

REPORT OF PROCEEDINGS OF THE LEGISLATIVE COUNCIL

**Douglas, Tuesday, 25th March 2003
at 10.30 a.m.**

Present:

The President (the Hon. N Q Cringle), The Lord Bishop (the Rt Revd Noël Debroy Jones), the Attorney-General (Mr W J H Corlett QC), Hon. C M Christian, Mr E A Crowe, Mr E G Lowey, Mr L I Singer and Mr G H Waft, with Mrs M Cullen, Clerk of the Council.

The Lord Bishop took the prayers.

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Apologies for Absence

The President: Hon. members, we have apologies from the hon. member Mr Gelling and the hon. member Mr Delaney.

Isle of Man Constabulary – Publication and Costs – Douglas Police Headquarters Opening

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

- (a) *How much did the recent publication from the Isle of Man Constabulary cost;*
- (b) *where was it printed;*
- (c) *how many copies were printed;*
- (d) *who was it aimed at;*
- (e) *how much has been spent on similar Constabulary publications over the past 2 years; and*
- (f) *when is the down-town Douglas Police Headquarters to be opened to the public?*

The President: We turn, then, to our order paper, and we have a question. I call on the hon. member Mr Lowey.

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

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

Mrs Christian: Thank you, Mr President. The answers to the various parts of the hon. member's question are as follows. The Isle of Man Constabulary have recently released two publications, their statutory Police (Amendment) Act 2000 policing plan for 2002-3 and their strategic plan for 2003 to 2006. I have assumed that the hon. member is referring to the latter. The cost of the strategic plan was £2,326.89 for design and printing. The document was printed at Mannin Media, and 1,000 copies were printed. In response to part (d), I am advised that the strategic plan is aimed at those people who have an interest in maintaining the high quality of life in the Island, in particular those who wish to know what the Isle of Man Constabulary is contributing to community safety and how it will develop its infrastructure to increase its prospects of having positive outcomes in what it does. It was distributed to politicians, local authorities, departments within government, partnership agencies and the

community in general via local police stations and on request. Also, every member of the constabulary, regular officers, civil servants associated with the force and the special constabulary received a copy. In answer to part (e), the statutory policing plan cost £2,934.40 in 2001-2 and £1,973.99 in 2002-3. And, finally, Mr President, the police station in Lord Street, Douglas, was opened to the public on Monday, 24th February this year.

The President: Mr Lowey.

Mr Lowey: Could I, first of all, just perhaps correct the minister? The one I was referring to is not the years 2003 to 2006, but on the front of the page it is 2003 to 2004. That is the publication 'Community Safety' or the policing plan. Perhaps the minister could also answer why there is no imprint from the printer on the publication, because I am informed that there is a 1939 Act that makes it imperative that the printer's name should be on it. And I can also say that I cannot find it on the Chief Constable's annual report – not the biggest crime in the world, but again I think it would be helpful. Would the minister also not agree that the printing of a £2,000 report for internal use – there are 1,000 copies printed, and over a third of that is going to the police themselves – seems an expensive exercise, and would she also not agree that to have a photo montage in the middle without a single word being written, again for internal consumption, is hardly the best use of public money? And would the minister also agree that when we raise the matter of – how can I best describe it? – 'posh publications', we . . . For the Financial Supervision Commission recently, it was agreed, I think, by the Treasury at the time in reply that it would go out to other departments of government and that perhaps we had better be less over the top than we have been in the past, and yet the message does not seem to have got through.

The President: Mrs Christian.

Mrs Christian: Thank you, Mr President. (*Interjections*) Can I say, first of all, that in respect of the wording of the hon. member's question, he did not specify which report he was enquiring about but referred to a recent publication, and I think both of those documents have come out recently, so I apologise if I have not picked the right one in terms of the original answer. However, I have given the costs of the policing plan for the last two years for him to make comparisons. Indeed, the cost went down, although I am not here as an advocate for the police force. I accept his point entirely that the printer should be marked on any document, and certainly I would expect that to be drawn to the attention of the printers for future reference. The hon. member has referred to the policing plan being an internal document. I do not have information here, because I was referring to the strategic plan, which is the other document, as to the

circulation of that, but it is a statutory document, and therefore I would have expected that to be available to the wider public. The hon. member has referred to the fact that the strategic plan has been circulated to every member of the constabulary. I will refer back his comments to that department for their consideration in terms of the numbers of copies printed and the virtue of circulating them in the manner which he has illustrated. However, I think it is recognised that very often an increased run does not necessarily considerably increase cost. The comments about publications are noted, and all departments should be conscious of the fact that we are trying to use recyclable materials and cut down on unnecessarily 'posh' publications where it is not required. I take the point that the hon. member is making. I am quite sure that his comments will be relayed back to the Chief Constable.

The President: Hon. member Mr Singer.

Mr Singer: Thank you, Mr President. Could I ask the hon. minister: on the last item, on the opening of the police station, how is the reception manned? Is it manned by police or is it manned by civilian staff? And also, can you tell me what hours it is open?

Mrs Christian: Yes, Mr President. The police station is manned by two civilian staff. They are full-time. The office is open from eight in the morning until six in the evening, Monday to Friday. They are temporary staff, as I understand it, and are funded from savings in other areas. I did ask for information as to how long it is likely to be kept open on the basis of temporary staff, but I am afraid, Mr President, I have not got that information back.

The President: Mr Singer.

Mr Singer: Could I ask: is this the decision, 8 to 6, or do they intend, in the future, to open it in hours in the evening – and weekends as well – when I would have thought that it was more important for it to be open when people actually need a police station?

The President: Mrs Christian.

Mrs Christian: Mr President, that is a matter, of course, for the police force. I accept the point that a police station in down-town Douglas may very well be needed during the evening period, or late evening anyway. That is an operational matter for the police force, but I will relay the hon. member's comments to the Minister for Home Affairs.

Mr Singer: So you are actually saying the police station is closed from six o' clock at night until eight o' clock in the morning? So the public have no access to it during those times?

