

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

**Douglas, Tuesday, 11th March 2003
at 10.00 a.m.**

Present:

The Speaker (the Hon. J A Brown) (Castletown); Mr D M Anderson (Glenfaba); Hon. A R Bell (Ramsey); Mr R E Quine OBE (Ayre); Mr J D Q Cannan (Michael); Mrs H Hannan (Peel); Hon. S C Rodan (Garff); Mr P Karran, Hon. R K Corkill and Mr A J Earnshaw (Onchan); Mr G M Quayle (Middle); Mr J R Houghton and Mr R W Henderson (Douglas North); Hon. D C Cretney and Mr A C Duggan (Douglas South); 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.

The Chaplain took the prayers.

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Leave of Absence Granted

The Speaker: Hon. members, I have granted leave of absence to the hon. member for Douglas East, Mr Braidwood, and the hon. member for Malew and Santon will be delayed this morning but will join us later on.

Commonwealth Day Message

The Speaker: Hon. members, the first item on the order paper today is the Commonwealth Day message from Her Majesty the Queen.

‘A message for Commonwealth Day from Her Majesty the Queen, Head of the Commonwealth.

‘Among my cherished memories of my Jubilee celebrations last year were those connected with the Commonwealth – in particular the visits to Jamaica, New Zealand, Australia and Canada. There was also the undoubted success of the 2002 Commonwealth Games in Manchester – both as a great sporting and Commonwealth occasion, and as a tremendous expression of the host city’s community spirit. Launching the Baton Relay from Buckingham Palace on Commonwealth Day last year was one of the many colourful events leading up to the Games.

‘A few days before, I had opened the 2002 Commonwealth Heads of Government Meeting in Coolum, Australia. That summit chartered a new course for the Commonwealth, confident of the important contribution the association can play as a force for good in the world.

‘What we have in common makes the choice of this year’s theme for Commonwealth Day, ‘Partners in Development’, so fitting. We are reminded daily that we live in an interdependent world. And yet there exist great global inequalities, with millions living lives of deep poverty and deprivation, which present a great and constant challenge to the notion of commonwealth. Under these conditions, peace is often more difficult to sustain while precious natural resources and the environment are threatened, economic growth and activity may be impeded as well as the benefits of modern technology denied to many.

‘Working in partnership is essential if the nations of the earth, whether they be developed or developing, are to build a better, more secure and more sustainable world. Only together can governments and peoples create just, open and democratic societies. And through a sense of partnership and mutual respect we should be able to recognise that we all share a common humanity, regardless of who we are or where we may be from.

‘In all this, the Commonwealth has much to offer. It is a unique global grouping, spanning every region of the world and including in its membership countries of all sizes and stages of development. It is an association of peoples as well as governments and, as we particularly celebrated last year, it is a body which cherishes the richness of its diversity. The special rôle of the Commonwealth in development was

spelt out once again in the Coolum Declaration and at the meeting of the Commonwealth Finance Ministers in London last September.

‘2002 was for me personally a special year – and it was also an opportunity to recall those elements of my life, notably the Commonwealth, which have been of enduring importance. Appreciating just how far the Commonwealth has developed in the last 50 years is surely a cause for great hope in the future. Elizabeth R, 10 March, 2003.’

Questions were taken at this point and concluded at 10.45 They are published separately.

Temporary Leave of Absence Granted

The Speaker: Before we move onto item 4 on our order paper, can I advise that the hon. member for Douglas North, Mr Henderson, and the hon. member for Rushen, Mrs Crowe, are, with my permission, absenting themselves from the House, as there is a current planning application affecting the land that is identified in this motion.

A Bill to Restrict Development and Enable Coast Protection Works in the Parish of Michael – Leave to Introduce Granted

Item 4. The hon. member for Michael, Mr Cannan, to move:

That leave be given to introduce a Bill to restrict development on certain land in the Parish of Michael; to enable coast protection works to be carried out on or in relation to that land; and for connected purposes.

The Speaker: Hon. members, we therefore move onto item 4 – leave to introduce. Hon. member for Michael.

Mr Cannan: Thank you. Mr Speaker, hon. members, this is a small constituency Bill. It has no effect on any other part of the Island and it has no effect on general revenue.

Members will know that over the long years coast erosion has been a very serious problem in the parish of Michael. Indeed, three years ago in Tynwald, I passed a photograph round to every member of Tynwald, showing what had gone on in the last 50 years: mill, bungalow, land, fields – all disappeared into the sea.

Hon. members, in discussing this leave to introduce, I have had a meeting with the Michael Commissioners, and you have on your desk a letter of full and unequivocal support. There has also been a public meeting in Kirk Michael in which four matters were discussed: first was a health centre; second was the possibility of a bypass; third was coast erosion; and

fourth a gas pipe. And in the matter of the coast erosion, in a hall packed to the doors from which people had eventually to be turned away, there was unanimous support that the cliffs in this area can no longer be destabilised. It is becoming a *very* serious issue.

You will have had before you a copy of a plan drawn up in 1999, by Posford Duvivier at the request of the government and showing, at the erosion rate of 2.8 metres a year, the amount of land that will disappear in 60 years. I can assure hon. members that the cliffs are falling at this very time. There has been a big fall already this winter. It is so serious that the community is unanimous and the commissioners, their representatives, are unanimous that it is giving such deep cause for concern.

So, all this Bill that I am seeking to have leave to introduce will do is: it has two clauses and one is to make the cliffs in that area a protected area. It will not stop erosion, it may not even slow down erosion, but it will certainly not accelerate erosion. What people are fearing will destabilise the cliffs is heavy machinery moving in to do heavy development in these lands. Now this is not a planning issue, we are not discussing a planning issue, we are discussing the protection of the cliffs and statute law takes precedence. We are seeking to protect the cliffs from any acceleration in erosion and to have enabling legislation which at some time in the future government may wish to take advantage of. I have discussed this with the Minister for Transport and assured him that if leave is introduced there will be full consultation with the Department of Transport, which is now responsible for coast erosion matters, so that the legislation may be extended further along the coasts in the Isle of Man or whatever. But there will be full consultation with the department responsible.

You have all had a letter from the developers, and you will see from this area that there is still land for the developer – and that is a matter for the planning committee – between the demarcated area and Shore Road, and where Cleiy Rhennee estate is is packed with houses – full, every house sold, because this plan was drawn up in 1999.

As I say, hon. members, community and commissioners are becoming very worried indeed about the state of the cliffs. They realise that Tynwald is not in the mood to spend money to put in sea protection, and if they were, they could hardly do that at public expense and then allow developers to build very expensive houses with a sea view to the Mountains of Mourne and the coast of the Mull of Galloway. They want this land and the cliffs preserved for this present time. And I can tell hon. members: it has been drawn to my attention that insurance policies are now being queried by insurance companies for residents in the coastal regions of Kirk Michael – that was announced by residents at the public meeting. I am not disclosing anything that has not been said publicly. It is that serious, hon. members.

So I ask you, in the name of basic common sense, to just keep what we have in the Isle of Man, because you cannot recover the land. If it is gone, it is gone.

This community is seeking the protection of that area as a protected area, at no cost to the taxpayer or to government – it is the same thing – just have it protected to give some sort of reassurance to the community living on the coastal lands of the village.

Mr Speaker, I beg to move and I hope that this House will give me their support, leave to introduce, and I will work with the Department of Transport, which is responsible for coast erosion matters.

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

Mr Houghton: Thank you, Mr Speaker. I beg to second the member for Michael in his proposal to restrict development on certain land in the parish of Michael. It is vital that coastal defence work is commenced soon in order to protect the existing dwellings within the village.

The mover has made a clear case for bringing to this House a private member's Bill for future consideration by members. He makes the point that ground works required for future development would require a network of sewage and surface-water drains, and such an infrastructure may destabilise the surrounding land. That surrounding land is simply compacted sand – sand which is rapidly being washed away over the years by the sea.

Mr Speaker, I believe that coastal erosion in this area will accelerate in the future due to increasing precipitation and high winds, which have been forecast by experts and are now an acknowledged fact. I believe that government *must* provide coastal protection at Kirk Michael in order to protect the community of the village.

The proposed development site may fall within the 60-year barrier. However, if construction was allowed to go ahead, I feel that these properties would soon be devalued, thus giving negative equity on those properties, with ensuing difficulties faced by respective householders in obtaining appropriate insurance cover.

Mr Speaker, in the summer of 2001, in company with the hon. member for Michael, I attended a point on the cliffs opposite the village, where I took a second measurement within a period of eight months. I noticed that, in that measurement, almost three metres of land had been washed away in that short period of time. I think it would be folly not to support the hon. member today. All members have a copy of the recent letter from Michael Commissioners supporting this measure, so I would therefore urge all hon. members to support this leave to introduce today, sir. Thank you.

The Speaker: Member for Douglas West, Mr Downie.

Mr Downie: Thank you, Mr Speaker. I listened with interest to the hon. member for Michael's opening remarks, seeking his leave to introduce. I personally, have no problem supporting this course of action, but in summing up, I wonder if the hon. member for Michael could just answer a few questions.

First of all, could he confirm that the land is currently zoned for development and that there is in fact a live planning application being processed for development on that area, which, in fairness, does link to an adjoining site that is being developed in the last two years?

Could I also ask him: has he sought any independent legal advice as to whether there could be a compensation issue regarding the loss of this land for development purposes? And in the Bill that he is hoping to progress – and as I say, I have no problem with him cracking on and progressing a Bill if he wishes – will he identify other uses for this land? For example, would it be possible to establish some sort of a campsite in the area to assist the tourist industry? Or an RV park, so that at certain times of the year, people can come into the Kirk Michael area with their mobile homes and campers and things, and make some contribution to the local community and make some most welcome, I would think, financial contribution to the local shops and hostelry, who try to do as much as they can to stimulate new business?

They are areas that I am concerned about, and I also note with interest that, on the edge of the development area, the predictions – and I am not going to be hung up on predictions – on the map circulated by Posford Duvivier do actually indicate that it is thought that, if the present rate were to continue, that area would not be safe for at least 80 years. Now that is a long time, even for a timber-framed house, and you could well have a situation where some form of development takes place there but there is a condition on that which says that it is liable to be removed.

The other thing that I would like to get over to hon. members today is that anybody who was to buy a house in this area must be fully aware now that there is a limited timescale on this property, and surely that must be reflected in the price. So if you are going to buy a house that you know in 70 or 80 years' time is not going to be there, it should be built, really –

A Member: Out of timber!

Mr Downie: – in a very affordable way, I would have thought. So as I said, I have no problem supporting the hon. member in his introduction of his private member's Bill. If that is his wish and that is the commissioners' wish, far be it for me to stand in his way; I would just be grateful if he would answer the questions I have put to him.

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

Mr Quayle: Thank you, Mr Speaker. I, too, rise to share the concerns of the hon. member for Michael, but I would just seek clarification on the erosion rate. The plan before us from Posford Duvivier refers to a 2.8 meters-per-year erosion rate, whereas, as I understand it, the developer of the proposed site, if it receives planning approval, indicates that a report circulated on coastal erosion on the northern coast of the Isle of Man, presented to Tynwald by the

Department of Transport in October 2000, made it clear that the average erosion rate at Kirk Michael is currently 0.7 metres per year and states that there is no reason to believe that these rates of erosion will significantly change in the foreseeable future. *(Interjection by Mr Houghton)* The 2.8 metres erosion rate is taken from the interim report to Tynwald on coastal erosion at Kirk Michael, and I do just then seek clarification because I understand that Tynwald accepted the findings of the report where it clearly concluded the actual rate at Kirk Michael is 0.7 metres per year. So as I see it, we have before us the 2.8 metres-per-year erosion rate, but there may well have been another plan that actually showed 0.6 metres-per-year erosion and it is concluding at 0.7 metres. So I would just seek clarification for that but also share the views from the hon. member for West Douglas, Mr Downie.

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

Mr Bell: Thank you, Mr Speaker. As a general issue, I have no strong feelings one way or another about this one, and I am sure most people, in a general sense, would like to see all the Island's cliff areas protected from unnecessary development. But I am brought to my feet – the hon. member for West Douglas actually beat me to it – by one concern: the hon. member who is moving this matter, I think made some comment that it would be at no cost, but I have at the back of my mind, Mr Speaker – and I think that you may remember this as well – some number of years ago now, there was a parcel of land in Michael which was zoned for development. I think, again at the behest of the hon. member, this land was dezoned – I cannot remember the details of it now, but I do remember that this piece of land was actually used as security with one of the banks at the time.

Mrs Hannan: Oh it was, yes.

Mr Bell: As a result of that particular change of designation, the banks on the Island as a whole – I think it is a general policy – stopped, for a good period, taking land as security against other loans. Now this is a long time ago, and it is nothing to do directly with this but it did cause a massive problem at the time. What appeared, I think it was in Tynwald, to be a very simple issue, actually caused massive complications in the financial system on the Island.

So I would really reiterate, Mr Speaker, the points raised by the hon. member for West Douglas. I understand this land is zoned, but I would welcome the hon. member for Michael confirming that that is the case, and I would also welcome some indication as to whether or not the member has taken legal advice as to whether, in pursuing this particular action, government is not setting itself up to be paying out very substantial damages by way of dezoning land which has been bought in good faith. There is a current planning application in on that, and what appears to be a very meritorious sentiment at the moment could end up

costing government a huge amount of money if this is not properly thought through.

Could I ask also: the hon. member moving this has made mention that he has discussed it with Michael Commissioners, and clearly is aware of the emotion and sentiment of people in Michael through the public meeting, but has he in fact discussed any of these proposals with the developer who has a currently planning application in? Could I also ask, Mr Speaker, if in fact this land is de-zoned, is it the intention of the hon. mover to seek other land in Michael to be re-zoned for housing to compensate for the land which may lose its designation in this particular area? I think these are all valid issues. The basic sentiment behind this proposal, I am sure, attracts general support, but there are some really quite important ramifications from this. It is not quite as straightforward as it may seem, and I think all members really need to go into this resolution with their eyes open to know that, whilst supporting it on the one hand, we are not going to land the Manx taxpayer with huge bills for compensation on another.

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

Mr Corkill: Thank you, Mr Speaker. My comments will be brief. Some of them reinforce the comments from the member for Ramsey, Mr Bell, and indeed, Mr Downie, member for West Douglas. I do not think anyone can fault the hon. member for Michael, Mr Cannan, in his pursuit of a constituency issue which is very important to the people of Kirk Michael. (**Mr Houghton:** Hear, hear.) They feel threatened by coastal erosion, and, of course, we know that to date government does not feel from a resource point of view that it represents value for money – that word again – in terms of trying to push the tide back, as it were. So we have an ongoing situation in a number of coastal areas.

So, this leave to introduce, Mr Speaker, is quite a specific suggestion that leave be given to introduce a Bill to restrict development on certain land in the parish of Michael and obviously the hon. member no doubt will come back with a definition of what that certain land might be, if he gets leave to go forward on this Bill. My concern, I suppose, like others, Mr Speaker, is that we do have a live planning application in process and I am aware that the hon. member for Michael has had a public meeting. He has made it quite high profile that there are other parts of Kirk Michael that he would wish to see developed – there has been talk of a bypass, of housing elsewhere and the chestnut of the doctors' surgery, which is not forgotten. The hon. member is doing his best, obviously as he has a duty to do, to represent his constituents' interests, and I respect him for that.

But yet, Mr Speaker, we do have a local plan for the area, and I seem to remember that, not that long ago, the local plan, although it was relatively new, was changed through the proper process, through Tynwald and Tynwald agreed, to allow Cannan Court to be built on land which was not specifically zoned at that time, but it was obviously a community need and that

happened. I have to say, that heartened me, in a way, because it showed that zoning of land can be flexible, not totally inflexible, and that is a good thing. I am worried that there is this planning application in process and that, in good faith, has been put forward with the local plan as it is, and so the question I have for the hon. member is: why he thinks that the process of a review of the local plan, which can take into account all sorts of environmental factors, such as land erosion, to zone land appropriately, is in some way lacking for Kirk Michael in particular? I have always considered that the planning legislation that we have can detail land quite specifically for a purpose or, in fact, for no purpose, so that it has to be left.

I am not going to stand in the way of the hon. member trying to promote his Bill. I understand where his heart is in terms of representing his constituents' interest here. If one was cynical, one might think that it is a ploy to allow development elsewhere instead of development here. With the land erosion question at the back – that is a very valid question to be put – it is very much a planning consideration, a local plan issue, where you have a special inquiry, a public inquiry. Everybody can contribute to that and, of course, Tynwald is the final arbiter as to whether that plan gets approved or not.

