

REPORT OF PROCEEDINGS OF THE LEGISLATIVE COUNCIL

**Douglas, Tuesday, 6th May 2003
at 10.30 a.m.**

Present:

The President (the Hon. N Q Cringle), the Attorney-General (Mr W J H Corlett QC), Hon. C M Christian, Hon. P M Crowe, Mr D F K Delaney, Mr D J Gelling CBE, Mr E G Lowey, Mr L I Singer and Mr G H Waft, with Mrs M Cullen, Clerk of the Council.

The Chaplain of the House of Keys took the prayers.

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**Ramsey Cottage Hospital –
Nurse Practitioners – Extra Training –
Question by Mr Singer**

Question 1. The hon. member (Mr Singer) to ask the hon. Minister for Health and Social Security (Mrs Christian):

How much extra training was given to the 'nurse practitioners' who are on duty at the emergency department Monday to Friday from 6 p.m. to 10 p.m. at Ramsey Cottage Hospital when there is no doctor cover?

The President: Hon. members, continuing with our order paper, then, we deal with the questions side of it. I call on the hon. member Mr Singer.

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

The President: The Minister for Health and Social Security, Mrs Christian, to reply.

Mrs Christian: Thank you, Mr President. All nurse practitioners working in the Minor Injuries Unit at Ramsey and District Cottage Hospital have undergone specific training to build on their existing qualifications and experience. The training course was a combination of practical and theoretical input. The practical input included: nurse-requested X-rays; clinical examination, covering a range of potential conditions; recognition of an ill and injured child; bone and soft tissue injuries; injuries to the eye; and ENT problems. Theoretical aspects included: legal and professional issues; reflective practice; theories of judgement; and decision making. The amount of training depended on their experience and their qualifications before they started.

The President: Mr Singer.

Mr Singer: Thank you. Could the minister be a little bit more specific as to the amount of training that they actually had? As the minister said, it is according to their experience, but perhaps the minister could also tell me: have the nurses you are now defining as 'nurse practitioners' at Ramsey Cottage Hospital undergone the appropriate educational preparation for the rôle as recommended by the Royal College of Nursing and have they therefore received Royal College of Nursing accreditation?

The President: Minister.

Mrs Christian: Mr President, the training commenced in October 2002 and culminated in March 2003. However, they will have ongoing training and they are to receive further lectures on pharmacology, training in emergency obstetrics and a review session on clinical examination. With regard to the

certification, I cannot answer that point; I have not been given that information.

The President: Mr Singer.

Mr Singer: Perhaps the minister would like to get that answer for me. So, if the minister says they started training the nurses up to nurse practitioners in Ramsey Cottage Hospital in October 2002, was that done because the department at that time knew that the doctors were going to withdraw their services and therefore the nurse practitioners would be left solely in charge of the hospital at the hours that we now know?

Mrs Christian: No, it was not done because of any intimation that the doctors were withdrawing their services. As hon. members will be aware, we have recently had a new NHS Bill in which we have indicated that the way forward will include much more often the use of nurse practitioners and the further training of nurses. It was felt at Ramsey, given our health and safety requirements and our constant risk assessments which are going on, that it was necessary to ensure that the skill levels in the Minor Injuries Unit were up to a nurse practitioner level, and that has been done, irrespective of whether there is medical cover available or not.

Mr Singer: Mr President, could I ask – ?

The President: Mr Singer.

Mr Singer: So have any of the nurse practitioners at Ramsey Cottage Hospital, nurse practitioners as defined by the Royal College of Nursing, received an acceptable nurse practitioner qualification from any of the 16 educational establishments which offer such courses? These are recommended by the Royal College of Nursing.

The President: Minister.

Mrs Christian: Mr President, I have just answered that point. With regard to the level of the training of the nurse practitioners, there has recently been a risk assessment of the skills of the nurse practitioners in respect of their work at Ramsey Cottage Hospital in the Minor Injuries Unit. That risk assessment has passed them with flying colours in respect of their skills and their ability to function in that area.

The President: Mr Lowey.

Mr Lowey: Could I ask the hon. minister: under the new Health Act which we have just recently passed, is it not a fact that the GPs have a different rôle because they are doing more minor surgery operations in their surgeries? And could the minister explain to me the difference between . . . If I go to Noble's Hospital, to the emergency out-patients, the first person I see is a nurse who will then decide whether I

need to see a doctor or not. So what is the difference really here, except that nurses would . . . ? If the nurse, I would assume, in Ramsey Cottage Hospital saw patients she thought deserved a doctor, she would recommend a doctor. I do not know.

The President: Mrs Christian.

Mrs Christian: Yes, can I respond to that? First of all, in respect of minor surgery, the GPs have always been able to do minor surgery. Perhaps in the Island they have not undertaken as much as they had the ability to do, and that is to be encouraged. The more the GPs can carry out minor surgery, the better.

With regard to the difference between A and E the hon. member indicates that if you go to Accident and Emergency at Noble's, you will first be seen by a nurse and then a doctor is available on hand. At Ramsey, prior to the Minor Injuries Unit having the nurse practitioners in place, they had to call the doctor. Irrespective if they were first seen by the nurses, they had to call the doctor for confirmation of the actions which they were to take. Under their nurse practitioner status, there are very clearly defined areas and protocols establishing those conditions under which the nurse practitioners can act of their own volition and decision.

The President: Mr Singer, I think a final supplementary,

Mr Singer: Thank you. The minister has not actually told me whether the nurses at Ramsey Cottage Hospital, who are termed now 'nurse practitioners', have actually been trained to the standards as defined by the Royal College of Nursing. Is the minister also aware that the Royal College of Nursing recommendations say that they should always be able to refer to a doctor swiftly? I should imagine that means being able to bring a doctor in if necessary, which is not possible at Ramsey at the moment. So, in an emergency, can she absolutely assure me that the nurses are not being put into an invidious position and that if they have not got a doctor there immediately and they make a wrong decision, they are not left without legal cover, thus losing their right to practise? Can she give me that absolute assurance, please?

The President: Mrs Christian.

Mrs Christian: Mr President, with regard to the situation of the nurses being able to access a doctor swiftly, the practice at Ramsey now, under the system we have introduced with the nurse-led Minor Injuries Unit and nurse practitioners, is that they can call the emergency service doctor, and they occasionally do that when they feel they need the confirmation of the steps that they are going to take. With regard to whether or not this meets the Royal College of Nursing requirements, I would suggest that it very much does. This is a practice now which has become commonplace in community hospitals in the United

Kingdom, where in many, many cases the practice is nurse-led. With regard to this situation, it is indeed now being introduced in Accident and Emergency areas in district general hospitals and may well see a change of practice in those areas or at least a development of parallel systems in those areas. There is no question at all that the nurses are covered by insurance in carrying out their work at the hospital. That is indeed why we ensure that appropriately trained nurses undertake this out-of-hours service, and we stop it at 10 o'clock because we do not have the cover beyond that time with sufficient numbers of qualified people to continue it. It would be unsafe to do so, and I have made that point before. When we have more fully trained nurse practitioners, then we can look to whether or not it would be appropriate to extend that service.

Oxygen Cylinders – Stocks Held in Homes – Question by Mr Singer

Question 2. The hon. member (Mr Singer) to ask the hon. Minister for Health and Social Security (Mrs Christian):

Are you aware that severely ill patients in the north of the Island on oxygen supply are being 'bullied' into holding extra stocks of oxygen cylinders in their homes?

The President: Hon. member Mr Singer.

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

The President: Again, I call on the Minister for Health and Social Security, Mrs Christian, to reply.

Mrs Christian: Thank you, Mr President. There are two patients living in Ramsey whose dependency on oxygen means that they require two free-standing oxygen cylinders each day, as well as the use of small portable cylinders for when they leave their home. The practice has been – or it has evolved – in Ramsey to make two daily deliveries to those patients' homes. That is contrary to normal practice for deliveries over the rest of the Island, where patients receive the amount of oxygen they require for a 24-hour period in a single delivery. This makes the most cost-effective use of the delivery time and also ensures that each patient has sufficient oxygen in the house for the 24-hour period, without having to rely upon additional deliveries. Proposals have been made to both users that we move to the system of single delivery on each day, and in each case the patients have raised objections. These objections are now being examined.

The President: Mr Singer.

Mr Singer: Thank you, Mr President. Is the minister aware: that the oxygen patients were receiving letters telling them that the service is changing, often only the day before – and this has happened over a series of months; that they have refused multiple cylinders in the house because they fear various problems, such as explosion; and that there has been organised pressure placed on these people to comply? And can you assure me that Ramsey Cottage Hospital management will not cause this extra distress to the families which are already under stress, and can you confirm that the system will be kept exactly as it is?

The President: Minister.

Mrs Christian: Mr President, I am sorry that the two patients in Ramsey who are receiving this service feel pressurised. I think what we need to do is assure them that other people in the Island who need more than one cylinder a day receive a single delivery, and we will endeavour to reassure them that this is indeed normal practice and not something to be alarmed by. I cannot give you an assurance at this stage that we will not revert to the single delivery a day. I have indicated that we are considering the responses of those two people, but at the same time we have to bear in mind the overall needs of the service and the very fact that the cost of delivering twice a day is disproportionate to the service, really.

The President: Mr Lowey.

Mr Lowey: Could I ask the minister: as there appears to be only a small number of people involved – two – would it not be a better use of PR, from the department's point of view for a personal call to try and persuade these two people of the rightness of the case, as opposed to writing letters, which are often impersonal? When you are face-to-face with people, perhaps that would be a one-off way of trying to resolve what I would call a small problem, considering the number of people who use oxygen at home throughout the Island.

The President: Mrs Christian.

Mrs Christian: I accept the point the hon. member has made. As I say, the objections are being considered, and I will take into account the points that have been made this morning. The implication is that the hospital is putting the pressure on. I do hope it is not the delivery people who are putting the pressure on.

Mr Singer: No, absolutely not.

The President: Mr Singer.

Mr Singer: Can I confirm that it is not the delivery people who are putting it on; it is coming from the hospital management. Is the minister aware

that the patients and their families are actually feeling they have to apologise for the inconvenience that they feel they are causing, when actually the problem is hospital organisation and housekeeping? Would the minister agree that the views of the sick and their elderly carers, who feel that they can neither move heavy oxygen cylinders around the house nor competently change the cylinders over, should be respected by a caring management at the hospital and that this should go for patients all over the Island, not just in Ramsey? They should not feel that they are being forced to do something which is giving them extra worry. Could I also ask: while the deliverers who bring the oxygen cylinders to the house will be covered by insurance, if a carer is expected to move these cylinders and they have an accident, are they covered by any insurance?

The President: Minister.

Mrs Christian: Mr President, can I come back to the point of the issue of deliveries to the home? The hon. member has raised concerns about people concerned who receive them. I imagine those concerns also apply to people who receive one delivery a day, so I will take up the point that he is making in respect of the people who are receiving two deliveries a day and consider their personal circumstances. However, they are not unique across the Island, and therefore I think what we need to do is reassure them that what other people can cope with we hope we can assist them to cope with as well. The suggestion has been made that somehow resources are better deployed by going out twice a day. I have to say that resources, certainly from our perspective, are not best deployed by going out twice a day, and there are other ways in which our resource can be used.

With regard to the insurance in the home, I think that is probably a matter of the householder's insurance and certainly not the health service insurance. So, I am not in a position to give a categorical answer on that, but I will certainly explore that and let the hon. member have an answer.

Mr Singer: Mr President, the fourth and final one.

The President: Mr Singer.

Mr Singer: Can the minister then assure me that anybody – not only in Ramsey, but anybody – who has oxygen in their homes, maybe a sick person and possibly a carer who does not feel competent to change over cylinders by themselves, will not have pressure put on them to accept that system and that if people wish to have them changed by someone else, whether it be a pharmacist visiting or whatever – because I think this is in some other system – these people will not have more stress put on them because of the worry that they are going to have to do this job themselves?

The President: Minister.

Mrs Christian: I will take those points into consideration, Mr President. The hon. member mentions pharmacists; indeed, in the United Kingdom, pharmacists do the oxygen deliveries. Whether or not that might be a way in which we can proceed, I do not know. It may be an alternative to the porters at the hospital doing deliveries, but at this point I cannot say whether we need to actually change the system; rather, we need to give assurance to the people who are concerned about changing the cylinders or help in convincing them that they are competent to do this.

Ramsey Cottage Hospital – TT Fortnight – Doctor on Call – Question by Mr Singer

Question 3. The hon. member (Mr Singer) to ask the hon. Minister for Health and Social Security (Mrs Christian):

Will the present system of no doctor on call at Ramsey Cottage Hospital except from 8 a.m. to 6 p.m. on Mondays to Fridays remain unchanged during the TT fortnight?

The President: Mr Singer.

Mr Singer: Thank you, Mr President. Can I ask the question standing in my name.

The President: Mrs Christian.

Mrs Christian: Yes, Mr President. There are no plans at the present to alter medical staffing of the Minor Injuries Unit at Ramsey Cottage Hospital during the TT fortnight. However, discussions are continuing with the Ramsey group practice on some financial aspects of their revised contract. Members will be very well aware that they have withdrawn from part of the contract, and therefore the contract needs to be redrawn in respect of the service they are willing to continue to provide. So, within these discussions, we will be exploring the possibility of securing enhanced GP cover in extreme circumstances, for example during periods of roads closure, which would include the TT period.

The President: Mr Singer.

Mr Singer: Thank you. Minister, so on Sundays, Mad Sunday and when they have the Ramsey sprint et cetera, there will be doctors available at Ramsey Cottage Hospital during those hours, even though they be outside the 8 a.m. to 6 p.m.?

Mrs Christian: Mr President –

The President: Mrs Christian.

Mrs Christian: I have said earlier that this is subject to the negotiations with the GPs in Ramsey.

Mr Singer: If an accident occurs when there is racing and there are no doctors available at Ramsey Cottage Hospital, the races may well have to be stopped to get an ambulance over the mountain if there is no service at Ramsey Cottage Hospital at all.

Mrs Christian: Mr President, Ramsey Cottage Hospital . . . racing normally takes place during working hours, Monday to Friday. (**Mr Singer:** Saturday.) I accept that on Saturdays they do not. I have just said that the negotiations are continuing with the GP service at Ramsey in respect of those particular events, and I cannot, at this point, say what the outcome will be, but we will have cognisance in relation to ambulance availability and so on.

Mr Singer: Minister, considering the TT is only three weeks away, does the minister . . . How soon before the TT does the minister think she will have agreement?

Mrs Christian: Mr President, in terms of racing, we are well aware that in racing periods, there are – (Interjection by Mr Singer)

The President: Mr Singer.

Mrs Christian: Mr President, the hon. member has referred to Saturday racing specifically. In terms of the races, we know that additional provision is made in terms of air ambulances, which can deal with accidents in respect of racing to take them as directly and as speedily as possible to Noble's for the sort of care that they need. In respect of the provision around the Island, we will, of course, be looking at the deployment of ambulances as we usually do around these periods, and with regard to the availability of GPs, that is a matter which is ongoing.

The President: Mr Gelling.

Mr Gelling: I was just going to ask, Mr President: would the minister not agree that before an event such as a race, whatever race it is, the Clerk of the Course has to be satisfied that medical and other precautions are made before they can hold the event, so surely they will be the judge on race days as to whether the race can proceed, and if medical facilities are not available, surely they will not be allowed to run the race at all?

The President: Mrs Christian.

Mrs Christian: Mr President, again, that depends on their definition of where they need those services and what cover is needed. Indeed, Manx Motor Sport are an extra facility which is available during race periods, and of course their services, one would assume, will be available during the race periods this year as they have been in other years.

**Ramsey Cottage Hospital –
Lack of 24-hour Doctor Cover –
Expression of Dissatisfaction –
Question by Mr Singer**

Question 4. The hon. member (Mr Singer) to ask the hon. Minister for Health and Social Security (Mrs Christian):

Are you aware of any dissatisfaction being expressed at the lack of 24-hour doctor cover from Ramsey Cottage Hospital?

The President: Mr Singer.

Mr Singer: Mr President, I beg leave to ask the question standing in my name.

The President: Minister.

Mrs Christian: Thank you, Mr President. I am aware, through the media and individual comments, of dissatisfaction being expressed at the lack of 24-hour medical cover at the Minor Injuries Unit at Ramsey and District Cottage Hospital. I would point out that in-patients at the hospital are still covered on a 24-hour basis. That is not made clear in the question, so I would just reiterate that point. The department has recently produced information which has been widely circulated in the media, providing further details on a number of changes that have taken place with respect to Ramsey and District Cottage Hospital, and will continue to answer questions as they arise.

The President: Mr Delaney.

Mr Delaney: Thank you, Mr President. In an earlier question the minister stated that the nurse-led services at Ramsey Cottage would cease at 10 o'clock. Could she tell me what happens when people get sick after 10 o'clock? What is the clear message to the public if you are injured after 10 o'clock?

Mrs Christian: The clear message to the public is: do not go to Ramsey Cottage Hospital. You ring your general practitioner, as was always the case. You will be dealt with by the emergency doctor service. The doctor there will consider the information that is given by the patient and will advise appropriately either that they will visit or, if it is an accident, they will advise whether or not an ambulance should be called or, indeed, they will suggest that the patients get themselves to the emergency doctor service to deal with the issue with the doctor. Alternatively, the Accident and Emergency facility at Noble's Hospital operates 24-hour cover.

The President: Mr Delaney.

Mr Delaney: Yes. A supplementary, having experienced this myself, just to make it clear: if you

have an accident in your home and you ring the hospital, are they obliged then to send an ambulance to you or does somebody else, the police or some other person out in the street, have to send for the ambulance, bearing in mind my own experience?

The President: Minister.

Mrs Christian: Mr President, if you have an accident – and we are talking here about accidents, as opposed to feeling ill – depending on the circumstances, you can call an ambulance or you can call the doctor. That applies throughout the Island, so the system is that you call the doctor, your GP, or you call an ambulance, depending on your own reaction to the situation.

Mr Delaney: Right, well, I can just tell you, just to get this clear, that it has changed from the time when I had my stroke at home, when I phoned up the ambulance and was told to 'phone the doctor because they could not send an ambulance to my home.

Mrs Christian: Mr President, I do not know what the circumstances of that were –

The President: Okay. (*Interjection by Mr Delaney*)

Mrs Christian: Right, then in those circumstances I would have been on the phone very quickly to the doctor.

Mr Delaney: If you are having a stroke, you cannot get on the phone, that is the point, if you are on your own.

The President: Mr Delaney. Mr Singer.

Mr Singer: Mr President, I obviously put these questions . . . These questions were in before the meeting last Saturday. Could I ask the minister: when she says about dissatisfaction – and, I personally thank the minister for attending the meeting last Saturday, which I did at the meeting, and I will thank her again here – did she hear any particular message from that meeting for herself and the department, and what steps will she be taking within the department to accommodate the views that she heard at that meeting?

The President: Minister, do you wish to answer?

Mrs Christian: Yes, Mr President. I heard what they were saying: I hope also they heard what I was saying. With regard to that, I can make no further comment than that I already have done, that we have heard what the people were saying at the meeting, those who were able to speak and given an opportunity to speak. The situation is that we are also in the consultation process, we are in discussion at the same time with the GPs in Ramsey, we are monitoring the effects of the newly introduced emergency doctor

service, and all of those issues will have to be taken into consideration in the further development of our primary healthcare services in the Island.

Mr Singer: And if the –

The President: I think Mr Delaney, then Mr Lowey.

Mr Delaney: At the observation of the meeting, the excellent meeting that took place at the weekend, what number of people would the minister consider was there present at that meeting?

The President: Well, I think that is –

Mr Delaney: There is some idea that these people were just troublemakers. I want to make it clear. I would like some idea what the minister saw there.

Mrs Christian: No, Mr President, certainly I have not implied that they were troublemakers. Mr President, the room was full. I do not know what the fire regulations on that hall are. I would suggest that there were a considerable number of people in the hall –

Mr Delaney: Thank you.