Mrs Christian: That is correct, Mr President.

Litter (Amendment) Bill 2003 – Second Reading Approved

The President: Okay, hon. members, having listened to the response to the question, we then turn to item 2 on our order paper, and it is the Litter (Amendment) Bill for second reading in the hands of Mr Singer.

Mr Singer: Thank you, Mr President. I am pleased to present this Litter (Amendment) Bill to this hon. Council for its second reading. It is based on sections 93 to 95 of the Environment Protection Act 1990 and inserts new sections in the Litter Act 1972.

At present, within the Litter Act 1972, there are powers to order an occupier to clean up private land to which the public has access. If, however, the litter is deposited on the highway, neither the department of local government nor the local authority has any powers to order a similar clean-up. The problem of litter is like a jigsaw, with different agencies, departments, local authorities and the general public all having a piece to put into place. I hope that this Bill is an important component to help clean up our Island, to make us proud of the way it presents itself to our visitors and to set an example for the next generation to follow and to accept that it is up to the individual to accept responsibility rather than to leave it to others. The Bill would grant the power to local authorities to serve litter control notices on the occupiers of designated types of premises to require them to keep the highway and any open land fronting the highway, for example a forecourt, clear of litter, and a specified distance from the premises they have to keep clear of that litter. The types of premises and the distances would be determined by DoLGE regulations. This Bill is not draconian; it is a Bill that primarily encourages those who produce the litter from their premises to accept the responsibility for clearing it up. Only if they refuse to accept that responsibility will action be taken, and I am sure that local authorities will not look at the powers this Bill gives them as a big stick but a power to use when all else fails. Mr President, this Bill intends to ensure that the occupier of specified premises will clean up litter near their premises by encouragement and that they will be given every chance to do so before the local authority takes action. This Bill sets out the foundations, and if it becomes law, then it will be for the department of local government to carefully consider the extent of the regulations and for the local authorities to enforce these provisions.

Mr President, at the clauses stage of the Bill, the hon. member for Onchan, Mr Karran, introduced a new clause, to which an amendment changing one word was moved by the hon. minister, Mrs Crowe, and approved by the House of Keys. That clause firstly encourages a local authority to provide bins or other litter receptacles in its area and make arrangements for them to be regularly emptied, and secondly instructs every local authority to designate one or more persons as a litter officer. It is not expected that this Bill will

have any significant effect on public revenue expenditure or personnel.

Mr President, I move that the Litter (Amendment) Bill 2003 be given its second reading.

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

The President: Mrs Christian.

Mrs Christian: Mr President, I think any measure that can be introduced to help in the battle against litter, which unfortunately I think we are losing at the moment, is to be welcomed. I think any provision depends on enforcement for its success or otherwise if people are not voluntarily looking after the Island, and sadly at the moment I think there are many people who are not concerned about looking after their environment. So, if this particular measure will go some way to assisting the process of a clean-up and the retention of a clean community, it is to be welcomed, Mr President.

The President: Mr Waft.

Mr Waft: Yes, Mr President, I fully support this Bill. I just wondered if the member might be able to . . . I have looked through the Bill, and there is no actual definition of what 'litter' can be interpreted as. I presume it is cartons from the adjacent shop and wonder whether it encompasses anything other than that. Maybe it refers to litter in the original Bill, but just for clarification . . . Thank you, Mr President.

The President: Mr Singer to reply.

Mr Singer: Thank you, Mr President. I thank Mrs Christian for her support, and I would say that the Bill did get the full support, all the way through, of the Department of Transport and the Department of Local Government. They were fully supportive.

As far as a definition of 'litter' is concerned, I think that generally it is material that is dropped outside premises. I do not think there is a definition that it is a carton or it is a paper, but I think it is general items that are dropped in an area. I have not got a particular definition of 'litter'.

The President: Hon. members, the motion that I will put to you, then, is that the Litter (Amendment) Bill be read for a second time. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Litter (Amendment) Bill 2003 – Consideration of Clauses Commenced

The President: We will turn, then, to the clauses stage. Hon. member Mr Singer, take clause 1.

Mr Singer: Thank you, Mr President. Clause 1 inserts new sections 4B to 4D in the Litter Act 1972,

giving local authorities power to serve and enforce litter control notices in respect of premises subject to limits imposed by regulations made by the Department of Local Government and the Environment.

Section 4B indicates that a local authority has to be satisfied that in the vicinity of a premises described under section 4C(1)(a) which has a frontage on the highway there is a recurrent defacement by litter or refuse, that it is likely to continue to the detriment of the amenities of the locality if no notice is served and that, as a result of the activities at those premises, there is likely to be a continuation of the problem. The local authority may serve a litter control notice on the occupier or, if the premises are unoccupied, on the owner, imposing requirements on any person who, at any time, is the occupier. Subsection (2) describes the information that is to be on the litter control notice, including the date – not less than 21 days after the date on which it is served – when it will come into force. Subsection (3) indicates the restrictions on the server, indicating what cannot be on the litter control notice. Subsection (4) indicates the requirements which may be imposed by the litter control notice and also indicates what requirements may not be imposed. Subsection (5) gives definition of terms under the section and also 4C and subsection 2B.

Section 4C indicates the regulations which the Department of Local Government may prescribe. Subsections (1) and (2) indicate descriptions of premises and land and the ability to describe premises by reference to occupation, ownership or the activities carried on there, and subsection (3) says the regulations under subsection (1) have to be approved by Tynwald. Subsection (4) instructs a local authority that they shall inform a person on whom a litter control notice is being served and allow him or her to make representations within a 21-day period commencing on the day he or she has been informed. The local authority must take into account any of those representations when making a decision. Subsection (5) describes a defence in proceedings which are relevant to this Bill, and subsection (6) puts a time limit on the litter control notice. My original draft had no time limit, but this was included after consultation comments from the local authorities. This time limit shall not prejudice any liability for, or proceedings arising from, a failure to comply with it before it ceased to have effect or a further notice served in respect of the same premises, either before or after the previous notice ceases to have effect.

