

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

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**Douglas, Tuesday, 1st April 2003  
at 10.00 a.m.**

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Present:

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

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*The Chaplain took the prayers.*

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## Apologies for Absence

**The Speaker:** Hon. members, I have granted leave of absence for this afternoon's proceedings to the hon. member for Douglas South, Mr Duggan.

Hon. members, we move on to the first item on our order paper, questions for oral answer.

*Questions were taken at this point and concluded at 11 a.m. They are published separately.*

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## Legislative Council – Election of Member to Serve until 28th February 2005 – Neither Candidate Elected

**The Speaker:** Hon. members, we move on to item 3 on our order paper. Hon. members, item 3 on our order paper today is to elect one person to the Legislative Council, to serve as a member for a period expiring on 28th February 2005. In accordance with the statutory requirements in section 2 of the Isle of Man (Constitution) (Elections to Council) Act 1971, I called for nominations on 18th March 2003 to be made by 5 p.m. on 21st March, and those on your order paper resulted. All nominations were accompanied by the required statement of qualification and reasons in support and were circulated to hon. members by the Secretary to the House, as also required by the Act. I confirm that the sitting of the House today takes place no sooner than 10 days after the close of nominations.

Before we proceed, I would remind hon. members of the advice I gave in the House on 4th March 2003 in relation to the text of standing order 209, which applies to this election, and I confirm that the same procedure is to apply today. I have therefore asked the Secretary to prepare ballot papers showing simply the names of the only candidates upon whom the House may now vote. Under the Act, a successful candidate requires not less than 13 votes in their favour. If it happens that a candidate obtains a majority of the votes of members present and voting but the total is not at least 13 votes, then standing order 209(1)(l) allows a second round of voting. In the second round, a total of 13 votes is still needed for the candidate to be elected, just as in the first round. Failing a candidate obtaining 13 votes in the second round of the voting, then I will call for fresh nominations to be made by 5 p.m. on 4th April. However, if both candidates receive less than a majority of the votes of members present and voting, then they are deleted from this election, and I will call for fresh nominations to be made by 5 p.m. on 4th April. There will then be a further ballot at the sitting of the House to be held on 15th April. I would advise that the procedure for hon. members voting is covered under standing order 209(1)(g). Finally, for the avoidance of doubt, I would again advise that, under standing order 209(1)(a), it provides that only the proposer and the seconder shall speak to a nomination.

I intend to invite each candidate to be nominated in the order they appear on today's order paper. Hon.

members, I therefore call upon the hon. member for Douglas East, Mr Braidwood, to speak to his nomination on Mr Thomas St John Neville Bates. Hon. member for Douglas East.

**Mr Braidwood:** Thank you, Mr Speaker. It was always my intention to propose Professor St John Bates for the two-year term of office in the Legislative Council, and hon. members are already in receipt of that correspondence, which also includes the qualifications and experience of Professor St John Bates which I feel make him eminently suitable to be a member of Council. I do not intend to refer to all of those attributes; they are already well known to the majority of members of this hon. House. However, Professor Bates is recognised as one of the foremost experts in the field of constitutional law and acknowledged as an experienced international consultant on a broad range of parliamentary and legislative issues. I believe he would be an asset, not only to the Legislative Council but also to Tynwald. The scrutinising of legislation is one of the primary rôles of Council, and St John Bates' knowledge and experience would be invaluable. Mr Speaker, I have no hesitation in proposing the nomination of Thomas St John Neville Bates as a candidate for election to the Legislative Council.

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

**Mr Henderson:** Gura mie eu, Vainstyr Loayreyder. I cannot really build too much upon what the hon. member for East Douglas, Mr Braidwood, has said, but I would say to hon. members that the nomination we have here is a nomination made in all genuineness. We have somebody here who is a relatively young man in years and who is very keen – and I use this word – to *serve* our Tynwald (**Mr Houghton:** Hear, hear.) and our Legislative Council and the people of this Island. As I say, I choose those words carefully, and also it is a genuine nomination. I am aware – and I do not know whether many other hon. members are aware – that Professor Bates has indeed been in liaison with the Clerk of Tynwald's Office specifically to enquire about his nomination and ensure that it would be in order and so forth, and certainly there have been positive signs from that particular liaison, which may well put certain hon. members' minds to rest with things in the dim and distant past, which should stay there. As I say, Vainstyr Loayreyder, this is a genuine nomination from a genuine person who is willing to *serve* Tynwald, the legislature and the people of this Island, and I have absolutely no hesitation in seconding this nomination.

**The Speaker:** I now call upon the hon. member for Douglas West, Mr Shimmin, to speak to his nomination of Mr John Raymond Kniveton.

**Mr Shimmin:** Thank you, Mr Speaker. After the recent election, I had lengthy conversations with Mr Kniveton, who was encouraged by the growth in his vote on that occasion. and he was encouraged by the kind words said by a number of supporters who wished his name to go forward again. He does so with a genuine intent to serve, and continue serving, within the Court of Tynwald, which he considers both an honour and something which he has to contribute. He has been a member since his first election as an MHK for Onchan in March of 1994, having gone to the electorate. He was then subsequently elected, in March 1998, to the MLC rôle that he has served until recently. Mr Kniveton feels he has something to contribute to the people of the Isle of Man through a variety of capacities and is a willing worker to do anything requested of him by his parliament or the government. Sir, I have the greatest pleasure in resubmitting the name of Mr John Raymond Kniveton and hope that he will engender the support of the members.

**The Speaker:** Hon. member for Rushen, Mr Gill.

**Mr Gill:** Thank you, Mr Speaker. I do not propose to reiterate my previous comments in relation to the nomination of Mr Ray Kniveton other than to say that hon. members have heard from the proposer, Mr Shimmin, and I would simply concur with those sentiments and conclude by asking hon. members to support a hard-working, diligent and respected candidate and vote for Mr Kniveton. Thank you, Mr Speaker.

**The Speaker:** Hon. members, those are the nominations before the House. I will now ask the Secretary of the House to have ballot papers issued.

Hon. members, the names on the ballot papers before you are Thomas St John Neville Bates and John Raymond Kniveton, and hon. members are requested to vote for one person.

I call upon the hon. member for Glenfaba and the hon. member for Douglas North, Mr Henderson, to be tellers, please.

**Mr Cannan:** Point of order, Mr Speaker. I do not think a seconder can be a teller, sir.

**The Speaker:** Thank you, Mr Cannan. Hon. member, I apologise; I had missed that you had seconded. I therefore call on the hon. member for Malew and Santon.

*A ballot took place.*

**The Speaker:** Hon. members, the result of the ballot is as follows: Mr Bates, 8 votes; and Mr Kniveton, 11 votes. There were four spoilt papers. Neither member achieved a majority of those present and voting; I therefore must call for fresh nominations, and they shall be, as I indicated, by 5 p.m. on Friday, 4th April 2003. The election following any

nominations will take place not less than 10 days later and will therefore be on the order paper for the sitting of the House to be held on 15th April. I would just remind hon. members that the nomination or nominations must be made by a member of the House, be in writing and be supported by a statement of the candidate's qualifications and experience and the reasons why the proposer considers the candidate would be suitable to be elected to the Legislative Council. A person nominated need not be a member of the House. Hon. members, that concludes item 3 on our order paper.

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### **Bill for First Reading**

**The Speaker:** Hon. members, we now move on to item 4 on the order paper, and I call on the Secretary of the House: Bill for first reading.

**The Secretary:** Mr Speaker, the Bill for first reading is the Local Government (Miscellaneous Provisions) Bill, introduced by the hon. member for Onchan, Mr Earnshaw.

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### **Constitution (Legislative Council) Bill – Second Reading – Debate Commenced**

**The Speaker:** Hon. members, we now move on to item 5 on the order paper, Bill for second reading, and item 1, the Constitution (Legislative Council) Bill. Mr Quine, hon. member for Ayre.

**Mr Quine:** Thank you, Mr Speaker. Hon. members are aware that, over the last 20 years, there have been several attempts to reform the Legislative Council. The last significant change, I suppose, was when His Excellency the Lieutenant-Governor was replaced as Chairman of the Legislative Council by the President of Tynwald. This, of course, was consequential on the Lieutenant-Governor being relieved of the rôle of President of Tynwald.

In a letter to hon. members dated 9th May 2002, I identified a number of select committee reports of Tynwald, Keys and Council dealing with this matter. I also made reference to a number of Bills, in the main private members' Bills, promoting various forms and degrees of change to the Legislative Council. For various reasons, these attempts to effect reform have failed, albeit that the consistent majority view of both Tynwald and the Keys in recent years has been that reform is needed. Indeed, the Legislative Council itself, as recently as 1999, produced a Constitution (Amendment) Bill, which provided, amongst other things, for the popular election of members of the Legislative Council. Admittedly, sir, it was motivated by the fact that the Keys were, at that time, considering the introduction of a Bill to reform the Legislative Council.

As I pointed out to hon. members in my letter of 9th May 2002, there would appear to be a fairly broad consensus within the Keys that members of the Legislative Council should be popularly elected. There is some strength of opinion in the House that unless members of the Legislative Council have been popularly elected, they should not be appointed as ministers of departments. A major obstacle in the past in progressing this matter has been the issue of the functions of the Legislative Council. The views of members have varied, contingent on whether members are popularly elected or appointed. Indeed, the matter of the functions of the Legislative Council in general, whether or not popularly elected, is an issue. A number of members place a considerable weight on the need for a clear distinction to be drawn between the Keys' functions and the Legislative Council's functions to ameliorate conflict between the two chambers. Others do not attach the same importance to conflict between the two chambers, pointing out that it is inherent in democratic parliamentary processes.

My review of recent efforts to reform the Legislative Council identified another strongly advocated view: reform of the Legislative Council should not materially affect the existing tricameral structure. I do not personally see this as an overriding consideration, but it has been accommodated in this Bill.

Importance is attached by a number of hon. members to the continued availability of members of the Legislative Council to serve in government. The view held is that unless they can take part in executive government, the services of a number – albeit a small number – of capable and experienced members would be lost. It could be suggested, of course, that such able people could, if so minded, be members of the House of Keys, which is the natural powerhouse of Island politics.

I have had this Bill drafted on the basis that the Legislative Council should be popularly elected and that their duties should be statutorily prescribed. Those are the two principal features on which it has been drafted. The process of popular election is designed to address the matter of democratic legitimacy, a matter of some considerable importance. Inevitably, a line of comparison will be drawn between popular election and the existing electoral college, of which we have recent first-hand experience. With regard to the functions of the Legislative Council, the Bill proposes that they would retain responsibility for: firstly, scrutiny of primary legislation; and secondly, scrutiny of government policy and activities. The legal advice I have received, and the basis on which the Bill is drafted, is that these functions are inherent in the Legislative Council at this time and do not need to be statutorily prescribed. The statutory prescription of scrutiny of subordinate and EU legislation are provided for in this Bill. These would be new and additional duties for the Legislative Council. Subject to a degree of selectivity in tasking, which of course is inevitable, the Legislative Council must assuredly have the time to carry out these functions. So, these four

functions would give the Legislative Council a more clearly identified and meaningful rôle. Essentially, they would become a Council of elder statesmen, committed to revision and scrutiny. This distinct rôle should significantly reduce concern of excessive conflict with the Keys. In the same context, it should be noted, of course, that the Legislative Council would not have the right to introduce a Bill, removing a further potential point of conflict with the Keys.

This Bill does not provide for the removal of the Lord Bishop from the Legislative Council. This is not to say that there is no case for his removal; it reflects a pragmatic stance on my part in the interests of advancing more wide-ranging aspects of reform of this chamber. The Bill does provide for the removal of the Lord Bishop's vote. As an issue of principle, the exercise of a vote by a Crown-appointed ex-officio legislator is unacceptable. The impact of such a vote varies according to whether it is legislation or policy, but the vote of the Bishop can be decisive. A study by Dr Peter Edge of Oxford Brooks University has established this position very clearly.

It is proposed that there should be five electoral areas, not constituencies, and that members should be elected by postal ballot. The limited number of seats in the Legislative Council, sufficient for the envisaged day-to-day functions, dictates that the electoral areas be quite expansive. The practicalities of a candidate electioneering in some of the large demographic or geographical areas are a consideration in this regard. Much more important is that extended electoral areas should cultivate a strong national standpoint in the thought process and the workings of the Legislative Council. Exclusive postal ballots in a number of recent UK authority elections produced substantially higher voter turnout, established the mechanics of operating such elections and very adequately addressed earlier concerns of security issues.

One further provision of the Bill is that an elected member of the Legislative Council should not be eligible for nomination or appointment as Chief Minister. This would be consistent with the primary functions of the Legislative Council, not to mention the impracticality from a functioning, political perspective.

If I may conclude by making reference to the structure of the Bill, it is my ardent wish that the Bill should receive support – and receive such support in its present form. That, of course, may be a forlorn hope. It has, therefore, been assembled to facilitate amendment without, so far as is possible, any one amendment creating a domino effect. For example, if this hon. House determines that the Lord Bishop should not be a member of the Legislative Council, or alternatively that the Lord Bishop should be a member and have a vote, such an amendment would not fatally impact upon the remainder of the Bill. There are, of course, limits to which amendments can be catered for in any Bill.

Mr Speaker, I recognise the divergent views of members on the matter of reform of the Legislative Council. It is an issue of public record that some

members would wish to see a more radical approach than that advocated in this Bill; others do not wish to see any changes. In assembling this Bill, I have taken an objective assessment and adopted a fairly pragmatic approach. I trust it embodies sufficient common ground for this Bill to be progressed. Mr Speaker, I beg to move.

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

**Mr Karran:** Vainstyr Loayreyder, I beg to second and reserve my remarks.

**The Speaker:** Hon. member for Rushen, Mr Rimington.

**Mr Rimington:** Thank you, Mr Speaker. Yes, I would like to commend this Bill for second reading in its structure as it stands now. I do believe the hon. member has done a good service by bringing it forward in this manner and bringing it in a manner which lays itself open for appropriate amendment at another stage where various issues can be decided upon within it.

It encompasses two broad principles which I am greatly in favour of. The first one is the continued existence of the second chamber or an upper House, and that is having a system of checks and balances within the constitution, which I think is historic, not just to the Isle of Man but elsewhere as well, to other parliamentary democracies, and it is a tradition which we should not lightly dissuade ourselves on. It would maintain the traditions of Tynwald and the Keys as they stand at the moment, but it would give a new life to that upper chamber. I think possibly the circumstances of today have illustrated the weaknesses that exist in our upper chamber and the manner in which it is elected, and I do not feel that we have held ourselves in great credit in respect of our election procedures and how we actually effect them. It would give the opportunity for increased levels of responsibilities – but circumscribed levels of responsibilities – for that upper chamber and, as the hon. mover has indicated, the bringing of a broader approach of the elder statesmen within that chamber.

The second and important principle there is the principle of a democratic election, i.e. by the universal franchise, by the public itself, rather than this body having that facility. This body has not actually done very well with that facility in recent times, and I do not think we can say to ourselves how well we should hold on to it when we effected it so poorly. It would have the opportunity, with the constituencies as based, i.e. the larger constituencies, to bring a broader agenda into the political process, to express a wider interest than the quite narrow constituency interests which are sometimes expressed within our existing system, where our electorate is very small and we are all tied very closely to that electorate and very responsive and under pressure from their particular needs on quite localised issues. But then it does take you a step

beyond that, bearing in mind that our elected members of the Council would still be far below the election that a member of parliament in the United Kingdom would have, but that is by the by. But it is a very great step in the right direction, and hopefully we would have candidates there who would not be representing whether it should be, let us say, a marina in Port St Mary or a facility in Peel or whatever, but would be looking at the wider national interest and trying to bring an element of wisdom into the political process, which sometimes is missing.

There have been questions – and there has been concern – about whether such a body would then become too powerful, because it has a larger electoral base than ourselves, each member would have been voted on by a larger number of people than ourselves. That would be terrible, but I do not see that as a problem at all; I think it would be a great strength. Yes, they could, in a sense, claim to have greater public legitimacy, and what would be wrong with that claim to have greater public legitimacy? I would point to my own election: as I am sitting in this particular seat, I managed to scrape by with more votes than my colleagues, yet I only received approximately 30 per cent of the votes in Rushen. That is my electoral legitimacy, and there is definitely a weakness in that regard. So, I do think there is an opportunity there to broaden out and give greater democratic legitimacy, and it is not something that we should be afraid of but should actually welcome. The other question is: will this produce extra conflict within the system by having a body which is elected and possibly claiming some degree of legitimacy? I would say, ‘Well, what are we afraid of? What conflict is there there to be afraid of?’ Conflict is here already; it is expressed every time we sit, in different guises. Conflict is the substance of politics, but often that conflict that takes place is narrowly focused down on quite lower-level issues – or secondary-level issues – and that is where the conflict usually is. Very rarely do we actually have conflict on the high-level issues of our overall political direction, our economic policy or areas like this, and I believe that the opportunity to elect people with, possibly, a broader approach may actually give you the opportunity to have a sharper and more focused debate on such issues as economic policy or our political direction. We just drift along and, from time to time, we all follow along in that area, and it would bring a new dimension to that conflict which is inherent within politics. Conflict is not something to be afraid of; it is the very nature by which we sharpen our brains and our policies and take things forward.

I commend the fact that the Bill is structured for amendment, and no doubt I am sure there will be many. At this point in time, I would be looking to see two amendments. For myself, if the body is going to be democratically elected, I would wish to see the Bishop’s vote retained. In the long term, I would wish that that would be an ecumenical vote rather than precisely the Bishop’s itself, but that is not something that I feel should rightly be addressed within this particular legislation, and it is something that should

really arise from within the Churches themselves rather than ourselves trying to dictate that. A second amendment that I would wish to see in the future would be a limit of two ministers from the upper chamber (*Laughter*) being a member of Council, and that by way of a compromise to address the concerns of the fact that you would have a body of eight there but if six ministers or seven ministers or whatever were in that body, then there would be an imbalance between the two. I am not saying this is something set in stone for the long term, but in recognition of the traditional balance, then two ministers would be an appropriate, in my mind, step forward in terms of the amendment.

The very last point, Mr Speaker, is the need to establish some form of public consensus on this issue. If the Bill gets through its second reading today, which we shall see, then before it goes forward I intend to move that it should be moved to a committee so that the issues that are raised in this debate today can be considered by that committee. Also we should attempt to find some public consensus, because one important point which I believe we dismiss too lightly in this House is that the constitution is not ours to play with. Yes, we have the power to change it in legislation, but the constitution belongs to the people of the Isle of Man, and if we are to change it, we should do it knowing that there is consensus behind that change. It would be the job, in my mind, of the committee to try and find that consensus and respond to it. We should not, in ourselves, be putting through constitutional change which is contrary to the wishes of the general population. Thank you, Mr Speaker.

**The Speaker:** Hon. member for Onchan, Mr Corkill.

**Mr Corkill:** Thank you, Mr Speaker. None of these issues that I have heard in the debate so far are new ones, but I do believe the approach of this particular Bill is a new approach. As I have said to the hon. member for Ayre, I have never seen a coat hanger with so many hooks on it, because it is a simple framework, as the mover of the Bill has said, to append various amendments to. Although there have been only a couple of speakers so far, one can see where these amendments are going to start coming from. So, I take on board the hon. member for Rushen, Mr Rimington's comments about a wish to move it to a committee.

I think I start from the point of view that I will be voting against this particular second reading, because I do believe that the hon. mover has mentioned one or two things which are contradictory, and I have one or two questions about the Bill which perhaps the hon. mover could clarify for me. One of the issues is about the qualifications of a person standing for election. I would ask him whether someone with a criminal record would be barred from standing. I do not see a particular reference – maybe I have missed it – but there is reference to bankruptcy, the Mental Health Act et cetera. I would be interested to know what his views are regarding criminal record.

The hon. mover also referred to a number of previous reports which all said that reform was needed, but of course we all know that those reports have come to nothing, effectively, because the legislation has not proceeded, and I pay more note to the decision of this hon. House with regard to legislation rather than reports which are, by their nature, of a more general nature.

