

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

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**Douglas, Tuesday, 4th February 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 and Mr L I Singer (Ramsey); Mr R E Quine OBE (Ayre); Mr J D Q Cannan (Michael); Mrs H Hannan (Peel); Hon. S C Rodan (Garff); Mr P Karran, 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); 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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## Leave of Absence

**The Speaker:** Hon. members, I have granted leave of absence to the hon. member for Douglas South, Mr Cretney, and also I have granted leave of absence for late arrival to the hon. member for Rushen, Mr Rimington.

*Questions were taken at this point and concluded at 11.48 a.m. They are published separately.*

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## Bill for First Reading

**The Speaker:** We now go on to Bills for first reading and I call on the Secretary of the House.

**The Secretary:** Mr Speaker, the Bill for first reading is the Heath Burning Bill introduced by the hon. member for Rushen, Mr Rimington.

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## Inquiries (Evidence) Bill – Second Reading Approved

**The Speaker:** Hon. members, we now go on to Bills for second reading and I call on the hon. member for Onchan, Mr Corkill, for the Inquiries (Evidence) Bill.

**Mr Corkill:** Thank you, Mr Speaker. Prompted by the process of appointing the Mount Murray inquiry the Council of Ministers has proposed this Bill to replace the Inquiries (Evidence) Act of 1950. The 1950 Act enables certain bodies holding inquiries to summon witnesses, examine them on oath and require the production of documents. If authorised by resolution of Tynwald these powers may be exercised by firstly, a commission or committee appointed by the Governor to inquire into any cause or matter, or a department when holding an inquiry relating to any of its duties or functions.

The new Bill, Mr Speaker, re-enacts the 1950 Act with the following changes: firstly, this Bill applies to an inquiry appointed by the Governor in Council or the Council of Ministers, as well as one appointed by the Governor or held by a department; secondly, the Bill, like the 1950 Act, enables the inquiry to summon witnesses, require the production of documents and administer oaths and makes failure to comply a punishable offence. However, the powers to summon witnesses et cetera are conferred on the person conducting the inquiry, not on the chairman or vice-chairman of such commission, committee or department, which is the case in the 1950 Act. This is inappropriate in the case of an inquiry conducted by a single inspector or an inquiry held by a department.

The Bill also provides for appearance and legal representation at inquiries. This was not specifically provided for in the 1950 Act, but it is regarded as

natural justice to allow representation at such inquiries. It is therefore appropriate for such provision to be included within the legislation.

Mr Speaker, the Bill requires that the whole proceedings of the inquiry are held in public and not just evidence given pursuant to a summons. This was suggested by the Lord Chancellor's Department pointing out the difference between the 1950 Act, our Act, and the United Kingdom's Tribunals of Inquiry (Evidence) Act of 1921 on which our Act is based. As with the 1950 Act, however, the Bill enables the person holding the inquiry to conduct the inquiry in private if it is felt the presence of the public would be contrary to the public interest.

Finally, Mr Speaker, it is made clear that an inquiry can award costs, both in terms of expenses and legal costs of witnesses and a procedure is introduced to allow for assessment of costs in accordance with the rules of the High Court. Whilst similar provision existed in the 1950 Act, the new Bill identifies with greater clarity the circumstances in which costs can be awarded and defines the basis for their calculation. Mr Speaker, I beg to move the second reading of this Bill and commend it to hon. members.

**The Speaker:** Hon. member for Rushen, Mrs Crowe.

**Mrs Crowe:** I beg to second and reserve my remarks.

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

**Mr Karran:** Vainstyr Loayreyder, hon. members, we have all been waiting ages for this administration to put forward new legislation. There are so many important issues that urgently need addressing on this Island, but on the streets of Onchan, hon. members, I do not hear people saying 'We really must do something about the Inquiries (Evidence) Act 1950 crisis on the Isle of Man at the moment; (*Interjections*) if only the politicians would pass laws giving the Council of Ministers more powers for inquiries there would be a brighter future for us and for our children.' Hon. members, the fact that this Bill is even before this hon. House says a lot about how out of touch the Council of Ministers is with the man in the street. It says a lot more about what must be going on behind closed doors at the Council of Ministers, and it seems to me unthinkable that this Bill would ever be before us if it were not for the Commission of Inquiry into the Mount Murray.

Let us look at the explanatory notes referring to the 1950 Act. The explanatory notes helpfully say that the Bill is designed, and I quote, 'to remedy certain deficiencies that have recently become apparent.' Well they have not become apparent to me, hon. members, and guess what: number 1 on the so-called deficiencies is that the 1950s Act with its power to summon

witnesses does not apply to the inquiries appointed by the Council of Ministers!

Hon. members, this proposal is one of the most worrying to be laid before this House for quite some time. Changing the Inquiries (Evidence) Act 1950 in the way proposed may seem innocent enough, but do we really want to give more substantial powers to the Council of Ministers and this particular Council of Ministers? The current Inquiries (Evidence) Act has served our nation since 1950 by laying down a framework for independent inquires. Hon. members, the 1950 Act works; 50 long years have proved it. There is an old saying that 'if it is not broken do not fix it.'

Hon. members, the 1950s Act provides for a Commission of Inquiry to be set up by the Governor. Such inquiries can be seen by all parties as totally independent of government and non-political. This is the value of such inquiries, unlike the example of select committees, which can often be closely associated with government members. Too often a select committee can quite fairly be accused of being pro-government biased and that there is open criticism of whitewash and cover-up. It is not surprising when a committee effectively hand-picked by the government, reports on activities of the government can hardly be seen as being independent, but hon. members, an independent inquiry set up by a non-political arbiter such as the Governor using the 1950 Act is the only way to assure everyone that justice will be done.

The 1950 Act gives the appropriate teeth to independent inquiries. It gives the equivalent power to those of the High Court in respect of summonses, evidence and contempt, but this Bill tries to hijack all these powers and hand them over to the highly political body such as the Council of Ministers. Well, hon. members, forgive me, but this just damages the democratic process. It offends public opinion and runs contrary to natural justice, and I would not be surprised if it also is contrary to human rights legislation, if we ever get the order in.

Hon. members, having studied this Bill, I find the contents of the areas of grave concern. For example, section 3 of the proposed Bill is a rehash of section 1 of subsection (5) of the existing Act. This gives the inquiries the power to make orders as to cost and that every such order made by rule of the High Court. It is common sense, it is simple, but under this Bill the Treasury may get involved and be able to apply their own regulations and their own conditions to costs. This is just going to politicise the whole process and it could make a mockery of any pretence that the inquiry would be independent.

I am most concerned about section 1 of this Bill. The Governor's inquiries are distinct from other inquiries and select committees in this House, in that the members of the panel are appointed by the Governor, thus they are at arm's length from the executive of the day. This distinction helps to make them independent and give them the value, but the revamped section 1 put forward today by the Council

of Ministers proposes – guess what – to increase the powers of the Council of Ministers so they can set up their inquiries with similar powers to the Governor's inquiry.

Now, the thinking becomes far clearer, hon. members. The new powers could be used to block up the setting up of a Governor's inquiry by insisting the Council of Ministers could do the job themselves. Imagine what a Council of Ministers Commission of Inquiry into Mount Murray would say: 'No problem there, boys!' Or imagine what the Council of Ministers' inquiry into the new hospital would say: 'Splendid work, 10 out of 10!' This is *Alice in Wonderland* stuff; in fact, it even makes *Alice in Wonderland* look like something that could be on the 10 o'clock news.

I ask this House to consider the damage to what is left of Manx democracy when independent inquiries would consist of people hand-picked by government, reporting on government to government.

Hon. members, we must be very careful here today. If we endorse these proposals, we are blurring the proper separation between the executive and the judicial powers. We are taking another step along the road to making the executive even less accountable, and we are opening the door to the wholesale erosion of civil liberties. Hon. members, in a democracy justice must be seen to be done and only by offering ourselves to scrutiny by total independent authorities can this House claim to be committed to open, honest and fair government.

Hon. members, the Inquiries (Evidence) Act 1950 needs no revision and certainly not the wholesale changes proposed in this Bill. So I ask this House to reject this Bill as it stands, and if there is any merit in pursuing this Bill at all – I have to say, I cannot see it myself – we should have a select committee to do what parliament is supposed to do and that is scrutinise legislation.

Before we do, let the Council of Ministers come back and justify in some detail what the supposed deficiencies of the 1950s Act mean and why we need a whole new one as far as this legislation is concerned. Let them justify making this such an important part of the Corkill administration legislative programme, especially when there are so many other important areas urgently needing legislation. Let the Council of Ministers prove that they have not been influenced by the turn of events with the progress of the Mount Murray inquiry, a Governor's Commission of Inquiry, not like the Professor Crow Inquiry and one that was set up by the Council of Ministers.

Hon. members, this Bill is an assault on democracy, civil liberties, human rights and it allows an independent process to be hijacked for political ends. We must vote against this piece of legislation today, hon. members.

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

**Mrs Hannan:** Thank you, Vainstyr Loayreyder. Could I ask the mover of this legislation: in schedule 1 there is one of the paragraphs, relates to the Town and Country Planning Act 1990 – does this relate to appeals which are heard by independent inspectors? I think it would be interesting to know whether this would affect the running of an appeal hearing for planning, or does it just relate to area plans?

One of the issues that I think we have not had in the past with appeals is that there has not been any sort of rules and regulations with regard to hearing appeals. The inspector is appointed and the inspector can really run the appeal hearing as they wish. So in actual fact it is to the advantage of the person who usually appears there, which usually is the developer, and there are no rules for anyone who appears there for the first time, who is a person just off the street, you might say – no rules, no regulations, nothing for them to know how something is going to be controlled. I think that is one of the areas which, when we are looking at inquiries we actually do not have any rules and regulations. I know it would also help the developers, but they are there on a regular basis and they actually know how an inspector runs something – it might be different with different inspectors, but they would know how it would be run. I think there has to be some sort of control over how these are heard, if we are going to look at a democratic process where people are going to be able to present their thoughts in a manner which is conducive to a proper hearing. I think this is one of the areas that I would like clarification on, and if it is not then I do think it is something that the Department of Local Government and the Environment along with the Council of Ministers should be seriously looking at, to bring in something which brings some sort of rick on the way that these inquiries are operated.

Does the other one, could I ask, which comes under this or comes under an amendment, also relate to the Boundary Extensions Act, which I have been involved with recently, where really it is again just down to the inspector as to how the hearing is carried out? If we have legislation such as this, I do not think that the people involved in that should be left to the wish and the whim of the advice that the inspector is given or hangs on, regarding what is interpreted by the department, or the advice that they might get from the Chief Minister's Office or the Governor in Council set-up.

So I do think that it is all very well having legislation such as this before us, but there is a need for certain other issues which, if they do not come under this Act, I think they should be brought under. Thank you, Vainstyr Loayreyder.

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

**Mr Rodan:** Thank you, Mr Speaker. Listening to the hon. member for Onchan, it was very clear that what we have from him is an extension of the conspiracy theory and the suspicion that what this is all about is to replace a symbol of independence from the

executive, the Lieutenant Governor, who would be able to call for unbiased inquiries in which the public could have full confidence, with this sinister notion of the Council of Ministers or Governor in Council actually calling the inquiry and having the inquiry conducted with the power of summoning witnesses and so. (*Interjection by Mr Karran*); that this process somehow warrants suspicion, that it is to be designed to remove the independence of the symbol of the Lieutenant Governor as is presently the case under the 1950 Act.

Well, of course, what the hon. member has overlooked, and it is surprising he has overlooked it, is that the situation constitutionally in terms of who is the government today is entirely different from what it was in 1950. In 1950 it was the Lieutenant Governor that was the government of the Isle of Man, and one need only look at the explanatory memorandum point 1 to see what it is that this Bill is all about and that is to replace the 1950 Act with more up-to-date provisions. What is it that is more up-to-date? It is to reflect the way government has changed and areas of responsibility have changed over the last 50 years and I am surprised that for a member who is renowned and prides himself in being in the vanguard of the fight against vestiges of colonialism, as he would put it, that he would wish to perpetuate what is an out-of-date system -

**Mr Karran:** Not to replace it with a closed shop.

**Mr Rodan:** – and that is what is surprising about the hon. member's thrust of his complaint. It is that particular issue I wish to focus upon and draw to his attention that he is being entirely inconsistent in that with many of the other things he says and tells us.

**The Speaker:** Hon. member for Middle, Mr Quayle.

**Mr Quayle:** Thank you, Mr Speaker. Just in relation to section 5 where it refers to the fact 'that a public authority interested in the subject matter of the inquiry ought to repay the costs of the inquiry' and I just seek clarification on that. Would it be envisaged that there would be apportionment of costs or just really a few extra details on that particular section?

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

**Mr Rimington:** Thank you, Mr Speaker. Yes, I was brought to my feet by the contribution from the hon. member for Onchan, Mr Karran. I think he forgets that we are all elected representatives of this House, and he is not the only person to assume the mantle of being a democrat. He, unfortunately, seems to think that there is a huge conspiracy and that he is the only person who is alive to that conspiracy and can see all the shutters that are being brought down against the wishes of the people and against the wishes of the

majority of members by the evil satanic body of the Council of Ministers. (*Interjection by Mr Karran*) Now, since joining the Council of Ministers I am not aware of any of this sort of 'behind-closed-doors' discussion about how we are going to wrap up the system of government and not let anybody have their way or their say, and 'let us silence these democrats and these awkward members of the public from progressing their legitimate desires'. This Inquiries (Evidence) Bill did not come forward as any concern about the out turn of the inquiry which is underway at Mount Murray, because this was initiated right at the beginning of that process after the hon. member had brought the resolution to Tynwald and had realised, and the Attorney-General had pointed out, that there were deficiencies in the existing legislation. So before that inquiry had even managed to get its bottom on the seat anywhere, the process of bringing forward a more up-to-date piece of legislation was initiated. It was absolutely nothing to do with conspiracy or the Mount Murray Inquiry.

Now, if the hon. member is saying that all the other members of Tynwald are hoodwinked and are not capable of independent thought in any shape or form, then please come out publicly and say that and say that you are the vanguard of righteousness and the rest of us are all drivel and nothing – because that is the implication of your speeches.