Section 4D (1) instructs the local authority to send a copy of any litter control notice it has served and any order made on appeal to the department, whilst subsection (2) says that the department shall maintain a register containing those copies and permit the public to inspect that register free of charge at all reasonable times. The public may also obtain copies from the register on payment of a reasonable charge.

Mr President, I move that clause 1 become part of the Bill.

The President: Mr Waft.

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

The President: Mrs Christian.

Mrs Christian: Yes, Mr President. I think I would ask the hon. member if he could assist in some of the interpretation of this. I think the intention is good, and I wonder whether people will be looking for ways around the particular piece of legislation.

In the first instance, I think we had a question, at second reading stage, about the definition of 'litter'. Can I take it that if a control of litter order is imposed, it will deal with any type of litter that is deposited outside a premises, not necessarily emanating from those premises? One can see the difficulty here, where there may be a temptation to shove stuff onto one's neighbours.

And secondly, there is a question here about not being able to clear litter from a carriageway unless that carriageway is closed to traffic other than emergency vehicles. Very few carriageways are closed in the normal course of events; will this lead to people simply brushing all their rubbish into the carriageway? It reads as though that might be a possible way of clearing your own area but just leaving the problem with somebody else, and we all know that on carriageways where people are parking from time to time it is not very easy for local authorities to come along with a vehicle that can clean gutters and so on and so forth.

So, whilst the intention is good, I just wonder if the hon. member could comment on those particular aspects of the clause and his view of the way in which they might be interpreted.

The President: Mr Lowey.

Mr Lowey: Mr President, I support the Bill, obviously. The department is very grateful to the hon. member for Ramsey for introducing it, and that is why we have adopted it. I would, however, like to move an amendment – I believe it has been circulated to hon. members – and explain the reasoning why.

The President: I think that comes as a new clause.

Mr Lowey: Does it? So, therefore . . .

The President: Sorry, Mr Lowey, but I have it as a new clause in the clause 2 in the new part, 5C.

Mr Lowey: Then I have obviously picked it up wrongly but –

The President: Mr Waft.

Mr Waft: Yes, thank you, Mr President. I think it has been mentioned, but it is often not around the area where the litter is produced but it is some way up the street and into another area that it is deposited. It is absolutely essential that receptacles are provided by

the local authorities in the areas not immediately surrounding but further along that area. And it is a concern for a lot of people, if they live within the vicinity of one of these retailers, that the surroundings around the establishment can be looked at but it is certainly in the surrounding area where a lot of it is deposited and that when they designate the area they do take that situation into consideration.

The President: Mr Singer.

Mr Singer: Thank you. I think it is up to the department of local government to designate the distances from particular premises for which those particular premises are responsible. I would imagine that when they look at it, they will decide that with certain premises, for example a takeaway, the litter deposited is likely to be in a larger area than say if they designate a bank, where you have got the telling slips, or a betting shop. So that will be up to the department of local government.

I do understand what Mrs Christian was saying, that they could sweep it into the carriageway. That could happen now. The sweeping of the carriageway is a responsibility of the Department of Transport, and they will continue to have that responsibility, but I do know that many premises now do take responsibility when they close at night; they do come out and they clean the area, and it is possible. We do get complaints about companies like McDonalds, where people take it into the car and throw it out on the way home. There is not much I can do with this Bill on that, and this Bill is really . . . That is why I said originally in the second reading that it is part of the greater amount. It is like a jigsaw where the particular premises will be responsible outside their premises for the specified distance. I do believe it will help. As I say, it is not a total answer and I do not think there is much more I can say on it, but I would hope that the particular designated officer from the local commissioners or the local council will be regularly in touch with the area and will be inspecting on a regular basis – first thing in the morning, perhaps, but that is up to them to decide – and seeing where the litter is. As I say, I hope they will be going into premises and saying, 'Look outside your shop and in the area specified. This is not being cleaned up. Will you please clean it up?' and only if they do not clean it up and it becomes a problem on a regular basis will they then serve that litter notice. I hope this will help, but there will be a balance, of course. Some litter will be blown into the area and some will be blown out of the area depending on the weather. So, it is over a balance as I hope that this will help to keep the centres of our towns and villages cleaner, because there will be some responsibility put onto the owners of those premises; it will not just be left to the Department of Transport or the local authority.

The President: Do you wish to ask a question, Mrs Christian?

Mrs Christian: It was a point of order with regard to the amendment.

The President: No, we have not reached clause 2 yet.

Mrs Christian: I wonder why it should be in clause 2. Is it not an amendment to clause 1?

The President: If we could just deal with clause 1 first, because clause 1 is printed in your green paper as a clause 1 with all its subsections. The new clause was introduced and circulated to you on your white paper as number 2. It is headed 'new clause', but it was introduced as a second clause into your green paper in the Keys stage.

Mr Singer: Mr President, I assumed that was going to be clause 2 of the new clause.

The President: It is clause 2. (*Interjection by Mrs Christian*)

Mr Singer: If I could possibly make one more comment in relation to Mr Waft. He said he wanted to see more receptacles and he felt it was important. It is important and I think this is covered within this clause 2, this new clause.

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

Now, hon. members, we will deal with the functions of the local authorities, which is the new clause introduced at the House of Keys stage. So we have a new clause which we will deal with on its own, as clause number 2 of this particular Bill. Functions of Local Authorities, Mr Singer.

Mr Singer: Thank you, Mr President. I think these particular clauses are self-explanatory and are to be inserted after section 5A of the Litter Act 1972. The first one is the provision of litter bins, which comes under 5B and it is really saying that the local authority should take more notice of the problems it may be encountering in this area and adjust to be able to provide litter bins where it feels it is necessary – I think those words are very important: where it is reasonably necessary – to provide litter bins in any street in its district and in any other public place and to make sure that there is an arrangement for them to be regularly emptied. I think this is a good clause, and it does put that extra responsibility . . . Of course, the question will be, I think, quite obvious to many of us: wherever there are litter bins, there is no litter in the bin but the litter is all around it. Hopefully people will be educated. Particularly, I think, young people need to be educated, and the Minister of Education did say quite clearly that he would be encouraging schools to encourage young people to be more conscious of the areas in which they live and to show some pride in the areas where they live. Of course, the more bins, the

better, so that again received the full support of the House of Keys.