Mrs Christian: – some of whom were clearly very passionate about what they said and others of whom I know did not get an opportunity to have their questions put.

The President: Mr Lowey.

Mr Lowey: Okay? Can I just ask the minister: has she any powers to make doctors work to a contract when they decided to pull out of that contract? Has the minister got any reserve powers to make doctors do what they will not do, if you like, by contract?

Mrs Christian: The answer to that, Mr President, is that in respect of people who are self-employed, working on the types of contracts that GPs are employed under, no, we cannot force them to take on any terms and conditions that they do not accept. They are free agents in that respect. If they are employed doctors, then clearly they have a different relationship with the department.

Mr Lowey: Right. Then, just to get it absolutely clear, the doctors of Ramsey practice decided to terminate their contract to give 24-hour service, giving one month's notice – am I correct in that? And is one month's notice to terminate something as basic as healthcare for the Island adequate in this day and age?

Mrs Christian: Mr President, the hon. member is right. They did give one month's notice to withdraw, and I do accept that, in this day and age that is not a sufficient time in which we would have a reasonable

chance of making alternative arrangements, and that is something, obviously, that we will be bearing in mind for the future in terms of our contracts. However, I imagine – I do not know – that the Ramsey Cottage Hospital relationship with the GPs goes back to the very beginning of the NHS in the Island, and whether or not there has been much change in the contract from that time, I do not know. That may have been viewed, when the contracts were established, as a reasonable period. One also, I think, bears in mind that community hospitals are very much dependent upon GPs' willingness to be involved with their running, and I do not think anybody, given the past history of Ramsey Cottage Hospital, envisaged that there would be movement from the GPs, on whom the thing functions, to withdraw from that element of the service.

Fireworks Bill – Consideration of Clauses Concluded

The President: Hon. members, I think it is time we moved on, (*Interjection by Mr Singer*) so we will move on to item 2 on our order paper, hon. members, which is the Fireworks Bill. When we are dealing with the Fireworks Bill, remember that at the last sitting we reverted to clause 3, which we completed and moved on to clause 4, which we then adjourned at. Hon. members, I have before me a suggestion that we ought to revisit clause 3, for on two separate weeks we did tend to get bogged down a little on the Fireworks Bill, and I think it is possibly right that we take the opportunity, when dealing with the clauses, to be sure what we wish to have written in this particular Bill. So I am prepared, with your concurrence, to revert to clause 3, as long as you are content, hon. members. Content? (**Members:** Agreed.)

In that case, hon. members, we will return again to clause 3, and I call upon Mr Lowey.

Mr Lowey: Thank you, Mr President. Could I first of all thank members for their constructive views on this particular Bill? I think we are all agreed that we thought it was a bit anomalous that the Department of Home Affairs could advertise for comments from the general public for fireworks outside the permitted times and could then, at the end of the day, no matter what those comments were, only agree to the granting of a licence. They did not have the power to say no, and so I think we were concerned, for a variety of reasons that that should not be. Having spoken with the mover of the Bill in another place, he assures me that his aim was to try and make it less bureaucratic, but he accepts that that is a blatant weakness and has agreed with the moves that I propose to take on behalf of the Council to correct that situation.

So in essence, all the amendments that I propose to move to clause 3 and 4 have that aim in mind. Clause 3, if you like, is supplemental to the main clause 4, which will alter the position of the

Department of Home Affairs. It will actually have the power to listen and to reject and to put in place an appeals procedure. The appeals procedure is well documented in other bits of legislation, so we are just taking on a proven system, if you like, to deal with that. In clause 3:

Page 2, line 26; for paragraph (d) substitute –

‘(d) a person to whom a licence referred to in section 4(1) has been granted for the letting off of the firework in question;’

The reason why we have to go back to 3 is because there is a clear reference there to 4(1), which will be the resolution. So, that is the reasoning behind it. It is to put in place the legislation to allow the Department of Home Affairs to listen to an application and to listen to views of people who object to that and to have the power to say ‘Nay’ and to give the aggrieved person the right of appeal. It may seem complicated in the way in which I have presented it, but it is not really. Therefore, I would ask hon. members if they would approve the amendment to clause 3 standing in my name.

The President: Mr Gelling.

Mr Gelling: Yes, Mr President. This was a point, actually, that I contributed to the Bill, that it seemed rather nonsensical that an application be made and the Department of Home Affairs just automatically issued a licence, even if there had been 100 people objecting. I think that amendment does take care of that, although it does enter in more bureaucracy. It just seemed a bit ridiculous that they were just acting as a postbag rather than someone that would consider the application properly and take the objections into mind. So I would so second that, Mr President.

The President: Mrs Christian, do you . . . ?

Mrs Christian: Yes, Mr President, I am a little bit confused about which way we are going here. I thought that at the last consideration of the Bill, the view was that we should take the Department of Home Affairs out of the loop in all of this so as not to impose further bureaucracy, but simply to notify the public that various activities were going to take place and that if you did not notify the public, then there would be penalties for so acting. So, I am a little surprised that we are going in the opposite direction and imposing this level of bureaucracy now in the system. The hon. mover of the amendment has indicated that he has discussed this with the mover. I wonder if it then has been discussed at all with the Department of Home Affairs to consider what their stance is on the issue. I know it is up to the legislature to impose these on departments if the legislature so decides, but at the same time it is adding another responsibility to the Department of Home Affairs with a requirement for somebody to do the job. It may not be onerous, I do

not know, but again it seems to me that we are creating more and more bureaucracy to deal with issues in the Island, and to that extent I do not support the general trend that we are following now. I would prefer to see that we take the Home Affairs Department right out of the loop in this.

The President: Mrs Crowe.

Mrs Crowe: That was the point that I was actually going to make. I do believe that the Office of Fair Trading, who authorise the storage and transport of fireworks and who do training for firework display organisers . . . I wondered why indeed we had another department involved when it would seem to me that the Office of Fair Trading, who licence people for many activities . . . If a licence needs to be granted I would have thought they were a more appropriate body, but that was my only observation.

The President: Mr Attorney.

The Attorney-General: Mr President, if I may, I think one of the anxieties that was expressed by hon. members at the last reading was that the Department of Home Affairs would be placed in an invidious position if they were simply being used as it were, as a recipient for notices and were perhaps thereby put on notice of a potential risk to the public and they were not able to take any action to stop the event occurring. I think we were all concerned that that might trigger off some liability in law, and that is why, as I understood it, it was felt that some department had to be involved to, as it were, police the advertisement and to see whether it was appropriate in all the circumstances that a licence be issued to allow the letting off of the fireworks. That, as I understood it, was the theory behind the amendment. Indeed, I took the liberty, Mr President, to discuss this with the mover of the Bill in another place, and I understood him to be generally content with that broad approach.

The President: Mr Lowey.

Mr Lowey: Yes. I take note of what the hon. members have said. Again, all I can say is I cannot answer whether it has been discussed with the Department of Home Affairs, but the member who brought it forward was content with the amendment and, to be fair to the member, in drawing up the Bill he did try to balance the bureaucracy against the aims of the Bill. On reflection, he could concede that, in this instance if there was a need, if there was objection by the public to it, it should not be an automatic right, irrespective of what those objections should be, and on balance he thought that a bit of bureaucracy is preferable to none at all to meet the aims. Again, I think that regarding the point Mrs Crowe says – whether it should be the Department of Home Affairs or the Office of Fair Trading – no matter which one would have to do it, they would have to deal with a certain amount of bureaucracy, but I do think what is

proposed in these amendments will get the balance right on this occasion, and therefore I think it is a price worth paying. As I said, the mover of the Bill, the prime mover in another place, is content, and this is the mechanics of actually achieving that. So, I would beg to move that the amendment I propose stand part of the Bill.

The President: Mr Waft, as the member in charge of the Bill currently before the House, do you wish to add anything? (*Laughter*)

Mr Lowey: Indeed.

Mr Waft: I thought I was going to get out of this! (*Laughter*)

Mr Lowey: The loop.

Mr Waft: Just for clarification, perhaps, I did mention that there has been a consultative process which involved the police, the Home Affairs Department, the fire service, the Office of Fair Trading, the wholesalers, the retailers of fireworks, firework display organisations, veterinary practices, animal welfare organisations and some members of the public and local authorities. So I think there has been fairly comprehensive consultation with regard to that. I am quite happy with this amendment to be included in clause 3.

The President: That was consultation prior to the printing of the Bill, though, not subsequent to the amending of the Bill.

Mr Waft: As I understand it, it was prior to the consultation. I would take it to be.

The President: Mr Delaney.

Mr Delaney: Can I just ask: is the originator of the Bill happy with the amendment?

Mr Lowey: Yes.

Mr Delaney: Well, that seems fine to me then.

The President: Let us take it one at a time. Mrs Crowe.

Mrs Crowe: Yes, just once again I would say it is this cross-departmental activity. The Department of Home Affairs will have to check with the Office of Fair Trading, if it is a public display, whether the person has been suitably trained, and it would seem to me that it would sit far easier with the Office of Fair Trading to license as they license the sale of fireworks, the storage of fireworks and indeed, the transit of them. I just think that by introducing another department you are further increasing the bureaucracy between departments, if you like, apart from making it onerous for the public, who know that there is a one-

stop shop at that department. But I would have liked to have known that the Office of Fair Trading had been consulted about this particular amendment and whether it would be easier . . . They may well say they would prefer the Department of Home Affairs to look . . . But I would have liked that comfort, by way of consultation with the trading standards inspectors, that they would prefer it was all in one department or split between two.

The President: Mr Gelling.

Mr Gelling: Yes, Mr President, is it not the case that the Department of Home Affairs have always been in the frame right through Keys and that has not changed? All we are changing is that they should have the right to say yes or no.

The President: Mr Singer.

Mr Singer: I think we are making a bit of a mountain out of a molehill here, because the number of times that this is going to happen during the year is going to be very few. So we are not really adding a lot of bureaucracy. If it was happening every day or every week or every month, but it is not . . .

The President: Mr Lowey.

Mr Lowey: I am delighted, because this is what Council is about. It is trying to make the legislation workable. This is our rôle and it was quite clear at our last meeting, both from Mr Gelling and Mrs Christian, who I think highlighted the anomaly of just being able to say 'Yes' and, to coin a phrase by another well-known personality in another place, 'acting like a nodding dog', and that is not really quite the rôle that the mover or the people wanted. They were trying to balance too much bureaucracy as opposed to getting the thing right. I think, on reflection – and this Council is right, in my view, to reflect – that those that object have a right, as those who have been objected to have a right, to appeal against the decision. I think this is the only way. It is the quickest way, it is the most direct way, and whether it is the department or the Department of Home Affairs, as far as I am concerned that is a nicety that only time will tell, but the mechanics are there, and I think the principle is right. I think the Council should keep its eye on the principle, and these are the mechanics to get it working.

The President: Okay, hon. members. This is the third day on which we have had a go with clause 3 of the Fireworks Bill, so I propose now to put to you the amendment which is on your white paper, moved by Mr Lowey, that on page 2, line 26, for paragraph (d) we substitute 'person to whom a licence referred to in section 4(1) has been granted for the letting off of the firework in question.' Those in favour, hon. members, please say aye; against, no. The ayes have it. The ayes have it.

Okay, hon. members, we then go to clause 4, and at this stage I think it is possibly incumbent upon me to invite Mr Waft to open the discussion on clause 4.

Mr Waft: Thank you, Mr President. Clause 4 deals with restrictions on use of fireworks and a requirement to notify the Department of Home Affairs, giving notice specifying the time and place of a firework display et cetera, such as Onchan Park. It has contained within the clause five amendments from another place, and I understand there is another amendment coming, plus a new schedule which will be explained by the mover of the amendment and the schedule. The amendments are self-explanatory if you read through them. I can read through them. I know members have had copies of the amendments given in another place. I can go through them individually –

The President: We did deal with it last time, hon. member, and if you remember, we did adjourn clause 4 last time, so I do not think it is necessary possibly to go through every separate item again.

Mr Waft: I beg to move, sir.

The President: Right, clause 4 having formally again been moved, hon. members, I will refer to Mr Lowey to move the amendment which he again circulated this morning.

Mr Lowey: Thank you, Mr President. Again, all the principles that I enunciated in the clause 3 amendment actually apply to clause 4. In fact, it is the bulk of it. The schedule, of course, that is referred to – and is a page and a bit long – is the mechanics, and these are well tried: the appeal procedures, who it goes to, the High Bailiff, et cetera. So, without re-inventing the wheel, I do not intend to go through it in detail. What it does, in effect, is omit the printed one from page 3, line 23, for subsections (1) to (3) substitute the new (1) and (2) and the schedules; and on page 4, line 32 it omits subsection (8). With that, I just formally move the amendment standing in my name:

Page 3, line 23; for subsections (1) to (3) substitute –

‘(1) No person shall let off a firework in any place unless the letting off is authorised by a licence granted by the Department of Home Affairs (“the Department”) to –

(a) that person,

(b) the owner or occupier of the place, or

(c) where the firework is let off as part of a display, the person by whom the display is put on, and any conditions specified in the licence are complied with.

(2) Schedule [Licences] has effect with respect to the grant of licences referred to in subsection (1).’

Page 4, line 32, omit subsection (8).

NEW SCHEDULE

SCHEDULE

LICENCES

Interpretation etc.

1. (1) *In this Schedule –*

“licence” means a licence under paragraph 3;

“prescribed” (except in relation to a fee) means prescribed by regulations made by the Department.

(2) Regulations under this Schedule shall not have effect unless they are approved by Tynwald.

Application for licence

2. (1) *An application for a licence –*

(a) shall be in the prescribed form;

(b) shall be made to the Department not less than 42 days before the time specified in the application as the time when the fireworks are to be let off; and

(c) shall be accompanied by such fee as may be prescribed under the Fees and Duties Act 1989.

(2) The Department shall by regulations make provision for –

(a) the giving to such persons as may be prescribed of notice of an application for a licence;

(b) the giving of public notice of the application; and

(c) the making of objections and representations to the Department with respect to the application.

Grant of licence

3. (1) *The Department, on an application under paragraph 2, may grant to the applicant a licence to let off fireworks –*

(a) at the time and place specified in the application and in the licence, or

(b) at such other time and place as may be agreed between the Department and the applicant and specified in the licence,

subject to such conditions (if any) as may be specified in the licence.

(2) In determining whether to grant a licence, and what conditions (if any) to specify in it, the Department shall have regard to the following matters –

- (a) the safety of persons;
- (b) the safety of property, in particular the risk of damage or destruction by fire;
- (c) the welfare of domestic animals; and
- (d) the protection of the amenities of the area;

and shall take into account any objections and representations made pursuant to regulations under paragraph 2(2).

(3) Where, 10 days before the time specified in the application, the Department has neither granted a licence nor refused the application, it shall thereafter be deemed for all purposes to have granted a licence to let off fireworks at the time and place specified in the application.

Appeal against refusal etc.

4. (1) Where an application for a licence is refused, the applicant may appeal to the High Bailiff.

(2) Where the applicant for the grant of a licence is aggrieved by any of the conditions specified in the licence, he may appeal to the High Bailiff.

(3) An appeal under this paragraph may not be made after the expiration of the period of 14 days beginning with the date on which the applicant is notified in writing by the Department of the decision in question.

(4) On an appeal under this section the High Bailiff may vary or reverse the decision of the Department if he considers that the Department in reaching the decision –

- (a) erred in law; or
- (b) based its decision on any incorrect material fact; or
- (c) exercised its discretion in an unreasonable manner;

and the Department shall give effect to the decision of the High Bailiff.

Mrs Christian: Mr President, I will second it, having –

The President: I was going to suggest, hon. members, with respect to Mr Lowey, having formally moved it, that I was going to give you, in fact, a two-minute break to read through the schedule to make sure, if you read through the paper, that you are content. I appreciate that the paper has just been distributed this morning. We can talk our way through it, but if you wish to have a couple of minutes to read through, I am perfectly happy to just sit while you deal with it.

Mr Lowey: Could I, Mr President, perhaps apologise to members for the lateness of it going on the agenda? I think somehow I was under the mistaken apprehension that it had already been circulated to members, and for whatever reason – it seems to me administratively –

The President: I am happy to have two minutes silence, which will mean the tape can tick along there.

Mr Lowey: I apologise.

The President: Mr Lowey having moved that, Mrs Christian, do you . . . ?

Mrs Christian: Yes, Mr President, we did debate earlier whether or not . . . We were at a watershed, almost, in determining whether we take the Home Affairs Department or any other department out of the loop or whether to put them in with a licensing function. I have listened to what people have said and find it to some extent extraordinary that it has already been through another place where they accepted that there would be no bureaucracy. They passed it, and they have sent it up here.

Indeed, the mover in another place accepted that there would be no bureaucracy in terms of the involvement of a department. However, having had that situation pointed out to the mover in another place and the promoter of the Bill, it apparently transpires that his view has changed or perhaps he did not quite have in his legislation what he thought he had in it.

Therefore, if it is intended that we do have this element of bureaucracy and control by the Department of Home Affairs, then so be it. This at least sets out in a much clearer way the steps that people are going to have to take in respect of letting off fireworks outside of the prescribed periods earlier in the Bill. It does make it a longer drawn-out process, in that we now introduce a 42-day notice where before it was 10. Indeed, we have not had a great deal of time to look at the detail of the licensing, but on a quick look through, on the face of it, it seems not to throw up further anomalies, and so I will second it because it gives some clarity, whereas the Bill before, I think, was so vague as not to be particularly helpful.

I do not think I have anything further to add, Mr President, except to ask, please, if I may, if I could have some clarity on whether we had dealt with my amendments on clause 4 at the last sitting or whether they still need to be dealt with.

The President: They still need to be dealt with, you will remember, Mrs Christian, because although they were before us, the discussion was adjourned. Now, Mr Singer.

Mr Singer: Mr President, on page 2, under grant of a licence 3(2)(c), determining whether to grant a licence, the conditions, it has got, '(c) the welfare of domestic animals'. I think we also had quite a long discussion on non-domestic animals as well and the effect it might have on them if the fireworks were let off in the countryside. I am not quite sure whether we determined those should be included as well in consideration when a licence was applied for.

The President: Just remove the word 'domestic'; that would cover it. Anyway, (*Interjection*) hon. member Mrs Crowe.

Mrs Crowe: I do have a lot of concerns about this Bill and, as you know, when I was involved in the Office of Fair Trading, I was trying very hard to introduce such a measure. So, I do have some concerns with this Bill.

The hon. member of Council Mr Singer made a comment that it would be very infrequently used, so it really would not matter. I would point out that now it is a common trend for weddings, birthday parties, local authority events, and even our own national day to have firework displays. In fact, my own daughter next Saturday is having a firework display, but we have notified all the neighbours. But I would say that I think you would be amazed at the number of firework displays that will be occurring throughout the year, and it will be an onerous task for any department in 42 days to enquire.

If we go through, there is: the grant of licence; the safety of persons – so that would be health and safety, Office of Fair Trading if it is a firework display, and as we know, the one in Onchan was closed; the safety of property – we are talking about the fire service, risk of damage and whatever; health and safety officers perhaps; the welfare of domestic animals – it is the veterinary surgeon that we need to take advice from; and the protection of the community of the area, so that perhaps would be wild flowers or whatever else it might be. So, if all of those particular parts of the grant of a licence have to be applied in a thorough manner by a department, I would suggest it would take a great deal longer than 42 days to get that information to hand, particularly as it might be in areas where firework displays have not been used before. It might be fine if it is Tynwald Day and we know that the area is well fenced off and know people are available, but of course a lot of this depends on the wind and on the expertise of the people that are letting the fireworks off. These are, in some cases, highly explosive and very dangerous devices. Some of the display fireworks contain enough explosive to set alight a huge area. These are not your standard little fireworks like that; we are talking about huge display things.