The hon. mover has said that popular election is the strong view, that members of the Legislative Council should be popularly elected, and I believe that that is a fairly straightforward, easy principle to sign up to but, as we know, the delivery of it is fraught with difficulties. I stood, in 1991, to this hon. House and, in my manifesto, it said, 'I believe that the Legislative Council should be popularly elected.' It did not seem democratic the way it was, but having seen the machinations of trying to put that into effect over many years now, by 1996 I said to my electorate that I had changed my mind. I did believe you are entitled to change your mind in the light of knowing things, because I have served on committees in the past where we have looked at the functions of the Legislative Council and it has all ended up in the long grass. So, I am not so sure that this emphasis on popular election and hanging everything on that issue is such a clever thing to do.

He also in this Bill, of course – and this is where the first contradiction comes in, in my view – says ministers should not come from the Legislative Council, and then the speaker who has just resumed his seat said that there should only be two ministers from the Legislative Council. I would ask the very question: why would you discriminate against people who have, under these proposals, a popular mandate? The shoe is on the other foot. This, I think, gets to the very core of the issue: if you are creating a structure where members of Tynwald, by virtue of the fact that they are members of the Legislative Council, are popularly elected, why should they be taken out of the frame or limited with regard to executive government functions? In reality, of course, we know that the constituencies as laid out in this Bill are actually bigger constituencies than our own. So, there is an argument, and here is the first tension, when people say, 'Why should there be conflict between the branches?' The first tension is – I will tell you this, Mr Speaker – 'My constituency is bigger than your constituency. Why shouldn't I have the power that goes with that? Why should I not be a minister?' I would be interested to see how any Chief Minister of the day would react to that type of argument. So, I think we ought to be a bit more pragmatic about some of the implications of this Bill.

Then there is another contradiction, because the hon. mover said that the Keys is the powerhouse. I agree with that, and I want it to remain the powerhouse, the 24 popularly elected members, but then he went on to say that the Legislative Council, under these new proposals, would become a group of 'elder statesmen'. We all know – and let us be pragmatic about it again: if you want to be an elder

statesman, do you also want to be up for popular election? There is a lack of incentive there, I would suggest, in terms of getting 'the right people', as other people have described them, in terms of getting experience upstairs.

I was also listening to some of the terminology the hon. mover mentioned. He said 'forlorn hope', I think, so I do wonder whether he is particularly confident about whether this Bill will progress, and I thought that was perhaps a telling comment.

**Mr Quine:** Without amendment.

**Mr Corkill:** Without amendment, yes. Then the hon. mover also said, 'Well, whether the Bishop is in or out' – they were not quite his words – 'there would be no impact on this Bill. Whether he retains the vote or, indeed, whether he is still a member of the Legislative Council, it would not disturb the balance.' I cannot agree with that comment, Mr Speaker, at all, because there is an issue that occupies my mind greatly in terms of this situation. I support the current situation where the Bishop retains the right to vote under the current circumstances, but if those circumstances were to change and if we were to give greater electoral mandate to members of the Legislative Council so that they are more important, if you want to put it that way – because at the end of the day they have got this popular mandate, they have got this constituency, they have got the right to vote on serious issues dealing with the Island – that actually separates the Bishop's situation further away from his colleagues on the Legislative Council and isolates him even more, because he does not have that democratic electoral background, and that obviously is an argument by those who wish to remove the Bishop's vote (*Interjection by Mr Downie*) to say, 'Well, he should not have a vote any more.' My concern, Mr Speaker, is that I support the Bishop having the vote, but under the circumstances that would be put to me if members of the Legislative Council were popularly elected, I would then have to question whether it was then still appropriate for the Bishop to have a vote when every other vote in the House was by popular mandate. So, that is a consequence that would have to occupy my mind under these proposals, and it is a sort of flick of the coin if you like, Mr Speaker.

These are my initial comments. There are one or two specific questions about qualifications. At 3(1)(b), it talks about 'ordinarily resident in the Island', and I know we have that in a lot of legislation, but I wondered –

**Mr Quine:** It is the same as the Keys.

**Mr Corkill:** It is the same as the Keys. I wondered how that would pan out. I have asked the question about the criminal record issue -

**Mr Quine:** The same as the Keys.

**Mr Corkill:** – and I have mentioned the issue about why ministers cannot be in the Legislative Council if they have got this popular election. There is a big clause here also about the rôle of the Chief Minister, whoever that might be, and that anyone in the Legislative Council should be barred from becoming Chief Minister. (**A Member:** Why?) If they got a popular mandate, there again, with a bigger constituency, the question has to be asked: why do you bar that person? That, to me, is a contradiction within this Bill. On the one hand, you are giving them more power and, on the other hand, taking powers away, and I think that is out of balance.

The hon. member for Rushen, Mr Rimington, talked about high-level issues and a broader approach, and I think there is another contradiction here, Mr Speaker, in as much as when we elect, as this body, members from within ourselves or from outside of this hon. House, members to become members of the Legislative Council, I certainly hope that we have that view in mind, that we do elect people with experience, with a view on wider issues. We do know, as constituent members ourselves, the pressures and the narrow issues that come down our paths and that we have to represent on the floor of this House at times, and they are very valid representations. The point I am making is that if members of the Legislative Council are also elected, they are going to have their constituents' interests to think of as well. And so these, to me, are all arguments against going down this particular route, and they are arguments that I learned, perhaps, mid-term through my term in this hon. House.

So, there are other questions which, if it does get to the clauses stage, I would like to ask on specific issues, and certainly things to do with the areas for the purpose of Council elections. They are listed in schedule 1. I just wonder why they have been chosen in this particular format. There is a certain logic to it from a constituency point of view, but is it logical from a high-level issue, broader-aspect point of view? You are pinning constituencies onto Legislative Council members by this very schedule.

I know the hon. mover of this Bill has had long-held views on this issue, and I am concerned, I think, that this is a Bill that has been constructed to receive and encourage so many amendments. I think that is a dangerous situation to be in, in as much as we will not know, at this point, what the hon. mover's views are in relation to how the Bill might turn out at the end of the day. He has only given us half of his point of view at this stage, because he is worried that if he gives us the whole point of view, we might vote it out, and that is what I shall be attempting to do, Mr Speaker.

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

**Mrs Cannell:** Thank you, Mr Speaker. I have not heard anything that I did not anticipate from the hon. Chief Minister before resuming his seat and, as predicted, so far I have seen a number of red herrings running in all sorts of different directions.

**Mr Cretney:** They haven't got legs! (*Laughter*)

**Mrs Cannell:** They will have to wear trousers, sir. I hope they are wearing trousers. (*Laughter*)

**A Member:** Sexist.

**Mrs Cannell:** I think there are a number of red herrings here, because it is quite clear, from my reading of this Bill, that some of the areas which have been questioned by the previous speaker are already covered. The hon. Chief Minister questioned the qualifications aspect under the Bill, and he quoted clause 3(1): 'A person is qualified to stand as a candidate for election and be elected as an elected member if, at the time, he is nominated as a candidate' and then it goes on and it goes on. He also alluded to, on page 3, the fact that the bankruptcy aspect and the Mental Health Act 1998 are mentioned. What he did not get to, of course, is clause 4, and clause 4 states that 'Every elected member of the Council shall, unless he sooner resigns or his seat is otherwise vacated, go out of office on the Thursday following the third Tuesday in October in 2009 and in each fifth year thereafter', and section (2) says, 'Nothing in this section affects section 4 of the Representation of the People Act 1995'. If we turn to the Representation of the People Act 1995, section 4 is quite clear, because it deals with corrupt and illegal practices, the very question I would have thought the Island's Chief Minister would have known the answer to before he asked the question, (**Mrs Hannan:** Hear, hear.) as our leader in this place. But it is quite clear that clause 4(4) of that particular Act of 1995 covers corrupt and illegal practices and goes on and spells out what is not acceptable for a nomination to the Council in this aspect under this Bill or to the House of Keys. So we retain that, and it covers all of those particular concerns which, to me, were the most serious that he had referred to. He suggested that what the hon. mover has said was contradictory, he had a concern about it and he wanted the hon. mover to answer; I hope, Mr Speaker, I have helped in that respect in answering that aspect for him. Qualifications is covered.

What I welcome, in this particular green Bill, are the other two aspects, clause 6 and clause 7. Clause 6, of course, says, 'The Council may consider any public document which is laid, or to be laid, before Tynwald and report thereon to Tynwald.' I think that is a very positive move, and it gives them a very fundamental rôle as a Council, elected as a Council. It goes on to say, in clause 7, 'Scrutiny of European legislation: if it appears to the Council of Ministers that a Community instrument has, or will have, effect in the Island by virtue of section 2 of the European Communities (Isle of Man) Act 1973, it shall refer the instrument to the Council, who may consider it and report thereon to Tynwald.' Again, a very useful rôle, but again it is establishing that it is the Council of Ministers who normally bring forward the European legislation which, let us face it, hon. members, is just laid, along with a tonne of other paper, at Tynwald sittings. And

to expect us all to go into the depth that one would expect for various aspects of it and the rest of our parliamentary work and the motions on the agenda is unreasonable to say the least.

I believe that the Legislative Council is at an impasse. I was elected in 1996, not 1991, and served as a member of a select committee that was looking at reforming the Legislative Council, and we had a very good cross-section of hon. members on that. (**Two Members:** Hear, hear.) We came up with some very positive recommendations on the whole, which were accepted, but of course we had all the same old arguments trotted out that we have heard thus far this morning. Of course, what happened following that was that the Legislative Council, Mr Speaker, took umbrage with us and they put together their own Bill, booted ours out, put their own Bill in, brought it to us for scrutiny and we fell out with that as well. It did not go anywhere.

**Mr Downie:** What do you think they will do when popularly elected?

**Mrs Cannell:** It was all a waste of time. Clearly, they need a definitive rôle. They are confused, to my mind. They are confused in that it is like we are the schoolchildren and they are the teachers; we produce something and we give it to them for them to mark to see if we have got it right. Well, fortunately they did mark it right so we could go in this place, but that has only happened in my time – my short time, my seven years here – maybe once or twice. The rest of the time, they seem to be floating in the wind without any meaningful purpose, and I think the provisions under this piece of legislation give them a definitive rôle and a meaningful purpose to really contribute to the parliamentary scrutiny and work that we expect in today's modern age.

I think it is drafted the way it is to try to accommodate some of the concerns; it is a very amenable Bill in that respect. Certain members have said they would like to test by bringing forward amendments, and of course that is what the clauses stage is all about. The hon. mover has enticed you, if you like, to consider amendments and bring them forward and let the House decide. So, it is not a tightly, thinly cast piece of legislation; there is opportunity there if members want a certain aspect to be incorporated.

Of course, we heard, this morning and last evening, an interview by the Lord Bishop of Sodor and Man, who, like many of us in this place, as politicians, took advantage by including in his interview the issue of this piece of legislation and the removal of the Bishop's vote, and he suggested – yes, another red hare ran this morning – that it could mean the end of this long historical situation that the Church has occupied in the Isle of Man. I would hope, Mr Speaker, that hon. members will not be influenced by that sort of opportunism which we are all guilty of from time to time, but we are talking about a man – or a woman, perhaps, in the future, if the seat is retained –

occupying a seat and thinking, acting and voting like a politician, but who is supposed to be there to represent the Church, the Church view, the spiritual aspect, the humanity aspect of certain things. Just for the record, I think it is important that we get back to basics here as to why this legislation is before us, and it is not because the hon. mover has a dogged attitude towards these issues –

**Mr Cretney:** Oh, no.

**Mrs Cannell:** No, it is not. It is because members have expressed concern and continue to express concern, and this has been going on for years. (**Mr Cretney:** Years.) The hon. member for South Douglas, my friend, Mr Cretney, knows full well it has been going on for years. He has been here longer than –

**Mr Cretney:** I do not change my mind half-way through.

**Mrs Cannell:** Let us remind ourselves of the anachronism that prevails with the Legislative Council as it is. Until fairly recently, the Attorney-General retained a vote. Until fairly recently, in historical terms, the Governor, the Queen's representative, retained a vote. Slowly, over the years, the Isle of Man has evolved, its parliamentary history, the Keys has evolved and those aspects have actually been removed, but the Bishop is still there and he still has a vote. Is it right that someone representing the spiritual aspect of things, morality, all of those sorts of things, should be given the power to vote on all sorts of principal policy issues which do not impart at all on the religious aspect, the spiritual side of things? And he has a vote not only on policy; the Bishop, representing the Church, has a vote on the monetary aspect of things also.

I am a firm believer in no taxation without representation – or is it vice versa? – that phrase that you are, and must be, publicly accountable if you are going to be responsible for voting for the people's money to be spent on various things. I believe that this will give people the opportunity to ensure that every member, whether they be Council or members of the House of Keys, is publicly responsible for what they do. I think that, in essence, is what we are looking for, and I believe there is public consensus out there. That is why this is an old chestnut that has not gone away, because we have not resolved it. We have not taken the bull by the horns and resolved it. We have an opportunity today to accept the principle of this Bill and, if one likes, go away and beaver away on some amendments. I feel sure that the hon. mover will be even more amenable if further time is required for members to pursue their clauses. This is not a bulldozing job; this is common sense. This is to make us a true democracy.

**Mr Cretney:** Hear, hear.

**Mrs Cannell:** There are certain things within this legislation that I, as a member for Douglas East, am a little concerned about in terms of the 'disproportionate' – as I have heard one or two members say – number of the members representing the North, South, West, East and Douglas under schedule 1, but again that is capable of amendment.

The difference I see with this is that, under this Bill, the Council would be elected by public franchise but they would be elected to serve under a particular function; it would be different. We are elected, under the Representation of the People Act, to represent people and the public view; what is being suggested in this legislation, as I understand it, is that the Council would be elected as something else. They would have a specific function, and it would not impinge upon what we do. I think that is a very positive rôle; they will have a specific purpose rather than, at the moment, just sailing in a lost situation, as it seems to me.

I think also, just finally, I have to say I do not believe that any minister should be in the Legislative Council who has not been elected by the people to be there. But that is my view, and there is no provision within this Bill to counter for my view. I think the people should have a say in who is going to be the Chief Minister, and I think the people – or at least the members of the House of Keys, representing the people – should have a say in who becomes a minister and who retains a ministry. That has been removed from us; we do not have that right, and so the people we represent do not have that right, because the ministers are appointed at the pleasure of the Chief Minister of the day, and we cannot do a thing about that. At the moment, we have a very . . . I am not going to question the capability of the health minister or even the Minister for Local Government and the Environment, who seems to prefer to stay in this place rather than go to another. I am not going to question personalities; I am going to question the size of those ministries, what they are responsible for and the huge amount of expenditure that they incur to operate. They are to me, Mr Speaker, the two biggest, most expensive government departments that we have compared to the others, and what have we got? We have not got it accountable in here; we can only fire off shots by way of scrutiny or questioning or concerns once a month, hon. members, and yet we come in this place every week. And we are supposed to be satisfied, are we, that members of those departments are sometimes put into very invidious positions, having to answer for their ministers who have been removed from scrutiny and are protected from the public's view and the public vote? That is what we have at the moment, and that, to me, is not democracy. I admire the health minister (**A Member:** Hear, hear.) for sticking with it, but let us face it: any minister who is in the Legislative Council at the moment has a whole month before they have to face up to hon. members' questions and concerns, and they are, by the very nature, totally protected. That is not right; that is not democracy. So, I agree with the provisions under this

draft Bill, but I think all ministries, and particularly the Chief Minister, should come from the House of Keys, put here under the Representation of the People Act to represent the people, the people's view, not government's view. And if the people are not happy with the performance of their Chief Minister or their ministers, then they have the right, when there is a general election, to boot them out, and that includes this hon. member for East Douglas, too, as chairman of a statutory authority at the moment. It includes me. I am not just criticising others that retain high office; I am criticising all of us. All of us should have the gumption to go out there and ask the people if they are happy with our performance as their representative or as a minister or as a Chief Minister, and if they say, 'No, sorry, we are not giving you the vote', then we have to accept that with dignity.

I hope we do not hear any more negative red herrings coming into this argument. The principle has been established that we must reform. The view has been taken that we must retain, the last time we looked at this. This Bill attempts to retain, but it attempts to make them publicly accountable, it attempts to give them a positive and meaningful rôle that will help us, as members of the House of Keys, and will help the government, and it also attempts to secure democracy, true democracy in the true sense of the word. I hope members will support, Mr Speaker.

**The Speaker:** Hon. member for Peel.

**Mrs Hannan:** Thank you, Vainstyr Loayreyder. I think this debate so far is very interesting because if, during the 1880s, a discussion like this had taken place – and I am not sure whether it was in this particular House or not, I think it was probably down the road – we probably would not have had an elected House of Keys, and I can almost be assured that we would not have given women the vote. The changes have taken place; we – when I say 'we', the people – did get control of the House of Keys, and to a certain extent, over the years, there has been reform of the Legislative Council, changing from the Governor's advisors and opposition to this hon. House – because that is what it was. This House was independent, whereas the Legislative Council acted on the Governor's behalf and was advised by the Governor and acted in those sorts of areas because they were appointed by the Governor. We have seen evolution, and I believe that this legislation could bring about evolution – not revolution. We should be looking for a way to continue this evolution so that both the Houses belong to the people, and I believe that this can be done by this legislation.

I do believe that we should be mature enough to see that we are not putting people in the Legislative Council to do our bidding because we hold the voting power, but we should be able to look at people in the Legislative Council to do a particular job, and that is looking at legislation, considering it, revising it, reviewing it and making sure that that legislation is in the best interests of the people of the Isle of Man, not

their political views. That is why I think you can have people who are elected; many countries do have a second house elected just to do that. Of course, if they are invited by the Chief Minister to take part, that is the responsibility of the Chief Minister at that particular time – or the Prime Minister of whatever country that is. I think that, in this legislation, there should, in actual fact, be a firmer constitution for the Legislative Council which actually spells out their responsibilities. Whether or not they then take up other issues because their constituency is bigger than ours or whatever, then that is something that they will take up, and I do not think anybody can . . . Local authority members take up things on behalf of their constituents. You could say that if that was going to be an argument, certain members of this hon. House who were in single-seat constituencies would, from time to time, say, 'We have a greater mandate than those in a two- or three-seat constituency.' It does not happen at the moment; people are not standing up and shouting, 'I have got a greater mandate than you and therefore I am more powerful than you' or 'I have got more votes than you and therefore I am more powerful.' Why should the Legislative Council do that? The Legislative Council now, without being elected by the people, act for their constituents, because they still see that they have an 'electorate' out there that they can be approached by and that they will act for them. We know of people that act outside their constituencies because they are approached by somebody, maybe because that person has moved, and other members do not jump up and down saying, 'You should not be acting for them.' So, I can see no reason why this evolution should not continue, and I think legislation such as this, which has been criticised because it could be amended, is possibly the right way of going ahead, looking for this evolution to continue.

As I say, if this was being put forward in 1880, 1879 or whenever, when this legislation was going through, we would not have had a popularly elected Keys because the same arguments would have taken place. The Legislative Council, at that time being on the advice of the Governor, obviously could have been supporting the legislation but could have been against it too, but the people in the House of Keys appointed by the Governor, who actually picked out one of two names being put forward by the House of Keys controlled everything. So, in 1881, this House of Keys was popularly elected. Some of the same people continued and some did not, but what this legislation is doing is actually continuing this, and I think it is the right time that we should be doing this in 2003 – it is past time, in actual fact. This is where we should actually be moving to, but I do think that there should be a constitution there and, as I say, if the Chief Minister of the time wishes to use that person in a department or the Council of Ministers, then to my mind that is okay, because they have a bigger mandate than they would at the moment.

I also believe that they should be scrutinising legislation. They should be revising and reviewing, and this should be part of their constitution, and that

can bring in other areas. The only thing I would say, under clause 7, is that where it says, 'if it appears to the Council of Ministers', quite frankly I think secondary legislation or European legislation should be considered not just at the whim and the wish of the Council of Ministers, but I think parliament could look at that, and that could be an area that maybe the Legislative Council are involved with, and I see that should be quite acceptable. But I think if you have got the Council of Ministers saying who should look at what, I think that is restrictive.