The second part is the employment of litter officers. Mr Karran originally introduced a Bill which said that every local authority shall *employ* one or more persons for the purpose of exercising this function. That was considered, perhaps, to need further clarification; the word 'employ' did not make it clear whether they needed to employ an extra person. Therefore, the hon. minister for local government introduced her clause, which changed the word 'employ' to 'designate' meaning that the local authority could actually employ somebody new, they could designate somebody who already worked for them, or they could appoint an agent on their behalf. This made it slightly easier for the local government department, because for the small areas or the smaller parish councils to employ a new person could well be an expensive business. The word 'designate' was considered more suitable, and that is why it was included. So with that explanation, I therefore move that this Function of Local Authorities become clause 2 of this Bill.

Mr Waft: I beg to second.

Mr Lowey: Perhaps I –

The President: Mr Lowey.

Mr Lowey: Thank you, Mr President. Paragraph 5C as inserted by the Keys reads as follows: 'every local authority shall designate one or more persons for the purpose of exercising (a) its functions under this section 3' – which is enforcement – 'and (b) any other functions of the authority under this Act.' We propose the following amendment and I will explain why.

Paragraph 5C:

- (i) *in the sidenotes delete the word 'Employment' and replace with the word 'Appointment';*
- (ii) *delete the word 'designate' and replace it with the word 'appoint; and*
- (iii) *in 5C(a) delete the number '3' and replace it with the number '2'.*

The reasons for these amendments are that the Department of Local Government and the Environment has received legal advice to the effect that a *designated* officer would not be able to prosecute litter offenders on behalf of a local authority under section 53 of the Local Government Act 1985, whereas a person *appointed* by the local authority would. The new clause also includes a minor typographical error in section 5C(a): the reference should have been to section 2 and not to section 3. The department believes that it is important for local authorities to be able to prosecute their own litter cases should the need arise, and therefore I beg to move this amendment. Mr President, it does not take away from

the thrust of the original one; it is the practicalities. We are now being told that if you use the word 'designate', then they would not be able to prosecute, but apparently this change of word actually delivers . . . What we do not want to do is to give the local authorities the job and then say, 'By the way, you will have to appoint legal people to represent you in court.' It is making it simpler for the enforcing authorities. In practical terms, I think it does make sense and I therefore beg to move the amendment standing in my name.

I would like to apologise to the mover of the Bill because he readily accepted the original on the assumption that it would have met the Bill. So it has nothing to do with the mover of the Bill; it is the department's responsibility. We got it wrong the first time. Hopefully – and I say that with all due humility – I think we have got it right now, and I beg to move the amendment standing in my name, sir.

Mrs Christian: Mr President, I am happy to second on the basis that it will enable local authorities to act in a more simplified fashion. However, I would ask, perhaps if the learned Attorney could assist with the definition of 'appointment'. My understanding is that this has to mean 'employ' if the person so appointed is to carry out prosecutions on behalf of its local authority. I wonder if the learned Attorney could confirm that in this context 'appoint' means 'employ'?

The President: Mr Attorney, do you wish to pick that up? I think it is fair to point out that it says section 5A of the Litter Act; this new clause is coming in there. That does actually come in, so the new bit is coming in after the fixed penalty for leaving of litter section in the Litter Act. Mr Attorney.

The Attorney-General: Yes. Thank you, Mr President. In fact, I am looking at section 5A of the existing legislation and if I may just read that: 'where a constable or an authorised officer of a local authority has reasonable cause to believe that a person has committed or is committing an offence under section 1 of the Act he may give that person a notice in writing in the prescribed form, offering the opportunity of discharging any liability to be convicted of that offence by payment of a fixed penalty.' So, clearly, there it is anticipated that an officer who is authorised by a local authority has the power to enforce the legislation by imposing a fixed penalty. It seems, Mr President, if the amendment by the hon. member Mr Lowey is to be preferred, we would have in 5C that every local authority shall employ one or more persons for the purposes of exercising its functions under section 3, Enforcement, and any other functions of the authority under this Act. I do think, Mr President, that 'employ' is –

The President: Mr Lowey's amendment is to use the word 'appoint', I think.

The Attorney-General: I do beg your pardon. I am sorry. I must say it would have been preferable to

use the same language, wouldn't it? 'Authorise' would have been better. (**A Member:** Yes.) That would be my humble opinion.

The President: We started off, I think, with Mr Karran's new clause, which used the word 'employ'. Subsequent upon that, Mrs Crowe, as Minister for Local Government and the Environment, moved in the Keys to use the word 'designate'. And now, consequently, the Department of Local Government and the Environment are coming back, via our colleague, Mr Lowey, with the suggestion that instead of 'designate', the better word to use is 'appoint'. I think that is the position which we have reached now, and Mrs Christian is querying whether 'appointment' is the right word to use in relation, I think, to the original Act. Yes, Mr Singer.

Mr Singer: Looking at 5A, it says 'where a constable or an authorised officer of a local authority...' the point of this new clause is that every local authority shall have an authorised officer. At the moment, they do not have an authorised officer. Some do; Ramsey has a warden now. Perhaps, asking the learned attorney whether there should be a further amendment if we said 'authorise one or more persons', would that be easier as far as the language is concerned and would it mean the same thing?

The Attorney-General: Mr President, whilst the hon. member is just considering that, it is certainly true also that section 53 of the Local Government Act, to which we have been referred, also states that any member or officer of a local authority who is *authorised* by that authority to prosecute may bring proceedings and so on. So, in my humble view, if we had used the consistent word 'authorised', that would have been preferable.

