exempt.

A warrant must be returned after execution or if it is not executed within the time allowed.

Obstruction of a person authorised to enter and search is an offence, with a maximum penalty of £5,000 on summary conviction.

The powers extend to vehicles, ships and aircraft, as well as premises.

Mr Speaker, I beg to move that clause 46 and schedule 8 stand part of the Bill.

The Speaker: Hon. member for Malew and Santon.

Mr Gelling: I beg to second, Mr Speaker.

The Speaker: Are you moving your amendment?

Mr Gelling: Was that 46? *(Interjection by Mrs Crowe)*

Mr Shimmin: I beg to second the original motion, sir.

The Speaker: I take the seconding from the hon. member for Douglas West, Mr Shimmin. I call on the hon. member for Malew and Santon.

Mr Gelling: Sorry, Mr Speaker. *(Laughter)* We were moving on quite quickly. I wish to propose the amendment that is standing in my name to clause 46, schedule 8, page 79, paragraph 1(3):

After 'officers or staff' insert ', or any other person authorised for the purpose by the supervisor,'.

The reason for this amendment is the fact that it only gives the officers and staff permission, whereas it could be a very technical person that is required to go in there, so this would allow the supervisor to appoint someone with maybe IT experience or some specialised experience to accompany them and to go in as an authorised person. I beg to move, sir.

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

Mr Braidwood: I beg to second, Mr Speaker.

The Speaker: Hon. member for Ramsey, Mr Bell, do you wish to reply?

Mr Bell: No, thank you, Mr Speaker.

The Speaker: Hon. members, we have an amendment before the House in the name of the hon. member for Malew and Santon, Mr Gelling, which is in relation to clause 46, schedule 8. All those in favour of the amendment say aye; against, no. The ayes have it. The ayes have it.

Can I now put the clause as amended. All those in favour say aye; against, no. The ayes have it. The ayes have it. Right, hon. members, we move on with the hon. member to clause 47, please, of the Bill.

Mr Bell: Clause 47 sets out the general duties of the Isle of Man Data Protection Supervisor to encourage good practice, to issue or approve codes of practice, and to give other forms of advice and guidance.

Sub-clause (1) requires the supervisor to promote good practice and to use his powers to encourage data controllers to comply with the Bill.

Sub-clause (2) requires the supervisor to disseminate information about the Bill and good practice, and to give advice to any person, data subjects as well as data controllers.

Sub-clause (3) requires the supervisor to publish codes of practice, either when directed to do so by the Council of Ministers or of his own motion.

Sub-clause (4) also requires the supervisor to encourage trade associations or similar bodies to issue their own codes of practice and to give an opinion on any draft of such code.

Sub-clause (5) requires a direction under sub-clause (3)(a) to specify the data, processing or persons to which a proposed code is to relate.

Sub-clause (6) requires the supervisor to issue other forms of advice or guidance for data controllers and data subjects.

Sub-clause (7) enables the supervisor to advise on processing, with the data controller's consent. This enables him to provide consultancy services for data controllers.

Sub-clause (8) defines terms used in this clause.

Mr Speaker, I beg to move that clause 47 stand part of the Bill.

The Speaker: Hon. member for Malew and Santon.

Mr Gelling: I beg to second, Mr Speaker.

The Speaker: Hon. member for Douglas East, Mrs Cannell.

Mrs Cannell: Thank you, Mr Speaker. I would just like to seek a bit of clarification from the hon. mover here. There are lots of references to 'he' within this particular clause: 'he'; 'if he thinks fit'; 'if he shall'; 'he'; and so forth. My question is this: if the Bill was reading, for instance,

that 'she believed this' or that 'she feels that', would the interpretation in law be the same as for 'he'?

The Speaker: Hon. member, for Ramsey, Mr Bell, to reply.

Mr Bell: I would have thought that the hon. member knows full well, Mr Speaker, that whenever 'she' speaks we always take notice, and (*Laughter*) that will have the same status (**A Member:** Hear, hear.) as 'he' saying the same thing. So I can assure the hon. member that is. . .

