

REPORT OF PROCEEDINGS OF THE LEGISLATIVE COUNCIL

**Douglas, Tuesday, 25th February 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, Mr D F K Delaney, Mr D J Gelling CBE, Mr J R Kniveton, Mr E G Lowey, Dr E J Mann and Mr G H Waft, with Mrs M Cullen, Clerk of the Council.

The Chaplain of the House of Keys took the prayers.

Items Considered

Apologies for Absence	C 132
Douglas Corporation Accounts – Douglas Rates	C 132
Matrimonial Proceedings Bill – Consideration of Clauses Concluded	C 133
Submarine Cables Bill – Second Reading Approved	C 142
Submarine Cables Bill – Clauses Considered	C 143
Suspension of Standing Orders – Approved	C 147
Submarine Cables Bill – Third Reading Approved	C 147
Anti-Terrorism and Crime Bill – Second Reading Approved	C 147
Anti-Terrorism and Crime Bill – Consideration of Clauses Commenced	C 150
Anti-Terrorism and Crime Bill – Consideration of Clauses Concluded	C 154
Suspension of Standing Orders – Approved	C 168
Anti-Terrorism and Crime Bill 2002 – Third Reading Approved	C 169
Retiring Members – Appreciation of Service – Motion Carried	C 169

Apologies for Absence

The President: Hon. members, the Lord Bishop is in London on Church business, and we have apologies also from the hon. member Mr Crowe, who continues to be indisposed, hon. members. Dr Mann has an appointment this morning and will be joining us later.

Douglas Corporation Accounts – Douglas Rates

Question 1. The hon. member (Mr Delaney) to ask the member of the Department of Local Government and the Environment (Mr Lowey):

- (a) *Can you supply me with a copy of Douglas Corporation's accounts for the past financial year; and*
- (b) *will your department call a meeting of Douglas Members of the House of Keys and other interested members of Tynwald to discuss the rate level expected to be paid by Douglas ratepayers?*

The President: We turn, then, to our order paper, and the first item on the order paper is a question for oral answer. I call on the hon. member Mr Delaney.

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

The President: I ask a member of the Department of Local Government and the Environment, Mr Lowey, to respond.

Mr Lowey: Thank you, Mr President. First of all, I would like to thank my hon. colleague for putting the question down. With regard to the first part of the hon. member's question, I am unable, at present, to supply him with an audited copy of the financial statement for Douglas Corporation for the past financial year ended 31st March 2002 or for the year ended 31st March 2001. Under section 3(2) of the Local Government Act 1985, all local authorities are required annually to submit audited accounts to the department, and under section 4(1) of the Accounts and Audit Regulation 1984 Act, they should be presented for audit within six months of the financial year's end, that is by 30th September. The department has written to, and orally requested the accounts from, the corporation on numerous occasions, but to date the accounts have still not been received. On speaking to the public auditors, KPMG, who audit the local authority accounts, the Douglas Corporation accounts for 2001-2 were not presented to them for audit until January 2003. January, I am advised, is a busy time of the year for auditors, so there is no resource available at KPMG to audit the accounts until the end of February 2003 at the earliest. Had they been submitted on time, KPMG inform us that they would have been

geared up to deal with them then. Current legislation does not carry any powers to allow the department to penalise the corporation financially for the late filing. However, the department is, at present, withholding certain funding for this financial year until the accounts have been received and audited.

In answer to the second part of the hon. member's question, the department currently does not have any plans to call a meeting with the Douglas Members of the House of Keys or any other interested parties to discuss the rate level to be paid by ratepayers in the Borough of Douglas. The rates for the Borough of Douglas are set and approved by the corporation and do not require approval by the department. However, in the light of the recent decision to introduce, for example – a topical one – waste disposal charges in July 2003, all rates for 2003-4 for the towns, villages and parishes are being reviewed by the department's accounting and finance officers to ensure that the ratepayers are getting value for money and the rates are not being artificially inflated using the new charging as an opportunity to raise funds for other unspecified purposes. If the Douglas Members of the House of Keys felt it would be helpful for them to meet the department and the minister and they requested such a meeting, the minister would be happy to invite them, but it would have to be on the understanding that the corporation's decision on the rates to be introduced does not require the department's approval.

The President: Mr Delaney.

Mr Delaney: Mr President, I am grateful for the answer. I am disappointed with what I have been told this morning. I would like to ask a couple of supplementaries. First of all, on the second part of my question, bearing in mind that the people represented by the members for Douglas for the House of Keys particularly are ratepayers who pay their rates by law and, at this moment in time, they are unable to give them answers to questions which are currently being asked of them about why our rates have increased by 10 per cent this year and over two years have gone up by nearly £1 million, which is another 10 per cent increase on top of what they got in extra rates income which has come into this borough, can I ask the representative, my colleague and friend, bearing in mind the answer he has given me: is it not possible that a surcharge can be levelled against public representatives for mismanagement, which is a costing imposed against the ratepayers of that borough? I know that you cannot answer me now, but I always understood that was the situation.

The President: Hon. member, let us try to deal with them one at a time. I think the question there is in relation to a surcharge. Mr Lowey.

Mr Lowey: I believe – and I am speaking again from no certain knowledge, but from the information that I have gleaned at various times – that surcharges can be raised if, I think, deliberate malfunctions of the

duties of a commissioner or corporation are proven and they have acted illegally. There are certain circumstances where that can be raised. But I and the department share the hon. member's frustration at the way in which the accounts have been so late in being put for public audit and, secondly, submitted under the law to the local government department for their inspection. I did say in my original answer that the department is withholding certain payments as a lever to try and get the thing speeded up.

The President: Mr Delaney.

Mr Delaney: Thank you, Mr President. Could I ask this: at my request, if I was to ask the members for Douglas to come to a meeting – I am sure they would – would your minister be courteous enough to attend that so we can ask specific questions in confidence, privacy, that might be embarrassing to the ratepayers of Douglas if they were asked in public? That is the reason for me asking for this meeting. I am conscious that I could find no way, on what I have been given and supplied with by the corporation . . . The most they can give me is an abstract of accounts for the year to 31st March 2001, which is only what they worked out, and the estimates, which is a wish list, really, of what they are going to spend this next year. That is the reason for asking. You can understand the concern.

Mr Lowey: I can, and can I say: my minister has already intimated to me that she would be more than happy to meet the members of Douglas, if they so wished, to talk about the town in general.

Mr Delaney: Could I ask one last supplementary? Bearing in mind your answer given here today – and I understand the necessity for the £1.6 million-plus, government taxpayers' money, which is given to Douglas Corporation on behalf of the taxpayers, and you are indicating a withholding of some of those funds – I hope that the minister will – I know she will – take into consideration the difficulty holding out funds may have on the ratepayers of Douglas – not the councillors, but the ratepayers of Douglas. Should that be carried out?

Mr Lowey: Again, I share the frustration of the hon. member, and it is obviously frustrating when he seeks to get factual information and it is not forthcoming. The department equally is that. If it was just Douglas too . . . I think it must be right, at this stage, to suggest that perhaps Douglas is isolated in . . . I regret to say that they are not the only local authority that have not submitted their accounts within that time, and so there is a general thing here that needs to go out that there are statutory requirements laid upon local authorities. Some of them have been lax in fulfilling them, and I would like to say that that is something that the department is not prepared to tolerate, because we too have financial regulations that we have to work under, and we cannot be giving public taxpayers' money out without covering ourselves that it is accounted for in a proper way. But can I again reiterate

what I said earlier: the minister would be prepared to meet with the members of Douglas and discuss this matter.

The President: Hon. member Mr Gelling.

Mr Gelling: Just one on the comment of the surcharge, Mr President. Would the hon. member not agree that to surcharge, penalise or otherwise is actually, again, affecting the taxpayers? So, it is a great shame that you would have to do that, because the rates could very well have to go up to pay the surcharge. It is really a disgraceful situation to have to handle, but it is a difficult one.

Mr Lowey: It could, as a very last resort, be a personal charge on the individual. So, it would not be a charge on the rates; it would be a personal charge on the individual.

Mr Delaney: Thank you, Mr President.

Mr Gelling: Thank you, Mr President.

The President: Right, hon. members, that seems to have drawn the line under that one.

Matrimonial Proceedings Bill – Consideration of Clauses Concluded

The President: We turn, then, to item 2 on our order paper, which is the Matrimonial Proceedings Bill. We had completed clause 97, so we pick up the cudgel again and start at clause 98. Mr Attorney.

The Attorney-General: Yes, thank you, Mr President. We are in the midst of part 5 of the Bill, which deals with Family Homes and Domestic Violence, and we have reached clause 98, as you rightly say, which deals with occupation orders.

Clause 98 makes provision for occupation orders for a limited period only in favour of a cohabitant or former cohabitant who has no existing right to occupy the home, but the other cohabitant is entitled to occupy.

Subclause (1) sets out the circumstances in which the clause applies: an unmarried couple live, or have lived, together and one of them is entitled, as perhaps owner or tenant, to occupy their home or former home, but the other is not.

Subclause (2) enables the cohabitant without rights to apply for an occupation order against the other.

Subclause (3) deals with the case where the applicant is living in the former home. The order will give him or her the right not to be turned out by the other cohabitant and forbids the other to do so, but only for a limited period, which we will see by referring to clause 92 below.

Subclause (4) deals with the case where the applicant is not living in the former home. The order

will give him or her the right to go in and stay in the home and require the other cohabitant to allow this, but again only for a limited period.

Subclause (5) sets out extra provisions which can be included in an order under (3) or (4).

Subclause (6) sets out the criteria to be applied by the court in deciding whether to make an order under (3) or (4), and if so, what to put in it. They are the same four factors as under clause 95(5)(a) to (d), but there are five additional criteria which are relevant in the cohabitation situation, namely: the nature of the parties' relationship, which is (e); how long they have lived together – (f); whether there are any children of both of them or for whom they both have parental responsibility, which is (g); how long it is since they separated, which is (h); and whether any proceedings are pending for any financial provision for children or an order declaring the parties' property rights in the home, which is (i).

Subclause (7) sets out the criteria to be applied by the court in deciding whether to include any provision under subclause (5) in the order which will diminish the other cohabitant's rights to enjoy his own property, albeit temporarily, and if so, how. They are the four factors (a) to (d) in subclause (6) plus the balance of harm provision, that is any harm the applicant and any children may suffer from the respondent if it does not include a provision under (5) as against any harm the respondent and any children may suffer if it does include such a provision.

Turning to clause 99, this clause makes supplemental provision relating to orders under clauses 97 and 98.

Subclause (1) precludes an order under 97 or 98 being made after the death of either party and provides for it to lapse on either party's death.

Subclause (2) limits the maximum duration of an order under 97 or 98 to six months initially. It can be extended for up to six months, but once only in the case of an order under clause 98.

Subclause (3) deals with the case where the former spouse or cohabitant wishing to apply under 97 or 98 is entitled to a beneficial or equitable interest under a trust or trust for sale affecting the property but is not the legal owner. For this purpose only, the former spouse or cohabitant is treated as not entitled to occupy the home by virtue of that interest and therefore is able and is eligible to apply for an order.

Subclause (4) makes it clear that the former spouse or cohabitant may still be able to apply for an order under clause 95 despite subclause (3), which is intended to protect the position of the former spouse or cohabitant who may or may not have a beneficial interest in the home.

Subclause (5) provides that a payment of rent or mortgage instalments by the former spouse or cohabitant with the benefit of an order under 97 or 98 is as valid as if made by the other party.

Subclause (6) requires the court, when taking into account under clause 98(6)(e) the nature of the parties' relationship, to have regard to the fact that, as cohabitants, they are not as committed to each other as if they had married.

Moving to clause 100, this clause makes provision for occupation orders for a limited period only in favour of a former spouse when neither party has the right to occupy. It extends existing powers in the case of a cohabitant to cover a former spouse.

Subclause (1) sets out the circumstances in which the clause applies, that is a couple are divorced and both of them occupy the former home, but neither has any right to do so. For example, they may be squatters or they were tenants and notice to quit has expired.

Subclause (2) enables a spouse or former spouse to apply for an occupation order against the other.

Subclause (3) sets out the provisions which can be included in an order: (a) allowing the applicant to enter and remain in the home; (b) regulating the occupation of the property – for example, allocating particular rooms to each party; (c) requiring the other person to leave the property or part of it; or (d) requiring the other person to stay away from a defined area of the property.

Subclause (4) applies the same criteria as in the case of an application by a spouse under clause 95 to applications under this clause.

Subclause (5) limits the maximum duration of an order under this clause to six months initially. It can be extended, but once only for up to six months.

Clause 101 makes provision for occupation orders for a limited period only in favour of a cohabitant or former cohabitant where neither party has any right to occupy. It restates existing powers which are limited at the moment to the High Court.

Subclause (1) sets out the circumstances in which the clause applies: an unmarried couple live, or used to live, together in the home, but neither has any right to do so. Again, they may be squatters or tenants where a notice to quit has expired. Very similar provisions and considerations as with clause 100.

Clause 102 makes general provisions relating to applications for occupation orders.

Subclause (1) defines the term 'occupation order' as covering orders under 95 to 101.

Subclause (2) allows an application for an occupation order to be either in other family proceedings or as a free-standing application.

Subclause (3) allows the court, where an application is made for an occupation order under any one provision, to make such an order under any other provision; for example, if an application is made under clause 95 by a cohabitant believing that she has an interest in the home and the court decides that she has none, the court can nevertheless make an order under clause 98 or 101.

Subclause (4) provides that the fact that an application for an occupation order was made on the basis that the applicant has no interest in the home does not prevent the applicant claiming an interest in the home in later proceedings.

Then finally, Mr President, with this batch of clauses, clause 103 gives the court power, where an occupation order is made, to order one party to pay rent or mortgage instalments or take other steps connected with the maintenance of the home or its

contents, except where neither party has any right to occupy the home.

Mr President, with that, I move that clauses 98 to 103 do stand part of the Bill.

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

The President: The motion I put to you, hon. members, is that clauses 98 to 103 inclusive do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Non-molestation orders, 104 to 116, including schedule 3, Mr Attorney?

The Attorney-General: That is right, Mr President, thank you. Clause 104 gives the court power to make a non-molestation order against any person for the protection of another person with whom he is, or has been, living or of a child living with either of them.

Subclause (1) explains the term. It is an order against a person which forbids him to molest a person with whom he has associated and/or a relevant child. Under clause 115(3), persons are associated if they are, or have been, married or are cohabiting or have cohabited or they live or have lived in the same household or they are relatives – that is under 116 – or they are, or have been, engaged – that is dealt with in clause 106 – or they are both the parents of, or have parental responsibility for, a child or are parties to the same family proceedings, which is, of course, clause 138. A child is a ‘relevant child’ if he lives or might live with either party or the proceedings concern an adoption order or an order under the Children and Young Persons Act relating to him or the court determines he is relevant.

Subclause (2) enables the court to make a non-molestation order either on an application for that particular purpose or without an application but in family proceedings where the respondent is a party and the court thinks an order ought to be made.

Subclause (3) requires the court to have regard to all the circumstances, but in particular the effect of the decision on the health, safety and well-being of the person in whose favour the order might be made and any relevant children.

If I can turn to clause 105, this clause places restrictions on applications by children under 16 for occupation orders or non-molestation orders.

As might be expected, subclause (1) requires the leave of the court before a child under 16 can apply for an occupation order or non-molestation order.

Subclause (2) provides that the court may grant leave only if it is satisfied that the child has sufficient understanding to make the application.

Clause 106 makes special provision where an application for an occupation order or non-molestation order is based on the fact that the parties are or were engaged.

Subclause (1) sets out the circumstances in which the clause applies. An application for an occupation order under clause 95 or a non-molestation order under

clause 104 can be made where the parties are ‘associated’ as defined in clause 115, and that includes where the parties are, or have been, engaged. There is a time limit of three years from the time the engagement was broken off after which no application can be made.

Subclause (3) requires a written agreement to marry before the court can make an occupation order or a non-molestation order.

Subclause (4) provides that no written agreement is required, however, where either: (a) one party gave the other an engagement ring; or (b) a betrothal ceremony took place before one or more witnesses.

Clause 107 enables the court to make an occupation order or non-molestation order *ex parte*, that is where no notice is given to the other person, the respondent. This is a power to be exercised in exceptional cases, but the other party, if there is an *ex parte* application, must be given an early opportunity to be heard.

Subclause (2) of that clause sets out the criteria to be applied by the court. The court must look at all the circumstances, but particularly: whether there is any risk of harm to the applicant or a relevant child from the respondent; secondly, whether the applicant might be deterred or prevented from making the application if an order is not made immediately; and thirdly, whether the respondent might be evading service and delay might prejudice the applicant or a relevant child.

Turning to clause 108, that clause enables the court to accept an undertaking from any party instead of an order and allows it to be enforced as if it were an order.

Clause 109, which includes schedule 3, allows the court to attach a power of arrest for breach of an occupation order or non-molestation order, and indeed requires the court to do so in certain cases. It also enables the court to issue an arrest warrant when no power of arrest is attached to the order.

Subclause (1) requires the court to attach a power of arrest to an occupation order or non-molestation order where the respondent has been violent or threatens violence to the applicant or a relevant child, unless the court thinks that they will be adequately protected without such a power.

Subclause (10) of clause 109 introduces schedule 3, and that schedule gives the High Court the same powers to remand the person arrested in custody or to bail, as courts of summary jurisdiction have under the Summary Jurisdiction Act 1989.

If I can turn to clause 110, that clause gives the court powers to remand the respondent for medical reports where he is arrested for a breach of an occupation order or non-molestation order.

Subclause (2) of the clause limits the period of remand to 21 days at a time where the respondent is remanded in custody or 28 days where the respondent is on bail.

Subclause (3) enables the court to remand the respondent to a hospital for a report on his mental state if it thinks that he is mentally ill or suffering from severe mental impairment as defined by the Mental Health Act 1998.

Clause 111 gives the High Court and courts of summary jurisdiction similar powers to make hospital orders, interim hospital orders and guardianship orders where a respondent is arrested for breach of an occupation order or non-molestation order as criminal courts have in the case of accused persons who are found to be suffering from mental disorder.

Subclause (1) gives the High Court similar powers to make those orders. The power is limited to cases of mental illness and severe mental impairment.

Subclause (2) gives the court of summary jurisdiction the same or corresponding powers to make such orders where a respondent is arrested for breach of an occupation order or non-molestation order.

Clause 112 enables the court to vary or revoke an occupation order or non-molestation order on an application by the respondent or the applicant.

Clause 113 gives a person with matrimonial home rights under clause 92 and a former spouse or cohabitant in whose favour an occupation order is made under clause 97 or 98 the right to be made a party to any proceedings by a mortgagee for execution, that is for the enforcement of the mortgagee's security. This obviously is a most important provision, because it protects people who have those rights against, say, a bank which wishes to enforce a mortgage against the owner, who has passed the mortgage to the bank. It gives the person with matrimonial home rights, which we have seen earlier, which are registered, the right to be given notice of the proceedings.

Subclause (1) gives a connected person in relation to the owner of a home the right to be made a party to the proceedings by a mortgagee who wishes to realise his security.

Subclause (2) defines 'connected person' as the present or former spouse or cohabitant of the owner, who either has matrimonial home rights under clause 92 or in whose favour an occupation order is made under clause 97 or 98.

Subclause (3) gives a person with matrimonial home rights which are registered at the relevant time and who is not already a party to the proceedings the right to be given notice of any proceedings by the mortgagee.

Subclause (4) defines the 'relevant time': it is normally going to be the time the proceedings for execution are begun but, in the case of registered land, the mortgagee is in a position to make an official search in the title register, and then the relevant time is the issue of a certificate of search, provided the proceedings are begun within 28 days from that time, which is known as the 'priority period'. This means that if no matrimonial home rights are shown as registered at that time – that is, the time when the official search is given – then the mortgagee does not have to give notice even if the matrimonial home rights are subsequently registered.