There is one other point with regard to how he might progress this Bill and that is that obviously the Department of Transport have a number of views on this particular aspect, and I would ask the hon. member to consult with the Department of Transport as to what they might require from their point of view, in relation to this type of legislation so that it is not deficient from the DoT point of view.

There are two parts to this leave. One is certain land in the parish of Michael, and then, if you split it into a second part: 'to enable coast protection works to be carried out on or in relation to that land and for connected purposes,' so it is very specific to a piece of land. I would ask the question: why should one piece of land in Michael be treated differently from land around the Island in general? There are other environmental factors in other parts of the Island that are important as well, and this is very specific. Most of our legislation tends to deal with land usage in a general fashion, backed up by local plans.

The Speaker: Hon. member for Peel.

Mrs Hannan: Thank you, Vainstyr Loayreyder. This request before us today is not just a simple request for passing legislation that would affect everyone; it affects a particular area of land and it is introduced for a particular purpose. It is all very well saying that it is just affecting the constituency of Michael; in actual fact, it does not, as the Chief Minister has suggested. It could affect any land, which any office could say should not be developed for any particular reason.

The mover has not suggested that there should be compensation, but has suggested that there is no cost to the public purse. Well, I would disagree with that, because the motion before us quite clearly says: 'that

leave be given to introduce a Bill to restrict development on certain land in the parish of Michael to enable coastal protection works to be carried out on or in relation to that land and for connected purposes.’ We are not looking at stopping development because there is erosion in a place; we are looking at stopping development as part of coastal erosion protection. Now if that is what the member wants, I think he should be up front and clearly state that that is what he is suggesting should happen in this particular area. This is not restricting development on a piece of land that is going to be affected because we are trying to save people in the future from buying properties that are going to fall into the sea in the next 60 years. That is not the purpose. The purpose is before us to get coastal erosion protection in this particular area and this is one part of it. So I do not see how he can state to this House, Vainstyr Loayreyder, that this is at no cost to the public purse, when quite clearly it is! Even if it was not, the planning application, which is in at the moment . . . Someone would be approaching, I would imagine, government to pass legislation, part of that being to form compensation for not being able to develop this particular land. So it is not a straightforward issue at all.

Now, there was a public meeting and the member moving this says that this was one of the burning issues. Was it *the* burning issue? I think we should be told. I would like him to explain who is going to pay the compensation, and with the letter before us today, is it suggested that the local authority does that? The local authority is very supportive of this motion before us, and it says, ‘with the introduction of this private member’s Bill, in order to protect our coastline and safeguard the parish and the community of Kirk Michael from disappearing . . . by the elements.’ Now, this is after a meeting that Mr Cannan has had with the local authority, so it spells out exactly what Mr Cannan is wanting, but in supporting it, is the local authority providing compensation for this area of land not being developed?

The member for North Douglas who seconded this motion said that he has been and he has measured and he knows what the erosion is like. I would suggest that members just go to Glen Wyllin. I think you might have to walk from the area that was the bridge area – certainly when I was there, they were working on that particular area. If that road is open again, you can actually drive down, so it is a very short distance to walk to see where there are boulders and the rock revetment there. You have only go to look around the revetment to see the erosion that has been speeded up by having this revetment there to stop the erosion and to get access onto the shore. So it is not a simple case of just putting a rock revetment there and it being held, because it is not. What happens is that the sea comes in underneath, and it can even undermine the revetment so it has got to be replaced after a time, and around about the edges of the other side of the revetment it actually increases the erosion. So it is not just a straightforward case of putting the revetment along there from Ballaeira to Glen Wyllin and stopping the erosion. It is not as simple as that at all, and if you are

looking at the elements you are not just looking at the sea but you are looking at the wind – the severity of it and all of that – which actually causes erosion high up, not just low down. It is also water off the land, and you could say that by developing this and making absolutely sure that the Department of Transport get the water running away from the cliff, so that it enters the water courses or whatever in a different area, it might actually stop the erosion that is happening. The water on the land is coming down over a clay base and because it is coming over a clay base it actually takes the sand across and causes the erosion. So it is not as simple as I think the member is suggesting, and it is certainly not at no cost to the public purse. I could see legislation being passed so that the public purse would be called upon to compensate either the landowner, because he could no longer get planning on the land, or the developer who has actually purchased it – I do not know which is which at the moment; maybe the member for Michael could explain that in his winding up.

There is just a comment that was made, I think, by the member for Ramsey about development and about the local plan. Yes, there was land, but it was the other side of the road that was taken out of the area zoned for developed and that could, if it had been left in, if it was ever developed, have been part of the development that a road would have been put in to eventually bypass Michael so that it did actually take some of the traffic away from the village centre. But that was taken out at the time of the plan to bring in Cannan Court. We do know that there is a developer on this particular side of the road which is away from the coastal area. We do know that. Mr Bolton has actually been on the radio to state that if this land was developed he would be prepared to put half of the money from the development into a road. So we already know that there is this other landowner who wants to develop across the road. And he also provided land for Cannan Court, so you have got to see what this particular application could possibly bring about.

I would agree with the Chief Minister that the way to go about this is that a local plan, taking into consideration environmental aspects and maybe taking into account some of the issues that the member has brought to the fore this morning, should be considered by an independent inspector, taking into account all of these issues and not just ‘we are going to stop development on this piece of land.’ I would put it to you, if somebody came along and said, ‘These particular houses here are going to be cheaper’ – they might not be – at least people will know if they come to purchase houses on this land, because of the concerns that have been brought forward by the member for Michael, then it should make it absolutely clear that there is erosion in this area. I would imagine any search through any advocate would tell anybody buying a house on this particular area of land that this is an issue, and I would suggest if an advocate did not come up with that sort of information to a purchaser, then they would be at fault and they would have to compensate the future purchaser.

So, I will not be supporting the introduction of this legislation before us. I think it is wrong to support it. If Mr Cannan wants to bring forward the issue of coastal erosion in another place, that is fine and that is for another place to decide what happens, but I would suggest to members that this legislation is going to be the tip of the iceberg. The next thing is going to be the revetment from Glen Wyllin to Ballaeira, because it says to so in his application to introduce legislation. Thank you Vainstyr Loayreyder.

The Speaker: Member for Douglas West, Mr Shimmin.

Mr Shimmin: Thank you, Mr Speaker. I think this morning was always going to go this way. I think there are so many complex areas that hon. members have already commented on. I do not wish to duplicate too many of those, but I do thank everybody for explaining this morning just how complicated this matter will be. I think we all fully understand that the hon. member for Michael has got a rôle to fulfil, as we all do in our constituency areas, and it has been known for some time that Michael is showing the evidence of coastal erosion more in that area than elsewhere. However, my A-level teacher, commonly know to many of you as Alex Maddrell, or Boris Maddrell, was talking about coastal erosion in the north of the Isle of Man back in the late 1970s. This is not new, although the acceleration of it is a potential worry.

So, there is a lot of information concerning Kirk Michael, but as the previous speaker has just pointed out, there is always going to be the fact that consequential effects of any work which is done in one area will have an impact elsewhere. The member for Michael can represent his area, as we all try to do in our own places. My department since November has been tasked with having the responsibility of the issue of coastal erosion throughout the Island.

I must express concern about the seconder of the motion, who did come out with the comment, 'government must provide protection'. My department is still some distance away from getting to the stage where we can actually come forward and say that that is an appropriate way of dealing with this matter. Certainly, we are some years away from getting anywhere near a fraction of the money that would be involved, were we to be taking on that responsibility.

So I would not like to think that any support for this right to introduce this morning gives tacit approval to the actual principles involved. However, my rule on the introduction of private member's Bills is that I would have to be fiercely opposed to what they were trying to achieve before I would deny an individual the right.

I think it is appropriate to explain where I am within the Department of Transport at the moment, which will possibly reflect on why I will be supporting Mr Cannan's right this morning. I have a responsibility with my department to address the issue, and as a first step we will require enabling legislation. So, although I will be looking all-Island, Mr Cannan, the member for Michael is actually referring to a specific area but still

enabling legislation which replicates in some ways what I will be doing on a larger scale.

We envisage that legislation would include powers to designate areas for coastal erosion management. That is what the member for Michael was talking about this morning in the specific area. We will be looking to potential for restricting development in designated areas. Again, that ties in with what the department will be looking at.

We need in legislation the ability to raise and expend finance. That is not just the means of actually achieving the finances, but the actual legal ability to expend it in this area, and also the rights and powers to carry out protection and maintenance works. Therefore, I do acknowledge that there is an overlap between what the member for Michael is referring to and what my department will be tasked by Tynwald with carrying out in the future.

However, we are unlikely to be able to be moving this legislation forward for a number of years – at least two and possibly longer than that. Therefore, I am grateful for the hon. member for Michael agreeing wholeheartedly to liaise with my own department and the Attorney-General's when drafting up this private member's Bill to see whether there is duplication that can actually benefit all of the Island, (**Mr Houghton:** Hear, hear.) rather than just his own area.

However, I do believe that the issues raised this morning by a number of hon. members need to be seriously considered. I do see that this Bill could still perish on the rocks because there are so many complexities within it, and I think that it is right for it to possibly go to a committee, if it does get to that stage, because I do not believe that the consequences are fully being voiced this morning. I will be interested to see how the Bill, when drafted, appears to cover some of these important issues.

So, I will be supportive. My department is tasked by Tynwald to move in this direction. The member for Michael may assist me in that process. However, I would point out that we do not have the resources, the finances nor the staffing to achieve this ourselves, and I would not like to give the hon. mover of this motion this morning my unequivocal support at the green stage. At the moment, he has my support to go to the next stage, sir.

The Speaker: Member for Douglas East, Mrs Cannell.

Mrs Cannell: Thank you, Mr Speaker. I rise in support of the hon. member's leave to introduce this private member's Bill, and I am grateful for the previous speaker's contribution to debate because I think it sets the record straight in terms of the Department of Transport's position in all of this, (**Mr Houghton:** Hear, hear.) which, as it has been acknowledged, has been tasked with the responsibility of coastal erosion.

Mr Speaker, I want to focus on some positive aspects of the seeking of leave to introduce and also put some clarity into debate, because we have had some worrying contributions in terms of the cost of

bringing legislation forward such as is described, and also about the houses et cetera and development. The way I read it, Mr Speaker, is that to restrict development is to manage development. 'To restrict' does not necessarily mean 'to stop or prevent', which is much stronger than restrict, and to restrict development on certain land and to enable to coast protection works to be carried out does not necessarily mean that the cost of the burden of that responsibility will fall on any government department, let alone the Department of Transport in the future. I do acknowledge the concern raised by the Treasury minister in respect of that, and he is right to rise on that particular issue, Mr Speaker. But the way I have read all of this, the way the hon. member has moved it and the way in which the local commissioners have considered the same is that if there is to be future development on areas such as this, close to the coast, then they have to be developed in such a way that the developer will be restricted in what he can put in that place and further, that he will be required in future to put in coastal erosion protection works in order to develop. Now, that makes a lot of sense to me, because if you have got land that is zoned for development purposes – and I take on board all the unfairness of a planning application being in on land which is currently zoned – yes, there is merit in that, there is credence and weight in that – but the way to actually do it is to enable under the law of the land for such developments, if they are going to take place, for the proper precautions to be put in place alongside. Now at the moment that does not happen.

I turn and cast my eye back to the issue of the Sulby flooding. We have some beautiful houses there all independently built by the looks of them, all architecturally different, very, very close to the bed of a river – the bottom of the garden within feet of a rising river. Now again, why did not the advocates advise those people, when purchasing those properties or developing that land, that there are times, if you build close to the river, when there may be occasion for the river to rise and your properties become flooded? I doubt if that was ever done. There are other examples which I could cite, but I will not because it would be *sub judice* at this point to do so, where advocates have failed in advising their clients when purchasing land for development, or property already developed, of what might take place some time in the future.

So I see that, in essence, what is being asked for today by hon. members is a good intention not to saddle a department – the Department of Transport, or any other department – with financing this, but rather to put in legislative terms, to put in law, that, 'if you want to develop land zoned for development, irrespective of how close to a cliff it is, irrespective of the fact the cliff is crumbling, you crack on, but you are restricted. You will have to do this, that and the other because we have a law that says that you must.'

So I am looking at it in a positive way: management of the development, which will include measures to protect from further coastal erosion in this instance. That the developers shall provide for such

protection is also something which may feature in such a Bill.

Mr Speaker, not so very long ago, all hon. members along with other interested people were invited to attend a climatic awareness day in Douglas at the Hilton Hotel, and many of us went and some of us stayed for longer than others. Nevertheless, what came out of that awareness day in terms of climatic changes, rising sea levels, coastal erosion was very, very interesting, and certainly quite worrying. The only brightness for us, in terms of the Kirk Michael situation, which is rapidly eroding away – one can see that. I am not going to quibble about how fast a rate – it does not matter how fast or how slow it is going; it is going, and so we have to protect it – that is a fact. So let us not get bogged down and quibble as to what speed and how long. You would have to be mad to buy a house with a life expectancy of 10 or 20 years, and live in it. In fact, I would doubt very much whether anybody in their right minds would buy a house with such a proposition, scenic views and all the rest of it.

But going back to the climatic awareness day: what did come out of that was that, in approximately any time between 30 and 80 years' time, what we may lose in Kirk Michael we will gain on the Point of Ayre, because of the way in which the sea moves. So the Island eventually may well change shape.

One thing is for sure, Mr Speaker: we will always have coastal erosion because we are an island surrounded by sea. But I would rather see legislation coming forward in the guise of a private member's Bill because it will be quicker than a department can achieve, bearing in mind that the Department of Transport has only just acquired responsibility, does not have the resources, as the minister has said, nor the money to pursue, but it is very keen to work with the hon. member in working out the legislation to ensure it complements what the Department of Transport is aiming to do. I think this is an important first start, it is a good start and I wish the member well.

The Speaker: The member for Onchan, Mr Karran.

Mr Karran: Vainstyr Loayreyder, I find this Bill quite interesting. I think there are a few inconsistencies, as far as it is concerned. The erosion rate, they say, is 2.8 metres but I thought the erosion rate given by our government consultants was 0.9 –

Mr Quayle: It is 0.7.

Mr Karran: – 0.7 metres each year. I think that there are a few other points that do give me concern about this piece of legislation. I believe that, even allowing for the fact that I think this piece of legislation will not address the issue as far as erosion is concerned, I will support the member's right to leave to have the Bill proceeded with because it is an important issue. With global warming, with the rising of seas, it will give an opportunity in this chamber, as the elected chamber, to discuss the issue.

I feel that this piece of legislation will not be effective, because quite frankly, apart from the issue that the data seems to be wrong to start off with, this idea that somehow you can do it in this one piece of land is just living in Lala Land! Normally the hon. member is one of the few who have pointed out some of the good points that this hon. House needed in recent months on some of the issues, as far as financial handling is concerned, but I disagree with the hon. member (*Interjection by Mr Cannan*) as far as this issue is concerned, because at the end of the day, the only way you are ever going to sort out the erosion problem in the Island is that you will have to address the issue of the whole length of the northern beach right round to Ramsey in order to do so. What you would end up having to do is to actually come up with a solution of protecting the sea cliff base in order to do so right around the area. So I do think that the piece of legislation is simplistic. And the other side effect which the environmentalists would more than likely not like is the fact that that would be the destruction of the sand sea cliffs on the northern beaches right around and you would end up with a slope going back 150 feet to 200 feet. And to do it on the basis of purely erosion would be very difficult. There was, Vainstyr Loayreyder, many years ago, a proposal to look at a way of doing it and doing it on the basis of other social issues, but unfortunately that was far too advanced for this hon. House.

The issue that concerns me, Vainstyr Loayreyder, is that – I will support the hon. member but I am rather concerned in this House to hear from the Treasury minister and others – the biggest social cancer in our society has been the housing crisis and development land should not be seen as money in the bank. That is the problem at the moment, Vainstyr Loayreyder: people have this land, they sit on it, we encourage the speculation. We encourage the growth of the side effects of this cancer in our society, regarding the lack of affordable, decent housing in our society. So I totally disagree with the member for Ramsey when he says that somehow people should be able to have it and be able to use it just as a commodity. That has been the problem –

Mr Bell: Why zone it then?