The Speaker: Hon. members, the motion before the House is that clause 47 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Hon. member, go on to clause 48, please.

Mr Bell: Clause 48 requires the supervisor to make an annual report to Tynwald and enables him to lay other reports and codes of practice before Tynwald: sub-clause (1) requires the supervisor to make an annual report to Tynwald; sub-clause (2) allows the supervisor to lay other reports before Tynwald; and sub-clause (3) requires the supervisor to lay codes of practice before Tynwald unless included in a report laid under sub-clauses (1) or (2).

Mr Speaker, I beg to move that clause 48 stand part of the Bill.

The Speaker: Hon. member for Malew and Santon.

Mr Gelling: I beg to second, Mr Speaker.

The Speaker: Hon. members, the motion before the House is that clause 48 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clause 49, sir.

Mr Bell: Clause 49 provides for the supervisor to perform functions under the Council of Europe Convention on Data Protection, to which the Isle of Man is a party.

Sub-clause (1) provides the supervisor to continue to be the designated authority under the convention.

Sub-clause (2) enables the Council of Ministers to make an order specifying the functions of the supervisor as designated authority under the convention. An order requires Tynwald approval.

Sub-clause (3) enables the Council of Ministers to make an order conferring functions on the supervisor in connection with the exchange of information with supervisory authorities outside the Island and enforcement against data controllers who are outside the scope of clause 5. This order requires Tynwald approval.

Sub-clause (4) enables the Council of Ministers to make an order conferring functions on the supervisor in connection with any obligations of the UK under any international agreement which extends to the Isle of Man. An order requires Tynwald approval.

Sub-clause (5) defines 'data protection functions' in sub-clauses (3) and (4).

Mr Speaker, I beg to move that clause 49 stand part of the Bill.

The Speaker: Hon. member for Malew and Santon.

Mr Gelling: I beg to second, Mr Speaker.

The Speaker: Hon. members, the motion before the House is that clause 49 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clauses 50 and 51, hon. member.

Mr Bell: Clause 50 makes the obtaining, disclosing or selling of personal data, without the consent of the data controller, an offence.

Sub-clause (1) prohibits the obtaining or disclosing of personal data or information contained in it, or procuring its disclosure to someone else, without the consent of the data controller.

Sub-clause (2) gives a defence where it is shown that the obtaining or disclosure was: (a) to prevent or detect crime, or was authorised or required by law or a court order; (b) made in the reasonable belief that it was authorised by law; and (c) made in the reasonable belief that the data controller would have consented if he had known of it; or (d) in the public interest.

Sub-clause (3) makes contravention of sub-clause (1) an offence, which carries a maximum fine of £5,000 on summary conviction, or an unlimited fine at general gaol.

Sub-clause (4) makes selling personal data obtained in breach of sub-clause (1) an offence, carrying the same penalty.

Sub-clause (5) makes offering personal data for sale, if it is then all subsequently obtained in breach of sub-clause (1), an offence, carrying the same penalty.

Sub-clause (6) treats an advertisement as an offer for sale for the purposes of sub-clause (5). In contract law, an advertisement is not technically an offer for sale but an invitation to make an offer.

Sub-clause (7) excludes the definitions of obtaining and disclosing in clause 1(2) for the purposes of this clause, and instead provides that personal data covers information extracted from personal data.

Sub-clause (8) excludes all data which is exempt from control on national security grounds. Sorry, did you say 51 as well, Mr Speaker?

The Speaker: Yes.

Mr Bell: Clause 51 makes it illegal to demand information about convictions or cautions obtained under a data subject's right of access in connection with the data subject's recruitment for employment or the provision of goods or services.

Sub-clause (1) prohibits any requirement that a record of convictions or similar record of a candidate for employment, or for a contract of services, be obtained or produced, whether the requirement is made of the candidate or a third party.

Sub-clause (2) imposes a similar prohibition in the case of a person to be supplied with any goods, facilities or services.