Subclause (5) defines 'official search' and 'priority period' by reference to the Land Registration Act and the Land Registry Rules.

Clause 114 provides that an occupation order or non-molestation order can be enforced by any judge of the High Court in the case of a High Court order or by

any court of summary jurisdiction in the case of an order by a court of summary jurisdiction.

Clause 115 defines the terms 'cohabitant', 'relevant child' and 'associated' as used in this part of the Bill.

Finally for this section, clause 116 defines the other terms used in part 5 and makes further provision for interpretation.

I move, Mr President, that clauses 104 to 116 with schedule 3 do stand part of the Bill.

Mr Gelling: I beg to second, Mr President.

The President: Mr Waft.

Mr Waft: Just for clarification, Mr President. Clause 109 refers to a non-molestation order and '(b) it appears to the court that the respondent has used or threatened violence against the applicant or a relevant child'. How does that marry up with the Children and Young Persons Act? Is that not covered under that Act? And has part 2 of the Children and Young Persons Act 2001 yet been brought into fruition or is it being held up somewhere?

The President: Do you wish to reply to that before I invite Mrs Christian or do you wish to take them all together?

The Attorney-General: I am afraid I am in some difficulty with the Children and Young Persons Act, Mr President, as to whether it is in force. My recollection is that not all the parts are in force, but I am afraid I am not sure -

Mr Waft: Please could I help you, Attorney? On page 128, at 4, it says, 'Orders affecting children: Until the coming into operation of part 2 of the Children and Young Persons Act 2001, the references to that part in sections 25 and 66 shall be construed as references to Part II of the Family Law Act 1991.'

The Attorney-General: That is right.

Mr Waft: Well, it is not in being, then, I take it?

The Attorney-General: I do not think it is, Mr President, though I have just been told that it is, so there we are. I am sorry, Mr President, it looks as if it might be. I think if I may, though, just go back to the effect of 109, which is a tailor-made provision in many ways. It is designed to give the courts additional powers to protect, for example, children who are connected with married persons and also couples who are not married, and where there is, for example, a threat of violence against a relevant child, it is entirely appropriate that the court is able to enforce a non-molestation order and impose the powers of arrest against a person who might be in breach of such an order. Of course, there are very wide protective powers also under the Children and Young Persons Act which are designed, I think, to provide rather for the long-term care of children, often protected by the

department, but here I think what we are trying to do is to ensure that where a child is at particular risk within a relationship, where the court has made a non-molestation order against, say, a violent or abusive father, the court can make that order and protect the child.

The President: Mrs Christian.

Mrs Christian: Yes, Mr President. Just with regard to the Children and Young Persons Act, I think the point raised by the hon. member is not that significant, because the other legislation is embodied in the Children and Young Persons Act, so they are both the same, as I understand it, anyway.

My query really is about the wording in clause 106, 'Agreements to marry'. I just wonder to what extent this is rather outdated and outmoded kind of wording, particularly with regard to subclause (3). I wonder what is in mind where the clause talks about 'evidence in writing of the existence of the agreement to marry'. I do not think these days most people would enter into written agreements to marry, unless we are talking about the publication of banns or something in a written form. Or indeed, when we move on to the next subclause, one can understand the giving of an engagement ring as evidence of an agreement to marry, but the wording in part (b), 'a ceremony entered into by the parties', sounds rather formal, and I do not know whether it relates to any particular kinds of church ceremonies or other kind . . . People might have a party without a ring; would that be considered to be a 'ceremony' in the context of this clause?

The President: Mr Attorney.

The Attorney-General: Yes, Mr President. I have a lot of sympathy with what the hon. member says. I think, though, if I can put it the other way round, that because the court is able to treat persons who have been engaged or are engaged as if they were married or in a long-standing relationship for the purposes of occupation orders or non-molestation orders, which might have some very real impact on them, it is important that there should be some formality, some evidence that there really is or was a relationship between them, otherwise, of course, a person could be exposed to all sorts of exotic claims without any basis. Therefore, although I entirely agree it is outdated, the best way you can show that you have made an agreement to marry is to produce a written agreement to that effect. I cannot imagine that these exist in 99.9 cases. However, the section goes on to say that you do not have to produce a written agreement if there has been the gift of an engagement ring, because that establishes a real intent to be engaged. Therefore, if you, as it were, go that far, it is reasonable that the court should be able to make an occupation order or non-molestation order against you. In relation to the ceremony, as I understand it, the reason for that, again rather curious, wording is that there are some religious ceremonies, some religious sects, perhaps, where they do have betrothal ceremonies which take place before

witnesses. There is a formality. You must forgive my pronunciation – and I did not research this – but the draftsman's notes say that, as an example, there might be a khol bharna, which apparently is a betrothal ceremony which takes place before witnesses, and that really is a formal engagement ceremony, but again I think these must be very few and far between.

Mrs Christian: So the party will not do?

The Attorney-General: The party – *(Laughter)*

Mr Lowey: I am learning all the time.

The President: I think in that case we all are. *(Laughter)* Hon. members, with that explanation, then, I put to you the motion that clauses 104 to 116 and schedule 3 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

We have reached 117; perhaps we can go to 124.

The Attorney-General: Yes, thank you, Mr President. This section of the Bill, as you will see in part 6, deals with the reciprocal enforcement of orders made in the United Kingdom and Channel Islands and so on. It does replicate the 2001 Act, which we have fairly recently looked at, so I will go through it. If there are any particular additional points hon. members wish to raise, please, I am sure they will.

Clause 117, as hon. members will recall, enables a designation order to be made by the Council of Ministers, allowing financial orders made in any part of the United Kingdom or any of the Channel Islands to be recognised in the Island, provided that reciprocal provision is made for recognising Manx orders in the relevant country.

Subclause (1) provides that the order will designate the territory in question and specify the kinds of order made in that territory which will be recognised. Interim orders are not recognised. It is important to note, Mr President, that in subclause (3) Tynwald approval is required to any designation order made by the Council of Ministers.

Clause 118 provides that an order of a specified kind made in a designated country, that is an overseas order, is to be recognised in the Island but may not be enforced unless it is registered under clause 119, and that clause provides for an overseas order to be registered in the High Court where a certified copy is sent officially to the Chief Registrar. The way the order will be registered is to be prescribed by rules of court.

Clause 120 deals with the cancellation or variation of the registration where the order is revoked or varied in the home territory which made the order. Clause 121 provides that a registered overseas order is enforceable in the same way as an order made by the High Court here.

Clause 122 enables the High Court to stay proceedings for enforcement of an overseas order if it is shown that the person liable has taken or intends to

take proceedings to vary or revoke the order in the home territory.

Clause 123 provides for enforcement proceedings to be dismissed where the overseas order has ceased to have effect.

Clause 124 deals with the converse situation where a Manx financial order is to be enforced in the UK or the Channel Islands under reciprocal legislation and provides machinery for sending the order for enforcement in the relevant territory.

Of that clause, subclause (1) enables the person having rights under a Manx financial order which is enforceable under reciprocal arrangements to apply to the High Court for the necessary steps to be taken.

Subclause (2) requires the application to be in accordance with the prescribed procedure prescribed by rules of court.

Subclause (3) requires the court or a prescribed officer, who will probably be the Chief Registrar, to send the necessary documents to the appropriate authority in the jurisdiction in question and take any other steps which are prescribed by rules of court.

Subclause (4) requires the Manx court which varies or revokes an order which it has sent to the UK or Channel Islands for enforcement to notify the appropriate authority there in accordance with rules of court.

Mr President, I beg that clauses 117 to 124 inclusive do stand part of the Bill.

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

The President: The motion, hon. members, that I put to you is at part 6, clauses 117 to 124 inclusive, do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

We turn to part 7, clauses 125 to 135.

The Attorney-General: Thank you, Mr President. Part 7 of the Bill restates a number of statutory provisions which were passed in the last century to reform the law relating to the status, rights and property of married couples, particularly to put married women on an equal footing with men. Some further changes have been made to remove the few remaining inequalities in the treatment of husbands and wives as respects property.

Clause 125 restates the main changes which were made from 1921 onwards relating to the status and property of married women.

Subclause (1) provides that a married woman has the same status in law as an unmarried woman so far as property and rights and liabilities in contract and tort are concerned.

Subclause (2) provides that a husband is not as such liable for his wife's debts entered into before he married her.

Subclause (3) makes unenforceable any so-called 'restraint upon anticipation' in a trust or settlement made in favour of a woman. A restraint upon anticipation was a device, in earlier times, to ensure that when money or property was settled on a woman,

she could not touch the capital, even though she was solely entitled to it. No such device could be made to apply to a man. So, that clearly is now to be unenforceable and has been unenforceable for some time.

Subclause (4) restates the abolition of the old rule that a married woman's will had to be remade or readopted after her husband's death.

Clause 126 restates the rule that husband and wife can sue each other in tort but enables the court to stay the proceedings if it considers that it would be appropriate. The old rule was that since, in law, husband and wife were one, they could not sue each other for torts – that is, civil wrongs – and that caused difficulty where, for example, in an injury case, a wife had been injured in an accident caused by her husband's negligence or breach of duty and the wife wished to claim against his insurers. The insurers, under the old law, would say, 'Well, because you are, in law, treated as one person, the wife could not bring an action against the husband.'

Subclause (1) of 126 provides that one spouse can sue the other in tort, just as if they were not married.

Subclause (2) gives the court power to stay the proceedings in such a case if the court thinks that no benefit would accrue as a result of the proceedings or else it thinks that the matter could be better disposed of under the summary procedure, which we will look at under clause 128.

Subclause (3) enables the court to do anything in the proceedings which it could do under clause 128 or to give directions for separate proceedings under clause 128.

Clause 127 restates the rules under which one party to a marriage can take out a policy of assurance on his or her own life for the benefit of the other party or their children.

Subclause (1) specifies the policies to which this clause applies, namely those taken out by one party to a marriage for the benefit of the other or the children of either of them.

Subclause (2) provides that the policy in such a case creates a trust in favour of the beneficiaries and the sum assured does not form part of the policyholder's estate and therefore is not subject to his creditors' claims.

Subclause (3) provides that if it is shown that the policy was taken out to defraud the policyholder's creditors, they can then claim the amount of the premiums paid but not the whole amount of the sum assured.

Subclause (4) enables the policyholder to appoint a trustee of the policy, either in the policy itself or in a separate document, and to give directions as to the appointment of new trustees and the investment of the policy money.

Subclause (5) provides that if there is no appointment under subclause (4), the policy is vested in the policyholder, and on his death the proceeds pass to his executors or administrators as trustees.

Subclause (6) enables the trustees or the executors or administrators to give a valid receipt for the policy money.

Subclause (7) provides that a policy under this clause can be taken out in favour of children who are not marital children.

Clause 128, with clause 129, provides a summary procedure or a relatively informal procedure for determining property disputes between married couples and formerly married or engaged couples.

Subclause (1) enables either party and the registrar of any stocks or shares to make a summary application to a deemster to decide as between the parties on the title to, or possession of, any property.

Subclause (2) sets out the powers of the judge: he can make any order as to the property and as to costs and can adjourn the application and order enquiries to be made.

Subclause (3) enables the application to be heard in chambers, that is in private.

Subclause (4) requires a registrar who makes an application to be treated as a stakeholder, that is that no order for costs can be made against him. He is a neutral party, if you like.

Subclause (5) enables the judge to order a sale of property.

Subclause (6) enables an application to be made even after divorce or annulment, but it must be made within three years of the final order.

Subclause (7) enables an application to be made by one of a formerly engaged couple as if they were married.

Subclause (8) requires an application by one of a formerly engaged couple to be made within three years after the engagement was broken off.

Clause 129 enables the application under clause 128 to be made where one spouse is alleged to have misappropriated money or property belonging to the other and allows the court to make orders for restitution.

Clause 130 provides that where one party to a marriage makes a substantial contribution to the improvement of any property belonging to either or both of them, he or she is to be treated as owning an appropriate share, or perhaps an increased share, in the property.

Subclause (1) sets out the circumstances in which the clause applies, namely that one party makes a substantial contribution to the improvement of any property belonging to either or both of them, and that contribution could be either in money or perhaps in work or some other contribution made to the household.

Subclause (2) specifies the effect of such a contribution: the person who makes the contribution is to be treated as owning an appropriate share or increased share in the property of an amount agreed between them or, if there is no agreement, decided by the High Court.

Clause 131 provides that any savings from a housekeeping allowance given by one party to a marriage to the other belong to them in equal shares if they have not agreed otherwise.

Clause 132 is intended to remove elements of sex discrimination in rules of the common law affecting married couples. It provides that the common law duty

of the husband to maintain his wife according to his means and the wife's implied authority to pledge the husband's credit for necessaries apply equally as between wife and husband.

Subclause (1) provides that the common law duty of the husband to maintain his wife according to his means will, in future, apply equally so as to oblige a wife to support her husband according to her means.

Subclause (2) deals with the wife's right of common law, where she and her husband are living together, to pledge his credit in order to buy necessaries – for example, food and fuel – suitable to their usual standard of living. In future, the husband will have the same right to pledge his wife's credit.

Subclause (3) provides that subclause (2) applies as between cohabitants as well as between husband and wife.

Subclause (4) provides that none of the above affects the various provisions of the Bill which you have seen before and which specify the matters to which the court is to have regard when deciding questions of maintenance or the statutory obligations on spouses to maintain each other, which in turn enable the Department of Health and Social Security to recover from either of those spouses any benefit paid for the maintenance of the other.

Clause 133 is similarly intended to remove elements of sex discrimination in the rules of equity relating to gifts of property. There is a general rule that where one person transfers property into the name of another without any consideration, then the transferee holds on trust, which is known as a resulting trust, for the person who makes the gift, unless there is evidence that it was intended to be a gift.

Subclause (1) states that the existing exception, where there is a transfer from husband to wife or from a man to his fiancée, is to apply in relation to transfers from a wife to her husband or from a female engaged partner to the male engaged partner.

Subclause (2) extends a similar exemption in the case of a transfer from parent to child. The existing exception is in the case of a transfer from a father to his son or daughter, but not from a mother. In future, where either parent transfers property to his or her child without any consideration, it is to be presumed that the transfer is a gift unless there is evidence that it was not.

Subclause (3) provides that the above rules supersede the existing rules as to resulting trusts but do not apply to a transfer made before the clause comes into force.

Clause 134 provides that the same rules of law are to apply to the property of engaged couples if the engagement is broken off as apply to the property of married couples.

Finally, clause 135 deals with gifts between engaged couples. Subject to a special rule as to engagement rings, the rule of law which prevents a party recovering property if he is in breach of contract does not prevent a person who breaks off an engagement from recovering a gift made to the other.

Subclause (1) provides that in the case of an engagement to marry, the person who breaks off the

engagement – and who otherwise might be said to be in breach of contract – can nevertheless get the gift back on the basis of the engagement unless it is proved that it was intended to be an absolute gift, for example a birthday present.

Subclause (2) makes an exception to that rule in the case of an engagement ring. If, for example, the man breaks off the engagement, he cannot demand the ring back unless he can prove that he intended it to be conditional on the marriage.

Mr President, I beg to move that clauses 125 to 135 inclusive do stand part of the Bill.

Mr Gelling: Yes, I beg to second, Mr President, and reserve my remarks. (*Interjection by Mr Delaney*)

The President: Mr Lowey.

Mr Lowey: Mr President, can I ask the Attorney: in one of the clauses he actually said that a gift of property from a mother or a father to their son or daughter would be deemed as a gift, and yet in the clause prior to that, if the Department of Health and Social Security can claim for moneys that they have paid out, if it has been paid out in other moneys . . . When it comes to property, doesn't the Department of Health and Social Security have extra powers to claim that a gift of a property, i.e. a home or a house, to a son and daughter is a wilful abrogation of resources to themselves? How does that square with that particular clause?

The President: Mr Attorney.

The Attorney-General: Yes, Mr President. Perhaps I can just go back a little bit. If we look at husband and wife first of all, if I may just go back on that, if a husband makes a transfer of property to his wife, there is a presumption, a so-called 'presumption of advancement', that the transfer is by way of gift and not by way of loan, so that the husband cannot claim it back. The effect of clause 133 would be that, in future, if a wife makes a transfer of property to her husband, that, instead of being capable of being set aside as a loan, will be a gift and therefore the husband can say, 'Well, it is mine, not the wife's.' In relation to children, a similar provision applies at the present time. Where a father makes a transfer of property to his son or daughter, that is considered to be a gift and not a loan. The law will, if it is passed, now have the effect that where a mother makes a transfer to a son or daughter, that also will be a gift and not a loan. We see in clause 133 that there is a saving clause: 133(3) says that 'This section applies notwithstanding any rule of law or equity to the contrary, but does not apply to any transfer made before the coming into operation of this section.' So, I think the intention of that subclause (3) was to make it clear that these new provisions effectively revoked the existing rules as to resulting trusts. In other words, the wife who makes a gift to her husband will not, in future, be able to say, 'There is a resulting trust back to me of the property I made.'

A very long introduction. I will try now to put that into some context with the transfer the hon. member is referring to, which I think is that a parent makes a transfer of property to a son or daughter and then the department says, 'Well, that is all right, but the effect of this will be that the parent is now without assets and cannot pay maintenance for his or her keep at the department.' I think that the way I would reconcile the two is that if the transfer by a parent to the child of a house with a view to defeating a legitimate claim by the department has been done, then I think the courts would be in a position to review that transaction in much the same way as they can review transactions which are designed to defeat creditors.

Mr Lowey: Yes, but would it be the court or the department that would sit as a judge in that?

The Attorney-General: Well, again, Mr President, perhaps I could look into that a little bit further, but my initial impression would be that ultimately the department would have the right to make an application to the court to set aside the transaction.

Mr Lowey: I am grateful to the Attorney.

The President: Mr Gelling.

Mr Gelling: Could I just ask one? On section (7) of clause 128, it says, 'Where an agreement to marry is terminated, this section applies, as if the parties were married, to any dispute between them in relation to property . . .', but does that also . . . We have been talking so much about the engagement as well and what deems an engagement. Would it be right to say that from the day that an official and formal engagement takes place, the same things apply between the two parties? In other words, from the formal engagement, all this applies, never mind getting married.

Mrs Christian: I think there are probably a lot of people who do not appreciate that they are giving all their worldly goods both ways.

Mr Gelling: Absolutely.

The Attorney-General: Yes, Mr President, I think that is certainly so, but the whole gist of clause 128 is to enable the parties to a relationship, whether they are married or whether they were formerly married or whether they are engaged or formerly engaged, to apply to the court if, for example, there was a dispute about who owns the car and –

Mr Lowey: Or the horse.

The Attorney-General: I have to say that, in practice, these sorts of applications are not common.

Mr Delaney: I will give each of my children a copy of this Act, I think. (*Laughter*)

The President: Mrs Christian.

Mrs Christian: Mr President, might I just ask for further clarification on that point? Is that the case only in respect of property regarding which there is an argument about it being jointly held or is all property deemed to be jointly held at the time of engagement?

Mr Gelling: What is yours is yours and what is mine is yours.

Mrs Christian: Yes. *(Interjections and laughter)*

The Attorney-General: Mr President, clause 128(1) states 'In any dispute between the parties to a marriage as to the title to or possession of property'. It applies to any property and, as I say, typically it would be where, for example, the male partner buys a car in his name and registers it in his name, but the female partner has contributed half of the purchase moneys or perhaps has contributed half of the hire purchase instalments, so that when the male partner then sells the car and pockets the money, the female partner says, 'Well, hold on. That is not right. I want an order declaring that I am entitled to half of the proceeds.' *(Interjection by Mr Lowey)*

Mrs Christian: But, Mr President, in the case where the male partner had bought the car (**The President:** Personally.) personally, is she still entitled to half of it?

The Attorney-General: Well, she would have to make a case. She would have to prove, Mr President, that she was entitled to a portion of the car or the proceeds of sale because she had contributed something.