Also, if I could comment – and you may or may not allow me to, Mr President – but in section (5) nothing in the subsection applies to a firework display put on by a public authority. Having had regard to nuisance that can be caused by a public authority –

The President: I am sorry, Mrs Crowe, are we dealing with clause 5?

Mrs Crowe: No, subclause . . . I am sorry –

The President: It is okay: I am with you.

Mrs Crowe: I did make comment about this in another place. I think it is absolutely essential that public authorities, or indeed anyone else who is going to have a firework display, make sure that they inform the public, and to say that a public authority, who are the likely people . . . Ramsey sprint: I do not know if they have a firework display up there, but we certainly have firework displays in Port Erin, and to say that public authorities should not have to comply with licensing conditions I think is wrong. Those are, I think, my only comments.

The President: But are you proposing, Mrs Crowe, that we delete 'public authorities'? Your chance is here if you wish to amend the Bill.

Mrs Crowe: Yes, indeed, I would like to amend the Bill so that public authorities are included, as are other people. I am unsure why naval, military and air forces of the Crown . . . if there was a battleship in Douglas Bay and they chose to put on a firework display, it could cause a great deal of upset to the residents of whichever area the noise came to, so I cannot understand why these people have been excluded. The information I was given was the lighting of maroons and the like.

The President: I take the point you are making, but I honestly cannot . . . I was trying to be helpful. I thought that you were making the case that you wished the public authority to have to apply the same as others, and when I suggested to you that maybe you should propose an amendment to delete (a), you then go on to suggest that maybe we should delete (b) as well. Please make your mind up, Mrs Crowe. Are we going to delete the whole of that section or . . .

Mrs Crowe: I would propose, by amendment, that that whole section –

The President: Sections 5(a) and (b)?

Mrs Crowe: Yes.

The President: You wish to delete those?

Mrs Crowe: I would wish to delete them.

The President: Okay.

Mr Waft: Could I just make a comment with regard to the deletion of that –

The President: It has not been seconded yet.

Mr Waft: No, I appreciate that.

The President: Until it is seconded . . .

Mr Waft: Okay.

Mr Gelling: Right. I am not seconding, Mr President, but can I comment on the earlier statement by Mrs Crowe in respect of all the consultation? I must admit – and I would look to someone to tell me otherwise if it is not the case – that the whole idea of giving the notice was not to actually consult with all those particular authorities, but that they would respond to that advertisement, whether you are a public person, whether you are an authority, whether you are the fire . . . That is how I read it, so I was just picking on that particular point. That is not how I see it in the Bill.

The President: In relation to the 42 days, can I just have it plain for my own purpose on that? The 42 days actually becomes 32, because if they do not respond within 10 days either way, it is automatic. (**Mr Lowey:** Yes.) Yes.

Mrs Christian? (**Mrs Christian:** No.) No, okay. Mr Attorney, have you any comment?

The Attorney-General: I am just a little concerned, Mr President, about the observations made on paragraph 3(2) of the proposed schedule, which reads that ‘in determining whether to grant a licence’ and so on, ‘the department shall have regard to the following matters’. I think, Mr President, that the hon. member Mrs Crowe is right when she says that the various relevant bodies will have to be consulted, because the way the schedule is drafted, there is a duty on the department to have regard to those matters, and I think that that must trigger off a duty to consult, and therefore it was felt that the 42 days was necessary to enable that consultation to take place. It is certainly the case that it is going to impose some heavy responsibilities on the department, but that, I am afraid, is the other side of the coin of the new régime we are setting in this Bill. We are enabling the department to refuse the licence, as well as to approve it, by omission, and that, I am afraid, is the price we have to pay.

Mrs Crowe: Mr President.

The President: Mrs Crowe.

Mrs Crowe: Could I ask a question, perhaps, of the Attorney? When we grant a licence that has had due regard to the safety of persons – and I know that is one reason why the firework displays no longer take place in Onchan – the safety of persons is very much

dependent on factors outwith the control of the department: (a) the experience of the operator; and (b) the weather is absolutely crucial, which is why that rocket went into the crowd in Onchan. It was actually not the operator; it was a factor of a freak gust of wind that took it straight into the crowd. If we give a licence that has due regard and we say that we have taken regard of the safety of persons and someone is indeed injured at a display, is it the licence provider that there could be a duty of care against? Who would have responsibility?

The President: Mr Attorney.

The Attorney-General: Yes, well, Mr President, I think that again the hon. member has spotted a very good point. In my view, the department would have a statutory duty of care (**Mrs Crowe:** Absolutely.), and it is something that the department would have to insure against, but equally – (*Interjection by Mrs Crowe*)

The President: Mrs Crowe.

The Attorney-General: Mr President.

The President: Mr Attorney.

The Attorney-General: Equally, as I say, Mr President, as I understood it, hon. members were also concerned that if the department had no power to impose any conditions whatsoever –

Mr Lowey: They have got none at all. (*Interjection by Mrs Crowe*)

The Attorney-General: – then there would be a major problem. So, we are, I would have thought, Mr President, endeavouring to protect the public after all (**Mr Lowey:** That is right.) against all sorts of things. To take the very obvious example, if you have a number of people, say, in a stadium and there is a very heavy wind blowing and the department was not able to say, ‘Well, the organisers must have regard to wind conditions and storm conditions and so on’ one can see that an injured party would have a right of action against the department.

The President: Mr Gelling.

Mr Gelling: Mr President, I am getting even more concerned with the legal interpretation of this, because I would have assumed that a licensing court giving a licence to someone to run a bar then does not become totally responsible for somebody giving them a bad pint of ale. I am just getting a little bit concerned that anybody then, like the FSC, who gives a licence to someone on whom they have done all their proper research and says they are a good licence holder, surely does not take the repercussions if they then do not do it correctly.

The President: The point is fairly made. Mr Attorney, I think, has the response.

The Attorney-General: Mr President, that is the reason why, of course, there is an indemnity in the Financial Supervision Act exempting the commission from liability. Therefore, the liability can arise in certain circumstances if the commission or any other licensing authority were to recklessly close its eyes to the obvious. We are not talking about liability arising unless the department has been negligent, has been in breach of its statutory duty, and what I am saying here, Mr President, is that this paragraph of the schedule is imposing on the department a duty to consult with those who are knowledgeable about these matters, and it strikes me that that is a far better result than to have a situation where the department can do nothing at all.

Mr Lowey: Could I –

The President: Mr Lowey.

Mr Lowey: – Mr President, say that if the department is consulting with a public authority for example, or a well-known charity, which ran these things . . . Let us take the instance that has been highlighted by the hon. member of Council Mrs Crowe; a well-known charity ran it for years. It could be quite easy for the department to say to the people who are organising it, ‘You will have a recognised person who is skilled in setting off these fireworks.’ That would be part of the condition under the regulations that would be raised, so that would take care of the wind, because that person would not set off the fireworks. In the tourism department we have a gentleman who has been trained who does all of these things, and we have had to cancel firework displays because of climatic conditions, the wind in the wrong direction et cetera. So they are being taken care of.

You are in a much more difficult position regarding smaller affairs like family affairs and birthdays and all the rest of it. One has got to recognise – and I think part of the thing is – that fireworks are dangerous. I think I have heard the former chairman of the . . . (**Mrs Crowe:** Yes.) express that point of view, and they are, but having said that, we are trying to get the balance here between what I would call the right for people to enjoy themselves and express their pleasure and the safety and the protection. We have got this Bill because it has got out of hand. People – elderly people particularly, sick people at home – are being inconvenienced with the uncontrolled . . . The setting up of a control mechanism does, regrettably, put some imposition on it. There is no getting away from that, and with the greatest respect to the . . . Mrs Crowe cannot have it both ways.

On the one hand, she wants freedom with no bureaucracy, and on the other hand, she complains it will be too bureaucratic. That has been the aim of the mover of the Bill, to try and get it at least recognised now that there has to be a price to pay, on the other

hand, of people having the right to object, and again that will impose certain restrictions on those people. I am sorry, but that, from my point of view, is a price, as I said earlier, that we should be prepared to pay.

Mrs Crowe: Mr President, I –

Mr President: Mrs Crowe.

Mrs Crowe: I would, I think, just pick up on the final words of the hon. member of Council Mr Lowey, when he mentioned it is a price to pay. I am sorry to say this, but what I would say is that if we were to total the price to pay if you were talking about officer time . . . People will have to visit the site, they will have to talk to the people that are running this – and the Attorney-General is nodding when I am saying this – it needs health and safety, fire officers and Office of Fair Trading inspectors who will have to visit the sites and reassure themselves. All this has got to be done within a 42-day period, outwith their normal working practice. I can tell you that if health and safety go round visiting these areas, they will be looking for every single aspect, as is their job, and we are not talking about a five-minute operation. We are talking about now imposing a licence condition upon issuing a government licence to someone who wants to set off a small firework display. You are talking about a huge roaming army of government officials that will be checking to make sure of the safety of these persons – this is the important aspect to me – and even at the end you would not be able to guarantee that government would not be able to be sued because, for some reason, the safety of persons was affected.

The President: Okay. The point has been made, I think, two or three times this morning. Mr Waft.

Mr Waft: Just a couple of comments. Public authorities are mentioned; it is very rare for public authorities to actually have any firework displays, to my knowledge. (*Interjections by Mr Lowey and Mrs Crowe*) The people who do the fireworks display are usually given to the Rotarians or the Rotary Clubs, and they are on strict rules with regard to insurance et cetera, but I take the possibility in this litigious society and the possibility of vicarious responsibility, and perhaps we need to look further into this. But I do not think we should get too involved in this; it is up to the insurance companies and the people who are acting in good faith to put these displays on. I think the bureaucracy . . . As has been said by Mr Lowey, they have tried to find a middle way of getting responsibility under some department which is a responsible department and is able to ensure that as far as possible they have looked into the position as they find it. What happens thereafter . . . Insurance companies would have to look towards whether they would comply with what any reasonable man would be asked to comply with, a stray rocket or something going off – that was a few years ago, I might add, when that happened. It can happen in any situation,

even in organised displays, and those things do happen, and that is why insurance companies make their money, of course. I am quite happy with what has been said by the mover of the schedules and the amendment which has been posed, and I would suggest that we comply with that, Mr President.

The President: Okay, hon. members. Before I put that to you, the Clerk has rightly pointed out to me that, when dealing with clause 3 and the amendment moved by Mr Lowey this morning, we did approve the amendment, but formally we did not approve the clause as amended, hon. members. So in order to set the record straight and so that there can be no doubt, I put to you clause 3 as amended by Mr Lowey's amendment this morning. Those in favour please say aye; and against, no. The ayes have it. The ayes have it.

Now, hon. members, what I will do is put to you clause 4 as amended by the amendment, together with the new schedule. Oh, we have got Mrs Christian's amendment. Steady.

Mrs Christian: Mr President.

The President: Just a moment; let me get this straight so that I . . . Mrs Christian did ask me where we were going with her amendments, and I said it had been adjourned.

Mrs Christian: Mr President, I cannot remember whether I moved them or not.

The Attorney-General: I think that would fall.

Mr Lowey: It would fall.

The President: I think it automatically falls, doesn't it?

The Attorney-General: It does, yes.

Mrs Christian: I do not see, Mr President, why they should fall, because the . . .

The President: Right, can we just consider that point, hon. member, in relation to . . .

A Member: Clause 3.

Mrs Christian: Mr President, in respect of clause 3, that is done and dusted.

The President: That is done and dusted.

Mrs Christian: That was agreed last time, and it has been changed again today.

The President: That was agreed last time, yes.

Mrs Christian: With regard to clause 4, my amendments refer to page 3, line 36, which is in subclause (2), which is omitted. Okay. No, is it?

Members: Yes.

Mr Lowey: It was a new amendment.

The President: It was a new amendment.

Mrs Christian: A new . . . All right. Well, okay, that does, but in respect of page 4, line 3, has that gone as well?

The President: That has gone as well, yes. If we go along with Mr Lowey, that goes as well.

Mrs Christian: Right.

The President: Right, hon. members, so –

Mrs Christian: Do you want me to withdraw them, Mr President, or . . .

The President: No, I think –

Mrs Christian: I cannot even remember if they have been . . .

The President: I think we can accept that they have been actually superseded by the amendment moved by Mr Lowey to clause 4 and the new schedule. If we are happy with that, hon. members, I put to you then, the clause 4 amendment moved by Mr Lowey, together with the new schedule. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Now, hon. members, clause 4 and the new schedule, as covered on the amendment circulated to you on the white paper. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

We turn then, to clause 5. So, dealing with clause 5, Mr Waft.

Mr Waft: Thank you, Mr President. Clause 5 deals with harassment et cetera by letting off fireworks.

Under subclause (1) no person shall let off a firework in a public place within the hearing or sight of a person or domestic animal likely to be caused harassment, annoyance, alarm or distress thereby.

Subclause (2) provides for exemptions and (b) and (c) provide for when notice has been given or a display put on during the specified period.

Subclause (3) provides for a defence to show that a person had no reason to believe that there was any person or domestic animal within hearing or sight that was likely to be caused harassment, annoyance, alarm or distress.

Mr President, I beg to move that clause 5 stand part of the Bill and I think there is an amendment from the hon. member Mr Lowey.

Mr Lowey: Yes.

The President: There may be, that is true. Is somebody seconding . . .

Mr Singer: I will second.

The President: Mr Singer seconds that clause 5 do stand part of the Bill. Mr Lowey.

Mr Lowey: Thank you, Mr President, again consequential:

Page 5, line 4 for subsection (2) substitute –

‘(2) Nothing in subsection (1) applies to the letting off of a firework in accordance with a licence under Schedule Licences.’

Again I beg to move the amendment standing in my name.

Mr Gelling: I beg to second, Mr President.

The President: It would actually become schedule 2, Mr Attorney, shouldn't it? We already have a schedule.

The Attorney-General: Yes, it could do, Mr President.

The President: So that should actually read, Mr Lowey, 'Schedule 2'.

Mr Lowey: Yes.

The Attorney-General: And the existing schedule becomes schedule 1.

The President: Mr Gelling, are you seconding?

Mr Gelling: Seconded, Mr President.

The President: Seconded by Mr Gelling. Does any hon. member wish to . . . Mrs Crowe.

Mrs Crowe: Can I just ask a question once again about public authority? The mover of the previous clause did say that, of course, public authorities did not put on firework displays, that they – (*Interjection by Mr Singer*) Well, whatever, but whoever was commissioned to put on that display would be the licence holder. Could I have some clarification of that, whether it would be the person who was putting on the display or whether it would be those who were charged with actually letting off the fireworks that would be the licence holder?

The President: The amendment actually substitutes a new (2), so the references to public authority, naval et cetera, (a) (b) and (c), are deleted, aren't they? Mr Attorney.

The Attorney-General: Mr President, if we go back to the amendment which has been moved earlier today by the hon. member Mr Lowey, to clause 4, page 3, line 23, hon. members will recall that the

licence granted by the department has to be issued to three persons, the person who lets off the firework, the owner or occupier of the place or the person by whom the display is put on, if that is different. So, in fact, the way that will work is that there could be three persons who are licensed to let off the fireworks and to be in charge of them.

Mrs Crowe: Yes, as I assumed. I just wonder, in responding to this clause, if I could ask the hon. mover whether he feels people will apply for licences when we have already passed, in the last schedule, 'Where 10 days before the time specified in the application, the department has neither granted a licence nor refused an application' – which, of course, could be because they did not have the consultation in from fire, health and safety and all the other agencies that need to be consulted – 'it shall thereafter be deemed for all purposes to have granted a licence to let off fireworks at the time and place specified in the application.'

The President: Mr Lowey.

Mr Lowey: Without going into vast detail, could I ask the hon. member: does she know of a local authority itself that would . . . ? If a local authority, somebody like Port Erin Commissioners in our own area or Douglas Corporation or Ramsey Town . . . I think I have covered them all now – would want to put on a display, they themselves would not; they would organise, get companies to do these displays. They would put an application in, in their own right, notifying the people that they want to put it on for whatever reason, the Queen's Jubilee or a special event or what have you. So they would not be actually doing it themselves anyway, so the idea that somehow we are preventing them from doing it is . . .

Mrs Crowe: No. I am sorry, Mr President –

The President: Right. Hold on. Mr Gelling, do you wish to . . . ?

Mr Gelling: No, again my only comment is that we are trying here to put a little bit of rick (**Mr Lowey:** Absolutely.) on people letting off fireworks, and we are getting into an absolute total quagmire, (**Mrs Crowe:** Absolutely.) but on the other hand, if the department does not come up within 32 days –

Mrs Christian: No, 10 days.

Mr Gelling: No, well, 10 days left. There are 10 days before, so in 32 days, if they have to have taken the appropriate action to say 'Yes' or 'No' I would say, 'Well, fine, you should go ahead with it.' That is how I read it.

The President: Yes, that is the way it reads.

Mrs Crowe: Yes, that is correct. Officers will have to drop everything and run out to check on these licences.

The President: Mrs Christian.

Mrs Christian: Just a point on clause 5: again, it applies to a public place, and I wonder if the mover would care to comment on penalties, whether or not there is any specific reason for defining a public place only in this clause?

The President: Mr Waft, do you wish to reply, then?

Mr Waft: Thank you, Mr President. I think I have been into arguments on a 'public place' many times, and it usually ends up – the Attorney-General will probably correct me – that it is a place to which the public have access. If the general public do not have access, I do not think it is a public place as such, but I am open to argument on that. Whether they will go ahead with this because of the time constraints imposed upon them, time will tell, I am afraid, on that one. Whether they will actually take on board all the necessary obligations to enter into these displays and the problems that they are going to encounter, it will at least make them think twice about the concerns that the general public have and the problems that some displays have had in the past. It is just to caution them, perhaps to be more circumspect when they do organise displays and the hoops that they have got to go through before they actually do so.

The President: I think then, hon. members, that what we will do is put to you clause 5, and to that we have the amendment on your white paper; page 5, line 4, substitute the new subsection (2) 'Nothing in subsection (1) applies to the letting off of a firework in accordance with a licence under schedule 2.' Those in favour of the amendment please say aye; against, no. The ayes have it. The ayes have it.

Clause as amended, hon. members. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Clause 6. Mr Waft, please.

Mr Waft: Clause 6, Mr President, deals with the miscellaneous and supplemental power to stop and search for explosive substances. Mr President, I beg to move that clause 6 stand part of the Bill.

Mr Gelling: I beg to second, Mr President.

The President: Hon. members, I put to you that clause 6 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Clause 7, Mr Waft.

Mr Waft: Clause 7, Mr President, deals with letting off fireworks in the street. In section 63(2) of

street offences of the Petty Sessions and Summary Jurisdiction Act 1927, for 'cast or throw any firework' substitute 'let off, cast or throw any firework'. That is specifically street offences. I beg to move that clause 7 stand part of the Bill.

Mr Gelling: I beg to second, Mr President.

The President: Mr Gelling seconds.

The President: Hon. members, I put to you that clause 7 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Clause 8, Mr Waft.

Mr Waft: Clause 8, Mr President, provides powers for the Department of Home Affairs to amend this Act by order to vary: any period specified in section 3(1) or 4(4); the amount specified in section 3(4); and the list of devices – that is, types of firework – specified in the schedule. Before making an order under subsection (1), the department shall consult the Isle of Man Office of Fair Trading, and any order under subsection (1) shall not have effect unless it is approved by Tynwald. Mr President, I beg to move that clause 8 stand part of the Bill.

Mr Gelling: I beg to second, Mr President.

The President: Hon. members, I would just point out to you that the list of devices specified is in schedule 1, it will read. As long as we are aware that there is a certain amount of renumbering to be done in relation to the schedules. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Clause 9, short title, Mr Waft.