Mr Karran: – as far as this whole affair has been – that people have held onto it and squeezed every drop of finance they can get out of the situation, and that should not be an excuse for not giving leave to introduce this Bill by the hon. member for Michael. And I quite agree, yes, dezone it – but might affect the canapés at the social gatherings when people are talking to one another about the future of the Isle of Man. The issue is, Vainstyr Loayreyder, that that should not be the case, and I must say to the hon. member for Peel, I totally agree. I would love to buy a load of agricultural land, and I would be more than happy to pay for a road, if the case came along, to change my agricultural land from £2,000 per acre to now over £300,000 to £400,000. A road would be a cheap price! So I think that is an issue –

Mr Cretney: You can have half a road!

Mr Karran: That would be a cheap price to pay for a road to get your land put up to the lottery winning stakes, and that reflects the problem we have got at the present time.

So I would hope hon. members would not use that as an excuse; you have heard the third point from the hon. member for Ramsey about the issue of compensation. But if we believe that developable land should be just purely a cheap commodity instead of a social requirement then he is right, if that is the case, if we give land planning permission. But I do not believe he is right, as far as the issue of it being money in the bank. The planning permission is done for the people by –

Mr Bell: The law.

Mr Karran: – the law, but for the people's benefit, and I think too many in this hon. House have forgotten that point.

So hon. members, I will support the leave to introduce because I believe that it is an opportunity to give this House the opportunity to debate the issue further. I believe that it is simplistic. I believe that, as far as I am concerned, it is building up false hope for his constituents and I believe it will not just affect big developers. I am led to believe it will affect other people who are not big developers, who will maybe be able to make representation at a later date.

Hon. members, it will not be a panacea, but I do believe that we should give the hon. member the chance to bring in this important issue. Whilst this idea of 1.9 to 2.8 metres and allowing for the fact of global warming and raising sea levels, I still think that the information has been increased to increase alarm in his own area.

The Speaker: Hon. members, before I call on the next hon. member, just to refer to a point the hon. member for Onchan, Mr Karran, raised, where he said he would support the right of a member to introduce a Bill, can I just remind the House that the only right a member has is to seek approval from the House to introduce a Bill? And there is quite a distinct difference in that issue. Hon. member for Garff.

Mr Rodan: Thank you, Mr Speaker. I have considerable sympathy for what the hon. member for Michael is trying to do here. I do not consider it simplistic or a panacea; I see it as dealing with real issues and real concerns. Last October we had torrential storm conditions (**Mr Houghton:** Hear, hear.) – a so-called 'once-in-50-years event' which regrettably seems to be more frequent than every 50 years and in my own constituency in Laxey, and old Laxey Hill in particular, a long-developed residential area, part of the cliff face collapsed, destroyed property, destroyed a garage and the back wall of a house. This naturally caused great concern as to what lies ahead in future years. Now, I have no need or requirement to be unnecessarily alarmist about this. I

mention this simply to highlight that these are real, actual concerns of people, and what happened in Laxey, the hon. member for Michael, quite rightly, wants to prevent happening in the years ahead. The issues are somewhat different – we are talking about, in my case, an area that has been long established and we will have to work in that situation. I simply say it is a real issue and a real concern, and, of course, it is not unique to the Isle of Man. Coastal regions of the British Isles have been, in many areas, long recognised as being in danger of coastal erosion, and it is well recognised that there are two ways of dealing with this. One either spends money on holding back the tide, so to speak, one rather expensively puts in place coastal revetments and various techniques to try and fight against nature; or one lets nature take its course and, in accepting nature taking its course, one embarks on a strategy of what is known as ‘managed retreat’. What the hon. member for Michael is focusing on is an aspect of ‘managed retreat’. It was very heartening, I think, to hear the Minister for Transport acknowledge that what is being done by the hon. member for Michael is consistent with a more general strategy of managed retreat, which is within the Department of Transport’s current thinking. It was made quite clear that what we were talking about is designating areas for coastal erosion management, restricting or controlling development in those designated areas and, coupled with that, carrying out protection and management works, which will, in appropriate circumstances where that is done, inevitably mean public expenditure.

Now part of managed retreat will inevitably mean that, in principle, land hitherto zoned for development may be taken out of development. That is what the strategy will mean, and we can expect that there will, therefore, be issues – there will be financial issues, there may be issues of financial consequence or where compensation is involved, and I do not think that should come as any surprise. What is important is that these issues are taken account of in the development planning process and that the development planning takes on board this strategy of managed retreat, and therefore for the Bill to say, as it does . . . This is the point made by the hon. member for Peel, who was critical of the fact that the Bill is mentioning coastal protection works to be carried out in relation to that land – well, that may or may not be the case, but if we are talking about managed retreat as the strategy, of which this is a particular example in the case of the coastline at Michael, it is perfectly appropriate that that enabling provision be included in the Bill. But what is important, therefore, is not to say, ‘Oh, this flag is up – red lights for future public expenditure.’ If the policy is to be managed retreat by the Department of Transport in a well thought out way then the cost of putting in place coastal protection is going to be, in some circumstances, inevitable.

But I would certainly support the member at this stage and do urge him, as he has said he is going to do, to consult closely with the body which is statutorily charged with these issues, which is the Department of Transport.

The Speaker: Member for Malew and Santon.

Capt. Douglas: Thank you, Mr Speaker. I thank the hon. member for Michael for offering this hon. Court for the opportunity to debate the entire subject of coastal erosion and coastal protection. I know it is not quite worded that way, sir, but that is what I feel we will end up doing.

The sea is a good slave and a bad master, and I think the hon. Minister for Transport has clearly indicated a willingness to investigate the whole matter but this will obviously be an extremely expensive operation, both to investigate and perhaps even to implement. But much as our duty is to provide airports and sea ports, I am sure it should also be protect our coasts and our lands.

I recall when I was a boy of 16 – just to give you an example, if I may, sir – being posted on lookout, looking for landfall, which was a low lying island. When we got there the island had gone completely; so had the 10,000 people on that land. Some of our crew had been away for three years – they never saw their land, never saw their people. So that is what the sea can do if you are not very careful.

So I will be brief, I will finish now. I will support the leave given to introduce this Bill and I do urge the hon. member to use all his magnificent energies in working together with the Department of Transport. Thank you.

The Speaker: Hon. member for Michael to reply to the debate.

Mr Cannan: Thank you, Mr Speaker. It has been a very interesting debate and I am pleased to receive members’ comments. I would like to start by thanking Mr Houghton for his seconding.

But I want to emphasise to everybody that this Bill will contain no public expenditure. There will be two clauses: one to restrict development and the other giving enabling powers. There are dozens of pieces of legislation that we pass in this hon. House, whether it is health or education or trade and industry, that give enabling legislation. Then on another day, at another time, in another year or in 5 or 10 years, the matter comes to Tynwald and the issue is debated, if there is to be public expenditure of money. These two reports, Mr Speaker, that we have from Posford Duvivier, that Tynwald commissioned, stated that before anything could be done primary legislation was required. And this is what it is, and I give a solemn undertaking – I do not think I need to do more – that I will be busy working with the Department of Transport, who are now in charge. I will do all I can to meet their requirements in this legislation. We already have two big comprehensive reports, that have cost over £70,000, and they were commissioned by Tynwald.

Now if I could move on to Mr Downie. At the heart of the land in the 1994 Michael Village Plan, part of it – which is this development area, not this other area which is agricultural – said, ‘It is zoned for development with the caution that it is subject to erosion.’ Those were the actual words. While it was

allowed development because it was in the area, there was the caution in the report that this land was subject to coast erosion. So that is the first one. There are actually two live applications. One is this one and there is one there for a house adjacent to another house in that area, which has gone to appeal because it has been refused for coast erosion purposes, but that is to answer the second question.

Now, I was advised by the legal draftsman, when I asked about this, that statute law takes precedence over everything. If planning is refused, there is no compensation if an application goes through – this is not planning but I would just comment on that – if there is a planning inquiry and land is taken out at Sulby, there is no compensation. If statute law by the parliament of the Isle of Man, so I am advised, states that by law, that takes precedence over everything. That is what I am advised.

As I say, the rest of it is continued use as agriculture. Now, Mr Downie, mentioned that these lands could be used for something else, but they are not zoned for anything else – all this other land is just for agriculture, which is falling into the sea. And the particular owner of land there is busily complaining that he is watching his fences go over the edge and the land go into the sea, so it has a very negative value, to the extent that you will hardly buy land that is going to topple over into the sea in the next few months.

Now, Mr Quayle, the member for Middle, suggested that it was 0.7 metres. Now in the reports which I have got there, they gave two maps – one at a minimum and one at a maximum. The minimum was 0.7 –

Mr Quayle: It was 0.6.

Mr Cannan: – 0.6 metres, I mean, sorry, and the maximum was 2.8 metres. Well, you are not going to go for the minimum when, if you go down there now, the commissioners and everybody are seeing it falling far more than 0.6 metres, it is falling at between two and three metres a year. Huge chunks have gone down.

Members will recall that about three years ago I invited members of Tynwald to come down to Glen Wyllin. Half of the members came, and we walked along the beach and we saw for ourselves the crumbling cliffs and what was happening. That was at the time when Tynwald agreed – it was happening so badly then – to bring in those reports. So, I say to Mr Quayle: that is the minimum, but it is far more now, and those reports, you must recall, were done in 1999.

Returning to Mr Bell, I understand that the development land is agricultural land and there is only an option to purchase. Like all developers, they never buy the land before they have got planning permission. We all know that and that is normal practice and custom.

To the Chief Minister, in his questions there was a full village plan in 1994 because land that had been zoned for low-density housing in woodland – in other words, big, expensive houses in an acre of land – the village wanted that for sheltered housing. So it was not

land that was agricultural, it had already been zoned for expensive housing, and the village plan went before an independent inspector at the will of Tynwald and he changed the use, not from agriculture, but from expensive housing in woodland.

What I want to emphasise to everybody is that I am not doing it for my own personal benefit; I am doing it, as we all do things, on behalf of the community. I have not got a house that is threatened there. I am doing it on behalf of the whole community, and the whole community are beginning to feel threatened. As I have said, this is not going to stop erosion. It may not even decrease the rate, but it will certainly not accelerate the rate, which may happen if irresponsible people go ahead with what they are thinking of doing.

The hon. member for Douglas East, Mrs Cannell, quite rightly pointed out what had happened in Sulby. And who is now picking up the tab? Who is complaining? The householders whose land has been flooded because they bought houses down in the millrace (**A Member:** Insurance.). Times have changed and government is resolving the river and its flows and so on and so forth. And what this Bill is going to do is just say, 'Leave the land as it is.' That is all it is asking.

So, hon. members, I wish that you would consider in good faith that there is no ulterior motive. There cannot be an ulterior motive because I am going to work with the Department of Transport. If there was an ulterior motive to build a huge sea wall, it would not get through Tynwald, or the money would not be voted by Treasury or anything else. This is enabling legislation to leave things as they are and work with the Department of Transport to come up with some sensible, positive solutions. Before anything can be done – as the minister said, before his department can do anything – there has to be enabling legislation, and if this enabling legislation, for which I hope that you will give me leave to introduce, will be with the guidance of the Department of Transport. So, Mr Speaker, I beg leave to seek to introduce the Bill on your order paper. Thank you.

The Speaker: Hon. members, the motion before the House is that leave be given to introduce a Bill to restrict development on certain land in the Parish of Michael; to enable coast protection work to be carried out on or in relation to that land; and for connected purposes. 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 Gill, Mr Houghton, Mr Duggan, Mrs Cannell, Mr Downie, Mr Shimmin, Mr Corkill, Mr Earnshaw, Capt. Douglas – 13

Against: Mr Quayle, Mr Rimington, Mr Cretney, Mrs Hannan, Mr Bell – 5

Abstained: The Speaker.

The Speaker: Hon. members, the motion before the House carries with 13 votes for, 5 votes against and one abstention.

Fireworks Bill – Third Reading Approved

The Speaker: Now, hon. members, we move onto item 5 on our order paper, under the heading ‘Bills for Third Reading’, item 1, the Fireworks Bill. I call on the hon. member for Douglas, West, Mr Downie.

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

At the clauses stage of the Bill there were 10 amendments tabled, together with a suspension of standing orders to allow Mr Henderson to move three additional amendments which, however, were unsuccessful.

Clause 1 and the schedule define fireworks and also identify those products which are quite clearly not fireworks.

Clause 2, which makes it an offence for a person under 18 to buy or sell fireworks, was amended by the hon. member Mr Houghton, whereby the word ‘apparently’ was removed and at 6, ‘in proceedings for an offence under subsection 1, it shall be an offence for the accused to show that he has reasonable cause to believe that the person in question was of the age of 18 or over.’ I understand that this terminology now mirrors the wording in the supply of tobacco and alcohol legislation.

Two of Mr Karran’s amendments were also successful, which means that a person over 18 years can also supply a firework in the course of business, amending the 21 years proposed in the original drafting of the Bill.

Clause 3 deals with the supply of fireworks at certain times of the year and sets out a list of businesses or professional firework organisations, public authorities, naval, military or forces of the Crown to whom subsection 1 does not apply. It also enables a private individual to put on a firework display and purchase fireworks, provided they have given notice under section 4 to which the notice refers. This clause also provides for penalties on subsequent conviction. An amendment to omit paragraph (g), that is, military forces and the Crown, by Mr Karran was not successful.

Clause 4 deals with the restrictions on the use of fireworks and defines the periods at which fireworks can be let off without obtaining authority under a

notice in clause 3. The periods, hon. members will recall, are the 25th October ending on 7th November and 26th December, ending on 1st January. An amendment to clause 4 by Mr Houghton was successful and considerably strengthens the Bill to cover any firework and not just a display.

The amendment moved by Mr Earnshaw to further restrict dates on which fireworks could be let off was unsuccessful, as were amendments moved by the hon. member for Peel, Mrs Hannan, and Mr Karran, which related to a public authority, naval, military, air forces of the Crown.

Clause 5 deals with the causing of harassment et cetera by the letting off of fireworks and is one of the most important clauses in the Bill. An amendment by Mr Houghton relating to giving notice of letting off a firework in substitute for a display was carried, as was an amendment from the hon. member for Peel, Mrs Hannan, which removes exemptions from prosecution by a public authority or any military or air forces of the Crown.

Clause 6 provides for miscellaneous and supplemental and gives police powers to stop and search for explosive substances by introducing a new section into the Police Powers and Procedures Act 1998.

Clause 7 alters the Petty Sessions and Summary Jurisdiction Act 1927: for ‘cast or throw any fireworks’ substitute ‘let off, cast or throw any fireworks.’

Clause 8 gives the Department of Home Affairs powers to amend the Fireworks Act as to: (1) any period specified in section 3.1 or 4.4, that is, the dates on which you can let the fireworks off; (2) the amounts specified in section 3.4; and (3) the list of devices specified in the schedules, and it provides for a consultation process with the Isle of Man Office of Fair Trading. An order under subsection (1) shall not have effect unless it is finally approved by Tynwald.

Clause 9 provides for the short title and deals with the date on which they actually come into operation and other health-and-safety consumer-protection related matters. An amendment for the hon. member for Rushen, Mr Gill, to this clause was not successful.

Mr Speaker, I beg to move that the Fireworks Bill be read for a third time.

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

Mr Houghton: Thank you, Mr Speaker. I rise to second the hon. member’s private member’s Bill. I congratulate him for all his extremely hard work. I am sure it is going to be an effective piece of legislation when it is enacted, and I look forward to its introduction. Thank you, sir.

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

Mr Duggan: Yes, I support the Bill, too, Mr Speaker. I think it has been very good. Mr Downie has worked very hard on it, but I think we will need to

advertise, around about Bonfire Night, especially, and New Years' Eve, the hours and the times when you can let fireworks off.

There is also the problem, of course, that you can bring fireworks in from the UK and other places too; I do not know how we will curtail that.

But overall, I think it is a good piece of legislation and I think it will certainly curtail a lot of these irresponsible people letting off fireworks months before the event.

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

Mr Karran: I am just a bit concerned that whilst I support the Bill, I think it would be naïve to say this would be a panacea for all the problems as far as fireworks are concerned. I believe there are certain things that still have not been addressed, but at least it is a step in the right direction regarding the public noise of people letting off fireworks. It will put in some restrictions, but it will not be the answer to everything, and I think it would be wrong to expect that from this piece of legislation.