Sub-clause (3) excludes the prohibitions in sub-clauses (1) and (2) where: (a) the requirement is imposed or authorised by law or a court order; or (b) if it is shown to be in the public interest.

Sub-clause (4) makes contravention of (1) or (2) an offence, which carries a maximum fine of £5,000 on summary conviction, or an unlimited fine at general gaol.

Sub-clause (5) defines 'relevant records' in sub-clauses (1) and (2): it covers criminal records, prison records and social security contribution records.

Sub-clause (6) explains the meaning of 'caution' and 'conviction' in sub-clause (5).

Sub-clause (7) enables the Council of Ministers, by order, to amend sub-clauses (5) and (6) to ensure that the prohibitions in sub-clauses (1) and (2) are not bypassed by requirements for other types of record. An order requires Tynwald approval.

Sub-clause (8) makes it clear that a nil return by a data controller as to any processing relating to a person counts as a record of information relating to that person.

Sub-clause (9) defines 'employee' and 'employment' for the purposes of sub-clauses (1)(a) and (b) as including apprenticeship in any office, such as a civil servant or police constable.

I beg to move that clause 51 be part of the Bill.

The Speaker: Hon. member for Malew and Santon.

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

The Speaker: Hon. members, the motion before the House is that clauses 50 and 51 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clause 52.

Mr Bell: Clause 52 makes void any contract term which requires production of a data subject's health record which has been obtained under the data subject's right of access.

Sub-clause (1) makes void any term of a contract, i.e. a contract of employment, which requires a person to supply a health record, or a copy of or extract from a health record, to another person.

Sub-clause (2) defines the records to which sub-clause (1) relates: they are health records obtained by a data subject under the right of access under clause 5 above.

Mr Speaker, I beg to move that clause 52 stand part of the Bill.

The Speaker: Hon. member for Malew and Santon.

Mr Gelling: I beg to second, Mr Speaker.

The Speaker: Hon. members, the motion before the House is that clause 52 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clauses 53 and 54, hon. member.

Mr Bell: Clause 53 disapplies any statutory provision, that is the Official Secrets Act, and any common law obligation of confidentiality which might prevent a person supplying information to the supervisor or the tribunal for the performance of their duties.

Clause 54 imposes a duty of confidentiality on the supervisor and his staff and agents, and any former supervisor, staff or agents, in relation to information about individuals supplied to them.

Sub-clause (1) prohibits any unauthorised disclosure by the supervisor and his staff and agents of information obtained under the Bill and relating to an identifiable individual or business which is not already in the public domain.

Sub-clause (2) defines authorised disclosure for this purpose. It must be: (a) made with the individual's or business's consent; (b) provided with a view to being made public; (c) for the purposes of the exercise of functions under the Bill; (d) for the purpose of criminal or civil proceedings; or (e) otherwise in the public interest, having regard to particular rights or interests.

Sub-clause (3) makes contravention of sub-clause (1) an offence, which carries a maximum fine of £5,000 on summary conviction, or an unlimited fine at general gaol.

Mr Speaker, I beg to move that clauses 53 and 54 stand part of the Bill.

The Speaker: Hon. member for Malew and Santon.

Mr Gelling: I beg to second, Mr Speaker.

The Speaker: Hon. members, the motion before the House is that clauses 53 and 54 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clauses 55 and 56, hon. member.

Mr Bell: Clause 55 imposes restrictions on prosecutions and sets the penalties for offences under the Bill.

Sub-clause (1) precludes private prosecutions for offences under the Bill.

Sub-clause (2) provides that all offences under the Bill may be prosecuted either way: on conviction by a court of summary jurisdiction, they carry a maximum fine of £5,000; on conviction at general gaol, an unlimited fine.

Sub-clause (3) makes an exception: obstruction of a person exercising a right of entry and inspection under schedule 8 may only be prosecuted summarily and carries a maximum fine of £5,000.