Mr Waft: Clause 9, Mr President, provides for the short title and the date on which the Act will come into operation. The Sale of Fireworks (Regulations) (Amendment) Order 1970 is revoked. Nothing in this Act affects any power to make safety regulations under section 9 of the Consumer Protection Act 1991 or health and safety regulations under section 15 of the Health and Safety at Work et cetera Act 1974, an Act of Parliament, as it has effect on the Isle of Man. Mr President, I beg to move that clause 9 stand part of the Bill.

Mr Gelling: I beg to second, Mr President.

The President: Hon. members, I put to you clause 9. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Suspension of Standing Orders – Approved

Mr Waft: Mr President, could I indulge the Council for standing orders to be suspended for the third reading? We have conjugated quite a bit on this Bill, and I think we have given our views most wholeheartedly. We have introduced schedules and amendments, and I think we have gone as far as we can. It has got to go further yet, and because of the time that has been taken over these nine clauses, I would think we have done all we can with this Bill. Mr President, I beg to move the suspension of standing orders so that the third reading be taken.

Mr Delaney: I beg to second.

Mr Lowey: I would support that on the grounds that the mover of the Bill has been very accommodating in freezing discussions while we went away and dealt – or hoped to deal – with the Bill. Again, I think the Council should not make any apologies. This is our rôle in life, which is to make sure any bit of legislation meets the requirements and is in a workable position. Some members of Council today may not think that we have made it more workable. I would suggest that I think we *have* made it workable. We have at least attempted to give the rights under the Bill as it came to us from another place, which actually said, ‘A department of government should advertise the fact that it was going to receive comments from the public’, but then, irrespective of those comments, actually go ahead and grant . . . They only had the *right* to grant; they did not have the right to say ‘Nay.’ I believe that we have accommodated that right, which I think, in my view, has to overcome the availability of people to set off, in a controlled way, substances that do frighten old people, ill people lying in their homes, and increasingly so –

The President: If you would just stick to the suspension, hon. member.

Mr Lowey: The point I am making about why we should suspend is that we have, Mr President, with fairness to the mover of the Bill, suspended debate on this to try and get the thing right, and I think he deserves the third reading today.

The President: Hon. members, just to be sure, I want to know that the Council is content with this, because I am equally aware that there were divisions. Although not formally recorded, there were divisions. Mrs Crowe, do you wish to . . .

Mrs Crowe: Yes. I would object to moving standing orders. I fully appreciate all the concerns expressed by the hon. member of Council, Mr Lowey, indeed concerns I have expressed for years in trying to formulate suitable legislation that would not be too onerous. What I have tried to point out in the short

time that I have been here is that this legislation will place enormous workload on the departments involved – health and safety, fire, the Office of Fair Trading – apart from the safety aspect, yes, I take the point, but also now in these licensing provisions which we have actually added to the Bill and excluding from it the people that do operate firework displays –quite often local authorities. So –

The President: Try to stick to the suspension –

Mrs Crowe: I would object to the suspension of standing orders for those reasons.

The President: Mrs Christian.

Mrs Christian: Mr President, I too would feel uncomfortable with the suspension of standing orders on this Bill. We have had a lot of debate about the detail. We have had put before us this morning a considerable amount of amendment and detailed licensing conditions, and whilst we have quickly read through it and agreed it, I do not think it would do any harm at all to defer for one week the further consideration of the Bill in order that we have time to reflect on what we have done fairly speedily this morning. I hear nothing from the mover about any real argument for needing to have a third reading this morning.

The President: Mr Gelling.

Mr Gelling: Mr President, yes. I look at it in an entirely different way. He had to do a job. We have done the job. We are now sending this to another place and saying, ‘That is how we think it should be.’ Surely that, then, is another safety valve in which they can look at it, look at everything that has been put, and if it is not workable and does not run, they can amend it, but –

A Member: Amend it again.

Mr Gelling: – they might not very well amend what we have already amended, Mr President. So, for me, I think we had better get it back to the other House as soon as possible.

The President: Hon. members, I put to you then that the motion is put by Mr Waft that we suspend standing orders in order to take the third reading of the Fireworks Bill 2003. Those in favour please say aye; against, no. The ayes have it.

A division was called for and voting resulted as follows:

For: Mr Lowey, Mr Waft, Mr Singer, Mr Delaney and Mr Gelling – 5

Against: Mrs Christian and Mrs Crowe – 2

The President: With 5 votes for and 2 votes against, hon. members, we will continue. The suspension of standing orders will take place.

Fireworks Bill – Third Reading Approved

The President: We will deal with the third reading of the Fireworks Bill. Mr Waft.

Mr Waft: Thank you, Mr President. The purpose of this Bill is to introduce an effective control mechanism for the sale of fireworks in periods during the year when the fireworks can be legitimately let off. The Bill also makes it an offence to harass or annoy a person or animal by letting off a firework in a public place and extends police powers to stop and search to cover explosive substances, and it makes it an offence to let off a firework in a street.

There were many additional amendments, both from another place and within the Council, new clauses and even an extra schedule, which is now within the Bill. This Bill has some way to go yet, Mr President, and if we need to get it through for next November, I think we need to send it down. I think we have gone into it fairly intricately and we have discussed and aired all the problems that seem to have arisen and caused concern for members, and I hope they are as satisfied as they can be with regard to our perusal of the Bill. Mr President, I beg to move the third reading of the Fireworks Bill and that it do pass.

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

Mrs Christian: Mr President, while I accept –

The President: Mrs Christian.

Mrs Christian: – some of the principles which are embodied in the Bill, I have considerable concern about dealing with the third reading today to the extent that I will not support the third reading because I think we have a mechanism here, in dealing with legislation, which allows us to give further consideration. That is why we have a delay between second and third readings to give us further time to consider the Bill, and I do think that there have been so many changes in this (**Mrs Crowe:** Yes.) and that the final amendments have been just placed before us this morning with only an opportunity to read them sitting here. I do not feel confident enough in the effectiveness of this particular measure to support it at this stage.

The President: Mr Gelling.

Mr Gelling: Yes, Mr President, I will support a third reading in as much as we get a Bill before us where we are trying to achieve something, and that is to protect innocent animals and innocent people who are perturbed by fireworks. If we are going to introduce regulations and laws, it is bureaucratic. I am

sorry, but you cannot have control without having regulations.

I have to go back, Mr President, to the point again that I took up earlier on, and that was that before we had a situation where somebody applied to the Department of Home Affairs and they gave them a licence. I would say that in the mere fact that the Department of Home Affairs gave them a licence or said, ‘Yes, you can’ –

Mrs Christian: They did not.

Mr Gelling: – if they had not done their duty of care checking, surely there would be liability upon them for having given a licence without having checked with the fire and everybody else? Here we have got a situation where we have put into the Bill a situation whereby they do check, and I would say that if then they were sued, it would be a case of ‘Well, did you carry out a duty of care?’ and the answer is: ‘Yes we did, and on the best possible reasons we gave the licence.’ I think this could go back and forward for ages, from the mere fact that you are trying to put in regulations which are bureaucratic. I am sorry; it is going to inconvenience people, and it might very well have the effect, as Mrs Crowe has said, that people may not apply for licences. Well, I am sorry again; perhaps some would say it is a good thing that perhaps then there will not be firework displays. Maybe, in the future, there will not be firework displays, because they *are* explosives and they *are* dangerous, and this could very well be the start of a situation whereby fireworks will not be permitted at all, (**Mrs Crowe:** Yes.) but I think in the first instance a private member has put forward a Bill and he has tried to do something about fireworks and the disturbance of people and animals, and I think that we have given this such an airing . . . And I take what Mrs Christian has said, that perhaps we had in front of us today a schedule which we have not had time to read, but nevertheless, on what I have seen, as far as I am concerned, I can support the third reading, Mr President.

Mrs Crowe: Mr President –

The President: Mrs Crowe.

Mrs Crowe: – as you know, I have expressed concerns. I have concerns throughout this Bill that I have not voiced, of course, around this table. The restriction on the purchase of fireworks will mean that people will purchase fireworks within the stated date and keep them within their own home to use for whatever birthday party or what have you, which is a dangerous position, to have fireworks stored in the home. Far better to be stored in licensed premises, as they are at the present time. There is the nuisance that could be caused by public authorities, who do not need to be licensed, which I have already said. It is not a case of me wanting public authorities not to have firework displays; I just want them to have to abide by the rules the same as everyone else, and that is the only

reason that . . . And once again, regarding the amendments moved by Mr Lowey today, as other members of Council have only just seen them at the same time as me, I think the grant of licence will cause enormous problems to not only the general public but also to all the officers involved with the granting of such licences. I think that we should have had time just to delay the third reading to perhaps ask for a little bit more advice from perhaps the people that were going to be granting the licences to see if it could have been in a little less onerous regulation.

The President: Mr Lowey.

Mr Lowey: Yes, Mr President. Coming back to Mrs Christian and the suspension of the standing orders and why she cannot support it, I can recognise that. Our standing orders should not be suspended willy-nilly, I would concur with that, but Mrs Christian alluded, if I may say so, to the fact that we have had a solution to the problem, which was highlighted over three weeks ago. The amendments that were drawn up by the Attorney-General were in relationship to something that was discussed three weeks ago, and this is a solution. I have already said that the regulations are standard formulae that are applied to other bits of legislation. If it is bureaucratic in this bit of legislation, then it is bureaucratic in those other pieces of legislation which we are doing nothing about.

I think the idea that somehow officers will suddenly . . . And I can understand where the hon. member of Council Mrs Crowe, is coming from, when she says the officers will apply themselves diligently; well, with respect, they have a duty to do, and as officers of government they should carry out those duties in a reasonable and fair way, but they must not be able to dictate by saying, 'By the way, we have got these officers, and we must put any regulations in that give them actually some work to do.'

I believe that plenty of time has been granted to this particular piece of legislation for those interested parties to come in touch. They knew that we were dealing with this today. They knew of the concerns – or they should have, under the legislation. I can only say that, as the person who has been invited to take the amendments, I was pleased to take the amendments. I have already apologised to hon. members for the lateness – not as a design, but a genuine mix-up, of that I am convinced, that they were not circulated to members previously – but having said that, I have tried to explain that we are not reinventing the wheel. These are bits of legislation that . . . The appeal procedures to the High Bailiff et cetera, are already established practice elsewhere, and it does not create any havoc that apparently is seen by certain members here today. So I have no difficulty in supporting the third reading of the Bill, because it is, as Mr Gelling said, designed to assist a problem which is growing on the Island and which needs to be tackled.

The President: Mr Singer, are you . . . No? (Mr Singer: No.) Mr Waft.

Mr Waft: Nothing further to add to what has already been mentioned.

The President: Hon. members, in that case, I put to you the motion that the Fireworks Bill 2003 be read for a third time. Those in favour please say aye; against, no. The ayes have it.

A division was called for and voting resulted as follows:

For: Mr Lowey, Mr Waft, Mr Singer, Mr Delaney and Mr Gelling – 5

Against: Mrs Christian and Mrs Crowe – 2

The President: With 5 votes for and 2 votes against, hon. members, the third reading is approved.

Can I make a comment, hon. members? It is unusual for Council to divide fairly regularly, but there we are. A division has been called, and we have a division there. I find now – and I do not know quite what the situation is in this Bill going back to the other place – that there is a considerable amount of amendments to it. I do not know whether it is practical that it should be reprinted before it goes back, or . . . Is it possible to have it reprinted? I do not know. I would make the suggestion that the Bill ought to be reprinted –

Mr Lowey: Yes, I agree.

The President: – because by the time we have got . . . I know my own particular copy here has got bits stuck in and it has got pencilled marks out, and now today we have had further additions with a new schedule. If it is at all possible, I think I would like to see the Bill reprinted to go back.

Legislative Council – Election of Member – Ballot Result

The President: In that case, hon. members, with those comments, perhaps I could tell you also at this stage that the result of the ballot in another place this morning is that, in the first ballot, Mr Kniveton received 12 votes, Mr Roy received 4 and Mr Watterson received 4. Mr Kniveton was put forward again and received 12 votes.

Mr Delaney: As the ex-Speaker, could you just clarify: is there another election now? I understand from standing orders from the other place, that another election is recalled –

The President: I would imagine that as nobody has been elected, Mr Speaker will have called for new nominations.

Inquiries (Evidence) Bill – Third Reading Approved

The President: Inquiries (Evidence) Bill then, item 3 on our order paper, in the hands of Mr Attorney, for third reading.

The Attorney-General: Thank you, Mr President. As I explained at the first and second readings of this Bill, its object is to re-enact the Inquiries(Evidence) Act 1950, with amendments to remedy certain deficiencies which have become apparent. For example, the 1950 Act applies only to inquiries appointed by the Governor or held by a department relating to any of the duties or functions exercisable by the department; it does not apply to inquiries appointed by the Governor in Council or by the Council of Ministers, and there is no power to award costs out of public funds. Hon. members have, quite naturally, expressed concerns about various human rights issues and the exposure to costs and expenses. Clause 5 of the Bill now enables the person holding the inquiry to make a variety of costs orders, similar in many ways to the orders which may be made by a court of law, subject to a right of appeal to the High Court. Perhaps of particular interest is the power to order that any person interested in the subject matter of the inquiry may have his legal costs paid by the Treasury out of money provided by Tynwald for the purpose.

Mr President, this is a relatively short but important Bill which modernises our law relating to the procedures to be followed when inquiries are appointed. I move that the Bill be read a third time and do pass.

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

The President: The motion, hon. members, is that the Inquiries(Evidence)Bill 2003 be read for a third time. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

International Criminal Court Bill – Second Reading Approved

The President: International Criminal Court Bill, then, at item 4, for second reading. Mr Attorney.

The Attorney-General: Thank you, Mr President. It is the traditional view of the criminal law that crimes are defined by the legislature, that they should be narrowly construed and that an accused has a right to a fair trial, before a court of his peers, with

the presumption of innocence. This is sufficient for local offences, and generally criminal jurisdiction works well in so far as a country rarely seeks to exercise jurisdiction outside its natural boundaries, although there are various examples of countries which seek to exercise jurisdiction over their nationals in respect of certain serious offences wheresoever they are committed. Major failures occur where a domestic legal system breaks down – for example, under dictatorship – and questions may arise whether, for example, former Heads of State can be held responsible for acts of torture and other breaches of human rights. Whereas the European Convention on Human Rights provides a European long-stop to remedy national failures to protect human rights, a global answer has been less easy to achieve.

The need for an international criminal court and a code of international crimes may be traced to the League of Nations and, as I explained at the first reading, in 1948 after Nuremberg, the United Nations General Assembly invited the International Law Commission to begin preparatory work. Real progress towards the establishment of a court was delayed by the onset of the Cold War, but its end saw various human rights initiatives, which led to the establishment of *ad hoc* tribunals and chapter 7 of the United Nations Charter where there was perceived to be a threat to the peace, breach of the peace or an act of aggression. International tribunals were established for the former Yugoslavia in 1993, Rwanda in 1994, East Timor in 2000 and Sierra Leone in 2001. Despite early criticism and cynicism, these tribunals have proved to be real courts with powers of investigation, prosecution, judgment and punishment. In this way the long-dormant notion to create the International Criminal Court came to life.

The court has established itself in premises at The Hague. It is intended to be a permanent institution capable of being used as occasion demands. It is intended to create accountability for all and universal justice. The court's jurisdiction may be invoked when a complaint is referred to it by a state party, by the Security Council under chapter 7 or by the elected court prosecutor. The court's jurisdiction currently extends over the international crimes of genocide, crimes against humanity and war crimes committed after the 1st July 2002 in the territory of a State Party, whatever the nationality of the offender, and by nationals of a state party wherever those crimes are committed. It follows, Mr President, that the court has no jurisdiction over crimes committed in the territory of a non-state unless the offender is a national of a state party. The court's fundamental and most important principle is that primary responsibility for the prosecution of international crime rests with the state in which it is committed and over its own nationals, wherever committed. It defers to national courts; it does not replace them. It only steps in when national institutions have failed to act. State sovereignty remains unchallenged, save where a state party fails to honour its obligations, and that will arise where a state party's decision not to prosecute results

from unwillingness or inability genuinely to prosecute. This principle accords with the generally held view that criminals should normally be brought to justice by national institutions. In times of conflict, however, national institutions are often unwilling to act because they lack the political will to do so or are unable to do so because their institutions have collapsed.

Mr President, although the Isle of Man is not a state in international law, it has not only the capacity to enact and enforce its own domestic criminal law but also the capacity to play its part in applying and enforcing where necessary emerging international norms, be they of a regulatory or criminal nature. I explained at the first reading that the Bill seeks to achieve objects similar to those of the UK International Criminal Court Act 2001, thereby enabling the Island to assist investigations into offences and enforce orders of the International Criminal Court, and if necessary, to prosecute war crimes in the Island. The legislation, if passed, will further demonstrate the Island's capacity to play an important rôle in the sphere of international law. Mr President, I move that the Bill be read a second time.

Mr Singer: I beg to second, Mr President, and reserve my remarks.

The President: Seconded by Mr Singer. Does any other member wish to comment? Mr Lowey?

Mr Lowey: Yes. I would just say that, again, taking the last point of the learned Attorney about the Isle of Man's rôle in international affairs, as we become a bigger player in the world, we cannot ignore our responsibilities that go with that. There are opportunities, there are gains, and I regret, taking note of the last debate we had about increasing a bit of bureaucracy, that this will pose a certain amount of bureaucracy if it ever has to be applied. I think, in my view, it is a price well worth paying. The Isle of Man has to play its part, no more than anybody else and no less, I believe, and I believe that as we become more internationally recognised and we are recognised externally – as a place of good practice, quality practice, then I would suggest that this particular piece of international law, recognising the criminal court, is one that I would want us to play and I am sure the people of the Isle of Man would want us to play. I commend the government for introducing it.

The President: Mr Singer.

Mr Singer: I understand, Mr President, that this could have been extended by the United Kingdom Government to the Island, but I think that the Council of Ministers were completely right in deciding that it should become an Act of Tynwald, that the Island itself is seen to be supportive of such legislation. It indicates, as has been referred to by the previous speaker, that we are taking our responsibilities on and that we here are not going to be a shelter and we have

no intention of ever being a shelter for persons who have committed any of the acts that are mentioned in the Bill. So I do think that we are doing exactly the right thing.

The President: Mr Gelling.

Mr Gelling: I think, Mr President, that the points actually now have been raised that I was going to ask, but the only question I would ask the mover is: now that we will have put our own law in place, with our near neighbour being responsible for our international affairs, is any of their law, in fact, that could be extended to us over and above what we have here, and does this give our residents also the protection of operating within our legislation here or could that be superseded by other legislation in the adjacent isle, where they could be extradited out of the Island to face any other charges?

The President: Okay, Mr Attorney.

The Attorney-General: Yes, thank you, Mr President. I am obliged to hon. members for their helpful and interesting comments. Sometimes bureaucracy has a pejorative interpretation; I would perhaps like to think that we are looking at bureaucracy in a completely different way in the context of this Bill compared with the way we were looking at it in relation to the earlier Bill. (*Interjections*) If bureaucracy means our ability to have our own criminal courts which can prosecute war crimes where – and I would imagine, Mr President – those rare occasions arise, then I am in favour of bureaucracy. (**Mr Lowey:** Hear, hear.) Equally, I am in favour of bureaucracy if it means that the Attorney-General has powers to give assistance to the International Criminal Court where proper requests (**A Member:** Hear, hear.) are put to the holder of that office to give assistance, but I am sure the hon. member did not mean anything pejorative in that respect.

Mr President, may I also wholly endorse the sentiments of the hon. member Mr Singer? It was a point I made at the first reading that it is indeed constitutionally most appropriate that we enact our own legislation whenever we can and that it should only be in very rare circumstances that we allow the United Kingdom to apply its primary legislation to our Island.