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

Mr Downie: Thank you. First of all, I would like to thank the hon. member for North Douglas, Mr Houghton, for seconding the third reading today. Mr Houghton has been very supportive, as has the Office of Fair Trading, and between us we have discussed the matter on a number of occasions.

For the benefit of the hon. member for South Douglas, Mr Duggan: following the progress of the Bill, if the Bill becomes law, what will happen then is that the home affairs department, trading standards and other interested parties will get together. They will be drawing up a code of practice which will be available for all members of the public. There will be lots of opportunities to advertise the implementation of the new legislation and, of course, the retail trade will be very much involved as well.

I am advised that it is actually an offence to transport fireworks to the Isle of Man, either by post or in other places, and in fact when the fireworks do come to the Isle of Man, they are carried as a special consignment by the Steam Packet and they are linked in with all the other dangerous cargoes which are transported. So, it is against the law to send them through the post, so anybody who is expecting to get fireworks by mail order, it just will not happen.

The hon. member for Onchan, Mr Karran, supports the Bill but has reservations. I suppose the answer that Mr Karran would be seeking would be a total ban, but as I said from the outset, what I have tried to do is to try to be reasonable with the Bill, try to take a common-sense approach to it, and there are plenty of safeguards within the Bill, where if there is an on-going problem with fireworks, the home affairs department can come back to Tynwald at any time and they can alter the various specifications – the times in

which you can set the fireworks off – and they can also alter the makeup of the range of fireworks available too. So if they wanted to ban a particularly noisy or antisocial firework they can come back to Tynwald with that.

So I sincerely hope that it has a successful passage through the Legislative Council and that we will be seeing it as part of our law for implementation before next Bonfire Night (**Two Members:** Hear, hear.). I would like to take this opportunity of thanking hon. members for their support and thank you, Mr Speaker, for your advice at times on the way in which we have been able to progress this matter.

Mrs Cannell: Well done.

The Speaker: Hon. members, the motion before the House is that the Fireworks Bill be now read a third time. All those in favour please say aye; against, no.

A division was called for and voting resulted as follows:

For: Mr Anderson, Mr Cannan, Mr Quine, Mr Rodan, Mr Quayle, Mr Gill, Mrs Crowe, Mr Houghton, Mr Henderson, Mr Duggan, Mrs Cannell, Mr Downie, Mr Shimmin, Mr Karran, Mr Corkill, Mr Earnshaw and Capt. Douglas – 17

Against: The Speaker – 1

The Speaker: Hon. members, the motion carries with 17 votes for and 1 vote against.

Inquiries (Evidence) Bill – Third Reading Approved

The Speaker: Hon. members, we now move on to item 2 of 'Bills for Third Reading', Inquiries (Evidence) Bill. I call on the hon. member for Onchan, Mr Corkill.

Mr Corkill: Thank you, Mr Speaker. The Council of Ministers has proposed the Inquiries (Evidence) Bill 2003 to replace the Inquiries (Evidence) Act of 1950. The Bill essentially updates the previous legislation, which had been found in recent times to lack clarity and did not reflect the modern structure of government.

The main changes brought about by the Bill are, firstly, that it 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 gives powers to summon witnesses to the person conducting the inquiry and not just chairmen or vice-chairmen, which was previously the case.

Thirdly, the Bill provides for appearance and legal representation at inquiries and that the whole proceedings of an inquiry are held in public.

Finally, the Bill provides for the awarding of costs and a procedure is introduced to allow for the assessment of costs.

Mr Speaker, I beg to move the third reading of this Bill.

The Speaker: Hon. member for Garff.

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

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

Mr Karran: Vainstyr Loayreyder, I shall be voting against this Bill because I do not think it has been thought out. I do not think that the issues that need to be addressed to protect the arm's length approach, as regards the picking of the people who could actually be scrutinising the very people that they are being picked by, are in a very healthy situation.

There is another point which has been raised by somebody just recently about clause 2(2)(b), about suppressing and concealing or destroying or refusing to produce any documents which are required to the procedure under this section. The issue that I would just like to know about from the mover: when does this particular piece of legislation apply from? Does it apply from once the inquiry has been called or if a person was given warning that there was a possibility of an inquiry coming up and then destroyed the information? When does this subclause actually take effect? I think it is important that hon. members should get an answer to that, either at the third reading stage or this hopefully will be raised in the upper house at a later stage.

But that is a secondary issue. The issue today is that we are producing a piece of legislation for the next 50 years, and I do feel that under our government system we have not got the right checks and balances. I think that this Bill should have looked at a number of issues, such as how they appoint an independent inquiry, if they are not going to use the Governor, whether it should have been through the basis of some sort of judicial representation on the formation of who should be given the opportunities to sit on a so-called independent inquiry. I honestly feel that this piece of legislation will not be used for open government; it will be used to circumvent democracy, freedom, by the unscrupulous – which I do not believe are in power at the present time, but I do believe that we have to make sure that we have the safeguards. I hope that this piece of legislation will not come back to haunt people that might find themselves in the minority at a later date, but I think there are not the safeguards in it, in my opinion. At the end of the day, how can the executive, who have an independent inquiry into the actions of the executive, pick that inquiry? It is not common sense and is fundamentally wrong.

The Speaker: I call on the hon. member for Onchan, Mr Corkill, to reply.

Mr Corkill: Yes, thank you, Mr Speaker. The hon. member who has resumed his seat – his concern is about arm's length. Can I say that in the existing 1950 Act – which is the one that we have found deficient because it is so out of date with the current structure of government – the Governor or a department of government are referred to, and they, at the moment, have these powers to conduct an inquiry when Tynwald has decided. Now, the issue of Tynwald deciding is not changing; all we are doing in effect is adding to the list of the Lieutenant-Governor or a department of government the more modern structure of ministerial government which is the Governor-in-Council function. As we all know, a number of Lieutenant-Governor's functions were transferred to a Governor in Council process or the Council of Ministers in their own right. Why should they not be able to instigate an inquiry when they feel it is appropriate to go to Tynwald to ask for that permission? It is really a regularising situation.

So, I know this is a sensitive issue for the hon. member Mr Karran with regard to events that are underway at the moment, but can I just make it quite clear that there is no conspiracy in any of this, it is a regularising piece of legislation in the light of our experiences in a number of areas, not just one particular inquiry. We have found that the legislation does lack clarity, that it is difficult to interpret the existing Act in relation to the functions of people in government today.

It is not taking away any member's right to go to Tynwald as an individual to ask for an inquiry and ask the Lieutenant-Governor, as indeed the hon. member has – it does not change any of that, it is still open to any individual member. But what it does do, as I said in my initial comments, is that one of the things it makes clear is that it makes sure that the vast majority of these proceedings will be in public. The emphasis in the existing legislation is the other way round: that it may go into public on occasion, but most of the inquiry would be in private. I think that in this day and age of transparency, we want as much in public as we can at these sorts of inquiries, unless the inquiry itself feels that in the public interest they need to go into private session – they still have that ability. So it does not close the options down for evidence being taken.

Now, there is a specific point the hon. member then went on to with regard to clause 2(2)(b), I think he said. Can I say that that is already an existing power within the existing legislation. It has not caused problems over the last 50-odd years, so I do not forecast it would cause any problems in regard to carrying on this legislation. The hon. member asked at what point – if the evidence is destroyed before the inquiry or during the inquiry – what is the timescale in terms of being held in contempt of the process? Now, the way I understand this is that most of this clause applies to an inquiry which is underway. Now, if evidence has been removed or destroyed in advance of an inquiry, you could not really describe it as evidence

at that point. It only becomes evidence when an inquiry is actually underway. But I take on board what the hon. member is saying, and I am sure these comments will be picked up upon as it goes to another place, assuming it gets its third reading today, Mr Speaker. Certainly, for whoever takes the Bill in the upper House, I will make sure that that issue is brought to their attention so that they can have a full explanation from the draftsman.

So I beg to move the third reading of the Inquiries (Evidence) Bill 2003 be approved, sir.

The Speaker: Hon. members, the motion before the House is that the Inquiries (Evidence) Bill now be supported. All those in favour say aye; against, no. The ayes have it. The ayes have it.

European Communities (Amendment) Bill – Third Reading Approved

The Speaker: Hon. members, we now move on to item 3, which is the European Communities (Amendment) Bill, and I call on the hon. member for Onchan, Mr Corkill, again.

Mr Corkill: Thank you, Mr Speaker. The main purpose of the European Communities (Amendment) Bill 2003 is to add certain provisions from the European Union's Treaty of Nice to the list of treaties set out in the European Communities (Isle of Man) Act 1973 as having effect in Manx law. The Bill does not affect the extent of the Island's relationship with the EU through protocol 3; it only reflects in Manx law those changes that the Nice treaty has made to the EU and which, in effect, already apply to the Island through the protocol 3 relationship.

The opportunity has also been taken with this Bill to make a very minor amendment to the Manx Time Act 1968, which fixes Manx time as being the same as that in Great Britain. At present under the 1968 Act only changes made to the law relating to time in Britain by an Act of Parliament apply to the Island. The amendment contained in this Bill allows changes to the law on time made under an Act of the British Parliament, that is by subordinate legislation, to also have legal effect on the Island.

Mr Speaker, I beg to move the third reading of the European Communities (Amendment) Bill 2003.

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

Mrs Crowe: Thank you, Mr Speaker, I beg to second and reserve my remarks.

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

Mr Karran: Vainstyr Loayreyder, I quite understand that we have no choice as far as this

legislation is today. I believe that we have no choice, we have to agree to this legislation, with the way of our arrangements with the EU, but I do feel that hon. members should be aware that this will increase pressure, as far as I am concerned, for a residency Act, if not a proper immigration Act, for the Isle of Man in real terms.

It is too simplistic. If you open up the former soviet-bloc countries you will have to come up with some better mechanisms in order that we do not have the situations that are increasingly happening where these poor souls are being used and exploited. I believe this practice is happening in the Island now. I am led to believe, in the likes of the cleaning industry, that people are being brought in by unscrupulous employers who are getting work permits for them, they are having to work 55 hours a week, so forcing down the wage structures for our own Manx resident cleaners. I know I have had one proprietor complaining to me only yesterday about the issue of having to make people redundant because of the fact he cannot compete because other proprietors are using these people who will work for a lot less and a lot more hours, a lot more unsociable hours, and I think that hon. members should realise this.

I have recently written to the minister for industry and I did get a reply this morning, but unfortunately I have not had an opportunity to reply, about the issue of trainees and about the issue of the minimum wage. But I do feel, hon. members, that we must accept that the pressure will be on now not to allow ourselves to have a situation where these people are brought in to be exploited and to drive down labour costs at the bottom end of the market. Some in this hon. House agree with me that the success of our society is on the ones at the bottom end who achieve a good standard of living. I know many in this hon. House believe that they look at the ones at the top, the high flyers, but I believe that any caring society must look at the bottom end, and my concern with this piece of legislation is that I hope that the Ard-shirveishagh raises the issue to make sure that it is not used to drive down labour costs.

I have written only today to the unions, to the work permits office and also to certain departments of government on the issue of how they allow their cleaning to be done by subcontractors and the issue of forcing labour costs down. So I do feel that this issue is important and this will be a direct effect from this piece of legislation, in my opinion, and I think members should be aware that it needs to be addressed.

The Speaker: I call on the hon. member for Onchan, Mr Corkill, to reply to the debate.

Mr Corkill: The hon. member who has resumed his seat said we have no choice, in a disapproving tone, inasmuch as we are stuck with this, but of course our protocol 3 arrangement in relation to the EU is a two-way stream and gives us many benefits. Since its inception in the early 1970s, protocol 3 to the treaty has given the Isle of Man many benefits. So the hon. member is focusing on one potential disadvantage, but

not actually showing the whole picture with regard to protocol 3.

I understand his concerns about payment to workers. I would say that this is an employment issue and it is separate from this legislation, but the point he is flagging up is that, of course, with an enlarged European Union you will have a situation where the population of the EU is that much bigger, but it already comprises of hundreds of millions of people who have by the right of their passport, as we have the rights of our passport, to freely move between those countries. Yes, I am aware of a number of employers who particularly have gone out and sourced Portuguese workers to help staff their cleaning businesses, but I also know in conversation with them that they would be only too willing and would prefer to employ local Manx workers, Isle of Man workers, if they were available or indeed applied for the jobs advertised. So there are two sides to the story with regard to this, when you have a full-employment economy.

The hon. member used the expression 'unscrupulous employer' – if the hon. member has any example of an unscrupulous employer I, and am sure the minister for the DTI, Mr Downie, (**Mr Downie:** Hear, hear.) would be only too willing to follow through on those situations with regard to employment law or the minimum wage or whatever it is –

Mr Karran: Well, the minimum wage is too low.

Mr Corkill: – it is important that we do address unscrupulous employers. It is easy to talk about unscrupulous employers, but let us have some facts if we are going to be serious about actually dealing with it.

So, that is almost a side issue to this Bill, but nonetheless an important point that the hon. member raises, and I would simply ask that hon. members support this third reading on the basis that this is mainly technical changes to our legislation, flowing from the Treaty of Nice and the fact that the protocol 3 arrangement, which defines our relationship with the EU is still in place, is still intact, but we have to acknowledge that the EU is changing and will continue to evolve and change and that we are a part of that institution through our protocol 3 arrangement. I beg to move the third reading, Mr Speaker.

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

Statement by the Speaker

The Speaker: Now, hon. members, just before I move off Bills for Third Reading, I think it is prudent to remind all hon. members that under standing order 158.2 there is a need for at least 13 votes for a Bill to be passed at third reading, and I think it would be most

unfortunate if a Bill was to actually be lost at third reading by default, only because the House was not fully serviced by members. I just make the point because today we have had two Bills that potentially were close to that vote of 13. So I just make the point.

Gas and Electricity Bill – Motion to Refer to Committee Lost – Consideration of Clauses Commenced

The Speaker: Hon. members, we now move on to the next item, which is Bills for Consideration of Clauses, and I call on the hon. member for Onchan, Mr Karran to move a motion standing in his name.

Mr Karran: Vainstyr Loayreyder, this piece of legislation may look like another piece of mundane legislation, and it may seem to be an easy thing just to nod it through, but this will be more than likely one of the most important pieces of legislation to be in front of this House this year. The effects of this legislation will cross the age bands from old to young alike, and the economics will not just affect the home, but businesses and industry alike.

It has been a long road since 1981, when I campaigned for the need for affordable, reliant energy for the Island, not just for the domestic consumer, but also as a vital part of the diversification of our economy. Only transport costs to and from the Island are an important factor to our economy.

The lack of transparency and accountability I believe will come back to haunt this House over the MEA's financial affairs, but whilst this Bill should be seen as an opportunity, it should be strengthened by the right amount by scrutiny. Sufficient thought has not been given to the Gas and Electricity Bill 2003. This Bill as written will easily create an uncontrollable, unaccountable, state monopoly for the wholesale supply of gas on the Island. This state monopoly could ultimately be extended to include the retail supply of gas and the supply of telecommunication services.

The following points should be given more careful consideration before passing this Bill. The Bill provides the authority, the MEA, with the sole importer of natural gas onto the Island through its pipeline. The authority may charge third party whatever it likes for gas supplied, subject to arbitration if agreement on the price is not reached. The price of gas is a highly specialised subject and the Arbitration Act 1976 is totally inadequate for the specialised disputes of this nature. There is no requirement for the authority to divulge what it is itself paying for the gas that it supplies to third parties.

Consideration should be given to allow third parties to transport their own gas through the authority pipeline. This Bill allows the authority to charge whatever it likes by way of the tariff to transport third parties' gas through its pipeline, subject only to arbitration, if agreement on price is not reached. As with the price of gas above, the tariff for transporting gas is a highly specialised subject, and the

Arbitration Act 1976 is totally inadequate for the specialised disputes of this nature.

In other jurisdictions the regulator caps transportation costs. In the UK the regulator is Ofgen and the tariffs are published by Transco plc. Consideration should be given to the capping of transportation costs on the Island. Failure to control the price of gas and the transportation costs will cause higher gas and electricity prices to the detriment of the Manx gas and electricity consumers. Both Manx Gas and the MEA are currently monopolies and will simply pass on the excesses of gas prices and tariffs to their consumers.