The President: Well, we have the time, hon. members.

Mrs Christian: Mr President, if we are in committee, may I make another point?

The President: Yes, you may.

Mrs Christian: The principal legislation says an 'authorised officer'; perhaps we need to look at both those words. Does the word 'officer' imply that they have to be employed? My reason for asking the question was that I did, when I saw the amendment, ask for some advice from the Department of Local Government and the Environment, and they advised me that the change was necessary so that they could have a person, because it was necessary that a person *employed* by the local authority could prosecute on its behalf under section 53 of the Local Government Act and a person *designated* could not. So their view was that *employment* was the critical thing. He may be employed and then authorised, I guess – I do not know – but is an officer a person who is employed and

do we need to cover both those points if we are coming up with an amendment that is going to do the job?

Mr Lowey: Could I try to be helpful? My hon. colleague is absolutely right, but I can only read the papers that have been given to me. The department has received advice from the legislative draftsman, confirming that whereas a person *employed* by a local authority could prosecute on its behalf under section 53 of the Local Government Act, a person merely *designated* could not. So that is confirming that, but the advice that the department has now, in attempting to get this right, comes from the chambers of the Attorney-General and . . .

Mr Singer: There was talk amongst the smaller authorities that they might wish to get together to appoint an officer between them. That officer would not necessarily be employed by each of those small authorities; they might be employed by one of the authorities or on behalf of one of the authorities as an agent.

Mrs Christian: I think that is the issue we are trying to –

The President: I appreciate we are in committee and I am quite happy to let it flow, but if we just take a little bit of a breath between people, I am sure it is easier for *Hansard* to pick up. Mrs Christian.

Mrs Christian: I accept the point that the hon. member of Council, Mr Singer, is making, in that small local authorities may well want to appoint a self-employed person who offers themselves to a number of authorities to fulfil this function. Really, my question was: in the light of the advice given about the person needing to be *employed*, which may be implied by the primary legislation in reference to an authorised officer, is an officer an employee necessarily – or not – and does ‘appoint’ imply employment or does ‘appoint’ just imply a contract of some kind with somebody to carry out a function? I think we need to get this absolutely clear in terms of the amendment before we progress with it.

The President: Mr Attorney.

The Attorney-General: Yes. Mr President, if I may, I think we ought to take the opportunity to get this absolutely right, and perhaps we could deal with it after I have had the benefit of considering it with my colleagues in chambers. My own view, for what it is worth, is that ‘officer’ certainly does connote some employment. An officer would be employed and it seems to me, as I say, that ‘authorised’ would have been a more consistent word to use. It would also be consistent with 5A and, indeed, the Local Government Act provision. I am very sorry, Mr President, that I am not better briefed to deal with this – to be perfectly frank, I was not aware of the background to the amendment – but I would not like to mislead hon. members. Perhaps we could hold it over to the next –

The President: Hon. members, we have queried it and I think it is important that we do get it right. With the concurrence of the hon. member, I am sure, in fact, that if we can ‘hold it over’, as it were, and come back to it on another day we would have the benefit of the Attorney’s consideration. Is that all right, hon. member? (**Mr Singer:** Yes.) In that case, hon. members, we will hold our deliberations on the Litter (Amendment) Bill where we are, in dealing with clause 2, which is a new clause which came up from the House of Keys. So, we will hold at that particular stage, hon. members.

European Communities (Amendment) Bill – First Reading Approved

The President: We will move from the Litter (Amendment) Bill to item 3 on our order paper which is the European Communities (Amendment) Bill. This we are dealing with for first reading and it is in the hands of Mr Attorney.

The Attorney-General: Thank you, Mr President. As the title to this Bill implies, its purpose is to amend the European Communities (Isle of Man) Act 1973. Hon. members will be aware that section 2 of the 1973 Act provides that, within the context of the Island’s relationship with the European Community as set out in protocol 3 to the 1972 Act of Accession the European Union treaties have effect in the Island without the enactment of domestic legislation. Whenever there is a new European Union treaty, the definition of ‘the treaties’ in the 1973 Act requires to be amended, and the last time this happened was in 1999, when an amendment was made to take account of the Treaty of Amsterdam.

With the signing of the Treaty of Nice a further consequential amendment now requires to be made. The main function of this treaty is to make adjustments to the functions of the institutions of the union following its enlargement by the admission of new member countries. It is only those provisions of the Treaty of Nice which are relevant to the Island which will have effect. An amendment is also to be made in the definition in the 1973 Act of ‘the European Court’ to take account of a protocol on the statute of the Court of Justice introduced by the Treaty of Nice. It must be emphasised that the Bill does not affect the Island’s relationship with the European Community.

The opportunity is also taken to make a minor amendment to the Manx Time Act 1968, which provides that, for general purposes, time in the Isle of Man shall be the same as that pertaining for general purposes in Great Britain (*Laughter*) notwithstanding *traa dy liooar*. (*Laughter*) This amendment is opportune and not consequent upon the Treaty of Nice. It follows the implementation in Great Britain of directive 2000/84/EC of the European Parliament and of the Council on summertime arrangements. The directive defines ‘summertime’ as the period during

which clocks are advanced by one hour and provides for the period to run from the last Sunday in March until the last Sunday in October for the indefinite future, replacing the previous arrangement over the last 20 years whereby harmonised European summertime dates were set for two to four years in advance.

So, Mr President, with that I move that the European Communities (Amendment) Bill 2003 be given its first reading.

The President: Mr Lowey.

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

The President: Mrs Christian.

Mrs Christian: Mr President, I support it but wonder why we . . . I know why we cannot move to standardisation of time throughout the whole of the year in Europe. It seems silly to have this clock moving going on still. I think most people could adjust to it today, but I will support it to bring us into line technically.

The President: They move as well.

Mrs Christian: Europe does not move, does it?

The President: Yes, it does.

Mrs Christian: It is the UK that moves.

The President: No, Europe does as well.