With regard to clause 3(1)(b), 'ordinarily resident in the Island', I would prefer to see a time limit for that. I do not think somebody should waltz into the Isle of Man at 21 and even be able to put themselves up for election; I think they should be here some time before they are able to stand for election, to know how the Isle of Man operates and not to bring some sort of outmoded ideas that have been floating around in another country here and pontificate on them. Even within the House of Keys, I think there should be a time limit for people actually to get involved – I know there is, but I think that in the Legislative Council there should also be a time limit on how long somebody has lived here.

I think the member for Douglas East mentioned ministers, and what I would say is that there is a responsibility of ministers to be accountable to Tynwald, and I think that is the area that we should be considering. Tynwald is responsible for, and votes on, policy and finance – those are the main areas – and also secondary legislation, and I think that is where the ministers are accountable to Tynwald. With the issues that are raised from time to time with questions in this House, the questions are asked and the majority of questions are not so urgent that they cannot wait to be asked in Tynwald once a month, where policy, finance and secondary legislation are considered. When members are putting down a question to a department which has not got a minister in the House of Keys, they know it will be answered by a member of the department who is not a minister, and therefore, from that point of view, that is quite straightforward. In some instances, the questions are asked of members so that the minister is not asked, so that is up to members here. When I first joined the House, very few questions were asked in this hon. House; they were asked in Tynwald on a monthly basis. Since that time, I have to say that the questions that have been asked have been, in the very rarest of circumstances, with that urgency, and I think that will probably continue for a time. So, I think members do know when they are asking a question who they are asking the question of.

I do think that this legislation gives us an opportunity to evolve the Legislative Council, and I would hope that members will support this legislation. I am not suggesting it is perfect. I do not see that there is any necessity for Legislative Council members to have a constituency; I think it could be an all-Island ballot, and I think it could be under STV, so that the public are educated to know what they are voting for. They are actually voting for their representative – or a

representative – to look at legislation in the Legislative Council and to also take an advisory capacity to the House of Keys and advisory in Tynwald, obviously with a vote.

I do not have an awful lot of strong feelings about the Bishop retaining his vote. What I think should happen is that the Bishop does not vote first in the Legislative Council in Tynwald; I think the Bishop should vote at the end of the voting of the Legislative Council if he or she is to retain the voting rights, because then I think the person in that position takes notice of how the Legislative Council thinks on an issue and can also reflect on how the House of Keys has voted. That gives that person then the opportunity, if we are going to continue a vote with the Bishop. I do think it is wrong that the Bishop votes first. I know the previous member for East Douglas used to complain bitterly when the Bishop voted opposite to the House of Keys; he no longer does because he is now in the Legislative Council, but I know in that instance he did and jumped up and down whenever the Bishop did that. But I think that if the Bishop voted at the end, at least he could reflect on how the Legislative Council and the Keys collectively have voted, if the vote is to be retained. I do hope members will support the second reading. Thank you, Vainstyr Loayreyder.

**The Speaker:** Hon. member for Garff.

**Mr Rodan:** Mr Speaker, one has rather a sense of nostalgia, not to mention *déjà vu*, as the House of Keys undertakes one of its periodic considerations of the rôle of the Legislative Council. However, there are five new members in this House since the last election, and it is no bad thing that they – and those of us who have been in a bit longer keep sight of a very important principle which is widely shared by the public, and that principle is that, in a democracy, there is a requirement for those who hold positions of power to be directly elected. This second reading is the opportunity for expression of support of that particular principle. It is an important principle and one that the public very widely holds in respect of the Legislative Council.

As other members have touched upon, the history of the Legislative Council since 1919 has been one of progressively becoming more democratic and more democratically legitimate. Gradually, over the years, we have seen the removal of the King's barons and of the deemsters and other appointed members of the Legislative Council. It is true that, in more recent years, moves for reform have become stalled and reports that have been issued have, in the words of the Chief Minister, come to nothing. However, in recent years, it is also true that the various reports have demonstrated one thing, and that is an overwhelming wish, in principle, that the members of the Legislative Council be directly elected and subject to popular election. Even the Legislative Council itself, when last given the opportunity to pronounce on the matter, came to that conclusion independently. Of course, what is correct, and where other speakers have been absolutely accurate, is in saying that the delivery is

what is difficult. The preferred option to take to give expression to this will for the Legislative Council to be founded on a wholly democratic basis is the difficulty. The principle is not in doubt, and what we are being required to do today at this second reading, I suggest, is to reaffirm that principle.

This particular Bill is a very major improvement on the status quo, on what we have at the moment, because it does put the Legislative Council on a directly elected basis and gives the legitimacy that we are after. However, as has been pointed out, this particular model does have flaws within it. I have to say that not permitting ministers to be in the Legislative Council is not one of those flaws, however, because the Bill does not exclude ministers from sitting in the Legislative Council; what it does, of course, refer to is the Chief Minister. One could make an argument that if a member of the Legislative Council, particularly one who has got a popular mandate on a large constituency basis, does become elected to a position of power, why should he or she not have the opportunity to be Chief Minister? So, that is one of the points of detail in this Bill that could, at clauses stage, be dealt with. Also referred to as an anomaly, if you like, are the large constituencies being suggested, and the larger democratic mandate which would flow from that might result in conflict – and so it might. The answer, I suggest, to these flaws or anomalies is to amend the Bill at clauses stage after the second reading and if I am given the opportunity, in the event of the second reading being accepted by this House, to amend the long title of this Bill, I will elaborate on some of the reasoning behind my wish for particular amendments to deal with some of the perceived flaws in this Bill.

I would like to highlight as well that what this Bill is doing in terms of how it is responding to the need for democratic legitimacy and trying to establish a workable model is that it has picked up on one of the options recommended in the most recent select committee report of the Keys, which was to say that the Legislative Council should be given a specific rôle and specific functions. Of course, what we have appearing here now are specific statutory functions to do with the scrutiny of subordinate legislation and the scrutiny of European legislation. One can look at this particular model as being a legitimate one that falls short of the more radical solution that the hon. member referred to in his opening. It is the more radical solution, I believe, that is an option that should be tested before this House. It is one that I would wish to promote if given the opportunity to do so, at least to have those arguments tested afresh, because that more radical solution, which is, of course, a single election to elect all members of Tynwald, will deal with some of the flaws in the status quo and some of the flaws, I believe, in this particular model. Nonetheless, I do commend the mover for giving the Legislative Council a specific rôle to perform in Tynwald.

I think the idea of postal ballots is innovative and interesting and worthy of consideration, and I think the reason this has been done is possibly in

acknowledgement of the larger constituency bases that would be established. What is not mentioned is what previous members have referred to, particularly the member for Peel: the need for a fair voting system. I would certainly hope that the opportunity will be taken to promote a fair voting system whereby 'one person, one vote' becomes the norm rather than the mixed bag that we have at the moment.

So, I shall certainly be supporting the principles that underpin this Bill by supporting the second reading. I look forward to opportunities to move amendments and to listen to the amendments that may be moved by others. We do have a new House with, perhaps, fresh eyes to examine this question, and I hope we do take that opportunity and perhaps bring to an end once and for all this farcical situation of being unable to elect mid-term in the life of this House members to serve in the Legislative Council under the present arrangements where it is done by us acting as an electoral college. I think the merits of that have been found wanting, most recently this morning, and it is high time, Mr Speaker, to move into the modern age, to continue the process of democratising the Legislative Council which began in 1919 and to support this Bill.

**The Speaker:** Member for Onchan, Mr Earnshaw.

**Mr Earnshaw:** Thank you, Mr Speaker. I would like to begin by welcoming the Bill that has been put before us and to thank the hon. member for Ayre for giving us the opportunity to consider his views, but I have got to say that my view is that I am not convinced public elections for the Legislative Council are the way forward. I also believe, with some reservations, that the present arrangements we have and the functions fulfilled by the Council are sound, which eliminates a major portion of what is proposed. If the Legislative Council is considered a necessary component of government, it seems essential to me that the Council will need to be supplied with members experienced in and familiar with the legislative process. This is the arrangement Tynwald enjoys at the moment, and although it is less than perfect, it has, in my opinion, stood the test of time quite well. I have given this, and also the correspondence submitted by Mr Rodan, careful thought, and whilst I agree that there are shortcomings in the Legislative Council process, I see too many conflicts and difficulties in the proposals and insufficient shortcomings to justify radical change. There have been attempts at reforming the Legislative Council in the past, and although there have been some changes it seems to me these have been gradual rather than massive. This tells us it is possibly difficult to substantially improve what we have, and I am, in the circumstances, reluctant to support much change in this Bill.

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

**Mr Shimmin:** Thank you, Mr Speaker. The hon. member for Garff started in the same way that I was intending to, which is quite envious of the new members of the House going through this possibly for the first time but, I am sure, not the last. Reform of the Legislative Council has not been top of my agenda. I think the member for Peel alluded to some of the inadequacies of our own electoral system within the House of Keys, which to me would be a starting place I would prefer to look at, with the reintroduction of the STV system of voting and, indeed, a rationalisation of the number of seats per constituency so that the public and the members have some form of equal representation.

However, not wanting to start that hare running at this stage, we have before us a Bill being moved for the second reading. I have already congratulated, some months ago, the hon. member who has brought this before us; I believe he has moved the system to an area where there is a better chance of getting some support and acceptance of his proposals. I do not wish to do what we will all do in subsequent weeks: to go through every clause at this stage. However, I would ask the hon. mover of the Bill to turn his attention to page 3 of the Bill, clause 3(5), and to explain, in his summing-up, whether indeed if an elected member accepts an office of profit under the government of the Island, one interpretation of that would be that if any elected member accepted any post within government, be it as a minister or as a member of the department, they would actually be ineligible and the seat would be vacated, which is where we get into the detail. And that is where all of these Bills tend to flounder; the principle is one that is established for many of us – we believe reform is to be desired – and the difficulty is in the detail. But I would like the hon. mover's comments upon whether the interpretation of clause 3(5) does mean his intention is that no member of Council would, at any future date, be eligible for any rôle within a government department, because that is certainly how it appears at this stage.

I have been concerned, certainly in recent months, at the number of occasions when the top floor of Tynwald, the Legislative Council, has had a number of absentees, either temporarily or permanently, for lengthy periods of time, which does mean that, in fact, the policy of the Isle of Man can often be determined by the Bishop's vote. I think that is a timely reminder to us that when we have a Legislative Council made up as we do currently, it only takes one or two members to be out of their seats and the policy of the Island, regardless of what the House of Keys may intend, can be scuppered by the vote of a Bishop. As we are approaching the potential appointment of a replacement for our current incumbent, we have no knowledge as to the views of that person. I do believe that serious consideration should be given to removing the vote of the Bishop, and this affords us an opportunity to take that decision.

It is the second reading. The devil is in the detail which we will achieve in weeks to come. Certainly it has a number of hurdles still to get over, but I do

believe that – cleverly – the mover of the Bill has actually brought something forward which may advance this issue without causing too much consternation. I think this is the closest we have got to a Bill which might actually engender support from the Keys. I will be very interested in his response today and also in the number of amendments which are coming forward. Some of those which have already been announced today I certainly would not be able to support, and it will be interesting to see how that determines. Thank you, sir.

**The Speaker:** Hon. member for Middle.

**Mr Quayle:** Thank you, Mr Speaker. I think we would all agree that, in today's uncertain world, with the conflict in the Gulf, there is a tremendous amount of uncertainty, certainly when we look at international relations, with the United Nations split apart, and the impact that everything has had on the European Union and the North Atlantic Treaty Organisation. Here we are talking about such massive constitutional upheaval in our own Island here; as far as I am concerned, I do not feel confident that I have the mandate of the people of Middle to vote for such a massive constitutional rearrangement. Are we to cast aside the one thing which is priceless for the Isle of Man as a national asset, and that is, I believe, its political stability, assisted by the fact that we have 24 directly elected members of the House of Keys and a revising chamber which, as we know, is Legislative Council, with the two branches sitting together as Tynwald?

The Legislative Council has, I believe, served us well, as the elder statesmen are revising the legislation that the House of Keys has initiated, and is obviously elected, as we know, by the House of Keys. We are in a unique situation whereby we can utilise the talents and experience of the Keys members by electing them to the Legislative Council. Each Keys member, when elected to the Legislative Council, has invariably served his constituents well and, in fact, the Isle of Man nationally, usually over a number of years, and has probably had the confidence of his or her electorate by being returned to the constituency on at least one or more occasions. The fact that 24 members of the Keys are returned from 15 constituencies around the Island and that, in order to be elected from the Keys to the Council, a potential member requires 13 or more to be successful is no mean feat, as we have already discovered in recent weeks. Having to obtain the support of over 50 per cent of the House of Keys is, I feel, quite a democratic situation. The prospect of moving to directly elected members of the Legislative Council at first sight may seem quite attractive but would introduce competition between the Keys and Council where none exists at the moment. It has, I believe, worked very harmoniously and served us well over a long number of years. As envisaged in the Bill, a Legislative Council member would be elected by one eighth or thereabouts of the electorate, and a Keys member elected by one twenty-fourth of the electorate or thereabouts. The Council would feel that they have

a far stronger mandate than the Keys and, I feel, would start to challenge the authority of the House of Keys as it now exists. The House of Keys is quite rightly the powerhouse of our parliament and can use its will to force through legislation even if the Legislative Council objects. Of course, they can delay any legislation, but ultimately the will of the House of Keys prevails. It is interesting to note that the British Parliament will, I understand, move to our system, whereby the parliament will elect members from within the House of Commons to sit in the House of Lords – or at least that is being considered.

The impact of constitutional reform may have downsides that we are not actually aware of at present and may lead to problems arising only when the changes have gone through and which are unable to be altered. We will not have the luxury to change our mind if things go wrong, as the damage will have been done, and we will have to live with the consequences; there would be no turning the clock back. The Legislative Council, as it now exists, is not perfect by any means, and there may be modest changes required which would be helpful and of assistance. Obviously, we have had a situation over recent months whereby there have been difficulties in filling vacancies on the Legislative Council, but the Keys have a duty to fill the vacancies, and generally the Keys will get there in the end, and the Legislative Council, when it eventually receives its full complement of members, will continue to serve us well.

I note with interest the proposal for a postal ballot, which, as we know, is untested in the Isle of Man for these types of elections. In fact, we are not given any particular detail as to the costs involved for any particular member standing for popular election and how it is envisaged that he would cover such a massive area, other than at the moment when Keys members stand for election they already cover some substantial areas themselves.

I turn now to the rôle of the Lord Bishop. I am happy for the Lord Bishop to remain as a member of the Legislative Council and, in fact, to retain his vote. I would not wish to undermine the authority of the Bishop, which may lead to the demise of the diocese of Sodor and Man; I note that it has been suggested that it is a red herring that that might be the case. Clearly, if he lost his vote, there would be little incentive for the Bishop to attend our sittings of Tynwald; I think it would send out the wrong signals to our electorate at a time when the voice of the Bishop is needed to be heard loud and clear, more so than at any time in our history. The voice of all the churches on the Isle of Man is represented by the Bishop, and I think we have come to realise he generally votes with the majority view of the House of Keys unless there are particular matters of conscience and so on. I think we have all, as members of the House of Keys, received some very helpful information provided by the Lord Bishop. Without going into anything in great detail, I think the notes prepared by Clare Faulds, Vicar General of Sodor and Man, are particularly helpful, and I feel that they answer a lot of the questions that have been posed

and reaffirm the reasons why I believe the Bishop should retain his vote and presence in Tynwald. I would also like to refer to the contribution made by the Lord Bishop in Tynwald Court on Wednesday, 13th July 1994; I believe that, in an excellent contribution to Tynwald Court that day, the points are as relevant today as they were then, and I hope that members of the House of Keys have had an opportunity to refresh their memory, as there will be quite a number of Keys members still with us today who were hearing that for that particular first time then. The appointment of the new Bishop has been referred to, and it would lead me to believe that if we were to have embarked upon a change in his rôle to our parliament, then we really ought to have considered this before now so that a new Bishop would have been aware, instead of being led to believe that he would be a member of our parliament entitled to vote and speak in the Legislative Council and Tynwald, that in fact he would be disenfranchised if this change goes ahead. I believe any change should have been considered prior to the appointment of a Bishop to replace the incumbent who, as we all know, will leave us on the 30th April 2003. The Lord Bishop, as we also know, goes through a very democratic process before he joins Tynwald, and he has the responsibility to consult with other churches before he speaks either in the Legislative Council or Tynwald. We have had a Bishop since 446 AD, and our history and heritage, I believe, are very important to us, and the Bishop obviously is in a position to represent all of our churches on the Island.

I would say that my priority, in terms of constitutional reform, would not be reform of the Legislative Council but, in fact, reform of the House of Keys. I would hope, at a future date, to persuade members that, in fact, House of Keys reform would be desirable, essential and imperative. I would favour the creation of 12 two-seat constituencies or 24 single-seat constituencies, which I feel would be greeted with enthusiasm across the Island, because the situation that we have at present of one-, two- and three-seat constituencies is one which I feel does not really serve the Island or its people as well as it might if it was reformed.

So, without dwelling on the need for constitutional reform of the House of Keys, which I will hope to bring forward at a later date, I close by saying that I have to put on record my reservations about this particular Bill, although I do commend the member for Ayre for his energy, enthusiasm and determination in bringing it back before the House yet again. I would also just re-emphasise that, certainly in terms of the public, there has not really been a large appetite for this constitutional change. I have not really heard it referred to much on the radio or in the local press. It is not something that seems to be cropping up in conversation with the electors around the Island. One thing that I can conclude by saying is that they feel the time we are devoting to this subject would be more useful if it was devoted to improving the housing, health, education, roads and economy of the Island.

(Interjections) I think that would be the situation that I would like to leave with you. Thank you.

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

**Mr Bell:** Thank you, Mr Speaker. As a long-time member of this chamber, it is interesting the number of times this issue has come up for debate in one way or another. I have to say that when I started off in politics, I did favour reform of the Legislative Council, but having heard the arguments which have been put forward over the years – and there have been a number of reports and a number of attempts to reform it – my views have changed considerably, based on, in my mind, the inability of those who wish to see reform to come forward with a practical working alternative to what exists at the moment. That, I believe, is fundamental. I do not believe there is necessarily an inbuilt hostility to the idea of reform, but we do need to see a structure put in place which actually will work.

I have been interested, Mr Speaker, to hear some of the comments this morning, that if we were to support this move in this chamber and create a directly elected Legislative Council, we will be creating a body of elder statesmen and they will have the wider national interest at heart and not be constituency bound, they will bring greater wisdom to Tynwald. If members look at this logically, the one thing that this Bill will most definitely not do is bring a body of elder statesmen with wider national interests and greater wisdom to Tynwald; this is the one guarantee which will prevent that from happening. ‘Elder statesmen’, by the very description, means that they are statesmen, they have been in government for some time; why would anyone in their right mind, who has been in the House of Keys for a number of years, want to resign and stand for election for the new body, for the Legislative Council, which has a much bigger constituency to cover, at a time, perhaps, in their life when they do not have the same sort of energy to canvas such large areas? The one thing which will happen is that these individuals will either stay in the House of Keys or they will be lost to the political process altogether. It is totally illogical to develop the idea that this new proposal will develop a body of elder statesmen. No matter what our individual opinions may be from time to time of the performance of the Legislative Council, there is a rôle in government for the elder statesmen, for those people who have many years of wisdom and experience and balance perhaps, to, from time to time, temper some of the proposals which come from the House of Keys. I believe that if we pursue this particular direction, that will be lost to us.

My overriding concern is that if we do pursue this proposal today, no matter how much it is couched in nice terms to try and seduce hon. members, it is still fundamentally the same Bill which has come forward time and time again and which has been rejected because it will fundamentally destroy the dominant rôle of the House of Keys, and anyone who thinks otherwise is dreaming. I have heard a fair bit of naïve

idealism this morning, but do not lose sight of the fact that this Bill, if it is accepted, will totally undermine the ability of this legitimately elected body, the House of Keys, to retain its predominant rôle as the powerhouse, which I think some members have mentioned, of government. You will be creating directly elected members from constituencies which are much bigger than our individual constituencies and, regardless of how we try to determine it now, they will come into office feeling that they at least have equality with the House of Keys and still will be arguing that, because of their greater constituency, they could, in fact, have a predominant rôle themselves.