The bottom line is that a select committee is essential to getting this legislation right. It does not serve our people well to allow this Bill, as it stands, as it will create an uncontrollable, unaccountable state monopoly for the wholesale supply of gas in the Isle of Man. I do hope that someone will second this proposal in order that I can hear the views from the hon. mover:

That the Gas and Electricity Bill be referred under standing order 156 to a committee of three members for the consideration of clauses and to report.

The Speaker: Hon. member for Peel.

Mrs Hannan: Thank you, Vainstyr Loayreyder. I will support the hon. member's proposal that this issue, this Bill goes to a select committee because I believe that this legislation just looks at part of the supply of gas and electricity. I believe that one of the issues that should be looked at and should be addressed is why a regulator was not introduced in this legislation. We know this is government introducing legislation for the Manx Electricity Authority to supply gas by wholesale or retail and also export electricity and provide telecommunication service and amend its constitution. But I think in doing this, in actually dealing with gas, I do believe that there should be a regulator to ensure that the MEA is not making undue profit from selling gas and I do also believe that the private sector do not actually have a cartel if the Manx Electricity Authority does not supply gas. So I believe there are many issues here that should be looked at, not by government, but by parliament and I hope members will support the whole issue of this Bill. I would add that the three-member committee should report back as soon as absolutely possible (**Mr Karran:** Hear, hear.), and I would be looking here at possibly by the end of May at the latest.

A Member: Hear, hear.

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

Mr Downie: Yes, thank you, Mr Speaker. I think my words of caution to this House have gone largely unheeded, and I think that a very strong agreement, an indication, was given in another place only a month ago that there was a group of people within government, a group of departments and other people

who have the specialist knowledge and information to hand, who were actually looking now to prepare a report on the regulation of gas. I did stress at the second reading stage that we did not want to get bogged down on an issue; what we were trying to do with the Gas and Electricity Bill was try and introduce this Bill as an enabling Bill to get the gas into the infrastructure and to progress associated matters. The regulation and charging issue, I would suggest, is totally different and it is separate, and really in my opinion that is the way we want to deal with it.

I have no problem supporting members' views, to have a regulatory body, no problem at all. The hon. member for Onchan, when he was on his feet, claimed the MEA were a monopoly; they may be, but they are government controlled. I can tell you now hon. member – you may shake your head – they are transparent. What I heard you say quite clearly in your opening remarks was that you made reference to the retailer of gas on the Isle of Man having an opportunity to supply their own gas through the MEA pipeline. Well, I can tell you now, hon. members, if you want to see a smoke screen and you want to lose transparency that is the last way to do it. My view is that you could get a situation developing in years to come where the local gas company was purchased by another company off-Island, they could then be using an agreement to bring their own gas into the Island and we would lose transparency straight away. The best way to have a transparent system is to ensure that whoever is retailing gas on the Island has to buy through the MEA and through their pipeline and utilise their gas, because we know exactly how much that is costing us, and you cannot hide it by taking it through another jurisdiction. That has been quite evident.

Now, I hope hon. members will not support this going to a select committee because when we do get to the hon. member for Onchan, Mr Karran's amendments I will be able to explain in more detail how in this particular section 37 of the gas Act his amendment actually defeats his own argument – I can show you that quite clearly, but it will take me some time to explain it and I do not think really this is the opportunity.

I would urge hon. members: do not push this off to a select committee. The gas is already in Douglas; we want to get on with the infrastructure; we want the ability to supply people initially in the Douglas, Onchan and Braddan area; we want to put our report together, which shows how we are going to propose to regulate the retail sector in the future; and we want to come back to Tynwald as quickly as possible. We have got all the expertise at our fingertips, we have got people like at Ofgen, whom we have been talking to already, and other bodies who are well versed in this, so let us not delay the process by pushing it off to a select committee. Let us get on with this now, and we will produce our report and come back to Tynwald as quickly as we can on the regulatory side.

The Speaker: Hon. member Mr Karran to reply to the debate.

Mr Karran: I thank my colleague, the hon. member for Peel, for her support as far as this is concerned. I would just like to say that she is quite right, and I am glad that people have realised, that the issue here today, Vainstyr Loayreyder, is that you are putting down primary legislation and the issue is we should be getting primary legislation right! It does alarm me as a member of parliament, of the Kiare-as-feed in this chamber, over recent years – the way things are just, ‘Oh well, if it comes to them we must nod it through.’ My concern is, and I think the concern has to be, for the consumers. I believe that the hon. member is right when she says there should be some sort of time limit so that we do not sit on it for months. But fundamental issues like the free access of allowing businesses that want to set up in this Island to be able to buy their gas in the United Kingdom or from wherever they want – like the United Kingdom’s competitors would be able to do – should be available to business on the Island, in my opinion. They should have the structure in primary law so that there is a proper transparent tariff for the transportation of providing that service.

At the moment in this piece of legislation there are no controls. I stand by what I say: the MEA are unaccountable to anybody – in fact I can remember getting abused up hill and down dale in the Millennium Room, not so long ago, for daring to ask questions about the MEA. So let us stop the nonsense and let us accept the fact that they are a monopoly, and the fact is that far too often, not so much with the hon. member but with his predecessors, where they have argued, ‘Oh well, we do not have representation on the MEA.’ They are part of government when it suits, they are not part of government when it does not suit.

I think the hon. member for Peel is quite right in the proposal, it is an important issue, it is important that we need this done speedily and I totally agree and I agree with the hon. member.

But the hon. member is wrong when he says that in another place . . . We are talking now about putting regulations in; I believe there should be the checks and balances put in primary law, and that is why I believe that there should be a select committee.

May I go on to the member for West Douglas – the issue that he raises about my amendment – I quite agree. Mr Gumbley was away on Friday of last week, on Monday of the previous week; it is a running battle to get legislation done the way that you want. What I got from the draftsman was the fact that he was not expert enough to be able to sort out the problems that I wanted sorted out as far as this legislation is concerned. I believe, to be perfectly honest with you, that the hon. member is right about my first amendment: it does not go far enough, the fact is it does not affect the fundamental issue of the transportation costs. We have already seen that – I believe – there are something like eight workmen that are going to be employed on this 15-mile length of gas main. All those costs will have to be added in, and like the argument that I had with Mr Gumbley as far as this legislation is concerned, and why I believe it should go to a select committee – it was like the argument that

we had over the Business Premises Act – in my constituency a company purchased a property to stop a competitor getting into that property, so they paid something I believe in the region of well over £0.5 million more than it was worth to keep this competitor out. But because of primary law the fact was that they had legitimately paid that amount, they could then use that primary legislation in the Business Premises Act to argue for the hike in the costs of the rent in that shopping development, so it nullifies that legislation. What I am saying here is that if we do not put the checks and balances in it will be a legitimate argument to have a bureaucracy for our gas pipeline or whatever, and the problem will be is when it goes to arbitration it will be: ‘Well, Mr Arbitrator, we employ eight people.’ The fact of whether they should employ eight people will not be the argument; the argument will be under your Arbitration Act is the legitimate cost of providing a facility, and the problem you have is that you more than likely find that you would have a duplication and you would not need those amounts of staff needing to be directly employed if it was done right and done properly. But this legislation leaves it for a free-for-all, and the only people who are going to suffer are going to be the consumer.

Remember one of our commitments as a BC member – ‘before the Council of Ministers’ – most of the Council of Ministers supporters have always supported the issue of getting a diversified economy. If we do not get this right there is only one other issue which affects light industry being developed on this Island more than energy costs and that is off- and on-Island transportation costs, and I believe, hon. members, you will do a disservice by not supporting this going to a select committee. I believe that if this hon. House does not put it to a select committee, you will find that you will regret it very soon.

So, hon. members, it is obviously up to this House. I believe that speed is essential and I believe that the hon. member is quite right – I do not want to stop the opportunity to get natural gas to the Island. What is important is we get it right, and this Bill is flawed totally, and I think it is an excuse to use the fact that I have to have a running battle trying to get stuff done through the legal draftsman. That is a side issue, Vainstyr Loayreyder. I do hope that hon. members will put this to a committee, and I hope that this committee would report by the end of May at the latest, if not earlier. I move.

The Speaker: Hon. members, the motion before the House is that the Gas and Electricity Bill be referred to a committee of three members under standing order 156 to consider clauses and to report. All those in favour say aye; against no. The noes have it.

A division was called for and voting resulted as follows:

For: Mr Gill, Mrs Hannan, Mr Karran – 3

Against: Mr Anderson, Mr Cannan, Mr Quine, Mr Rodan, Mr Quayle, Mr Rimington, Mrs Crowe, Mr Duggan, Mrs Cannell, Mr Downie, Mr Shimmin, Mr Bell, Mr Corkill, Capt. Douglas and the Speaker – 15

The Speaker: Hon. members, the motion for the matter to be sent to a committee fails with 3 votes for and 15 votes against.

I call on the hon. member for Douglas West, Mr Downie, to take clause 1, please.

Mr Downie: Thank you, Mr Speaker. Clause 1 of the Gas and Electricity Bill 2003 enables the MEA to lay pipes to supply gas wholesale to other public gas suppliers and itself to supply gas to consumers.

Section (1)(a) and (b) enable the MEA to lay and maintain gas pipes, conduits and any other apparatus required to convey gas through those pipes, and to lay with those pipes conduits for electrical lines, telecommunications apparatus and electrical apparatus, and this will widen the powers already granted to the MEA under section 15(a) of the Electricity Act 1996 with regard to gas mains.

Section 1(2) enables the MEA to supply gas conveyed through pipes laid under section 1 of this Bill, or section 15(a) of the Electricity Act 1996; under 1(2)(a) on a wholesale basis to any other public gas suppliers; under 1(2)(b) to supply with the authorisation by order of the Department of Trade and Industry gas to any other person. This would then be the retail function of the Bill.

Section (3) provides the prior consultation with the public gas suppliers who may be affected by the department granting authority for the MEA to supply gas other than on a retail basis. This will allow the department and the MEA to ascertain the reasons as to why a public gas supplier cannot or will not supply gas to a customer. It also gives some comfort to the public gas suppliers that the MEA will not be permitted to cherry-pick its best customers, for example, large businesses et cetera, or users of gas, to the detriment of the remaining customers.

Section 1(3) provides that the Gas Regulation Act 1995 will also apply to the MEA when it acts as a public gas supplier under the premise of this Bill, in the same way as it applies to all other public gas suppliers. This section will only apply if the MEA provides gas on a retail basis.

Mr Speaker I beg to move clause 1 of the Gas and Electricity Bill.

The Speaker: Hon. member for Middle.

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

The Speaker: Hon. member Mr Karran.

Mr Karran: Vainstyr Loayreyder, I would just like the hon. mover to explain: what safeguards are there? Here we have a situation where Manx Gas are going to spend £10 million on converting appliances to

get natural gas – this legislation seems to give an agreement to the department to enable the MEA to be able the cherry-pick its own customers without redress. My concern is that it does not seem to be doing what the hon. mover says and – obviously we want more light industry on the Island and that is something that energy costs are an important factor of – what I would hate to see is a situation where the big consumers would get a lesser tariff, leaving the costs of the refurbishment being left more on the domestic consumers, which means that at the end of the day, as the hon. mover did say in the debate to do with the select committee, Manx Gas is a commercial undertaking, they want their return. What safeguards are there that we would not have a situation where, if it comes to be that the economics are not quite straightforward, the big energy requirement consumers can circumvent Manx Gas and then leave all of the capital costs on the domestic consumer to pick up?

The Speaker: The hon. member Mr Downie to reply to clause 1.

Mr Downie: I think that the hon. member for Onchan has failed to realise the importance of clause 1 of the Bill, and in fact there is a section (3) which quite clearly states that the MEA will not be permitted to cherry-pick its best customers, and the only situation that I could see developing is, if there was a large business come into the Island – say for argument's sake in the Kirk Michael area – where there perhaps was not an existing gas infrastructure easily available, or in some other part of the Island, where it was possible for the MEA to supply that significantly large user, because it would be more cost effective for them to supply a large user, and if an opportunity could be taken to go directly into the gas pipeline as it comes across the Isle of Man, but that would not be allowed to take place until the department actually granted authority for that to happen. So a very, very good case would need to be made.

This legislation is not put in place to let the MEA go out and sell retail gas; it is here to provide a wholesale basis on which the gas is to come in, but there are certain times when, provided the right case is made and provided that agreement has been reached within the retail sector, a provision can be made to supply gas to a customer where there is not an existing infrastructure. So I hope that clarifies the situation.

Mr Karran: It does not.

Mr Downie: Right, well, I am sorry I cannot make it any clearer than that, hon. member! I beg to move that clause 1 stand part of the Bill.

The Speaker: Hon. members, the motion before the House is that clause 1 do stand part of the Bill. All those in favour say aye; against no. The ayes have it. The ayes have it.

Right hon. members, that concludes our business. We adjourn now until 2.30 p.m.

The House adjourned at 1.00 p.m. and resumed its sitting at 2.30 p.m.

Gas and Electricity Bill – Consideration of Clauses Concluded

The Speaker: Please be seated, hon. members. We continue with the Gas and Electricity Bill and I call on the hon. member for Douglas West, Mr Downie, to take clause 2, please.

Mr Downie: Thank you, Mr Speaker. This clause enables other public gas suppliers to request that the MEA supply gas to it wholesale on fair terms, including terms for non-discriminatory tariffs, any dispute as to terms of tariffs to be determined by arbitration. Section 2(1) places an obligation on the MEA, at the request of a public gas supplier under the provisions of 2(1)(a), to allow the supplier to connect to any of its gas pipes referred to under 1(2)(a) – that is to say, any of the low-pressure gas distribution mains laid by the MEA, but not the main 70-bar transmission main – and to provide a supply of gas through that connection. This is, of course, on such terms and conditions for the connection as the MEA and the public gas supplier agree upon. If these parties cannot agree on terms and conditions then there is provision under this clause for agreement to be settled by arbitration.

Clause 2(2) deals with tariffs for the gas supply provided under 2(1). The Gas Regulation Act 1995, section 6, provides for the price of supplies of gas by a public gas supplier to be in accordance with tariffs fixed by that supplier. Under this section the wholesale rates for the natural gas must be at rates which treat all public gas suppliers, including the MEA itself and the MEA's electricity undertaking, fairly. For example, the MEA must not charge Manx Gas Limited high wholesale prices which would then enable it to undercut Manx Gas's retail prices. Equally, it must not charge prices such that other gas suppliers are made to subsidise the electricity business.

Clause 2(3) provides that any dispute under 2(2) is to be settled by arbitration. The Arbitration Act 1976 provides a comprehensive code governing the settlement of disputes by arbitration under voluntary arbitration agreements. It is applied to statutory arbitration such as that covered by this clause under section 31 of the Act.

Mr Speaker, I beg to move that clause 2 stand part of the Bill.

The Speaker: Hon. member for Middle.

Mr Quayle: Thank you, Mr Speaker. I beg to second and reserve my remarks.

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

Mr Karran: Vainstyr Loayreyder, my amendment is a step in the right direction as far as I am concerned with this legislation, because it does deal with the issue of the fixing of a maximum price – the method of fixing the maximum price for any gas supplied under this subsection. I believe that this amendment should be supported as a protection to the consumer. The only issue that it does not cover which I would have liked it to cover is the issue of transportational tariffs. That has been done in the United Kingdom, and that is why gas prices have come down considerably in the United Kingdom. I hope this hon. House will support this amendment, as it is there as a protection for the consumer. As I have said, my concern with this piece of legislation – as well-meaning as it is – is that you are creating a state monopoly that is not accountable when it comes down to the bottom line, in my opinion, because it has not got a Tynwald member on its board. So I hope that this hon. House will support my amendment as it will be a step – whether it is done today, Vainstyr Loayreyder, or whether it is done in the near future – this sort of piece of legislation will have to be enforced, whether it comes from me or from you have to be shamed into it by others' complaints about the price of energy. I beg to move.

The Speaker: I call on the hon. member for Douglas West, Mr Downie, to reply to the debate.

Mr Downie: Yes, thank you, Mr Speaker. I hear what the hon. member is saying. I did give an undertaking before that the matter regarding retail price onstruction regulation was in hand and, as his amendment has not been seconded, I understand I cannot speak about it.

I beg to move that clause 2 stand part of the Bill.

The Speaker: Hon. members, the motion before the House is that clause 2 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it.