In relation to the third question raised by the hon. member Mr Gelling, the overlapping of jurisdictions, certainly one can imagine that there could be a situation where a person who has lived in the Isle of Man all his life, save, for example, when he is alleged to have committed a war crime, is resident in the Isle of Man and his removal to the jurisdiction of the International Criminal Court is sought not only by the United Kingdom but may also be sought by the Isle of Man. The whole thrust of this Bill is that it does give the Isle of Man the opportunity to try that person in the Isle of Man, in the Manx courts. It may be that, in fact,

there may be very good reasons why the prosecution should not be carried out within the Island, because we may not have the facilities to do it. There may be a trial which involves many hundreds of witnesses over a year or more, and it may therefore be most appropriate that the matter should be dealt with by the International Criminal Court. But certainly, Mr President, I do appreciate the possibility of overlapping of jurisdiction; suffice it to say that we have the armoury here to deal with it when the appropriate situation arises.

The President: Hon. members, the motion I put to you is that the International Criminal Court Bill 2003 be read for a second time. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

International Criminal Court Bill – Consideration of Clauses Commenced

The President: We go on then, with our clauses. Part 1, clause 1, Mr Attorney.

The Attorney-General: Yes, thank you, Mr President. Part 1 is essentially introductory, explaining the meaning of references to the 'ICC', the 'ICC statute', and 'ICC crime' in the Bill. It also introduces schedule 1, which makes provision in Manx law for the status and proceedings of the ICC. So, subclause (1) reads accordingly.

Subclause (2) refers to articles in the Bill, that is articles of the statute, the ICC statute.

Subclause (3) introduces schedule 1, which makes provision in Manx law for the status and proceedings of the ICC. If I can ask hon. members to move to that schedule 1 at page 36 of the Bill, paragraph 1 of the schedule enables legal personality, immunities and privileges to be conferred on the ICC and its officers by order of the Council of Ministers, but subject to Tynwald approval. Paragraph 2 enables the ICC rules to be given effect in the Isle of Man, to be made by order of the Council of Ministers, again subject to Tynwald approval. Paragraph 3 requires Tynwald approval to an order under paragraphs 1 or 2. Paragraph 4 provides for orders et cetera of the ICC to be accepted without formal proof of the authenticity of any seal or signature. Paragraph 5 provides for certificates and statements of the ICC about investigations or proceedings of the ICC to be admissible in evidence in Manx courts, and finally paragraph 6 provides for copies of documents referred to above and certified by the UK Government to be accepted in the same way as originals. So, Mr President, I move that clause 1 and schedule 1 be read a first time.

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

The President: Hon. members, the motion I put to you is that clause 1 and schedule 1 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Mr Attorney, dealing with part 2, perhaps we could take 2, 3, 4, 5 and 6.

The Attorney-General: Certainly, sir, yes.

The President: Proceedings on request.

The Attorney-General: Thank you. Yes, Mr President, part 2 deals with the arrest and delivery of persons, and clause 2 provides for the arrest of an accused or convicted person in compliance with a request for surrender by the ICC.

Subclause (1) sets out the circumstances in which the clause applies. The ICC sends to the Attorney-General a request under article 89 for the surrender of a person who either is accused of, or has been convicted by the ICC of, an ICC crime, where that person is believed to be in the Isle of Man.

Subclause (2) requires the Attorney-General then to send the request and other papers to the High Bailiff.

Subclause (3) deals with the case of an accused person. The request will come with an arrest warrant issued by the ICC and other relevant documentation, and the High Bailiff is required, if it appears in order, to endorse the warrant for execution in the Isle of Man, that is requiring the Isle of Man police to arrest the accused. It is important, Mr President, to note that the High Bailiff cannot go into the merits of the warrant.

Subclause (4) deals with the case of a convicted person rather than an accused person. The request in this case will come with a certified copy of the ICC conviction and other documentation, and the High Bailiff's rôle there is simply to issue an arrest warrant.

Clause 3, Mr President, provides for compliance with a request by the ICC in an urgent case, namely by the provisional arrest of a person who is accused before, or convicted by, the ICC pending the issue of a proper or more formal request for surrender.

Subclause (1) of clause 3 sets out the circumstances. The Attorney-General receives again a request, this time under article 92, for the provisional arrest of a person who either is accused of, or has been convicted by, the ICC of an ICC crime and again that person is believed to be in the Isle of Man.

Subclause (2) requires the Attorney to make an application to the High Bailiff for the issue of an arrest warrant based on a sworn statement as to the ICC request and the presence in the Island of the person concerned. Again, Mr President, the High Bailiff is required then to issue a provisional warrant for the arrest.

Clause 4 sets out the procedure to be followed where a person has been arrested under a provisional warrant. First of all, the person is to be arrested and brought before the High Bailiff as soon as practicable under subclause (1).

Subclause (2): if a section 2 warrant – that is, one which has been dealt with under the previous procedure – is produced, then the person is to be dealt with under that warrant and the provisional warrant procedure comes to an end.

Under subclause (3), if no section 2 warrant is produced, the High Bailiff is to remand the person either in custody or on bail, and it is to be noted that the ICC is to be consulted before bail is granted – and that is pursuant to clause 15, which we will look at later, Mr President.

Subclause (4) requires the Council of Ministers to make an order specifying the time limits for the remand of a person under subclause (3). These are to accord with the time limits laid down by the ICC rules under article 92(3).

Subclause (5) provides that where a section 2 warrant is produced while the person is on remand, the remand is to be ended and he is to be dealt with under that warrant.

Subclause (6) requires the High Bailiff to discharge the person if no section 2 warrant is produced by the end of the period of remand.

Subclause (7) makes it clear that the person can still be re-arrested later, under a section 2 warrant, even if he has been discharged under subclause (6).

Clause 5 deals with the making of a delivery order, which authorises a person who has been arrested under a section 2 warrant to be handed over to the ICC.

Subclause (1) requires the person arrested to be brought before the High Bailiff as soon as practicable, and subclause (2) then again sets out the functions of the High Bailiff. If he is satisfied that (a) the arrest was duly authorised by warrant under clause 2, and (b) the person under arrest is the person named in the warrant, the High Bailiff is to make a delivery order that he be handed over to the ICC or, in the case of a convicted person, to the state where he is to serve his sentence. The arrangements for taking him to the ICC are the responsibility of the Department of Home Affairs.

Subclause (3) enables the High Bailiff to adjourn the case, as permitted by article 5, pending a decision by the ICC, if the person contests, under article 18 or 19, the admissibility of the case or the ICC's jurisdiction. Again, Mr President, it is important to note that the merits of the case against the person cannot be argued before the High Bailiff.

Subclause (4) provides that the High Bailiff cannot enquire whether the ICC's warrant was issued in accordance with the proper procedure or whether the evidence on which it was issued was sufficient. These are matters for the ICC only.

Subclause (5) enables the High Bailiff to enquire whether the arrest was proper and whether the person's rights were respected, for example as to access to legal advice, and he must do so if the person asks him to enquire.

Subclause (6) provides that the High Bailiff, in acting under subclause (5), shall apply the same principles as the High Court on a petition of dolence.

Subclause (7) requires the High Bailiff, if he is satisfied that the arrest was improper or that the person's rights were not respected, to make a declaration to that effect, but he cannot, for example, order the release of the person.

Subclause (8) provides that, in proceedings for a delivery order: (a) the High Bailiff has the same rights to adjourn the case and remand the defendant as in a summary trial; (b) he must remand the defendant if he does adjourn the case; and (c) the High Bailiff is empowered to award the defendant's costs out of government funds if he dismisses the case.

Subclause (9) provides that legal aid is available for proceedings under this section before the High Bailiff.

Subclause (10) requires the High Bailiff to notify the Attorney-General of the outcome of proceedings for a delivery order.

Clause 6, Mr President, provides that if a person arrested under clause 2 or 3 consents to be handed over to the ICC, a delivery order can be made without an enquiry by the High Bailiff and subclause (1) provides accordingly.

Subclause (2) enables a consent to surrender to be given by the person himself or by an appropriate person on his behalf, for example if he is mentally disordered or unconscious.

Subclause (3) requires the consent to be given in writing in a prescribed form and signed before a justice of the peace, obviously, Mr President, underlining the importance of giving consent.

Subclause (4) requires the High Bailiff to make a delivery order on the defendant being brought before him without an enquiry under clause 5(2), and he cannot have the delivery order reviewed under clause 10.

Subclause (5) requires the Attorney to be notified of a consent to surrender and also the Department of Home Affairs if the defendant is in custody, or the Chief Constable if he is on bail.

So, Mr President, I move that clauses 2 to 6 inclusive do stand part of the Bill.

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

Mr Singer: Could I – ?

The President: Mr Singer.

Mr Singer: On page 3, subsection (4), lines 23 and 24, it refers to rules of evidence for the purposes of article 92.3. Can you just . . . Whose rules of evidence? Is that our rules of evidence or . . . ?

The President: Rules of evidence and procedure. Any other member? Mrs Christian?

Mrs Christian: Yes, Mr President. Under clauses 3 and 4, we have reference to provisional arrest and provisional warrants. I wonder if the learned Attorney would comment on the concept of provisional arrest

and whether that applies in any other legislation? It does go on to say that if the provisional arrest procedure has not been correct, the High Bailiff can pronounce on that, but that there is no . . . His pronouncement has no effect in practical terms; the person is not released as a result of having been arrested not in accordance with the warrants and so on. I wonder if the learned Attorney will also comment: in those circumstances, what redress may there be for a person who has not been arrested in accordance with the warrant?

The President: Mr Waft.

Mr Waft: Could I just ask for clarification? Recently we have seen in South Africa where a chap was arrested as one of the FBI's most wanted then spent a period in prison, only to be found that there was a case of mistaken identity. In whose responsibility does it lie if the ICC issues a warrant which we expedite through the High Bailiff on the Island and that sort of situation arises? Who actually takes responsibility for that?

The President: Mr Attorney.

The Attorney-General: Yes, thank you, Mr President. Dealing with the question raised by the hon. member Mr Singer, rules of evidence, that was referred to in clause 4(4), I think. Rules of evidence and procedure. Those are the rules of evidence and procedure which are set out in the statute of the ICC itself, and the statute does have various articles dealing with rules of evidence and procedure. Essentially, Mr President, it will be, I think, in one of the schedules. If I can just –

Mr Singer: Can I be of help to the learned Attorney? That is fine: you have answered my question, really, that they are the ICC rules of procedure and evidence. That is all I really needed to know. Thank you.

The Attorney-General: If we look, Mr President, at schedule 1, paragraph 2, we see that the Council of Ministers may, by order, make such provision to give effect to any rules of procedure and evidence having effect under article 51. Article 51, if I can just turn it up, in the Rome statute says that 'rules of procedure and evidence shall enter into force upon adoption by a two thirds majority of the members of the Assembly of States Parties' and so on. I think, Mr President, the object of that is to ensure that our laws will give the same protection and rights to defendants as they have in the Rome statute if we are going to try people here. Turning to the hon. Mrs Christian, the notion of provisional arrest is one which is designed to ensure that a person can be, as it were, held on the Island pending the receipt of formal documentation in precisely the correct form. It may be that intelligence indicates that a suspected war criminal is on the Isle of Man. The Bill enables the Attorney-General to receive

a request from the ICC to ensure that a provisional arrest of that person is carried out. It essentially is a holding operation, Mr President. The High Bailiff has a relatively minor rôle to play in so far as, if we look at clause 4, the High Bailiff remands the defendant pending the production of a formal warrant, and the only rôle, I think, that the High Bailiff has is to ensure that the person concerned has been properly arrested in response to the warrant for arrest, but it is essentially a holding operation, Mr President.

Dealing with the question raised by the hon. member Mr Waft, the identity of the defendant is a duty to be ascertained by the High Bailiff. If we see under clause 5 of the Bill, certainly in relation to a section 2 warrant – that is, as if it were a formal warrant as opposed to the provisional warrant – under 5(2), 'if the High Bailiff is satisfied that – and look at (b) there – the defendant is the person named or described in the warrant, the High Bailiff shall make a delivery order. So, it is for the High Bailiff to ascertain that, and if it turned out that the wrong person had been arrested and removed to another country, then that person would indeed have a right of action, not against the High Bailiff, I would suggest, because, normally speaking, judges have immunity, provided that they act honestly, but it may be that the person who is affected would have a right to claim damages, and it would be, I think, for Tynwald to decide whether or not a gratuitous award of damages should be made. I would imagine that is much the same sort of thing that was faced by the South African régime.

The President: Hon. members, the motion I put to you is that clauses 2, 3, 4, 5 and 6 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Clauses 7 and 8, Mr Attorney please.

The Attorney-General: Thank you, Mr President. Clauses 7 and 8 deal with the position where a delivery order is refused, that is where the High Bailiff refuses to make a delivery order. The Attorney-General and the Home Secretary are to be informed, and the defendant is to be either remanded in custody or on bail pending an appeal or he is to be released.

Subclause (1), Mr President, requires the High Bailiff, if he refuses to make a delivery order, to remand the defendant and to notify the Attorney, who is in turn to notify the Home Secretary. It will be observed from clause 15 later that the ICC is to be consulted before bail is granted.

Subclause (2) provides that if the High Bailiff is notified without delay that an appeal under clause 8 is to be brought, the defendant will stay on remand pending the appeal.

Subclause (3) provides that if the High Bailiff is not notified of an appeal, he must order the defendant's release.

Clause 8, Mr President, provides for an appeal to the High Court against a refusal by the High Bailiff to make a delivery order.

Subclause (1) enables the Attorney to appeal against a delivery order or a refusal, by the High Bailiff to make a delivery order. There is no leave required.

Subclause (2) enables the High Court, if it allows the appeal, to make a delivery order itself, or it can remit the case back to the High Bailiff for further consideration.

Subclause (3) provides that if the High Court dismisses the Attorney-General's appeal, the remand of the defendant will terminate seven days after the decision, unless an application for leave to appeal to the Privy Council is made within that time. Otherwise, the remand continues while the appeal is pending.

Subclause (4) provides that a case is considered to be pending so long as there is any step left for the Attorney-General to take, except to consider whether leave should be given out of time.

Mr President, I move that clauses 7 and 8 do stand part of the Bill.

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

The President: Mr Singer.

Mr Singer: Could I ask: with reference there to the Home Secretary, would you yourself deal directly with the Home Secretary or would you have to go through the Lord Chancellor's Office? In this case, would you go direct to the Home Secretary?

The President: Mr Gelling.

Mr Gelling: Yes, I think about three things, one following on that: I was intrigued, because it does not say anything in the legislation about the Home Secretary, and then the overlap, in my opinion, was what I asked before about what jurisdiction is actually operating this. In other words, are we saying that the Home Secretary has the final say in this particular Bill.

The other was: if the High Bailiff is informed *without delay* – those words 'without delay', because it goes on then to say, 'The order remanding the defendant shall continue to have effect if the High Bailiff is not so informed' . . . Then when we go to clause 8, it says 'expiration of seven days'. In other words, what I am saying is: what is 'without delay'? In one it says 'seven days', so we know, but in the other it says 'without delay'.

Then lastly was 8(4), where it says, 'Unless proceedings are discontinued, a case is pending until there is no step that the Attorney-General can take'. My question then was: does that also include the Home Secretary, and what is that step? And then, 'disregarding any power of a court to allow a step to be taken', so in other words, what I am saying is: could the Attorney-General explain what that step might be, if he is then to get Home Secretary approval to that step and why we have not got days in 7(2) instead of 'without delay'? (*Interjections*)

The President: Mr Attorney.

The Attorney-General: Yes, if I may, Mr President, just . . . In relation to the question of the rôle of the Attorney and his liaison with the Home Secretary, it will be appreciated that, in matters of international law and indeed international concerns generally, it is not uncommon for the Attorney-General, and indeed for many other officers within the government, to have cause to consult with the Home Secretary – and it is quite right – more commonly with the Lord Chancellor's Department. However, I suspect, Mr President, that it will be the Home Secretary who will have a greater involvement in relation to matters of this nature than the Lord Chancellor, whose rôle, of course, is primarily concerned with domestic matters and administration of justice within England and Wales. Here we are concerned with essentially international matters, and the Home Secretary, I would imagine, would be better placed to give advice and consultation with the Isle of Man's Attorney-General and other officers within government. I did say that I did imply in clause 7 that it would be for the Attorney to notify the Home Secretary. I just cannot find it now, but there is a provision in the Bill, I think, which deals with this, and can I perhaps just come back to that? (**Mr Delaney:** Hear, hear.) I think that there is some provision – I just cannot put my finger on it now – where the Attorney is to notify the Home Secretary. Yes, as I say, perhaps I can come back to that, Mr President. I just cannot find that.

In relation to the point on 7(2), 'without delay', contrasting that with clause 8(3), which deals with 'seven days', there is no doubt about it that if a person has been arrested and the High Bailiff refuses to make an order that the person be removed from the Island to the ICC or to another country, it would be absolutely right and proper that that person should be released. The High Bailiff obviously considers that there is no case to be made against that person, and therefore he is entitled not to be put through what must be a very worrying process where he is removed from the Island to another country. Clearly, there may be some very good reason why the Attorney-General should appeal against the High Bailiff's decision, but he must act extremely promptly, because on the one hand you have got the rights of the individual not to be held in custody, but equally you have got the right of the Attorney, perhaps acting on information from the Home Secretary. You must get that person removed to the ICC before he goes to another state which is not a party to the statute. So, Mr President, acting 'without delay' certainly means acting far quicker than seven days. It would really be, I would suggest, within 24 hours, although it may be that 48 hours would be appropriate. It has to be very quickly, that is for sure.

Mr President, if I may just move on to an analysis of clause 8, because the hon. member has raised some difficult questions. As I say, under clause 8, it is appropriate that the Attorney has a right to appeal, and that is what 8(1) says, and you do not have to get

permission from anybody. No leave is required from the High Bailiff or from the High Court and the High Court can consider the case put by the Attorney, and it can either make a delivery order itself and say, 'Yes, the person should have been sent off the Island to the ICC or to the requesting state', or the High Court can say, 'Well, the High Bailiff made a mistake. Put it back to the High Bailiff to deal with the case again.' The fact is that while this appeal is pending and the case is being heard, it is entirely sensible that the defendant should remain in custody, because otherwise the Attorney would win his case but find that the person had fled. So what it is saying here is that the person remains in custody for seven days, beginning with the dismissal of the appeal from the High Court. The reason for that is that the Attorney-General might have lost his case before the High Court, but he is convinced that this person should be delivered up to the ICC and is told by the authorities in the UK. It may very well be that, or it might be in the US. Sorry, that is a very bad example: the US is not a party to the statute. It may be France, Germany, whatever. He may be told that 'This person is certainly the person who committed the war crime. You must appeal to the Privy Council.' So the Attorney-General has to give notice of his appeal to the High Court that he is going to appeal to the Privy Council within seven days. So he has got a little bit more leeway when he is appealing to the Privy Council, because clearly there is a lot more work to be done, but when he is dealing with an appeal from the High Bailiff, he has to act without delay, which, I would suggest would be 24 hours or 48 hours. And when, Mr President, there are no other proceedings to be taken – that is, the Attorney has exhausted his rights of appeal to the High Court and to the Privy Council – there is no further step that can be taken, then essentially the defendant is entitled to be released unless there is an appeal pending or some other step. But as I say, by that stage all the appeal processes will have been exhausted, and the only thing that could be considered is that the Attorney is, strictly speaking, out of time, he has not appealed within seven days, but he can get his case together within 10 days, so he is considering whether to apply to the Privy Council for an extension of time to appeal. If he is genuinely considering that, then the person must be retained in custody. I am sorry, Mr President; it is a very long-winded response, but it is –

The President: No, I think it is very important. Apologies, members, but on 8(1)(b), 'remit the case to the High Bailiff to make a delivery order in accordance with the decision of the High Court. (The Attorney-General: Yes.) I think, in your explanation of clause 7 and 8 to us initially, you indicated rather, in relation to 2(b), that there was *further consideration* by the High Bailiff. Does the High Bailiff not have to *take* the decision of the High Court rather than *consider* the decision of the High Court?