Mrs Christian: You have got to argue some contribution.

The Attorney-General: Oh, yes. There is a burden of proof on her to show that she is entitled to an order by the court that you are entitled to half, a quarter, a third or whatever it is, depending on the extent of your contribution. I want to make it perfectly clear, Mr President, that just because you are engaged or have been engaged, that does not mean to say that you are entitled to one half of your former – *(Interjections and laughter)*

The President: Right, hon. members, let us come back to base, as it were. Are there any further questions in relation to part 7 or shall we put the motion to you? Hon. members, I put to you therefore the motion that part 7, that is clauses 125 to 135, do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Now we will complete by taking part 8, which is clauses 136 to 140, and the remaining schedules, I think. Mr Attorney, is it?

The Attorney-General: Yes, thank you, Mr President.

The President: Schedules 4, 5 and 6.

The Attorney-General: Thank you, sir. Part 8, Mr President, Miscellaneous and Supplemental.

Starting with clause 136, it makes it clear that divorce or annulment proceedings or any other proceedings under the Bill can be brought even though the marriage in question is actually polygamous or merely potentially polygamous. Subclause (2) enables rules of court to be made to provide for notice to be given to any other spouse where proceedings are brought in relation to a polygamous marriage.

Clause 137 makes special provision for evidence of whether a marriage was consummated. Subclause (1) provides that the evidence of either party is admissible as to whether a marriage was consummated, and subclause (2) requires evidence as to sexual capacity to be heard *in camera* unless the court thinks it is necessary, in the interests of justice, to hear it in open court.

Clause 138 provides definitions of various terms used in the Bill.

Clause 139, in subclause (1), introduces schedule 4, which makes transitional provisions. Subclause (2) of clause 139 introduces schedule 5, which makes minor and consequential amendments, mainly to substitute references to provisions of the Bill for provisions which are repealed by schedule 6, and indeed subclause (3) introduces a schedule 6, which makes consequential repeals of provisions superseded by the Bill.

Clause 140 gives the Bill its short title and provides for its commencement on an appointed day.

Mr President, I beg to move that clauses 136 to 140, together with schedules 4, 5 and 6, do stand part of the Bill.

Mr Gelling: I beg to second, Mr President.

The President: Mr Waft.

Mr Waft: Just to clarify the interpretation with regard to clause 138, under 'child' it says, 'in relation to one or both of the parties to a marriage, includes a child of that party or, as the case may be, of both parties which is not a marital child'. Am I given to understand that there is a child, perhaps of one party, that has been brought to the marriage and is still a party of the marriage, still included as a party of the marriage in legal terms?

The Attorney-General: Yes, Mr President, the position is that referring to 'marital child'; of course that is the modern and perhaps much more appropriate way of describing children who were formerly referred to as 'illegitimate'. So, in other words, if there was a child born to one of the parties, it nonetheless becomes legitimate as a result of the subsequent marriage of the parties, and that child is to be treated as a 'child' for the purposes of the Act.

Mr Waft: Again, for clarification, it does not have to be the son or the daughter of both parties before the marriage; it could be from a third party? (**The Attorney-General:** Correct.) So that child would have equal rights to a child born after the marriage?

The Attorney-General: Mr President, I think we have seen in the earlier parts of the Bill that a 'child' is most commonly, of course, a child born to the partners during the marriage or during the relationship, but also a 'child' is a child who is treated as a child of the family. In other words, it may very well be that the male partner knows that the female partner has had a child by a previous relationship or previous marriage, and he might be very content to accept that child as a child of the family, as a child of the marriage, and so that child, who otherwise might have been considered to be illegitimate or a non-marital child, will be entitled to the same consideration as a child born in the normal way, if I can put it that way, a natural child of the father's.

The President: Mr Gelling.

Mr Gelling: Mr President, is that not then a way of demonstration if that child was living with them? I think previously it said if the child was living with them as a child of the marriage, irrespective of whether it was a child of the two people so concerned.

The Attorney-General: Yes, Mr President, that would be a very good way of showing to the court that that child had been treated by the male and the female partners as, indeed, a child of the family. It would be more difficult to prove if that child was living away from the relationship.

The President: Right, hon. members, I put to you, then, that part 8, clauses 136 to 140, including schedules 4, 5 and 6, do stand part of the Bill. Those in favour please say aye; and against, no. The ayes have it. The ayes have it.

That concludes our deliberations on the clauses of the Matrimonial Proceedings Bill.

Submarine Cables Bill – Second Reading Approved

The President: We turn, then, on our order paper to the Submarine Cables Bill, and this is down for second reading. I call upon Mr Kniveton.

Mr Kniveton: Yes, Mr President. Sir, at the first reading of this Bill two weeks ago, I went into some detail as to exactly what this Bill is about. Hon. members unanimously accepted my presentation and agreed the first reading. Today, for the second reading, I do not propose to repeat all I said two weeks ago, but I would like to summarise and bring out the main points.

The Submarine Cables Bill fills a gap in Manx law whereby there is currently no statutory requirement to provide controls in respect of the laying of submarine cables within territorial waters. The legislative framework of the Bill is similar to that applying to pipelines. Under the stewardship of the Department of Transport, the Bill would strengthen the department's ability to control activities and would achieve specified standards in Manx territorial waters. This would be instead of relying on the goodwill of owners and contractors working voluntarily to establish good practice. The Bill and the regulations leading from it would require those proposing to lay a cable to apply to the department to be granted an authorisation for such work. This would require the applicant to provide information such as an environmental impact assessment, survey data, project layout et cetera. In spite of there being no financial implication to the department in respect of this Bill, the Bill does provide for regulations to be made to provide for licence or inspection fees. I beg to move the second reading, sir.

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

The President: Mr Lowey.

Mr Lowey: In self-regulation, and if there are no penalties for not adhering to the highest standards – because the mover of the Bill did say it was going to be on a voluntary basis – what real sanctions are there if they fail to deliver the standards accepted by the department, and how can that be enforced?

The President: Mrs Christian.

Mrs Christian: Yes, Mr President, if I could just ask for some further explanation on detail in the explanatory memorandum, which on the one hand enables the department to make safety regulations controlling vessels and operations in the vicinity of cables – in other words, I suppose, trying to keep vessels away from the cables – and at the same time requires cable owners to pay the cost of repairing damage caused to other cables or, in particular, to pay compensation for anchors or fishing gear sacrificed to prevent damage to a cable. The two do not seem to sit comfortably together. Why should there be a requirement to pay compensation for the loss of fishing gear if there are regulations controlling vessels to keep them away from cables?

The President: Mr Kniveton.

Mr Kniveton: Mrs Christian first, sir. There are regulations, but of course regulations often go by the board, and that is really what it is all about there. There is a protection of the fishing fleet, and it goes back to the 1885 Act, which requires anyone fouling cables to drop their gear, and the cable company is required to compensate them. Additionally, in recognition of the fact that, in Manx territorial waters, scallop fishing is important and in order to avoid a clash between the

needs of the fishermen and the cable owner, the requirement to bury cables is contained in the seabed lease. This works so long as the cable owner is willing to incur considerable cost in achieving this burial and the contractor capable of doing it. Both apply to the 360 Atlantic cable. I trust that that goes some way to answering your question, Mrs Christian.

Mrs Christian: Yes, thank you, Mr President.

Mr Gelling: Could I, Mr President, perhaps ask: is it not two distinctly different operations? One is repairing the cable, and therefore people are kept away from it. The other is when the cable is lying in the seabed and somebody, like a fisherman, trawls it, they are asked to drop their . . . So, in other words, there would not be people keeping them away only when a repair was taking place. That is how I read it, Mr President.

Mr Kniveton: That is basically the way it is read, yes, Mr President. As far as I am given to understand, that is it, sir.

The President: Mrs Christian, are you happy with that?

Mrs Christian: Mr President, yes, thank you.

The President: In that case, hon. members—

Mr Lowey: No, could I ask —

The President: Mr Lowey, yes.

Mr Lowey: — the hon. member: would he address my little problem there?

Mr Kniveton: The enforcement: this is, or can be through this, taken to court if the agreements are not kept by. That is the way I understand that one.

The President: Right, hon. members, the motion that I would put to you is that the Submarine Cables Bill be read a second time. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Submarine Cables Bill – Clauses Considered

The President: We will turn, then, to our deliberation of the clauses, and we will start with clause 1, schedules 1 and 2. Mr Kniveton.

Mr Kniveton: Thank you, Mr President. Clause 1, sir, along with schedules 1 and 2, prohibits the laying of a cable within territorial waters without an authorisation issued by the Department of Transport, and provision is made for applications for authorisations to be issued. The authorisation mechanism is based on part 3 of the UK Petroleum Act

1998, which relates to submarine pipelines and applies to the Isle of Man.

Schedule 1 sets out the procedure for granting authorisation. The department is unable to make authorisations requiring Tynwald approval as to applications for authorisations which may include provision for application fees. In the first instance, the department can decide whether to consider the application, in which the case it is to give directions and would require the applicant to publicise the application. Alternatively, the department could reject the application and would normally give its reasons for doing so. If the department thinks that the proposed route of the cable should be altered, then the department can notify the applicant, and the applicant can request a hearing by an appointed person if the applicant disputes a notification. The department may, if it wishes, hold an inquiry into the application once it has decided to consider it and the applicant has publicised it. An appointed person chosen for the purpose will hold the inquiry, and the applicants, any persons who have made representations in response to that publicity and any other person who the department thinks has a vested interest in it are entitled to appear. The appointed person can allow anyone else to appear at his or her discretion and shall consider the question of an alternative route if the proposed cable route has been raised by the department. He or she is to report to the department and shall send a copy of the report to the applicant and other parties. Provided the applicant has complied with any directions and the department has considered any representations, the department shall make a decision on the application. The department shall notify the applicants and certain other persons of its decision and, if it decides to reject the application, give its reasons, except where it would be against the national interest to do so. Following this, the department is required to give certain persons details of the authorisation and to give public notice of it.

Subclause (3) enables the department to include terms in an authorisation including terms relating to matters in schedule 2, which are as follows: its duration; who may carry out works under it; the route of the cable; the limits within which works may be carried out; the design; the capacity of the cable; what the cable may carry — electricity could be at a stated voltage, or telecommunications; what is to be done to reduce interference with fishing et cetera; the removal of the cable on the termination of the authorisation; the giving of a bond or guarantee to secure a fund for the holders' obligations; insurance against loss or damage caused by an escape of electricity; transactions, for example leases or assignments, relating to the cable which require the department's consent; restrictions on who may require an interest in the cable; how and by whom the cable is to be operated; information to be provided and directions by the department.

Mr President, I beg to move that clause 1 and schedules 1 and 2 stand part of the Bill, sir.

The President: Mr Waft.

Mr Waft: I beg to second and reserve my remarks.

The President: Mrs Christian.

Mrs Christian: Mr President, I wonder if I might just ask, under schedule 2: whilst this is enabling, it does allow steps to be taken to require the authorised party to remove the cable on the termination of the agreement and reinstate the seabed after such removal; is that something that would normally be required? I accept that it is a power in there, should the department wish to do it. Is it normal practice? I would have thought it highly impractical to have to remove a cable when it comes to the end of its useful life, but is it common practice to have cables removed?

The President: If my memory serves me correctly, there was another Bill somewhere where we made people who had oil rigs, for example, remove things which were in the sea. Anyway, Mr Kniveton.

Mr Kniveton: If the department decides it should be removed, then it has to be removed. If the person who is responsible for the cable does not remove it, then the department, throughout the clauses you will see, is entitled to have that cable removed and to charge the person responsible for the cable.

Mr Lowey: Does that include spent missiles in training areas that land in the sea, in territorial waters?

Mr Kniveton: They are not cables.

Mr Lowey: No, it is not a cable, but . . .

The President: Mr Waft.

Mr Waft: Could I just ask, Mr President, how the department is going to enforce restrictions on who may acquire an interest in the cable? Do they have to inform the department if the parties change ownership of the cable?

The President: Mr Kniveton.

Mr Kniveton: That is the true position, because the authority is given to a certain body to lay the cable, and if that body changes and therefore the cable changes hands, then the department must and should be notified.

Mr Waft: I just wondered about the restrictions on who should have an interest in the cable.

Mr Kniveton: Mr President, I can tell you that there are many cables under that sea which many of us do not know much about. This is why we are now trying to grasp them and get it into order.

The President: Mr Attorney.

The Attorney-General: Yes, Mr President. Just hopefully by way of information, perhaps the hon. member would agree that, for the most part, these relationships between the department and a company which wants to lay a cable are invariably dealt with by a lease of easement which sets out covenants on the part of the department and covenants on the part of the company which wishes to lay the cable. It is not uncommon for the company to be under a direct obligation with the department not only to lay the cable at a certain route but a certain depth and also to remove the cable if and when the use comes to an end. Therefore, Mr President, I hope that we can see that, under clause 1(3), the authorisation will be in the form of a lease of easement which may very well contain some, if not all, of the matters referred to in schedule 2.

Mr Kniveton: I thank the Attorney-General for that, sir.

The President: Okay. Hon. members, the motion I put to you is that clause 1, along with schedule 1 and schedule 2, do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Clause 2, Mr Kniveton.

Mr Kniveton: In clause 2, Mr President, provision is made for an authorisation to be terminated, at a time provided for in the authorisation, by agreement between the department and the authorisation holder or following a contravention of the authorisation terms. Furthermore, the department can terminate a licence by giving notice to the holder if the works have not begun within the time prescribed, which is normally three years from the commencement of the authorisation, but this may be extended on application by the holder. Notice of an application for the extension of the time is to be served on certain persons, and the department must consider any representations they make. The department can, by notice, terminate an authorisation where the holder has contravened its authorisation terms, but the department must give the holder an opportunity to make representations before taking action. Provided that it would be unreasonable to do so and the holder has taken steps to prevent future contravention, the department is prevented from taking action. Public notice of the termination of an authorisation is required to be given by the department, and the terms of an authorisation can be enforced against the former holder even though the authorisation has terminated. Mr President, I beg to move clause 2.

Mr Waft: I beg to second and reserve my remarks.

The President: The motion, hon. members, I put to you is that clause 2 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Clause 3, Mr Kniveton.

Mr Kniveton: Thank you, Mr President. In clause 3, the department may make safety regulations with respect to submarine cables which would require Tynwald approval. The regulations can apply to vessels et cetera in the area and operations or work in the sea or on or below the seabed. Particular matters with which regulations can deal are: measures for the safety of the cable and the associated apparatus; safety measures when cable laying, maintenance et cetera is in progress; the movement of vessels and the precautions they must take in the area; and the way in which or place where any operations are to be carried out. This legislation is based on the Mineral Working (Offshore Installations) (Isle of Man) Act 1974. Other regulations making powers are not curtailed by this particular power under health and safety legislation and shipping legislation. Mr President, I beg to move that clause 3 stand part of the Bill.

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

The President: The motion, hon. members, is that clause 3 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Clause 4, Mr Kniveton.

Mr Kniveton: Yes, Mr President, on to clause 4, which enables a breach of safety regulations under clause 3 to give rise to civil liability for compensation for personal injury caused by the breach. Civil liability extends to cover liability under the Fatal Accidents Act to the dependants of a person whose death is caused by the breach of regulations. It is made clear that subclauses (1) and (2) do not affect any liability which may arise otherwise, such as the liability for negligence of common law. There is provision so that, where regulations provide, a special defence such as due diligence be available in criminal proceedings for a breach of regulations. That defence is not available in civil proceedings, either under subclause (1) and (2) or at common law. For interpretation purposes, the 'personal injury' for the purposes of subclause (1) is defined to include disease, mental disorder and death. I beg to move clause 4, sir.

The President: Mr Waft.

Mr Waft: I beg to second, Mr President.

The President: The motion, hon. members, is that clause 4 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 take 5 and 6, Mr Kniveton.

Mr Kniveton: Yes, thank you, sir. Clause 5 first. Clause 5 makes it an offence to break or injure a cable in territorial waters. This corresponds to provisions as contained in article 113 of the United Nations Convention on the Law of the Sea, which applies to cables under the high seas. It is an offence, and

penalties are applicable, to break or injure a cable in territorial waters or to act in such a way as is likely to do so. An exception to this is if action is taken to save life or one's ship, provided that all necessary precautions were taken.

Moving to clause 6, sir, this means that a person laying or repairing a cable is liable for any damage caused to another cable or pipeline. The mariner, provided he has taken proper precautions, is given the right to claim against the holder of the authorisation for anchors, nets or gear lost as a result of fouling a cable. This is a corresponding provision to articles 114 and 115 of the United Nations Convention on the Law of the Sea. I beg to move that the two clauses, clauses 5 and 6, stand part of the Bill.

Mr Waft: I beg to second, Mr President.

The President: Mr Gelling.

Mr Gelling: Just one question, Mr President: perhaps the mover could give me some information as to where the territorial sea finishes. For argument's sake, where cables come up onto a beach, is the territorial sea finished at high watermark or mid watermark or low watermark? I am just really trying to ascertain where this Act finishes and where another Act of whatever to damage to cables . . .

The President: Mr Kniveton.

Mr Kniveton: I am looking to the Attorney-General, sir, to help me out on that one. I believe it is high water, but I want confirmation if I can, sir.

The Attorney-General: Mr President, I think the answer may be in clause 11 of the Bill, which defines 'territorial waters' as meaning '(a) the territorial sea adjacent to the Island' – so, of course, that is 12 miles, the 12-mile limit – 'and any waters within the area which extends landward from the baselines from which the breadth of the territorial sea is measured as far as the mean high watermark of ordinary spring tides.' So, the ordinary rule, Mr President, is that the baselines are measured from the high watermark, 12 miles out, and we are also including within this definition waters which are between the . . .

The President: I think it simply means the mean high watermark.

The Attorney-General: Yes. It is intended to cover, Mr President, estuaries which might be, as it were, behind the high watermark. That subclause (b) is rather difficult to – (*Interjections*)

The President: Right, so what you are saying is that any waters within the area which extends landward from the baseline, which is the mean high water, could include, for example, water which would progress up the Dhoo Glass or up the Silverburn or up the Sulby River?

The Attorney-General: That, I think, must be so.

Mr Gelling: That answers my question, then. I know now where to go, sir.

The President: Right.

The Attorney-General: Certainly, if a cable comes on land, Mr President, above the high watermark, this Bill has no operation -

The President: Unless it goes up a river.

Mr Gelling: Yes.

The Attorney-General: If it goes up a river where the ordinary spring tides have influence, then it would.

Mr Gelling: That is exactly the case, yes.

The President: Mr Kniveton, do you wish to add to that?

Mr Kniveton: I truly thank the Attorney-General for that one.

The President: In that case, hon. members, I put to you that clauses 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.

I do not know whether it is practical, Mr Kniveton, but do you want to take 7, 8 and 9 together? Or you can take 7, if you wish.

Mr Kniveton: I will do them, sir, yes. Clause 7 enables regulations to be made giving powers to authorised persons such as inspectors and the facilities to be accorded to them to assist the department in carrying the Bills into effect. The regulations would require Tynwald approval.

Clause 8 creates offences under the Bill, provides for penalties and gives the department power to require contraventions to be remedied and to carry out the works itself if at fault. Certain contraventions are a criminal offence, such as: (a) laying a cable without an authorisation or otherwise in accordance with its terms or damaging cables; or (b) making false statements to obtain an authorisation or to induce the department to act or not to act under clause 2. Mr President, prosecutions for offences are to be brought and are triable either by magistrates or by deemsters in the Court of General Goal and carry up to two years and/or an unlimited fine. The department must serve a notice requiring unauthorised cable to be removed. This obliges the recipient to comply with the notice, and the department may act in default and recover the costs from him or her. Emergency powers are given to the department to remove an unauthorised cable, and the department is given the power to recover the cost from the person responsible. The fact that something was done pursuant to subclauses (3), (4) or (5) does not exempt the person responsible from civil liability for

any loss or damage caused where the loss or damage was caused by the department in exercising its powers under (4) or (5). It can claim to be indemnified by the person responsible.