Clause 1, hon. member refer to it – if your good legislative friends and researchers were able to read such matters and could refer to line 9 and 10, if anybody would care to read to that – where it says 'where Tynwald' – that is the critical phrase there – 'has resolved that the powers conferred by this Act shall be exercisable in relation to the inquiry.'

**Mr Karran:** Block vote.

**Mr Rimington:** Tynwald is the body that resolves what is exercised. If you are then saying that that is no good because Tynwald is a heap of junk and all the rest of it, there is a block vote and blah blah blah – you did get your Commission of Inquiry set up through Tynwald, I just care to point out – then we might as well forget it, go home and just install the hon. member for Onchan as the Chief Minister. You can dictate the wishes of the Isle of Man people and run the government completely by yourself and we will just not bother, because that is the logic of what you are saying. Your researchers have got it all wrong I am afraid, hon. member, on this occasion. It is Tynwald that resolves what particular inquiry takes place, and that is quite clear.

Now if you are saying that Tynwald is not a democratic body and that we do not live in a democracy then fair enough, but let us be open about it and let us not bring in all this nonsense about conspiracy theory all the time. Let us just focus on the mechanics of the legislation that we are trying to pass.

**Mr Karran:** So much for the former green member.

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

**Mr Quine:** Thank you, Mr Speaker.

**Mr Karran:** A former green member.

**Mr Quine:** Mr Speaker –

**Mr Karran:** Elected.

**Mr Quine:** – my concerns evolve on clause 2, which basically says that a person conducting an inquiry to which this Act applies, and obviously an inquiry that has been approved by Tynwald, is going to have a right by summons to require people to attend that inquiry, to give evidence and to produce documents, in other words go to a *subpoena duces tecum* process, have powers to require documents to be produced, to take evidence on oath et cetera. If that person then commits any of the infringements which are in 2(2) the person holding the inquiry and that person alone it would appear, can certify that an offence has been committed. (**Mr Karran:** Hear, hear.) Straightaway that individual, whether it is a person that is holding a specialist departmental inquiry or whatever, he can turn round and say, 'A criminal offence has been committed and you are in contempt of court.'

Now I think that is rather too broadly cast as it is (**Mr Karran:** Hear, hear.), because what it is saying really is that whoever the person is that is chairing that inquiry – and he would certainly be chairing that inquiry in many cases because he has a specialist knowledge of a particular subject, it may be planning, it may be something else – is going to be asked to stand in judgement on what is a criminal act and announce that that witness has not produced the documents or has done something that is in effect contempt of court and certify it. That certificate is then going to be passed on to the High Court which may punish that person as if he had been guilty of contempt of court.

Now I do not think that is following what I would call the normal principles or safeguards attached to –

**Mr Karran:** Hear, hear. A bit of sense.

**Mr Quine:** – a criminal process or indeed an offence of contempt of court to be more specific. There is nothing here to say, for example, that he is going to be entitled to representation; nothing to say that he is going to have a lawyer with him in court when all this takes place. He could well be a man in the street who is faced with this situation and has this decision handed down to him by a person who may not be legally trained. I do not think that is a happy situation, and then you say, 'Well, okay, I can find nothing in here about legal representation,' so you could have a

person that is not legally qualified, standing in judgement on what is de facto a criminal offence, using a procedure which is not standard criminal procedure, in terms of the layers of the built-in checks and balances for a criminal procedure, literally being certified on the statement of the chairman of that tribunal – that is how I read this.

So far as I can see – the hon. member for Peel, I think raised this point – I do not see any provision for a person who has been dealt with for, in effect, contempt of court under this to take it to court by way of an appeal. At least I do not see this, just looking through, at all and so I would ask the Chief Minister to dwell – for my benefit, if for nobody else’s – on what I think is very cavalier drafting and a very cavalier procedure for people who can be adjudged as having committed a contempt of court. Contempt of court carries – I mean, we are not talking of £2,500 nor of a penalty there – a very heavy sentence. (**Mr Karran:** Hear, hear.) It just seems to me that if a person is to be led into that, and if the person passing judgment on him in relation to that matter – certainly if he is not legally qualified – would give rise to a rather hazardous situation.

So I would ask the Chief Minister to explain to us how this works and, if my understanding is correct, whether that is acceptable to him, because if what I have outlined to you is in fact the situation, it would not be acceptable to me and I do not think it would be acceptable to a considerable number of members of this hon. House. It is a matter which would need to be addressed by way of an amendment with an alternative provision. Thank you, Mr Speaker.

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

**Mr Corkill:** Thank you, Mr Speaker, and I thank hon. members for their consideration of this Bill. First of all, one or two speakers have, I hope, put paid to the concerns of the hon. member, my colleague from Onchan, Mr Karran, that there is some conspiracy afoot here, because there is not. What I would say, Mr Speaker, is quite simply: this is a learning process emanating from a process that the hon. member for Onchan put in place in another place, in Tynwald Court, which was the Mount Murray Inquiry, which followed the 1950 Act quite straightforwardly. But it is not every day that such a process is actioned by Tynwald Court and obviously Tynwald has to take serious consideration before it uses the powers of that Evidence Act and hopefully Tynwald Court will always do that. Certainly emanating from the Attorney-General’s scrutiny of the legislation that we have in place, we have embarked on this learning process and I think, I hope hon. members would think, that that is quite a reasonable thing for us to do. So this is nothing to do with conspiracy at all, and that disappoints me that that has been levelled at this piece of legislation –

**A Member:** By your own ministers.

**Mr Corkill:** – which primarily has come into this legislative programme – not as a government priority, I take quite on board what the hon. member for Onchan said. This is not a government priority; we could just ignore it, but it is something that has been noticed at a particular time and we felt as a council that there was a duty on us to bring it before this House, and in my view it is a fairly simple and straightforward Bill.

Now the hon. member for Onchan said, ‘If it ain’t broke don’t fix it.’ Well, we are not fixing it inasmuch as we are taking the old Bill to pieces; we are actually adding to the old Bill. What we are saying is that the old Bill, the legislation, has served us well, as the hon. member has said, but there is a deficiency as we see it today, and I think the hon. member for Garff made it quite clear that government has progressed. Now the hon. member for Onchan may not want government to progress at this particular time, but over a period of years I understand that he has wanted government to progress, but I do understand his long-standing position over ministerial government and that he has never supported that process, and that dates back to a time before I was a member of this hon. House. As someone who was elected in 1991 I do what I can to make the process that I have come into, as a lay person, work as well as possible.

I do not want to dwell on the Mount Murray situation too much, but the hon. member did raise the issue of the Crow report. One of the biggest criticisms that has been levelled at government by the hon. member for Ayre, Mr Quine in particular, was that Professor Crow did not have the powers to his elbow, to his hand, that were required for the job -

**Mr Cannan:** That is right.

**Mr Corkill:** – that was put before him. Now I have a difference of opinion in that respect in terms of the actual Crow report and why it was set up, but that is a criticism that has been levied in terms of an appointee by the Council of Ministers to look at a particular problem. Of course we have now gone down the road of Tynwald’s resolution in the name the hon. member for Onchan, Mr Karran.

So, it was only right that government looked at its own situation and looked at the legislation, so this Bill effectively adds to the list as it were. It does not take away any powers of Tynwald or any powers of the Lieutenant-Governor, once Tynwald has resolved something, but what it does do is it adds the ability in legislation for the Council of Ministers to do that function when it is appropriate, but only when Tynwald wants. At the end of the day Tynwald is the final arbiter in all of these things. Put it this way, hon. members, if Tynwald resolved that the Council of Minister should set up a commission of inquiry in the same vein as the commission of inquiry that we have over Mount Murray at the moment, we would not be able to do that under the present legislation and so this adds that facility to it.

So it is not conspiracy, because at the end of the day Tynwald will resolve and the hon. member says that we are hijacking the Governor's powers and that is certainly not the case.

**Mr Karran:** It is in reality.

**Mr Corkill:** Now, (*Interjection by Mrs Crowe*) the other concern the hon. member had was about Treasury being involved in court costs. Treasury has to be involved in legislation, because it is the vehicle which delivers taxpayers money through Tynwald, through the Treasury to the purpose that it is intended and that is how costs are awarded now. Without the Treasury mechanics being in the legislation, then where does the money come from. So it is purely a mechanical process as to why Treasury is written into the legislation and that is no different.

Something else that we have learnt in this experience is that some of the questions that have been asked during the process of this Commission of Inquiry have been: 'Are witnesses entitled to costs? Can they have legal representation paid for?' This legislation makes that very clear. The commission, with the chairman at the helm of it, can make that happen. At the moment there is some ambiguity in the legislation, which the Attorney-General has pointed out, as to whether that is actually the case or not.

So, the hon. member for Onchan says this Bill needs no revision. Well I would disagree with him and I can understand, bearing in mind the sensitivity over the Mount Murray Inquiry which we are yet to learn the result of and I do not want to touch on that process any more, but perhaps it is a predictable response that the hon. member is very sensitive to any discussion about this type of process. It is the process we are dealing with, not the subject of Mount Murray and so I really think we should just focus on the mechanics of the Bill as indeed other speakers have done.

Now, the other aspect of course about the block vote that the hon. member mentioned a couple of times, and I would remind the wider audience that the Council of Ministers is a minority of votes within Tynwald in the consensus style of government that we have, that is a fact. As Mr Rimington, the member for Rushen said, the hon. member for Onchan was able to successfully use the 1950 Evidence Act to promote his cause and Tynwald voted in the way that it did. So to say that there is a block vote there blocking everything is far from the reality.

I thank hon. members who have supported this Bill. The hon. member for Rushen, Mr Rimington mentioned the Attorney-General and his input and I think certainly more of the input has probably come from the legislative draftsman rather than the Attorney-General himself.

Now, the hon. member for Peel, Mrs Hannan, raised a couple of interesting points with regard to schedule 1 in relation to planning issues. Certainly if you look at the legislation it talks about a department – one element is of course an inquiry held or caused to

be held by a department where you are talking of the functions of that department – so obviously in the case of the Department of Local Government and the Environment you are talking about planning issues. Now we all know that that particular department does set up inquiries, particularly into area plans, that is a regular occurrence and certainly I see this legislation applying in that area of that core departmental function. The hon. member then went on to ask: 'Does it apply to planning appeals?' I am very pleased that the local government department is actually reviewing the planning process at the moment, because I am sure – perhaps as all hon. members in this House, we have all attended planning appeals perhaps to help constituents, perhaps to fight a particular cause – there are no rules in advance. Lay people, as we are, do not know what to expect first time round and it can be quite a shock. It certainly has been to some of my constituents where, when they start to contribute at a planning appeal, they are surprised that they are only able to ask questions of fact about the actual application, or the reverse if it is an objection, and that the charring of such appeals is quite rigid and quite strict, certainly that is my experience. So I think it would be very helpful if people who are heading into an appeal situation know what the rules of engagement are and what to expect, and hopefully the department of Local Government and the Environment in its review of planning is addressing that particular issue.

The hon. member also asked: 'Does it apply to boundary extension?' Well, that is another situation where the department can appoint an independent inspector to do a particular job. So I think at a further reading of this Bill, if hon. members should support this reading of the Bill, I can seek further clarification in these areas.

The Bill is really intended to deal with special inquiries and special commissions that are set up for special purposes, such as we have experienced in recent times, but I do not believe that it really applies to planning appeals. I think it is more to do with the independent inquiries where you are dealing with a public inquiry, and in particular I mentioned area plans.

I thank the hon. member for Garff, Mr Rodan, for his support because I think he has made it quite clear that government has changed, and really do we want to perpetuate a piece of legislation from back in 1950 when the Lieutenant-Governor of the Isle of Man was very much seen to be at the helm of government and an integral part of government? One could perhaps criticise the 1950s' Evidence Act in that at the time it was cast it was actually giving the job to someone who was actually charring government, so it was deficient at that time, if one takes that argument to –

**Mr Karran:** It has now changed.

**Mr Corkill:** – a particular end.

Now, the hon. member for Middle, Mr Quayle, referred to section 5 and it was talking about costs and

I understand his question was: 'Was it local authorities in terms of public authorities?' I am not so sure that it would really apply to local authorities. I would see in this particular clause 5(1), 'The person holding an inquiry falling within section 1(1)(b) may order that a public authority interested in the subject matter of the inquiry pay the costs of the inquiry.' So, yes it could potentially apply to a local authority, but I think that would be a pretty rare event. The main point I would like to put across about costs in this Bill is that it actually regularises the situation in line with modern legislation in terms of High Court costs.

Now the hon. member for Ayre, Mr Quine, focused on clause 2 and I thank him for his interest in this, because as he was speaking I was thinking of the opposite scenario where in fact you might have a chairman of a commission of inquiry with too little power in terms of the way that he can summons people and summons evidence and get to the core truth of a situation. I would have thought that when we have these commissions we expect the person enlisted to do the job to get right to the root of the situation and without a pretty broad access he is going to be thwarted in his attempts. I think perhaps recent events, although I said I would not talk about it, show that these attempts to get evidence, to get particular information from individuals, can be thwarted quite easily by High Court action. I will not refer any more to that particular action, it would be imprudent to do so, but the hon. member is concerned about it being too broad and asked if I would dwell on that. Can I say: in these situations Tynwald is giving the commission and the Chairman of the Commission a particular job to do. If the individuals summonsed are unfairly treated, if they end up with a grievance towards the commission, they have that right of settlement within the High Court. The hon. member asked, 'During the operation of the commission will an individual, a lay person, have representation?' Well, under this Act it is made quite clear –

**Mr Quine:** Not who is going to pay for it.

**Mr Corkill:** – that in that particular clause 5(5) 'The person holding an inquiry to which this Act applies may order that the expenses of attendance of any witness at the inquiry be paid –' and (b) says 'by the Treasury out of money provided by Tynwald for the purpose.'

**Mr Quine:** That is different, isn't it?

**Mr Corkill:** And so my reading of the Bill is that people's costs and representation are better covered under this new legislation than under the old, but I certainly will come back to the hon. member to clarify that, and if it is necessary to have an amendment then I am more than happy to discuss that with the hon. member to help him prove the clarity of that situation.