Sub-clause (4) enables the court, on conviction for certain offences, to order forfeiture or destruction of any document or record containing personal data, and sub-clause (5) prevents an order from being made under sub-clause (4) in relation to property of someone other than the defendant, unless he is given a chance to appear and object.

Clause 56 is a standard form provision, under which the directors or officials of a body corporate may also be prosecuted for offences committed by the body.

I beg to move clauses 55 and 56, Mr Speaker.

The Speaker: Hon. member for Malew and Santon.

Mr Gelling: I beg to second clauses 55 and 56, Mr Speaker.

The Speaker: Hon. members, the motion before the House is that clauses 55 and 56 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Hon. member, we move on to clause 57 and schedule 9, please.

Mr Bell: Clause 57 introduces schedule 9, which amends the Jury Act 1980 and the Registration of Electors Act 1984 so as to restrict the supply of information contained in jury lists and registers of electors where the individuals concerned object to such supply.

Paragraph 1 substitutes the Jury Act of 1980 section 9, which at present requires jury lists to be open for inspection, giving the Council of Ministers a new power to make regulations requiring the lists to be open for inspection and restricting the copying, disclosure and use of information on them by persons inspecting them and by coroners and others. The regulations may create summary offences and will require Tynwald approval.

Paragraph 2(1) substitutes the Registration of Electors Act of 1984 section 6, making similar provision with respect to lists of electors. Paragraph 2(2) substitutes section 14, making similar provision for the final registers of electors, but also providing for copies of an edited register to be made available, omitting persons who have objected to their names being supplied to anyone who asks, and paragraph 2(3) makes a consequent amendment.

I beg to move that clause 57 and schedule 9 stand part of the Bill.

The Speaker: Hon. member for Malew and Santon.

Mr Gelling: I beg to second, Mr Speaker.

The Speaker: Hon. members, the motion before the House is that clause 57 and schedule 9 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clause 58, sir.

Mr Bell: Clause 58 provides for the application of the Bill to government and the police.

Sub-clause (1) provides that departments, statutory boards and offices of government are subject to the Bill. Civil servants are treated as employees of the department or board they work for, or otherwise of the Treasury.

Sub-clause (2) provides that a police officer is to be treated as an employee of the Chief Constable.

I beg to move that clause 58 stand part of the Bill.

The Speaker: Hon. member for Malew and Santon.

Mr Gelling: I beg to second, Mr Speaker.

The Speaker: Hon. members, the motion before the House is that clause 58 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clause 59, sir.

Mr Bell: Clause 59 provides for the application of the Bill to the processing of data on behalf of the legislature: sub-clause (1) provides that the Bill applies to the processing of data on behalf of Tynwald or the branches; sub-clause (2) provides that the appropriate officer of Tynwald or the branches is treated as the data controller in respect of such data.

I beg to move that clause 59 stand part of the Bill.

The Speaker: Hon. member for Malew and Santon.

Mr Gelling: I beg to second, Mr Speaker.

The Speaker: Hon. members, the motion before the House is that clause 59 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clause 60, hon. member.

Mr Bell: Clause 60 provides for the service of notices by the supervisor: sub-clause (1) provides for the service of notices on individuals or companies by the supervisor; sub-clause (2) defines terms used in sub-clause (1); and sub-clause (3) saves any other valid method of service.

I beg to move that clause 60 stand part of the Bill.

The Speaker: Hon. member for Malew and Santon.

Mr Gelling: I beg to second.

The Speaker: Hon. members, the motion before the House is that clause 60 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clause 61, hon. member.

Mr Bell: Clause 61 provides for Tynwald approval of subordinate legislation: sub-clause (1) requires Tynwald approval to all subordinate legislation under the Bill, except an appointed day order under clause 67(2); sub-clause (2) requires consultation with the supervisor before any subordinate legislation under the Bill is made, again except an appointed day order under clause 67(2).

I beg to move that clause 61 stand part of the Bill.

The Speaker: Hon. member for Malew and Santon.

Mr Gelling: I beg to second, Mr Speaker.

The Speaker: Hon. member for Douglas East, Mrs Cannell.