Moving on to clause 9, sir, this contains miscellaneous provisions relating to criminal proceedings for offences under the Bill or regulations. An offence is to be treated as if it were committed in the Island, thus avoiding problems over the courts of jurisdiction. Private prosecutions are prevented for offences under the Bill or regulations, except for offences under clause 5(1). All regulations have the powers of authorised persons. However, it is a defence to prove that an act took place outside the territorial waters, not for the prosecution to prove that it took place within them. Proceedings can be taken against the directors or officials responsible as well as against the company. There is a general defence of due diligence for failing to comply with the terms of an authorisation.

I beg to move clauses 7, 8 and 9, sir.

The President: Mr Waft.

Mr Waft: I beg to second, Mr President.

The President: The motion I put, hon. members, is that clauses 7, 8 and 9 do stand part of the Bill. Those in favour please say aye; and against, no. The ayes have it. The ayes have it.

Clauses 10 and 11, Mr Kniveton, please.

Mr Kniveton: Yes, Mr President. Clause 10 makes a general provision for regulations under the Bill such as safety regulations and regulations at the powers of authorised persons. Exceptions from the Bill are existing cables and applications. The department must consult interested parties before making any regulations. Regulations creating offences are to be limited in their application to provide for inspection fees et cetera and to contain supplemental and transitional provisions. The department can make regulations, which require Tynwald approval, excepting specified kinds of cable either generally or subject to conditions.

Going to clause 11, sir, this provides for the interpretation of the Bill saving provisions are made so that no civil claim for compensation can be made for breach of the Bill or regulations except as provided by clause 4 in relation to safety regulations under clause 3 and other statutory restrictions and other civil or criminal remedies are not affected.

I beg to move that those two clauses, 10 and 11, become part of the Bill, sir.

Mr Waft: I beg to second, Mr President.

The President: Sorry, Mr Kniveton, I was trying to work out where you had the reference in clause 11 to clauses 4 and 5, I think you said, did you not?

Mr Kniveton: Clauses 4 and 3, sir.

The President: Clauses 4 and 3, okay. It does not specifically mention the clauses within the Act. It is just within the wording, I take it, then? (**Mr Kniveton:** Yes.)

Hon. members, in that case I put to you that clauses 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.

Clause 12.

Mr Kniveton: Yes, finally, sir, clause 12 provides for the short title and commencement of the Bill and its application to existing cables laid in territorial waters. I beg to move that clause 12 stand part of the Bill.

The President: Mr Waft.

Mr Waft: I beg to second, Mr President.

The President: The motion I put, hon. members, is that clause 12 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Suspension of Standing Orders – Approved

The President: That concludes our deliberations on the Submarine Cables Bill for this morning, so we turn, then, to –

Mr Kniveton: Sir, may I please request that I take the third reading of this Bill? Who knows what the future holds for me, and I am here for it now if the Council is agreeable, sir.

Mr Delaney: Agreed.

The President: It is entirely up to the members.

Members: Agreed.

The President: Now, hon. members, I . . . Mrs Christian.

Mrs Christian: No, I am happy. It is a non-contentious measure.

The President: In that case, hon. members, I put to you that we suspend standing orders to permit the third reading of the Submarine Cables Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Submarine Cables Bill – Third Reading Approved

The President: So, we will deal straight on with Mr Kniveton: third reading.

Mr Kniveton: I thank you and the members, sir, for your consideration. To summarise for the third reading, I can but say that the Submarine Cables Bill fills that gap in Manx law whereby there is currently no statutory requirement to provide controls in respect of the laying of submarine cables within territorial waters. The legislative framework of the Bill is similar to that applying to pipelines. Under the stewardship of the Department of Transport, the Bill would strengthen the department's ability to control activities and would achieve specified standards in Manx territorial waters. This would be instead of relying on the goodwill of owners and contractors working voluntarily to establish good practice, as in the past. The Bill and the regulations leading from it would require those proposing to lay a cable to apply to the department to grant an authorisation for such work, and this would require the applicant to provide information such as environmental impact assessment, survey data, project layout et cetera. In spite of there being no financial implications to the department in respect of the Bill, the Bill does provide for regulations being made to provide for licence or inspection. I beg to move the third reading of this Bill, sir, and that it do pass.

Mr Waft: I beg to second, Mr President.

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

Anti-Terrorism and Crime Bill – Second Reading Approved

The President: At this stage, then, we will turn to the Anti-Terrorism and Crime Bill 2002, and I call upon the hon. member Mr Lowey for second reading.

Mr Lowey: Thank you, Mr President. This Bill is promoted by the Department of Home Affairs, and the Bill repeals and replaces the Prevention of Terrorism Act of 1990. It is principally based on the Terrorism Act of 2000 of the UK Parliament but does include some provisions from the Anti-terrorism, Crime and Security Act of the United Kingdom Parliament. The 1990 Act was originally designed in response to terrorism connected with the affairs of Northern Ireland and, although some of its provisions extended to certain other categories of international terrorism, the main thrust of the Bill was that the counter-terrorism measures in the Bill will be applicable to *all* forms of terrorism: Irish, international and domestic. The Bill is intended to ensure the full implementation of the UN convention for the suppression of terrorist bombings and for the suppression of the financing of terrorism.

The Bill's parts and schedules are broken down into various parts, and part I sets out the definition of 'terrorism'. Part II, Proscribed organisations, defines 'proscribed organisations'. Part III, Terrorist property,

provides offences relating to fund-raising and other kinds of financial support for terrorism. Part IV, Terrorist investigations, provides for the investigation of terrorism and confers a power to set up cordons – and cordons will be explained. Part V, Counter-terrorist powers, provides the police with powers to arrest and detain suspected terrorists and broader powers to stop and search and to impose parking restrictions. Part VI makes provision with respect to weapons training for terrorist purposes. Part VII, Freezing orders, will enable the Treasury to freeze terrorist funds. Part VIII deals with the disclosure of information for the purposes of criminal investigations and proceedings. Part IX, Dangerous substances, creates offences relating to the use of noxious substances and criminalises hoaxes purporting to involve those substances or bombs. It was very relevant to hear this morning that in New Zealand, the last place you would have associated with terrorism, that sort of behaviour was being practised now. Part X, Miscellaneous powers and proceedings, deals with police and other officers' powers, prosecutions and warrants. Part XI deals with the bribery of foreign officials. Part XII introduces schedule 13, which deals with the control of pathogens and toxins – and I will explain that in more detail – and part XIII contains supplementary provisions and includes a list of terms defined in the Bill.

In reply, really, to a question posed by my hon. friend, Mr Gelling, last week, it is thought unlikely that the Bill will result in significant increases in expenditure, but this will largely depend on operational circumstances, which are impossible to predict. The Bill will cause no reduction in government income. Some of the financial implications of the proposed Bill – and this is why I am going to explain to my hon. friend how it is almost impossible – are: The provision of passenger and freight information – this kind of information relating to passengers, crews or their vehicles which examining officers will be able to request will be set out in a separate order and will apply to ships and aircraft arriving, and it is hard to put a price and a quantity on that; and the security of laboratories holding dangerous substances – Noble's Hospital, for example, hold stocks of some of the dangerous substances listed in the Bill, and the main costs falling upon Noble's and the new hospital will be of complying with reasonable instructions issued by the police as to the security measures which need to be taken to prevent terrorist theft of the dangerous disease stocks. There will be financial implications which will centre on the methods of adequately securing areas storing dangerous pathogens within the hospital buildings. For example, I am sure the hospital, even now, takes those precautions to a standard; perhaps the new standards that will be imposed will be higher. Again, we cannot quantify those costs. And of course there is the cost of policing. The police may very well, for example . . . The financial implications of the proposed new Bill are complex and, at the moment, the constabulary, in conjunction with the UK authorities responsible for national security at ports, are assessing the policing of the Isle of Man ports. There may very

well be a manpower . . . Bearing in mind that if all of the sections of the Bill are implemented . . . Again at this stage and this time, we cannot quantify.

I would also like to draw attention to an omission I made in summing up last week. The Lord Bishop made a very legitimate point and, in his absence, I think I ought to publicly announce that he mentioned, 'Will this Bill impinge on the likes of the cadets, as training of people is going to be proscribed?' He was concerned about the cadets, but there is a defence – and I believe it is in clause 42(6) of the Bill – where cadets quite clearly are allowed to be exempted from that.

Mr President, I do not wish to go into all the details that I did, but I think the need is exemplified in the point I have raised this morning of terrorism knowing no boundaries. I think it is right that in this Bill we should replicate what is in the UK so that we have similarity of the whole area in which it is being applied, and I think this is a sensible application to deal with those who would seek to destroy society. I beg to move the second reading of the Anti-Terrorism and Crime Bill 2002.

The President: Mr Delaney.

Mr Delaney: I beg to second. It gives me no pleasure to have to second such a Bill as this. I would love it to be a fact, as all members would, I think, that this was not happening, but the fact is that it is happening, and unfortunately I am sorry to say that it is going to be worse. I think that, in parts of the Bill, each member will have a different view on whether it goes far enough or too far. In actual fact, I believe that, within a short period of time, there will be amendments found out; unfortunately, when things get under way, they will have to come back with amending legislation to give it more strength. That is my view, and unfortunately I hope we have not got a . . . This was based on a British Bill of 2000. I think that we will be back more quickly than waiting a couple of years to get back with amendments to it, because it is only in the light of bitter experience where they find the law is wanting, and I believe that it will be found in this case. The part that does concern me – and I must say this – when I was listening to what went on in the other place. I have heard certain opinions in relation to certain parts of this Bill which give me room for concern. I will be raising them at those clauses, because I cannot understand why we have to wait for something to go wrong before we see the need to block the loopholes, if you like. Everyone is entitled to an opinion; in my case, I think that, as a government, you have got to stick with something like this in the interests of the nation as one. Any arguments on this Bill should have been fought out in another place, and I will say so when I get to the clauses.

The President: Mrs Christian.

Mrs Christian: Mr President, I think we had accepted the principle of prevention of terrorism legislation back in 1990, and even then there were

concerns about having it in place continuously. However, rather than seeing things get better, things seem to have gone worse, and I think that, generally speaking, most members of the public would support provisions such as this, not least so that the Isle of Man does not seem to be a loophole through which any terrorist activity could be routed. I therefore support the Bill. I know there are some concerns in some quarters about individual freedoms and civil liberties and so on, but I think that it does provide for the greater good of the community.

The President: Mr Gelling.

Mr Gelling: Just one question, Mr President, really. In part II, where it has got the proscribed organisations, I take it that proscribed organisations are deemed terrorists, and the list is there. Who compiles the list, and are we always therefore bound to have to follow that particular list, whoever makes that particular list? And do organisations actually come off that list? Is it something that these people . . . Are they always going to be terrorists?

The President: Dr Mann.

Dr Mann: Yes. I realise I shall not be here at the next reading of this Bill, but we are assuming a lot more powers, and so far I have not heard a clear description of those additional powers that are being assumed by this Bill. If I am not clear on that issue, the people outside who just assume that we are doing our job should also know. Certainly, I think the public should be made aware of some of the provisions of this Bill, and I hope, when it is passed through the branches, that there should be some explanation to the public of what we are actually doing, first of all to give some of the members confidence that things are being done, but also to explain how some freedoms are actually being taken away.

The President: Mr Waft.

Mr Waft: Just on a point of observation, Mr President. We are, as has been said, giving wide powers to the police and the situation with regard to the interpretation of what is terrorism and what is not, but there is a very broad picture given here with regard to something which involves serious violence against a person, involves serious damage to a property or endangers life. That happens on a fairly regular basis but does not come under the broad auspices of terrorism. At the same time, when you give general powers to anyone, which includes this sort of thing, these sorts of items here, I just wonder: where is the line which can define whether it is terrorist activity or just 'weekend' activity as such, which happens on a fairly regular basis?

The other point I was going to make was that if somebody was wrongfully arrested because of anything encompassed in this Bill and then was found subsequently not to be what it was purported that they were, is there any form of compensation that can be

allowed to that body or body corporate? Thank you, Mr President.

The President: Mr Kniveton.

Mr Kniveton: Yes, just briefly, sir, and not referring directly to the Bill, as you know, I have responsibility for the airport and the sea terminal, and even apart from this Bill we are governed, at the airport in particular, by the outside authority, the CAA. We do have to do exactly as they say, and the same at the sea terminal, otherwise airlines will not travel to the Island and boats will not be allowed to enter UK ports unless we have adhered to all the anti-terrorism requirements from the authorities. So, that is interesting in itself. There has been a fair amount of reluctance to accept the decisions of the airport and the harbours, but I must say now that, after three or four weeks, everybody falls in because they realise what it is all about. Thank you.

The President: Mr Lowey.

Mr Lowey: Thank you, Mr President. I am grateful that every member of Council present has spoken on this particular Bill, because it is a very important piece of legislation. It is very important because, as certain members have said, it has got very far-reaching implications for everybody in society. It will impinge. I did say, at the first reading, that this was a balanced approach, with rights and responsibilities taken into account. Regrettably, when we are fighting terrorism, there are times when certain rights have to be . . . I will not say sacrificed, but at least operated in a different way than if we were in a peaceful situation. Regrettably, the world is a dangerous place. Those people who would destroy society know the weaknesses of that society. They actually use the situation to their advantage. I have to say the Isle of Man is particularly vulnerable in this regard, because we are an international finance sector. One of our strengths is our well-regulated financial centre, and it can be seen that that can be used in the financing of terrorism, which is, in this Bill, given just as much weight as those that actually plant the bombs and do these dreadful acts of terrorism. Equally important is to get rid of the people that finance it, and that is why you will find, in this Bill, they are extending the powers into not just confiscating the properties of those who deal directly but those that actually service those avenues of terrorism.

I would like to thank Mr Delaney for his general support, and he is right to query where he is unhappy at the different clauses stage.

Mrs Christian mentioned that most people in the Isle of Man would accept that it is right that the Isle of Man should play its part internationally, and it is right that we should mirror the United Kingdom's legislation so that we cannot be used as a back door. There has been a safeguard added in another place, where this legislation will have to be renewed in five years' time. It is not forever and a day, so it will have to be renewed in five years' time. That, again, is

another indication that we will be actively reviewing if the need has changed.

Mr Gelling mentioned the lists: which are the lists? I have a list here; I think there are 30. I will not read them all out, because some I can say and some I cannot say. They are the United Kingdom list, but at the moment we have to go to Tynwald with an order putting people on the list. That is not always convenient, if you will pardon. If the security forces discover today that they need to put somebody on the list, 'Hang on, boys. You have got three weeks or whatever it is before you can do it', and so it is right, I think, that we should apply the UK list. It has to be published and a record kept for people to see who is on it and who is not on it, but it goes from all the Irish and proscribes the Liberation Tigers of Tamil, the Palestinian Islamic Jihad, the Mujaheddin e Khalq – I think I have pronounced that right – but it goes on. The list is there for all to see. So, the lists are to be published so people can see who is on it and who is not on it and yes, it will be the UK list that will form the basis, although there is a clause that gives the Isle of Man the right, in the light of its thing, to add to the list if it needs to, independently.

I welcome Dr Mann's contribution, because it is right that it is impinging on most people and that there is extending an impingement, an erosion of liberty, but I think that is a price one has got to pay. I think it is right that people should know and, in that regard, that is why I think the department, in fairness, have consulted widely. This legislation is required; we are not pioneering. The Channel Islands have already adopted similar legislation and put it into practice to mirror the UK, so we are not at the forefront, but I think we are catching up, and I think it is right and proper that we do. The department has consulted with the membership and gave a presentation as to why the Bill is necessary and where it will impinge, and it did give every opportunity for members to question the necessity. And I do not regard any heated debate in another place as extraneous; I think it was right. I think it was healthy. I think it was right that people should express concerns and views. I think that is the right formula, and we have done all of that.

Mr Waft said there are wide powers, and I have to say they are needed, because we have to have a united front against terrorism. These are balanced, and I have to say they have been in operation in the United Kingdom since the year 2000. Most of them have been in, and so they have been in for two and a quarter years, and I think they have got practice. They have not brought a diminution of what I would call people's day-to-day lives, but they are there if needed by the authorities and to be operated when they are required by the police and the army.

I welcome Mr Kniveton's support.

Mr President, the Bill is complicated, but it does already mirror, to a large degree, what we have already had for the last decade, as Mrs Christian said. It has been augmented in the light of what has happened in the United Kingdom, which seems practical and balanced, bearing in mind, as I said, on the one hand civic rights and civic duties. But we are facing a real

problem, and regrettably these decisions are necessary. I beg to move that the Anti-Terrorism and Crime Bill be read a second time.

The President: The motion, hon. members, that I put to you is that the Anti-Terrorism and Crime Bill be read for a second time. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Anti-Terrorism and Crime Bill – Consideration of Clauses Commenced

The President: We turn, then, to the clauses and part I. Mr Lowey, clause 1.

Mr Lowey: Thank you, Mr President. I apologise to members, because I only wish the Bill was in very nice, neat little compartments; most of them are, but there are some sections which are rather larger than others. But we will deal with them, I am sure, in your usual way, Mr President, when we come to them.

Part I is a short one, it is 'Introductory' and it interprets 'terrorism'. Under the Prevention of Terrorism Act 1990 – and when I use the initials in some of the clauses in the future, I will refer to it as the 'PTA' – 'terrorism' means the use of violence for political ends and includes any use of violence for the purpose of putting the public or any section of the public in fear. The definition in the PTA is limited in that the powers of the offences in that Act only applied to terrorism connected with the affairs of Northern Ireland or Irish and certain international terrorism. This Bill adopts a wider definition, recognising that terrorism may have religious or ideological, as well as political, motivation, covering actions which might not be violent in themselves but which can, in a modern society, have a devastating impact. These could include interfering with the supply of water or power, where life, health or safety may be put at risk. Subsection (2)(e) covers the disruption of key computer systems, for example.

Subsection (3) provides that where action involves firearms or explosives, it does not have to be designed to influence the government or to intimidate the public or a section of the public to be included in the definition. This is to ensure that, for instance, the assassination of key individuals is covered.

Subsection (4) provides for the definition to cover terrorism not only within the Island but throughout the world. This is implicit already in the PTA definition, but this Bill makes it explicit. It may be implied in the PTA; this makes it explicit.

So, with that, Mr President, I beg to move that clause 1 stand part of the Bill.

Mrs Christian: I beg to second.

The President: Mr Delaney.

Mr Delaney: I would like to have seconded, but I have got a question on this particular one. I am

interested in the Attorney-General here. 'The use or threat is made for the purpose of advancing a political, religious or ideological cause': this is a fascinating one, because up until recently . . . Again, I heard two weeks ago a statement made by a person of a certain group, who threatened, in my opinion, the lives of certain citizens in relation to their political views, publicly. As I understand it – and the Attorney-General maybe can tell me if the mover cannot – surely this Act covers such a threat? If someone stands up in the pulpit, for example, and says that that person should be physically removed, isn't that a threat that should carry the weight of this Act against it?

The President: Mr Waft.

Mr Waft: Perhaps that might be covered under the Public Order Act already. (*Interjections*)

Mr Delaney: There are an awful lot of people who are not getting this law against them. Those people are not acting against them.

The President: Mr Attorney.

The Attorney-General: Well, thank you, Mr President. I think that the hon. member is probably right. It could well constitute terrorism, but equally I think it could well constitute offences under other legislation. For example, I think in yesterday evening's news –

Mr Delaney: That is right, yes.

The Attorney-General: – there was a religious figure in London, I think it was, who had been inciting others, I think, to kill and to remove members of certain religions in certain countries. To the best of my knowledge, he was not charged with an offence of terrorism –

Mr Delaney: That is right.

The Attorney-General: – but he was charged with an offence of incitement, I think, to kill others. And so, I think, as ever, Mr President, it rather depends on the particular facts of the case. This rather broad definition of terrorism is intended to be broad -

Mr Delaney: Thank you.