I would leave members with the view that this piece of legislation does give teeth to the individual

and to the commission in terms of whatever inquiry they may be asked to embark on by Tynwald, and I would not want to see a dilution of that. That is not the purpose of this Bill. The existing Act has a certain amount of teeth. What we are doing is adding to that, Mr Speaker, and I hope that that has answered some of the queries at the second reading. I hope hon. members will support the second reading. I am quite happy to endeavour to settle some of the outstanding points between now and the clauses stage. Therefore, Mr Speaker, I beg to move.

**The Speaker:** Hon. members, the motion before the House is that the Inquiries (Evidence) 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 Anderson, Mr Cannan, Mr Quine, Mr Rodan, Mr Quayle, Mr Rimington, Mr Gill, Mrs Crowe, Mr Houghton, Mr Henderson, Mr Duggan, Mr Braidwood, Mrs Cannell, Mr Downie, Mr Shimmin, Mrs Hannan, Mr Bell, Mr Singer, Mr Corkill, Mr Earnshaw, Capt. Douglas and the Speaker – 22*

*Against: Mr Karran – 1*

**The Speaker:** Hon. members, the motion is carried with 22 votes in favour and 1 vote against. The Bill therefore receives its second reading.

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## Fireworks Bill – Debate Commenced

**The Speaker:** Hon. members, we move on to item 2, the Fireworks Bill, and I call on the hon. member for Douglas West, Mr Downie.

**Mr Downie:** Thank you, Mr Speaker, hon. members. Leave was granted by this House to me for the introduction of this Private Member's Bill on 21st January 2002 when I made a case for the introduction of legislation to deal with a number of complaints from the general public, emergency services, animal and veterinary organisations about incidents of criminal damage involving the indiscriminate use of fireworks, particularly in public places and at times in the early hours of the morning, well outside the traditional Bonfire Night or New Year's Eve period.

Just to give hon. members an idea of the problem, I have a letter from the Chief Constable which I am more than willing to circulate: 'In recent years it has become evident that the concept of the traditional Bonfire Night has extended way beyond 5th November and this is a cause of considerable concern for many of our Island's residents. Further evidence of this is a debate on the misuse of fireworks which has featured

in most areas during the Police Consultative Forum public meetings. I can add some statistical performance or information to your proposal by advising you that the force control room started taking calls from the public concerning fireworks this year from 16th October, and over the remainder of that month some 60 calls were recorded which warranted a police attendance. A further 22 calls concerning fireworks were lodged during November. These figures do not include calls received directly at Ramsey, Port Erin or Peel police stations, of which I would expect there to be equally significant numbers.'

Some of the most serious incidents attended by police included a report of children throwing fireworks at cars in Union Mills; several 999 calls from numbers of the public describing a major explosion in Castle Street in Douglas; numerous shop alarms were set off by this explosion and there was the belief from the general public that a shotgun had been discharged in the street – all of these incidents were the result of a firework being discharged in a flower planter in the shopping centre; on 20th October a report of youths firing rockets at the windows of Ballakermeen School; reports of youths using fireworks on a playground slide and additional calls from a distressed female who was struck by a rocket – this is in October by the way; a distressed female reporting being hit on the leg by a rocket fired from an unknown property in Thorny Road in Douglas; a lighted firework thrown through the door of a public house; fire engines turned out to smoke-logged toilets on the Loch Promenade resulting from a fire caused by the misuse of fireworks; on 4th October 2001 public toilets in Factory Lane were seriously damaged by fireworks, I have the photographs if hon. members wish to see them; and the last one I will make reference to is fireworks forced into a window frame and lit at an address in Anagh Coar. It was fortunate that it did not cause the window frame to ignite, but the occupants were very distressed. The Chief Constable goes on to say, 'I cite the above as examples of some of the firework incidents which perhaps only due to good fortune did not result in serious injury or damage.'

I am also aware that a number of hon. members have passed on to me complaints from elderly constituents, parents with young children and owners of household pets regarding an increase in anti-social behaviour, often causing alarm and distress resulting from the misuse of fireworks.

In putting together the various components of the Bill, the purpose of which is to introduce additional controls over the supply and sale of fireworks, I decided that a common-sense approach to the problem should be taken. Therefore a full consultative process was entered into involving the police, the Department of Home Affairs, fire service, the Office of Fair Trading, who also have responsibility for some of our existing firework legislation, wholesalers and retailers of fireworks, firework display organisations, veterinary practices, animal welfare organisations and some members of the public and local authorities.

Clause 1 and the schedule define fireworks for the purposes of the Bill and it quite clearly identifies those products in the schedule which are not fireworks.

Clause 2 deals with restrictions on supply and provides a minimum age limit of 18 years for persons who can be sold a firework. This clause also makes it an offence for a person under the age of 21 years to supply or sell a firework in the course of a business.

Section (5) provides a penalty on summary conviction under sections (1) (2) (3) and (4).

Clause 3 deals with the supply or retail sale to the general public of a firework at certain times, for example, (a) the period beginning 25th October and ending on 5th November and (b) the period beginning 26th December and ending on 31st December.

Subsection (1) does not apply to a supply to those specified in 2(a), (b), (c), (d), (e), (f) or (g) where they are professional firework-display organisers, fireworks trade or suppliers, public authorities, special-effects film work or other related matters, a person who has given notice under section 4 of this Bill for the purpose of a display outside the normal firework period, and certain exemptions also apply to local authorities and the RNLI Coastguard. The Bill will not prevent authorised bodies firing maroons, for example, on Remembrance Day to mark the two minutes' silence.

Subsection (1) does not apply to the sale of fireworks at a price exceeding £25, which will be the minimum required to be purchased to justify the holding of a fireworks display under section 4, outside the normal firework retail period and following notification of the Home Affairs Department.

Subsection (5) provides for a penalty on subsequent summary conviction.

Subsection (6): in proceedings for an offence under subsection (5) this section provides for a defence.

Subsection (7) describes the meaning of a 'maroon' and its use.

Clause 4 deals with the restrictions on the use of fireworks and a requirement to notify the Department of Home Affairs giving notice specifying the time and place of the firework display; (b) causes the like notice to be given in a newspaper informing the public that a fireworks display notice has been applied for in the prescribed form; and (c) the notice is to be given no later than 10 days before the display.

Part (3): the Home Affairs Department as soon as practicable after receiving the notice under subsection 1(a) shall send by post to the person to whom it was given a receipt in this prescribed form. Just to clarify the procedure from thereon, the receipt would then be proof that the legislation had been addressed and produced at the time the fireworks were purchased. Members will please note that in clause 3(4) the minimum amount of fireworks to be supplied for this purpose is £25.

Clause 4(4) makes it clear that you can let off fireworks or have a non-notifiable display during the period of 25th October to 7th November and this extra two days provides for inclement weather over the

Bonfire Night 5th November period; (b) provides for a fireworks period from 26th December ending on 1st January for letting off fireworks over the New Year period, and I am advised by the legal draftsman that 1st January means midnight on 1st January, so it includes the whole of the 1st January.

Section (5) provides for exemptions for displays put on by a public authority or naval, military or air forces of the Crown.

Section (6): if subsection (1) is contravened, (a) and (b) provide for a penalty following subsequent prosecution – (a), the person by whom the display is put on and (b) subject to subsection (7) the occupier of the place where the display takes place or the offence takes place.

Subclause (7) provides for a defence, for example, that a contravention took place without his or her consent or connivance, or (b) he had reasonable cause to believe that the person by whom the display was put on had complied with subsection (1).

Subclause (8) means that the Department of Home Affairs shall by regulations prescribe the forms of notice under subsections (1) and (3), and in this section ‘prescribed’ means prescribed by such regulations.

Clause 5 deals with the issues regarding harassment et cetera by letting off fireworks.

Section (1): ‘No person shall let off a firework in a public place within the hearing or sight of a person or domestic animal likely to be caused harassment, annoyance, alarm or distress thereby.’

Section (2) provides for exemptions, for example (b) and (c) provide them where notice has been given or put on during a specified period in clause 4(4).

Section (4) provides for a defence to show that a person had no reason to believe that there was a person or domestic animal within hearing or sight that was likely to be caused harassment, annoyance, alarm or distress.

Clause 6 deals with the Miscellaneous and supplemental power to stop and search for explosive substances: ‘In section 1(7) (police powers to stop and search et cetera: prohibited articles) according to the Police Powers and Procedures Act 1998, after paragraph (a) insert “(aa) an explosive substance;” – so that is added to the list.

Section 7, letting off fireworks in the street: ‘In section 63(2) (street offences) of the Petty Sessions and Summary Jurisdiction Act 1927, for ‘cast or throw any fireworks’ substitute ‘let off, cast or throw any firework.’ – just to clarify that: at present it is not an offence to let off a firework in the street. If this clause is included it will be an offence to let off a firework in the street.

Clause 8 provides for powers for the Department of Home Affairs to amend this Act by order to (a) vary any period specified in section 3(1) or 4(4); (b) the amount specified in section 3(4); (c) the list of devices specified in the schedule, annexed to clause 1.

Subclause (2): ‘Before making an order under subclause (1) the department shall consult with the Isle of Man Office of Fair Trading.’

Subclause (3): ‘An order under subsection (1) shall not have effect unless it is approved by Tynwald.’

Clause 9 provides the short title; (2) the date in which the Act will come into operation; (4) the sale of Fireworks (Regulations) (Amendment) Order 1970 is revoked; and (5) ‘Nothing in this Act affects any power to make safety regulations under section 9 of the Consumer Protection Act 1991, or health and safety regulations under section 15 of the Health and Safety at Work etc. Act 1974 (an Act of Parliament), as it has effect on the Isle of Man.’

The Bill has the full support of the Department of Home Affairs, and I am aware that there is a possibility of a small amendment which is currently being considered by the Office of Fair Trading to tighten up the meaning of ‘displays’ in clause 4. Hon. members, I thank you for your perseverance and move that the Fireworks Bill be read for a second time.

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

**Mr Earnshaw:** Thank you, Mr Speaker. I am very happy to second this motion and I think a lot of people – a lot of the hon. members, as well as members of the public – will very much welcome this Bill. I would like to thank the mover for the hard work that he has put in over the last few months in assembling the Bill that is before us today, because I think there have been far too many abuses in recent years and fireworks have been a growing nuisance. They have become a serious nuisance, I think, and that is what has brought this issue up. It is an anti-social behaviour problem and, like in my constituency, where I have had a considerable number of complaints, I am sure others have as well.

Turning to the Bill itself, I want to ask the mover for some assurances on various parts: first of all, the thorny old problem of enforcement. Enforcement, prosecution and punishment – what is going to happen? If we pass this legislation in due course, is it going to be effective? So I think that is the first question I would ask the hon. member to answer, please.

Now looking through some of the clauses, I have got written down here that there are two which are giving me a little bit of trouble. I am not too happy at the moment with clause 3(4); I would just like the mover to expand a little bit on that particular clause if he would please. I think perhaps a higher figure than £25 might be appropriate; it does not seem to me that £25 buys an awful lot of fireworks these days. So I would like his views on that one.

The other clause I am not terribly happy with is clause 4(4), which sets out the times during which a firework display can be put on – it has got here the dates of 25th October to 7th November and 26th December to 1st January. Now, I think these are unreasonably long periods. Bonfire Night to me is traditionally 5th November; this is the night of the ‘big bang’ and it always has been. Sometimes we do have

inclement weather and there are good reasons for moving a firework display from that night, but I think what we have got in the Bill here at the moment is a little bit too generous. I think the periods are both too wide; I would have thought perhaps two days either side of 5th November would have been plenty, and I think from 26th December to 1st January is too wide also. I think really people want to be letting their fireworks off on New Year's Eve and that is it. On that one as well, I would just like to ask about any offenders under clause 4(4): I am not sure of the penalty that applies to those who offend under that section, but perhaps I have missed something there.

Finally, I would like to ask the mover – this is outside the clause section – does he consider there is a case for licensing suppliers? So I look forward to his comments in due course.

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

**Mr Henderson:** Thank you, Vainstyr Loayreyder. I would just like to compliment the mover of this Bill (**Mr Houghton:** Hear, hear.) and to say thank you very much for the work that has gone into it, for a much needed piece of legislation, and certainly on behalf of the residents of Willaston and Cronk y Berry and North Douglas – we could not have this soon enough, certainly for all the reasons that hon. members have indicated and the mover himself. I cannot add to that.

What I can say though is that we may have to look at the buying age which many people consider should actually be 21. I realise there is an argument that many things are at 18 years of age these days, but I think in all honesty, when you are dealing with explosives and dangerous devices such as fireworks, we may well have to consider 21 being the minimum age at which somebody can actually buy these things. It may well cut out a lot of the carry-on we have seen and described by hon. members in their contributions. Otherwise it is very welcome, Mr Speaker, and I hope it receives a speedy passage.

**The Speaker:** Hon. members, that concludes the sitting for this morning. The House will now stand adjourned until 2.30 p.m. this afternoon.

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

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### **Fireworks Bill – Debate Continued – Second Reading Approved**

**The Speaker:** We continue now with the Fireworks Bill and I call on the hon. member for Douglas North, Mr Houghton.

**Mr Houghton:** Thank you, Mr Speaker. I join all earlier speakers, in complimenting the hon. member

for West Douglas, Mr Downie, in bringing forward this Bill. It is a comprehensive Bill, I am quite sure it will do the job, bar one thing after it has been enacted: we do need police officers in order to be able to catch these people in the act of the –

**Mr Braidwood:** We have got police officers.

**Mr Houghton:** – forthcoming offences that will be committed, no doubt, time and time again.

So, as I say, I have nothing but praise for the endurance and fortitude that the hon. member has brought in bringing forward this Bill today; it will address matters. (*Interjection by Mrs Hannan*)

With my Office of Fair Trading hat on, Mr Speaker: we have within the Office of Fair Trading under the auspices of Mr Kinrade, the chief officer there, scrutinised the Bill and I would like to bring, on behalf of the Office of Fair Trading, two minor amendments in order to support a couple of clauses: one is to put supportive clarification in respect of the age limit for enforcement reasons; and the other one is to further clarify what a firework display indeed is. Where we see a weakness within the Bill, as is actually written, is in the letting-off of bangers – which would not actually be a display – and things like that in the street. What we are doing is that we are asking the Attorney-General if he would prepare for me to move this small amendment in order to support, for the case of the Bill, the situation as regards what firework displays actually are. So the definition of a firework display would indeed include the likes of bangers and so on. Of course, it is quite clearly set out in the hon. minister's schedule at the back that these fun snaps and small crack things which are known as bangers. We are not talking about that; we are talking about firework bangers that we have all known about and seen and all are quite aware of.