The Attorney-General: Well, Mr President, the position would be that, under 8(2), there are two alternatives: first of all, the High Court itself can make the delivery order (**The President:** Yes.) and reject the High Bailiff's decision; alternatively, the High Court may consider that there are grounds for making a delivery order, but instead of making the order itself, it will decide to remit the case to the High Bailiff, and it will be then for the High Bailiff to decide whether to make a delivery order, but obviously taking into account a pretty strong hint from the High Court that the order should be made.

The President: Okay, right.

The Attorney-General: But it would, in fact, be a decision of the High Bailiff.

The President: Okay, hon. members, with the explanations given to the questions relative to clauses 7 and 8 then, I put to you that clauses 7 and 8 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Hon. members, being aware of the clock, I think it is . . . Mr Attorney, do you wish to continue a bit further or do we . . . I think it is probably an appropriate time at which to withdraw, and we will return to our deliberations at clause 9 at 2.30, hon. members? (**Members:** Agreed.) Thank you.

The Council adjourned at 1 p.m. and resumed its sitting at 2.30 p.m.

International Criminal Court Bill – Consideration of Clauses Concluded

The President: I can see by our clock that I might be a little previous, but by the clock downstairs I am a little late. (*Interjections*)

In that case, hon. members, we return again to the International Criminal Court Bill. We had reached the conclusion of clauses 7 and 8, and I think we can probably deal now with 9, 10 and 11, proceedings where court makes a delivery order. Okay, Mr Attorney?

The Attorney-General: Yes, thank you, Mr President. As you have indicated, Mr President, clause 9 applies where the High Bailiff makes a delivery order.

Subclause (1) requires His Worship to commit the defendant in custody or on bail pending the Department of Home Affairs' directions for his transfer. He must also tell the defendant, or have him told in his own language, of his right to a review under clause 10, and also the Attorney-General must be notified.

Subclause (2) enables the High Bailiff to grant bail later where the defendant has been committed in custody.

Subclause (3) provides that the procedure, except subclause (1)(b), applies where a delivery order is made, on appeal, by the High Court under clause 8.

Clause 10, Mr President, is an important provision, enabling the defendant to have a right to a review of the order by the High Court unless he waives that right.

Subclause (1) provides that the right of review applies where the High Bailiff has made a delivery order under clause 5 unless the defendant has waived his right under clause 11 or has consented to his surrender.

Subclause (2) gives the defendant the right to apply for a review within 15 days after the order has been made by His Worship.

Subclause (3) prevents any directions of the Department of Home Affairs for his removal taking effect until after the 15-day period has expired or, if an application for a review is made in that period, while the application is pending.

Subclause (4) provides that proceedings are 'pending' for the purposes of subclause (3) so long as there is any step left to take, otherwise than with leave to act out of time.

Subclause (5) gives the High Court power to cancel a delivery order if it is not satisfied as to the matters on the basis of which it was made, that is that the arrest was duly authorised by a warrant under clause 2, that the person under arrest is the person named in the warrant, and gives it the same powers and duties as a High Bailiff under clause 5(4) to (9).

Moving to clause 11, Mr President, this clause enables the person in respect of whom a delivery order is made to waive his right to review under clause 10.

Moving to subclause (2), that waiver must be given by the person himself or by an appropriate person on his behalf.

Subclause (3) again provides that the waiver must be in a prescribed form, in writing, signed before a justice of the peace.

Subclause (4) provides that if the right is waived, an application for review cannot be made and the delivery order is deemed to be validly made.

Subclause (5) requires the Attorney to be notified of a waiver and also the Department of Home Affairs if the defendant is in custody or the Chief Constable if he is on bail.

Mr President, I therefore move that clauses 9 to 11 inclusive do stand part of the Bill.

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

Mr Singer: Mr President –

The President: Mr Singer.

Mr Singer: Thank you. If this was to occur and somebody was to appeal, it is likely to be a high profile matter. Is there any limit to the time a person has from the appeal, or could it be one of these cases where the legal argument continues and continues and

continues and these sorts of things go on for months and months?

The President: Mr Attorney.

The Attorney-General: Thank you, Mr President. As the hon. member observes, it could well be that a case under this part of the Bill would attract a lot of comment. It may very well be a high profile case, and there may be some very difficult principles to be looked at. One can only, perhaps, imagine what might happen if we had the equivalent of a General Pinochet case in the Isle of Man. Yes, of course cases can be complex and can go on for a long time, but I think sometimes, Mr President, the courts do need to give appropriate time to the complexities of the case.

Mr Singer: And would the Council of Ministers –

The President: Mr Singer.

Mr Singer: I am just thinking of the practicalities of keeping somebody on this Island for maybe months. Would they just be kept in the jail as we have it now, or would the . . .

The Attorney-General: Yes, Mr President, the defendant would be detained in the prison if he was remanded in custody, otherwise on bail.

Mr Singer: Yes.

The President: Okay, hon. members, the motion that I put to you is that clauses 9, 10 and 11 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Now, Mr Attorney, clauses 12 to 17 inclusive, I think.

The Attorney-General: Yes, thank you. Mr President, clause 12 provides that an arrest warrant under clause 2 or 3 is equivalent to an arrest warrant issued under Manx law generally, and that is what subclause (1) provides.

Subclause (2) allows such a warrant to be executed by any person to whom it is addressed, for example an ICC official in the case of an ICC warrant, or by any constable.

Subclause (3) provides that on his arrest under a warrant, a person is deemed to be in legal custody, that is he can be detained against his will or rearrested until he is brought before the High Bailiff.

Clause 13 sets out the effect of a delivery order. It enables the defendant to be delivered up into the custody of the ICC, kept in custody in the meantime and rearrested if he escapes. I do not think I can really add anything further to that in clause 13, Mr President.

Clause 14 makes general provision as to the High Bailiff's powers to remand a person in custody or on bail.

Subclause (1) provides that a power for the High Bailiff to remand is to remand either in custody or on bail.

Subclause (2) precludes the High Bailiff granting bail to a person serving a sentence of custody or remanded in custody to await sentence.

Subclause (3) requires the High Bailiff to commit a person to custody where he grants bail and fixes the amount of bail but a surety is not available.

Clause 15 lays down certain conditions subject to which any application for bail is to be granted; in particular, the ICC is to be consulted. The High Bailiff must notify the Attorney-General, who must consult the ICC. The High Bailiff must consider: firstly, any recommendations of the ICC; secondly, the gravity of the charges or offences; and thirdly, the measures to ensure the person's surrender to bail – for example, His Worship may direct that the passport be surrendered or that security be offered.

Clause 16 enables the High Court to order the release of a person in respect of whom a delivery order is made and who has not been handed over within 40 days.

Subclause (1) enables that person in respect of whom a delivery order is made to apply to the High Court for his release.

Subclause (2) requires the court to order his release unless there is a good reason for the delay in handing him over.

Clause 17 requires a person who has been arrested to be released where the ICC says he is no longer required. Where the ICC notifies the Attorney that a person arrested is no longer required, the Attorney must notify the High Bailiff, who must then order the person's release.

Mr President, I move that clauses 12 to 17 inclusive do stand part of the Bill.

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

The President: Mr Gelling.

Mr Gelling: Just a small point, Mr President. As we go through the Bill, we refer to a person being in the custody of the Department of Home Affairs, and then in 13 it refers to 'the department', so I take it that still is the Department of Home Affairs. Then, if we go to (3) of 13, it says, 'A person authorised for the purpose of a delivery order to take the defendant to or from any place or to keep him in custody has all the powers, authority, protection and privileges of a constable.' Could I ask, perhaps, if Mr Attorney could clarify? I take it, then, that the department would be nominating the person who would be taking the defendant to another place, and the authority and protection and privileges of a constable would be bestowed upon that person, but what person would he envisage that could be? In other words, are we talking about an administrative secretary from a department or . . . I just do not know what is envisaged there. If they are taking on the authority, protection and

privileges of a constable, they would have to know what those powers and privileges were.

The President: Mr Attorney.

The Attorney-General: Yes, thank you, Mr President. I envisage that, in most of the cases, the department will, in fact, be authorising a police officer to deal with these matters. Of course, the police officer will know his powers and duties as a constable, but one can, I think, imagine that there may be circumstances where an official from the ICC has come to the Island with the full knowledge and approval of the department and the ICC official is authorised to, as it were, look after the defendant, the person who is under the order of the High Bailiff, and that official would have the powers of a constable to arrest, if the person tried to escape, to rearrest and so on and so forth. But as I say, my expectation is that, in most of the cases, it would be a police constable.

Mr Gelling: Mr President, not wanting to be pedantic, but that person that you so described – it could be an official of the ICC – could not arrest the person only if he escaped after being put in his custody.

The Attorney-General: Mr President, if we look at clause 13(3), we see there 'A person authorised for the purposes of a delivery order' and so on 'has all the powers, authority, protection and privileges of a constable'. One of the powers, of course, of a constable is to arrest someone on reasonable suspicion that an offence has been committed, an arrestable offence, and therefore if the ICC official believed that the person was about to escape, shall we say, then he would have the power of arrest and detention.

Mr Gelling: Yes, I think, Mr President –

The Attorney-General: And I am missing the point.

Mr Gelling: – what I was trying to get at was: once he is in his custody, he then has the powers of a constable to rearrest him, but he could not come into the Island, that person, and arrest the person until they had been taken into custody in the first place by the authorities of the Isle of Man.

The Attorney-General: Mr President, in the unlikely circumstance that the Department of Home Affairs was content that an ICC official came from outside the Isle of Man to arrest a suspect in the Island, clause 13 does indeed empower that ICC official. As I say, in most of these cases, I am quite sure the suspect will have been arrested by a police constable and therefore the question will not arise, but it strikes me, Mr President, that clause 13(3) is wide enough to cover the example I have given.

The President: Mrs Crowe.

Mrs Crowe: Just one slight query. It is not one, actually, that I noted before in another place, but I notice here that where a delivery order is . . . The defendant is deemed to be in legal custody at any time in the Island or on board a Manx ship. Are we talking about a Manx registered vessel, of which there are now many hundreds throughout the world, or the Steam Packet, which indeed is not a Manx ship and is registered elsewhere? So, I just wondered what 'a Manx ship' meant. (*Interjections*) No, I did not. I missed it. I did not notice that.

The Attorney-General: Yes, Mr President, clause 53 of the Bill –

The President: Interpretation.

The Attorney-General: – states that 'Manx ship' has the same meaning as in the Merchant Shipping Registration Act 1991. The hon. member actually therefore raises a very good point, because, subject to my just checking that legislation, it would mean, would it not, a ship that was actually registered on our register, so therefore, if you had the Manx Ben my Chree, if it was registered in Bermuda, shall we say, it would not be 'a Manx ship'.

Mrs Crowe: To my knowledge, the Steam Packet vessels are not registered on the Island.

The Attorney-General: I will have to just check that Act again, but –

Mrs Crowe: And 'on board a Manx ship', if it meant Manx registered we are looking at hundreds. (*Interjection by Mr Singer*)

The Attorney-General: No, I do not think it is likely to cause a problem, Mr President. All that clause 13(2) is saying, if we read it with 13(1), is that if a suspect is on board a Manx registered ship, he is deemed to be in legal custody and there is no need to, as it were, arrest him or rearrest him. If he was on a foreign registered ship within Manx waters, again he could be arrested, because it is within the jurisdiction of the Isle of Man. If he was on a foreign registered vessel outside the Isle of Man's territory, then we would not have any jurisdiction.

Mrs Crowe: Which would be local?

Mr Delaney: International waters.

The Attorney-General: On the high seas or whatever, so –

Mr Waft: 'A vessel in Manx waters' would cover it, wouldn't it? Any vessel?

Mrs Crowe: Well, it would be leaving Manx waters, wouldn't it? If it was the transportation of a

prisoner from the Isle of Man to another place, I . . . Sorry.

The President: No, I am quite happy for conversation to take place. I just remind hon. members that sometimes it is more difficult for the *Hansard* if we do not go through the Chair.

Mrs Crowe: Sorry.

The President: Mr Attorney, is the Act –

The Attorney-General: Thank you.

The President: – relevant as brought? The question is whether we should deal with this at this stage or whether it could be dealt with in the interpretation clause at 53.

The Attorney-General: Yes, Mr President. The Clerk has very kindly referred me to the Manx Shipping Registration Act 1991, and it is certainly true that 'Manx ships' are defined as ships which are registered in the Island under part 1 or part 2 or 3 or the ship is a fishing vessel which is eligible to be registered and so on. So, the point which has been raised, which is a very good one, is that there does not appear to be any authority for saying that someone is deemed to be in custody if he is on board a foreign registered ship outside territorial waters of the Island, but we would not ordinarily, Mr President, claim jurisdiction in respect of any such person. That person would have to be arrested when he came into the jurisdiction of another state party, for example to the UK or to Ireland.

The President: If he was on the Ben my Chree and half way over the median line to Dublin, he could not be arrested?

The Attorney-General: Well, as soon as he got outside Manx territorial waters.

The President: Right, which is the median line.

Mr Delaney: Under the Maritime Act the captain of a ship is the legal officer, and he can arrest anyone on suspicion, even, of being on the run.

The President: We are getting bogged down again. Mr Attorney.

The Attorney-General: Mr President, yes, the normal thing is that, of course, the master of a ship has jurisdiction in relation to criminal law, that it is Manx criminal law on a Manx ship, no matter where that vessel is. What we are concerned about is the interpretation of this Bill and the rights and duties of the authorities in the Isle of Man, the courts and so on, and how they can assist the ICC. As we have noticed, Mr President, most of this is triggered off where the person concerned is in the jurisdiction of the Manx

court, is believed to be in the Isle of Man, and one of the main functions of the High Bailiff is to be sure that the person who is named in the warrant is the person who is brought before him, and we have seen that there are wide powers of arrest. Clause 13 is really concerned with whether or not a person needs to be kept in custody, and it is saying, is it not, that if you are on board a Manx registered ship you are deemed to be in custody.

The President: Yes, okay. Mrs Christian.

Mrs Christian: Mr President, might I ask the learned Attorney for a view on a proposed amendment to subclause (2)? Would it cover the point if it was for a person being in the Island or within Manx territorial waters, because the question of them being on a Manx ship – is not helping when our local shipping line is not Manx registered, or are we looking still for a power outside of our territorial waters?

The President: Mr Attorney.

The Attorney-General: Mr President, I think that if we were to amend clause 14(2) to say that –

Mrs Christian: Clause 13.

The Attorney-General: – the person was within Manx territorial waters, that actually would not be adding to 2(a), which is ‘in the Island’. I think I am right in saying that in the Interpretation Act and the way that the territorial seas provisions are applied, if someone is within the territorial waters of the Island, he is deemed to be in the Island so I do not think we would add anything, but it is an interesting point, Mr President. I actually do not think that any damage is being done by having this ‘on board a Manx ship’. All that hon. members have done is spot a loophole, an exemption, but we would not try to have jurisdiction on board foreign ships anyway.

The President: No, but under this could we not have . . . For example, there are lots of ships which are on the Manx register, covered by the 1991 Act, that could be sailing in Australian waters. Could we use our power to arrest them on that ship there?

The Attorney-General: Can I just go back to what we are talking about? It is a delivery order, Mr President.

The President: That is right. It is a delivery order; it is not power of arrest really.

The Attorney-General: We are not talking about powers of arrest, really.

The President: Absolutely. Okay, I am with you. Fine. Mrs Crowe.

Mrs Crowe: I am sorry. My point was concerned with delivery, and it was: when that vessel, whether it

be called a Manx ship or whatever, sails from the Isle of Man, it is a transportation vessel, and I think what it is trying to say is that they are deemed to be in legal custody while they are in transit from the Island. Would it mean that a person on a vessel, the Ben my Chree or a vessel that was not a Manx registered vessel, whatever vessel you chose to use, would have to be rearrested when they were out of Manx waters? That was the point I was trying to ask, because we would not have legal jurisdiction, because it would not be on board a Manx ship, and once it is out of ‘in the Island’, which includes our territorial waters, then that person may or may not have to be rearrested. That was the point I was trying to make.

The Attorney-General: Yes. Mr President, if I may just read clause 13, because I think, due to my own fault, I may have misled hon. members, we are actually not talking about the right to arrest. What we are talking about is –

The President: That has already happened.

The Attorney-General: Yes, what we are talking about is how we actually execute a delivery order –

Mrs Crowe: That is right.

The Attorney-General: – and it says in 13(1) that ‘A delivery order is sufficient authority for any person acting in accordance with the directions of the department to receive the defendant, keep him in custody and convey him to the place where he is to be delivered up into the custody of the ICC.’ Now Clause 13(2) explains that a little bit by saying ‘Where a delivery order is in force, the defendant is deemed to be in legal custody at any time when he is (a) in the Island or (b) on board a Manx ship and he is being taken, under the order, to or from any place or is being kept in custody pending his delivery up under the order.’ So I do not think that we are concerned, Mr President, with arrest at all; we are simply – it is a rather curious provision – making it clear that once the delivery order has been made and you are on board a Manx ship, a Manx registered ship, you are deemed to be in custody for the purposes of this order being executed.

The President: Yes. Mr Singer.

Mr Singer: Can I ask therefore, what happens if the person is being transported abroad by air? (**Mr Lowey:** Yes.) We are talking now about having a Manx air register as well. (**Mrs Crowe:** Yes.) Should we be anticipating that? And what is the position if someone is put on a plane at Ronaldsway under arrest and is being taken somewhere else? (*Interjections*)

The President: Mrs Christian.

Mrs Christian: Mr President, to try and further this, this seems to me to establish that a delivery order

within the confines of our jurisdiction is such that a person covered by a delivery order there is in legal custody. Presumably, because they are being delivered to somewhere else, when they cross those boundaries as defined here, they would come under the legislation of another jurisdiction, where a similar provision in relation to legal custody under the delivery order will take effect. I wonder if the learned Attorney could confirm that that is his view and we are simply here making sure that when they are in our area it is legal custody, this delivery process.

The Attorney-General: Yes. Mr President, I think there are two points. If I may just deal with Mrs Christian's point first, I think she has explained it very well. She is absolutely right. I think that the purpose of this clause 13(2) is to make it clear that the person remains in custody for the purposes of this delivery order if he is on board a Manx ship and also, of course, if he is on the Island, because the Manx courts can enforce the delivery order by arrest and so on and so forth. In relation to an aircraft, Mr President, of course a person can be kept in custody on board an aircraft, and you could have a police constable or more than one police constable in charge of someone who is being flown from Ronaldsway to – (*Interjection by Mr Delaney*) London and onwards to The Hague, but clause 13 does not deal with aircraft. Clause 13 is dealing with Manx ships and people who are on the Island, and as the hon. member Mrs Christian says, when the person and the police officers move into the jurisdiction of another state, then – you are quite right, their laws take over.

The President: Yes. Mr Gelling.

Mr Gelling: Again, sorry, Mr Attorney, but that was the point, really, I was trying to make in (3) that we are talking about delivery here, and I was just taken a little aback when you said that that would also give power for an ICC person to actually arrest someone in the Island. I do not think that does, does it? It is only when they are already in custody and they are delivering a delivery order and they escape.

The Attorney-General: I beg to differ, if I may, with respect, Mr President, because I think that if the Department of Home Affairs agrees this – and that is how I prefaced it, provided it is done with the authority of the Department of Home Affairs – someone can be specially authorised to arrest somebody. It seems to me, but I can certainly check it, Mr President, in time for the next reading, if you wish.

The President: Mrs Crowe. Finally, I think.

Mrs Crowe: Could I . . . ? I am sorry.

The President: That is all right.

Mrs Crowe: It is just that I think it is so important, because I think there could be high-

powered lawyers looking at this to find every single loophole they possibly can, if we had a high-profile prisoner. Would the Attorney-General feel that it might be appropriate to delete all of (2)? We have it quite plainly stated in (1) that 'A delivery order is sufficient authority for any person with the directions of the Department, to keep him in custody and convey him to a place where he is delivered up into the custody of the ICC' or whatever. Here we are talking about on board a Manx ship; we are talking about crossing out of territorial waters and someone from the ICC being there to receive him. It was just a thought.