Mrs Christian: Well, I stand corrected because I wondered why we all need to move then, Mr President.

The Lord Bishop: It is tempting to have Manx time, isn't it? (*Laughter*)

The President: Hon. members, the motion I put to you then, is that the European Communities (Amendment) Bill be read for a first time. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Inquiries (Evidence) Bill – First Reading Approved

The President: We turn then to the Inquiries (Evidence) Bill, again for first reading, in the hands of Her Majesty's Attorney.

The Attorney-General: Thank you, Mr President. This Bill seeks to repeal the Inquiries (Evidence) Act 1950 so as to make better provision for the taking of evidence at inquiries, appearances and public access to inquiries and to make provision as to the payment of costs and expenses. The 1950 Act, which deals with a similar subject matter, nonetheless has restricted

application, applying as it does only where the Governor appoints a commission or committee to inquire into any cause or matter or where a government department causes an inquiry to be held relating to any of its duties or functions. The Bill applies not only where the Governor or a department establishes the inquiry, but also to one established by the Governor in Council or by the Council of Ministers. Tynwald must resolve that the statutory powers shall be exercisable in relation to the inquiry in question.

The Bill provides that the person conducting the inquiry may summon witnesses to give evidence or produce relevant documents. The witness has the same immunities and privileges as if he were a witness in civil proceedings in the High Court. The Bill now makes express provision as to who may appear at the inquiry and also provides for public access to the proceedings unless that would be contrary to the public interest or there would be disorder.

In so far as costs and expenses are concerned, provision is made for the person holding the inquiry to make various orders. Firstly, he may order the costs to be paid by a public authority interested in the subject matter of the inquiry where the inquiry has been established by a government department. Secondly, he may order that the expenses incurred by any person interested in the subject matter of the inquiry for the purpose of his attendance or legal representation or both be paid by another person so interested or by the Treasury. Thirdly, he may order that the expenses of any witness be paid by any person interested in the subject matter of the inquiry or by Treasury. Consequential amendments and repeals are made by the schedules.

So, Mr President, with that I move that the Inquiries (Evidence) Bill 2003 be read a first time.

The President: Mrs Christian.

Mrs Christian: I beg to second, Mr President, and I think this highlights, probably, weaknesses in the legislation which have been brought to light by recent events. I do think it is appropriate that the Governor in Council or the Council of Ministers ought to be able to set up inquiries with the power to summon witnesses and this is something which may be seen as some constitutional development. It is inappropriate in my view that in this day and age the Governor has to be involved necessarily in establishing inquiries and that the Council of Ministers or Governor in Council have no powers to do so to establish an inquiry with powers to summon witnesses. It certainly is something that needs changing and I am happy to second and support.

The President: Mr Waft.

Mr Waft: Yes, we do give sweeping powers to inquiries on evidence required from time to time. Inquiries are set up and the chairman or the officer in charge asks for information which is often private and confidential as far as the person is concerned. I just want assurance by the Attorney-General that the

human rights side of this Bill has been looked into and it does conform with all human rights which will be in existence very shortly.

The President: Mr Lowey.

Mr Lowey: I am much more concerned on the principle, and I am always a bit suspicious when Bills are brought in to deal with recent anomalies. While I have no difficulty with the particular Bill, what I do object to is the threat almost that costs can be awarded against certain individuals if they ask for an inquiry; they are not able to be at the moment. I think that would be a dangerous precedent. I think I am talking now in broad principle terms as opposed to the principle of it being for the Council of Ministers to be able to set up an inquiry. Perhaps I am reading this Bill wrong, but I do see that an emphasis has been placed on it that costs could be awarded against. That is an implicit sword of Damocles, that if you ask for these things and it is proven that you may have been given wrong information, you could be liable for costs. This is the same sort of thing that was applied to planning at one time that the costs . . . and I still wait to see the next lot of costs being awarded against somebody who appeals against a planning application. So, I do have a difficulty with it on a principle of costs being able to be awarded against any individual at the discretion of the chairman of the tribunal, and perhaps the Attorney would like to comment on that particular aspect, please.

The President: Mr Waft.

Mr Waft: Could I just come back on that? With regard to costs and legal representation, if there is someone for instance on the receiving end of a QC's wit and intelligence, he should have equal representation for himself by a QC to represent himself. I would just like to be assured that if representation is there from a QC with regard to planning in particular, where large companies can employ an English QC to come over and represent them, then the recipients – in some cases, constituents – should be given equal representation by a QC to defend their case. I just wondered if the Attorney-General might have a comment on that.

The President: Mr Singer.

Mr Singer: My comment was that I agree with Mrs Christian. We are talking here about reviewing a Bill that is 53 years old and is not in line with the current situation of the government, and I think it is important that we bring in up-to-date legislation. I think some of the questions are relevant, and I look forward to hearing the answers although I have been through all this once. *(Laughter)*

The President: Mr Attorney.

The Attorney-General: Thank you, Mr President. I am very grateful to hon. members for their

comments. I do wholeheartedly agree with the hon. member Mrs Christian and indeed, the hon. member Mr Singer for their observations in relation to the very healthy development that this Bill indicates in the ability of executive government and indeed, Governor in Council to establish inquiries. The 1950 Act, as I have indicated, reserved that power namely the power to appoint a commission or committee – to the Governor or, as it was then described, a board, but only where the board was concerned with its own functions. It seems to me that it is very appropriate that, in these days of constitutional development this Bill indicates a worthwhile stepping-stone along the path.

In relation to the human rights effect or the effect of the human rights on the legislation, the observations made by Mr Waft are very opportune, and I can confirm that this Bill has been scrutinised by members of chambers, who are content that it complies with the legislation when it comes into force. One of the important points to make is that this legislation does not cover planning appeals. We are not concerned with the planning process at all. As we know, the planning process is concerned within planning legislation but it is worthwhile making the point that one of the linchpins of the Human Rights Act is that when we have a hearing, whether it is before a court or a tribunal or a planning appeal inspector, there should be so-called 'equality of arms'. Therefore, Mr President, if there were to be a very learned Queen's Counsel from England who had been especially licensed in the High Court, the deemsters generally do make orders whereby an equivalent attorney of equivalent standing can be employed to defend the interests of the other party.