So those are the two amendments in support of the hon. member's Bill that I would like to bring forward at the clauses stage, sir, and after that I wish him well with the future of the Bill. Thank you.

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

**Mrs Hannan:** Thank you, Vainstyr Loayreyder. Could I ask him: on clause 4, where it is 'Restrictions on use of fireworks', it states that a notice has to be submitted to the Department of Home Affairs and also has to be placed in a newspaper, circulating in the Island – one newspaper in this instance – what about if it is a private function where there is going to be fireworks? Surely that is a bit draconian, I would have said, to have to place a notice in a newspaper, because we do not have local area newspapers. So we are putting money in the hands of newspapers, not necessarily notifying the people that are going to be affected generally, that is neighbours. I am talking about a private function which somebody has, a birthday party or something like that. Surely one of the issues should be of notifying neighbours that there are

going to be fireworks, and surely a clarification to the Department of Home Affairs that neighbours have been informed either by a leaflet drop or something like that would be preferable to putting notices in the paper that may be missed.

The other area that is not involved is local authorities. Local authorities do have notice boards and I would have thought that in certain instances it could have been that notices would be suggested for notice boards, things like that, which inform the public. It seems to me that newspapers are a little old hat, and I think of the number of people who say to me that they do not buy a newspaper – they would not be affected by this. Therefore has the member looked at informing people and communities in different ways? Thank you, Vainstyr Loayreyder.

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

**Mr Quine:** Mr Speaker, I suppose my starting point is to seek some clarification from the promoter of this Bill as to precisely what in the context of his Bill amounts to a public place. Perhaps I could explain why I am asking what should be a fairly transparent question: it has been brought to my attention that one of the areas of complaint relating to the discharge of fireworks is the effect that firework displays, particularly of a prolonged nature, which may be taking place inside an individual's garden in the countryside, a house that may be surrounded by fields with stock in them, is causing and has the potential to cause, which is perhaps equally important, considerable risk of damage to the stock. Of course, when you get this excessive noise it amounts to harassment of certainly cattle and horses in particular, who go half crazy running around the field trying to find a way out from these fireworks displays. Now there might be good innocent intent by these people who can live in the country in a large house and a large garden and afford very expensive firework displays, but it does not alter the fact that it causes a real problem for those who make their living and who have to have the responsibility for looking after stock in the countryside. I just want to be clear from the mover of the Bill whether he feels that what is in this Bill at the moment goes any way to addressing that particular problem, because if it does not it is quite clearly something which I would need to take up by way of a possible amendment to the Bill.

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

**Mr Gill:** Thank you, Mr Speaker, I welcome this Bill in the principle of it, but there are just a few points that I would like to flag up for consideration. First of all, the dates at 4(4)(a): I would suggest regarding 25th October to 7th November – it has been mentioned earlier that some people think that is too short, others think it is too long – I would err on the side of inclement weather at that time of year as a consideration, and would suggest that with Hop-Tu-

Naa falling on 31st October perhaps 30th to 13th might be a more suitable time, but that is a matter for us to consider at a later time.

Also picking up on the point from the previous speaker, I wonder, giving a town example, about a 'public place'. Would the mover advise if I, having got all the necessary certification, let off a firework in my garden and that firework went into the road, into a public place, would that be an offence, whereas if it went into the back of the garden abutting my property and perhaps scared an animal, would that not be an offence? That seems a bit of an invidious position to have to sustain, so I would look for some reassurance on that.

Two final points, Mr Speaker, if I may: I would be interested, when we talk about a firework display, who is actually responsible for controlling a firework display and what liability might they have? I think that would impact on some of the points that are made here.

Finally, at clause 9 where we talk about public authority, it talks about 'the Council of Ministers, a department or a local authority', but it does not, as far as I can see, include a Committee of Tynwald, perhaps for the Tynwald ceremony arrangements. (*Interjection*) If we could perhaps have some reassurance and clarification on that, that would be welcomed. Thank you, Vainstyr Loayreyder.

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

**Mr Rodan:** Mr Speaker, I welcome this legislation and this Bill is a genuine attempt to deal with what has become a social problem. In dealing with social problems, or what are perceived to be problems, a balance has to be struck between a reasonable restriction over people's freedom to pursue activities that they have enjoyed up to this point and the public interest, and in particular the rights of members of the public not to be given cause to be alarmed, frightened or distressed – the same right applies to defenceless animals and domestic pets, as is referred to in the Bill and was well covered by the mover in his opening. So I shall certainly be supporting the Bill.

I have a couple of questions really to get some clarification on the restrictions on the use of fireworks, and the first comment I would like to make is on clause 4, which prohibits a firework display except on or about certain dates unless advance notice has been given to the Department of Home Affairs. Subsection (5) creates an exemption from that requirement in respect of firework displays if they have been 'put on by a public authority or naval, military or air forces', as it says here. I would like to ask the mover just to define what we mean by 'put on by'. One could envisage a situation where a local organisation, a fund-raising charity, for example, wants to put on as a fund-raiser a fireworks display in August outwith the appointed times and of course seeks the expertise of the Department of Tourism, which does have, or

certainly have had, staff who are capable and qualified in pyrotechnics and, on behalf of organisations, actually let off the fireworks. In this situation, if a charity wanted a fund-raiser and wanted fireworks to be part of it and arranged through the Department of Tourism for somebody from that department to come and let off the fireworks, would it be the Department of Tourism as a public authority putting on a fireworks display or would it be the private organisation? If it is the latter, really they need to know whether, despite the involvement of a public authority, they need to be putting a notice into the newspaper.

Clause 5, Mr Speaker, deals with creating the offence of harassing or annoying a person or animal by letting off a firework in a public place and the principle of that I think is well accepted. Again there is an exemption created on the part of a public authority and my question is: if it is indisputable that letting off fireworks in a public place within hearing or sight of persons or animals can cause harassment or distress, does it mean that if a firework display is put on by a public authority those persons or domestic animals are at any less risk of distress or alarm just because the fireworks have been let off by a public authority rather than an individual? What is the thinking, when we are talking about harassment and distress to animals, behind creating an exemption for public authorities or the categories specified here? Surely fireworks either can cause distress, whoever lets them off, or they cannot. So I would appreciate some clarity on that because after all we are talking about creation of an offence with a fine not exceeding £2,500, so it is no small matter. I would not have thought the members of the public would necessarily receive any reassurance – if their cat or dog was in a state of distress at the sound of fireworks, the fact that it was a local authority letting them off would be no small comfort to that member of the public. So could the House have some clarification on why there is this exemption?

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

**Mr Duggan:** Thank you, Mr Speaker. I, too, support the legislation before the House. Like many other members have stated, I have had complaints from my constituents about people letting off fireworks at 1 o'clock in the morning a month beforehand. It does cause, as hon. members have said, effects on elderly people and also animals. The thing is that you ring up and report the matter to the police but it is very hard to trace these people. The other thing too, as Mr Braidwood will tell you, is that many a night there is hardly any police on the beat and by the time they get there they cannot get the culprits. It is a waste of time ringing sometimes, so what worries me, like one or two other members have said, is regarding enforcement.

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

**Mr Corkill:** Thank you, Mr Speaker. Without a doubt, I think fireworks are increasingly becoming a nuisance to great numbers of our general public and certainly in the time I have spent in this House I receive more complaints now than ever before about the untimely setting-off of fireworks, the upset to pets, the disturbance and the fact that I think people just generally get fed up with them going off at all times (**A Member:** Hear, hear.) of the day and night over a period of weeks. That is what has changed over a period of years: the spread of the setting-off of fireworks, and no doubt there is more disposable income in the community and people are seeking to spend their money on things like this from time to time, and I am sure that is part of it.

So in general I support the thrust of this Bill, but I would make the point, Mr Speaker, that I think the hon. member for Douglas West, Mr Downie, is probably not the first and probably not the last person who will be trying to address this problem, trying to define the boundaries of what is reasonable and what is unreasonable within the legislation and yet at the same time not being so sort of draconian that you are (**Mr Earnshaw:** Spoilsport.) being a complete spoilsport, as my colleague on my right has just said. I suppose only time will tell, when this Bill hopefully becomes law, how that turns out. The hon. member, Mr Duggan, member for Douglas South, has just said that enforcement is a key issue, and I would certainly wish to hear from the mover of the Bill his views on how this type of legislation can be enforced and how perhaps it should be enforced.

Just in relation to a few details, I notice on the restrictions on supply it has been decided in the drafting of this Bill to restrict to the age of 18. Of course we often have a debate about this particular age as to whether it is reasonable or not, and I notice the member for Douglas North, Mr Henderson, said that 21 would be a more appropriate age. In this particular 2(1) at the bottom of that page it says, 'No person shall supply a firework to a person apparently under the age of 18' – I just wonder why the word 'apparently' is in. In other situations we insist on proof-of-age cards, we insist on some sort of identification, and yet the word 'apparently' is in here. I can well understand the problem that the retailer will have: the same as in licensed premises, it is very difficult sometimes to work out the age of someone and the way that is drafted does leave things open to interpretation.

Also, another point of clarification, if I may: I notice at the top of page 3 there is reference to the Royal National Lifeboat Institution where maroons are effectively exempted because obviously they have a very valid purpose in terms of signalling purposes, as it has put in this Bill; but there are other situations where a maroon can be discharged, for instance the start of a yacht race out in the bay. We often hear the boom in the distance as a yacht race may start off, either in Douglas Bay or Ramsey, or very often Port St Mary, and certainly it would seem very unreasonable if they

were caught by this legislation in some way, but I do not see any reference to that type of device.

Mr Speaker, I think at the end of the day all these things are a matter of judgement. I think it is a sorry day, in a way, that we are talking about legislation in relation to this sort of situation because of the irresponsibility and the poor behaviour of a certain number of people – not all juveniles either – who are being anti-social.

In relation to the periods of time, I notice there was discussion about 25th October through to 5th November, then 26th December through to 31st December. I am sure for a lot of people within the Island those periods are relevant, but of course there are minority groups within our society in terms of numbers and the Chinese New Year comes to mind. What would people of that background, if they wish to celebrate Chinese New Year (*Interjection by Mr Downie*), how would they deal with that particular process? So in terms of this type of legislation I have to say that in the past I have resisted too much over-regulation because I think you can overdo it.

There is one final question that I have, Mr Speaker, and that is in relation to the purchase of fireworks. What is the situation in relation to Manx residents who purchase fireworks directly from a manufacturer or a store for fireworks elsewhere from outside of the Island, for instance the UK? If they order them, as these days we can order so much, on the internet or via telesales orders . . . I am aware that with certain display-type fireworks, people do actually pay for them and order them directly from manufacturers. So here we would be restricting sales on Island, but of course our legislation does not apply in another place and it could actually have an impact on the trading activity of people selling fireworks. So presumably that is being touched on during the consultative period of this Bill? Thank you, Mr Speaker.

**The Speaker:** Hon. member for Douglas West, Mr Downie to reply to the debate.

**Mr Downie:** Thank you, Mr Speaker. I would just like to thank hon. members for their very valuable contributions in the debate, and I will now try and unravel some of the mysteries enshrined in the Fireworks Bill.

I would just like, first of all, to thank Mr Earnshaw, the hon. member for Onchan, for seconding the Bill. He is quite right: there is a serious nuisance. His main issue dealt with enforcement and whether it will be effective. Well, I just want to remind hon. members that at the present time there is no law on our statute books which would prevent me walking out of this building today, going down into the shopping centre and letting off a major firework, a banger, in broad daylight. There are no conditions attached to what time of the day or night I could set it off –

**Two Members:** Disturbance of the peace.

**Mr Downie:** – and the only possible crime I could be charged with would be an act likely to cause a breach of the peace –

**A Member:** That is it.

**Mr Downie:** – if there was some mechanism even to do that. You could say, ‘I am going to let this firework off’, you could give notice in some way to people, but these acts of anti-social behaviour are occurring more and more frequently. One of the reasons I want to amend the petty sessions and jurisdictions legislation is that we have a very good piece of quite old law – and I am going to read from it because it is important that hon. members will know what else that you cannot do under that particular piece of legislation – it says quite clearly: ‘Nuisances on Public Roads. Any person who shall commit any of the following offences shall be liable to the punishment hereinafter specified in each case. Any person who shall fly any kite or play any game or make use of any slide on any public road or in any street of a town to the danger of the passengers or who shall’ – now the legislation hopefully will be amended to ‘let off, cast or throw any firework’. In the old legislation it was ‘throw any fireworks’, right? ‘Or discharge any firearm on any public road or within 30 feet of the centre thereof or in any street or passage of a town, or who shall cast, throw or discharge the same or suffer the same to be cast, thrown or discharged out of his house, shop, dwelling, lodging or habitation or from out of any place hereto belonging into any public road, street or passage or who shall fire any gun on a Sunday shall be liable to a fine not exceeding £200.’ The paragraph expression ‘firearms’ means ‘any lethal barrel weapon of any description from which any shot, bullet or any other missile can be discharged and includes an airgun, air rifle or air pistol.’ Now that is quite a sensible piece of legislation – all right, you could argue it is outdated – but it provides a very good vehicle to add to the list in the armaments that are available to the police officer when confronting a situation when someone has let a firework off in the street. So there is no need to re-invent the wheel, as it were, and I honestly think that on a weekend in the town the police stop young men who they know have let fireworks off and sometimes, I am told, they are asked to turn out their pockets and they cannot bring a prosecution because in another clause of the Bill, under the Police Powers and Procedures Act 1998, which I am having to amend as well: ‘The power of a constable to stop and search a person’s vehicles et cetera: a constable may exercise any power conferred in this section in any place to which, at the time when he proposes to exercise the power, the public or any section of the public has access on payment or otherwise as a right or by virtue of express or implied permission or in any other place to which people have already access at the time when he proposes to exercise the power; he can search any person or vehicle, anything which is in or on the vehicle’. The

purpose of that means that in the old legislation it applied to offensive weapons and other items that were deemed as offensive – knives, cudgels and so on – but in this instance a firework now becomes an explosive substance. So there is also provision there to stop a person who they suspect of having let fireworks off in the street, and if they are an honest person he equally can be charged with another offence under another piece of legislation. The framework is there, hon. members; it currently does not exist at all, so I am just trying to approach this in the most pragmatic way.