The Attorney-General: – but it would not necessarily mean that every factual situation which could possibly fall within the definition is going to trigger a prosecution under this Bill.

Mr Delaney: It is nice to know it is there, though.

The President: Is there anything you wish to add, Mr Lowey?

Mr Lowey: No, I do not. I thank the learned Attorney for his contribution.

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

Clauses 2, 3, 4 and 5, I think, Mr Lowey.

Mr Lowey: Thank you, Mr President. Part II deals with proscribed organisations. The proscription régime under the Bill differs from that it replaces as follows: the PTA listed the organisations that are proscribed – and remember the PTA was the 1990 Manx Act – and gave power to amend the list by order; the Bill treats as proscribed organisations those that are proscribed under the Terrorism Act of 2000 of the United Kingdom Parliament. This will ensure consistency between the jurisdictions and avoid the need for complicated appeal procedures for those appealing against proscription. Under the PTA, proscription is only applicable to organisations concerned in Irish terrorism. Proscription under this Bill can cover organisations concerned in international or domestic terrorism, and the organisations which are currently proscribed are . . . And I could recite the 30-odd, but I will decline. If any member wants to see the list, they are more than welcome.

Clause 2 deals with proscribed organisations. Proscribed organisations are those listed from time to time in schedule 2 to the UK Terrorism Act of 2000. The UK schedule can include any organisation deemed to merit proscription and will be proscribed throughout the whole of the UK. Subsection (3) imposes an obligation for the Governor in Council to maintain a public list of proscribed organisations and to publish alterations to that list.

Clauses 3 and 4 deal with membership and support. These offences are based on those in section 2 of the present Act, the PTA, and have similar effect. The offence in clause 4(1) is not confined to support by providing money or other property, because that kind of support is dealt with in part III of this Bill, but subsection (4) of clause 4 is intended to permit the arranging of genuinely benign meetings. Again, we are back to this balance, trying to allow people to organise legitimate political meetings et cetera.

Clause 5 deals with uniform. This clause repeats the offence in section 3 of the PTA. As was the case under the PTA, the offence is summary only, with a maximum custodial penalty of six months, but I am quite sure hon. members will be fully aware that while uniform can be benign, like the Boy Scouts or the Girl Guides have a uniform, uniform in terror organisations, such as, if I take the Northern Ireland situation, balaclavas or berets, was an instant identity, an introduction to a terrorist organisation. So, again we are trying there to get the balance right.

Mr President, I do not think I can add much to clauses 2, 3, 4 and 5, and I beg that they stand part of the Bill.

The President: Mr Delaney.

Mr Delaney: I would like to second this, and could I ask the member if it also includes such things

as are commonly worn on protests and which give succour to terrorist organisations, such as the checked scarf as used for Arab organisations to identify them as supporters of a criminal organisation, a terrorist organisation?

The President: Mr Lowey.

Mr Lowey: Yes, again, clause 5 deals with uniform: 'A person in a public place commits an offence if he – (a) wears an item of clothing, or . . . in such a way or in such circumstances as to arouse reasonable suspicion that he is a member or supporter of a proscribed organisation.' So, I think it is covered in that.

Mr Delaney: To show you support an organisation.

Mr Lowey: Absolutely.

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

Clause 6, Mr Lowey.

Mr Lowey: Thank you, Mr President. Clause 6, and part III, deal with terrorist property. This part corresponds to part III of the PTA, 'Financial Assistance for Terrorism'. The name has been changed to 'Terrorist Property' to make it clear that, in this Bill, just as in the PTA, the part III offences apply not only to money but also to other property. While part III of the PTA applies only to Irish and certain kinds of international terrorism, part III of this Bill applies to all forms of terrorism. In addition to replicating part III of the PTA, part III of this Bill also introduces a new power for the police, customs officers and immigration officers to seize terrorist cash and to seek forfeiture of the cash in civil proceedings. This extends and replaces, so far as it relates to terrorist offences, a power to seize the proceeds of crime at the border under the Criminal Justice Act of 1990. In addition, a power is conferred on the High Court to make orders permitting the monitoring of accounts with banks et cetera.

Clause 6 deals with property. This definition comes into play in the money-laundering offence, and the power to seize and forfeit terrorist cash is dealt with in clause 17 and schedule 3. Subsection (1) makes it clear that 'terrorist property' can include both property to be used for terrorism and the proceeds of acts of terrorism. Subsection (2)(a) makes it explicit that the proceeds of an act of terrorism cover not only the money stolen in, say, a terrorist robbery but also any money paid in connection with the commissioning of terrorist acts. Subsection (2)(b) makes it explicit that any resources of a proscribed organisation are covered, not only the resources they use for bomb-making, arms purchase et cetera but also money they have set aside for non-violent purposes, such as paying rent and the likes. I beg to move that clause 6 stand part of the Bill.

Mr Delaney: I beg to second.

The President: The motion, hon. members, is 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.

Perhaps, Mr Lowey, we could take 7, 8, 9 and 10, please.

Mr Lowey: Thank you, Mr President. These deal with fund-raising and money laundering. Clauses 7 to 9 deal with fund-raising, use and possession and funding arrangements. These clauses correspond to sections 7 and 8 of the PTA. Under clause 1(5) of the Bill, the words 'for the purposes of terrorism' can be taken to include 'for the benefit of a proscribed organisation' and, as a result, the offences of fund-raising, using and possessing money and entering into funding arrangements for a proscribed organisation are subsumed into these clauses. So, 7, 8 and 9 deal with fund-raising, use and possession and funding arrangements.

The President: Are you content to stop there, sir?

Mr Lowey: I am, yes. I beg to move.

The President: In that case, Mr Delaney.

Mr Delaney: I beg to second.

The President: In that case, hon. members, I put to you that clauses 7, 8 and 9 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Perhaps, then, sir, clauses 10, 11 and 12.

Mr Lowey: Yes, indeed.

The President: Okay.

Mr Lowey: Money Laundering and 'Disclosure of information: duty' are dealt with in that, and up to 12: 'Disclosure of information'.

Clause 10, corresponds to section 9 of the existing PTA and has the same effect. Although it is entitled 'Money Laundering' and is most likely to be used for money, it also applies to laundering-type arrangements in respect of other property.

Clause 11, 'Disclosure of information: duty', is based on section 16 of the present PTA and has the same effect, except that financial institutions are excluded from it and are covered by a separate clause in this Bill, which is clause 14. This clause requires businesses to report any suspicions they may have that someone is laundering terrorist money or committing any of the other terrorist property offences. Subsection (1)(b) ensures the offence is focused on suspicions which arise at work, and subsection (5) preserves the exemptions in respect of legal advisers' privileged material.

Clause 12 . . . If I can stop there, sir, up to 10 and 11, I can perhaps deal with clauses 12 and 13 together, if that is all right with you.

The President: Yes, I am perfectly happy, sir. You are in charge. Second, Mr Delaney?

Mr Delaney: I beg to second, Mr President.

The President: Mr Waft.

Mr Waft: Could I just ask again, Mr President: with regard to mistakes being made in carrying out the legislation of the Anti-Terrorism and Crime Bill, if somebody is wrongly accused and he suffers as a consequence, is there any retribution to be made to that person within this Bill? Perhaps the Attorney might –

The President: Well, Mr Attorney.

The Attorney-General: Thank you, Mr President. There is no specific provision in the Bill enabling a person who, for example, is wrongfully arrested to claim compensation, but there is always the common law, which does provide a remedy to anybody, not only someone who suffers as a result of excessive police powers under the terrorism Bill but any legislation. So, if you are wrongfully arrested and the police act unreasonably, then, depending on the circumstances, you may very well have a claim for compensation.

The President: Mr Lowey, do you wish to add anything?

Mr Lowey: No, I think the Mr Attorney has –

The President: In that case, hon. members, I put to you the motion that clauses 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.

How far do you wish to go now, Mr Lowey? Clauses 12 and 13?

Mr Lowey: Clauses 12 and 13, sir, please. Clauses 12 and 13 of this Bill ‘Disclosure of information: permission’ and ‘Co-operation with police’ correspond to section 10 of the present Act, the PTA, and have the same effect.

Clause 12 ensures that businesses can disclose information to the police without fear of breaching legal restriction.

Clause 13(1) allows for the activities of informants who may have to be involved with terrorist property, if they are not to be found out and protect others who may innocently become involved. Subsection (2) makes it possible for someone involved with such property to avoid prosecution by telling the police as soon as is reasonably practical – which is dealt with in subsection (3) – and discontinue his involvement if asked to do so by the police. So, there are safeguards there.

So, I beg to move that clauses 12 and 13 dealing with the ‘Disclosure of information: permissions’ and ‘Co-operation with police’ do stand part of the Bill.

Mr Delaney: I beg to second, Mr President.

The President: Hon. members, the motion I put to you is that clauses 12 and 13 do stand part of the Bill. Those in favour please say aye; and against, no. The ayes have it. The ayes have it.

Now, Mr Lowey, if we could, could we just take clause 14 on its own? I am now conscious of the fact that whilst it refers also to schedule 1, we missed taking schedule 1 along with clause 11, where it was also mentioned in subclause (8) of clause 11. So, if we just pick that up as we come so that it is absolutely plain for the *Hansard*.

Mr Lowey: Yes. I am grateful. Clause 14, ‘Failure to disclose’, provides that where a person knows or suspects or has reasonable grounds for knowing or suspecting that a person has committed an offence under any of the sections 7 to 10 of the Bill and the information came to him in the course of business in the regulated sector, he must disclose that information. Failure to do so is an offence. This provision is only directed at persons who are carrying out activities in the regulated sector and reflects the fact they should be expected to exercise a higher level of diligence in handling transactions than those engaged in other businesses. Where a business carries out some activities which are specified in schedule 1, part 1 and some which are not, then it is only to the extent that information is obtained in the course of those specified activities that it is covered by these provisions. Mr President, I think that explains, really, clause 14 in a nutshell, and I beg to move that clause 14 stands part of the Bill.

Mr Delaney: I beg to second, Mr President.

The President: Now, hon. members, I want to make it plain that, in putting to you clause 14, it also incorporates schedule 1. You will see, from the top of your notes on schedule 1, that it refers also to section 11(8). So, hon. members, I put to you the motion that clause 14 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.

Hon. members, I am aware of the Court clock. It seems to be an appropriate time at which we could take a break, and we will resume our deliberations at 2.30 p.m., hon. members. Thank you.

The Council adjourned at 12.58 p.m. and resumed its sitting at 2.30 p.m.

**Anti-Terrorism and Crime Bill –
Consideration of Clauses Concluded**

The President: When we broke off for lunch, we had just completed clause 14 and schedule 1, so we start again at clause 15 –

Mr Lowey: Could I do clauses 16 and 17 and schedule 2, Mr President, if I may?

The President: Clauses 16 and 17, okay. Thank you.

Mr Lowey: Clause 15, Mr President, ensures that persons in the regulated sector can disclose information which causes them to know or suspect or gives them reasonable grounds to know or suspect that an offence has been committed to the police without fear of breaching any other legal restriction which would otherwise apply.

Clauses 16 and 17 deal with forfeiture. Clause 16 is based on section 11(2) of the PTA, that is our existing Act, and has a similar effect, subject to one substantive modification. That modification is that subsection (6) allows for forfeiture on the proceeds of a terrorist property offence. This could arise in a case where an accountant prepared accounts on behalf of a proscribed organisation, thus facilitating the retention or control of the organisation's money, and was paid for doing so. The money he received in payment could not be forfeited under section 11(2) of the present PTA, because it was not intended or suspected for use in terrorism. Subsection (6) ensures that the power of forfeiture operates in a way that is consistent with other powers of forfeiture under criminal justice legislation, Mr President.

Clause 17, 'Forfeiture of terrorist cash', introduces schedule . . . I am sorry, clause 16 also introduces schedule 2. Clause 17 introduces schedule 3, which expands and replaces the current provisions in the Criminal Justice Act of 1990 in so far as they relate to terrorist cash and for the seizure and forfeiture of terrorist cash. Mr President, I would like to move –

The President: Mr Lowey, I am sorry to interrupt, but it would be convenient, I think, if you took clause 18 and schedule 4 as well, thus completing part III.

Mr Lowey: Thank you, Mr President. I am grateful to you for that. Clause 18 introduces schedule 4, which introduces the power of the High Court to order access to accounts of named persons and bodies. The PTA contains provisions enabling a deemster to order a person to produce particular material to a constable for the purposes of terrorist investigation. In schedule 5, the power is, however, not well suited to information relating to transactions –

The President: Sorry, Mr Lowey –

Mr Lowey: This is what it . . . I can only recite, sir, what is actually mentioned in my notes. Schedule 5. (*Interjections*)

The President: Schedule 4. So you are actually on schedule 4 of clause 18.

Mr Lowey: Schedule 4, okay. Thus there is a gap in the current provisions where investigating authorities need to be able to obtain information relating to the account or accounts held by a named individual or body. Account monitoring orders will be the mechanism available to obtain this information, and the information required is principally that relating to transactions on the account.

Mr President, I beg leave to move that clauses 15 and 16, schedule 2, clause 17, schedule 3, clause 18 and schedule 4 stand part of the Bill.

Mr Delaney: I beg to second.

The President: Do you wish to talk, sir?

Mr Delaney: No, just for clarification, I was just trying to associate my briefing paper with the clauses that we just read. I was following it closely, and the schedules, and I thought clause 19 . . . All right, it is okay.

The President: Hon. members, I put to you, then, the motion that clauses 15, 16, 17 and 18, along with schedules 2, 3 and 4, do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

We turn, then, to part IV, 'Terrorist investigations', and clause 19.

Mr Lowey: Thank you, Mr President.

Mr Gelling: Could I, Mr President? I think possibly, just taking that point, that clause 18 says it introduces schedule 3 when it should actually be schedule 4. That is in the –

Mr Delaney: That is what I was –

Mr Gelling: – explanatory notes –

The President: In which? The explanatory notes? Well, I am following the Bill, not the explanatory notes.

Mr Gelling: Yes, but that is where it is picked up, sorry.

The President: It could very well be picked up wrongly in the explanatory notes, but the important bit is that we have the wording right on the Bill. The motion which I put to you was that clauses 15, 16, 17 and 18, together with the schedules 2, 3 and 4 referred to therein, stand part of the Bill, and that has been accepted. We turn, then, to clause 19.

Mr Lowey: Thank you, Mr President. Part IV deals with terrorist investigations. Clause 19 is 'Terrorist investigation'. This definition applies to the power in clauses 20 and 23 to use cordons to the powers in schedule 5 to obtain search warrants, production orders and explanation orders and to the power in schedule 6 to make financial information orders. There is also an offence in clause 27 of tipping off in relation to a terrorist investigation. Mr President, clause 19 defines just that, and I beg to move that clause 19 stand part of the Bill.

Mr Delaney: I beg to second.

The President: Seconded by Mr Delaney.

Hon. members, the motion I put to you is that clause 19 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Perhaps, Mr Lowey, you could take 20, 21 and -

Mr Lowey: To 23?

The President: To 23, okay?

Mr Lowey: Yes. Clauses 20 to 23, Mr President, deal with cordons. These clauses give the police the power, for a limited period, to designate and demarcate a specified area as a cordoned area for the purposes of a terrorist investigation. For instance, in the wake of a bomb, they also make it an offence to breach a cordon. In other words, they have the power, under the Terrorism Act, to cordon off large areas. I think 20, 21, 22 and 23 are just the machinery with which they actually deal with that particular problem, giving them the ability to cordon off areas. I do not think I need add any more other than that, Mr President.

Mr Delaney: I beg to second, sir.

The President: The motion, hon. members, is that clauses 20, 21, 22 and 23 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Then we have a little part headed 'Information and evidence', clauses 24, 25, 26 and 27, along with schedules 5 and 6, which are referred to in clauses 24 and 25.

Mr Lowey: Yes, indeed, Mr President. Clause 24, as you rightly say, introduces schedule 5, and the power to obtain information shall have effect.

Clause 25 deals with financial information. This clause introduces schedule 6, which deals with power for a deemster to order a financial institution to provide customer information.

Clause 26, 'Information about acts of terrorism', makes the failure to disclose information about acts of terrorism a criminal offence. The new offence is similar to that which was found in section 16 of the PTA. Section 16 related only to acts of terrorism in Northern Ireland; the new offence has no geographical limitations. Subsections (1) and (2) of the clause make

it an offence for a person, subject to the defence in subsection (4), to fail to disclose information which he either knows or believes might help prevent another person carrying out an act of terrorism or might help in bringing a terrorist to justice in the Island. The words 'an act of terrorism' are to be read with the definition of terrorism in clause 1 and include acts of terrorism anywhere in the world. Subsection (3) of clause 27 makes it an offence for someone to disclose information to another person which would be likely to prejudice an investigation resulting from a disclosure under this clause or to interfere with material that is likely to be relevant in such an investigation. The penalties for these offences are the same as under the clause as defined.

Clause 27, Mr President, the 'Disclosure of information to prejudice terrorist investigations', corresponds to section 15 of the PTA and has a similar effect. The offences as set out include that at subsection (2)(a), which is sometimes called 'tipping off', are essential to the disclosure régime and have a powerful deterrent effect. The defence at clause 27(5)(a) is one to which clause 68 applies - I know this sounds very complicated - and therefore imposes an evidential burden only on the defendant. I think it is the mechanics, the logistics, of allowing people to tip off and to be protected.

Mr President, I move that clause 24, schedule 5, clause 25, schedule 6 and clauses 26 and 27 stand part of the Bill.

Mr Delaney: I would second, and could I ask, through . . . (**The President:** Yes.) I did mention that I would be raising certain points, and there is one that struck me earlier on when this first came in the white paper form. I look under schedule 5 here, and it says here, 'A warrant under this paragraph shall not authorise' - it goes on from (a) to (b) - 'a constable' - in (b) - 'to require a person to remove any clothing in public except for headgear, footwear, an outer coat, a jacket or gloves.' Mr President, as I said, with modern terrorism, having a hand grenade strapped in your crotch does not worry that terrorist, but it certainly worries the hell out of me, and I do not accept that a constable, if he believes that he is in danger or the public is in danger of being blown to kingdom come, should be gentlemanly about it and say, 'I only want you to take your hat and your shoes off.' If he thinks that this man is going to commit suicide and blow all the rest up as well, he should be able to do that, and I am wondering where in this Bill it gives them an extra power that he might require, some young constable, to protect the public and himself.

Mrs Christian: Mr President.

The President: Mrs Christian.

Mrs Christian: I wonder if the mover might indicate whether or not, as clause 25 deals with financial information, it is considered that all these institutions as set out in schedule 6, the various types of institutions, will have, to any great extent, to alter

their compliance and training rules now. Already they have to comply with money laundering requirements; is there going to be an extensive training régime required for them in respect of these terrorism rules? Or is it envisaged that it will be quite readily incorporated into their anti-laundering régimes?

Mr Lowey: Could I answer Mrs Christian, if I may, Mr President? I did say that there has been consultation with various organisations in the drawing up of this particular Bill and the Bill is based on the United Kingdom, so it has already been incorporated as most of the banks and institutions are. I use the word 'international' to that degree. A lot of the training basis is already there and the practices are being incorporated already, but it is after consultation, so it is not coming as a shock to the institutions that they have got to do something new. Again, a lot of this was covered in the original Terrorism Act; all it is doing is extending it to other areas, and so I think the basis is already there. So, I do not think it is coming as a shock to the private sector.

Perhaps the Attorney could answer Mr Delaney on the other parts of . . . I tend to agree with him. It seems a restrictive list, and if you are out on the street dealing with a terrorist –

Mr Delaney: Real life.