Mrs Cannell: Thank you, Mr Speaker. This is the relevant clause that you made reference to earlier on in proceedings, where all the orders, rules and regulations made by the Council of

Ministers or a department are subject to approval by Tynwald, save for as specified in clause 67(2). Looking at 67(2), it says, 'This Act may be cited as the Data Protection Act 2002. This Act, except the following provisions' - and there is (a) to (e) - 'shall come into operation on such day or days as the Council of Ministers may by order appoint.' I just wonder why there are exceptions to it coming in other than by the appointment of order along with the rest of the provisions laid out in the Bill. Why is there a separation which is referred to in clause 61? Just a bit of clarification and guidance there, Mr Speaker.

The Speaker: Hon. member for Ramsey, Mr Bell, to reply.

Mr Bell: I think it is because, Mr Speaker, most of this Bill will not come in automatically on the day that this Bill is passed. The various parts of the new schedules will need appointed day orders, but these five items which are referred to in clause 67 are the ones that will come in automatically anyway. Subordinate legislation as well will need Tynwald approval. So these items, I think, will come in automatically.

The Speaker: Right, hon. members, the motion before the House is that clause 61 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clause 62, hon. member.

Mr Bell: Clause 62 defines various terms used in the Bill: sub-clause (1) defines terms as listed; sub-clause (2) explains that inaccurate data means data incorrect or misleading as to the facts; and sub-clause (3) allows a court or tribunal to have regard to the Data Protection Convention or the directive in interpreting the Bill.

I beg to move that clause 62 stand part of the Bill, Mr Speaker.

The Speaker: Hon. member for Malew and Santon.

Mr Gelling: I beg to second, Mr Speaker.

The Speaker: Hon. members, the motion before the House is that clause 62 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clause 63, hon. member for Ramsey.

Mr Bell: Clause 63 provides a glossary of terms used in the Bill, indicating where an appropriate definition can be found. I beg to move clause 63.

The Speaker: Hon. member for Malew and Santon.

Mr Gelling: I beg to second, Mr Speaker.

The Speaker: Hon. members, the motion before the House is that clause 63 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clause 64, hon. member.

Mr Bell: Clause 64 introduces schedule 10, which contains transitional exemptions and modifications, some indefinite and some operating up to 23rd October 2007, which is the 10th anniversary of the coming into force of the directive. They correspond to the exemptions provided for within the United Kingdom Act as the second transitional period.

Sub-clause (1) introduces schedule 10, part 1, which contains temporary exemptions operating from the date part 2 of the Bill, which contains the main controls on processing, comes into force, mainly until 23rd October 2007.

Paragraph 1 defines terms used in the schedule.

Paragraph 2 exempts manual data already in existence, and accessible records, from: the first principle, which is personal data being processed fairly and lawfully, except as explained in schedule 1 paragraph 10; the second principle; the third principle; the fourth principle; the fifth

principle; and clause 12(1) to (3), which enables a court order to rectify, block, erase or destroy data.

Paragraph 3 extends indefinitely the exemption under paragraph 2 in the case of existing manual records which are processed only for the purpose of historical research, subject to the conditions in clause 29: not to support decisions relating to individuals or so as to cause distress or damage to a data subject.

Paragraph 4 provides limited but indefinite exemptions for automated data which are processed only for the purpose of historical research, subject to the conditions in clause 29. The processing is exempt from the rules in schedules 2 and 3, and the exemption under paragraph 2 applies, provided that the processing is not by reference to the data subject.

Paragraph 5 applies the same wide definition of processing for the purposes of historical research as applies to clause 29.

Paragraph 6 applies to processing which is designated under clause 19(1) as particularly dangerous for data subjects. Processing already under way is exempt from the power of the supervisor under clause 19 to require a preliminary assessment.

Sub-clause (2) introduces schedule 10, part 2, which contains temporary modifications of the Bill operating from the date part 2, of the Bill comes into force until 23rd October 2007.