Now, I hope that legislation, if it is successful, will be enforced; at least it will make it an awful lot easier under this legislation to actually get a prosecution. The hon. member for Onchan, Mr Earnshaw, made reference to clause 3(4), £25 for a box of fireworks. Now, in order to be reasonable and in order to progress the Bill, I had some discussion with the various retailers of fireworks and they thought for a private fireworks party or a child's birthday party or something out in the garden that that was not an unreasonable amount of money. Saying that, if you look later on in the Bill, there is an opportunity to put that figure up at any time, but that figure, following consultation with the Office of Fair Trading, would have to be subsequently approved by Tynwald Court.

In clause 4(4) the periods of time: again, the hon. member Mr Earnshaw said that the times were too generous and in particular it should be restricted to either Bonfire Night or New Year. Well, there again there is provision within the legislation to alter those periods and then the alteration times would come before Tynwald. So what I am trying to do with the introduction of the Bill is to put a framework forward. Let us see how it goes, let us see what the public response is, and if people are well behaved and the system is not the subject of abuse, fine. If that is not the case, if what we are proposing at the moment does not work, at least we have got, within the legislative framework, an opportunity to revisit it. Then following consultations with Home Affairs and Trading Standards they can come back.

Now, he also asked: 'what will be the penalty for people letting these fireworks off outside the time period?' Well, the penalty is quite clear. It is a fine not exceeding £2,500 and it is a significant fine. He also mentioned whether there would be a call for licensing suppliers. Well, all suppliers of fireworks are already licensed. There is a proper register kept by Trading Standards. They all have to go on courses and satisfy health and safety standards and the register is quite strictly adhered to, I understand.

The hon. member for Douglas North, Mr Henderson, was supportive of the Bill. He felt we should be looking at the buying age, it should be a 21-year minimum. That was a recommendation that was put forward by some of the manufacturers and retailers of the fireworks, but in all honesty, hon. members, if you are going to send a young man out to the Gulf at 18, to shoot with a rifle and to defend his country –

**Mr Henderson:** That is shooting with a rifle, not throwing fireworks.

**Mr Downie:** – it seems to me a bit pointless that it should be 21 to buy a firework. You have got to have a degree of common sense in this. There is also provision in the legislation where there is an element of parental control that is brought in as well, which will be useful. So we are trying to keep 18 for the purchase of various items, which are alcohol, cigarettes, fireworks; but for a person to actually sell a firework in a shop they need to be 21 years of age.

The hon. member for North Douglas, Mr Houghton, was also supportive of the Bill. He indicated that there needs to be a bit more input from the police officers. If the legislation goes through they will have a vehicle which they can use for that purpose. He said he was looking at a couple of minor amendments, one is to clarify 'display' and exactly what the display is, and the other one will deal with the issue that was raised by another hon. member about 'apparently' 18. So we are going to clear up those two areas. When I put the framework to this together I lifted it from a piece of legislation which I understand in itself now has been altered, so the 'apparently' has gone and that is going to be dealt with when Mr Houghton comes back with Trading Standards amendments and I am grateful to him for doing that.

The hon. member for Peel, Mrs Hannan, made reference to clause 4 about the requirement for notices to be submitted and advertised, and 'what about private functions?' Well the whole idea of having the legislation and a provision to allow people to let off fireworks outside of the Bonfire Night or the New Year's periods is to have a system where we can put people on notice that a display is about to take place. Now, having taken some advice on this, the most practical way of doing it is to have an advertisement placed in a newspaper. I am not suggesting for one minute that it maybe should not go on Manx Radio. There is no reason in my opinion why a person who is having a display should not out of common courtesy go round to the neighbours and say, 'It is the young one's birthday next week, we have decided to have a fireworks party. I am just letting you know I have applied for the notification documents from Home Affairs, it will be going in the paper.' To me that is all about being a good neighbour', and if you have got a dog or a cat that is highly sensitive you can have a word with the vet and you can have a tranquiliser or a draught prepared for it. You can make sure the animal is in and the curtains drawn and you can minimise the stress. So I think, without being too draconian you do need this provision where a private display, or a local authority display for that matter, is properly advertised and people know that it is about to take place.

Now, the hon. member for Ayre, Mr Quine, he made reference to: 'What amounts to a public place?' Well, public places are quite clearly defined in law, and the best way to find that out is if you get drunk one night, because I am told you cannot be locked up if

you are not in a public place, you are only committing an offence when you are in a public place. A display on a farm – I know of the particular instance that the hon. member is referring to, because I had telephone calls about that. We cannot really dictate what people do on private property, but if the Bill comes in in its present form a person holding a display on a private property would have to give notice, and I would suggest that if the person who is having the display regularly causes a nuisance and has fireworks going off 2 o'clock and 3 o'clock in the morning, and is not adhering to the spirit of the legislation, I would think that the Home Affairs Department could probably give a very good reason why that permission possibly should be withheld, or conditions could be put on whereby there is a visit from the fire officer, who examines the situation. I know that in other jurisdictions similar legislation is being brought in, and I have the new legislation which is coming in in Northern Ireland before me, with all the details and the forms, there is health and safety advice and everything else given by the fire authorities and there are proper explanatory notes. We could quite well adopt a similar procedure. It is a difficult situation; one would expect that people living in the country where there were farm animals would have a little bit of common sense and really have the wit to advise adjoining landowners that, if they had stock, perhaps they could maybe move them back a couple of fields. The Bill covers the occupiers of land and also the person who puts the display on. So there is quite an onus on the people who are proposing to hold the display to go through this proper procedure. So I hope I have clarified that in some way for the hon. member.

The hon. member for Rushen, Mr Gill, made reference to the dates, Halloween and so on.

**Mrs Hannan:** Halloween?

**Mr Downie:** As I said, the dates can be amended and as long they are ratified by Tynwald there is not a problem. Pardon?

**Mrs Hannan:** Hop-Tu-Naa!

**Mr Downie:** Halloween, I said.

**Mr Duggan:** Hop-Tu-Naa!

**The Speaker:** Hon. members, please. Mr Downie has the floor.

**Mr Downie:** I am sorry if I have caused offence, but in my calendar and in the Oxford Dictionary the date is actually Halloween. I accept it is Hop-Tu-Naa in the Isle of Man but –

**Mrs Hannan:** This legislation is for the Isle of Man.

**The Speaker:** Hon. members.

**Mr Downie:** In our day we did not let fireworks off on Hop-Tu-Naa; we all got dressed up in silly outfits playing trick or treat. So, let us get back to the turnips!

**The Speaker:** Let us get back to the Bill, Mr Downie. *(Laughter)*

**Mr Henderson:** Hear, hear, Mr Speaker.

**Mr Karran:** You are the turnip! *(Laughter)*

**Mr Downie:** Mr Gill also raised the point: who is responsible for controlling a public display? Well, one of the areas that is covered in the Bill deals with the types of people who will actually come and put a firework display on for a family – a person who is in the business of a professional organiser or a professional operator of firework displays. More and more we are coming into conflict with new legislation regarding health and safety at work, health and safety insurance, so I would think that if you are having a fairly large firework display you are much better to go and get somebody professional to organise it for you. The other thing, too, which is important, is that a lot of these fireworks now are available in certain categories and there is only really a very limited category available to the man in the street. So if you want to have these huge aerial bombs and great star bursts and things, you really have to acquire that sort of firework through one of these professional organisers and they will not let you discharge them yourself; they will have to come and oversee them being let off on your premises, because they are dangerous, and they have the proper expertise, they are licensed by Trading Standards and they also, I would think, have the proper insurance in place to deal with them as well. I hope that deals with that.

The hon. member for Garff, Mr Rodan, made reference to public places. The whole idea of the Bill is to try and prevent indiscriminate and anti-social use of fireworks in public places. We are trying to cut down on or prevent some of these youths or young people going off and causing an absolute nuisance by improper use of fireworks, and that is what we are trying to get over. If, for instance, an argument was made about a firework display on a beach, a beach really is not a public place. A beach is a place where the public may have access, but really if you are going to have a firework display on a beach you either need to contact your local authority or indeed the Department of Transport, they are the people who would have to give consent. Now, if you were having a firework display outside of the normal period you could always go for the option of seeking the advice or assistance of a responsive body like the tourist department – obviously the display would have to be properly advertised in the prescribed manner – and where it was a charity or some other organisation, they could solicit the assistance of the local authority. It

would really need them if they are going to have the display somewhere else, perhaps in a town or village where the public has access. I do not foresee a particular problem in that area and, as I say, there are plenty of professional organisations who are only too willing to get involved with charity organisations.

If I could move on to Mr Duggan, he supported the legislation and also said that an issue was enforcement, and that is why I have tried throughout the Bill to make the enforcement issues as easy as possible for the police to get to grips with.

Now, Mr Corkill, the Chief Minister, supported the thrust of the Bill. He made reference to defining boundaries as to what was reasonable; well I hope I have tried to do that within the Bill. He said enforcement was a key issue, and I would reiterate: at present there is no law to prevent someone letting off fireworks in the street really. He made reference to the word 'apparently' again, restrictions on age; that is being addressed in an amendment that is coming. Regarding the reference to the RNLI and maroons and the start of a yacht race, the marine pyrotechnics, which include distress flares and some types of maroon, are actually exempt from fireworks legislation and they are covered by the safety at sea legislation, SOLAS, and all sorts of other areas which come under the shipping heading. They are a different thing entirely – parachute flares come under that category as well – and it is actually an offence to fire those in land, and I do not think there will be a problem with any of the yacht races or other events which take place round the coast.

Chinese New Year – I do not have a copy of the lunar calendar with me, but if the Chinese community on the Isle of Man want to have a huge display that is up to them, but I should remind hon. members that fireworks in Hong Kong have been banned for a number of years, and in other parts of China. There were so many people getting hurt through the misuse of fireworks that it was stopped, so these things that you see on TV now are somewhat illegal, and I doubt whether the manufacturing of this type of firework and the sale would actually bear any resemblance to health and safety regulations which exist in the Isle of Man. I am sure if they want a fireworks display it can be accommodated through this legislation.

Finally, purchase directly from off-Island – I should remind hon. members that at present if a person sends fireworks or other explosives through the post or through a carrier who does not have a licence under the Dangerous Goods or Explosives Act is committing an offence. I know that when the fireworks do come to the Isle of Man there is a special licence issued in conjunction with Trading Standards. They are held in a very special container on the ship, they do come with other hazardous cargoes and then they go into store here until they start going into the various retail outlets for sale. So a person should not be thinking they can acquire fireworks and just bring them into the Isle of Man, and I am sure that if this proposed legislation becomes law, if there was an offence committed under

this particular Act, they would be wanting to know where these illegal fireworks came from if they found out that they had been imported through some other route.

So I hope I have dealt with all the questions, hon. members. If there are others or you require some additional information, I am only too willing to provide it, and I would just formally like to move that the Bill be read for a second time.

**Mr Houghton:** Hear, hear.

**A Member:** Hear, hear.

**The Speaker:** Right, hon. members, the motion before the House is that the Fireworks Bill be read a second time. All those in favour say aye; against, no. The ayes have it. The ayes have it.

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### **European Communities (Amendment) Bill – Second Reading Approved**

**The Speaker:** We now move on to the European Communities (Amendment) Bill and I call upon the hon. member for Onchan, Mr Corkill.

**Mr Corkill:** Thank you, Mr Speaker. As hon. members will be aware, the European Communities (Isle of Man) Act 1973 implements the Island's special relationship with the European Communities, as set out in protocol 3 to the United Kingdom's 1972 Act of Accession to the community, into Manx law.

The 1973 Act is amended each time a new European Community treaty is adopted. Previous examples include the European Communities (Amendment) Acts of 1994, 1995 and 1999 which took into account the Maastricht treaty and the EEA agreement, the Treaty of Accession of Austria, Finland and Sweden and the Treaty of Amsterdam respectively. I should perhaps emphasise, Mr Speaker, that the extent of the Isle of Man's relationship with the European Community, as set out in protocol 3, is not changed by these amendments. They merely take into account changes in the community itself.

As you may be aware it is proposed that 10 countries Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia will join the EU in time to take part in the elections to the European Parliament in 2004. Some might say that the EU does not work properly with only 15 members, so how will it be able to function at all when it has 25? The Treaty of Nice, Mr Speaker, aims to address this issue by reforming the institutions of the European Union to enable it to continue to function adequately after the accession of the applicant states.

Key changes made by this treaty include: firstly, changes to the size and organisation of the European Commission; secondly revision of the current system of weighted votes in the Council; extension of

qualified majority voting in the Council and co-decision with the European Parliament; also changes to the procedures set out in the Amsterdam treaty for authorising a group of member states to use the EU's institutions to move ahead with activity in certain areas, even though not all member states want to take part, and this is referred to as 'enhanced co-operation'. It also takes into account changes to the distribution of seats in the European Parliament after enlargement and also a package of reforms to alleviate the growing burden on the European Court of Justice and the Court of First Instance.

The UK ratified the Treaty of Nice on 25th July 2002, and following the deposit of the final instrument of ratification, which was by Ireland in December 2002, the treaty came into force on 1st February 2003. This Bill is intended to give legal effect in Isle of Man law to the Treaty of Nice. As the amendments to the existing community treaties resulting from this treaty are mostly institutional in nature, they are not expected to have any financial implications for the Isle of Man, and the Bill will have no effect on public service manpower.