Mr Lowey: – in real life and you say, 'Well, would you kindly remove your hat, sir?' when you know that you have got a bomb tied round your middle, it does seem a little bit off. I know that if I was a policeman, I would sort of shut my eye to that and make sure that he was covered with a blanket or whatever it is that stops these explosives from going off, but that is not a professional response. I should be able to say that these things are covered by general . . . As the Attorney said before, these are standard procedures, but I am quite sure that if the life of the officer is threatened, then he is permitted to use all reasonable steps to protect himself and the general public, I would have thought, in the execution of his duties.

Mr Delaney: I want to get that right.

The President: This is under warrant, isn't it?

Mr Lowey: Yes.

Mr Delaney: He needs to have a warrant anyhow –

The President: Mr Attorney.

The Attorney-General: Mr President, whilst I do not disagree in any way with what the hon. member has said, I think what we have to do is to look at schedule 5 in the context of the relevant clause, which is clause 24. Clause 24 deals with the power to obtain information, and we will see under schedule 5, paragraph 1, that 'A constable may apply to a justice

of the peace for the issue of a warrant under this paragraph for the purposes of a terrorist investigation.' And so the whole thrust of schedule 5, Mr President, is to obtain information, and therefore I think it is reasonable to conclude that if you are simply looking for information, the furthest you should go, in searching, is to require the person to remove headgear, footwear, outer coat, jacket or gloves. When you look later on in the Bill, as we will do just now, under part V, 'Counter-terrorist powers', we will actually see, in clause 32, that there are far more draconian powers available to the constable, because there he is actually looking to see if someone is a terrorist. We are not looking to see whether he has got information, and therefore is it appropriate, as you will see, under clause 32, that a constable may stop and search a person whom he reasonably suspects to be a terrorist to discover whether he has in his possession anything which may constitute evidence that he is a terrorist. There, clearly, the constable is not going to stop at removing his coat and headgear.

Mr Delaney: The point being – and I must say this – that on the ground they are doing an investigation for information, on information they receive. They go in, obviously, on the belief that this could be information to do with terrorists. They are then probably, or practically, dealing with people who are connected to terrorists, and if the constable who is there has not got to the stage of that clause 32, he has only got there when he is doing his job trying to find out whether it is there. If he suspects as I read it, he cannot turn round and do exactly what it says in clause 32, because he is controlled by the powers on this schedule.

The President: Mr Attorney, do you wish to add to that?

Mr Delaney: If he had got to clause 32, he had got to the stage of no comeback.

The President: It is the difference, isn't it, between applying for a warrant and just taking action?

The Attorney-General: Well, Mr President, under clause 32, all that the constable has to have is a reasonable suspicion that a person is a terrorist, and if that is the case, then that triggers off his power to stop and search. So, I think, Mr President, with respect, that we do have enough power there in clause 32 –

Mr Delaney: Yes, you see my point –

The Attorney-General: I do. With a specific warrant, though, to search premises, for example, to find out information to see whether a particular office is involved with terrorist activities, all you need there is the power to search to a limited extent.

Mr Delaney: I just wondered why they say 'Please take your hat off' if I am only looking for information? Is it to be polite?

The President: Okay, hon. members, if we can, then, the motion that I will put to you is that clauses 24, 25, 26 and 27, including schedules 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.

We will turn, then, to part V and clause 28 and schedule 7.

Mr Lowey: Thank you, Mr President. Part V deals with counter-terrorist powers, and clause 28 particularly with port controls. This clause brings into effect schedule 7 on port controls. Subsection (2) takes account of existing legislation relating to residence and immigration. Mr President, I beg to move that clause 28 and schedule 7 stand part of the Bill.

Mr Delaney: I beg to second.

The President: The motion, hon. members, is thus: clause 28 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.

Clauses 29 and 30, Mr Lowey?

Mr Lowey: Could I take 29 to 32, because it deals with the arrest power and related search powers, Mr President, if I may? These clauses make similar provisions to the arrest and detention provisions at sections 12 and 13 of the current law, the PTA. There is a special arrest power for use in terrorist cases to make provision for circumstances where, at the point where the police believe an arrest should take place, there is not enough evidence to charge an individual with a particular offence, even though there is a reasonable suspicion of involvement with terrorism. Clauses 31 and 32 give the police powers to search premises for people liable to arrest under section 30 and also to search such people.

Mr President, we talked, at the second reading, about extending into areas that the present legislation does not permit. This is one, I would have thought, of those such areas. It does give special powers. It will place a responsibility on the law enforcement agencies, but they will be acting with intelligence and evidence that perhaps is not quite apparent to the general public. If I can use Mr Delaney's phrase, there will be times when the police do not have to ask politely to 'Take your hat off before we search you', in the light of the evidence that they may have. So, I would like to move that clauses 29, 30, 31 and 32 stand part of the Bill, and schedule 8, Mr President.

Mr Delaney: I beg to second.

The President: The motion, hon. members, is that clauses 29 and 30, which incorporates schedule 8, and clauses 31 and 32 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Clauses 33 and 34, Mr Lowey?

Mr Lowey: And 35 and 36 Mr President, with your permission.

The President: Okay, yes.

Mr Lowey: General powers to stop and search, if I may. Mr President, these clauses give the police powers to stop and search vehicles and their occupants and pedestrians for the prevention of terrorism. Authorisations apply to a specific area and for a maximum of 28 days, though that period may be renewed. Vehicle stop and search authorisations, as well as pedestrian authorisations, will have to be confirmed or amended by the Governor within 48 hours of their being made or they will cease to have effect. Again, as I said at the second reading, in the legislation we are trying to temper the need for quick action but also to safeguard liberties to a degree, and I think this is the balance that we are striking. So, I beg to move that clauses 33, 34, 35 and 36 stand part of the Bill.

Mr Delaney: I take pleasure in seconding.

The President: The motion, hon. members, is that clauses 33, 34, 35 and 36 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Continue, Mr Lowey, please.

Mr Lowey: Could I take clauses 37 to 41, which deal, in effect, with parking, Mr President? I know it sounds quite remarkable, but anyway, there you are. These clauses give the police the power to restrict or prohibit parking for a limited period in a specified area for the prevention of terrorism and make it an offence to park in, or refuse to move from, such an area. Mr President, I do not think there is any real need for me to break it down any further than that, because that is exactly what it does, as I have explained it. It is to do with parking and the power to move on or to get you moving as quickly as possible. I beg to move that clauses 37 to 41 stand part of the Bill.

Mr Delaney: I beg to second.

The President: The motion, hon. members, is that clauses 37 to 41 inclusive do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Part VI, Mr Lowey.

Mr Lowey: Thank you, Mr President. Can I take 42 and 43, which deal with weapons training? Part VI of this Act deals with miscellaneous terrorist offences, and clauses 42 and 43 deal with weapon training. These clauses cover chemical, biological and nuclear weapons and materials as well as conventional firearms and explosives. They also cover recruitment for training as well as the training itself. Clause 42(6) provides a defence for persons who are acting for non-terrorist purposes, such as the armed forces, and that is the point I was making about the Lord Bishop's comments of last week. Under subsection (1) of section 42, no recipient is needed for the offence to be committed. This means that the offence could cover

someone who makes weapons instructions for terrorist purposes generally available, for example via the internet.

The definitions of 'chemical' and 'biological' weapons are based on other statutes. Under section 1 of the Chemical Weapons Act of 1996, for example, an Act of Parliament that extends to the Isle of Man, chemical weapons are toxic chemicals and their precursors, munitions and other devices designed to cause death or harm to the toxic properties of toxic chemicals released by them and equipment designed for use in connection with such munitions and devices.

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

Mr Delaney: I beg to second and would just like to say that I think that in a small community like ours, with water supplies and other supplies of requirements to the public, this one has always frightened the hell out of me. Not the bomb – that is hard to assemble, hard to get through – but just to have these infections that you can put into water-carrying areas or airborne carriers is the one, I think, that we will have to worry about for the populace.

The President: Mr Waft.

Mr Waft: I think mention was made, Mr President, of territorial armies and people who train in firearms. There are gun clubs in the Island as well, which I presume are covered under that.

Mr Lowey: Yes, indeed. I only used them to illustrate the point, but I am sure legitimate gun clubs are covered.

The President: Mrs Christian.

Mrs Christian: Mr President, we live in a world where the internet can take you into all sorts of areas, and I just wonder if these powers extend to tracking down people who put such information on the internet or can it only apply in the Isle of Man? Is there any mechanism for taking action through other jurisdictions where information is accessed in the Isle of Man for the purposes of direction in making firearms or explosives?

The President: Mr Lowey.

Mr Lowey: Can I say to that that this, as I said, is an Act that has been in operation in the United Kingdom for the last two years. I am not an authority on how the internet works, and I have already confessed publicly my shortcomings in that, but I am let to believe that this is included to make sure that the message is that anybody that we can get at . . . And with international connections, this is implementing UN resolutions, which are world-wide. Those that operate the internet must come from some jurisdiction, and if we pass this legislation to this jurisdiction, we can get at people in other jurisdictions if we suspect that they are committing or commissioning acts of

terrorism, however it may be transmitted, and in this case through the internet.

The President: With that explanation, hon. members, I put to you the motion that clauses 42 and 43 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Mr Lowey, please.

Mr Lowey: Can I deal with just clause 44 at the moment, which is 'Directing terrorist organisation'? This clause makes the directing of any terrorist organisation an offence, and the organisation need not be proscribed for this offence to be committed. In other words, you can still be guilty of an offence if you are starting out a new organisation and it has not got on the list yet. If it is deemed that you are encouraging terrorism, you can be prosecuted under this particular Act. I beg to move that clause 44 stand part of the Bill.

Mr Delaney: I beg to second, Mr President.

The President: Mr Waft.

Mr Waft: Just a quick one, Mr President. With regard to the custody term, I understand that if it is less than four years, the term is halved. Perhaps the Attorney-General might clarify that. He only serves two. If he is sentenced for six months, he serves three. Is there any change in this legislation?

The President: Mr Attorney.

The Attorney-General: I am sorry, Mr President, I do not quite follow that under clause 44. (*Interjections*)

The President: It is custody for life.

The Attorney-General: Oh, I see. I do beg your pardon.

Mr Lowey: Can that be halved? That is what, at the moment, is served.

The Attorney-General: Ah, well, of course, Mr President, I am sorry. The deemster, in sentencing, can make recommendations as to the period for which a person shall be detained in custody, and so if it was a particularly bad case, he could recommend that the person should not be released on licence until he had served, shall we say, a period of 15 years in prison.

Mr Waft: So he comes under the normal custody rules, then?

The Attorney-General: Yes. There is nothing special, I think, in this legislation.

The President: In that case, hon. members, I put to you the motion that clause 44 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Mr Lowey, 45, sir.

Mr Lowey: Clauses 45 and 46, which deal with possession offences, Mr President. These clauses introduce new offences relating to the possession of articles for terrorist purposes and the collecting or recording of information for like purposes. The defences in clauses 42 and 43 are ones to which clause 68 of this Bill applies and therefore impose an evidential burden only on the defendant. In other words, the rôles are reversed. The prosecution does not have to prove the guilt; it is up to the . . . I take it from that that the defence has got to prove that they are holding that information for other than terrorist activities. This is another of what I would call the areas that were referred to by my hon. colleague Dr Mann this morning when he says that there are pros and cons, and these are one of what I would call the downsides of introducing this sort of legislation. I beg to move, sir, that clauses 45 and 46 stand part of the Bill.

Mr Delaney: I beg to second.

The President: The motion, hon. members, which I put to you is that clauses 45 and 46 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Clause 47, Mr Lowey.

Mr Lowey: Yes, if I can take that on its own, Mr President, because it is 'Inciting Terrorism'. This clause makes it an offence to incite another to commit a terrorist and criminal act abroad, and I beg to move that clause 47 stand part of the Bill.

The President: Mr Delaney.

Mr Delaney: I beg to second.

The President: Mr Gelling.

Mr Gelling: Could I just ask a very quick question, Mr President? 'Inciting another person to commit': has the act – in other words, the murder or whatever – actually got to happen? Or just inciting someone to actually go and commit it, and yet it does not happen, is still an offence, is it?

Mr Delaney: Rightly so.

Mr Lowey: The answer is that as long as you are inciting someone, that is the offence. I think it was illustrated this morning by the Attorney mentioning the cleric that was on another charge. He was inciting people to go . . . He did not have to do it, but he was inciting, and that was why he was prosecuted. Under this one, it is exactly that. If you incite someone to do it, you are guilty of an offence.

The President: The motion, hon. members, I put to you is that clause 47 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Mr Lowey: Clauses 48 and 49, Mr President, if I may.

The President: Thank you.

Mr Lowey: They deal with terrorist bombing and finance offences. These clauses are included to enable the UN Convention for the Suppression of Terrorist Bombings and the UN Convention for the Suppression of the Financing of Terrorism to be extended to the Isle of Man. They will enable the Isle of Man to meet its obligations under the provisions of these conventions, and I think we would all agree that those conventions are the sort of conventions that should be applied to the Isle of Man. I beg to move that clauses 48 and 49 stand part of the Bill.

Mr Delaney: I beg to second.

The President: The motion, hon. members, is that clauses 48 and 49 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

We have reached part VII, 'Freezing Orders'. Mr Lowey, please.

Mr Lowey: Thank you, Mr President, and if I can take clause 50 to start with. Part VII contains measures to allow the Isle of Man to take action to freeze the assets of overseas persons or governments who are threatening the economic interests of the Island or the United Kingdom or the life or property of residents of the Island or the United Kingdom or United Kingdom nationals. These provisions allow the Isle of Man to impose sanctions in case of urgency when neither the United Nations nor the European Union has yet agreed a course of action or in cases where it is appropriate for the Island to impose sanctions unilaterally. Under the provisions of this Bill, the Treasury will be able to freeze the assets of overseas governments or residents, including groups or individuals, when there is a threat to the economy or to life or to property.

Clause 50 empowers the power to make an order. This clause allows the Treasury to make a freezing order if two conditions are satisfied: first, the Treasury must reasonably believe that actions threaten the Island or the United Kingdom economy or part of its life; and secondly, the person involved in the action must be resident outside the Island or be a government outside the British Islands.

If I may, Mr President, deal with clauses 51 and 52, because they are dealing with the orders, the contents of the orders? A freezing order prohibits all persons in the Island, all persons elsewhere who are United Kingdom nationals ordinarily resident in the Island and bodies incorporated under the Isle of Man law from making funds available to, or for the benefit of, a person or persons specified in that order. The order may also specify the persons taking the action referred to in clause 50 and any person who has provided, or is likely to provide, assistance directly or indirectly to those persons. The specifications may be by name or by description of those persons set out in

the order. Where a person is specified by description, the description must be such that a reasonable person would know whether he fell within it.

Clause 52 deals with the 'Orders: general'. This clause makes further provision about freezing orders.

Subsection (1) specifies that a freezing order lapses two years after it was made.

Subsection (2) requires the Treasury to keep under review whether any freezing orders should be kept in force or amended, and subsection (3) introduces schedule 9 – another misprint here, Mr President, and that is why I looked to you for guidance – which contains provisions about the contents of freezing orders.

Subsection (4) declares that a freezing order is a public document. This makes it clear that it is to be treated as legislation.

Subsection (5) permits a freezing order to include supplementary, incidental, saving or transitional provisions.

Mr President, I beg leave to move that clauses 50, 51 and 52 stand part of the Bill.

Mr Delaney: I beg to second.

The President: Just out of interest, Mr Lowey, in relation to clause 50, the Treasury may make a freezing order. 'The first condition is that the Treasury reasonably believes that action to the detriment to the Island's or the United Kingdom's economy (or part of it) has been or is likely to be taken by a person or persons': is that reversed as well so that, in fact, there is, in UK legislation, protection for the Isle of Man's economy?

Mr Lowey: This legislation, of course, is taken from the 2001 UK Act, and again I think the attempt in this legislation is to mirror UK legislation, but it is a very good point.

The President: We do not know whether the UK legislation could very well say 'or part of it', and I do not know whether, in legalistic terms, it would be a mirror image or not. Mr Attorney?

The Attorney-General: I am afraid I do not know, Mr President. I do not think it does, but if I may check that?

Mr Gelling: I was thinking, Mr President, that there are a few other organisations I could add to the list. *(Laughter)*

The President: Hon. members, I am sure that Mr Lowey will come up with an answer at third reading –

Mr Lowey: Yes, indeed.

The President: – maybe. Can I put to you the motion that clauses 50, 51 and 52, along with schedule 9, do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Mr Lowey, 'Interpretation', clause 53.

Mr Lowey: Clause 53, if I may, sir: 'Interpretations: nationals and residents'. This clause sets out the persons who are residents of the Isle of Man or nationals of the United Kingdom for the purposes of this part. It also sets out who is a resident of a country outside the Island for the purposes of this part. Mr President, I beg leave to move that clause 53 stand part of the Bill.

Mr Delaney: I beg to second.

The President: Mrs Christian.

Mrs Christian: Mr President, perhaps I have not read this properly, but 'A national of the United Kingdom is an individual who is a British citizen, a British Dependent Territories citizen . . .' – I presume we are falling into that category? **(Mr Lowey:** Yes.) Right, okay. Are we therefore expected to describe ourselves as that rather than British, normally speaking? Given that many people do not know what the United Kingdom is anyway, I suppose it is a technicality.

The Attorney-General: I do not think, Mr President, we could describe ourselves as British Dependent Territories citizens. That is normally reserved, as I understand it, for the overseas territories.

Mrs Christian: I wondered where we sat in this particular subclause.

The Attorney-General: Yes, I think we –

Mrs Christian: Or perhaps we do not. Well, we do not want to, because we do not want to be of the United Kingdom.

The Attorney-General: Of course, we are caught in clause 53(2) as a resident of the Island. As individuals, we are ordinarily resident in the Island. That would be our qualifying –

Mrs Christian: If I may pursue it, Mr President, I am still not clear. 'A national of the United Kingdom is a British citizen . . .': are we defined as British citizens?

Mr Delaney: It says on your passport –

Mrs Christian: Residence in the Island is not the same as nationality. **(A Member:** True.) Where do we quite sit in that clause?

The Attorney-General: Mr President, I think that most of us here would be caught both as nationals of the United Kingdom under 53(1) and as residents of the Island under 53(2), because under 53(1) we would be British citizens –

Mrs Christian: Do we therefore have to be considered nationals of the United Kingdom? I have always thought that we distinguished ourselves from –

Mr Delaney: I thought it says on the front of your passport ‘British Islands’.

A Member: It does.

The Attorney-General: We are British nationals, Mr President, for the purposes of nationality. There is no such thing, I am afraid to say, as Isle of Man nationals for the purposes of international law and the law of nationality.

The President: Mr Lowey, do you wish to add anything –

Mr Lowey: I think the Attorney has really put the legal point of description for this Act. We can be on the two fronts, and I have nothing further to add to that.

Mr Delaney: I have always worried about your nationality. *(Laughter)*

Mr Waft: Could I just ask, Mr President, on (1), about the use of Treasury freezing assets: how does that –

The President: I am sorry, sir, you have gone past (1) there –

Mr Waft: I thought it was clause 52.

Mr Lowey: We have finished clause 52.

The President: We have dealt with clause 52; we are now on clause 53. However, the freezing order will come up again in clause 54, so I am sure we can go over the same ground.

Let us deal with clause 53, hon. members. I put to you the motion that clause 53 do stand part of the Bill. Those in favour please say aye; and against, no. The ayes have it. The ayes have it.

Clause 54, Mr Lowey.

Mr Lowey: Can I deal with clauses 54 and 55? Mr President, clause 54: a freezing order must be made by order made by the Treasury. The order must be laid before Tynwald and is subject to the negative resolution procedure, so that it becomes operative from the day it has been issued and you can catch up later.

Clause 55, ‘The Crown’: freezing orders bind the Crown and Crown servants, but the Crown is not criminally liable for breaches of freezing orders. The orders do not bind the Queen in her personal capacity.

Mr President, I beg leave to move clauses 54 and 55.

Mr Delaney: I beg to second, Mr President.

The President: Now, Mr Waft, freezing orders.