The hon. member for East Douglas, Mrs Cannell, has argued that the new Legislative Council members will have a different rôle. No, they will not; they will have exactly the same rôle. They will still be able to be ministers, they will still be members of departments, they will still be dealing with legislation, they will be dealing with policy and finance, and the only two new proposals which have been put forward are a *possibility* that they could scrutinise secondary legislation and a *possibility* that they could scrutinise European legislation. Otherwise, they are going to be exactly the same as they are now, so there is no new rôle for members at all proposed in this. The one rôle which is being denied to them is one which, I believe, legitimately could be argued strongly against, and that is that anyone from Legislative Council should not be eligible for the position of Chief Minister. Why shouldn't they be Chief Minister? They will have the same legitimacy as anyone else elected in this chamber, they will be directly elected by the public, so why shouldn't they also have the expectation, at some point, of becoming Chief Minister as well?

There is a recipe for ongoing conflict here between the ‘newly elected’, as it would be, Legislative Council and the future House of Keys, and the hon. member for Middle is quite right when he identifies the new era which we are living in. There is extreme uncertainty, which is likely to be with us for a number of years to come, we have turmoil because of war and a considerable number of very real external threats to the Isle of Man, and the last thing we want at this particular juncture is conflict within our own ranks (**A Member:** Hear, hear.) – and this is what this Bill is going to generate.

I believe that we should strip away all the rhetoric that we are hearing around this Bill and get to the nub of what this Bill will do: it is going to undermine the House of Keys, it is going to develop a permanent opposition in Tynwald and it is going to be a recipe for instability. I do not accept at all the arguments that have been put forward that this is the ideal way forward because it does allow members to hang their own amendments on the Bill as it goes through the clauses stage; if anything, that is going to distort whatever is being proposed in this Bill in the first place, because once we start opening the doors to a whole raft of amendments, we have no idea what the end picture is going to be, and we could actually end

up with a Bill considerably different to the one that is before us at the moment, but a Bill which will be considerably less workable than this one is.

The hon. member for Rushen, Mr Rimington, I think has recognised the possibility of the conflict which could – and very likely will – develop between a directly elected Legislative Council and the House of Keys. He says we should welcome conflict; yes, we should welcome debate – that is what the Tynwald chamber is for, we are there to debate – but what government in their right mind would deliberately introduce an element into their parliamentary system which deliberately stirs up conflict? We have got to keep our feet on the ground. We, as I have said, are in very turbulent times, and these turbulent times are going to be with us for some time. To then, recognising that, introduce a element of permanent conflict into the system is irresponsible in the extreme. (*Interjections*) It is not rubbish at all; the hon. member has not been in this House very long (*Interjections*) and has not seen the damage that conflict can do. We have to recognise that it is very easy to turn this chamber into a dilettante debating society. We have to live with the consequences of this Bill once it goes through and, in spite of where my heart lay in the first place, which was that there was an argument for reforming the Legislative Council and there may still be an argument for reforming the Legislative Council, I do not believe that this is the way forward.

Mr Speaker, as previous speakers have said, it would not be appropriate to go through the Bill at this stage in detail on the clauses, but I have to say that, on a matter of principle, at this particular time, I cannot support this Bill, and I would urge hon. members to vote against it, because I do believe that this is the wrong time and the wrong structure that is being put forward.

**The Speaker:** Hon. members, the House will now stand adjourned until 2.30 p.m. and the first to speak will be the hon. member for Douglas West, Mr Downie.

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

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**Constitution (Legislative Council) Bill –  
Second Reading – Debate Concluded –  
Amended Motion Carried**

**The Speaker:** Please be seated, hon. members. We continue the debate, hon. members, with the hon. member for Douglas West, Mr Downie.

**Mr Downie:** Thank you, Mr Speaker. I think what we have got to try and do, if it is possible, during the course of the debate is to really establish a principle of whether we want a democratically elected Tynwald or not. There are a number of members in here who would support that view. It would make sense, if there

is going to be a democratically elected Tynwald, to have the elections all at the same time, which is not unusual. Previous contributors to the debate have said that they would possibly like to see 16 two-seat constituencies on the Isle of Man, but my view is if we are determined to have a democratically elected Tynwald, to my way of thinking that probably would make the most sense. We could have a boundary commission report to make sure that there was proper proportional representation, and I could then live with STV, provided that the mechanism was not meddled with in some way and we were not going back to the silly situation where people were allowed to plump. So, if we had a quite clear and concise voting method, we had proportional representation, there was a proper boundary commission brought into play and we had a democratically elected Tynwald, the issue may be worth pursuing.

One of the problems I have with the schedule – if I can start with the schedule in the Bill – is that the area which has 26,000 people, in round terms – the Borough of Douglas – appears to only have two representatives, so I would suppose then that the most effective way to go about electing our elder statesmen, if we are going to take another option, another route, would be to go out to the people of the Isle of Man in general and let us have an all-Island vote, and when the eight people who top the poll are produced, they would then become the Legislative Council. For whatever reason, I honestly feel that you are going to find it difficult to find candidates to stand for this particular system, and that leads me back to the main issue: I think we have really got to establish the principle of having a democratically elected Tynwald before we start to look at other components that exist in the Bill.

‘Senior statesmen’: that has been said today, but really, if we do go down a road where we are having electoral areas for the purpose of elections, are we not depriving ourselves of the opportunity to have senior statesmen? What will be the background of some of these people who put their names forward? Are they going to come forward on some strange mandate? Will they have the best wishes and thoughts of the Island uppermost in our minds? What experience will they have, for instance? We see lots of strange results around the Island during local authority and other types of elections that take place, so I think we have got to be absolutely certain what it is that we are trying to achieve.

The other issue that I would like to raise at this time: come what may, I think there comes a time in a person’s life when their ‘career’, as it were, particularly in a job as demanding as being a member of Tynwald can be – and I say, ‘can be’ . . . There should be an upper age limit, and I maintain the view that there should not be anyone over the age of 70 standing for election. They need to be medically fit, and I also think it is against principles that there are people in here and in another place drawing an old age pension and drawing a salary as well at the same time, and I think that is contrary to principles as far as I am

concerned. Remuneration for the elder statesmen: if you look at clause 3(5), that is linked. And I will read clause 3(5): 'If an elected member accepts an office of profit under the government of the Island or the government of any country or territory of the Island or becomes a member of the House of Keys or a local authority, his seat shall be vacated.' Can I have that clarified by the hon. member? And does that actually mean that if a person is elected under this legislation, he physically cannot become a member of a government department or receive remuneration by being a member of a board or a statutory board? Is that quite clear?

I think what is required as well is a proper job description of what we are expecting members of the Legislative Council to actually do and what they need to deliver. I know there are parts of the Bill which relate to scrutiny of legislation, scrutiny of EU legislation, but in all honesty I do not really see that as a particularly onerous task. And are we actually going to get people to put their names forward? I take it that the hon. member is expecting them to mount some sort of a campaign – they need to be elected on an issue, when all is said and done – and then they are just going to come in here and scrutinise legislation or scrutinise EU legislation. I think we need to be a bit clearer. I would naturally assume that anyone who was popularly elected to this House or to Tynwald would consider themselves as having a mandate. That mandate gives them certain rights and privileges, and this is where I think we need to be absolutely clear on what the job description of a member of the Legislative Council actually is. There will be issues that some of these people will be elected on. They may be perhaps parochial issues, and that is why I am of the opinion, perhaps, that if we are going to go down this route, we should have 32 people democratically elected in one go and then decide who goes where afterwards. That would be a much fairer basis for doing things.

I have no particular hang-ups about the Bishop's vote. As previous speakers have said, it is a historical link. I have never really known, in my time in here or in another place, that the Bishop's vote has been crucial. He does take part in debates, and I think he has a very healthy approach to the workings of Tynwald, and I would be sorry if we lost him and his historical links with the Isle of Man.

As previous speakers have said, the Bill that is before us today, I feel certain, is destined to go to a committee. I do not think it is plain sailing. My view, at the present time, is to support it in its second reading, but unless some amendments come out of the Bill itself which provide more clarity on a way forward in which to proceed, I will be reviewing my decision. I still think that, as the hon. member for Garff said, there is a very good argument for having everybody out together and then looking for volunteers to go up. Then, if you cannot get the number of volunteers, we draw the names out of a hat. At least then we are in the situation where we have got control of what happens and we are not leaving ourselves wide open, as it were,

to the great unknown. I think that is the downside of the Bill as it is written at the moment; there is this fear of the unknown, there are unchartered waters, and if we are going to have a democratically elected Tynwald, let us do it for the right reasons. Thank you, Mr Speaker.

**The Speaker:** I call on the hon. member for Ayre to reply.

**Mr Quine:** Thank you, Mr Speaker. I have been quite pleased with the debate, really. I suspect we have not heard it all yet, but I am quite pleased with it as a debate, and I thank those members who have taken part for their contributions.

I just want to say three very short preliminaries. First of all, I start from the position that the predominant view in Tynwald and the Keys is, at least up to the formation of the last House, that the Legislative Council is in need of reform. Hon. members can look to various reports and the record of proceedings, I think, which will clearly establish that. The second point I would like to just remind members about is that I think, certainly in terms of the majority of the membership of this House, the underlying consideration is this matter of political legitimacy – and I will revert to that when I come to deal with the position of the Lord Bishop – but not just political legitimacy in the context of giving it a veneer of respectability, political legitimacy in the context of what is acceptable for this new century that we have entered into. In taking a position on that, I think it is not unreasonable that we should look to what the great majority of legislatures are doing in respect of this matter. The third preliminary I would put is that I would just remind members that, in putting this Bill together, I wrote to hon. members, I analysed why I was putting forward a Bill based on this framework and I drew members' attention to the other approaches to this which have been before the legislature – or branches, in some cases – and in respect of which we had not been able to arrive at a positive outcome. So, it is not a question of me saying that this is an approach that I favour; it is an approach that I have designed, based upon a fairly careful analysis of what has gone before. I hope I set that out fairly clearly in the letter which I sent to members, and I have drawn heavily on the past reports and on the debates themselves, which of course are in the *Hansard* for all to see. I would like to think that what you have before you does represent – to use a term that has been used by at least two members here this morning – a 'practical proposition'. If I thought for one moment that it did not, then of course I, for one, would not be putting it forward.

I thank Mr Rimington for his contribution. His reports, I think, in general were supportive. I thank him for recognising the value of the structure of the Bill, although that structure has been criticised by others. I agree with the hon. member for Rushen, Mr Rimington, that conflict is essentially inherent in politics. We may debate degree as to what is necessary

confrontation and what is conflict, but I think the very nature of politics, in the sense that one seeks to make a case and seeks to persuade and seeks to establish against contrary views, makes that conflict, to some extent, I think, inevitable. I do feel that a number of the contributions today have overplayed that matter of conflict.

In relation to what is in this Bill, I would just make three points here. Firstly, this Bill does envisage a distinctive rôle for the upper chamber. The point, I think, has been made by at least one member that perhaps it could be even more tightly defined than it is in this Bill. I would have no great difficulty with that, other than, as I explained in my introduction, in putting this Bill together one has to be guided to a large extent by what the Attorney-General's Chambers advise you. Because of that, although it is conceded that there are four elements to the rôle, only two of those, the new elements, are stated in this Bill. If hon. members want to take that advice with a pinch of salt and restate that, bringing in all four elements more clearly, then that is fine by me. Again, in this context of conflict, I would remind members, if I may, that in any second chamber – and certainly a second chamber as we have it or as is proposed here – there are very clear limits to the extent to which they can frustrate the will of this hon. House. There are limits to that, and that is why I would not use the word 'defeat'. There are one or two exceptional circumstances where they could, by their actions, by the position they take, run an issue out of time or defeat it in that sense, but basically, in evaluating the importance of this matter of conflict of interest, we should take on board that the second chamber only has a limited capacity and that capacity essentially is one to frustrate and delay. Thirdly, still staying with this matter of conflict of interest, I would point out, that contrary to the view of some members, I do honestly believe that if you have a larger base – for the purpose of this Bill, I refer to it as electoral areas – I agree with the hon. member for Rushen, Mr Rimington, that, all other things being even, it should introduce a stronger national perspective. And let us be quite honest: even within the Legislative Council that we have now, I think you can, on occasions – I am not saying you see it every time that we sit, or certainly not on every item – see perhaps a more pronounced national perspective coming through because of the freedom inherent in their position. It may be that on occasions that we think that that freedom is being exercised in one direction, but that is an entirely different matter. So, I really, in common with Mr Rimington, do not have the concerns that many have about this issue of conflict of interests in some way flawing or creating serious flaws in this Bill. I certainly agree with him about public consultation and consensus in progressing any piece of legislation; that is important, not least in a piece of legislation such as this. I would hope that we will, at the end of the day, whatever happens to this, see greater public input and hopefully consensus as to the way that we move forward.

Unlike myself, Mr Rimington has slightly stronger views – or has different views, should we say – about retaining the Bishop's vote, and perhaps he is more concerned that I am about that. I feel myself that it is not that the Lord Bishop has a vote *per se* that is important to me; it is this question, as I said in my introduction, of a Crown nominee in effect having a vote which can have substantial effect. If you take it in the legislative context, then quite clearly, at the end of the day, Keys can prevail, so it is not so important in that context, but in other areas, whether it is in areas of Council voting separately from the Keys or, as in Tynwald, on a joint vote, then it is an important consideration. As put, in fact, in this independent report that I referred to in my speech, the report by Doctor Edge, I think he summed it up very well where he said that in these varying situations 'in one context, it can be seen to represent a majority of one in Council, and in another it gives rise to a tie requiring a casting vote'. That is just in Council alone, so you can see the impact of that vote, and in Tynwald the vote is decisive and it can dictate, it can influence whether or not Council's vote goes with the Keys or does not go with the Keys. In this report, which is, as I say, very detailed – there are three pages of it here – decisive votes by the Lord Bishop are quoted. Over a number of years, these cases are all quoted here for everybody to refer to and read, and that is the essence of my submission: it is simply that the Bishop, who is not a person who has been put there through popular expression, has that disproportionate influence over the outcome of our proceedings. So, I take a slightly harder view, perhaps, on the position of the Lord Bishop than the hon. member Mr Rimington does.

Mr Corkill has already made his position very clear: he is against the second reading. That is fine; if Mr Corkill wishes to vote against the second reading, he is perfectly entitled to do so. Nonetheless, a lost cause as it may represent in terms of today's voting pattern, I think there are one or two matters that I would still refer to. He asked, in relation to qualifications, about criminal records; I think the short answer to that is that the same qualifications, so far as that is concerned and other matters, that apply to Keys candidates, as this Bill is presently drafted, will apply to Council, so obviously the same standards are inherent as far as qualifications are concerned. The hon. member for Onchan, Mr Corkill, says those standards are not high enough. He may have a point; perhaps *our* standards – because they are the same standards as we have arrived here at – are not high enough. But that is not a case to vote against the Bill in principle; that may be a case to vote for an amendment to the Bill when we reach that decision, but we are talking about comparable standards. He also feels that the sort of people that we would attract could not be described as 'elder statesmen'. Quite clearly, the starting point in analysing that is the rôle, and we have specified the rôle. There are three different functions and, as I said in my opening speech, they are concerned with scrutiny, they are concerned with monitoring. It is in the context of that rôle that we will

or will not attract people. They do not assume a constituency rôle, and that is an important difference between attracting candidates to sit here and attracting candidates to be in Council and perform a different task, because they would be putting themselves forward, albeit on a larger electoral area, on the basis of qualification and experience. There is no requirement, having regard to their duties, to put themselves forward on what their policies are on *a*, *b*, *c* and *d*. That is not the issue. It is a specific rôle that they have to perform, and they would be putting themselves on qualifications and experience to provide that function, to do that rôle. And I know, and hon. members here know, that there are a considerable number of people who are politically minded and who have great experience – some that have served in this House, some that have not – but they may not want, at a point in time, to be upfront in a constituency rôle, because that is entirely different. That involves a great deal of additional commitment, a great deal of additional involvement, which is not inherent in being a member of the Legislative Council, and certainly not one where you are working to specified statutory duties.

Why can the Chief Minister not be in the Legislative Council? Of course, if we reach a point where we are dealing with the clauses, that can always be changed, but my rationale is quite simple: firstly, because he would be coming from a body that had specified functions that do not involve formulation of policy. He would be coming from a body that had quite different functions to perform, and my view is that it would be inappropriate therefore for him to fill that rôle. As I say, if at a later stage the consensus is that it should be open to him, let the Chief Minister run with this situation, it would not cause any great heartburn to myself, but nonetheless I think logic and common sense dictate that if you belong to a body that has got a quite clear, quite distinct rôle that does not take you into the realms of the formulation of policy, then it would appear to be sensible and prudent that your Chief Minister should not come from that body.

I thank Mrs Cannell for her contribution, and again she did deal with this matter of the qualifications, which more or less answered Mr Corkill's query. She is concerned about the disproportionate allocation of seats. I take her point. I understand where she is coming from, as one other member has raised the same issue: matters not, I would suggest, of policy, but matters which we can address later on in these proceedings if that point should be reached. I note her views that ministers should all be from the House of Keys. That is not in this Bill for the very simple reason that, in the consultation process I had with members, one of their concerns was that ministers should not be excluded, because it should be a political judgement for the Chief Minister, and secondly, there will always be a situation where you will have an exceptional member of the legislature who is in the Council and who may be ideally suited for a particular task. So, I took that point; I picked it up

from the consultation and widened it from my initial letter that I sent out to members asking for their views.

I thank Mrs Hannan for her generally very supportive comments. She is quite right, of course – and I certainly view the Bill in this light: it is a Bill that is drafted to facilitate further evolution, of the Legislative Council. She points out I think, very correctly and properly that many countries have second chambers that are elected, and they do not seem to have these problems that are envisaged by certain members. She did make the point that a firmer constitution may be required for the Legislative Council, and I have no argument about that at all. I have already touched upon that. A further definition, a better definition, of that rôle is quite possible, and that can be dealt with.

The hon. member for Peel was not too happy with clause 7 in the context of the Council of Ministers deciding which of the EU instruments could be viewed by the Legislative Council. I have no strong views on that. I think the view that has been taken is there are so many of these and given that government has a mechanism to determine basically whether or not they have any application to the Isle of Man, it would be prudent to use that government 'check', if you wish, to decide which can be diverted and put to one side and which would warrant examination, but I have no strong views on it. I understand, of course, the hon. member for Peel's views on STV, and I would have been very surprised if that had not been raised anyway by at least two or three members, but I know exactly where she stands. I thank the hon. member for Garff, Mr Rodan, for his general support, and I subscribe to his view that the public outside are quite strongly in favour of reform. But not only that: I would just remind members that if you go back and look at the manifestos of all of the candidates at the last general election, you will see that a very substantial majority of the candidates – and a very substantial majority of the those who were successful in being returned to this hon. House – were also in favour of reforming the Legislative Council. Some either took no position or, in two cases, I think, they took an opposite view, but the majority view – not just the public view, the majority view – echoed through the manifestos, was that this is what should happen. Again, the hon. member for Garff made the point that he sees that the underlying object of today's exercise, certainly in seeking to carry forward this second reading, is to seek affirmation of the principle of popular election, and I certainly endorse that. He made the point that if we have flaws, if we have variances, they can be addressed later by way of amendment to the Bill. I think more or less he served notice on us, depending upon the progress of the second reading, that he would want to make a move to run with the concept of a single election to Tynwald of 32 seats and then divide up and have a number of those members constitute the Legislative Council for legislative purposes – and presumably legislative purposes only – and I understand his position on that. He mentioned, of course, that he does not see anything impractical about

postal ballots, and I do not see anything impractical about that when you consider the size of our constituencies. We are still talking about relatively small constituencies in relation to those which exist in other places.

Mr Earnshaw is opposed to reform of the Legislative Council. I think that comes through quite clearly. He does not believe that this Bill would assist in getting the experienced members that are needed for the Legislative Council. I think he would also accept from me that we have not had great success in getting experienced members to Legislative Council to date by using the existing system either. In fact, we have been made to look rather foolish with the exercise to date. His bottom line is that although he accepts that there are shortcomings in the Legislative Council position, he feels that they are insufficient to justify change. If there are shortcomings and if he has agreed in principle that, all things being even, we should seek to improve upon that position, then I would suggest to him that he should be supporting the second reading. Indeed, I would appeal to him that he should be supporting the second reading.