Paragraph 7 includes a new clause 10(a) in the Bill, giving data subjects special temporary rights in relation to existing manual data. They can serve notice on the data controller, requiring him to rectify, block, erase or destroy inaccurate or incomplete data or to cease holding them in a way incompatible with legitimate purposes. If he fails, the High Court can order him to do so. Paragraph 8 excludes new clause 10(a) in the case of national security. Paragraph 9 excludes clause 10(a) in the case of data which must be made public.

Paragraph 10 extends the operation of the sixth principle, that is the rights of data subjects as explained by schedule 1 paragraph 16, to cover rights under clause 10(a).

Mr Speaker, I beg to move that clause 64 and schedule 10 stand part of the Bill.

The Speaker: Hon. member for Malew and Santon.

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

The Speaker: Hon. members, the motion before the House is that clause 64 and schedule 10 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Hon. member for Ramsey, we will take clauses 65 and 66 and the schedules.

Mr Bell: Clause 65, Mr Speaker, introduces schedule 11, which contains transitional provisions dealing with the changeover from the 1986 Act to this Bill.

Clause 66 introduces the amendments and repeals in schedules 12 and 13.

Sub-clause (1) introduces schedule 12, the amendments, which just substitute references in other legislation to the Bill, its provisions and the supervisor, for references to the 1986 Act, its provisions and the registrar.

Sub-clause (2) introduces schedule 13, which repeals the 1986 Act and provisions amending that Act, and also The Access to Health Records and Reports Act 1993, except so far as it relates to health records of deceased persons and health reports. It is superseded by clause 5 so far as it relates to health records of living persons.

So, Mr Speaker, I beg to move clauses 65 and 66 and schedules 11, 12 and 13.

The Speaker: Hon. member for Malew and Santon.

Mr Gelling: I beg to second, Mr Speaker.

The Speaker: Hon. member for Douglas East, Mrs Cannell.

Mrs Cannell: Thank you, Mr Speaker. Just briefly, looking at schedule 11: sub-clause (1) deals with the old principles of the 1986 Act - a 16-year-old Act - and the new principles within this new Bill that we are proposing to be enacted. I would just like to make the point of clarification for the benefit of the hon. mover that, in terms of gender, which was the question I asked of him before, 'Rules as to gender and number: words in an enactment importing persons or male persons shall include male and female persons; words in the singular shall include the plural, and words in the plural shall include the singular.' In other words, if this Bill had been written in the way in which I asked before, using the terminology 'she' as opposed to 'he', it would not be recognised as a piece of legislation to be applied in the Isle of Man court, and that was the question that I asked. So 'he' does, in fact, mean 'she', but 'she' on her own has no substance in terms of the legislation. I just wish to make the point, sir. Thank you.

The Speaker: Hon. member for Ramsey, Mr Bell, to reply.

Mr Bell: I am suitably chastised, Mr Speaker. *(Laughter)*

The Speaker: Hon. members, the motion before the House is that clauses 65 and 66 and schedules 11, 12 and 13 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clause 67, hon. member.

Mr Bell: I am sure, Mr Speaker, that hon. members will be very disappointed to know that this is the last clause of this Bill, but nevertheless this clause gives the Bill its short title and provides for its commencement, principally on one or more appointed days.

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

Sub-clause (2) provides for the Bill to come into force on one or more appointed days to be fixed by order of the Council of Ministers. This does not apply to the provisions listed in paragraphs (a) to (e), which will come into force on the passing of the Bill.

Mr Speaker, it gives me extremely great pleasure to move that clause 67 stand part of the Bill.

The Speaker: Hon. member for Malew and Santon.

Mr Gelling: And I would wish to second the last clause, Mr Speaker. *(Interjections and laughter)*

The Speaker: Hon. members, the motion before the House is that clause 67 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it.

Now hon. members, that concludes the business before the House today, and the House will now stand adjourned until Tuesday, 21st May at 10.30 a.m. in Tynwald Court. Thank you, hon. members.

The House adjourned at 3.20 p.m.