Now, hon. members, we have a new clause in the name of the hon. member for Onchan, Mr Karran, and I intend to take it at this stage in line with our standing orders, standing order 154. We will first debate the principle of the clause and, if the House approves the principle, we will then debate the clause as it will be presented by the hon. member. So I invite the hon. member for Onchan, Mr Karran, to move the principle of the clause.

Mr Karran: Vainstyr Loayreyder, the principle of the clause is simple. It gives consumers in the Isle of Man the same opportunities as they would be getting in the United Kingdom. The issue is that in the United Kingdom you can buy your gas from any of several companies and it will be transported to you. The only difference that there is here is that we have not addressed the issue of putting the same sort of controls Transco has in the United Kingdom by Transco as regards the structure, as regards the fees for using the infrastructure of another company. If this House

supports the principle of this proposal, this will mean that consumers in the Isle of Man will have the opportunity to buy gas from a supplier in the United Kingdom. That must be a good move for the consumers of the Isle of Man and for business. It is important that we do not allow ourselves – as I said in the debate to do with the select committee – to have a piece of legislation that will create a position where we have an unaccountable monopoly that can do what it likes. This is a move in order to make sure that people will have the opportunity to buy gas from whomever they want and have it transported through the gas pipeline to the Isle of Man. This is what is done in the United Kingdom and I believe that that principle should be debated, because if you allow it to be a closed shop then you are doing a disservice to consumers in the Isle of Man. I beg to move.

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

Mr Henderson: Gura mie eu, Vainstyr Loayreyder. I beg to second, sir.

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

Mr Downie: Yes, I am very concerned at this new clause and I think potentially this is probably the most dangerous of the amendments to the Bill as this will allow a public gas supplier to purchase its own gas from its own nominated supplier and then require that the MEA transport this gas through its pipeline to the public gas supplier. The MEA would then charge the public gas supplier for the transport of that capacity of gas the public gas supplier received into its system at Pulrose.

Now this would lead to a very difficult and extremely complex accounting régime for the MEA, which would have to charge for a specific capacity – as in fact do all transcos in the United Kingdom and other places – and also take into account any swings in the capacity required by the public gas supplier. This would lead to the MEA having to charge the public gas supplier sufficient to cover these swings in capacity and the maximum peaks, leading to a higher transportation charge to the public gas supplier. If the MEA supply the gas to the public gas supplier, they have the load capacity to allow for a quantity of swing to be absorbed by the fine tuning of the gas turbine sets as required.

Now, contrary to what the hon. member for Onchan, Mr Karran, has told us this afternoon, this clause would actually remove all of the inherent transparency of charging that is currently included in the Bill. The only figures that would be public knowledge would be the transport cost that the MEA charges and the final cost to the consumer.

If you can imagine the following scenario, it would be possible for a public gas supplier to purchase gas from a sister or parent company in another jurisdiction, say at x pence per therm, have this transported to the Island via the MEA pipeline, pay the

transportation charge which will be y pence per therm, add their own overheads and profits at z pence per therm and charge the customer $x+y+z$ pence per therm. This would seem fair and transparent. However, we could only really know what z was if an investigation was held. y is known, as the MEA provide this service, but what about x ? How would we know what x was the real cost per therm of the gas? As the gas was purchased in another jurisdiction from a sister or parent company, x could be a – the price of gas – plus a hefty markup b . Therefore x equals $a+b$. We would only be able to know x and not a or b , as this would be out of our jurisdiction.

Mr Quine: Never mind the zy ! (*Laughter*)

Mr Downie: So considering Mr Karran was initially asking for more regulation of gas prices over and above that provided under section 19 of the Fair Trading Act, this would seem to be a backward step by removing the transparency in the system and allowing a possible muddying of the waters. This clause would also be a next step, with a report to Tynwald on regulations, to suggest that the best way forward for the Island would be to open up the system to allow third party purchase of gas and to put some form of direct regulation in place. All this will do currently is open up the system for possible abuse, to the detriment of the consumer, and make it impossible for the provisions of section 19 of the Fair Trading Act to be applied thoroughly and correctly.

Tynwald made its wishes very clear in June 2001 that public gas suppliers would purchase their gas from the MEA or its subsidiary in order for the government to have a clear and transparent confirmation of the price of the Island's feedstock gas. The Bill, as written, actually provides for that transparency. So I would urge hon. members not to go down this road and, as I stated earlier on, if we are looking at a regulatory régime, that is being worked on at the moment. This measure that this new clause would bring about, I think, would be detrimental to the Bill and in the long term it would be detrimental to the customers. I am not suggesting that in years to come it would not be possible to introduce elements such as this, but there are other parties involved in the Island and I am not sure whether legally a consumer or a customer of Manx Gas would have the option to say, 'Well, we do not want your gas, we want somebody else's gas through the MEA pipeline.'

We are getting into a very complicated area and I would urge members to stick with the Bill as it is written and let us get on and get the enabling legislation through. We can revisit areas like this when we have a lot more information to hand, particularly on the regulatory side. Thank you.

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

Mr Rimington: Thank you, Mr Speaker. I appreciate the sentiments of the hon. member for Onchan, Mr Karran, in what he is trying to do. I think

everyone would agree that getting a good price for the consumer is a good thing, and I take on board the comments by the minister that there are mechanisms and that Tynwald has expressed its wish in the direction that we wish to handle it. I am fully in agreement with that.

I think that an additional argument as to why it would be difficult to support this particular clause is what you might call 'the Isle of Man factor', which is common through all our problems, and it is the fact that we are so small. We are only like a market town or a very small area of England, so to bring natural gas to the Island and to get any form of decent price for the volume of gas, it has to be in fact the whole supply. The majority of that supply is for the purpose of electricity generation, and on top of that a minority part, as I understand, is for supply to domestic and commercial consumers through the network as it develops.

I think you would be going down a dead-end, because if the MEA's contract was purely there for its own supply it would place its position in a worse state because it had a smaller volume, and I cannot consider that it would then be economic or, indeed, logical for the gas for the domestic and commercial fields to be of sufficient volume to gain any form of price advantage over the two volumes combined. I think for purely practical Isle of Man reasons to get any form of decent price for our small, what is still a very small volume of gas for our Island, it has to be done through one purchaser.

The Speaker: I call on the hon. member for Onchan, Mr Karran, to reply to the debate.

Mr Karran: Vainstyr Loayreyder, I would like to thank my seconder. I think it is important that he has done a service to his constituents by seconding this, because this is an important issue. I do not know about talking about gas but my good friend the member for West Douglas's reasons for being against it were maybe not as clear as gas but as clear as mud.

The problem you have got is quite simple. The problem we have got with this piece of legislation – and this is why I wanted it to go to a select committee for a short period – is that the Bill does not impose a level playing field as far as a fair tariff is concerned. If there was a purveyor tariff which limited what the maximum is on the same basis as Transco national tariffs in the United Kingdom, then there should be no problems as far as opening up our gas facilities with suitable amendment legislation to the likes of the Douglas gas to our consumers from off-Island.

I think the problem we have here is that there has not been enough thought given to this, and that is why I believe that it should have been opened up. If the hon. member had brought in the same structure as the United Kingdom then the very arguments that the hon. member for Rushen was complaining – about the fact that we are too small to have anybody who is big interested in us – if we had the same structure as far as Transco is concerned and as far as the fees are concerned and the legislation then I believe that our

consumers could have bought their utility product from any facility in the United Kingdom, especially bigger retailers, in order to give the competition that there should be.

The hon. member for West Douglas, the mover of this legislation, is quite right. There is a glaring anomaly in the fact that we have not addressed the issue of the controls as far as the fees that could be charged for using the infrastructure of another company to provide the product from a third company to a consumer in the Isle of Man. I think, from the reply from the minister, that this important issue has not been addressed.

The only issue I would leave as regards my reply to Mr Rimington is that he talks about the Isle of Man factor. The Isle of Man factor far too often – through the fact of the lack of transparency, the lack of consistency, the lack of accountability – to most people in the Isle of Man is the rip-off factor for the people. What this amendment is doing is putting down in primary law the principle that your consumers can have an opportunity, once we have sorted out the other issue of Transco and the charging factor of opening up gas supply in the Isle of Man from the United Kingdom service. I believe that this House does a disservice to our constituents if we do not do this.

At the end of the day, Vainstyr Loayreyder, as I explained in the member's room not so long ago, you have a situation in the United Kingdom where you might be living in Blackpool or wherever and United Utilities or somebody owns the infrastructure there, but the residents in Blackpool can buy gas from Virgin. There is a set procedure as far as the cost for the handling charges through the infrastructure that serves Blackpool is concerned, and that consumer can have the opportunity to purchase the gas at the most competitive price. That is what this new clause does.

I hope this hon. House will support the principle of my new clause because I believe it should be in the Bill. I believe the hon. member for Rushen's Isle of Man factor is often used for closed shops and secrecy and the fact that we will not get what we really want as far as the best for our consumers against the vested interest of the lucky few. I hope hon. members will support the principle of my Bill being fully debated.

The Speaker: Hon. members, the motion before the House is that in principle the new clause in the name of the hon. member for Onchan, Mr Karran, stand part of the Bill. All those in favour say aye; against, no. The noes have it.

A division was called for and voting resulted as follows:

For: Mr Henderson, Mr Karran and the Speaker – 3

Against: Mr Anderson, Mr Cannan, Mr Quine, Mr Rodan, Mr Quayle, Mr Rimington, Mr Gill, Mrs Crowe, Mr Houghton, Mr Cretney, Mr Duggan, Mr Downie, Mr Shimmin, Mrs Hannan, Mr Bell, Mr Corkill, Mr Earnshaw and Capt. Douglas – 18

The Speaker: Hon. members, the motion fails to carry with 3 votes for and 18 votes against.

I call on the hon. member for Douglas West, Mr Downie, to take clause 3, sir.

Mr Downie: Thank you, Mr Speaker. Clause 3 inserts an amendment into the Gas Regulation Act 1995 transferring the power to appoint inspectors to ensure gas quality standards from the public gas suppliers to the Department of Trade and Industry. This amendment to the Act was suggested after consultation with the Office of Fair Trading after completion of the original Act to remove the possibility of self-appointment of inspectors by the public gas suppliers.

Section 8(3) of the 1995 Act as amended by this clause will read as follows: '(3) Public gas suppliers shall cause competent and impartial persons approved by the Department to carry out tests of gas supplied through pipes for the purposes of ascertaining whether it conforms with the standards prescribed under this section and whether it is of or above the declared calorific value; and regulations shall make provision for the approval by the Department of persons to carry out tests of gas under this subsection.' Obviously, these regulations will require Tynwald approval.

I beg to move that clause 3 stand part of the Bill.

The Speaker: Thank you, hon. member. I call the hon. member for Middle.

Mr Quayle: Thank you, Mr Speaker. I beg to second and reserve my remarks.

The Speaker: Hon. members, the motion before the House is that clause 3 do stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it.

Hon. member for Douglas West, Mr Downie, clause 4, sir.

Mr Downie: Thank you, Mr Speaker. The intention of clause 4 is to enable the MEA, with the prior consent of the DTI, to provide telecommunication services. This will enable the MEA to utilise its great depth of knowledge in the communications field and its own infrastructure to provide additional services to the people of the Isle of Man. Section 4(1) will enable the MEA to provide telecommunication services as defined by the Telecommunications Act 1984 and to install and maintain any apparatus provided or required for that purpose.

Clause 4(2) provides that the requirements of the Telecommunications Act 1984 are not affected – for example, the requirement for a licence to be granted in order to run a telecommunications system.

Clause 4(3) provides definitions of 'telecommunication services' and 'telecommunication apparatus' by reference to the 1984 Act. Section 1 of that Act contains highly technical definitions derived from the basic concept of a telecommunication system – 'a system for the conveyance through the

agency of electric, magnetic, electromagnetic, electrochemical or electromechanical energy of speech, music and other sounds, visual images and certain other types of signal'. A telecommunication service is defined as a service consisting of any of those things, and telecommunication apparatus has a corresponding meaning.

Mr Speaker, I beg to move that clause 4 stand part of the Bill.

The Speaker: Hon. member for Middle.

Mr Quayle: Thank you, Mr Speaker. I beg to second and reserve my remarks.

The Speaker: Hon. members, the motion before the House is that clause 4 do stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it.

Hon. member for Douglas West, Mr Downie, clause 5, sir.

Mr Downie: Thank you, Mr Speaker. Clause 5(1) inserts an amendment into schedule 1 of the Electricity Act 1996 in order to alter the constitution of the Manx Electricity Authority to increase its maximum number of board members to seven. This will allow the MEA to have flexibility in its number of board members allowing for a minimum of a chairman and four members to a maximum of a chairman and six members. This will provide the MEA with greater flexibility in its dealings due to the widening of its functions.

Clause 5(2) amends section 2 of the 1996 Act, and this provides that even though the MEA has obtained consent from the department to carry out any of its functions that require departmental consent, no person or persons dealing with the MEA may require the MEA to produce evidence of that consent. An example of this would be the supply of gas on a retail basis under clause 1(2)(b).

Mr Speaker, I beg to move that clause 5 stand part of the Bill.

The Speaker: Hon. member for Middle.

Mr Quayle: Thank you, Mr Speaker. I beg to second and reserve my remarks.

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

Mr Karran: Vainstyr Loayreyder, I find, to start off with, section 2 rather strange in that you are not permitted to question the MEA on whether the department approval has been obtained. Surely this is wrong! If we are talking about open government, why can't people know whether they have got the approval of the department? What are the thought processes? And can I also say, I did not try to move an amendment to this clause but I do think, hon. members, that this spending PR that we have had over not having Tynwald members on the statutory boards

will come to an end very soon and we will see how important it is that Tynwald has some representation on these statutory boards. As I have said before, I believe that in the very near future some of the accountancy will come out as far as the MEA is concerned and because there has not been a direct link into Tynwald, I believe that we in this hon. House will find it very embarrassing especially within the executive part of this hon. House. I am disappointed that once again we have not seen the fact that we should be moving back to having a politician on the MEA. It has such an important rôle as far as our constituents are concerned. This unaccountability has to stop. Vainstyr Loayreyder, I do hope that the hon. member can clarify subclause (2) because it just does not seem to make sense to me. What have they got to hide? Why are these positions of the department not able to be transparent or are we just supposed to just nod everything through?

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

Mr Duggan: Thank you, Mr Speaker. Mr Karran got me on my feet, actually, because I think the MEA should be congratulated. I think the chairman, the officers and the board members do an excellent job and they have actually brought the price of electricity down. I think we are far better off with no Tynwald members on that department whatsoever.

The Speaker: Hon. member, Mr Downie, to reply to the debate.

Mr Karran: You will see when you are paying off the bond.

Mr Cannan: Well done, Adrian!

Mr Downie: I understand where the hon. member, Mr Karran, is coming from but I think hon. members in here must really agree that we are moving on and some of these commercial boards must be run in a commercial manner. It is no disrespect to other government boards, but I think we have got the balance about right at the moment. (**A Member:** Hear, hear.) There is a need particularly with electricity, gas and communications to have people on those boards who have a broad depth of knowledge about the generation of the product, the operation of the types of plants. You need people who have an accountancy background as well, and I know one of the avenues that they are looking at in the MEA is to have somebody with a broad legal background as a new board member so I think we should really try and dispel this myth that things would work a lot better if there was a Tynwald member on there. I cannot accept the hon. member for Onchan's allegation that there is unaccountability or some cover-up because there is no Tynwald member there. I am more than willing to answer questions about the MEA or how it is run and I know that the present chief executive has invited the hon. member for Onchan up on a number of occasions

to the MEA to explain what is going on because he has written to him or raised various points with him.

As far as section 5(2) goes, the amendment of section 2 of the Act – I will read it again, 'This provides that even though the MEA has obtained consent from the department to carry out any of its functions that require departmental consent no person or persons dealing with the MEA may require the MEA to produce evidence of that consent.' An example of this would be the supply of gas on a retail basis under clause 1(2) and I think that is an area that provides for some protection or some commercial protection. But if the hon. member who has sought clarification of this will leave this with me I am only too pleased to bring this back at the third reading of the Bill and I will have that fully explained as the thinking behind it and exactly what it means. So I would just like to thank the hon. member for Douglas South, Mr Duggan, for his support and I think he is quite right because of the commercial attitude adopted by the MEA we have seen this reduction (**A Member:** Hear, hear.) in tariffs.