Mr Waft: Yes, just on the Treasury input, what is the procedure, then? Does the Department of Home Affairs give information to the Treasury of such a nature and degree as to what the freezing orders to be implemented by the Treasury are? Treasury has to come to Tynwald with it, I appreciate that, but is it the Treasury’s remit or is it the Department of Home Affairs? Who actually has to make the case?

Mr Lowey: It could be a combination of both or . . . At this moment in time, in the confiscation of property under the Criminal Act, it is Home Affairs, but they work very closely with Treasury officials, so it is a joint order. The actual person that does the freezing bit is actually . . . I think, if I remember rightly, it is the Treasury that actually moves it, but it is a combination of both lots of officers. It will be the Treasury that does the freezing order here, but it will be in co-operation with the other security forces, whether they be the army or the police or a combination.

Mr Gelling: On submission of the evidence, Mr President, the Treasury would either issue it or otherwise, the freezing order.

Mr Lowey: I am sure the Attorney-General –

Mr Gelling: It is very similar to the FSC or all the other . . . Treasury do it, but it is the FSC that furnishes them with the information to do so.

Mr Lowey: That is right.

The President: Mr Attorney, do you wish to add to that?

The Attorney-General: I think, Mr President, that in reality there will be very close liaison, will there not, between the authorities here in the Island and their counterparts in the UK, and almost necessarily the authorities in the UK will be better briefed and better able to gain intelligence, which I am sure they will be very keen to pass on to the Isle of Man, and indeed to the Channel Islands, to ensure that there is a common régime against such organisations.

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

Clause 56, Mr Lowey –

Mr Lowey: Thank you, Mr President –

The President: – and schedule 10. Okay, sir?

Mr Lowey: Yes, indeed. This starts part VIII, ‘Disclosure of information’. Clause 56 is the extension of existing disclosure powers. This clause clarifies and extends a number of information disclosure provisions available to public authorities. The powers are listed in schedule 10. It permits disclosure to assist any criminal

investigation or criminal proceedings being carried out in the Isle of Man or abroad or to facilitate determinations of whether or not such investigations or proceedings should begin or end. The clause does not limit any power to disclose that exists apart from this clause. In determining whether they may disclose information, public authorities must ensure that their disclosure is proportionate to that which is intended by disclosing. So, again we are trying to get that balance right. Mr President, I beg to move that clause 46 and schedule 10 stand part of the Bill.

The President: Clause 56.

Mr Lowey: Clause 56, rather, and schedule 10.

The President: Mr Delaney.

Mr Delaney: I beg to second.

The President: Dr Mann.

Dr Mann: Yes, could I just ask the mover to clarify the extension of existing disclosure? We are dealing with terrorism here, and we are talking about the Agricultural Marketing Act, Agricultural Wages Act, Agricultural Returns – (*Interjections*) When you say ‘extending’, you mean there is already an existing power (**Mr Lowey:** Yes.), and I do find it rather difficult to understand why the Agricultural Wages Act comes under the Anti-Terrorism and Crime Bill. And what do we mean by ‘extending the existing disclosure’?

The President: Mr Attorney.

The Attorney-General: Thank you, Mr President. I think you are absolutely right, sir. We would have to look at each particular section under the relevant Act, but I think the common feature is that each of those sections under the legislation contain a power for an officer to disclose information for the purposes of that particular legislation. What clause 56 is saying is that if, in the unlikely event that there were some records that were held by, shall we say, the department of agriculture relating to a particular farm worker or where he lived and what he was paid and it was considered appropriate that that information should be disclosed, not for the main purposes of that Act but for an investigation into a terrorist investigation, then the authority under that agricultural Act could make the disclosure for the purposes of the investigation. I think that must be the background to it. We would have to look at each particular Act to see, but I am sure that must be the theory behind it.

The President: Yes.

Mr Lowey: I did mention, in moving, that it was proportionate to the disclosure, and if you look at the Agricultural Marketing Act, there are just two sections to which that applies. In other words, it is areas that are sensitive; although we just say the Agricultural

Marketing Act, getting that information entails, in some instances, sensitive information that should not be generally put forward, but for terrorist purposes, if that needs to be breached, then it should be breached. I think that is what it is about, and it is about being proportionate to the amount of information that would be . . . In other words, it cannot be used *ad-lib*; it has got to be identified.

Mr Gelling: Mr President, you have got to cover all the Acts that at the moment do not allow disclosure. (*Interjections*)

The President: I am very happy, hon. members, that we do continue conversation, but there are times when I get a little restless here by virtue of the fact that it must be difficult to pick up which member is actually speaking on the tape at the same time. Mr Attorney.

The Attorney-General: Mr President, I was just going to say that perhaps a good example would be if we look at schedule 10, at the penultimate statutory references to the Residence Act. You might well imagine that there could be quite a body of information which had built up in relation to an applicant for a licence to come here to live, for example someone who wanted a conditional right to live here. There might be a whole body of information as to where he worked, what his employment history was and so on, and that might be very important for the security services to have in relation to a terrorist investigation.

The President: In that case, hon. members, what I will put to you is that clause 56, together with the enactments to which section 56 applies, listed at schedule 10, do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Clause 57 onwards, Mr Lowey.

Mr Lowey: Thank you, Mr President. Can I use clause 57 and clause 58? If I can deal with clause 57 at the start, this clause is on the restriction on disclosure of information for overseas purposes. This clause enables the Department of Home Affairs to prohibit the disclosure of information for the purpose of overseas criminal investigations or criminal proceedings that would otherwise be permitted by clause 56 or, without clause 56, by the provisions modified by that clause. This power may be exercised where it appears to the department that the overseas investigation of proceedings relates to a matter in respect of which it would be more appropriate for any jurisdiction or investigation to be exercised or carried out by the authorities of the Isle of Man or a third country. Any person who knowingly makes a disclosure prohibited by the Department of Home Affairs pursuant to clause 57 will be guilty of an offence. The person will be liable on conviction on information to custody, imprisonment for a term of up to two years or a fine or to both, and on summary

conviction to imprisonment or a term of up to six months or a fine of £5,000.

Clause 58 –

The President: Can I just hold you there, Mr Lowey, if I may, because we have –

Mr Lowey: A Keys amendment.

The President: – a Keys amendment in clause 58, so we will just deal with clause 57. Mr Delaney, seconding?

Mr Delaney: I will second that.

The President: Thank you, sir. Anybody wish to speak to clause 57? In that case, hon. members, the motion I put is that clause 57 do stand part of the Bill. Those in favour please say aye; and against, no. The ayes have it. The ayes have it.

We will deal with clause 58, Mr Lowey, please.

Mr Lowey: Thank you, Mr President. This clause deals with disclosures of information held by Treasury et cetera. This clause applies to information held by or for the Treasury or the Assessor of Income Tax. The clause provides that no obligation of secrecy, excepting the Data Protection Act of 1986 requirements, prevents the voluntary disclosure of information on the authority of the Treasury, made for the following purposes: to assist any criminal investigation or criminal proceedings being carried out in the Island or abroad or to facilitate whether or not such investigations or proceedings should begin or end. In addition, the clause allows for disclosure to the intelligence services – the Security Service, the Secret Intelligence Service and GCHQ – in support of their functions. These functions include the protection of national security and the prevention and detection of serious crime. Disclosed information cannot be further disclosed by the recipient, except for the purposes permitted for original disclosures and with the consent of the Treasury. Bodies who receive information from the Treasury may not further disclose that information to the intelligence services, except for the purposes of criminal investigations or proceedings. The clause does not limit any power to disclose that exists apart from this clause. In determining whether they may disclose information, public authorities must ensure that their disclosure is proportionate to that which is intended by disclosure. Mr President, to that I believe we have amendments in another place, and I obviously accept those amendments as have been circulated. Mr President, I beg leave to move clause 58 as amended in another place. Is that the correct procedure?

Mr Delaney: I beg to second the clause and the amendment.

The President: Now, hon. members, have you got your amendments on your white sheet or do you want me to take through the amendments? If you are all

content, hon. members, we are dealing with clause 58, 'Disclosure of information held by Treasury', and the listed amendments which have been circulated, made by the House of Keys.

Hon. members, I put to you the motion that clause 58, as amended, do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

We turn, then, Mr Lowey, to clause 59.

Mr Lowey: Thank you, Mr President. Clause 59 is 'Interpretation of Part VIII'. This clause defines terms used throughout part VIII and specifies that 'criminal conduct' refers to conduct which would be criminal if conducted in the Isle of Man. In other words, it is an explanation. Mr President, I beg leave to move that clause 59 stand part of the Bill.

Mr Delaney: I beg to second.

The President: The motion, hon. members, is that clause 59 do stand part of the Bill. Those in favour please say aye; against, no. The aye has it. The aye has it.

Clause 60, Mr Lowey.

Mr Lowey: Thank you, Mr President. Clause 60, in part IX, deals with dangerous substances and hoaxes. Clause 60 is the 'Use of noxious substances to cause harm and intimidate'. Under this clause, it will become an offence for a person to use, or threaten to use, a biological, chemical, radioactive or other noxious substance to cause various kinds of serious harm in a manner designed to influence the government or to intimidate the public. Offences carry a sentence of up to 14 years' custody, imprisonment, and a fine, or both. Mr President, it is relevant and, as I said in the second reading speech, it is already being operated in another part of the Commonwealth, albeit in another quarter of the world as far removed from us as we can possibly be, New Zealand. So, it is a practice that regrettably is gaining currency and ought to be stamped on, and this does just that.

Mr Delaney: Hear, hear. I wish to second, but can I ask for an explanation from the Attorney-General, too? I personally do not think that 14 years, in this day and age and for this sort of offence, is appropriate. Can the Attorney-General tell me why they have fixed, across the water, on 14 years being appropriate for this particular crime?

The Attorney-General: Well, Mr President, 14 years is a very severe term, of course, of imprisonment. I do not have an explanation as to the reason why, I have to say, but it is difficult for me to think of another offence where a fixed term is more than 14 years, and –

Mr Delaney: That is why I queried it.

The Attorney-General: – it is normally . . . If it is not this, it would be life imprisonment.

The President: Yes.

Mr Delaney: I cannot see why this does not carry life imprisonment. I am just making my own view on this.

The President: I might be totally out of order, but I have a feeling that 14 years is acknowledged as being the life sentence at the present time unless it is stipulated otherwise, sir.

Mr Lowey: I think you are right.

Mr Delaney: I thought life can be done by the court; it can say . . . Up to 25 years . . . I read cases, and I thought that –

Mr Lowey: Could I also add, Mr President, that it seems to be a standard practice for this, because I note that, for whatever reason, the terrorist that was convicted in Germany recently was given 14 years for organising the October 11th –

Mr Delaney: You see my point.

Mr Lowey: Yes, indeed, I appreciate that, but again if we are dealing on a global thing, it does not mean that I can move from this jurisdiction to that jurisdiction to get a lower tariff when the same tariff applies for the same sort of offence. To that extent, I think that may be why it is included as a fixed term, as it is fixed throughout the other jurisdictions.

The President: Mr Waft, a further question?

Mr Waft: I was just going to mention, in a similar vein, that if he appealed against a longer sentence, the appeal court judge would take the UK line, I would think, and give him 14 years. If it is the –

Mr Delaney: There is no rhyme or reason to me.

The President: That being the case, hon. members, I put to you the motion that clause 60 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Clauses 61 and 62, Mr Lowey.

Mr Lowey: Thank you, Mr President. Clauses 61 and 62. Clause 61 deals with hoaxes involving noxious substances or things. This fills a gap in the law.

Subsection (1) makes it an offence to place anywhere or send anything intending to make others believe that it is likely to be or contain a noxious substance or is likely to explode or ignite.

Subsection (2) makes it an offence for a person falsely to communicate any information to another that a noxious substance or bomb et cetera is or will be in a place.

Subsection (3) sets out the penalties for these offences: on summary conviction, a person may be kept in custody for up to six months or receive a fine of £5,000 or both; on conviction on information,

however, a person may be kept in custody for up to seven years or receive a fine or both.

Clause 62 deals with sections 60 and 61, which are supplementary.

Subsection (1) provides definitions of ‘thing’ and ‘substance’ for the purposes of clauses 60 and 61.

Subsection (2) deals with the intent of a person who is charged with an offence under clauses 60(3) or 61. To be guilty of the offence, the person does not have to have any particular person in mind to whom the belief in question is to be induced.

Mr President, I beg leave to move that clauses 61 and 62 stand part of the Bill.

Mr Delaney: I beg to second and welcome this clause.

The President: Hon. members, the motion I put to you is that 61 and 62 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Part X, Mr Lowey.

Mr Lowey: Thank you, Mr President. Part X, general, deals with police powers. It is clauses 63, 64, 65 and 66, if I may take those in one block, Mr President, because I think –

The President: Including schedules 11 and 12, then –

Mr Lowey: Indeed, schedules 11 and 12. Mr President, subsection (1) of clause 63, ‘Police powers’, confirms that a power conferred under this Bill is additional to powers available to the police under common law or under any other enactment and that the Bill shall not be taken to affect those other powers.

Subsection (2) allows a constable, if necessary, to use reasonable force when exercising a power, except for the power of examination, while under subsection (3) anything seized under this Bill may be retained for so long as is necessary in all the circumstances.

Clause 64 deals with the amendment of police powers, and this clause introduces schedule 11, which amends enactments relating to police powers.

Clause 65 deals with officers’ powers again, and this clause gives effect to schedule 12, which makes provision about the exercise of functions by authorised persons.

Clause 66 is ‘Powers to stop and search’, and under subsection (1) a power to search premises conferred by the Bill can include searching a container.

Under subsection (2), power to stop a person conferred under the Bill includes power to stop a vehicle, other than an airborne aircraft – which is rather difficult – and it is an offence under subsection (3) not to stop a vehicle when required to do so under this clause.

Subsection (4) sets out the penalties for those found guilty: on summary conviction of this offence, up to six months or a fine not exceeding £5,000, or both.

Mr President, I beg leave to move that clauses 63 and 64, schedule 11, clause 65, schedule 12 and clause 66 stand part of the Bill.

Mr Delaney: I beg to second, Mr President.

The President: The motion, hon. members, is that clauses 63, 64, 65 and 66, together with schedules 11 and 12, do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Clause 67, Mr Lowey.

Mr Lowey: Thank you, Mr President. Clause 67 deals with consent to prosecution. This clause deals with issues surrounding consent to prosecution.

Under subsection (1), proceedings under the Bill cannot be instituted without the prior consent of the Attorney-General.

Subsection (2) ensures that the limitations in subsection (1) do not prevent the taking of preliminary steps such as arrest or the issue of a warrant or warrants for arrest.

Mr President, I move that clause 67 stand part of the Bill.

Mr Delaney: I beg to second.

The President: The motion, hon. members, is that clause 67 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Clause 68.

Mr Lowey: Clause 68 deals with defences, Mr President. This clause covers defences provided by the Bill for those charged with offences under the Bill. The clause is intended to make sure that defences in the Bill which require the defendant to prove a particular matter are not construed as imposing an obligation on a defendant to prove his innocence. If a defendant presents sufficient evidence to raise a particular defence under the Bill, then the court is to assume that the defence is satisfied unless the prosecution proved beyond reasonable doubt that the defence is not proved. Mr President, I beg to move that clause 68 stand part of the Bill.

Mr Delaney: I beg to second, Mr President.

The President: The motion, hon. members, is that clause 68 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Clause 69.

Mr Lowey: Clause 69, Mr President, convictions and the effect of deproscription. Under the Bill, an organisation is a proscribed organisation if it is proscribed under the Terrorism Act of the UK Parliament. That Act permits proscribed organisations to request deproscription and, where deproscription is refused, the UK Acts permit an appeal to a special

tribunal. This clause deals with the consequences of a successful appeal against a refusal of deproscription, where, as a consequence, an order is made under the UK Act deproscribing the organisation. Anyone convicted of one of the offences listed in subsection (1)(c) of the clause in respect of the deproscribed organisation may, if the offence was committed after the date of the refusal to deproscribe, appeal against this conviction to the Court of Appeal staff of Government Division. The court must allow the appeal in such cases. Mr President, I beg to move that clause 69 stand part of the Bill.

Mr Delaney: I beg to second. Could I ask the Attorney just for one other clarification on taking your name off the list, because that is what it means? When one of these proscribed groups of people, whether it be the IRA and these, suddenly decide that they are bona fide and they want to actually have their name taken off it, do they actually see . . . Can you see somebody coming forward to admit that he was a member of a terrorist organisation, listed, to ask for his name to come off the list? You see my point? You are still on the list, and you are a terrorist until you are off the list. So it is a catch-22. You then have to say, 'I am on the list, I know I am, but will you take my name off the list, please?'

The President: Mr Attorney, do you wish to . . . ?

The Attorney-General: I think, Mr President, the reality of the situation would be that the security services –

Mr Delaney: Would ask –

The Attorney-General: – would carry out a thorough review of the organisation, and it is rather difficult to imagine, isn't it, how a heinous organisation is ever going to get off the list, to be perfectly frank?

Mr Lowey: Yes, indeed.

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

Mrs Christian: My understanding of it was that it was only a person who had been convicted as a member of those proscribed organisations who then, when it was coming off the list, could possibly seek to have their conviction annulled or whatever.

The Attorney-General: Yes.

The President: The motion, hon. members, which I will put to you is that clause 69 do stand part of the Bill. Those in favour please say aye; and against, no. The ayes have it. The ayes have it.

Clause 70, Mr Lowey.

Mr Lowey: Can I deal with 70, 71 and 72 all together? They deal with crown servants, regulators, warrants and evidence.

Mr President, clause 70, dealing with crown servants and regulators, gives the Governor in Council power to extend money laundering offences under the Bill to Crown servants who might otherwise be exempt from the provisions. Subsection (2) gives the Governor in Council the power to exempt from the offences of failure to disclose a knowledge or suspicion that another is engaged in money laundering any person appearing to be performing regulatory, supervisory, investigative or registration functions. The exemptions will be necessary should money laundering legislation place the financial industry's supervisory authorities under a duty to report such a knowledge or a suspicion to a constable.

Clause 71, dealing with warrants, repeats provisions formerly in paragraph 6 of schedule 7 to the PTA, that is the present Terrorism Act that deals with the Isle of Man. It deals with the operation in the Isle of Man of UK warrants issued to the intelligence services. Warrants in respect of crime require the consent of the Attorney-General. In other cases, they can be issued only after consultation with the Chief Minister or the Minister of Home Affairs.

Clause 72 deals with evidence. This clause ensures that certified signed copies of certain documents issued by the Governor in Council under the Bill, for example notices designating security areas and ports and things like that, may be received and be admissible as evidence in court.

Mr President, I beg to move that clauses 70, 71 and 72 stand part of the Bill.

Mr Delaney: I beg to second.

The President: The motion, hon. members, is that 70, 71, and 72 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Part XI, Mr Lowey.

Mr Lowey: Thank you, Mr President. Part XI deals with bribery and corruption. Clause 73 deals with 'Bribery and corruption: foreign officers et cetera'. This clause amends and inserts two new sections into the Corruption Act 1986.

Subsection (1) ensures that the existing presumption of corruption contained in the Corruption Act does not apply any more widely as a result of the provisions of clause 73. This clause allows the presumption to continue to apply only in those cases where it applies at present. The new section 2A inserted into the Corruption Act 1986, which is inserted by subsection 1(b) of the clause, ensures that section 1 of that Act, 'Corrupt Transactions', applies in respect of agents and principals within the meaning of that Act, whether or not their respective affairs or functions are connected with the Island. The new section 2B of the 1986 Act, which is inserted by subsection 1(b) of the clause, gives the courts extra-territorial jurisdiction over bribery and corruption offences committed abroad by UK nationals resident in the Island and bodies incorporated under the Isle of Man law. It enables the offences specified in

subsection (3) of the new section 2B, when committed by those nationals and bodies, to be prosecuted in the Island, wherever those offences take place.