Mr Lowey: I am sorry to cut across you, Mr Attorney, because planning does not go to the High Court.

The Attorney-General: Mr President, certainly I was talking there about matters in the High Court but it seems to me that if there were to be an inquiry established under this legislation, the chairman of the inquiry or the chairperson of the inquiry would be very keen to ensure that the 'equality of arms' principle were preserved there and there was no reason at all why there should not be QCs on both sides. I would hope, Mr President, there would be learned advocates on both sides. *(Laughter)*

The President: I think it is covered in clause 5(2): 'a person holding an inquiry to which this Act applies may order that the expenses, including legal cost and disbursement incurred by any person interested in the subject matter...'

The Attorney-General: That is right, Mr President, but as I understood it from the hon. member Mr Waft, he was concerned that, as it were, one party should not have an advantage by being able to employ the services of a very eminent London silk when the other party was not.

The hon. member Mr Lowey raises an important point in relation to costs. It is, I think, an inherent and well-established principle, not only in the High Court but also in tribunals and arbitrations, that it is in the discretion of the chairman or the judge to make an order for costs. This is not designed to punish persons, who in good faith and honesty bring proceedings or, indeed, are defendants to proceedings. It is, however, very important that there should be this reserve power to punish a party in costs if the proceedings have been brought wholly without merit, in bad faith, with a knowledge that the proceedings would cause real harm and damage to the opponent. It seems to me that that is a very important reserve power, but one which is unlikely to be exercised except in the most exceptional cases. As the hon. member has said, in the planning process there is power to award costs; I am not aware that that power has ever been exercised, but it is very important it be there. So, I would think that again it is entirely compliant with the Human Rights Act that that reserve power to award costs should be contained within the Bill.

I hope that I have covered the points raised by hon. members. As I say, I move that the Bill be read a first time.

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

Fireworks Bill – First Reading Approved

The President: We turn then to the Fireworks Bill, again down for first reading, and this time in the hands of the hon. member Mr Waft.

Mr Waft: Thank you, Mr President. Leave was granted for the introduction of this Bill on 21st January 2002, following the increase in complaints from the general public regarding the abuse of fireworks, incidents of criminal damage and indiscriminate use of fireworks in public places well outside the traditional Bonfire Night on 5th November or New Year period, and subsequent distress and alarm caused to the elderly, animals and household pets. The purpose of this Bill is to introduce additional controls over the supply and use of fireworks. An extensive consultation process has been carried out involving the home affairs department, the police, fire, the Office of Fair Trading, wholesalers and retailers of fireworks, firework display organisers, veterinary surgeries and animal welfare organisations.

Clause 1 and the schedule define ‘fireworks’ for the purpose of the Bill.

Clause 2 deals with restrictions on supply to minors.

Clause 3 deals with the supply of fireworks at certain times – the periods of 25th October to 5th November and 26th December to 31st December – but does not apply to various organisations.

Clause 4 deals with restrictions on the use of fireworks and the system of advertising proposed displays, together with the issue of the receipt of the notice by the home affairs department, which, in effect, provides permission to hold the display outside normal fireworks periods.

Clause 5 deals with the letting off of fireworks in a public place, causing harassment by letting off fireworks within the hearing or sight of a person or domestic animal likely to be caused harassment, annoyance, alarm or distress thereby. This section also provides for exemptions and a defence.

Clause 6, ‘Miscellaneous and Supplemental’, provides police with power to stop and search for explosive substances and amends the Police Powers and Procedures Act 1998 by inserting ‘(aa) an explosive substance;’.

Clause 7 amends section 63(2) (street offences), of the Petty Sessions and Summary Jurisdiction Act 1927: for ‘cast or throw away any fireworks’, substitute ‘let off, cast or throw away any fireworks’.

Clause 8: the department may amend periods specified when fireworks may be set off, the amount specified in 3(4) – the minimum value of a box of fireworks – and the list of devices in the schedule. When making orders, consultation with the Office of Fair Trading and approval of orders by Tynwald is necessary.

Clause 9 is just the short title and the Sale of Fireworks (Regulations) (Amendment) Order 1970 is revoked.

To that, Mr President, we have some amendments made in another place, which are set out in clauses 2, 4 and 5. There is also another amendment expressed by the Attorney-General, with the mover of the Bill quite happy to see it being included in clause 2 page 1 line 12, after ‘person’ shall insert ‘in the course of a business’. No doubt, all these amendments will be taken into consideration when we do get to the clauses stage, but in the meantime I beg that the Bill be read a first time.

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

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

Mr Lowey: All I can say, Mr President, is that I welcome the Bill. I am not a killjoy. I understand fireworks have their place, but what I have seen is the distress to elderly people and particularly animals like dogs for the blind and also I have seen working terriers put into a state where they are like jellies with these explosions. They are not little bangers now that go off; they are tremendously powerful – or they make an awful lot of noise, anyway. I do not know what the attraction is, at 11 o’clock on a Sunday night, to be setting off such devices, but that seems to be the time of night that is more attractive around where I live, anyway, which is annoying, to say the least, for children and for animals, and I do not think that we should be subjected to that. I also think that the

dangers, having been with the fire chief and seen some of the results, things that have started off innocently enough, finishing up . . . I believe that prevention is better than cure, and this Bill goes a long way in what I would call the 'preventative stakes' and should be supported for no other reason than that.

The President: Mrs Christian.