Again, I thank Mr Shimmin for his comments. He was concerned about clause 3(5) and the implications of that – no member being able to take a position in government – and I can provide that assurance, because what this amounts to is that a candidate for the Legislative Council would be in exactly the same position as that for the House of Keys. In other words, it is taken from what exists for the Representation of the People Act.

Mr Quayle is obviously opposed to reform of the Legislative Council. He says it would be a massive constitutional upheaval. I think you would need a most dramatic imagination to consider what we are proposing here to be a massive constitutional upheaval. Essentially, we are seeking to substitute one form of election for another. He feels that political stability would be cast aside. I think all I need to say to that is that that statement is manifestly a gross overstatement. By definition, he feels that 50 per cent of a Keys vote is a democratic process. (*Laughter*) I certainly cannot subscribe to that. He feels that there would be problems as we go through the change. I simply comment that if you go through any change, there are problems. If you go through the various steps in life, there are problems. Managing change is something that we, above all others perhaps, *should* be able to cope with. More importantly, if the changes are reasonable, then I do not see why that should be a difficulty at all. He spoke about the Lord Bishop's position, and I have spelt out my position on that, but I do not accept that this Bill would make the difference between the diocese continuing to exist here or the diocese not existing. If the diocese should fail to exist, I am afraid it is much more likely to be based on the economics of the Church of England (**Several Members:** Hear, hear.), the financial position of the Church of England, and not whether in the Isle of Man, a small jurisdiction like the Isle of Man, we decide that yesterday he could stand up and speak and vote but tomorrow he can only

stand up and speak and cannot vote. I do not think any logical evaluation would lead us to the conclusion that that has any substance. And certainly, it is not of such substance to cast aside or to lay against the important principle of democratic legitimacy and whether or not Crown nominees should be in a position to influence the outcome of a democratically elected legislature.

Quite clearly, Mr Bell is not in favour of reforming the Legislative Council. I am sure he has expressed that view on previous occasions, so I am not surprised about that. He makes the point that, to date, we have been unable to find a practical working alternative. I suppose the idea of this Bill, if we can get it to second reading and beyond that to further study, is that it might produce a practical working alternative, either in the form that is in this Bill or somewhat enhanced. But one thing is for sure: we will never find a practical working alternative if we do not look. The hon. member's approach appears to be 'I am not going to look, therefore I shall not find', and therefore he hopes he can legitimately say to his electors, 'I would change it if I knew how to improve things, but I am not going to change it because I have not found a better solution.' And he said it will not bring in elder statesmen. I would ask him: why not? We are talking about a different rôle. We are talking about a rôle that is going to be statutorily defined. We are talking about a rôle which is largely devoid of what you would call the 'hurly-burly' aspect of politics, the constituency aspect of politics. Obviously, any member of the legislature is, and would continue to be, a conduit for passing things through, as members of Council do now, but that is very different from having the duties and responsibilities of the Representation of the Peoples Act to represent the people in a constituency. That is an entirely different matter, and the public will decide ultimately, in relation to the rôle, who they want to fill that rôle, and they will be judging that against experience and qualification.

He feels that somehow this Bill, or the amendments inherent in this Bill, would destroy the House of Keys. That does not bear scrutiny either. Clearly, the Keys is dominant. The Keys will remain dominant. The last call on legislation rests with the Keys. The last call on legislation will remain with the Keys, and when it comes to a combined Tynwald vote, again the last call is going to have the impact behind it of the larger volume of votes that are represented within the House of Keys, so I do not see how that can happen.

He said there is presently little value in the make up of the Legislative Council functions and duties. This is the point I was going to make here: if we are talking about the limited value under a new scenario, I would just ask hon. members to reflect on what we get today from what we have in the Legislative Council. Just reflect on what we get there. Take the sittings of the Legislative Council: the last figure which I got the time I put the letter out to you was that there were 18 sitting days and they met on 11 days. Is it not logical and sensible that if you look at the totality of the commitments that we have to perform and to meet as a

legislature, we should not allocate tasks that very properly can fall to those people and which they can perform? I would say that it is sensible that they should undertake these duties.

Uncertainty: somehow, this little Bill, this change of electoral procedures, is brought in and aligned up against, in the mind of the hon. member for Ramsey, all the problems of today, from the Gulf War right through to Northern Ireland. That is totally absurd, and even the hon. member, if he just reflects on what he said, must accept that it is totally absurd.

A final point I would make on Mr Bell's contribution is that he seems to be under the impression that wisdom is inherent in long service. It most assuredly is not, and I am coming at it from one of those who –

**Mrs Crowe:** That is true.

**Mr Quine:** – can be accredited with reasonably long service. To suggest that you need long service to have the wisdom to be an elder statesman does not stand scrutiny. If there is a job to be performed, you look at that job, you look at the experience that is necessary for that job and you look at the qualifications that would help to perform an evaluation. They are relevant, but to think that somebody who has been sitting on a perch and had 40 years before the mast and never put a finger wrong somehow has this prior claim on wisdom is totally ludicrous. (*Interjection by Mr Cannan and laughter*)

I think I have covered all the points, really, but I am not finished. (*Laughter*) One final point before I go on to deal with the scheme as such is that the hon. member for West Douglas, Mr Downie, suggested that when we reach 70, we should fade away. (**Mrs Crowe:** Yes.) I know that the majority of you in this hon. House are hoping that I will fade away when I am 70 (**Two Members:** No!), but do not bank on it –

**Mrs Crowe:** No, we will not.

**Mr Quine:** – because there is an important point here that has been made by a couple of people, and that is this: why should we be attaching age limits (**Two members:** Hear, hear.) to people that represent others? When you go to a popular election and they say you are the person that they want to represent you –

**Several Members:** Hear, hear.

**Mr Karran:** I totally agree.

**Mr Quine:** If some of those, I am afraid, substantially less than 70 fell off the perch, they would not even be noticed (**A Member:** Indeed.) (**A Member:** Hear, hear.), but the suggestion that you automatically reach 70 and you are written off is ageism, perhaps, but it does not represent the public interest.

**Mr Houghton:** That is what we are going to do with Mr Cannan.

**Mr Quine:** Mr Speaker, what is on offer in this Bill? Certainly, let me say I do not suggest that it is a scheme that will meet everybody's aspirations – I am not suggesting that at all – but what does it represent? Essentially, there are 10 particular points that I would draw to members' attention. It would provide that the membership of the Legislative Council would remain essentially as it is at present, so there is no radical variation there. As it is, we would have the Lord Bishop and we would have the Attorney-General there. The Lord Bishop would be able to speak, but he would not be able to vote, and I maintain there are good, solid, democratic reasons why that should be so, and they are well documented. Secondly, the qualifications for candidacy would remain as at present, subject to the endorsement of proposers and seconders, so there is no radical change there. We are taking that essentially as it stands also. For election purposes, there would be five electoral areas related to voter distribution, and the voter qualifications would be the same as for the Keys – nothing startling there, I would suggest. They would be elected for five years, following the pattern of the House of Keys. They would have their election all together one year ahead, and that clearly slots in with the House of Keys election. The fifth point, I think, is important, because it would give them, for the first time, a very clearly defined rôle: revision of primary legislation – essentially what they do now – scrutiny of secondary legislation by examination of statutory instruments – that would be a new function – scrutiny of EU legislation – that would be a new function – and scrutiny of government policy, activities and expenditure, which is essentially what happens through questions and motions now and through their participation in Tynwald Court and select committees of Tynwald Court, which is not going to be changed. The Legislative Council would function as a separate entity in carrying out a number of those functions, so that is a slight variation in procedure, but only a marginal one. And this is important, having regard to past comments: the Legislative Council would remain a component of Tynwald Court, and Tynwald Court would continue to function as at present. We had a vast amount of comment about previous proposals to reform the Legislative Council because they would have impacted upon the tripartite structure, the tricameral structure, of Tynwald. This scheme leaves that structure largely in place. It is in place; it is just a variation in the procedures for one or two aspects of their work. Elected members would remain available for services; the only qualification I have put in the Bill is that the Chief Minister would have to come from the lower House. While elected members would not have statutory constituency responsibilities, they would continue, as would any member of the legislature, to act as a conduit to pass things along. Nothing unusual about that – that happens.

They are the bones, Mr Speaker, of what is in this Bill and, at the end of the day, I think, at this point in time, we have a fairly simple decision. It is not whether, in this Bill, all the clauses meet all the requirements – that is a matter for another stage, should we reach that stage – but what is inherent in the vote that we are now going to be asked to partake in is whether, as a matter of principle, reform of the Legislative Council is something that you wish to persevere with. And I would say there are two important principles that are involved here: one is that the Legislative Council should be subject to popular election, and secondly, that their function should be statutorily defined. So, if you believe that we should be progressing to reform the Legislative Council and hopefully that at least you are minded to support those two underlying principles, then I would ask hon. members to vote for the second reading. Where we go from here is a matter that we shall decide. If it is supported, it may go to committee. There are various paths, but that is what the vote is for. That is the point we have reached, and I would invite hon. members to support this Bill for its second reading. Thank you, sir.

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

**Mr Shimmin:** Mr Speaker, apologies for extending this any longer than we absolutely have to, but a point of clarification from either the mover of the Bill before I cast my vote, please, or indeed the Secretary of the House: was I right in understanding from the mover of the Bill that in clause 3(5)(a), he was saying that the terminology there is the same as exists for members of the House of Keys?

**Mr Quine:** The import is going to be the same.

**Mr Shimmin:** Import? (**Mr Quine:** Yes.) I just find it is not what it says here, and I do not know if the Secretary can clarify it. I believe that if a member accepts an office of profit under the government, that is fairly fundamental to this Bill, which I believe would exclude members of Council from serving in parts of government, and before I give my vote on this, I would have preferred to have had that clarified, rather than what the hon. mover has just actually said.

**The Speaker:** I think that if the mover is happy, we should seek clarification, maybe, from the Secretary unless you wish to add anything.

**Mr Quine:** No, please. All I wish to say is that, as far as my drafting instructions are concerned, I have asked for the qualifications as presently exist for members of the House of Keys.

**The Speaker:** Okay. Can I ask the Secretary?

**The Secretary:** Mr Speaker, I understand the issue to be whether or not the Bill as currently drafted, in particular clause 3(5), has the effect of preventing

any elected member of the Legislative Council, after the Bill has been passed, from holding office in the government, either as a minister or as a member of a department. As I understand it, that is the result. I get to this conclusion by looking at section 3(5), the clear wording of which prevents any member elected to the Council from accepting an office of profit under the government of the Island. That clearly includes a ministerial office or a membership of a department which is remunerated.

**Mr Quine:** Same thing, as far as I understand.

**The Secretary:** In schedule 3 to the Bill – if members can turn to schedule 3, page 9 – one of the enactments repealed – it is the third one from the bottom – is the Payment of Members' Expenses Act 1989, section 7(6). The Payment of Members' Expenses Act 1989, section 7(6) says, 'Payments under this Act' – that is ordinary payments to all members of Tynwald, either as members of Tynwald or as receiving the augment as members of government – 'shall not constitute a salary payable by the Isle of Man Government for the purposes of section 12 of the Isle of Man Constitution (Amendment) Act.' That is the section which is now parallel to what would, in fact, be the case under section 3(5) of this Bill, and the net result of those provisions, in my opinion, as I understand the matter now, is that there is no qualification to clause 3(5) of the Bill and 3(5) therefore stands alone, unqualified, and prevents any elected member of the Council being a member of government in any capacity.

**The Speaker:** I do not know if the hon. member for Ayre wishes to comment or ask for clarification.

**Mr Quine:** I just want to restate. If the learned Clerk, of course, has given his opinion, I am sure he has given it properly. If, in fact, an error has crept into this Bill, then I, for one, would be making arrangements, if it received a second reading, for that to be corrected.

**A Member:** Hear, hear.

**The Speaker:** Okay, hon. members, I think everyone is clear – and I think clarity is important if there is any concern – and I hope that is, at this stage anyway, subject to the mover, if the Bill gets second reading, making further investigations and clarification.

Hon. members, the motion before the House is that the Constitution (Legislative Council) Bill be now read a second time. All those in favour say aye; against, no. The ayes have it.

*A division was called for and voting resulted as follows:*

*For: Mr Cannan, Mr Quine, Mr Rodan, Mr Rimington, Mr Houghton, Mr Henderson, Mr Cretney,*

*Mr Braidwood, Mrs Cannell, Mr Downie,  
Mr Shimmin, Mrs Hannan, Mr Karran and the  
Speaker – 14*

*Against: Mr Anderson, Mr Quayle, Mr Gill,  
Mrs Crowe, Mr Bell, Mr Corkill, Mr Earnshaw  
and Capt. Douglas – 8.*

**The Speaker:** Hon. members the motion carries with 14 votes for and 8 votes against.

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### **Suspension of Standing Order – Approved**

**The Speaker:** Hon. members, I call on the hon. member for Garff, Mr Rodan, to move suspension of standing orders.

**Mr Rodan:** Thank you, Mr Speaker. I rise to move the suspension of standing orders 37(3) and 155 to allow amendments to the long title of the Constitution (Legislative Council) Bill 2003 to be moved at this sitting. I did write, Mr Speaker, to hon. members last week, explaining that I wished to table amendments to this Bill, the effect of which would be to change the proposed mechanism of how Legislative Councils are elected from one of separate popular election, as proposed in this Bill, to one of a single popular election of all members of Tynwald. I have been advised that such amendments I wish to table bringing this about would actually be outwith the present long title of the Bill, in contravention of standing order 154. In order to table such amendments at the clauses stages, the existing long title needs to be changed beforehand. In this respect, Mr Speaker, standing orders present a dilemma, because standing order 155 states that the preamble and title shall be considered only after clauses have been considered and, if necessary, amendment, and at that point it would be obviously too late for my purpose. Therefore, I need to ask for standing order 155 and standing order 37(3) to be suspended before the clauses stage, and this will at least allow the case to be heard for amendments to the long title. It would then, of course, Mr Speaker, be up to members whether they actually accept any amendment to the long title that I may move, so I beg to move, sir.

**The Speaker:** Member for Douglas North, Mr Houghton.

**Mr Houghton:** I beg to second, sir.

**The Speaker:** Hon. members, the motion before the House is that standing orders 37(3) and 155 be suspended to allow amendments to the long title of the Constitution (Legislative Council) Bill 2003 to be moved at this sitting. All those in favour say aye; against, no. The ayes have it.

*A division was called for and voting resulted as follows:*

*For: Mr Cannan, Mr Quine, Mr Rodan, Mr Quayle,  
Mr Rimington, Mr Gill, Mrs Crowe,  
Mr Houghton, Mr Henderson, Mr Cretney,  
Mr Braidwood, Mrs Cannell, Mr Downie,  
Mr Shimmin, Mr Corkill, Mr Earnshaw and  
Capt. Douglas – 17*

*Against: Mr Anderson, Mrs Hannan, Mr Bell and the  
Speaker – 4*

**The Speaker:** Hon. members, that motion carries, with 17 votes for and 4 votes against. I would just remind hon. members that, as you will recall, suspension of standing orders required 16 votes. So, 17 votes for, 4 votes against.

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### **Constitution (Legislative Council) Bill – Amendment of Long Title – Motion Carried**

**The Speaker:** Hon. member for Garff, move your motion, please.

**Mr Rodan:** Yes, thank you, Mr Speaker, and I would like to thank the House for providing this opportunity. I am, of course, Mr Speaker, conscious that we have concluded, at some length, a debate on this subject, and I do not wish unduly to repeat arguments (**A Member:** Hear, hear.), but I do just need to spend a minute or two to set out the case for the particular amendments that I would wish to bring at the clauses stage. So, I hope that members will forgive if some of it does sound somewhat repetitive, but it is essential, I think, that the case is at least set out.

The Bill that is before us certainly achieves, as has been argued, a democratic legitimacy for the Legislative Council, but I do suggest that there is a price to be paid for this particular model being suggested. What is being proposed is, in effect, two separately elected chambers elected at different times by the same electorate, albeit in different numbers of that electorate, and I think inevitably there will be a risk of conflict and tension entering into our parliamentary system from this. Legislative Council members would each represent, on average, based on the 2001 voting registers, in this Bill, 7,105 voters, while Keys members would each represent an average of 2,368 voters. The Legislative Council could then, I suggest, genuinely claim to be more representative of the public than the Keys – that is one point.

A second point that has been referred to is the unmanageably large constituencies – or ‘electoral areas’, as they are called – which will be difficult, possibly, to canvass, especially where there is no party political machine for canvassing and, as has been referred to already, a member would need to be prepared to canvass coming on for 25,000 voters, in the case of Douglas, and, in the case of the east constituency, some 15,000 to 16,000 voters would

need to be canvassed by a candidate. There would be inevitably increased expense attached to such an election, and candidates beforehand are going to ask themselves, 'Which branch should I stand for?' I happen not to agree with my hon. friend, the member for Ayre, when he says that, under the separate election procedure as proposed, members would have an exclusively national rôle and no constituency rôle because, Mr Speaker, the very fact of being elected by the public on a regional basis will confer, whether they like it or not, a constituency rôle to discharge, (A Member: Hear, hear.) and I do not think members of an elected Legislative Council would accept the limited rôle that is being laid out in this Bill. An example of that is clause 5, which says that no Bill may be introduced in the Council. I think anyone fresh from the polls with a popular mandate may well want to initiate legislation.

A further point, Mr Speaker, without wishing to belabour this, is that the Bill, of course, says, as we know, that an elected member of the Legislative Council cannot be Chief Minister, and some would argue that such a member ought to be able to be a candidate for Chief Minister. Under a separate election procedure, the electorate would have to go to the polls twice in every five-year period, and after such an election the Chief Minister would have to shuffle members around after each election, thus – at least in theory – disturbing the stability that might be in place at that point.

Mr Speaker, one can avoid all of this very simply by the people of the Isle of Man electing the whole of Tynwald at one election. There would be no problems about unelected ministers, because anyone would be eligible to stand as Chief Minister or to be appointed as a minister. The Chief Minister would have the whole of the 32 members of Tynwald available for allocation at the beginning of the term, allowing the best person to be chosen for the job. Everyone would have the same popular mandate and would have constituents to represent, and therefore there would be no arguments about relative rates of pay. There would be no disruptions during the five-year period caused by by-elections from the Keys acting as an electoral college or the need to reshuffle government following a separate Legislative Council election.

So, Mr Speaker, I see the single election model that my amendments would facilitate as addressing a number of the deficiencies in a most worthy Bill that have been identified. My own particular preference for doing this would be through multi-member constituencies of perhaps four, five or six members elected by a fair voting system such as the single transferable vote, but whatever voting method is chosen, the point is that the Legislative Council would become an element of a directly elected Tynwald Court. We could envisage that, after a general election, eight members would be nominated from within that Court and elected by members of Tynwald to constitute the Legislative Council in the same way as any Tynwald committee. I would agree with the Bill that this would have to be done on a geographic or

regional basis as opposed to an Island-wide basis, because I think the geographic groupings by which Tynwald would elect the Legislative Council would be the way to ensure that there is equal representation for all areas in both branches. I think this, in practice, would be important when passing legislation.

The Legislative Council thus elected would be a body constituted for the prime purpose of dealing with primary legislation only. It would be up to Tynwald, if it wished, to delegate further tasks such as scrutiny of European or subsidiary legislation. This would be a matter for Tynwald to decide upon, but the prime purpose would be for dealing with primary legislation only and, in parallel, the House of Keys would become a body for dealing with legislation only, which would mean that all questions to ministers, all declaratory resolutions, all purely parliamentary as opposed to legislative business, would be dealt with solely by Tynwald Court, and this House would carry out its prime function of legislation. As a result, Tynwald I would say, would become the powerhouse; it would become stronger. It may have to meet rather more often than it currently does, but it would be elected, and when it functions all members would vote as one body at all times on matters of policy and parliamentary business. Mr Speaker, in conclusion, the form of amendment required to achieve all this is a moot point. It may look rather like a Bill now. It will be for this House to decide whether it wishes to proceed down this route at the clauses stage or not, but I think it is important that the House does have the opportunity, at clauses stage, to consider – as an option – for the direct, worthy objective, which has been accepted in principle, of direct elections to the Legislative Council, that this be done through what I would argue would be a mechanism that would avoid some of the problems that have been highlighted. So, I beg to move, Mr Speaker:

*In the long title of the Bill delete the words 'the Legislative Council and substitute 'Tynwald'; and after 'election' insert –*

*'to make new provision for the constitution of the House of Keys and the Legislative Council;'*

**The Speaker:** Hon. member for Douglas North, Mr Houghton.

**Mr Houghton:** I beg to second, sir.

**The Speaker:** Hon. member for Ayre.

**Mr Quine:** Just to say, sir, that I would certainly not raise any objection to the change to the long title. It is true that we have been down this road of the 32 being directly elected to Tynwald in the fairly recent past, and we were not successful going along that route, but that is not to say . . . As has been pointed out today, there are new faces and some different membership here, and perhaps it will be better received on this occasion, but the only reason I rise,

really, is to make clear that, from my point of view, as the mover of the Bill, I have no objection to the long title being changed as suggested.