The Attorney-General: Mr President, can I undertake to think about it and –

The President: Right. Absolutely. Hon. members, I think the best way of dealing with it . . . and I am sure Mr Attorney will refer us to it on third reading stage. In the interim, I put to you that clauses 12 to 17 inclusive do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

In that case, hon. members, we will move on, I think possibly to clauses 18 and 19.

The Attorney-General: Thank you, Mr President. Yes, clause 18 provides that where a prisoner is in transit to or from the ICC and passes through the Isle of Man with the agreement of the Department of Home Affairs, he is treated as if he had been arrested under an ICC warrant.

Subclause (1) of clause 18 deals with the procedure on a request from the ICC to the Attorney to allow a person in transit to or from the ICC to pass through the Island. The Attorney must pass the request on to the Department of Home Affairs, who must notify the Attorney of its decision.

Subclause (2) deals with the situation where the department agrees to the request for transit. The prisoner is treated on his arrival as if: (a) the ICC's request had been for his arrest and surrender; (b) the ICC warrant accompanying him had been endorsed by the High Bailiff; and (c) he had been arrested under that warrant. Then, Mr President, clauses 5 to 11 will apply, with the modifications which are necessary – that is in (d) and (e) – and he must be taken before the High Bailiff, who, if he is satisfied that the department has agreed to his transit through the Island and that he is the person named in the warrant, is to make a delivery order. The same provisions under clauses 6 to 11 again apply, except that an application to the High Court under clause 10 for a review of the order must be made within two days instead of 15.

Subclause (3) provides that a prisoner in transit cannot be granted bail.

Clause 19 requires a prisoner in transit to or from the ICC who makes an unscheduled landing in the Island to be held pending a request for transit from the ICC.

Subclause (1) requires a prisoner being surrendered to the ICC who makes an unscheduled

landing to be arrested and brought before the High Bailiff.

Subclause (2) requires the High Bailiff to remand him in custody to await: (a) a request to the Attorney-General by the ICC for his transit through the Isle of Man; (b) a decision by the Department of Home Affairs on the request; and (c) its notification to the Attorney.

Subclause (3) provides that where the Attorney-General has received no request within 96 hours of the landing or is informed by the department that it has refused such a request, the Attorney is to notify the High Bailiff, who is to release the prisoner.

Subclause (4) provides that where the Attorney receives a request for transit within 96 hours, he is to notify the High Bailiff, who is to terminate the remand and proceed in accordance with clause 18.

Mr President, I move that clauses 18 to 19 do stand part of the Bill.

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

The President: Mr Delaney.

Mr Delaney: I take it that, as usual, this legislation is virtually copying . . . Every other member of the organisation believes this particular court will have a similar . . . So therefore for the main points that were raised in the last one, other than the one about the ship in foreign waters, this would cover it, because anywhere we were flying somebody to or shipping somebody to, the place we are shipping to would have a similar legislation to take up this particular section.

The President: Mr Waft.

Mr Waft: I just wanted to say the same thing about Jersey and Guernsey. How do we compare and is the legislation that we are enacting here virtually the same? I am thinking about the different United Kingdom states, Scotland and Wales and Northern Ireland. Has the legislation just gone through the United Kingdom, and is it compiled with other legislation of a similar ilk in other areas?

The President: Mr Attorney.

The Attorney-General: Mr President, clauses 18 and 19 of our Bill are based on sections 21 and 22 of the UK Act, more or less in mirror form, and therefore, as the hon. member Mr Delaney observes, the same principles are to apply and are unlikely to cause any difficulty I should have thought. I am afraid I am not certain, Mr President, of the position in Jersey and Guernsey. My understanding is that we are in advance of them in relation to this legislation, but again, I will endeavour to check that for the third reading.

The President: Hon. members, the motion I put is that 18 and 19 do stand part of the Bill. Those in

favour please say aye; against, no. The ayes have it. The ayes have it.

Clauses 20, 21, 22 and 23, Mr Attorney.

The Attorney-General: Sir, thank you. Clause 20 provides that a person's state or diplomatic immunity will not normally prevent any action under this part, except in the case of a state which is not a party to the statute.

Clause 20(1) lays down the general rule that a person cannot, by reason of a connection with a state party to the statute, claim state or diplomatic immunity from proceedings under the Bill.

Subclause (2) provides that where a person has state or diplomatic immunity by reason of a connection with a state which is not a party to the statute, and that State has waived immunity to allow him to be surrendered to the ICC, he cannot claim immunity from proceedings under this part.

Subclause (3) provides that the Secretary of State's certificate as to whether a state is party to the statute or has waived immunity is conclusive.

Subclause (4) gives the United Kingdom Government a reserved power to refuse co-operation with the ICC in the case of a person who has state or diplomatic immunity which otherwise could not be waived by virtue of subclauses 1 or 2.

Subclause (5) defines in some detail what is meant by 'state or diplomatic immunity'.

Clause 21 introduces schedule 2, which deals with the case where a request is received from the ICC for the surrender of a person against whom criminal or extradition proceedings or proceedings before a tribunal dealing with the atrocities in Bosnia or Rwanda are pending.

Schedule 2, Mr President, is at page 38 of the Bill, and paragraph 1 defines the term 'criminal proceedings'.

Paragraph 2 deals with the case where a request from the ICC for the surrender of a person arrives while criminal proceedings are pending or in progress against him. The answer is that those proceedings must be adjourned pending the making of a delivery order, and if one is made, the Attorney-General may decide that the ICC request is to have priority and direct that the criminal proceedings in the Island are to discontinue.

Paragraph 3 deals with the case where a person serving a sentence of custody in the Island is handed over to the ICC. His sentence is not cancelled, but any time he spends in the custody of the ICC or serving an ICC sentence counts towards his Isle of Man sentence. The delivery order may include provision for his return to the custody of the Department of Home Affairs.

Paragraph 4 gives a general power to suspend or revoke any order other than a sentence of custody, for example a hospital order on the making of a delivery order.

Part 2 deals with extradition proceedings. Again, paragraph 5 defines what is meant by 'extradition proceedings'.

Paragraph 6 makes similar provision to paragraph 2. Where a request from the ICC for the surrender of a person arrives while extradition proceedings are pending, they are to be adjourned pending the making of a delivery order, and if one is made, the Attorney may decide that the ICC request is to have priority and the extradition proceedings are then to be discontinued.

Paragraph 7 deals with the case where a request from the ICC for the surrender of a person arrives when extradition proceedings have been concluded, and the court is to suspend or revoke any warrant or order so that he can be handed over pursuant to the delivery order.

Part 3, Mr President, deals with other delivery proceedings, that is proceedings for surrender of a person to a tribunal set up by the United Nations to try cases arising out of the atrocities in Bosnia or Rwanda. Again, similar principles apply to those other delivery proceedings as I have explained.

Returning then, Mr President, to clause 22 of the Bill, this clause provides that copy ICC warrants, certified copies of those copies and faxed documents are to be treated as originals. It also provides that this part applies to an amended warrant as it applies to the original.

Clause 23 defines terms used in this part.

And so, Mr President, I move that clauses 20 to 23 and schedule 2 do stand part of the Bill.

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

The President: The motion, then, hon. members, is that clauses 20 to 23, including schedule 2, do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Part 3, clause 24, Mr Attorney.

The Attorney-General: Yes, thank you, Mr President. Clause 24 introduces the provisions of part 3, under which assistance is to be given to the ICC in investigating ICC crimes.

Subclause (1) sets out the circumstances in which part 3 applies, namely where the ICC or its officials are investigating an ICC crime.

Subclause (2) provides that faxed documents are to be treated as originals.

Subclause (3) provides that this part does not prevent assistance being given to the ICC in any other way.

Mr President, I move that clause 24 do stand part of the Bill.

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

The President: The motion, hon. members, is that clause 24 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. How far do we wish to travel this time? Clauses 25 to 35, Mr Attorney?

The Attorney-General: Yes, sir. (**The President:** Okay.) Mr President, clause 25 also introduces schedule 3, which deals with the questioning of suspects at the request of the ICC for the purposes of an investigation.

Clause 25(1) sets out the circumstances where the clause applies and the ICC requests the Attorney-General to assist in questioning a suspect.

Subclause (2) makes it clear that a person must be informed of his rights under article 55 and cannot be interviewed without his consent.

Subclause (3) introduces schedule 3, which sets out article 55, and that refers to the human rights of suspects as embodied in the statute.

Subclause (4) provides that consent may be given by the person himself or by an appropriate person on his behalf – that is the consent to be interviewed.

Subclause (5) enables consent to be given orally or in writing, but it must be recorded in writing as soon as practicable.

Clause 26 enables evidence to be taken or documents produced at the request of the ICC for the purposes of an investigation.

Subclause (1) sets out the circumstances where the clause applies. The ICC must request the Attorney for assistance in taking evidence or producing documents.

Subclause (2) requires the Attorney to give a direction to the High Bailiff to receive the evidence.

Subclause (3) gives the High Bailiff the same powers to summon witnesses and require the production of documents, including taking evidence on oath, as he has in other summary proceedings.

Subclause (4) gives a witness the same privileges as he has in criminal proceedings, for example the privilege against self-incrimination.

Subclause (5) enables the Attorney-General's direction under subclause (2) to include instructions as to how the evidence is to be verified.

Subclause (6) prevents any order for costs being made against or in favour of a witness.

Clause 27 makes further provision with respect to the taking of evidence under clause 26.

Subclause (1) is introductory.

Subclause (2) enables the High Bailiff to take evidence *in camera* on the basis that that is necessary to protect victims and witnesses or the person alleged to have committed an ICC crime or that there will be confidential or sensitive information disclosed.

Subclause (3) requires a record of the proceedings to be made in the order book, that is the order book under the Summary Jurisdiction Act, section 78.

Subclause (4) provides that the record is not to be made public unless authorised by the Attorney or the High Bailiff.

Subclause (5) requires the record to be copied to the Attorney and by him to the Home Secretary and the ICC.

Clause 28 enables a summons or other document from the ICC to be served in the Isle of Man, and it may be served by a coroner on the person personally.

Clause 29 provides for the temporary transfer to the ICC of a prisoner in a Manx institution, with his

consent, for the purpose of identification or to give evidence.

Subclause (1) sets out the circumstances where this applies. The ICC again makes a request to the Attorney for the transfer of a prisoner for the purpose of identification or giving evidence.

Subclause (2) requires the Attorney to pass the request on to the Department of Home Affairs, who are to issue a 'transfer warrant' authorising the transfer of the detainee to the ICC in accordance with arrangements made with the ICC.

Subclause (3) requires the consent of the detainee to a transfer warrant, but, once given, his consent cannot be withdrawn after the issue of the warrant.

Subclause (4) applies clause 13 and clause 21 and schedule 2 to a transfer warrant.

Subclause (5) defines 'detainee' as including: a person serving a sentence of custody; a person in custody awaiting trial or sentence; a person committed in default of payment of a fine or in connection with extradition or other delivery proceedings; and also a detained immigrant.

Subclause (6) provides that a detained immigrant who is temporarily transferred to the ICC under a transfer warrant is not to be treated as having left the Island for the purpose of the Immigration Act 1971 so any proceedings under that Act can be continued against him on his return.

Subclause (7) defines 'the Immigration Acts'.

Clause 30 applies the powers of entry, search and seizure in the Police Powers and Procedures Act 1998 to a request for assistance by the ICC.

Subclause (1) provides that where the Attorney receives a request for assistance requiring the exercise of powers of entry, search and seizure he is to direct a constable to apply for a warrant or order under part II of the 1998 Act.

Subclause (2) applies the provisions of part II of that Act relating to a serious arrestable offence to an ICC crime.

Clause 31 introduces schedule 4, which gives the police power, under the supervision of a court, to take fingerprints and non-intimate samples, for example of hair or saliva, in response to a request for assistance by the ICC.

Schedule 4, Mr President, is set out at page 44 of the Bill. I am not sure if hon. members wish me to go through schedule 4 in any detail; suffice it to say that there are protections there for the person who is giving assistance – for example, appropriate consent must be given to enable fingerprints or samples to be taken – but I can come back to that if hon. members wish.

Clause 32 enables the High Bailiff in his capacity as coroner of inquests, to issue a warrant authorising the exhumation of a body in connection with an investigation into the deceased's death or that of another person which occurred in connected circumstances.

Clause 33 provides for the production to the ICC of records of evidence, police statements et cetera taken in the Island which are required in connection with the investigation of an ICC crime.

Subclause (1) sets out the circumstances where the clause applies. Again, the ICC requests the Attorney for records or other documents relating to evidence taken in the Island.

Subclause (2) requires the Attorney to take any necessary steps to obtain the documents, for example, apply for a court order.

Clause 34 introduces schedule 5 and provides for the issue by the High Court of orders and warrants to assist the ICC in investigating the proceeds of any ICC crime.

Subclause (1) requires the Attorney to apply for an order or warrant under schedule 5 where the ICC requests him for assistance in investigating the proceeds of an ICC crime.

Schedule 5 is set out at page 47 of the Bill. Paragraph 1 gives any judge of the High Court power to make an order for production of, or access to, any specified material and the application by the Attorney. The application may be made in chambers *ex parte* – that is, without notice to the person concerned – but may not apply to a matter which is subject to legal privilege. Mr President, I think hon. members will be familiar with the provisions of production or access orders which apply in other pieces of legislation, but again I can come back to that if hon. members wish me to do so.

Clause 35 introduces schedule 6 and provides for the making of temporary freezing orders at the request of the ICC with a view to preserving property which may be subject to eventual forfeiture by the ICC if a person is convicted of an ICC crime. The Attorney is required to apply for a freezing order under schedule 6 where the ICC requests him for assistance in freezing the proceeds of an ICC crime or other property or assets which may become liable to forfeiture. Again, Mr President, the provisions of schedule 6 are set out at page 52, and again I think hon. members will be familiar with the broad approach to freezing orders, the appointment of receivers and so on and the power for constables to seize any property the subject of a freezing order to prevent it being taken out of the jurisdiction. It is perhaps interesting to note that in paragraph 7 of schedule 6 there is provision for a freezing order affecting land, the title to which is registered under the Land Registration Act, or an application for such an order, and that may be notified on the Title Register. Paragraph 8 of that schedule also makes provision in the case of land, the title to which is unregistered.

Mr President, clause 36 exempts from production or disclosure under any powers conferred by this part any documents or information which would prejudice national security, and we can see there that it is prejudicial to the security of the United Kingdom or the Island.

Subclause (2) of clause 36 makes a certificate of the Home Secretary or the Chief Minister to be conclusive in relation to those matters.

Clause 37 enables the Attorney to give directions as to how any material obtained in compliance with a request from the ICC is to be verified – that is, for

example, exhibited to an affidavit – in order that that material can be used as evidence before the ICC.

Clause 38 requires any material obtained in compliance with a request from the ICC to be sent to the Attorney-General, who is to send it to the ICC.

So, Mr President, with that, I move that clauses . . . I know where I finished, but I am not sure where I started.

The President: Clause 25.

The Attorney-General: Clauses 25 to 38, thank you, and schedules . . .

The President: Schedules 3, 4, 5 and 6.

The Attorney-General: Schedules 3, 4, 5 and 6 do stand part of the Bill.

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

The President: Mrs Christian.

Mrs Christian: Yes, Mr President, in clause 29 dealing with the transfer of a detainee to give evidence or assist an investigation, it is made clear in subclause (3) that such a transfer warrant shall not be issued unless the detainee consents to the transfer. How does the question of progressing the business of the inquiry or the court proceed if such a person does not consent to transfer? Does it come to the Isle of Man or does the thing stop?

The President: Mr Singer.

Mr Singer: Maybe I am a little bit too sensitive, I do not know, but on 36(1) and (2), this is an Isle of Man Act, and it goads me a little bit that we say ‘the United Kingdom or the Island’ and then it says the ‘Secretary of State or the Chief Minister’. I believe it should be the other way round in priority as it is an Isle of Man Act. That is just my personal view.

The President: A matter of legal drafting there, yes? Mr Waft.

Mr Waft: No, I just wondered about legal aid.

The President: We have been through that.

Mr Waft: For the arrest of the person.

The President: Yes, we –

The Attorney-General: There is a provision earlier, Mr President.

The President: We had it. Legal aid cropped up earlier.

The Attorney-General: Provisions before the High Bailiff. In clause 5(9), but –

The President: What, page 5?

The Attorney-General: Yes, but –

Mr Waft: Yes, we passed that one today.

The President: We queried previously the question as to ‘constable’. I think it was Mr Gelling or Mrs Crowe, somebody on the right hand side was querying about the provision of ‘constable’. We decided it was a police constable, but I notice that in schedule 5 it includes an officer within the meaning of the Customs and Excise Management Act 1986, so ‘constable’ is also referred to as being on the customs side and that is in relation to that. (**The Attorney-General:** Yes.) Right, let us go back to where we were. We have come a long way in that one. I think we have covered the whole of part 3, haven’t we? In fact, hon. members, what I put to you is that clauses 24 to –

Mrs Christian: Mr President, might we have a response from the learned Attorney to the enquiries please, before we go –

The President: Yes, sorry. Mr Attorney.

The Attorney-General: Thank you, Mr President. I thought I had escaped! (**The President:** No.) Clause 29, if I may deal with the question from the hon. member Mrs Christian: I think it is important to appreciate that this clause is not concerned with a person who is a suspect, but it is concerned with a person who happens to be in custody but who may be able to give assistance to the ICC proceedings. as it says in clause 29(1), ‘for purposes of identification or for obtaining testimony or other assistance’. The way I would approach it is that such a person would not ordinarily be compelled to attend a foreign court to give mere evidence as a witness. He is not a party, he is not a suspect as such, and therefore it would be consistent with his status as a witness, albeit that he is in custody, to be able to say ‘Well, it may be that I can help, but actually I do not want to. I do not want to have anything to do with this.’ In those circumstances there is no power to compel him to give assistance, which I think is consistent with modern approach.

The hon. member Mr Singer queries the order of priority: the United Kingdom or the Island, and then the Secretary of State or the Chief Minister. For my part, Mr President, I have every sympathy with the observations made. It is a drafting point, and I do not have any firm views.

In relation to legal aid, I think that the whole approach now under the Human Rights Act and the jurisprudence under the Human Rights Act is that a person should indeed have legal aid. I feel quite sure that in these sorts of cases, which as has been observed, are likely to be of high profile, involving very basic human rights, the relevant court would

ensure that the person concerned had legal aid if he was not able to pay for it himself.

Mr Waft: Would he be able to demand, Mr President, a QC on a par with the people he was up against, and who would pay for that?

The Attorney-General: Mr President, in the normal criminal courts on the Island, if one party has leading counsel, then the court generally allows the other party to have leading counsel, and I am afraid it is sometimes quite a drain on the taxpayers' resources.

The President: Mr Singer.

Mr Singer: I thank the learned Attorney for his comment and his support, really, of my comment. I did not know if I was in the minority of one here. Perhaps not in this Bill, but in future, he might put that point to his legal draftsman that they take note of the comments that have been made.

The President: Thank you, hon. members. I think that takes me, doesn't it, to putting to you part 3, which takes us up to clause 38 inclusive, along with the relevant schedules 3, 4, 5 and 6? Those in favour please say aye; and against, no. The ayes have it. The ayes have it.

So we come to part 4, which will take us from 39 to 43. Mr Attorney.

The Attorney-General: Thank you, Mr President. Clause 39 makes provision for a person convicted of an ICC crime by the ICC to be detained in the Island, provided the Isle of Man Government agrees.

Subclause (1) sets out the circumstances where this might apply, namely the ICC designates the United Kingdom as the state where a person convicted of an ICC crime is to serve his sentence and the UK Government agrees and suggests that the person might serve the sentence in the Island, for example because his family might be here.