I should also mention that the opportunity has been taken with this Bill to make a minor amendment to the Manx Time Act 1968 which fixes Manx time as being the same as that in Great Britain. The need for this amendment is the result of the implementation in Britain of an EU directive concerning the period when the clocks are put forward one hour during the summer. In practice, the period during which summertime is applied on the Island will remain the same as it has been for the last several years. Mr Speaker, I beg to move the second reading of this Bill.

**Mr Shimmin:** I beg to second, Mr Speaker.

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

**Mr Karran:** Vainstyr Loayreyder, the only question I have got to the Ard-shirveishagh is if he can tell us what the procedures are for scrutiny of this legislation – what bodies we have – as far as European Communities legislation is concerned. I am very concerned about, whilst obviously this seems to be quite straightforward, the fact that . . . I would hate us to find that EU legislation could end up being used as a Trojan horse to affect our own legislation in the future. So I would be very interested to hear from the mover what sort of input has gone into what implications it could have as far as the Isle of Man is concerned. There are implications with the Nice convention: we heard the other week there where people were saying that we wanted to be at the level of the EU. Well obviously after this particular convention comes in, the standard of living will actually go down as far as an average over the EU is concerned. That is a side issue, I am not denying that, but I would like to know what

sort of scrutiny is done as far as this, what the procedures are as far as the Council of Ministers are concerned and maybe whether we as a legislative assembly should be scrutinising this sort of legislation rather than just letting it go through, because there will be implications I am sure. There might be implications regarding the likes of agricultural produce as far as the broadening of the membership of the EU is concerned. There may be other implications, whilst it will not have any effects as far as staffing is concerned. I am concerned with this Bill – we saw with the previous Bill, where we spent hours over the fireworks and it is almost an art form. The Bill before made sweeping fundamental changes and there were two or three who spoke about it, and the next . . . I am concerned that it is important. This body is supposed to be a legislative chamber that scrutinises legislation, and I am just a little bit concerned that at the moment with this piece of legislation the Council of Ministers have checked it out, but really we have not, and maybe we should be looking at whether there are any other implications as far as the Island is concerned.

**The Speaker:** Hon. member for Middle, Mr Quayle.

**Mr Quayle:** Thank you, Mr Speaker. I had the pleasure of attending, within a delegation, the British Parliament and whilst there with the President of Tynwald we met a number of members of the British Parliament. They were concerned about the fact that the UK rigorously implements the rules and regulations emanating from the European Union to such an extent that they believe it is a far more rigorous implementation than is done anywhere else in Europe, to the disadvantage of the United Kingdom. I really just flag up within this, and relating to other European matters, that there is the perception – it may be reality – that the Isle of Man is even more zealous in its rigorous implementation of regulations that are emanating from the European Community. I would be interested to hear the Chief Minister's comments relating to that.

**The Speaker:** Hon. member for Onchan, Mr Corkill, to reply to the debate.

**Mr Corkill:** Yes, thank you, Mr Speaker. In reply to the hon. member for Onchan, Mr Karran, about scrutiny of this legislation, the process which it has undergone before it has got to the Council of Ministers is that the Chief Secretary's Office, particularly the external relations area of the Chief Secretary's Office and indeed the Attorney-General's Chambers have scrutinised this piece of legislation carefully to try and ensure as far as possible – scrutiny can be never-ending and I am not saying that that is the end of all scrutiny of this particular piece of legislation – but from a government perspective we are comfortable that this piece of legislation has minimal implications for the Island. We do that for all EU legislation, not

just this particular piece, but of course a lot of that legislation is secondary legislation that we pass through Tynwald. This of course is primary law. So in terms of a deeper scrutiny, it has been mooted from time to time that there should be perhaps standing committees of scrutiny, and as a government spokesman I will not comment further on that. Obviously we will offer this piece of legislation up publicly for as much scrutiny as hon. members wish to give it. Can I reiterate, though, that we are content as government that this has minimal implications.

The hon. member also spoke of the impact on agriculture, and of course we see the existing impact of the EU on our agricultural industry – and other areas of our economy – because of our protocol 3 relationship, which was built into the relationship back in 1972, or whenever the Treaty of Accession was, and that is unchanged by this piece of legislation. So the actual protocol 3 issue in relation to agriculture is unchanged, but of course what is happening is that the EU is changing, and with these extra countries coming into the EU the impact for agriculture could be greater because a number of these states that are joining are agricultural states. In particular, I know that Poland is very much an agricultural community which will have an impact on the whole of the EU, so it is bound to have some impact here on the Island because they will be, as part of the EU, free to trade into our Island, and that is the situation that of course the existing EU member states have. So yes, the hon. member is right to be cautious because the EU is changing, it is growing, and although we are getting slightly bigger, we are very small beer compared to the hundreds of millions of people that are now forming this union.

With regard to the member for Middle, Mr Quayle, I am pleased that he was delegate to the Westminster Parliament and knowing some of the MPs who are very kind enough to make themselves available to parliamentarians from the Isle of Man. I am very aware that a number of them are very Euro-sceptic in their stance, and they are very interested and helpful towards the Island in scrutinising the legislation that comes from the EU. Of course, we have the benefit here, as a parliament, whether it is in this chamber or another place, either to implement or not to implement a great deal of EU legislation. There are certain obligations in areas to do with agriculture for instance, where because of protocol 3 we are obliged to do things in line, but with the vast majority of EU directives, it is up to us as to whether we think they suit the Island's interests or not. Of course to members of the parliament in the UK who are not particularly pro-European, that is a great attraction. It is probably something they would wish to see within the UK, but of course the UK being a full member of the EU does not have that luxury.

Whenever we debate the EU in this House, Mr Speaker, we talk about the fact that certain EU countries seem rather less than diligent in terms of the way they implement the legislation that has been agreed in Brussels and some states seem to be better at

it than others. Some states enforce it more than others, but I would say that that is really a matter for the EU themselves to sort out, whereas for ourselves, our relationship is defined by protocol 3. That is really a matter for them, but I would reiterate the fact that with regard to all the emerging directives that come out of the EU – we hear obviously this morning, things about taxation – there are many things that have an impact on the Island and the Chief Secretary's Office has a rôle of scrutinising that legislation to see what is applicable and what is not to the Island. I would say also that Keys and Tynwald have a duty to scrutinise as well, in terms of whether it is appropriate.

In rounding up, Mr Speaker, there has not been much comment about this legislation. It really is a way of changing our law here in the Isle of Man to acknowledge the changes that are occurring in the EU and it is no more than that, plus the small item about the Manx Time Act. Can I just say not everybody realises that the Isle of Man is actually in the same time zone as the United Kingdom and sometimes that includes the UK Government. I once had a call from the press office in the Home Office to ask what time zone the Isle of Man was actually on because they wanted to co-ordinate some press releases. So, bearing in mind that traa dy liooar is something that we all probably wish to see more of, can I say in this instance there is no place for traa dy liooar in this legislation because we want our time to be in line with the UK time, which is now EU time. I beg to move the second reading, Mr Speaker.

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

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### **Litter (Amendment) Bill – Second Reading Approved**

**The Speaker:** We go on to the next item which is the Litter (Amendment) Bill and I call on the hon. member for Ramsey, Mr Singer.

**Mr Singer:** Thank you, Mr Speaker. I am pleased to present this Litter (Amendment) Bill 2003 to this hon. House for its second reading. It is based on sections 93 to 95 of the Environmental Protection Act 1990 and inserts new sections in the Litter Act 1972.

Hon. members will recall that before I sought leave to introduce this Bill last year I contacted all local authorities for their views on the principle of the Bill, as it would be those local authorities who would be serving the litter control notices on the relevant premises. At that time I received support from the local authorities, even from those who said that the problem did not effect their area, but they appreciated such powers being available to those authorities which would.

There is a general wish Island-wide to tackle the problem of litter, to tidy up our countryside, our villages and our towns. I have to say to hon. members that it is not within my ability to solve all the Island's litter problems, but I believe I have identified a gap in the present legislation which will be helped by this proposal. At present within the Litter Act 1972 there are powers to order an occupier to clean up private land to which the public has access. If, however, the litter is deposited on the highway, neither the local government department nor the local authority have any powers to order a similar clean up. This Bill would grant the power to local authorities to serve litter control notices on the occupiers of designated types of premises to require them to keep the highway and any open land fronting the highway, for example a forecourt, clear of litter and to keep a specified distance from the premises clear of that litter. The types of premises and the distances would be determined by DoLGE regulations, which would have to be approved by Tynwald. I envisage that the type of premises DoLGE would specify are those from which litter emanates, particularly premises used wholly or partly for the sale of food and drink for consumption off the premises. These could include take-away premises, service stations and supermarkets. Another litter source could be automated teller machines at banks and building societies or discarded betting slips from outside bookmakers shops.

I do not for one moment expect that all the litter problems of the towns and villages will be solved by this Bill, but I hope members will agree with me that the environment will be improved. There are many responsible occupiers who now make the effort to keep the outside of their retail premises clean and tidy and I am sure that we all appreciate those efforts.

At the leave to introduce, members raised items in the discussion and I have considered and discussed them with the Attorney-General's Chambers. One of the particular problems focused upon was the discarding of cigarette ends outside offices where smokers gather. My discussion with the Attorney-General's office threw up the difficulty of who the litter control notice would be served on as several companies might occupy one office block, and I think the answer to that problem is to put pressure on the companies to provide more waste receptacles and to be more conscious of their responsibility to the environment. There is no doubt in my mind that government in general has a great responsibility to tackle the litter problem and the hon. minister Mrs Crowe did indicate the reintroduction of the Clean Sweep campaign. Education can play a great part in the teaching of good citizenship and DoT can provide the general services of road-sweeping and litter receptacles, but in doing all this, it is not up to government to solve the problem for those businesses which, for whatever reason, produce the litter and expect the government to clear it up for them in public areas.

This Bill is not draconian; it is a Bill that primarily encourages those who produce the litter from their premises to accept the responsibility for clearing it up. Only if they refuse to accept that responsibility would action be taken, and I am sure that local authorities will not look on the powers that this Bill gives them as a big stick, but a power to use when all else fails.

Mr Speaker, when the draft Bill was introduced I undertook a second consultation with all local authorities and the local government department and the Department of Transport, as I was asked to do by the respective ministers of those two departments. I received nine replies from the local authorities, all of which were fully in support of the Bill. These authorities were Douglas, Port Erin, Ramsey, Bride, Arbory, Port St Mary, Braddan, Laxey and Peel and added to that at the first consultation I received support from 11 other local authorities, which makes a total of 20 local authorities in all. I sent a copy of the Bill to the DoT and received a reply from the chief executive on 22nd November saying he would contact me if there was anything he needed to discuss on behalf of the department. I have had no further communication and am therefore assuming that the department supports this Bill, particularly in regard of the hon. minister's comments that were mentioned in the letter, and I thank him for those comments. I received a similar letter from the chief executive of DoLGE, which by coincidence was also dated 22nd November and I have not received any further comment. I hope therefore that I have the support of the hon. minister on the department.

I have referred previously to the problem of litter being like a jigsaw, with different agencies, departments, local authorities and the general public all having a piece of that jigsaw to put in place. I hope that this Bill is an important component to help clean up our Island, to make us proud of the way it presents itself to our visitors and to set an example for the next generation to follow and to accept that it is up to the individual to accept a responsibility rather than to leave it to others.

In conclusion, Mr Speaker, this Bill intends to ensure that the occupier of a specified premises will clean up litter near their premises by encouragement and that they will be given every chance to do so before the local authority takes action. The Bill sets out the foundations and if it becomes law it will be for the local government department, having heard the comments of hon. members, myself and the local authorities, to carefully consider the extent of the regulations and for the local authorities to enforce those provisions. It is not expected that this Bill will have any significant effect on public revenue, expenditure or personnel and therefore, Mr Speaker, I move that the Litter (Amendment) Bill 2003 be read for a second time.

**The Speaker:** Hon. member for Rushen, Mrs Crowe.

**Mrs Crowe:** Thank you, Mr Speaker. I am delighted to second this legislation. I know that the hon. member for Ramsey, Mr Singer, has consulted with my department and that we will do everything that we can to keep the Isle of Man litter free. He knows, I think, that he has my support in this matter and I wish him well with the progression of the Bill.

**The Speaker:** Hon. member for Middle, Mr Quayle.

**Mr Quayle:** Thank you, Mr Speaker. I did rise a moment or two ago there in the hope that I could have seconded this Bill –

**The Speaker:** You were too slow, hon. member.

**Mr Quayle:** Yes! (*Laughter*) So I would like to congratulate the hon. member for Ramsey for the initiative in bringing this Bill for our consideration here today. He has obviously put a lot of hard work into progressing it thus far. In relation to the comment from the hon. minister for DoLGE, I look forward to the time when the co-ordinated strategy is in place, which I have been pressing for for the last year now, which would be hopefully co-ordinating a policy between the Department of Local Government and the Environment, Department of Transport, Department of Education, Department of Home Affairs and the Department of Tourism and Leisure. I think, whilst the Bill before us today is a very important step, that it is more important to continue to make progress by hoping that the Minister for DoLGE will bring about the co-ordinated strategy which I think she had pledged herself to do some months ago. Thank you.

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

**Mr Houghton:** Thank you, Mr Speaker. I would like to join all the previous speakers in congratulating the mover of this Bill and to also assure him that indeed its details have been considered in the department, as my minister has already alluded to, but more particularly in the Environmental Health Division. We are very greatly awaiting the provision of the enactment of this Bill because it gives all the reasons that have been set out by the hon. mover, but in addition, interestingly, it can also through its regulation be extended to include rear lanes to do with buildings to do with those retail buildings, to which the hon. mover is targeting. We all know that we have a great deal of difficulty, especially on Douglas Promenade and in the East Douglas area unfortunately, with waste flying about in rear lanes and it is usually waste from food products and containers thereof. So we are very supportive from the environmental health aspect on this, and we see that it will be an extremely useful provision. We will be supporting it all the way, sir. Thank you.