Just to dispel another myth, I think that they publish their tariffs on a regular basis. There is no reason why, if they are the sole importer of the gas, they cannot produce their tariff of what the basic gas price is to the end user. So there is an opportunity there to be even more transparent in future.

Mr Speaker, I beg to move that clause 5 stand part of the Bill.

The Speaker: Hon. members, the motion before the House is that clause 5 do stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it.

Hon. member for Douglas West, Mr Downie, clause 6, sir.

Mr Downie: Mr Speaker, clause 6 amends various sections of the Electricity Act 1996 in order to require that separate accounts be kept for the different operations of the MEA to ensure that it does not cross-subsidise one operation unfairly from another. This will allow for transparency of accounting and operation. It also enables the MEA to set up subsidiary or associated companies to run any of its operations.

Clause 6(1) amends section 3(1) of the Electricity Act 1996, which requires the MEA not to run at a loss taking one year with another so as to apply that obligation to each of its separate functions i.e. those functions referred to in the 1996 Act section 3A(1).

Whilst speaking about section 3A of the 1996 Act, 6(2) of the Bill inserts new sections – that is, 3A, 3B and 3C into the Act; with sections 3A(1) requiring the MEA to keep separate accounts in respect of each of its functions. For the sake of regularity, they are: (a) its electricity undertaking; (b) its gas transmission undertaking under section 15(a) of the 1996 Act; (c) its gas supply undertaking wholesale and retailing under this Bill; (d) its telecom undertaking under clause 4; and (e) any advisory and consultancy services it provides. The amended section 3A(2) enables the Treasury to give the MEA directions as to its separate

accounts, including directions as to which undertaking or in which proportions particular classes of revenue or expenditure are to be allocated. An example of this would be to distribute its headquarters and administrative costs fairly across all of its various undertakings. The amended section 3A(3) provides that the Accounts and Audit Regulations 1984, which among others deal with the form and content of statutory boards accounts are to be applied subject to any requirements placed under the additional section 3A(2).

The new section 3B(1) enables the Treasury to give the MEA direction to pay in any specified year a sum from profits raised to the Treasury. This sum raised will then be paid into the general revenue of the Island. No direction shall be given under this section without the Treasury first consulting with both the Department of Trade and Industry and the MEA. A new section 3B(2) provides for this consultation.

Section 3C(1) enables the MEA, with the consent of the department, to set up subsidiary or associated companies to run any of its undertakings or any part of these undertakings. For example, its gas wholesale or retail undertaking, telecommunications undertaking or its gas transmission undertaking. Section 3C provides that in the case of a subsidiary company, the department and the Treasury have the same powers of direction as they have in the case of the MEA itself.

Section 3C(3) provides that where the MEA needs the DTI's consent to any activity, the same consent is required by a subsidiary company but that the third party is not concerned to see any such consent as being given.

Mr Speaker, I beg to move that clause 6 stand part of the Bill.

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

Mr Duggan: I beg to second, sir.

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

Mr Karran: Vainstyr Loayreyder, we heard in the previous clause about the issue of a commercial board and the need for it to be run on a commercial basis. This has been the whole reason why I have been trying to put the infrastructure in that a commercial board would be working in the United Kingdom on that basis. What we have is a state monopoly.

Let us just think. The authority is permitted to charge whatever it thinks adequate to cover its cost for supplying a third party. Since its costs will be higher because we do not have published formulas like Transco or BGE charges a third party. Clause 2 of this piece of legislation has to do with the 1976 Arbitration Act but it is totally wrong to suggest that this enables us to do it in a commercial way. We are not doing it a commercial way. We want the best of both worlds, which ends up being the worst for our consumers because what we have is a state monopoly. For example, I am led to believe that the MEA is going to

operate and maintain this 15-mile onshore pipeline with one small pressure of a reduction valve with eight operators. Now under the 1976 Act – as I was telling you before about the business premises Act – the fact of whether it would be one operator in the United Kingdom with duplication facts with other officers for other things. Under clause 2 of this particular Act that is a legitimate cost. Whether it should be there or not is immaterial.

Consequently you are going to end up with a seriously flawed clause, in my opinion. And in my opinion we should have been putting the right structure in. I understand this hon. House will just nod this through and it will be another one that people will look at in the future and say, 'You were in the minority as usual but you were proven right'. This House will support this and so be it, hon. members, but I am putting this on record. It is one thing to try and put up to our generally unthinking media who are spoon-fed with whatever they get told by the government that somehow this is some great commercial opportunity. It is not. All we are trying to do is create the impression of freeing up the market but actually we are going to end up with a state monopoly that is not going to be accountable. As I said about the previous clause, the problem is that there is no Tynwald member on it and when the going gets hot the minister will get going. I am sure of that because whether it is this minister or whether it is a future minister – like it has been in the past with previous ministers – when things – (*Interjections*) They have been quite quick to distance themselves.

This clause talks about the financial provisions, but it is the financial provisions of looking after themselves and not looking after the consumers. I only hope that my input into this Bill really does get the department to look at this issue. Energy costs are an important factor, and if anything happens to our finance sector we will be grateful to get our energy costs down to create other high-quality, low-volume manufacturing on this Island and energy costs will be affected. As far as I am concerned, Vainstyr Loayreyder, I do just think that the mover needs to reassure this House that I am wrong; that the fact is the authority will be permitted to charge whatever it feels adequate as far as it is concerned; and Manx Gas, being another monopoly, would just pass it onto its consumer because at the end of the day there is no-one fighting with them for the business. There is only one on the Island. That is the problem we have with this legislation.

The Speaker: Hon. Member for Peel.

Mrs Hannan: Thank you, Vainstyr Loayreyder. Just following on from the comments made by the member for Onchan, I am surprised in a way, really, at his comments because we are a small community in relation to energy. We have been lucky in the past that we have had an electricity authority that has been able to get prices down. I can remember a time in here when everybody was complaining about the price of electricity (**A Member:** Hear, hear.) and how difficult

it was to make ends meet. Prices have come down. It is a state monopoly but I am surprised by the comments of the member because surely a state-owned company is not screwing – sorry, I beg your pardon, hon. members. (*Interjections and laughter*) Now, please, I ask the House's forgiveness – but it is not making lots of money out of us and not thinking only about its shareholders. If any money is raised which is excess it does go into the coffers. As it belongs to the people and, therefore, I would have thought that that is what the member for Onchan would have been supporting. What concerns me is that we are bringing in gas and it is being suggested that we can sell to a company whose main remit is to make money for its shareholders. Supplying energy to its customers is one thing but it has to make a profit to keep its shareholders happy.

Now, that is just the company that is dealing here. The member is not talking about off-Island companies which he is suggesting that people could be able to purchase from, using the route that he was suggesting. Using that route, it could be that we wipe out the suppliers that are here already. That is what they are trying to do in the UK: wipe out all opposition so that they can then raise the cost of energy. It is all very well having a market economy but if everybody is wiped out along the way and then whoever is left can charge exactly what they like it is not in the best interests of the consumer. It is the Manx Electricity Authority is owned by the people and any excess moneys that it earns – because they have to reinvest – do go to the people whose ownership it is in. By bringing in gas, hopefully, we are able to again bring some stability to the supply of energy, and I would hope that it will work in favour of us all. But it means that it cannot work in the interests of us all unless there are enough people purchasing from the authority to actually keep it going.

So, yes, it is a monopoly but in some instances where you have got a state monopoly and the excess funds that are being generated come back to the people then I think it is the right way with the control that I would hope to see from the introduction of a gas regulator because I think that is important – there could even be an electricity regulator. As long as we have got on top of the financial controls and audit and all of that then I think excess should come back to the very people who own it but ensuring that proper investment is with it. So I would hope the member for Onchan can accept that there is a need for this legislation to allow the MEA to do certain things but also to make sure that the MEA is regulated properly itself.

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

Mr Downie: Thank you, Mr Speaker. I do not know where this idea has crept in about these eight operatives looking after this pipeline, but there again I will put that to the MEA and find out. I would have thought that whichever way you look at this, the availability of gas will be another arm or another

option in the energy market in the Isle of Man. Whether we like it or not, if the price of gas is too high, people have the opportunity to go for alternatives and as I have said on another occasion a couple of weeks ago, at the moment the oil prices have gone up between 25 and 30 per cent in the last few months; so it is not just the gas that has taken a hike. I think what you have got to do is have a broadbrush approach to see what is actually going on in the energy market itself.

Now, I do not accept that the MEA is a state monopoly, but I would like to think that it is possibly state controlled. We have some say in the running of that organisation in Tynwald Court. The other thing I would like to say too that it is modern; it is go-ahead and it is progressive. The demise of the state-run monopolies in the UK and other places where they got too big, it became 'jobs for the boys' and they did not care about their customers. Now you cannot say that of the MEA. It has a good régime and it is very go-ahead and I think we do get value for money from it. Without the go-ahead approach from the MEA, there is no way we can have the present infrastructure in place in the Isle of Man, and there have been times over the last few weeks during the cold weather when we have had every generator and every item of equipment operating and we have just about been able to cope with the demand. So the introduction of the gas-fired power station will give us the security that we need.

Now, turning to the hon. member for Peel, Mrs Hannan. She said that she was surprised at Mr Karran's comments. I am, too, because like her, I feel that the people of the Isle of Man are the shareholders. This operation is being run really for their benefit and that is why we have legislation in place. In fact clause 6 gives an opportunity to make sure that everything is out in the open and that there is nothing hidden in other accounts or in other headings and it has to be transparent and all the various strands to the new business have to be kept separately.

As far as negotiations go for the wholesale price, there is a mechanism there to provide for arbitration. However, the best indicator I can give to hon. members on prices is that the MEA will know – and we will have a mechanism of knowing – how much the cost is per therm of that gas coming through the pipeline. We will be able to tell quite easily what any gas company . . . That is no disrespect to the present gas company; it has a rôle to fulfill. It has had a significant investment in the Isle of Man and as far as I am concerned it does a good job, but their feedstocks are subject to huge changes in the market-place and what I think we will see is when the system comes into line is some stability in the pricing. For once we will know that because of where the gas is sourced for the Isle of Man, it is not subject to the peaks and troughs that LGP is. So I think there will be an opportunity for some stability and an opportunity for the MEA and the gas company to work together in a much more positive way.

The hon. member for Peel said that what was going on in the UK was they were trying to wipe out the opposition. Well, that is quite right. There were

dozens of small gas companies in the UK a few years ago, but they have all been whittled away. When we get down to two or three majors, then you will see the prices starting to take a hike because that is what happens. In times of plenty there are lots of people interested in providing these facilities but when the hard times come, look out, and then it is the consumer that gets caught.

I hope hon. members will support this clause because I think it does provide a framework for transparency; it does provide an option to see that everything is above board and all the various strands of the business are in there with separate and clearly distinct headings and their accounts, when they are produced on an annual basis, will be very easy to follow. So with that, Mr Speaker, I beg to move clause 6 stand part of the Bill.

The Speaker: Hon. members, the motion before the House is that clause 6 do stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it.

Hon. member for Douglas West, Mr Downie, clause 7, sir.

Mr Downie: Yes, thank you, Mr Speaker. This clause amends the Electricity Act 1996 section 2, which gives the MEA power to carry on various activities by inserting an amendment that adds to the powers already granted to carry out these functions. These powers, which are twofold, will first provide the MEA with the option to transmit electricity to a transmission company (transco) or a distribution company (disco) in Great Britain – for example: England, Wales and Scotland – via the electricity interconnector cable. Currently the cable is used to bolster the Island's generation capacity and to provide security of service.

This amendment will allow the sale back to providers in Britain of excess generation capacity once the new Pulrose power station is commissioned. This will allow the MEA to sell electricity back into the grid and, at times of peak load, obtain revenue from this.

Secondly, the powers will allow the MEA to provide consultancy or advisory services to customers outside as well as within the Isle of Man. Current legislation allows them to market these services only on the Island. As we are all aware, the MEA is currently a world leader in the operation of AC subsea interconnector cables and small-island generation technology, operating the world's longest subsea electricity connector.

With this knowledge and expertise the MEA has been approached on a number of occasions to supply consultancy services to other small island nations. This amendment to the 1996 Act will allow them to enter into this provision and utilise their expertise to tap into this as-yet-untapped revenue resource. Mr Speaker, I beg to move that clause 7 stand part of the Bill.

The Speaker: Hon. member for Middle.

Mr Quayle: Thank you, Mr Speaker. I beg to second and reserve my remarks.

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

Mr Karran: Vainstyr Loayreyder, I welcome this clause. All I have been trying to do is have the same sort of opportunity the other way – for the consumers of the Island. I think it is wrong for certain members to think somehow that it would destroy the gas companies. There would be safeguards as far as the costs of maintaining their systems and a reasonable profit for doing so.

My point is that here we are in this clause giving this opportunity to transport electricity to the UK's national grid, which I welcome – I think that is great. All I am saying is that it is a great missed opportunity, with this infrastructure for the gas being put into this Island, that we could have had the same system which the consumers have in the United Kingdom. There are statutory obligations on gas suppliers there; statutory safeguards as far as the supply of gas in the United Kingdom. We could have allowed this clause to flow not just one way but also the other way.

Whilst I have no problem with this clause, it is just a shame that we are not having the same consistency as far as wanting that flexibility. At the end of the day I think the consumers will be the losers because we have not got what I have asked for in this Bill. Here we have it one way – for the MEA – but we do not have it the other way – for our consumers.

The Speaker: I would remind the hon. member that under our standing orders you should not reflect on decisions of the House. The points that you have put in earlier in the debate in relation to this Bill have been considered by members and the decisions made, and I do not think it benefits us to go back over decisions that have been made.

Hon. member for Douglas East, Mrs Cannell.

Mrs Cannell: Thank you, Mr Speaker. I welcome this particular clause in this piece of legislation. I just wonder whether or not the hon. mover is aware that Northern Ireland are hoping to take advantage of being able to buy in such energy and being able to barter for it to flow towards them. Knowing that the hon. mover of the Bill, the Minister for Trade and Industry, has visited Northern Ireland in fairly recent times, I wonder whether or not there were any discussions with regards to this. Northern Ireland looks to me as though it may be a willing buyer of any energy that we may wish to sell there. Thank you.

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

Mr Downie: Thank you. If I can deal with the hon. member for East Douglas, Mrs Cannell, first, the problem that we have got with doing any business with Northern Ireland is that at present the only way to export electricity is from Douglas to Bispham in

Lancashire. That is the only cable that we have at present. In years to come there may well be an opportunity to link the Island with a second subsea cable.

I think, in taking on board what the hon. member is saying, one thing that has become apparent over the last few years is that we do have the longest subsea AC cable in the world. A lot of smaller island countries in the Mediterranean and the Far East and other places have been very interested to see this development take place and actually see it working. One of the reasons why this particular clause is in the Bill is to allow the MEA to go out and actually sell and promote this type of expertise that they have built up.

I think it is brilliant that sometimes we have excess capacity on the Island. Even with diesel generation there are times when there is a trough in the Island and we can actually send electricity back down the cable into the UK and reap some financial benefits, which eventually get passed on to the shareholders of the MEA, who are the people of the Isle of Man. That is really what it is all about.

As far as Mr Karran's comments go, I understand what he is saying, but I hope that this is the last occasion today when I have to repeat that we are looking at regulation; we are looking at trying to improve the level of protection for the consumers and come up with a solution that is much more transparent and accountable, but please do not try and involve it with the present Bill because really it is not designed to do that. But do not worry: it is like they say about the horror films, 'coming to a cinema near you.' In the not-too-distant future we will be making our report.

With that, I beg to move that clause 7 stand part of the Bill.

The Speaker: Hon. members, the motion before the House is that clause 7 do stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it.

Hon. member for Douglas West, Mr Downie, clause 8, sir.

Mr Downie: Clause 8 closes a loophole in section 74 of the Public Health Act 1990, which enables the Waste Management Board to produce energy from waste. At present the board has the power to produce energy in the form of electricity as well as in the form of heat, but only has the power to lay pipes and not cables to carry it. This amendment will allow the board to lay electricity cables to carry this energy.

The power to produce energy from waste is currently vested in the Department of Local Government and the Environment but will be transferred to the new Waste Management Board at the appropriate time. I know that in the Bill it says 1st April 2003, but since then, in the last few weeks, there has been a slip as far as the Waste Management Board goes. I will be seeking information for hon. members as to what that date needs to be replaced with and bringing it back before the House at the third reading stage. Obviously this clause will allow the

11,000KV cable being laid between the energy-from-waste plant and Pulrose to be owned by DoLGE.