Subclause (2) provides that if the Department of Home Affairs agrees, it is to issue a warrant under which the prisoner can be brought to the Island, detained here and conveyed to the institution where he is to be detained.

Subclause (3) enables a warrant to be varied, and it must be varied if the ICC varies the sentence.

Subclause (4) provides that a prisoner serving an ICC sentence in the Island is to be treated as if he had been sentenced at General Gaol.

Subclause (5) excludes certain provisions of the Custody Act 1995 and custody rules in relation to a prisoner serving an ICC sentence in particular those relating to the length of sentence and early or temporary release.

Clause 40, Mr President, enables a person serving an ICC sentence in the Island to be temporarily returned to the ICC or permanently transferred to another state to serve his sentence.

Subclause (1) sets out the circumstances in which this clause applies: again, there is a request to the department to return the prisoner to the ICC temporarily or to transfer him to another state to serve his sentence.

Subclause (2) requires the department to issue a warrant for the return or transfer of the prisoner and to give directions for his conveyance in accordance with arrangements made with the ICC.

Subclause (3) provides that in the case of a prisoner's temporary return to the ICC, the original warrant, and of course 39(2), under which he was detained in the Island, continue to have effect so as to authorise his detention when he is returned to the Island.

Clause 41 enables a prisoner serving an ICC sentence in the Island to be transferred, with the consent of the Isle of Man Government, to the United Kingdom, either temporarily or to serve his sentence there.

Subclause (1) sets out the circumstances where this clause applies: the Home Secretary, Northern Ireland Secretary or Scottish Executive makes an order, with the consent of the Department of Home Affairs, for the transfer to the UK.

Subclause (2) requires the department to issue a warrant for the transfer of the prisoner and to give directions for his conveyance.

Clause 42 provides that a person who is in transit under a warrant under this part and is not in an institution, and so is not technically in legal custody under the Custody Act, is nevertheless treated as if he were in legal custody so that, for example, he can be arrested if he is at large and anyone harbouring him commits an offence. Subclause (1) makes that clear, Mr President.

Subclause (2) provides that the prisoner is nevertheless deemed to be in the legal custody of the Department of Home Affairs when he is on Manx soil or a Manx ship and is being taken to or from anywhere or is being kept in custody.

Subclause (3) gives the department power to designate the person who is to take charge of a prisoner in transit or to keep him in custody.

Subclause (4) provides that a person designated has the same powers and privileges as a constable.

Subclause (5) enables a prisoner in transit who escapes or is unlawfully at large to be arrested without a warrant by any constable and taken to the prison, airport et cetera where he should be.

Clause 43 enables regulations to be made for the enforcement of other orders of the ICC, for example fines, forfeitures and compensation.

Subclause (1) enables the Council of Ministers to make regulations, making provision accordingly, for example orders for reparation to victims, that is restitution, compensation or rehabilitation.

Subclause (2) enables the regulations to provide for the Department of Home Affairs to appoint a person to enforce an ICC order and to give directions to that person.

Subclause (3) provides that the regulations must require an ICC order to be registered in a specified court in the Island before it can be enforced.

Subclause (4) requires the court to be satisfied that the order is in force and cannot be appealed before it is registered.

Subclause (5) provides that an ICC order which has been complied with in part, for example where part of a fine has been paid, can only be registered as to the part outstanding.

Subclause (6) enables the regulations to provide that a registered order is to be deemed to be a Manx court order and enforceable in the same way.

Subclause (7) enables the regulations to apply any other legislation relating to the enforcement of overseas orders.

Subclause (8) requires a court enforcing a registered ICC order to give anyone with an interest in property affected an opportunity to be heard and not to enforce it to prejudice third parties who have acted in good faith, for example a bona fide purchaser of property which has been ordered to be forfeited.

Subclause (9) enables the regulations to provide for any costs of enforcement to be recovered as if they were due under the order.

Subclause (10) requires Tynwald approval to those regulations.

Mr President, I move that clauses 39 to 43 do stand part of the Bill.

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

Mrs Crowe: I know I came back just at the wrong moment, but if the Attorney-General would actually check if we do need to have, in 42 again, that definition that I think might well be used as a 'get-out' clause by some clever lawyers being paid a fortune. *(Interjection by Mr Delaney)*

The President: Mr Waft.

Mr Waft: Just on a small point, if there was a person who was taken via the Isle of Man courts to the ICC and sentenced and because he had family living on the Island the sentence was imposed and he could request to be imprisoned on the Island, who would pay the costs involved, as there could be very lengthy sentences imposed?

The President: Mr Attorney.

The Attorney-General: Yes, thank you, Mr President. First of all, I do agree and undertake to look at the point on Manx ships for Mrs Crowe.

In relation to the point about the cost of maintaining a prisoner on the Island, we can see that clause 39 provides that the Department of Home Affairs – this is in subclause (2) must agree that the prisoner should be detained in the Island. I suppose, Mr President, that if it was envisaged that there was a long period of custody to be served here and there

might be some very real problems with security and so on, guarding this person against terrorist attack and so on, the department might very properly say, 'Yes, we will agree that he serves his sentence, provided that the United Kingdom bears the cost or part of the cost or additional costs.' So, I think it would be something that the department could certainly take into account.

The President: In that case, hon. members, the motion that I will put to you is that clauses 39, 40, 41, 42 and 43, part 4 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Part 5 then, clauses 44 to 53. Mr Attorney.

The Attorney-General: Thank you very much, Mr President. Clause 44 sets out the meaning of 'genocide', 'war crimes' and 'crimes against humanity' by reference to the relevant articles and the Elements of Crimes adopted in relation to ICC crimes. Subclause (1) provides accordingly.

Subclause (2) requires any court to apply the Elements of Crimes for the time being adopted in relation to ICC crimes.

Subclause (3) requires the Council of Ministers to make regulations setting out the Elements of Crimes for the time being in force.

Subclause (4) requires the relevant articles to be interpreted in accordance with any reservation or declaration lodged by the United Kingdom when ratifying any relevant treaty or convention.

Subclause (5) enables the Council of Ministers to specify any relevant reservation or declaration in an order.

Subclause (6) requires regulations under subclause (3) and orders under subclause (5) to be laid before Tynwald.

Subclause (7) requires the court also to take into account any case law of the ICC and any relevant rules of public international law.

Subclause (8) introduces schedule 7, which sets out those relevant articles. I am not sure that I need to take hon. members through schedule 7. You will see there, Mr President, that the relevant articles from the statute are set out defining 'genocide', 'crimes against humanity' and 'war crimes'. They are set out extensively.

So, Mr President, I move that clause 44 and schedule 7 do stand part of the Bill.

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

The President: Are we content, hon. members, just to deal with the one clause?

The Attorney-General: I am sorry.

The President: It is perfectly all right. I put to you, then, the motion that clause 44 and schedule 7 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

So, perhaps we can take the remaining clauses, Mr Attorney, of part 5.

The Attorney-General: Yes, sir.

The President: Clauses 45 to 53.

The Attorney-General: Thank you. Clause 45 makes genocide, war crimes and crimes against humanity offences under Manx law if committed in the Isle of Man or by a person with a connection with the Isle of Man.

Subclause (1) makes those crimes as defined in clause 44 offences under Manx law.

Subclause (2) limits such offences to acts committed: (a) in the Isle of Man by anyone; or (b) elsewhere by a United Kingdom national, a Manx resident or a person subject to UK service jurisdiction.

Clause 46 makes conduct ancillary to acts of offences against Manx law, even if the acts themselves are committed outside the Island. For example, if a person in the Island incites nationals of a foreign country to commit a crime against humanity in that country, the incitement will be an offence under Manx law even though the crime itself would not.

Subclause (1) makes conduct ancillary to an act specified in subclause (2) an offence under Manx law even though the Act is not itself an offence under Manx law. Conduct ancillary to an act includes aiding, abetting, counselling, procuring or inciting it, attempting or conspiring to commit it et cetera.

Subclause (2) specifies the acts referred to: they are acts committed outside the Island which would be genocide, war crimes or crimes against humanity if committed in the Island, for example a crime committed by a foreign national who is not resident in the Island or subject to UK service jurisdiction.

Subclause (3) provides that conduct is ancillary to such an act if it would be an ancillary offence if the act itself were committed in the Island.

Subclause (4) limits such ancillary offences to acts committed: (a) in the Isle of Man by anyone; or (b) elsewhere by a United Kingdom national, a Manx resident or a person subject to UK service jurisdiction.

Clause 47, Mr President, provides for the prosecution, trial and punishment of genocide, war crimes and crimes against humanity and related crimes.

Subclause (1) defines the offences covered by the clause.

Subclause (2) provides that the offence is triable only on information, that is at General Gaol by a deemster and jury and as a result of information laid by the Attorney-General.

Subclause (3) provides that if the offence amounts to murder or aiding or abetting murder, it is punishable as for murder, that is with custody for life.

Subclause (4) makes any other offence of genocide, a war crime or a crime against humanity punishable with up to 30 years' custody.

Clause 48 makes an offence under article 70(1) against the administration of justice in the ICC, for

example giving false evidence, an offence in Manx law.

Subclause (1) makes intentionally giving false evidence in the ICC in breach of article 70(1)(a) an offence in Manx law, carrying up to seven years' custody and/or an unlimited fine.

Subclause (2) makes any other breach of article 70 an offence in Manx law, carrying up to five years and an unlimited fine in General Gaol or up to six months and or a fine of up to £5,000 on summary conviction. This might cover, for example, false documentation and bribing, threatening or harming witnesses and so on.

Subclause (3) requires the court to take into account any relevant case law of the ICC and rules of public international law.

Subclause (4) limits such offences to acts committed: (a) in the Isle of Man by anyone; or (b) elsewhere by a United Kingdom national, a Manx resident or a person subject to UK service jurisdiction.

Subclause (5) requires the Attorney-General's consent to a prosecution for an offence under this clause.

Clause 49 applies provisions of Manx legislation for the protection of complainants and witnesses to offences under clauses 45 or 46 which involve sexual offences or offences against children and young persons.

Subclause (1) specifies the protective provisions applied by the clause, that is, for example, the Sexual Offences Act 1992, schedule 2, which provides for the victim's anonymity in rape cases and the Children and Young Persons Act 2001, part 8, which involves proceedings against children and young persons.

Subclause (2) provides that where those provisions apply to a specific offence, for example rape or child cruelty, they will also apply to an offence under clauses 45 and 46, which involve conduct amounting to that specific offence, and also to ancillary offences such as aiding or abetting. For example, rape is a crime against humanity and is a war crime, so a trial for a crime against humanity or war crime consisting of or including rape would be subject to anonymity for the victim.

Subclause (3) defines terms used in subclause (2).

Subclause (4) is a traditional provision in case the whole of the Children and Young Persons Act 2001 is not in force when this part comes into force, in which case the reference will be to the earlier 1966 Act.

Mr President, I beg to move that clauses 45 to 49 do stand part of the Bill.

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

The President: Mrs Crowe.

Mrs Crowe: Mr President, could I just ask the Attorney to clarify, in clause 48(b), line 24 approximately, 'outside the Isle of Man by a United Kingdom national or a Manx resident'? 'A resident of the Isle of Man' I would have thought might be better. But what is a 'Manx resident'? Is it 10-year residency?

The President: It is in the interpretations clause, clause 53. The President: It might not be totally in force of all its parts. That is the point, I think. It comes into being in bits, I think. (**The Attorney-General:** Yes.) Yes. While we are talking about things coming in in parts, Mr Attorney, I did intend to ask you, in relation to clause 44, really – I know we have moved on from there, about your comment about the Elements of Crimes adopted in that article: have the UK accepted all the Elements of Crime? Any relevant Elements of Crimes adopted in accordance with article 9: have the UK accepted them or not? It is really relating to schedule 7. (**The Attorney-General:** Yes.) Perhaps you could answer that –

The Attorney-General: Mr President, can I reserve that to the third reading?

The President: Yes, of course. Is there any further explanation you wish to give to any of the queries on 45 to 49?

The Attorney-General: I do not think so, Mr President. I hope I have dealt with them.

The President: In that case, hon. members, I put to you that clauses 45 to 49, including schedule 8, which is introduced in clause 48, I think, do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Clauses 50 to 53, Mr Attorney.

The Attorney-General: Thank you, Mr President. Clause 50 makes it clear that a military commander or superior officer is legally responsible for war crimes committed by his forces or subordinates if he fails to control them. It corresponds to article 28 of the statute.

Subclause (1) specifies the offences to which the clause applies, that is offences under clauses 45, 46 and 48 and offences ancillary to them.

Subclause (2) makes military commanders responsible for the crimes of forces under their command if they knew or ought to have known that they were committing them and failed to control them.

Subclause (3) extends that subclause to make superiors responsible for crimes of their subordinates as well as commanders for their forces.

Subclause (4) provides that where a commander or superior is treated as responsible for a crime, he is to be charged with aiding or abetting that crime.

Subclause (5) requires the court to take into account any case law of the ICC on article 28 and any relevant rules of public international law in applying this clause.

Subclause (6) makes it clear that the clause does not mean that a commander or superior cannot himself not be liable as a principal offender apart from this clause.

Clause 51, Mr President, provides that the Manx legal principles are to be applied in deciding on a person's guilt and makes it clear that *mens rea*, that is

a guilty intent, is normally an essential element of an offence under this part.

Subclause (1) states that that is so.

Subclause (2) provides that whether a person has committed an offence under this part is to be decided with regard to the necessary mental element required by the clause.

Subclause (3) provides that the accused must be shown to have done an act knowingly and intentionally for it to count as an offence under this part, subject to any provision to the contrary in the relevant articles or Elements of Crime.

Subclause (4) defines 'intent' and 'knowledge' for the purpose of subclause (3). If you mean to do the deed or cause the consequence or you know that the consequence will normally ensue, you have the necessary intent. If you are aware that a circumstance exists or that a consequence will normally ensue, you again have the necessary knowledge.

Subclause (5) requires the court to have regard to any case law of the ICC on article 30 in applying subclauses (3) and (4).

Clause 52 makes an exception to the normal rule if proceedings can be brought for an act committed outside the Isle of Man only if it was committed by a UK national, Manx resident or UK serviceman, that is in the case of a person subsequently becoming resident in the Island.

Subclause (1) provides that the clause applies where a person commits acts outside the Island when he is *not* a UK national, Manx resident or UK serviceman and later becomes resident in the Island.

Subclause (2) enables such a person to be prosecuted for the substantive offence in respect of those acts if he is resident in the Island when the proceedings are begun and the acts would have been an offence if they had been committed in the Island.

Subclause (3) enables a person to be prosecuted for an ancillary offence in respect of such acts if he is resident in the Isle of Man when the proceedings are begun and the acts would have been an offence if they had been committed in the Island.

Subclause (4) defines 'substantive offence'.

Subclause (5) makes it clear that this clause does not prevent a prosecution being brought for acts which could be prosecuted apart from this clause.

Clause 53 defines terms used in part 5.

Mr President, I move that clauses 50 to 53 inclusive do stand part of the Bill.

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

The President: Mr Singer.

Mr Singer: Could I ask the Attorney-General: if a Manx resident commits an offence of incitement in another country, does it make any difference to whether he can be prosecuted if that country is signed up to the ICC or is not signed up to the ICC?

The President: Mr Waft.

Mr Waft: Yes. It is just that this clause 51 reminds me of the Pinochet case and *mens rea* and whether he was fully in possession of his full faculties when he committed the offence and then subsequently became incapable through Alzheimer's or something similar, so that he would (*Interjection by Mr Delaney*) then be unfit to plead, I take it. Is that what it says?

The President: Mr Attorney.

The Attorney-General: Can I deal with the second question first, Mr President? Clause 50 is the relevant provision. General Pinochet, for example, the person effectively acting in control of the relevant army forces: by virtue of clause 50(2), he would be responsible for offences committed by forces under his effective command and control. If we look at (2)(a), it says that 'as a result of his failure to exercise control properly over those forces, where he either knew or owing to the circumstances at the time, should have known that the forces were committing or about to commit such offences and he failed to take all necessary and reasonable measures' and so on. The difficulty, which, I think, applied in relation to the Pinochet case, and which one can envisage happening again, is that it would be argued that, at the time of the offences, he was fully *compos mentis*, he had the necessary *mens rea*, but at the time he actually stood his trial he was not. Again, the normal principle of Manx law is that if someone is not fit to plead when he is arraigned or when he comes before the court, then he is entitled to be found not guilty by reason of mental disorder, and he would be sentenced accordingly. There are some, of course, very nice questions which arise as a result of that, and there are some remarkable recoveries, (**A Member:** Yes.) (**Mr Delaney:** Hear, hear.) but, Mr President, it is very difficult for me to advise in the abstract; it very much depends on the particular circumstances.

The answer to the question raised by the hon. member Mr Singer, is really yes I think. Can the Isle of Man court exercise jurisdiction in respect of an act committed by a Manx resident in a country which is not signed up to the convention? The reading I have done as to the background of this legislation would indicate that that is so, that he can be prosecuted, but if the . . . Yes, that is so.

The President: He would have to reside in a state which was signed up first?

The Attorney-General: Well, (*Interjection by Mr Singer.*) we are signed up, but the act is committed in a state which is not signed up. We have jurisdiction because he is resident here in the Island.

The President: Okay. Hon. members, the motion I put to you is that 50, 51, 52 and 53 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Perhaps we could complete part 6 in one fell swoop, Mr Attorney. Clauses 54 to 59.

The Attorney-General: Thank you. Mr President, clause 54 applies clauses 20 and 39 to 42 to UN tribunals investigating atrocities in Bosnia and Rwanda.

Subclause (1) applies clause 20, which deals with the concept of having no state or diplomatic immunity in respect of war crimes, with modifications to proceedings following a request for assistance by a UN tribunal investigating atrocities in Bosnia or Rwanda.

Subclause (2) applies clauses 39 to 42, which deal with detention pursuant to a sentence passed by the ICC, to sentences passed by such a tribunal.

Clause 55 applies the Bill to the Crown and Crown property.

Clause 56 gives power by order to amend any reference to the Secretary of State in the Bill to reflect any transfer of functions in the UK.

Subclause (1) gives the Council of Ministers power by order to amend any reference in the Bill to the Secretary of State in case any of his functions are transferred to any other UK official.

Subclause (2) requires Tynwald approval to any such order.

Clause 57 provides an index of definitions which apply in various places in the Bill.

Clause 58 makes a consequential repeal of the Genocide (Isle of Man) Act 1969, which makes genocide an offence in Manx law. It is, of course, superseded by clause 45, which has the same effect.

Clause 59 gives the Bill its short title and provides for it to come into force on an appointed day to be fixed by order of the Council of Ministers.

So I move, Mr President, that clauses 54 to 59 inclusive do stand part of the Bill.

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

The President: Hon. members, the motion I put then, is that clauses 54, 55, 56, 57, 58 and 59 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Election of Acting President – Mr Lowey Elected

The President: Hon. members, that brings us to the conclusion of the order paper for today, but can I tell Council that next week I will not be here to preside over your sitting. We have this International Criminal Court Bill coming back, presumably, for its third reading. I will be off the Island as I am going to Norway to the Storting national day, and so there is a requirement under our standing orders, in my absence, if you are to sit next week, that Council shall elect some member of Council to preside thereat. I know it has happened in the past, and I think Mr Lowey had been appointed on other occasions, but I draw your attention to standing order 11(1): 'If the President is absent from any sitting, Council shall elect some

member of the Council to preside thereat'. So I will leave it –

Mr Delaney: Can I nominate Mr Lowey, Mr President – ?

Mr Singer: I second that, Mr President.

The President: In that case, hon. members, if you are all in agreement, in my absence, depending on what is on the order paper next week, Mr Lowey will be the presiding officer.

Thank you, hon. members. That brings to a conclusion our sitting for today, and we will now deal with the summaries of proceedings of Council in private.

The Council sat in private.