Subsection (2) amends section 323 of the Criminal Code of 1872, 'Bribery of persons connected with the administration of justice'. It makes it clear within that code that section 2B of the 1986 Act will apply to section 323. This means that bribery offences committed by UK nationals resident in the Island and bodies incorporated under the law of the Island can be prosecuted in the Island, wherever those offences take place. So, if they are incorporated and operate from here and do bribery and corruption in other jurisdictions, they can still be prosecuted here in the Isle of Man. I think that is right.

Mr President, I beg leave to move that clause 73 stand part of the Bill.

Mr Delaney: I beg to second.

The President: The motion, hon. members, is that clause 73 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Clause 74 and schedule 13, Mr Lowey, please.

Mr Lowey: Thank you, Mr President. Clause 74, 'Security of pathogens and toxins', gives effect to schedule 13, which deals with the security of pathogens and toxins. It is a small world, Mr President, if I may say so. The only time I ever heard pathogens and toxins raised was when we were dealing with the – I am not allowed to call it an 'incinerator' – energy-from-waste building (*Interjections and laughter*), and here we are dealing with them now in national security matters, but it is a very serious piece of legislation, and this clause gives effect to schedule 13. I beg to move that clause 74 and schedule 13 stand part of the Bill.

Mr Delaney: I beg to second.

The President: I am glad you did not try to read out schedule 13 entirely, (**Mr Lowey:** No.) (*Laughter*) but there we are.

The motion I put to you, hon. members, is that clause 74 and schedule 13 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Part XIII, general provisions, Mr Lowey.

Mr Lowey: Thank you, Mr President. Clause 75 deals with interpretation. This clause provides definitions for terms used in the Bill. It is as simple as that; I cannot add any more to it than that, Mr President. I beg leave to move that clause 75 stand part of the Bill.

Mr Delaney: I beg to second clause 75.

The President: The motion, hon. members, is that clause 75 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Clauses 76 and 77.

Mr Lowey: Clauses 76 and 77. Clause 76 deals with the index of defined expressions. This clause specifies the provisions responsible for defining expressions within the Bill.

Clause 77, 'Orders, et cetera', covers orders, regulations and rules of court and specifies which are subject to the affirmative Tynwald procedures.

Mr President, I beg leave to move that clauses 76 and 77 stand part of the Bill.

Mr Delaney: I beg to second.

The President: The motion, hon. members, is that clauses 76 and 77 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Clauses 78 and 79, along with schedule 14, Mr Lowey.

Mr Lowey: Thank you, Mr President. Clause 78 is 'Directions'. Under this clause, a direction given under the Bill may be varied or revoked by a further direction, for example directions requiring security measures under clause 7.

Clause 79, 'Amendments and repeals', gives effect to schedule 14, consequential and minor amendments, and gives notice that the enactments listed in schedule 15 are repealed or revoked to the extent specified.

Mr President, I beg leave to move that clauses 78 and 79 and schedule 14 and schedule 15 are part of the Bill.

Mr Delaney: I beg to second, Mr President.

The President: The motion, hon. members, is that clauses 78 and 79, together with schedules 14 and 15, do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Mr Lowey: Shall I take the last three, Mr President, together?

The President: Noting, as we do, that there is a further amendment, I see, to clause 82.

Mr Lowey: Yes, indeed. Then I can do clauses 80 and 81, Mr President. All right?

The President: I am quite happy for you to complete, as long as we know.

Mr Lowey: Okay. Clause 80 deals with money matters. This clause allows for any expenditure by government under the Bill to be provided out of the general revenue of the Island. That is standard procedure, Mr President.

Clause 81, 'Transitional provisions', provides for transitional arrangements between the repeal of the Prevention of Terrorism Act 1990 and the coming into force of the Bill. In particular, it provides that where

somebody is detained under the PTA immediately before the coming into force of the Bill, they should continue to be held under the PTA régime until his or her detention comes to an end. This is essentially to avoid complications arising from switching from one régime to another.

Clause 82 is 'Short title and commencement'. Noting the amendments made by the Keys, this clause provides a short title for the Bill and enables it to be brought into operation by means of an appointed day order by the Department of Home Affairs and, of course, deals with the five-year cycle. It has got to be revisited, so it cannot stay on for ever, and I think that is right and proper.

Mr President, I beg leave to move that clauses 80, 81 and 82 stand part of the Bill.

Mr Delaney: I beg to second, Mr President.

The President: Mrs Christian.

Mrs Christian: Just a minor point, please, Mr President. In clause 80, there is reference to expenditure of the Governor. In clause 77, there is reference to Governor in Council. It is a long piece of legislation. Is there any reference anywhere to actions of the Governor, or does that imply Governor in Council?

Mr Lowey: There is a clause that deals specifically with the Governor. I did actually query that, and I –

The President: It is somewhere in the middle.

Mr Lowey: Yes, indeed, it is, and I noticed that. All the rest . . . It is only the one mention of the Governor directly.

Dr Mann: Actually, there is one clause that just deals with that. I cannot remember which one it was.

Mr Lowey: I have marked it, and it escaped my –

The Attorney-General: At clause 57(4), there is reference to –

The President: Yes, that was it. On page 37, clause 57(4).

The Attorney-General: Clause 57(4)(a).

Mrs Christian: Yes.

The President: The making of any disclosure by the Governor, the Attorney General or by the Treasury.

Mr Lowey: No, there is another one too, because I . . . There is another one where it mentions the Governor, and I . . . Here it is, clauses 33 and 36. Vehicle stop and search authorisations, as well as pedestrian, will have to be confirmed or amended by the Governor within 48 hours of their being made or

they will cease to have effect. As the Attorney will be able to confirm, I had to put under there 'Why?' It is a matter for the Governor, but we will deal with that.

The President: Mrs Christian.

Mrs Christian: This is because he is dealing . . . Sorry, clause . . . ?

Mr Lowey: It is between clauses 33 and 36, general powers to stop and search. Vehicle stop and search authorisations, as well as pedestrian authorisations, will have to be confirmed or amended by the Governor within 48 hours. This is in my notes, anyway. I have underlined Governor and put the question 'Why?' because that is my usual technique.

Mrs Christian: Yes, I accept that, Mr President. I am showing myself up for not having seen the detail, but . . . (*Interjections*)

The Attorney-General: It does not say it in the Bill.

Mr Lowey: It does not say it in the Bill. No, well, I will take that as read, then. There are one or two things in here . . . We were dealing with parking, weren't we, at the time?

Mrs Christian: Duration. Authorisation. I cannot see it.

The Attorney-General: Mr President, as I read the parking restrictions in clause 37, it says that 'An authorisation may be given only if the Chief Constable considers it expedient for the prevention of acts of terrorism.' I must say I have not spotted any power of the Governor to be involved on that.

The President: I think I have not . . . looking through there, I do not see the Governor either, but I do see the Governor did crop up in clause 57. This is quite specific. (*Interjections*) It is dealing with the 'Restriction on disclosure of information for overseas purposes', and 'A direction under this section shall not have the effect of prohibiting the making of any disclosure'.

Mr Lowey: It is an area . . . I take the point that Mrs Christian is making. All of this is with the Governor in Council in dealing with security matters. I am sure the Governor has a part to play, as residual with the powers of the Crown, but I would have thought that the main responsibility must lie with the government of the day, which is either the Chief Minister, the Council of Ministers or the Home Affairs Minister.

The President: Do you want to travel further with it, Mrs Christian, or are you content?

Mrs Christian: No, except that the only reference that we have been able to pick up on is in clause 57,

where there is also a reference to the Attorney-General, so if it is just to do with disclosure of information under there, I cannot imagine it is going to be a huge expenditure.

The President: Overseas disclosure, too.

Mrs Christian: Thank you for that. Sorry if I have missed it anywhere else.

Mr Lowey: Not at all. That is what we are here for.

The President: Hon. members, the motion I will put to you, then, is that clauses 80, 81 and 82, noting the amendments which were made and circulated to you on the white paper from the House of Keys, which incorporates the five-year period bit, do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Suspension of Standing Orders – Approved

The President: That draws us to the conclusion, then, of our –

Mr Lowey: Mr President, would it be . . . Again, using my good friend to try . . . If there is one piece of legislation that is required on the statute, I would have thought that this one is. I am just trying to think of the timetable. If it passes now, it could be enacted at the next sitting of Tynwald. If we leave it – and whoever would take it next time – we would be too late for the next sitting of Tynwald. I think this is serious enough (**Members:** Hear, hear.) to take it. I am being very grateful for the support of the Council for this particular sensitive piece of legislation, but there is an urgency about it, I think. I have highlighted what is happening in New Zealand. Terrorism is about all the time. I think the quicker we can get this on the statute the better, and I would request my colleagues if they could suspend standing orders to take the third reading. Of the two points that have been raised, I take it . . . I will certainly circulate every member with an explanation of it –

The President: I look to our Clerk on this one, because I think our next sitting formally would be 11th. We should be back in session for 11th, so if we took the third reading then, you still could reach the March Tynwald – possibly. (*Interjection by the Clerk*) Well, I would imagine it would come pretty quickly on this one, wouldn't it? (*Interjection*) When do we have the April sitting?

The Clerk: That is quite early –

The President: And it is an early sitting, because there are only three weeks between the March sitting and the April sitting. However, I am in your hands. I

can only give you that information. (*Interjection by Mr Kniveton*) Mr Kniveton proposes that we suspend standing orders. Seconded by Mr Gelling, who is happy. Mr Delaney?

Mr Delaney: I would be happy with that. I think the sooner we do get it on . . . I understand the need for procedures, but in this case terrorism has not got procedures. We have, and I think we should short-cut them on this occasion.

A Member: Hear, hear.

The President: In that case, hon. members, I will put it to you formally that we suspend standing orders so that we can take the third reading of the Anti-Terrorism and Crime Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Anti-Terrorism and Crime Bill 2002 – Third Reading Approved

The President: In that case, Mr Lowey, over to you.

Mr Lowey: Thank you, Mr President. As I said, the purpose of the Anti-Terrorism and Crime Bill, I think, is self-evident. We live in a very troubled and uncertain world. I think it is right and proper that we should be part of the international scene in trying to combat it. As I said, we are not at the forefront at this time, although we have had . . . Certain legislation has been limited to Irish terrorism. We acted responsibly and quickly. I think we are acting responsibly and quickly. It does mirror the UK legislation, which has been in being really for two years, so it is not brand new, but we dovetail into that. We are joining the international fight, under the United Nations Convention, with this particular Bill, too. For all those positive reasons, I thank the members of Council for the constructive way in which they have dealt with this and for the support it has received, and I formally move the third reading of the Anti-Terrorism and Crime Bill. I notice it says 2002 in the list; it will automatically be changed to 2003, sir. In that case, I have pleasure in moving that the Anti-Terrorism and Crime Bill 2003 become law.

The President: Mr Delaney.

Mr Delaney: I think that the third reading should be speeded along. I think we have done it and we have shown responsibility. There is always somebody who may get caught out by this, but the only people I can foresee are the general public being caught out by terrorists, and that is what we are here to protect. I support the third reading.

The President: Any other member wish to speak to the third reading? In that case, hon. members, the motion I put to you is that the Anti-Terrorism and

Crime Bill be read for a third time. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Retiring Members – Appreciation of Service – Motion Carried

Item 5. Mr Waft to move:

That the Council do express its appreciation of the parliamentary, governmental and other public service of Mrs Christian, Mr Crowe, Mr Kniveton, Mr Lowey and Dr Mann who shortly vacate office as members.

The President: That concludes our business with legislation today, hon. members. I call on the hon. member Mr Waft.

Mr Waft: Thank you, Mr President. It is my privilege today to move the motion standing in my name, and I will try to encompass all five members in this address. The cumulative years they have given in service to the Island in the rôle as members of local authority, House of Keys and Legislative Council must add up to over a century. They each have made a unique contribution to the work of the Legislative Council and have all provided the stability and sound common sense to what sometimes seem very complex and contentious issues. They have all carried them through and gained the respect of their colleagues. This short tribute cannot do justice to the effect these members have had on the political life of the Island. However, I will try to mention just a few of their attributes. As has been requested, I will try not to make it sound like obituaries, but here goes. (**A Member:** Hear, hear.)

Dealing first with the hon. Mrs Christian, Clare was first elected to the House of Keys in 1980. She was elected to the Council in 1993, has held a number of very senior positions in Tynwald and has been recognised for her capacity for work by her appointment as minister of one of the largest departments, the DHSS. This rôle seems to have initiated more questions to a minister than any other. Clare has dealt with all the trials and tribulations of her post with patience and understanding and gives an excellent account of herself and the work of her department. On doing my research, I find that she has also been a past chairman of the Civil Service Commission, for which I express my condolences. (*Laughter*) She has served her office well, and I personally need her to be successfully returned (**Mr Lowey:** Hear, hear.) in order to get the Disability Discriminations Bill on the statute book and to develop the smoking strategy. Politicians of Clare's calibre are absolutely necessary to Tynwald Court, members who can make decisions which are best for the Island's future and not just go for the easy option, that of being populist for the short-term gain.

Going on to Mr Crowe, he has been a very conscientious and hard-working member of the Legislative Council team. He was elected to the Keys following the untimely death of Mr Corlett and became the member for Douglas North in 1995. In 1998, he became a Member of the Legislative Council with a resounding 19 votes. His calm, dignified manner and common sense soon gained him a place in the Treasury. His was one of the better appointments. He had had first-hand knowledge of the finance sector, having held senior management positions in banking, merchant banking and international insurance, both here and abroad. He was thoroughly reliable and conscientious, and I know some members have sought him out for advice on personal matters, well knowing his wise counsel and the way he kept confidentiality. It was a considerable blow to him and a loss to Tynwald when he became unwell some months ago, resulting in his inability to attend Tynwald Court. I am sure we all wish him a speedy recovery and, should he not be returning to politics, a long and happy retirement to both himself and Dorothy. (**Two Members:** Hear, hear.)

Mr Kniveton is an old friend and colleague of mine since his days with me in the Onchan commissioners. He was a well respected member of that well respected local authority. He always polled well in the local elections and attended to his duties with enthusiasm and professional ability. He was elected to the commissioners in 1988 and was chairman in 1993-4. He was elected to the Keys in the 1994 election, following my election to the Legislative Council. He has been a member of the Board of Consumer Affairs, the Department of Industry and the DHSS. His later years have been spent with the Department of Transport, with special responsibility to the harbours and the airport division. He has also been a driving force with the furtherance of the IRIS project. Ray has a banking and business background, which has stood him in good stead when faced with the issues which are presented to his department. I can well understand ministers requesting him for their department when they take office. He always presents a balanced view and speaks his mind on all topics, never averse to expressing caution when necessary. He has been a valued asset to the Council, and his experience has been well founded and put to great use in our deliberations.

Mr Lowey, on the other hand, presents us with a somewhat different picture. (**A Member:** Hear, hear.) His contribution to the Legislative Council stems from his being the longest-serving member of this Tynwald, a practical politician of substance who always makes sure we do not forget the working man. His work within the CPA has earned him the respect of politicians worldwide, and he has a reputation as a statesman who could quite easily fulfil a rôle on the international stage. He has always been noted for presenting the view of those in our society who are not always heard, or perhaps heard but not listened to. He can be described as having a common touch and has an easy rapport with both royalty and rascals. He can and does speak equally to both, gaining their respect,

which in many cases is not that easily earned. His high esteem, held by everyone who meets him, makes him a well-earned and established member of this Council. His work ethic and his past knowledge as minister made him an obvious choice as chairman-elect of the newly formed Waste Management Committee. I am sure we all wish him well with this most controversial issue. He will find a way forward which will benefit the whole Island, I am sure, and it will be done all the more quickly with Eddie's skills.

Last but not least, Dr Mann. This is a most difficult one for me, as Edgar has packed so much into his time in Tynwald: chairman of the Executive Council, chairman of the agriculture and fisheries, Chairman of the Finance Committee, chairman of the FSC, Minister for Education, Deputy Speaker of the Keys, the list goes on and on. It is interesting to note that he has also served as a commissioner, this time for Laxey, and was their chairman in 1975. I have been sitting alongside Edgar since 1995, and I can also tell you that he has a most incisive wit and wicked sense of humour. (**Members:** Hear, hear.) Asides to me include 'You will regret one day voting that way' and 'A secondary school in Onchan just will not fit into that small space.' I have looked to him on many occasions, and he has been something of a mentor from time to time, always ready to offer advice and criticism in equal quantities where necessary. When he announced his retirement, I must admit I did first think of the fact that we had no-one to answer when someone asked, 'Is there a doctor in the House?' His contribution to politics, both local and national, his splendid career as a physician and his life's work to people of the Island cannot be applauded highly enough. I cannot pretend that I can include all of his attributes in this address, and I am sure that I could heap many more honours on him, but I have probably embarrassed him and everyone else for long enough. Might I just say that our thoughts are with him and Joan in their long and happy retirement together (**A Member:** Hear, hear.) and that we are very grateful for the time he has spent with us.

For those who are up for re-election, may I wish you all good luck, and for those who will not be returning, may you have a well-earned and happy retirement. Mr President, I so move.

The President: Mr Delaney.

Mr Delaney: Yes. You could not very well let this occasion go past without seconding that and also saying that I am sure that my colleagues who are standing for election will be returned. On this occasion, the sadness is that we are going to lose Dr Edgar Mann. He came through the doors in 1976, and I was in awe of him, I must admit, when looking at his qualifications to represent the people. I had nothing and he had everything. During my time here, and on behalf of other members, we have actually been shown by him what that ability is that he earned with his credentials in academic and other spheres. There is no doubt whatsoever that he is going to be missed. I have always referred to him as the cleverest member of

Tynwald without hesitation, and I am going to miss him and I am sure all the other members of Tynwald are going to miss him, because he has given so much into it. I am only sorry that I am not retiring with him at this time and going on holiday with him, as I am sure he will be spending a lot of time with his grandchildren. Thank you, Mr President.

The President: Mr Gelling.

Mr Gelling: Being the only other one not involved, Mr President, I would only like to add my, first of all, congratulations to the members on what they have achieved up to date. Certainly, if I could concentrate a little more on Dr Mann and Alan Crowe, because they are the only ones we know are not in the frame, their services, I am quite sure, have been appreciated by not just ourselves in Tynwald but the people outside, and I think that will go down in our history books, especially Dr Mann. I can well recall ringing him up and giving him a real dressing down on the phone many years ago when he was chairman of the Executive Council. He might remember it. Again, it was – believe it or not – refuse. However, he handled it in a way that I have learned to respect since. That is the way he conducted business. So, I would just like to say to the others who are standing for election that I am quite sure you will be back, and I certainly wish you every success in the elections next week.

The President: Now, hon. members, I too would wish to add my thanks to those who are seeking re-election, and my thanks indeed to Edgar Mann for the service which he has given, not only to Tynwald, to the Legislative Council and to the Keys but to the people of the Isle of Man. (**Members:** Hear, hear.) I think it is important that we should recognise that. I am sad that Alan Crowe was unable to be here, as it were, to be with us, but that is the nature of life. Whether we accept or whatever, we all move along, and there are times . . . I would just pay tribute to each and all of you for the co-operation which certainly I have had, both as Speaker of the Keys and then subsequently becoming President of Tynwald, and particularly here in this chair. Thank you very much for your co-operation and the help which you have given to this office.

So, thanks to all, and it says on item 5 of our order paper ‘That Council do express its appreciation of the parliamentary, governmental and other public service of Mrs Christian, Mr Crowe, Mr Kniveton, Mr Lowey and Dr Mann who shortly vacate office as members.’ Moved by Mr Waft. I appreciate it most if you are within that frame. Nevertheless, hon. members, I put it to you that we accept with gratitude that motion. Those in favour please say aye; and against, no. The ayes have it. The ayes have it.

That draws us to a complete conclusion of our order paper, hon. members. We will now sit in committee of the whole Council. Thank you.

The Council sat in private.