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

**Mr Duggan:** Thank you, Mr Speaker. I fully support the legislation, but again, what about the enforcement? You take a TT week and go down the promenade the morning after one of the street parties and the place is in a terrible state. Also outside schools, you generally see kids going to tuck shops and on the way back to school they are dumping litter. So though I support the legislation, I think enforcement is the most important thing. I do not think you will get very far with it.

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

**Mr Karran:** Vainstyr Loayreyder, I think that it is a bit like one of the previous pieces of legislation to do with fireworks and it is about the situation being a reflection on our times and a sign of the lack of civic pride. I think the problem is like in that previous piece of legislation: I do not see that as being the panacea, and whilst I think it would be wrong to be a dog in the manger and vote against this proposal here in front of us without putting something in its place, I think we do need to get back to some realism. I have heard people here on about different things: we have anarchy as far as sometimes on our promenade; we have the situations over drugs; we have all the other problems as far as law and order are concerned. Let us get back to reality, please. This Bill will hopefully do what it proposes to do, but let us be honest about it. If I have got policemen, I want my policemen out sorting out the things that really blight our society and our people, and I know that litter is part of the equation, but it is very, very low on the list.

I am concerned with this piece of legislation – a couple of things that I would have liked to have seen. I do not know whether the mover has any intentions of trying to bring in any sort of on-the-spot fines. We hear increasingly of the waiting lists to try and get court cases in front of the judiciary and we add this piece of legislation to the list of things for which you can end up being in front of the courts.

I wonder whether the member has any views regarding the employment of litter officers and the likes of that. This piece of legislation will need to be enforced and I think this is where my battle has been with the Minister for Local Government and the Environment over planning bye-laws at the present time, where local authorities are penalised for employing people to do the job. There are some horrendous nightmare messes, speaking as an ex-joiner, that we are going to find in the very near future because of bye-laws not being properly adhered to, and I can tell you that especially in Douglas and one or two other areas, they are going to have some awful constituency problems in the near future. It is all right bringing the legislation in, Vainstyr Loayreyder, but it does need to be policed and the problem is that if you

do not employ people to police standards to a reasonable level, you might as well not bring the legislation in and this is the danger.

What I am concerned about with the piece of legislation is whether we should put some sort of responsibility on local authorities, because what we do at the moment is that we encourage local authorities to be irresponsible. You take the likes of my ratepayers and the ratepayers of Peel – they are about the only two when it comes to building bye-laws – because they are proactive, they are penalised. Now what we need, if you are going to deal with the likes of litter and this piece of legislation, is there should be people there to police this piece of legislation and the local authorities should be paying for it as far as that is concerned. Quite frankly, they are not going to, Vainstyr Loayreyder, and that is where I think this piece of legislation will fall down.

The other issue that concerns me about this piece of legislation is the issue of the local authorities and if they have to take out private prosecutions, or whether it is going to be a criminal prosecution. We have the absurd situation, I know in my own constituency, where I had a place that for something like 15 years the local authority tried to sort out this blot on the landscape and in the end they would not take them to court because it cost them too much money to do so. So I just ask whether the proposer of the legislation has thought of whether we should be extending maybe the small claims court to be able to get the local authorities' costs back in order to police this piece of legislation. At the moment, they go and take the lawyers time, it costs them money, it is all well and good bringing in this legislation, but if it does not do the likes of these things. As local government we penalise local authorities who are progressive. I just worry whether this Bill will be more window-dressing than actually doing the job that it is supposed to do. I will not vote against the Bill because I think that is something.

The other issue I would like to see, Vainstyr Loayreyder, and I might do something with this Litter (Amendment) Bill, is the fact of responsibility for litter bins and such. I actually do feel that the local authorities bring an awful lot of this onto themselves – they should be providing more litter bins – but it is a cancer which we have encouraged in our society, and it starts in here and in the civil service where we all spend three times more time and effort finding a reason not to do something than the effort it would take just to simply get the issue addressed. So I do feel that with this piece of legislation that, whilst it is well meaning, I am concerned that I feel that I do not want us to lose sight of the priorities within the police force and I do not want a situation where you bring this on board, this is another grace-and-favour bit of legislation that will never be properly implemented unless somebody really crosses swords with a particular individual and we end up with a situation where local authorities will not police it, will not enforce it, simply because there is a rate liability on

their local authority. That is the only thing that concerns me about this piece of legislation.

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

**Mr Cannan:** Me?

**The Speaker:** I thought you indicated, hon. member that you wished to . . .

**Mr Duggan:** He was just nodding, I think.

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

**Mr Cannan:** Thank you, Mr Speaker.

**Mr Rodan:** Mr Speaker, could I ask the mover just to say a little bit about the criteria by which a local authority will satisfy itself that when it has identified premises that the litter that may come from those premises will be the litter that is causing the problem. As I understand this Bill, the local authority has the job of serving this litter control notice on premises defining the area of the highway and within the curtilage of the premises to which the controls will apply, provide and stipulate what receptacles for litter should be in place, the period under which litter must be removed and so on and so forth. Litter of course is litter, and I know the mover did try to explain the particular problems and the types of premises generating particular types of litter, but is it going to be fair to those premises or that operator who has the business to be held responsible for litter that may not be of his own making? There may be litter dumped in front of his premises, which did not emanate from those premises. Passers-by may be scattering litter when they go about their business – the litter is nothing to do with the premises in question. One could envisage, I suppose, a situation where you had a whole street of commercial premises, each potential sources of litter and therefore each being served litter control notices by the local authority so that the whole street was covered by the onus on those commercial operators in effect to keep the whole street clean, and the litter in question was nothing to do with them. It may be an extreme case, but like the hon. member from Onchan, that scenario could absolve entirely the local authority from any duties to keep the streets and pavements clean, and I just wonder in practice if there is room for abuse or misunderstanding or some unfairness that the litter, as I say, may have nothing to do with the premises in question and yet we are putting a requirement on those premises or in the public interest to remove litter in a situation where it would be more properly the job of a local authority.

**The Speaker:** Hon. member for Ramsey, Mr Singer, to reply to the debate.

**Mr Singer:** Thank you, Mr Speaker. Can I first of all thank everybody who has contributed to the debate.

Can I particularly thank the hon. Minister for DoLGE for her and obviously her department's support of this Bill. I am sure a lot of the questions that have been asked here today – certainly from what the hon. member, Mr Houghton says – the department has already thought of some of these problems and maybe thought of problems that have not been mentioned today.

I would like to thank the hon. member for Middle, Mr Quayle, for his generous support. I do agree with him and I think I did say that every department within government has a part to play to produce a comprehensive answer to the litter problem.

Mr Houghton talked about the Environmental Health Division and also giving power to local authorities and this is a vehicle – and it partly answers Mr Karran's question – for giving powers to local authorities, and the department may wish at a future time to use this Bill as a vehicle to extend its powers; that is fine. I do not think that, as I said, it is my responsibility to do it at this time and certainly I feel that I have identified a gap in the legislation. I am particularly pleased that Mr Houghton thinks that this private member's Bill will help Douglas.

Mr Duggan talked about enforcement, and enforcement is important. As I said, I do not think that this Bill is the be-all and end-all to litter problems, but there is a link with Mr Duggan's question with that put forward by Mr Karran when he talks about enforcement and the policemen – how are we going to get policemen, they have got other jobs? The whole point of this Bill is that it is not policemen who will be called on to ensure that this Bill is working. It is in the responsibility of the local authorities –

**Mrs Crowe:** That is right.

**Mr Singer:** – and the local authorities in some way will appoint a person, a litter warden, whatever you want to call them, and it will be that person's responsibility as a litter officer to identify where the problems are and where the specified premises are, if there is a problem. If there is no problem that is fine. It is only if there is a problem that they would then take action. First of all, I would say, they would go and talk to the premises' owners and say, 'Look, will you please clean up and keep your premises clean, as lots of people do now', and only as a last resort would they issue a litter notice. So I believe, opposite to Mr Karran, that there is realism in this Bill in the fact that it is a Bill that can be used by local authorities to improve the litter situation in the towns.

Mr Karran mentioned on-the-spot fines, this is something that has not been mentioned before and yes, that is a problem or a matter for government to think of, but I do not think it is within this Bill. Mr Karran did make great play on the fact that it will not work. Well, all I can say to Mr Karran is that if the enthusiasm that I received from 20 local authorities, some of them twice, having discussed the principle, having seen the Bill and having come back to me and

said, 'Yes, we fully support this Bill', can be translated into taking action then this Bill I believe will work. I believe that with it being a local matter it will work that much more quickly than having to refer a matter back to government for the government to take action. So I think that we will, if necessary, get successful prosecutions. Again a point raised by Mr Karran, if a prosecution is taken by a local authority and they win the prosecution, then they will be able to claim back their particular expenses of that successful prosecution.

I think that as far as litter bins are concerned this Bill will encourage the specified premises to provide litter bins almost without being asked, to save them time when they do go and clean up the outside of their premises.

The last contributor, the hon. member for Garff, talked about litter outside premises which may not be from those premises; I agree, I said this at the introduction and I think it was raised about McDonald's waste paper that is thrown out of the car in an area nowhere near the premises it emanates from. Again this Bill is to try and tidy up the town centres and when people drop litter just generally, the wind blows, you do not know where the litter has come from, but what we do know is that there are certain premises from which this litter emanates and people walk out of these places and they just drop the litter on the floor and the majority, I would think, of the litter generally outside those premises is going to come from those premises. Now I would not expect the owners to go round saying, 'That is my piece of litter, that is not my piece of litter.' I hope that there will be a general attitude by the owners of these premises or the occupiers of these premises to say, 'When I close these premises I will go and clean up outside these premises', and they will know the specified distance and that is going to help the litter problem generally throughout our towns and villages. Remember, hon. members, that litter control notices will only be issued if there is a problem, and if that problem is because the owners of the premises from which the majority of that litter emanates does not wish to take action.

So, Mr Speaker, I do believe that this, as I say, has plugged a gap. I am very pleased to have the support of the local government department and I think the Department of Transport on this matter, and I hope that I can have member's support at this stage. Thank you, Mr Speaker.

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

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### **Submarine Cables Bill – Third Reading Approved**

**The Speaker:** Now, hon. members, we move on to Bills for third reading and we have the Submarine Cables Bill. I call on the hon. member for Douglas West, Mr Shimmin.

**Mr Shimmin:** Thank you, Mr Speaker. There were only two items raised at the second reading or the clauses stage which I would just like to address. Firstly, the member for Ramsey, Mr Singer, questioned the issue of payment for environmental studies. I intimated at the clauses stage that the environmental study would be initially at the cost of the proposed applicant. However, we are considering in regulations as to whether that would need to be strengthened by our own independent examination of the environmental study, so that, like the second point I will go on to, will be subject to regulations which come before Tynwald. However, we are still considering the most appropriate way forward of having environmental studies evaluated.

The second issue was raised by the member for Rushen, Mr Gill, who referred to the responsibilities for ensuring that adequate work is being carried out. This will again fall as part of the regulations which will be approved by Tynwald, but it will be subject to a works authorisation being determined, and for the benefit of the House I would say that in this works authorisation the applicant will be advised of the operational conditions that apply to the laying of the cable. Amongst other matters specified would be the route of the cable and the depth to which it is to be buried. Both of these issues can be monitored, firstly by the equipment on board the ship for the accurate laying, which is in the best interests of the applicant laying the cable, but secondly the burial depth is a different matter and this is where the works authorisation will protect other sea users, mainly fishermen. Burying a cable is very expensive, it has to be laid in a trench, or more likely ploughed into the sea bed by a powerful tug, and it is our department's intentions that the regulations will enable the department to place a surveyor on board the laying vessel and entitle them to immediate information regarding burial depth as the work progresses. This we believe will give the safeguard that all satisfactory works are completed to our standard and I hope that satisfies the hon. member's question. I beg to move, sir.

**The Speaker:** Hon. member for Malew and Santon.

**Capt. Douglas:** Mr Speaker, I beg to second and reserve my remarks.

**The Speaker:** Hon. member for Douglas West, do you wish to, Mr Downie?

**Mr Downie:** No, I was going to second.

**Mr Anderson:** Slow! *(Laughter)*

**The Speaker:** Hon. members, the motion before the House is that the Submarine Cables Bill be now

read a third time. All those in favour say aye; against, no. The ayes have it. The ayes have it.

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### **Anti-Terrorism and Crime Bill – Third Reading Approved**

**The Speaker:** We now move on to the Anti-Terrorism and Crime Bill and I call on the hon. member for Douglas East, Mr Braidwood.

**Mr Braidwood:** Thank you, Mr Speaker. Before I move the third reading of this very important piece of legislation I would like to clarify some points which were raised by hon. members during the clauses stage of last week. On clause 11(2) Mrs Hannan asked how an employee is meant to distinguish if a person is raising money for an organisation involved in terrorism. An employee is not expected to know that someone is committing an offence, but if they believe or suspect they are, then the employee is then required to report it to their employer. If the employer also suspects the individual of committing an offence then the employer must report it to the police. These requirements are already in place. The Anti-Money Laundering Code makes it obligatory for businesses to introduce preventative systems and procedures concerning customer identification procedures, record-keeping, education and training and the reporting of suspicious transactions. The code leaves it to individual businesses to issue guidance notes setting out how the employers expects its employees to address their obligations under the law. Institutions such as the Financial Supervision Commission have issued guidance notes to its licence holders, banks and building societies, investment businesses and collective investment schemes on the Island. The guidance notes give detailed practical guidance on prevention techniques and the important principle of 'Know your customer'.

Mr Singer asked if police already had powers to cordon off areas. There are no specific statutory powers for police to cordon off areas at this time. They use a collection of powers at the present time, Mr Speaker.

Mrs Hannan also, under clause 24, schedule 5, paragraph 1(4)(a) requested a definition of 'legal privilege'. Legal privilege is a client's privilege to get unbiased legal advice with regard to his situation. It is the fundamental right of the client.