**The Speaker:** Hon. member for Peel.

**Mrs Hannan:** Thank you, Vainstyr Loayreyder. I think members ought to be aware that this, in actual fact, changes how the House of Keys and Legislative Council are constituted. What it means now is that if this legislation does proceed as the member for Garff has suggested, the Legislative Council and the House of Keys become a committee of Tynwald, and that changes the position of the House of Keys and the Legislative Council. It will allow, as happened in the past when there were boards of Tynwald, a 'kitchen cabinet', where members will get together beforehand and decide between themselves, in a small clique, who will go into the Legislative Council. It could be the people who have served for a long time, because that is what has been suggested in the past, and it could mean that the House of Keys would lose the experience of members. It could be that the people that have served for a longer time would go into the Legislative Council, would leave the Keys, so you would not necessarily have a mixture of experience and new members. So, there are a number of issues, I think, which members ought to be aware of with this suggestion. It does sound, on the surface, in some areas, that everyone would be elected and it would be at the same time – an advantage, but I put it to this hon. House that we should be very protective of the House of Keys as it is at the moment. The House of Keys is the representative of the people, and if we go away from this, we are moving into Tynwald being the representative of the people as opposed to the House of Keys. I think we ought to consider it extremely carefully before we do that and just make the House of Keys a committee which can be then either dismissed or not, as the case may be, by Tynwald. I think, too, that the Keys can now sit by themselves, can remove themselves; they have a different constitution, and therefore I do not think that the proposal, simple as it seems, is the way in which we should be going for the House of Keys.

I would remind members that the House of Keys and the Legislative Council sitting together as Tynwald is something which does not happen in other places. It is either the lower house or the upper house, and they tend not to sit together. They tend to meet only very irregularly, if at all. What happens here is that the House of Keys and Legislative Council look at legislation and then, although legislation is signed in Tynwald, the responsibility of Tynwald is for policy, and I think that divide is a good divide and should be remembered by the House of Keys.

We should, I suggest to members today, try to preserve the House of Keys. The House of Keys has a long and robust history. It stood up to many contingencies from outside its being, and I think we should be protective of it. I think the suggestion that we should change that approach today is wrong, and I

would hope members would vote against it. Even if it sounds simple, I do not think that Tynwald should come together after maybe a committee or a gathering, a cabinet around somebody's kitchen table, deciding who will go where and who will get what, because that is what has happened in the past. I think members should have the freedom of choice to decide whether they are in the Keys or they are in the Legislative Council, no matter how they are elected, and I think that decision should be made by members alone. We have before us people who are prepared to go into the Legislative Council; they need to be elected at the moment, and we have difficulty getting them there, but they have made the choice to move from this House or stand again for the Legislative Council. They have made that decision, and I think we should respect that decision which has been made, allowing that we can vote for them. But I do believe that that should be a choice and not get elected to Tynwald and then someone else decide whether you are going to be in the Keys or in the Legislative Council, so I would hope members will consider that when they are voting.

**The Speaker:** Hon. member for Douglas South, Mr Cretney.

**Mr Cretney:** Very briefly, Mr Speaker, just to indicate that my preference will be to allow the hon. member to proceed. I think we will be looking at a number of issues in the weeks ahead in relation to this Bill, and I think the more opportunity we have to look at all aspects, the better chance we have of getting it right. All I would say, though, in response to the hon. member for Ayre, Mr Quine, in relation to the new members, is that it was indicated by the new members who all voted against going forward with the Bill to its next stage.

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

**Mr Bell:** Mr Speaker, I have no problem at all in amending the short title of any Bill to allow an amendment to come forward. We have done that on a number of occasions, to my memory, over the years, so it is a perfectly legitimate process to go through with. What I have the strongest opposition to, though, Mr Speaker, is the proposal that is before us today, because this goes way beyond just a basic amendment to a Bill. This is a very fundamental change to the whole constitution of the Isle of Man, and to bring this forward by way of an amendment to a Bill is absolutely unprecedented. I believe, Mr Speaker, that this should be rejected today and the hon. member should be encouraged to go ahead and bring back a Bill in its own right to give us proper time to consider it in the round and consider all the implications of that, because frankly what is being proposed as an amendment is vastly more far-reaching than the actual Bill we are considering in front of us now. (**Mrs Hannan:** Hear, hear.) This certainly needs far more, and more widespread, consultation, both within and without this chamber, before we embark on what

will really be an exercise to turn the current constitutional position on its head. So, I would urge hon. members: whether we support the principle behind what the hon. member is moving or not, please think very carefully before you go down this route, because we will be embarking on something which, to my knowledge, I do not believe we have ever done before. By all means, consider the issue, but consider it in the form of a new Bill and not a very substantial amendment which, in effect, will be longer than the Bill itself.

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

**Mr Downie:** I rise because I think we should be looking at all the options available. If we are going to enter into this debate, let us do it for the right reasons, and if we do make a decision, let us make the decision based on the facts that we have before us and not just on surmise.

My view is quite clear: if we are going to have a look at a situation like the hon. member for Garff indicates, where there are 33 people going out for election at one time, to me that seems a fair way forward, but there are other issues to consider as well. One I have issue with is that there are seats on this Island presently where, in all honesty, the whole make-up of that particular area wants to be revisited. There needs to be a proper boundary commission inquiry set up to look at the numbers of seats on the Island and how areas are represented. I think that is very, very important and if, as I said earlier on today, somebody wants to look at STV, again there is no problem in doing that, but let us do it properly and not have the issue fudged by people being allowed to plump and come in and out of the system. Let us set the thing up properly, give it a fair hearing and a proper airing.

My view, for what it is worth, is that I think this issue will finish up going to a committee. It is a very big, broad issue now that is before us, and there is absolutely no way, in my view, that we can be progressing this on the floor of the House week by week. There is a lot of dialogue required to take place on this particular issue, and I think that, at the next reading, the whole issue could well go off to a committee and be thoroughly looked at and investigated.

As I said at the outset, we have really got to make our minds up what it is we want to do. Some of us appear to be happy with the old system where we actually control who we elect to the Legislative Council – so, in other words, we have our say on behalf of the people of the Isle of Man – but if you want the much more democratic approach where everybody is elected by the general public, there are other hang-ups that come with that system, and I think it is absolutely important that we know what the options are available, we have got the big picture, we know what the implications are and we are not setting up a régime that is ultimately going to come back and haunt us. So, with that, I have no problem in

supporting my hon. colleague, the member for Garff. I think he has always had this at the back of his mind. We will see where we go, and hopefully the thing will go to a committee.

**The Speaker:** Member for Onchan, Mr Karran.

**Mr Karran:** Vainstyr Loayreyder, to be honest with you, I was not going to speak on this debate. I seconded the proposal by the hon. mover of the Bill to make sure it got debated – as we know how party lines draw up as far as these are concerned – and, to be honest, I was alarmed at what was in the original debate from the likes of the hon. member for Ramsey. I have to say that, with the proposals that are in front of us now, there is an issue in having them all out at the same time as far as the stability issue is concerned, but what does concern me is the way that members have been debating this issue. It is a bit like having the employers work out their contract of employment, in my opinion, and I honestly think, after listening to this debate, that whatever is done as far as this legislation is concerned should be put to a referendum by the people on the changes that are needed in order to do such fundamental changes to the House.

Unfortunately, Vainstyr Loayreyder, I did not realise that this was coming on, and I was out of the chamber when you called the divide on this proposal, but I do feel rather concerned that such a major issue is being tagged onto this proposal. I think this hon. House has accepted it, but it is concerning that these issues can be on the hoof, changing the Bill completely from what it was originally proposed for. And, Vainstyr Loayreyder, may I just point out that with our standing orders – as one hon. member was complaining about my amendments – the situation is that I have had to jump through these made-up hoops, because otherwise we would do what I said would happen when we brought in ministerial government in this hon. chamber, and I think I do not need to repeat that. I think that the hon. member, Mr Speaker, should be concerned about this proposal, and I do think it is wrong of us thinking that we can just do what we want. I believe that with issues of this sort of constitutional merit there should be a referendum, and I shall be looking at that if this Bill goes any further.

What concerns me today, Vainstyr Loayreyder, is that the situation is that I think we have actually seen the demise of the hon. member for Ayre's Bill by the broadening of this proposal. I am not sure whether it is just being used as a device to make sure that we end up getting nothing, because at the end of the day, let us be perfectly honest about it: whether you call it Cooncil Slattysagh or Cooncil ny Merriu – the Legislative Council or the Council of the Dead – the situation is that it is a form of redundancy for members in this hon. House when we become unelectable. I believe that the situation is that whatever we do with the Legislative Council, I do think, Vainstyr Loayreyder, that I want to see things change as far as the governmental and the parliamentary system in this House is concerned and that we do want to try and get back to having an

independent parliament from an independent executive. What concerns me here is that once again it is a bit like capital programmes, where it is a new plaque, new building scenario; it is a new badge, new position scenario as far as this legislation is concerned. But I do think, Vainstyr Loayreyder, that the situation is that there will be an argument now that we will end up losing every sort of change with this widening of the broad title of the Bill, and I am concerned that the real issues that the people want to see in government, the issues of mismanagement and unaccountability, will not be addressed by tinkering around with Coonceil Slattysagh or Coonceil ny Merriu – or whatever you want to call them. I believe that what the real people want to see is getting an effective government, an effective parliamentary assembly, that will make the executive have to justify their white elephants, and I believe that would be far better for this House to be working on -

**Mr Downie:** Mr Karran's white elephants.

**The Speaker:** Hon. members. Carry on, hon. member.

**Mr Karran:** The situation is that I do feel that that, Vainstyr Loayreyder, is the priority. I think people forget that it is not just the issue of having an elected upper House, it is actually making the governmental system that we have brought in in 1986 effective and efficient and what is needed for our people. I think that maybe we can use this Bill now, with its broader long title, to do so, Vainstyr Loayreyder.

**The Speaker:** Before I call on the next hon. member, can I just clarify that the only decision that the House has made in relation to this matter is to suspend standing orders to debate the issue, so the issue is still for determination. Hon. member for Middle.

**Mr Quayle:** Thank you, Mr Speaker. It was really a point of order in relation to the contribution of the last member. I would have asked the Speaker if perhaps he would consider whether there was anything within that contribution that was a breach of standing orders, particularly in bringing the parliament into disrepute, when a member of this branch speaks in such a derogatory way about members of the upper chamber and in such disparaging terms as saying they are the 'Council of the Dead' and unelectable. I think it is a slight on the members of the upper House, and I think it is not reflecting very well on this parliament chamber of the House of Keys, particularly when we are trying to elect members to the legislative chamber. I would have hoped that standing order – I think it is – 100 would cover – (*Interjection by Mr Karran*)

**The Speaker:** I think, hon. members, that hon. members are all guilty of using flowery words on occasions to describe an issue, and I think that there

has to be a judgement, clearly, of the seriousness of the issue or the words that are used. It is always a matter for members to seek that issue. What 96 says, of course, is that 'no member may use offensive words in reference to any member of either branch of the legislature', and I would say to the hon. member that whether those words were offensive is a matter of judgement for the House. If the member is concerned about it, then quite clearly I am happy to refer it to the Members' Standards Committee, which, of course, members have recently agreed to.

**Mr Quayle:** I would leave it to your discretion, Mr Speaker, as to what action you consider advisable. (*Interjections*)

**The Speaker:** I think, hon. members, that as the issue does not seem to be of such strong concern, the best way forward is for me just to caution members to be careful on the language that they use within the House, (**A Member:** Hear, hear.) and all I can say is – and I have had criticism for it – as Speaker, if I feel that terminology does go too far, then I do usually pull the members up. But I take the point that the hon. member for Middle raises, and I think that if it causes concern for members, they are right to raise issues. Okay? But I would, just following that, ask members to be just a little bit careful on some of the terminology used during debates. Right. Hon. members, I call on the hon. member for Garff to reply to the debate.

**Mr Rodan:** Thank you, Mr Speaker, and I thank hon. members for their contributions. I thank the hon. member for Ayre for accepting the principle of amendment to the title of his Bill.

The hon. member for Peel, Mrs Hannan, is correct to say that any amendment brought forward along the lines I have indicated would change how the Keys and Legislative Council are constituted to the extent that they would become committees of Tynwald. In effect, yes, that is correct, they would be legislative committees, but they would be bodies of equal status, and Tynwald itself would correspondingly have a considerably enhanced rôle. It would not matter, therefore, whether an elected member of Tynwald ended up in the Keys or in the Legislative Council, on one or other of those legislative committees. Those committees would have equal status, equal esteem. It would be no less desirable to be a member of one than the other, because Tynwald would be the powerhouse. So, the question as to whether a 'kitchen cabinet' of some sort would contrive to put an experienced member or someone else up to the Legislative Council would not matter, would have no practical effect, as far as parliamentary business is concerned, because the Legislative Council and Keys would be equally important for progression of legislation only. I can well understand the hon. member wishing to preserve and not to see any loss in the rights and privileges of the House of Keys, and she has made a case for preserving that. Of course, ultimately it will be up to members of the House whether they accept that

argument as being a real concern. I would see, as far as the ancient office of Speaker is concerned, no need for anything to alter. It has evolved over the years, and I would see no diminution of that particular aspect of the House of Keys.

I would say to the hon. member for Douglas South, Mr Cretney, that I would thank him for his support and he is correct to say that all we are doing is changing the long title, something that might be very useful in the event that a committee is set up.

The hon. member for Ramsey, Mr Bell, is concerned that a far-reaching amendment to bring about this single popular election of Tynwald represents turning the constitutional position on its head. It depends how you view the process or the arguments. The arguments are certainly not new. There is a stack of evidence in the recent past available to members in support of such a constitutional change. If members view it as an upheaval to the extent that they believe it is indigestible and would be more appropriate in the form of a new Bill rather than an amendment to a present one, then let that be determined by a committee, but as far as I am concerned, the principle has been well accepted today that the Legislative Council be elected by the electorate, not by this House as an electoral college but directly by the people. That is the important principle, and that is the major constitutional change that we have so far accepted in principle.

The hon. member for Douglas South, Mr Downie, may well be right that a boundary commission might be needed to resolve some of the anomalies that have grown up as part of the electoral process, and there would be an opportunity, certainly, to revisit this aspect. Members may recall that such a proposal was tabled, in fact, the last time the matter was brought before this House in the form of an amendment to the last constitution Bill, which proceeded no further. Nonetheless, the question of a boundary commission and looking at and updating the boundaries I would think would be inevitable if we are to do this job right and ensure parity of representation.

The hon. member for Onchan, Mr Karran, suggested that such fundamental changes be put to a referendum. That would be a matter for this House and Tynwald. He is concerned that a major issue such as I am indicating is being tagged on and being done on the hoof and is changing the Bill completely. It depends, as I say, on whether you think that the principle of major constitutional change has already been accepted, and I suggest it has. So, the question then becomes: do we, having accepted the principle, simply make particular changes to the mechanism of directly electing the Legislative Council? I would say, from my point of view, that any amendment is essentially just doing that – changing the mechanism to one of a single Tynwald election. He says that broadening the Bill in this particular way would threaten its existence. I would say that those who genuinely do want reform will, at the end of the day, go for what is achievable. If it is concluded that it is the Bill in its present form that is achievable, I would agree that it warrants support on

the basis that it is a major step forward in the status quo and on what we have at the moment. It will be for this House ultimately, as the Bill proceeds, to decide the extent they wish to go to, but I would not wish it to be thought that any amendment that brings about a single election is really the massive constitutional upheaval over and beyond what we have done this afternoon. I beg to move.

**The Speaker:** Hon. members, the motion before the House is that standing in the name of the hon. member for Garff, Mr Rodan, and it relates to amendments to the long title. All those in favour say aye; against, no. The ayes have it.

*A division was called for and voting resulted as follows:*

*For: Mr Cannan, Mr Quine, Mr Rodan, Mr Quayle, Mr Gill, Mr Houghton, Mr Henderson, Mr Cretney, Mrs Cannell, Mr Downie, Mr Shimmin and Mr Karran – 12*

*Against: Mr Anderson, Mr Rimington, Mr Braidwood, Mrs Hannan, Mr Bell, Mr Corkill, Mr Earnshaw, Capt. Douglas and the Speaker – 9*

**The Speaker:** Hon. members, that motion carries, with 12 votes for and 9 votes against.

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### **Constitution (Legislative Council) Bill – Committee Members Appointed**

**The Speaker:** Now, hon. members, we have before us a motion in the name of the hon. member for Rushen, Mr Rimington, and I therefore call on the hon. member for Rushen to move the motion standing in his name that the matter be referred to a committee. Hon. member.

**Mr Rimington:** Thank you, Mr Speaker. I hope that motion will be circulated at this point if it is ready. It is simply:

*That a committee of three members be appointed to examine and consider the Constitution (Legislative Council) Bill, to take evidence thereon in public and to report to the House before the clauses stages.*

I think it has been accepted by people that we are dealing with a matter of quite considerable significance for the Isle of Man and for its constitution, whatever point of view you are coming from in that regard. These are matters of significance, and indeed the arguments that have been made by those people who actually voted against the second reading are also significant and need to be considered, taken on board and given a full airing. So, I think sending it to committee – and that is not, as I say, sending it into the long grass, but it is a serious matter and it should be

considered in some depth – is the right approach. The issues that people have brought up in this debate – and no doubt the opportunity will be there for members to bring other issues, and those same issues again more forcefully, to that committee – can be brought forward, and also the committee can have the opportunity to invite the public to give evidence and try and form, if such a thing is possible, some degree of public consensus or reach out to the public on the issues involved so that they are alive. In moving, I would hope that our hon. colleagues from the media would, for once, use this as an opportunity to explore these very significant issues before it does come back to the clauses stage, because this is, after all, the constitution of the people of the Isle of Man. I beg to move.

**The Speaker:** Hon. member for Middle.

**Mr Quayle:** Thank you, Mr Speaker. I beg to second, but in doing so I just would wish to seek clarification. The hon. member for Rushen has obviously got the motion in his name, but I just wonder, standing now, having had the amendment already moved by the hon. member for Garff, how this impacts on the –

**The Speaker:** If I just clarify that, the House has now agreed the long title to be amended, and therefore it is now amended. Therefore, anything referred to a select committee will include that as part of that Bill. Continue, hon. member.

**Mr Quayle:** In which case, Mr Speaker, if Mr Rimington's motion is amended accordingly to reflect that, then I –

**The Speaker:** It does not need amending. The hon. member's motion for a select committee does not need to be amended, because it says that the Bill be referred, and therefore the long title is now part of that Bill. Okay, hon. member? Do you wish to continue or – ?