Mrs Christian: Mr President, I can see some of the reasons for this. I do think it is another indicator of getting more and more bureaucratic, and there are some justifications for that. I accept that. In my view, if we can just cut down the noise of many fireworks, they would be less offensive to the community and probably less frightening to animals and still give as much pleasure to people, but unfortunately I do not think that the legislation can deal with that particular point. I will, during the discussion of the clauses, be looking for some clarification on areas of the legislation dealing with sales and limits on sales values. It seems to me that you can go and buy small quantities at a time and set up an arsenal that you can keep between the purchasing times and be prepared to have a firework party or use fireworks at a party at some other time of the year, given that you have now got to meet all these requirements about public notices and so on. It does seem slightly bureaucratic but perhaps we can deal with those aspects as we go through the Bill.

Mr Singer: Could I make a point, Mr President?

The President: Mr Singer.

Mr Singer: Thank you. Mrs Christian just made a point about, 'We could not have any control over the type of fireworks that were sold'. Could I ask the learned Attorney whether it would be possible to instruct that fireworks that did bang were not allowed to be sold? Is that a possibility, because I know . . . I am certainly told that, in the case of guide dogs one serious effect is that if they are really stressed, they then just lose the whole ability to do their job, so I think it is important. I am not sure what my children think of me supporting this, but . . . (*Laughter*)

The Lord Bishop: I just wonder: if we are going to ask for more control, which means logically that you are going to have organised firework displays as being better – it is, of course, safer – that actually increases the noise rather than negates it, because you have got large displays, which concentrates the whole thing, and bigger and better displays and therefore bigger and better bangs. I would have thought that one of the problems is going to be that you are going to have a lot more noise and rattle with organised displays rather than individual ones. My other comment, as it has been for some years, is on the awful cost of these huge pyrotechnics these days. I think the money would do better going to Parkinson's disease.

The President: Mr Lowey.

Mr Lowey: Could I just say on one point: it is the changing fashion. We used to have fireworks once a year, on 5th November. Now we have them at Christmas time, and especially New Year's Eve now. Our place was alive with the sound of exploding rockets to welcome in the New Year. I have noticed that is a big trend, and then other nights I am told it is somebody's birthday so they have a birthday party. So the idea that somehow we sell these things for enjoyment once a year has gone, and it is extending further and further into the calendar. I think that is why it becomes a bigger problem, especially to, as I have said, the elderly, who could put up with it once a year and either put their heads under the pillow and go to sleep or go to bed early and just put up with it. But the dogs do not, of course, and it is dogs – and cats too. I have joined many a cat hunt to rescue cats that have left home because of the noise in the neighbourhood. Where they go to, I do not know, but it is a menace to animals, and, as I say, the indiscriminate hours of the night when these things are going off is not on. I am sure it is innocent in many instances, but I am sure that in certain areas they are done deliberately to annoy.

The President: Mr Singer.

Mr Singer: The problem – and where this Bill is aiming at – is those people who just indiscriminately, at any time, throw fireworks in the street, when nobody is prepared. I think that organised displays are usually advertised and people can at least try and make some preparation for their animals and for themselves because they know it is going to happen and it is going to be over in a certain length of time. But I think it is not only dogs and cats; it is animals in fields, it is horses in the countryside that can be scared. I do not think this is going to solve the problem entirely – it cannot, because if it is noisy, it is noisy and it is going to affect animals – but at least people can be prepared if they know there is going to be an organised display.

The President: Before I ask Mr Waft to reply to that general discussion, I just throw my own 'banger' into it and ask him to see, in fact, why we have in clause 4 'any place' and in clause 5 we have 'public place'. Whether or not we should be consistent in that is . . . perhaps we can look at that later, too. Mr Waft.

Mr Waft: Thank you, Mr President. I would like to thank my seconder and also thank Mr Lowey for his contribution. He highlighted the distress caused to the local populace and animals and children, and he highlighted the dangers. He also highlighted the fact that these firework displays are more spread out throughout the year, not only at Christmas and New Year but also when a large conglomerate decides to celebrate the building of a large office, they tend to take over the whole population to demonstrate their ability to provide this edifice for themselves, basically, and they think it is within their right to ignore the wishes of the local community and make a big display and cause quite a lot of distress.

I thank the hon. Mrs Christian for her submission with regard to becoming more bureaucratic. Unfortunately, with all the best wishes in the world, we have to get some legislation down from time to time, especially with regard to passive smoking and disability discrimination, and until legislation is in place, we will not see any improvement there. However, I think the legislation is necessary in this instance, and with regard to cutting down on the noise, I think we are. I think the Attorney-General would probably agree we are subject to the fireworks and the strength of the materials that are used from the United Kingdom, because basically most of them come from there, and it would be very difficult to change the decibels that emanate from these devices. There is, of course, a possibility of stocking up; I do appreciate that and take that point.

With regard to the hon. member Mr Singer saying about not allowing bangers to be sold, I think they have probably investigated this. I would just like to say that this is a Bill from a private member who has gone into all these details, and the situation will be brought out during the clauses stage as to what we can and cannot do. He does give his views about the concern of guide dogs – I think we would all agree with him there – and throwing the fireworks in the street, and animals in the fields is another point a lot of people miss with regard to this.

The hon. Lord Bishop mentioned the cost of fireworks these days – and it is quite considerable, really – and the way they are just let off . . . My mind tries to think of the amount of money that is going off with each bang that you hear and the amount of money that has just gone up in flames; it is amazing, really. that they are happy to do this. However, we cannot do anything about the cost, I am afraid. I think it will always be a costly exercise.

I take your own consideration and ‘banger’ in the midst with regard to clause 4 and clause 5. I will have a look at that as well. Thank you, Mr President.

The President: Hon. members, the motion that I put to you is that the Fireworks Bill 2003 receive its first reading. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Procedural

The President: Hon. members, that draws to a conclusion our order paper for this morning, and we have the consideration of summaries of proceedings in the Council of Ministers for February 2003. Having dealt with that shortly, we will adjourn to 1st April 2003.

But can I equally say hon. members, that I understand that I might be right and I might be wrong – that it could very well be the Attorney-General’s birthday today, in which case we wish you many happy returns of the day, sir. (*Laughter and interjections*)

The Attorney-General: Thank you very much, Mr President.

The President: Council will now sit in private.

The Council sat in private.