Mrs Hannan also asked for the clarification of 'specified area' and 'cordoned area'. A specified area is an area for which authorisation has been given by the Chief Constable under clause 33 to stop and search a vehicle and its occupants, or pedestrians. A cordoned-off area is an area designated under clause 20 by a police officer of at least the rank of Chief Inspector. The police may restrict access and order the removal of vehicles and any persons from the area immediately.

Mrs Hannan also asked for, under clause 53(2)(a), the definition of 'ordinarily resident'. There is no fixed definition, it is usually read as a place in which a person has his usual fixed permanent abode.

On clause 70 the hon. member for Douglas East, Mrs Cannell asked 'Do regulations made under the Bill need Tynwald approval?' Orders and regulations made under the Bill are to be laid before Tynwald as soon as practical after they are made and are subject to the procedure of approval by Tynwald at that sitting or the next following sitting. If Tynwald fails to approve them then the order or regulations will cease to have effect. This allows for orders or regulations to be made in advance of Tynwald in case of an emergency under subparagraph (2), those officers working for the Financial Supervision Commission, Independent Pensions Authority et cetera.

On clause 77(3) Mrs Hannan, the hon. member for Peel, asked whether rules of court go before Tynwald. The primary enabling power for rules of court is section 25 of the High Court Act 1991 which allows for rules of court to be laid before Tynwald as soon as practical after they are made and if Tynwald at the sitting at which the regulations are laid or at the next following sitting resolves that they shall be annulled, they shall cease to have effect. Mr Speaker, those are the points which I have clarified and I just beg to move the third reading, sir.

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

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

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

**Mrs Hannan:** Thank you, Vainstyr Loayreyder. I am surprised by the presentation that we have had with this legislation because, while the mover suggested that it was serious legislation, I do not think any of us here quite acknowledge how serious the legislation is. Part of it is an enactment of legislation that we had already, but the other part is legislation that has been introduced in the UK, and there are parts of the legislation of which I do not think the full consequences have actually been demonstrated to us before this hon. House. In relation to clause 2 which actually states who is a terrorist according to the UK, we automatically put them on that without really referring to anyone else. I come back to the start of discussing this legislation – someone's terrorist might be someone else's freedom fighter, and we know that there are many people in the world who are in positions of responsibility, not least prime ministers and presidents of countries who before might have been terrorists, but today they certainly are not – they meet and take part in discussions in the United Nations and the like, and really what we are saying by this legislation is presumably that there is no difference between them as long as there is someone who is

objecting – and quite legitimately objecting. We know in certain countries – we see in Zimbabwe the way they are treated by the government there, purely because they want to take part in the democratic government of their country. So there are issues here which I do not think have been fully explored by this hon. House. There is even the legislation which relates to other issues, such as financial issues and the like, so I remain concerned about this legislation. I think this legislation will mean that certain countries will be able to get information, notwithstanding the money-laundering legislation and other regulations under money-laundering and financial legislation before the House.

If I could just talk for a few minutes, Vainstyr Loayreyder: in Manchester over the weekend there was a terrorist alert and when it actually came to where people had to leave their properties, the police who were actually there did not inform everybody that they should leave the premises, they did not make sure that people had left the premises, they did not seem to know what was going on. I am not saying that is going to be the same here, but I am just saying that it is their legislation that we are actually copying and I just hope that this sort of thing does not happen here in the same way as it happened in Manchester where these 'bobbies on the beat', for want of a better expression, did not really know what was going on. The place was cordoned off and people were asked to move out of the cordoned area, but they had no idea. They were told it was 250 metres, I think. People went and sat in a café, which was actually within the 250 metres, but nobody had told the café to close down and not to serve people. What I am trying to come round to is some sort of guarantee that should we have an emergency such as this, emergency planning would swing into order where people will in actual fact be given information about where an emergency planning centre is, where people can be fed and looked after, where they can, if they have to stay overnight, have sleeping arrangements made for them. I think it is all very well passing legislation, but without actually knowing what can happen to people . . . As it was, this instance in Manchester did not go overnight, but it started off very early in the morning and it was later on in the evening before people were allowed back again. What I am suggesting to this hon. House is that could quite easily happen here and that we should have arrangements made so that people who are inconvenienced by issues such as this are looked after, proper planning is in place and people are not left really not knowing what is happening and what is going on.

I think, Vainstyr Loayreyder, that this legislation has not really been discussed in any definitive sort of way to actually bring home to members in this hon. House the actual state that we are creating. We only pass legislation and it becomes law. The only real discussion we have had over this legislation is whether ministers should have been allowed to vote on conscience or not, and it saddened me really because I think this legislation is about conscience; it is also

about being responsible, but I think there are issues in here which have not had the detail of debate that we should have had with regard to bringing in draconian legislation which affects our people – not just our people, but I think also the way that people react to other people that are not quite the same as us, when we look at what people wear, badges or uniform or whatever and because it is some sort of uniform or badge that maybe we do not like, they could have the finger pointed at them because of this legislation. It says, ‘If you think somebody is . . . you should actually tell the police’, and under this legislation that can happen: because we do not like the way these people dress, the way they act maybe, the way they worship and the sort of headgear that they wear, we can then take action against them. I think this feeds into the oppression that can come about because of people feeling pressured because of asylum seekers and people like that, immigration and those sort of issues. I think many of us here recognise the problems where there is war and people have to move from that place because of the persecution, for one reason or another. We feel very sorry for them and we say, ‘Oh, yes, they must receive asylum’, but as soon as they get anywhere in numbers that is when the problems start, and I really think that we ought to put in some sort of legislation which protects them so that they are not attacked, but also helps them to assimilate, if they are going to stay long enough for that. I do not think we should allow people, because of this legislation, who look for security within our midst, to suffer just because they are not quite the same as us. Vainstyr Loayreyder, people have moved here for economic reasons, but have moved within the migration area that we operate within the United Kingdom, and they tend to be some of the people who are the most vociferous when it comes to seeing people of different races within our midst, and therefore it is not just a plain straightforward issue that we might object to, under this legislation; I think there are other people, who have come here for what they see as very good reasons and they have a right to be here, opposing other people that they consider do not have a right to be here, and I just think we have to be very careful with the legislation that we take through this House. Thank you, Vainstyr Loayreyder.

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

**Mr Karran:** Vainstyr Loayreyder, I was quite impressed, with not being here last week, my heart rose when I saw that the hon. member for Peel’s amendment actually got supported in this House, and I do not want this to be seen as a down side to it, but it just disappoints me that it had to take the Chief Minister to second it. I believe that it would have been nice to have seen us as a parliamentary group seeing this, independent of the Council of Ministers.

The fact of the matter is that the problem you have got is that when we make legislation we do not make

legislation for the present time, we make legislation for the future, and the concerns that I have with this situation is like the old adage that ‘power corrupts, and total power corrupts totally’. My concern is the fact that, whilst I applaud the Chief Minister for seconding that amendment as far as this piece of legislation is concerned, it showed that he could see the importance of putting the limited period on that legislation and he should not be decried for doing that, which was right of him to do as an hon. member of this hon. House, it comes down to the issue of the separation of the legislature from the executive. I think the point is that it was good to see that you had a situation where my hon. colleague can see the dangers, the attacks on civil liberties, the potential attacks on justice and human rights violations, and that is to be welcomed and to be applauded from the Chief Minister. So I am not decrying that issue as far as that is concerned, and he should be applauded for that. What I am disappointed in is that I would have liked to have seen it being an initiative which did not come from ministers in order to have to do this, but it just shows that with this piece of legislation, Vainstyr Loayreyder, the Council of Ministers have acted sensibly in limiting the powers as far as this present Bill is concerned.

What concerns me about this piece of legislation is the fact that I would be very frightened to have the mover of this Bill protecting my civil liberties, my democratic rights, like many within this hon. House, and my concern is that, whilst it is to be applauded that this House and executive government were united in limiting the five years as far as this piece of legislation is concerned, I still cannot support this piece of legislation, because I do not think that we have looked at this seriously. We are not making legislation for today, we are making legislation for the next 50 years and that is what we have got to remember. Admittedly in this particular case it will not be for 50 years, (*Interjection*) because of that amendment, but what we are talking in general terms is that we do make that sort of legislation that will be here for a long time.

We have just seen the nodding through of the European Communities (Amendment) Bill where we are going to extend the EU citizenship and we are going to have to treat people from a broader number of countries now, as far as that is concerned, and it does concern me that in this House there is such simplicity as far as this part of the important rôle as far as a member of the House of Keys is concerned. The powers within this piece of legislation can be interpreted frighteningly to attack legitimate political opposition. I know that my colleague here is not the sort that would use this piece of legislation as a vehicle for that, but I am not here to make legislation because the hon. member for Onchan is going to be the Chief Minister; I am here to make sure that the legislation works and works well.

The problem I see, and why I cannot support this piece of legislation – it was a bit like one of the previous items on the agenda – is about the separation of power between the parliament, the executive and the

judiciary, and my concern is, as I have said with the inquiries Act, was the problem of the blurring of the edges. I have to make legislation under normal circumstances, like us all in this hon. House, for the worst scenario. Now, fortunately, we have had the vision from the executive and the parliament to support the five years' limitation on this piece of legislation, but the danger is the checks and balances are not in, in my opinion, on this piece of legislation. I understand the problem of the issue that we have to protect our citizens from terrorism, but what I do not want legislation to be used for is a way of attacking the civil liberties of minorities.

I would just like to conclude, Vainstyr Loayreyder. (*Interjection*) I was quite interested in what the previous speaker was saying about people coming in with different religions, vocabulary and languages into our Island, and I am sure that most of us are mature enough that we would not allow a situation where they would be allowed to be persecuted, but at the end of the day I think the problem we have got, and my concern with this legislation, is 'power corrupts, total power corrupts totally' and it concerns me. I do wonder sometimes, especially with some of our Manx people . . . When I think of my grandparents' generation – the likes of one of my aunts – whose English was very, very questionable as far as communication today is concerned. (*Laughter*) The situation is that I do think that some of us need to remember, when we are talking about people who have very poor English as we know it today: many of our grandparents would have been classed in the same level as far as their English is concerned today as these people that are coming into the Island. So I think we should not forget that when we are talking about these people coming into the Island. I will not support the proposal today because I feel that it has not got the checks and balances, and we have got to sort out a number of fundamental issues as far as government is concerned and the separation of power. I just hope that this issue does not come back to haunt future Houses, like so many other issues that I have raised and been ridiculed for that are in *Hansard* for all to see.

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

**Mr Rimington:** Thank you, Mr Speaker. Just a minor point to the hon. member who has just resumed his seat on the issue of the separation of powers: I am glad that he introduces that concept onto the floor of the House, it is one that is constantly before any parliamentary body and that we should always be wishing to explore, and he does refer to the blurring of the edges between that separation of powers. I would just like to point out to the hon. member that there is not actually a parliamentary democracy in existence where the edges are not blurred, and if you look at any parliamentary democracy you will find in between those three areas – the judiciary, the legislature and the executive – that in any one of them there will be edges

which are very distinctly blurred, as indeed there are blurrings within our own system. If you take, say, the United States of America and you could separate the legislature out and you separate the executive which is in the form of the president in control of the cabinet and the executive and the money and then what do you find? The president appoints the judiciary at the highest level and that is supposedly a highly democratic constitution (*Interjection*). You find it in the UK system: there are blurs within the edges. So, hon. member, yes, discuss these issues, look at those, but there is no pure solution. It is a very complex and difficult area and we have to work carefully to find that right balance as we go along.

**The Speaker:** Hon. member for Douglas East, Mr Braidwood, to reply to the debate.

**Mr Braidwood:** Thank you, Mr Speaker. The hon. member for Onchan mentioned minority races and religions. This Bill is nothing to do with that; we are talking about proscribed organisations. I will always protect minority religions, races, I will even protect the hon. member for Onchan!

**Mr Karran:** There is always a first!

**Mr Braidwood:** The whole point of this legislation is to protect the people of the Isle of Man against terrorist attack. I thought I had explained it on clause 2 on 'Proscribed Organisations', Mr Speaker: yes, we have followed the list which is proscribed in the UK under their Terrorism Act of 2000. I have also said that if the Isle of Man felt threatened by an organisation on the Isle of Man, we would contact UK authorities and they would put it on their proscribed list and it would already be here. I know that under the Prevention of Terrorism Act 1990 we had our own proscribed list and we could add to that list or de-proscribe by order in council, but under the human rights legislation we would have to have a proper appeals procedure in place. We would have to have the expertise. We have not got that and it would be extremely dangerous if an organisation was de-proscribed in the Isle of Man through an appeals procedure. It would not put us in a very good light at all.

Mr Speaker, Mrs Hannan mentioned the experience in Manchester where the police did not know what to do or the people did not know where to go; it would not happen in the Isle of Man. I can relate an experience a few months ago with the emergency planning officers –

**Mrs Hannan:** It was not terrorism though.

**Mr Braidwood:** But it is the same principle. If you have to take people out of an area, which happened in the Tynwald area and the Princess Street area when there was a fire and there was a propane cylinder and the fire fighters had to be there, people

had to be evacuated. They were taken down to the Sea Terminal and they were looked after and this would be the same situation if people had to be taken out of a cordoned area.

Mr Speaker, this is a very important piece of legislation. I believe I have answered the queries. I beg to move, sir.

**A Member:** Hear, hear.

**The Speaker:** Hon. members, the motion before the House is that the Anti-Terrorism and Crime Bill be now read a third 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 Anderson, Mr Cannan, Mr Quine, Mr Rodan, Mr Quayle, Mr Rimington, Mr Gill, Mrs Crowe, Mr Henderson, Mr Duggan, Mr Braidwood, Mrs Cannell, Mr Downie, Mr Shimmin, Mr Bell, Mr Singer, Mr Corkill, Mr Earnshaw, Capt. Douglas and the Speaker – 20*

*Against: Mrs Hannan and Mr Karran – 2*

**The Speaker:** Hon. members, the motion carries with 20 votes in favour and 2 votes against. Therefore the Anti-Terrorism and Crime Bill is read a third time.

Hon. members, the House will now adjourn until 10.00 a.m. on 11th February.

*The House adjourned at 4.35 p.m.*