**Mr Quayle:** I am happy to second that.

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

**Mr Karran:** Vainstyr Loayreyder, I am a little bit concerned about this. I actually agree with the idea of sending it to a committee, but the way that we go round these situations . . . We used to have good procedures as far as this is concerned, and standing orders should only be broken when there is a good reason for doing so. My concern is, Vainstyr Loayreyder, the issue of doing it this way, because if we had waited until the clauses stage, we would have seen the amendments that are going to be in front of us so that the committee would have been able to . . . Because I know myself, Vainstyr Loayreyder, that I have got a list of things that I would like to add to this piece of legislation, and I honestly think that we are

going about it the wrong way. The hon. member had the right –

**The Speaker:** Right, hon. member, as you are going off on a tangent, dare I say, first of all can I make it absolutely clear that standing orders have not been broken. Standing orders are not being messed about with. We are complying fully with standing orders, and when a member moves the issue, it is a matter for a member, as long as they comply with standing orders. Standing orders make it clear that, after the motion – I refer to standing order 156 – for second reading has been carried, the Bill may be referred to a committee to consider and report, and during the consideration of the clauses of the Bill any clause may be referred to a committee to consider and report. The timing of when the hon. member for Rushen wished to move his amendment to refer it to a committee is his timing. If he had wished to wait until we got to the stage where the Bill came back to the House with any potential amendments, that would be a matter for the hon. member. The hon. member determined to move it straight after the Bill had received its second reading, after, of course, a procedure which I determined, which should be the long title to be amended first so that we knew exactly the basis of the Bill before the House. And can I say to hon. members: even if the hon. member, for example, is not successful at this stage of having the matter sent to a committee, any member has the right, at any stage during the consideration of that Bill – or for that matter, any other Bill – to move that that clause and subsequent clauses go to a committee. So, standing orders are being fully complied with, hon. member. I hope that clarifies it. Hon. member for Onchan, continue.

**Mr Karran:** Vainstyr Loayreyder, I have no problems with it going to a committee, but what I do have a concern with is the fact that if it goes, at this time, before members of . . . I did not bring in the rules as far as the fortnight situation with amendments is concerned, but if it goes now, what we are going to see is that we are going to have a committee sit on it for 18 months, and at least the initial amendments that will come from this House for changes are not going to be in front of the committee, and that is what concerns me, Vainstyr Loayreyder. By all means, send it to a committee, but I think it would be far better if hon. members were to wait until the clauses stage, and then hopefully we will have the majority of what members' ideas of amendments are. There is always the opportunity that I could be proven wrong and we end up with very few amendments when it comes to the clauses stage, but I feel that that would be the proper way to go about it. The only way that I would support this proposal is if the hon. member would make it that he would ask members for their amendments to proposed legislation beforehand, but I do not know whether that would be the right way of dealing with the situation, because I think things should be done upfront in this House beforehand, before being

discussed by a select committee behind closed doors. My concern is that, by doing it to a committee now, we are not getting the benefit of the amendments that could possibly come along from hon. members, such as referendum and other issues, which then would detract from the committee sitting for 18 months, and then somebody comes along and brings out a load more amendments, Vainstyr Loayreyder.

**The Speaker:** Can I just, before I call on the next hon. member, make it clear – and the hon. member for Onchan, Mr Karran, has been here long enough to know – that this procedure is not unusual. It is a matter for the members whether they wish to put a matter before the House, as long as they comply with standing orders. It is ultimately a matter for a majority of this House whether or not it accepts what has been put before them, and if it does not, it does not. Hon. member for Peel, Mrs Hannan.

**Mrs Hannan:** Thank you, Vainstyr Loayreyder. I am a little bit concerned about the proposal that is before us. I have no objection to this legislation or the amendment moved by the member for Garff. However, I am concerned that such a Bill is suggested to go to a committee of three members. It is such an issue that I think that it should go to a committee of five members (**A Member:** Hear, hear.) to be properly considered so that all of the areas about which concern has been expressed are looked at in a proper and competent way, not rushed. The member was saying 18 months; it might take 18 months, it might take two and a half years to look at it, as long as it is looked at properly. So, if I could move an amendment, Vainstyr Loayreyder:

*For the term 'three' substitute 'five'.*

A committee of five members should be appointed to examine and consider the constitution and take evidence thereon in public and to report to the House before the clauses stage. Taking into account the comments made by the member for Onchan, I would have thought that members actually making representation to this committee could, in actual fact, put forward their amendments to that committee for them to put together the legislation before it came back here. That does not take away the ability of members then to amend on the floor of this House, but the whole of the thing is brought together so we have not got a piece of legislation being taken out and something else being put in when it should not, so I would hope that the House will support five members. Thank you, Vainstyr Loayreyder.

**The Speaker:** Hon. member for Onchan, Mr Earnshaw.

**Mr Earnshaw:** Thank you, Mr Speaker. I agree with the principle that the hon. member for Rushen, Mr Rimington, posed – that a committee should be formed – but I also agree with Mrs Hannan. I think a

committee of three is too narrow a number, and I would not be able to vote for three, but if an amendment can be brought forward to increase that to five –

**The Speaker:** There is an amendment before the House, subject to it being seconded, sir. Do you wish to second Mrs Hannan's amendment?

**Mr Earnshaw:** Mrs Hannan's amendment? Right, yes, I do. Thank you.

**The Speaker:** Just so it is clear for members, we now have an amendment before the House. If you look at the amendment in the name of the hon. member for Rushen, where it says that a committee of three members be appointed, there is now an amendment that is also before the House that says that a committee of five members be appointed et cetera. Hon. member for Ramsey, Mr Bell.

**Mr Bell:** Thank you, Mr Speaker. I still have a real problem with this. Under normal circumstances, the procedure which we are going ahead with at the moment is quite valid, and I would support it, even though I do not necessarily support the contents of the Bill, but this, to my mind, Mr Speaker, simply confirms the fear I have had and which I expressed when we amended the short title. The resolution from Mr Rimington says to consider the Constitution Bill – that is the Bill as printed – and to take evidence from the public on that Bill as printed. Ordinarily, a Bill going to a committee like this could be subject to a range of amendments later on if it comes back, that is again perfectly normal, but what has been suggested here this afternoon is a fundamental change in the Bill. It is a whole new Bill that is being proposed as an amendment, totally different from the Bill that is being put forward today. The public, who will be asked to give evidence on the Constitution Bill, will not be made aware of the content of what, in effect, is a reserve Bill to come in in its place, so what is the public actually going to be discussing – the narrow Bill as presented today or this alternative Bill, which is, as I say, far more wide-ranging and fundamental than anything we have considered heretofore? I really think we are going to get ourselves in a real mess on this one, and I really would like some guidance as to the status of the implications of the amended short title, otherwise I am going to have to vote against it.

**The Speaker:** Can I make a call on the Secretary of the House just to clarify? I have already indicated what I believe, but I think if the Secretary was to clarify . . .

**The Secretary:** Mr Speaker, as I understand the position raised by the hon. member for Ramsey, he is concerned about the Bill which would actually go to committee. The Bill, Mr Speaker, with respect, is as you have described it: the Bill is now as amended in the long title by the hon. member for Garff's motion. It

is the Bill as amended by the long title and as described in the hon. member's letter to members setting out the amended long title. That is the Bill that would go to committee.

**A Member:** I have not got a letter.

**A Member:** Yes, I have got a letter.

**The Speaker:** There is a letter from the hon. member, Mr Rodan, I think –

**A Member:** No, I have not got a letter.

**The Speaker:** Can I ask the Clerk to read it out so that we are clear, then, hon. members?

**The Secretary:** Mr Speaker, Mr Rodan wrote to members on 27th March, setting out, for ease of reference, the long title of the Bill as it would be if his amendment to the long title was carried, which indeed it was. So, the long title of the Bill now is 'A Bill to require members of Tynwald to be the subject of popular election, to make provision for the constitution of the House of Keys and the Legislative Council and for connected purposes'. Mr Speaker, that is the Bill that would be referred to committee.

**The Speaker:** Just to clarify, hon. members, if this goes to committee, the Bill that will be before the committee will be the Bill that you have in your green form, and the only addition to that will be the new title. Therefore, that is the Bill, with a new title, that will be considered. It will then be a matter for evidence to be put to the committee and the committee to report back to this House. Of course, as the hon. member for Peel has said, it will then be open to this House, and individual members of this House if the committee do not make recommendations or even if they do, to make further amendments if they feel it is necessary. So, quite clearly the only matter being referred to the committee of the House today is the green Bill before you, which is at the moment headed Constitution (Legislative Council) Bill 2003 and to which now there is an amended title, which was approved by the House. That amended title is the one that was put to the House as a motion by the hon. member for Garff. So, it is pretty straightforward. The only issue that has been changed so far is the title. Hon. member for Ramsey, Mr Bell.

**Mr Bell:** Yes, just to follow up that point, Mr Speaker, could you then confirm – and I think you already have – that the proposed, in effect, new Bill, which has generated the amendment, will not be made available for public observation when evidence is being given to the committee? The public will only be asked to comment on the green Bill as printed. They will not be aware of the contents of the proposed amendment.

**The Speaker:** They will be aware of the content of the change of the title. There is nothing else before the House except the green Bill that you have, which is the Bill that was circulated on the order paper, and to that is a change in the title. There is nothing else that has been brought into this House at this stage, hence the point made by the hon. member for Onchan, Mr Karran, that the House did not have those issues before it. But as I said to the hon. member for Onchan, Mr Karran, that is irrelevant, because the hon. member for Rushen, Mr Rimington, has determined to move this issue going to a committee. Therefore, the committee will consider the green Bill that is before the House and, in taking that into account, it will also have a new title, but nothing else. I presume – and I can only presume – that, as is normal practice, if a committee is approved by this House, it will then seek evidence from the public, including members, which then *may* result in additions to the Bill that is before us today being recommended to the House or it may not, and it may or may not make any changes in relation to the title. That will be a matter for the committee to consider and report back on. I hope that is clear. Nothing has changed except the title. Do you wish to say any more?

**Mr Bell:** No. That is enough.

**The Speaker:** Right. Hon. member for Garff.

**Mr Rodan:** Thank you, Mr Speaker, and thank you for clarifying that particular point. I think it is important that members appreciate that this committee is a committee of the Keys to look at a Bill. It is not a select committee to determine whether there is merit in bringing forward a Bill or whether the matter of a single election should be recommended; it is a committee to look at the green Bill as printed, as you rightly say, Mr Speaker, and in doing so to take account of the extension of the long title, which would then permit those so minded to take advantage of the opening by the long title to put amendments to the Bill. I would agree with the hon. member for Onchan, Mr Karran, that it would have been perhaps clearer to members in knowing what it was the committee was going to scrutinise if the House, in making its decision, had knowledge of the form of the amendments, including my own one, for which the extension of the long title was moved. It would then make a decision as to what the committee would be examining, and I certainly did myself think that any move to a committee would be made at the next sitting when such amendments had been at least tabled and before the debate on the clauses commenced, but, Mr Speaker, you have advised that it is within Mr Rimington's right to move the committee at this sitting. I would certainly, in the event that the committee is set up today, in putting evidence to the committee, wish to put before the committee's consideration the draft of the amendment to the Bill – not, at that stage, tabled, of course – and that would be deliberated upon by the committee and reported when

the committee reports to the House as to whether it had merit or did not have merit.

What I would say, Mr Speaker, is that the last committee that was set up in this House to look at this question took three years to report. I expect full unanimity for such a committee today. If one was being somewhat jaundiced, one would say it would command the full support and wish this matter to go into oblivion. To avoid that happening, Mr Speaker, I would like to propose, by way of further amendment, a time limit to give the committee a period within which it must report back, and I do not think this would be an onerous duty imposed on the committee, given the wealth of written evidence that exists on this question, six inches high on my neighbouring desk here. I do not think that would be unreasonable, Mr Speaker, (**Mr Karran:** Hear, hear.) and therefore I would, in thoroughly supporting what the hon. member for Peel, Mrs Hannan, has said about five members being preferable, wish a further amendment to that to request that the committee report by April of next year – not of this year, of next year (*Laughter*) – which gives a year, which should be perfectly long enough to give this question the examination it warrants. I beg to move accordingly, Mr Speaker:

*For the term 'three' substitute 'five' and add at the end –*

*'no later than April 2004.'*

**The Speaker:** Hon. member for Ayre.

**Mr Quine:** If it is in order, Mr Speaker, I would like to second the amendment that Mr Rodan has moved. I have concern about the matter going to a committee, but I think it probably offers the best way through, provided there is, of course, goodwill attached to the exercise. But in common with the hon. member for Garff, I do feel that this has to be time-limited, because my past experience of it – and I have been involved in a number of these exercises – is such that if we do not put a time limit, albeit a reasonable time limit, and certainly April next year is reasonable, I am afraid this Bill, with or without the long title, is going to be lost -

**Mrs Crowe:** In the long grass!

**Mr Quine:** Very much in the long grass. I think the public deserve better than that, so I have pleasure, sir, in seconding Mr Rodan's amendment, if that is acceptable.

**The Speaker:** Thank you, hon. member. Before I move on, could I maybe, for tidiness, ask the hon. member for Peel whether or not she is content . . . I need to be careful here. I have two amendments before the House, one by the hon. member for Peel, which says five members, and then the hon. member for Garff has got five members plus reporting by April

2004. I presume the hon. member for Peel still wishes to proceed with her amendment?

**Mrs Hannan:** No, I am quite happy to allow his amendment and withdraw mine.

**The Speaker:** I just think that at least, then, it is clear that we have one amendment which amends the whole issue but carries Mrs Hannan's proposal as well. Hon. member for Douglas East, Mrs Cannell.

**Mrs Cannell:** Thank you, Mr Speaker. I think we are looking at a little bit of déjà vu today. We really are. We have amendments before us that a committee is to look at and decide the appropriateness of the Bill that we have given second reading to, as written, and the extension to the long title as advised but not yet seen. They are going to look and take evidence from the public on one part of it that is written and another part which is yet to be written but will be in draft form, and this committee of five, if supported, will decide the appropriateness of all of it instead of members of the House of Keys. I think it is a rather messy way of looking at it.

I unfortunately – well, it was not unfortunate, because it was a good learning curve for me, a good exercise – was a member of a select committee that took two years to deliver what we thought were good recommendations. Now, All of those things that were promoted by that committee of the day were thrown back by hon. members of the day, and now we find that they are all coming back in, and one might be forgiven for thinking that this is being done purposely to hijack the Bill that we have given second reading to.

I respect the ruling from Mr Speaker, how he has determined that this should proceed, but I still feel – and I share some of the concerns expressed by the hon. member for Ramsey, Mr Bell – that it does seem a messy way to me of dealing with this. In hindsight, it perhaps would have been better if the hon. member for Garff had asked to introduce a private member's Bill to do what it is that he would like to attach onto the Constitution (Legislative Council) Bill 2003, but what we have before us, of course, is what we have before us, and that is what we have to consider.

Clearly, if a committee is going to be appointed, it needs to be well balanced and not all on one side or the other, because clearly there is a division of thought in here. It needs to be well balanced, and it needs to report promptly, but again, even with an amendment attached onto it to say that they must report by April 2004, it does not mean that that committee does that. All that committee need do is come back to this hon. House, Mr Speaker, and say, 'We need more time.' And then 2005 arrives: 'We need more time. There are still public out there we need to be talking to. We need more time.' And then we will get to the end of our term of office and the whole thing will all be up in the air again, and it will be for the new administration of the House of Keys to pick it up and run with it. Let us not forget that, in April next year, this House will be halfway through its term of office. It will be two and a

half years through its term of office and, bearing in mind how long these things take, the legislative process, bearing in mind the amount of amendments which may flow, it could take 18 months to two years for this to become the law of the land, to actually change things the way we would like to change them by having them evolve.

So, I think there is obviously some tactical play going on here to try and hijack the Bill. I will not be supporting it going to a committee; I will be voting against it going to a committee. I am happy that we have supported the principle of this Bill as written and that we have that before us. I think it is a really messy process. In hindsight, I just wish that the hon. member for Rushen had waited until the appropriate time, in my view, for this, and that would have been when it came back to clauses and we had the drafted amendments on the agenda along with consideration of the clauses. That, to my mind, would have been the tidy way of dealing with this issue. If members then wanted to refer it, they could refer it. At least members of this hon. House, all of us, would have had the opportunity to see what the amendments were, in written form, that were going to be moved whilst the clauses were being moved, while we were going through the meat of the legislation. What we are left with now is that we have approved the bone, (**A Member:** Yes.) we have yet to consider some of the meat and there is some more meat and possibly fat being thrown in that is going to be considered by five individuals from this hon. House behind closed doors but opening it up to the public. If I was Joe Public, Mr Speaker, going in to see such a committee, first of all I would want to have considered the meat in the legislation as we have approved it for second reading, but secondly I would want to see the proposed meat that is going to be thrown in on amendments, otherwise you will get to the end of the exercise, if it is done and dusted in a timely fashion, the committee will come back in April next year and say, 'This is the public view on the Bill as written, and this was the view on drafted amendments that the hon. member for Garff kindly submitted to the committee' – although we, as members, had been deprived of that, but the committee will have those, and this is the view. It is just such a messy, untidy way for a mature parliament, like we are supposed to be, to deal with legislation today. So, I am sorry, hon. members; I will not be supporting a select committee.

**The Speaker:** Can I just, before I call on the next hon. member, make it absolutely clear: nothing has been decided at all in relation to this matter of it going to a committee. There is a motion before the House for consideration, which is what the House is doing. We will only know the result of that when a vote is taken. I would also just say to hon. members, and especially to the last hon. member who spoke, that how the committee undertakes its responsibilities on behalf of this House, if it is so appointed, within the remit it is given, is a matter for that committee, and I do not think we should endeavour to prejudge what it may or may

not do. I just make that point because I think they are important points to make. The committee, if appointed, will have a clear responsibility to act on behalf of this House. Hon. member for Douglas West, Mr Downie.

**Mr Downie:** Thank you, Mr Speaker. Some hon. members seem to think that this issue that is to go before the public now is one of such a complex nature that they will not be able to grasp the nub of the issue. I am absolutely certain that when the Secretary of the House places the advertisement in the newspaper – which I sincerely hope happens – to engender some public debate, a proper outline will be given of what has taken place in the House today and how the actual core issue of the Bill has been extended to cover the other issues. I would bet now, at this time, that one of my constituents is already writing out his submission – we all know who that is, and I would put money on it, hon. members – and I think that because of the interest that again has been generated, there will be lots of coverage in the press. So, I really do not see what the problem is. Whether we get on and do it this week or we leave it until the Bill comes back for its clauses stage to me is irrelevant, because if members are serious enough about it and interested enough in the issue, they will put their proposed amendments, as they see them, in as part of their submission. I think my view is that we should get on with this. I think if the committee reports back by April 2004, that is more than reasonable. I would hope that they may even be in a position to complete their deliberations before then, but I would not underestimate the ability of the man in the street to understand what is going on; that appears to be the message that is coming out today. There is an interest in this issue, and it is a big enough issue, I would think, to warrant lots of discussion, both in the press and on Manx Radio, and I am absolutely sure that the Clerk will give this a very fair hearing in the newspapers and the remit of the committee will be loud and clear as to what the aims and objectives of going to public consultation are all about. So, I would support this.

**A Member:** Let us get on with it.

**The Speaker:** Hon. members, the hon. member for Ramsey, Mr Bell, speaking to the amendment moved by Mr Rodan.

**Mr Bell:** Yes, if I can, Mr Speaker. First of all, I disagree with the previous speaker. The alternative Bill will not be available for the public to comment on; that is only something which will come out of the committee at the end of the deliberations.

I simply want to reiterate my point and to remind members of the seriousness of the issue that we are dealing with here. This is not a common-or-garden Bill which is going through the chamber; it is a fundamental Bill affecting the constitution of the Isle of Man and the constitution of its government system. This is not something to be treated lightly or to operate, as we seem to have entered into, a

constitutional Dutch auction. (*Interjection*) This has a fundamental effect as to how the Isle of Man Government and its constitution is going to operate, and I think, frankly, we have got ourselves into an absolute shambles on this. If – as I am sure it will – this move to a committee will go ahead, I will continue my opposition now to the time limit put on it. Dealing with a constitution is something that should not be time-constrained; it will have a very far-reaching impact on the Isle of Man, whatever the ultimate outcome is, and the committee should be given as much time as it believes necessary to consider all aspects – and perhaps other aspects that we have not even thought about today – before it comes back to a conclusion. If it is time-constrained and it is forced to rush its conclusions, we have to live with the constitutional impact of that for many years to come. So, I would urge hon. members to think very carefully about what we are doing today, but I will be voting against everything.

**The Speaker:** Hon. member for Garff to reply to the amendment.

**Mr Rodan:** Yes, thank you, Mr Speaker. I do not agree that this time constraint that is held up as a major problem is one in reality. There is enough evidence on this question in written form and out in the public – they know very well what the issues at hand are. I would agree with him that it is important not to address lightly questions of constitutional development or change in any way, but for a committee of this House formed to look at the matter carefully and on the basis of what it knows and what has been said, I cannot see that a year is not long enough to come forward with a meaningful report for consideration. It will be up to this House how the matter is viewed and, as has been said, if it is not long enough, the committee can come back with an interim report. I am quite sure that the matter will be given the fullest and proper consideration and scrutiny.

The question as to what the committee will be looking at: again, it will become a matter of record the form that the particular amendment that might have been tabled will actually take. That will be submitted as part of my own evidence, it will be before the committee, they will analyse it and a conclusion will be reached as to whether there was any merit in it or not. The purpose of a committee is to do the thinking of this House in a proper fashion, it is do its thinking for it and to think deeply about issues, and I can assure you that a committee will give the utmost scrutiny to any matters of constitutional change. It will have a year to do so, it will do so thoroughly, and I think we can have the confidence that what emanates from that committee, the composition of which is in our hands, will be something that we can give detailed examination to subsequently. I am delighted it is going to a committee, because that is the way to do these things properly, and not on the hoof.

**The Speaker:** Hon. member for Rushen, Mr Rimington, to reply to the debate.

**Mr Rimington:** Thank you, Mr Speaker. My reply will be very short and swift. (**A Member:** Hear, hear.) I am happy with both amendments that have been proposed.

**A Member:** One.

**The Speaker:** I will just clarify that. We only have one amendment before the House, and I will read that out so that members are clear. Hon. members, the House has before it a motion standing in the name of the hon. member for Rushen, Mr Rimington ‘that a committee of three members be appointed to examine and consider the Constitution (Legislative Council) Bill, to take evidence thereon in public and to report to the House before the clauses stage. To that, we have an amendment standing in the name of the hon. member for Garff which says ‘that a committee of five members be appointed to examine and consider the Constitution (Legislative Council) Bill, to take evidence thereon in public and to report to the House before the clauses stage April 2004.’ Is everybody clear on the amendment that is before the House? Right. All those in favour of the amendment say aye; against, no. The ayes have it.

*A division was called for and voting resulted as follows:*

*For: Mr Cannan, Mr Quine, Mr Rodan, Mr Quayle, Mr Rimington, Mr Gill, Mrs Crowe, Mr Houghton, Mr Henderson, Mr Braidwood, Mr Downie, Mr Shimmin, Mrs Hannan, Mr Karran and the Speaker – 15*

*Against: Mr Anderson, Mrs Cannell, Mr Bell, Mr Earnshaw and Capt. Douglas – 5*

**The Speaker:** I would just clarify, hon. members, that the hon. member for Onchan, Mr Corkill, has leave of absence from me for the latter part of the House.

Hon. members, the motion carries in the House with 15 votes for and 5 votes against.

I now put the motion as amended. All those in favour say aye; against, no. The ayes have it.

*A division was called for and voting resulted as follows:*

*For: Mr Anderson, Mr Cannan, Mr Quine, Mr Rodan, Mr Quayle, Mr Rimington, Mr Gill, Mrs Crowe, Mr Houghton, Mr Henderson, Mr Braidwood, Mr Downie, Mr Shimmin, Mrs Hannan, Mr Karran and Mr Earnshaw – 16*

*Against: Mrs Cannell, Mr Bell, Capt. Douglas and the Speaker – 4*

**The Speaker:** Hon. members, the motion carries, with 16 votes for and 4 votes against.

Now, hon. members, we need to elect a committee of five members. Can I ask hon. members: I will call you one at a time, and I will look for a seconder thereafter. Hon. member for Douglas West, Mr Downie.

**Mr Downie:** I move the name of the member for Garff, Mr Rodan.

**Mr Henderson:** I second Mr Rodan.

**The Speaker:** Seconded. Thank you. Hon. member for Peel, Mrs Hannan.

**Mrs Hannan:** I propose Mr Speaker.

**The Speaker:** Hon. member for Glenfaba.

**Mr Anderson:** I second Mr Speaker.

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

**Mr Quine:** If I could propose the hon. member for Peel, Mrs Hannan.

**Mr Karran:** I second that.

**The Speaker:** Seconded by Mr Karran. Hon. member for Onchan, Mr Earnshaw.

**Mr Earnshaw:** I would like to propose the hon. member for Glenfaba, Mr Anderson.

**Mr Henderson:** I second Mr Anderson.

**The Speaker:** Seconded by Mr Henderson. Hon. member for Rushen, Mrs Crowe.

**Mrs Crowe:** Can I propose the hon. member for East Douglas, Mrs Cannell?

**Mr Karran:** I will second that.

**The Speaker:** Seconded. Hon. member for Douglas North, Mr Houghton.

**Mr Houghton:** I propose Mr Quine, sir.

**Mrs Cannell:** I wish to second, Mr Speaker.

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

**Mr Shimmin:** I propose Mr Rimington, member for Rushen, sir.

**Mr Henderson:** I second Mr Rimington.

**The Speaker:** Seconded by the hon. member.

**Mr Houghton:** Nominations closed?

**A Member:** Agreed. (*Laughter*)

**The Speaker:** Right, hon. members, we shall now have ballot papers distributed. You need to vote for five members to act as the committee. Less than five votes and it will be a spoilt ballot paper. Is that correct?

**The Secretary:** Up to five.

**The Speaker:** Up to five. My apologies. I thought that it was if you had less. Up to five you can vote for. My apologies.

**The Secretary:** Mr Speaker, the names.

**The Speaker:** The names. Carry on.

**The Secretary:** The members nominated are: Mr Anderson; Mrs Cannell; Mrs Hannan; Mr Quine; Mr Rimington; Mr Rodan and Mr Speaker.

**The Speaker:** Hon. member for Ramsey to act as teller, please. You are not nominated, are you? No. Hon. member for Douglas East, Mr Braidwood, as well, please.

*A ballot took place.*

**The Speaker:** Right hon. members, the result of the ballot is as follows: Mr Anderson, 9 votes; Mrs Cannell, 16 votes; Mrs Hannan, 15 votes; Mr Quine, 12 votes; Mr Rimington, 19 votes; Mr Rodan, 14 votes; and Mr Speaker, 14 votes.

Therefore, elected are Mrs Cannell, Mrs Hannan, Mr Rimington, Mr Rodan and Mr Speaker. (**A Member:** Hear, hear.) Thank you, hon. members.

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### **International Criminal Court Bill – Third Reading Approved**

**The Speaker:** Hon. members, we will move on to the next item on our order paper, and I call on the hon. member for Rushen. International Criminal Court Bill for third reading, Mr Gill.

**Mr Gill:** Thank you, Vainstyr Loayreyder. The International Criminal Court Bill seeks to make the necessary amendments to Manx law to give full support to the recently established International Criminal Court, which enables crimes against humanity and similar atrocities to be properly tried at an international level.

The United Nations first proposed the establishment of a permanent international tribunal to try such crimes in 1948. The Rome Statute of the International Criminal Court entered into force on 1st July 2002, on which date the International Criminal Court – or the ICC – legally came into existence. The

United Kingdom's 2001 ratification extends to the Isle of Man.

The Rome statute provides for the creation of an international criminal court at The Hague and gives the ICC jurisdiction to try specified crimes committed after 1st July 2002. These crimes are genocide, war crimes, crimes against humanity and aggression. The statute lays down general principles of criminal law to be applied in relation to offences and ensures that the human rights of the accused are respected. Provision is also made for the constitution and procedures of the ICC. Penalties which may be imposed include imprisonment, fines and compensation. There is a right of appeal against convictions, sentence and other decisions. The preamble to the statute declares it a moral imperative that the most serious crimes of concern to the international community as a whole must not go unpunished. It establishes the ICC as a complementary judicial body for situations where national justice systems have broken down or failed.

The ICC will be able to investigate crimes committed by nationals of, or on the territory of, state parties or of non-state parties who have given consent. It will also have jurisdiction over crimes, wherever committed, which are referred to the ICC by the United Nations Security Council. If a case were to come before the ICC and it was decided to be admissible, then we would be obliged to deliver to the Court any accused person resident in the Island. Where the Island is genuinely investigating or prosecuting the case or has already done so, the ICC would treat the case as inadmissible. To keep open the option of trying an accused person domestically, the Island must ensure that crimes within the jurisdiction of the ICC are also triable by our courts. Domestic legislation is required to ensure that the Island can fulfil this worthy obligation. The UK has given effect to the statute by the International Criminal Court Act 2001. That Act may be extended to other British territories, including the Isle of Man, by order in Council. However, the Council of Ministers has decided that provision should be made by an Act of Tynwald. I am pleased to promote this Bill on behalf of the Council of Ministers. It is my firm belief that its enactment would further promote the Island's reputation as a mature and tolerant democracy and provide valuable expression of our ability to make our own decisions regarding international issues.

During consideration of clauses, an enquiry was made regarding the involvement of the Attorney-General. This is a matter of international judicial co-operation, and in Manx law the Attorney-General is the usual and proper channel for such co-operation. For example, where evidence is sought for presentation in an overseas criminal court, the letter of request goes via the Attorney-General under the Criminal Justice Act 1991, section 21. The order in Council relating to the UN tribunals on Yugoslavia and Rwanda specifies the Secretary of State, that is any UK government minister bearing that title, as the channel between the tribunals and the Isle of Man, but this is not considered to be a suitable precedent. Furthermore, because the

ratification of the Rome statute lies with the UK, not the Isle of Man, it is necessary to set up communication channels which flow from the ICC to the Island through the UK and vice versa. The appropriate rôle for this is the Attorney-General, as the government's principal legal officer. This is because of the complexity and legal responsibility involved, as well as a need to remove any impression or appearance that prosecutions or investigations could in any way be politically motivated. The Attorney-General is appropriately qualified and perceived as sufficiently independent and politically neutral to perform this rôle.

The hon. member for Peel also asked who performs this rôle in other countries which have made domestic legislation for the Court and whether executive government is involved in those countries. To date, 89 countries have ratified the Rome statute. Not all of those countries have yet enacted domestic legislation implementing the provisions of the statute and enabling co-operation with the newly formed Court. Not all the countries which have enacted domestic laws operate with a similar enough legal system to provide a useful comparison. For example, Belgium and Germany have incorporated the ICC by the addition of another layer onto their penal or criminal codes, and so the legislation is not comparable. Other states, such as Ireland, have mirrored existing provisions for co-operation with the ad hoc tribunals dealing with Rwanda and the former Yugoslavia. The rôle which, in this Bill, is fulfilled by the Attorney-General is variously filled by different office-holders in different countries. Norway uses a combination of the Minister of Justice and the King; in South Africa, provision is made by the National Director; Spain uses the Ministry of Justice; Switzerland created a new office for this particular rôle – the Central Authority; and the UK uses the term 'Secretary of State' – that is, as I previously stated, any UK government minister who bears that title. Many other states do use their Attorney-General or his or her equivalent, including Australia and Canada. Others have divided the rôle between the Minister for Justice and the Attorney, such as New Zealand and Malta. It should be noted, however, Mr Speaker, that the model legislation provided by the Foreign and Commonwealth Office for the use of British Overseas Territories suggests that the rôle should be filled by the Governor. This was not considered appropriate in the current climate of transferring various functions from the Governor to the government.

Another enquiry regarded the procedures provided for the High Bailiff that an ICC warrant appears to be valid. I referred at the time to article 58(3) of the Rome statute, which reads 'The warrant of arrest shall contain (a) the name of the person and any other relevant identifying information; (b) a specific reference to the crimes within the jurisdiction of the Court for which the person's arrest is sought; and (c) a concise statement of the facts which are alleged to constitute those crimes.' The other relevant clause is 22(1). If I can remind hon. members, this clause deals with what is received in the Isle of Man, which will be

either a copy of the warrant sent by the ICC to the Foreign and Commonwealth Office or a copy of that copy, certified by the FCO as a true copy. Either would be treated as equivalent to the original warrant. The High Bailiff would ask the representative of the Attorney-General to confirm that the document before him really did come from the FCO, and he will also read it to see that, on its face, it purports to be an ICC warrant or a copy of it and not something completely different. Template copies of such documents will be lodged with the Attorney-General's Chambers to assist them in this identification.

The hon. member for Peel also enquired why clause 7 refers to the Home Secretary and not the Minister for Home Affairs. Mr Speaker, in this instance, I am afraid that apologies are in order. A previous draft of the Bill had referred to the Secretary of State, but that reference had been removed. Unfortunately, the reference remained in the notes on clauses and consequently appeared in my speaking notes. I am very sorry for any confusion this may have caused, sir, and for the sake of clarity can I therefore categorically state that clause 7(1) states that 'where the High Bailiff refuses to make a delivery order, the defendant must be remanded to allow for an appeal, and the Attorney-General' – not the Secretary of State, the Attorney-General – 'must be notified.' So, I am obliged to the hon. member for Peel for her diligent scrutiny and the opportunity to clarify this matter.

Further clarification was sought as to the meaning of subclause 43(7), which reads 'The regulations may, for that purpose (enforcement of other orders), apply any statutory provision relating to the enforcement in the Island of orders of a court of a country or territory outside the Island.' This would allow the regulations to incorporate, for example, the procedures under the Judgments (Reciprocal Enforcement) (Isle of Man) Act 1968. This Act allows for bilateral agreements with other states, including the UK, relating to the enforcement of their court orders in our jurisdiction. The provision would be used only where a country has entered into an agreement with the Island. It may be unlikely that this enabling provision would need to be used, but its inclusion is prudent for the future.

Mr Speaker, I would like to thank all the hon. members who have contributed to the debate on this Bill, and I beg to move that it be read for a third time.

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

**Mr Henderson:** Gura mie eu, Vainstyr Loayreyder. I beg to second, sir, and reserve my remarks.

**The Speaker:** Hon. member for Peel.

**Mrs Hannan:** Thank you, Vainstyr Loayreyder. I am a bit concerned. The member did clarify the position with regard to the Secretary of State and the Attorney-General but said that it was a suggestion that it would be the Governor. I just wonder: the Attorney-

General is not part of the government so to speak, it is Her Majesty's Attorney-General, and therefore in a similar position to the Governor, so I do not see that there is an awful lot of difference between the Governor and the Attorney-General when it comes to their responsibilities. Their first responsibilities, both of them, are to Her Majesty, so I do not understand that. I would have thought it should have been to a government department or even the Chief Minister's Office. The member has clarified that to a certain extent, but I am just concerned that it does not really, to my mind, satisfy me, because the responsibilities are exactly the same.

However, could the member clarify the position with regard to this legislation? We have passed this legislation and, from what I can understand by what he said, we are not going to be signatories to the International Criminal Court. We have taken this legislation through, but we are not going to be signed up to it, so we will not appear on a list of countries that are actually signed up to this legislation. I just think that it has been necessary for us to take this legislation through – I do think that – and I would request the mover of this legislation, should it pass through the other place, which it no doubt will, because it is a government Bill, to make representations to the government that we become signatories in our own right. It is all very well that we have passed the legislation, we have accepted it, but I do think we should be signatories in our own right. Thank you, Vainstyr Loayreyder.

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

**Mr Karran:** Vainstyr Loayreyder, I have concerns about this Bill. As we all know, history is written by the victors, and the concern that I have with this Bill is that somehow we are but only a small nation, more than likely insignificant to the world stage, to most people in the world. What concerns me is the safeguard of us not just being used to legitimise political show trials for the victors over the other side, and I just say that because I think it is important that we realise that that is the problem when we get into these issues of tribunals. I am quite sure if the people in power were the people in Vietnam, you would more than likely find that several US Presidents and their Oval Offices of staff would be in front of an international tribunal when I think of the likes of the use of 'Agent Orange' and all these other chemical sprays. I think that if we look at Mrs Thatcher, when the things are opened up I would not be surprised if the British Prime Minister would not have been under the same category as far as some of these issues are concerned.

I know that must sound very hard to most in this hon. House, and I can understand them frowning, but one of the things that I am concerned about is that we have to look at things without fear or favour. That is our core oath, really, in my opinion, in this hon. House, and I believe that the problem that you are

going to have is a situation where political deals will be done behind closed doors, and what we will find with this piece of legislation is the legitimising of the actions of the victorious as far as that is concerned. I think it is important, as a small nation. I understand the problems that our Ard-shirveishagh has got with the United Kingdom, and quite frankly, Vainstyr Loayreyder, that is why I smiled this morning when they were talking about immigration. Quite frankly, at least he is on one side of the fence, which delegates that all off to the UK – and at least he is honest about that – until there is some sort of mechanism. My concern is that, as a small nation and as a small national parliament, we are being forced to join this club, a club which the superpowers will deem to be what they feel, and they work against other minority small nations who cannot stand their own corner, and that is what worries me. I feel that, without us having more of an identity to want to be an independent nation, we have little choice but to support this piece of legislation, but it does concern me greatly that the situation is the fact that it will be the USA and the likes of the USA who will be making the agenda. The USA have done more against democracy and freedom of speech than nearly any other nation on earth in recent years, and big business runs the USA – no-one else but big business – and they make the agendas in that country. The Presidents have to have a multi-national behind them in order to be able to get elected in that country. I do feel, Vainstyr Loayreyder, that the likes of these international issues should be more clearly debated to members before it comes to this hon. House as well, but I do feel it is a very concerning time when we are having to support this piece of legislation and we are not even signatories to it. We will be expected to jump, and they are going to tell us how far and which way we jump, and I do not like that, Vainstyr Loayreyder. That is the one thing that really sticks in my throat as far as this piece of legislation is concerned.

**The Speaker:** Hon. member for Rushen, Mr Gill, to reply to the debate.

**Mr Gill:** Mr Speaker, if I could begin with the input from the hon. member for Peel, Mrs Hannan, which I think could be split into two points, firstly that she sought some clarification about the Secretary of State's rôle, which I did mention and hopefully clarified in my speaking notes. That was a mistake to have the rôle of Secretary of State in the notes, and I have clarified that. The hon. member goes on to ask about the difference between the Attorney-General and the Lieutenant-Governor and states that, in her view, their first loyalty is to the United Kingdom, not to the Isle of Man Government. I take her point. I hope that she would also accept my point that the principle of Tynwald or the Isle of Man Government making our own decisions and transferring those functions on an ongoing basis from the Lieutenant-Governor is to be welcomed. I am sure I would have no hesitation in expecting that response from her. The second point she

makes is that we should be signatories to this statute. Sir, the practice, as I have explained in the preamble and again in the résumé, is that it is the UK who sign this, and we do not have the capacity to sign in our own right. However, I will convey the comments and sentiments to the Chief Minister, and he may wish to progress that with the hon. member. So, I hope that will satisfy the two points that the hon. member for Peel made.

Turning to the hon. member for Onchan, Mr Karran, I have to say, sir, that he seems to be labouring under a misapprehension. In wide-ranging observations, he talks about Agent Orange, the US business lobby, and Presidents suffering because of their previous actions in Vietnam, and I accept all that. However, sir, the point is the USA will not be making the agenda as far as the ICC is concerned because they are not signatories, they have not ratified it. So, that is a fundamental starting point I would seek to reassure him on. If we continue on the issue in hand, the ICC Bill, rather than international conspiracy (**A Member:** Hear, hear.), could I say that the International Criminal Court exists to stop national politicised trials. That is the very purpose of it, and I would welcome that. It is to ensure neutrality and, as I have said, it does exist already. The UK could have extended this to cover the Isle of Man or any other Crown-dependent territories by order in Council. I think it is –

**Mr Karran:** There is something wrong with our constitution.

**Mr Gill:** The hon. member says there is something wrong with our constitution. That may be. However, that is for another time and perhaps another date. (**A Member:** Hear, hear.) I do not seek to take argument with that but simply to focus on the provisions of this Bill and to say that we are not being forced to join the international club. I hope that we are being able to make a mature, considered and responsible decision to actually fulfil our international obligations. (**A Member:** Hear, hear.) So, I do thank the hon. member for Onchan for his broad support. I am sorry I cannot share his concerns in relation to this Bill, but I hope that others will join him and I in moving this Bill, sir.

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

Now, hon. members, that completes the business of the House today, and we adjourn until 8th April at 10.30 a.m. in Tynwald Court. Thank you, hon. members.

**Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.

*The House adjourned at 5.34 p.m.*

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