I beg to move that clause 8 stand part of the Bill.

The Speaker: Hon. member for Middle.

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

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

Mr Karran: Vainstyr Loayreyder, I welcome this clause. I welcome any flexibility as far as energy from waste is concerned. Maybe the minister would like to clarify the rationale of this clause, which I could never understand. The most inefficient way of using the waste heat from an incinerator is by generating electricity. Allowing for the fact that we have spent millions of pounds on a new cable to bring electricity to the Isle of Man and also the fact that we have spent £80 million on a new power station, what is the rationale this clause? It is recognised that the most inefficient way of using the waste heat from an incinerator is to generate electricity. Will this clause have any effects as far as the possibility of the waste heat being used much more realistically and much more efficiently through a district heating system? I ask this question because really this is another economic madness that we are generating electricity from the waste heat from the incinerator. That, I think, will be a proven point. I would hate for this clause to be used as a fig leaf for the economic problems of generating electricity using the waste heat from the incinerator. Really there should be some massive public building in the vicinity of the incinerator to use the heat in its domestic heating system.

Whilst this clause is an enabling clause, the economics of what is being proposed – admittedly by a different department, the department of local government – is just going to be crazy and will be proven to be crazy. Comments were made in another place several years ago about the costs of the incinerator and this hon. member got a rubbishing and then was proven to be right. I believe that facilitating this in this piece of legislation will still not serve the taxpayers well. It is the most inefficient way of using the heat from the incinerator.

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

Mrs Cannell: Thank you, Mr Speaker. I have a little bit of concern about this particular clause. While I appreciate that it needs to be in legislation in order for us to be able to utilise at some point in the future waste heat from anything other than the gas-fired power station, what is concerning me is that in this piece of legislation 'the department' is the Department of Trade and Industry. Am I correct in reading, then, that it is that department that may construct, or contribute towards the costs of, apparatus? And in so doing, equally they may not. Should this not really have been

the responsibility of the Department of Local Government and the Environment, bearing in mind that it weighed heavily in the push towards the adoption of and the proceeding with the waste incinerator?

Does the hon. minister and mover of the Bill have any idea of what the cost will be of laying cable from the site of the incinerator to the Pulrose power plant? Can he give us an idea of the indication of costs? And can he further try to explain to hon. members why it is that, whilst this new plant is being built to deal with waste, the infrastructure and the pipework has not been put in at the same time, bearing in mind that we are supposed to have corporate government, joined up government working together? After all of the imposition for the public during the construction of the incinerator and, in addition, the roads that are required to service such a plant, to at some time in the future then have to go down the road and start digging up roads and fields and all the rest of it to put in the necessary cables and pipework – it just seems odd to me that this has not been done. I stand to be corrected if it has been part of the overall project. I would have expected that it should, and I would have expected that the costs of that would have been absorbed by the cost of the incineration plant. I am a little concerned that it is now falling quite heavily, I perceive, on the Department of Trade and Industry, which I feel is quite innocent in all of this.

In addition, can the hon. mover advise whether, in view of his opening comments in terms of the establishment of the Waste Management Board being put back a year, this board is still proposed to come under the wing of the Department of Trade and Industry, or where it is? It seems to be blowing in the wind out there somewhere. Thank you, Mr Speaker.

The Speaker: Member for Douglas West, Mr Downie, to reply to the debate.

Mr Downie: I do not really want to get into an incinerator debate here, but to the hon. member for Onchan, Mr Karran, yes, electricity is an efficient way of using the surplus heat from the energy-from-waste plant. I understand that we should be able to generate about 6MW and that that is probably enough to light the whole of Douglas on a normal evening. My favoured option with incineration was always to provide a district heating plant, and I understand that the design of the incinerator would enable a district heating plant to be annexed to that particular piece of equipment. There is a cost that is allied to that, a considerable cost, but I think that for the future the opportunity does remain open.

As far as the piece of legislation goes, the Waste Management Board legislation came through in 1990 and I think that, whatever has happened, there needs to be this tidying-up exercise, which is that clause 8 is all about. The hon. member for East Douglas, Mrs Cannell, has asked if it should not be the local government department of progressing this. Well really, as the electricity is eventually going to go to the

Pulrose power station into the national grid, it is just as easy to do it at this particular time.

I am not sure what the cost of the cable is to link with the MEA; I would take it to be an 11,000KV cable and I would have thought that that cable is actually now being laid in with the gas pipes and gas infrastructure. I know there was some work carried out in that particular area but I will check to see if the cable has been laid now. The costs of that cable, I would have thought, would be included in the cost of the incinerator as it would really be part of that project itself.

As I have said, the issue regarding the establishment of the Waste Management Board was only resolved in the last few weeks really, after the Bill had been printed. As I said, I give an undertaking that I will clarify that situation and, should it require amendment, I will be bringing it back at the third reading.

Mr Speaker, I beg to move that clause 8 stand part of the Bill.

The Speaker: Thank you, hon. member. Just before I put the motion to members, this may just help Mrs Cannell: clause 8 refers to an amendment to the Public Health Act of 1990, and therefore the term ‘department’ there refers to the department in that Act, not the department as defined under this Bill. Therefore, that will mean, as it is part and will be part of that Act, it will be referring to the Department of Local Government and the Environment. I hope that helps to clarify that.

Right. Hon. members, the motion before the House is that clause 8 do stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it.

Hon. member for Douglas West, Mr Downie, clause 9, sir.

Mr Downie: Thank you, Mr Speaker. This clause contains supplemental provisions: 9(1) gives the Bill its short title, 9(2) provides for the commencement of the Bill on an appointed day and 9(3) defines various terms connected with the Bill. Mr Speaker, I beg to move that clause 9 stand part of the Bill.

The Speaker: Member for Douglas South, Mr Duggan.

Mr Duggan: I beg to second, sir.

The Speaker: Hon. members, the motion before the House is that clause 9 do stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it.

That concludes the consideration of clauses of the Gas and Electricity Bill.

**International Criminal Court Bill –
Consideration of Clauses Commenced**

The Speaker: Hon. members, we now turn to the International Criminal Court Bill and I call upon the hon. member for Rushen, Mr Gill, to move clause 1.

Mr Gill: Thank you, Vainstyr Loayreyder. If hon. members will permit, I will begin with a few words of introduction.

The concept of war crimes was developed in the 18th and 19th centuries and later crystallised in the Geneva Conventions. The concept of crimes against humanity, such as genocide, arose out of the holocaust of the Second World War. War crimes and crimes against humanity are to some extent offences under Manx law anyway; for example, a war crime amounting to murder or genocide will in many cases be triable as murder in the Manx courts.

Specific provision is also made by legislation in certain cases. The Geneva Conventions are given effect in the UK domestic law by the Geneva Conventions Act 1957 of Parliament, which was extended to the Isle of Man by order in Council in 1970. The Genocide Convention of 1948 was given effect in the Isle of Man by the Genocide (Isle of Man) Act 1969 of Tynwald, creating a new offence of genocide in Manx law.

The Second World War also gave rise to the concept of international courts or tribunals to try and punish war crimes and crimes against humanity. The first such tribunal was established by the victorious allies at Nuremberg in 1946. Similar ad hoc tribunals have been set up by the United Nations following the atrocities in Bosnia and Rwanda.

The United Nations first proposed the establishment of a standing international tribunal to try such crimes in 1948, but it took 50 years for a sufficient number of states to agree on its constitution and powers. The Rome statute of the International Criminal Court was opened for signature in 1998 and, after ratification by 60 states, entered into force on 1st July 2002, on which date the International Criminal Court (ICC) legally came into existence. Eighty-four states have ratified to date, including the United Kingdom, whose ratification extends to the Isle of Man.

An important principle of the statute is that if the case before the ICC is admissible, a state party is bound to hand the accused over, but the ICC is to treat a case as inadmissible where a state party is genuinely investigating or prosecuting the case or has already done so. This is like the normal principle in extradition cases. To keep open the option of trying an accused person itself, a state party must ensure that ICC crimes are also triable by its national courts.

The United Kingdom has given effect to the statute by the International Criminal Court Act 2001 of parliament. The UK Act may be extended to other British territories, including the Isle of Man, by order in Council. It has been decided that rather than have the UK Act extended to the Isle of Man similar

provisions should be made by an Act of Tynwald. This Bill is to achieve that object; in other words, to assist in investigations into offences and enforce warrants, summonses, orders and sentences of the ICC and to create offences in Manx law corresponding to offences under the statute.

If I may, Vainstyr Loayreyder, I would like to move clause 1 and schedule 1 together. This clause is introductory, explaining the meaning of references to 'the ICC', 'the ICC Statute' and 'ICC crime' in the Bill and introducing schedule 1, which makes provisions in Manx law for the status and proceedings of the ICC.

Subclause (1) defines the terms 'the ICC', 'the ICC Statute' and 'ICC crime' in the Bill.

Subclause (2) explains references to articles in the Bill, that is articles of the Rome statute.

Subclause (3) introduces schedule 1, which makes provision in Manx law for the status and proceedings of the ICC.

Paragraph 1 enables legal personality immunities and privileges to be conferred on the ICC and its officers by order of the Council of Ministers subject to Tynwald approval. Paragraph 2 enables the ICC rules to be given effect in the Isle of Man to be made by order of the Council of Ministers subject to Tynwald approval. Paragraph 3 requires Tynwald approval to an order under paragraph 1 or 2. Paragraph 4 provides for orders of the ICC to be accepted without formal proof of the authenticity of any seal or signature. Paragraph 5 provides for certificates and statements of the ICC about investigations or proceedings of the ICC to be admissible in evidence in Manx courts. Paragraph 6 provides for copies of documents referred to above certified by the UK Government to be accepted in the same way as originals.

These are the provisions laid down in clause 1 and schedule 1, Mr Speaker. I beg to move that both clause 1 and schedule 1 stand part of the Bill.

The Speaker: Hon. member for Garff.

Mr Rodan: I beg to second, Mr Speaker, and reserve my remarks.

The Speaker: Hon. members, the motion before the House is that clause 1 and schedule 1 do stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it.

Hon. member for Rushen, Mr Gill, clause 2, sir.

Mr Gill: Thank you, Vainstyr Loayreyder. Article 59 of the Rome statute requires a state party to arrest an accused or convicted person at the request of the ICC and deliver him to the ICC. Part 2 of this Bill provides the machinery for arrest and delivery. Clause 2 provides for the arrest of an accused or convicted person in compliance with a request for surrender by the ICC.

Subclause (1) sets out the circumstances in which the clause applies: the ICC send to the Attorney-General a request for the surrender of a person who either is accused of, or has been convicted by the ICC

of, an ICC crime and is believed to be in the Isle of Man.

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

Subclause (3) deals with the case of an accused person: the request will come with an arrest warrant issued by the ICC and the High Bailiff is required, if it appears in order, to endorse it for execution in the Isle of Man, that is requiring the Isle of Man constabulary to arrest the accused.

Subclause (4) deals with the case of a convicted person: the request will come with a certified copy of the ICC conviction and other documentation, and the High Bailiff is required to issue an arrest warrant.

Mr Speaker, I beg to move that clause 2 stand part of the Bill.

The Speaker: Hon. member for Garff.

Mr Rodan: I beg to second, Mr Speaker, and reserve my remarks.

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

Mrs Cannell: Thank you, Mr Speaker. I just want to seek some clarification in respect of clause 2 under subsection 3, where it reads 'If the request is accompanied by a warrant of arrest and the High Bailiff is satisfied that the warrant appears to have been issued by the ICC, he shall endorse the warrant for execution in the Island.' How can the High Bailiff be satisfied when the warrant 'appears' to have been issued? Is there no proper procedure in place to be able to check whether or not it is in fact a warrant that has been issued by the ICC? I am a little disturbed by the use of the word 'appears' in this legislation, which I do not believe I have actually come across before. I just wonder how it will 'appear' or not, as the case may be, and what form of checking and crosschecking there will be to make sure that it is not a spoof, if you like, because what it leads on to is, of course, somebody having a warrant of arrest, judgement and all sorts of very serious things where someone can actually be arrested. So I am looking really for some comfort on what the 'appears' means when it is written in law and how that is quantifiable.

The Speaker: Hon. member for Peel.

Mrs Hannan: Thank you, Vainstyr Loayreyder. I am grateful to the member who has given me a document relating to the International Criminal Court, in relation to questions I asked at the second reading and I wonder whether he has circulated it to members because I think they might find it quite interesting. Could I ask him – maybe he has not got the answer but maybe he can come back at the third reading and let me know: in relation to the crimes of international criminals, for want of a better expression, how is it that someone who is suspected of human rights abuses and abuses under this sort of legislation can go to France under the protection of the government in France and

not get arrested under this particular legislation? We might be closing a loophole to prevent somebody from coming in here, but we know of people that have gone to these countries and they have been protected. It seems strange then that we are seen to be this loophole in the whole of the International Criminal Court scenario. These people were not taken in by the back door – they blatantly used the situation by high living in a central city hotel near to the shops so that they could spend some of their money while their people at home are being starved. I just wonder: yes, we have got this legislation, we have got the request for arrest and surrender but when we know of these things why are they not happening?

The Speaker: Member for Rushen, Mr Gill to reply.

Mr Gill: Thank you, Mr Speaker. If I could refer the first speaker, Mrs Cannell, to article 58 of the Rome statute I hope that will suffice as an answer to her query about the definition of 'appears'. Article 58 relates to the issuance of the pre-trial chamber of a warrant of arrest or a summons to appear. Under 3 of that article there are a number of criteria: '(a) the name of the person and any other relevant identifying information; (b) specific reference to the crimes within the jurisdiction of the court for which the person's arrest is sought; and (c) a concise statement of the facts which are alleged to constitute those crimes.' That will be the content of the warrant that would have to appear to be satisfied. As to the actual form of documentation I would have to seek further advice if that is the nature of the query that the hon. member is making. I could undertake to write to Mrs Cannell to clarify that, hopefully in the form that I have just done but for the sake of clarity I shall write to her and refer to that at the next stage.

Mrs Hannan spoke and related that I had written following the second reading. Previously I had written to her in relation to some of the queries she had about the Geneva Convention and she has asked me if I would distribute that letter. Certainly I will do that and I did undertake to do that at the previous stage and I am happy to do that now that Mrs Hannan has indicated that she would wish that to happen.

She also goes on to the protection of a person under a government in another country. I presume that Mrs Hannan is referring to Mr Mugabe's recent visit to France and whilst I share her distaste for many of the problems that he is visiting upon his country, I am not sure that the issue of national sovereignty would not prevail within his country and equally I am not sure that he is being indicted for any ICC crimes. Mrs Hannan might find that surprising; many people might. However, the ICC crimes, as we described earlier, are specific to four areas: aggression – which is yet to be defined; war crimes, genocide and crimes against humanity. As I explained in the preamble, other matters, such as murder perhaps, could be dealt with under national law. So I have no doubt that the hon. member for Peel will have some uncertainty about that and I would perhaps share it, but that is

really outwith the remit of the ICC Bill. So I hope that will suffice for those two members.

The Speaker: Right, hon. members, I would just indicate to the hon. member for Rushen that when Mrs Hannan raised this issue at the second reading and you advised that you would provide the information and also ensure that it was printed in *Hansard*. When a copy is available can you ensure that the Secretary of the House gets one?

Mr Gill: I have an unedited transcript of *Hansard* in which, as you quite rightly say, sir, you raised that issue. My response to your point when you said 'Thank you, hon. member. Could I just ask the hon. member, in circulation of the list' – which we have referred to for Mrs Hannan – 'he has indicated he wishes to circulate, did you indicate that you wish this to be included in *Hansard*?' was: 'Sir, I was saying on the basis of my reading of *Hansard* the points that the hon. member for Peel, Mrs Hannan, made, including a request for the list of the signatories for the ICC statute and also the Geneva Convention. So I will check with *Hansard* to ensure that I am passing on all the advice . . .' So I was going to use *Hansard* as a check rather than as a vehicle.

The Speaker: That is fine, hon. member, as long as you are content. Hon. member for Peel – a point of order, I presume.

Mrs Hannan: A point of order. An issue has been raised before the House and the member has not been able to respond to it. I do not feel that it is information just for me; I feel that the House should also be informed and not only should the House be informed but it should be on record. I think this is a very serious issue that is before the House – I do not see it as a piece of gas legislation or whatever. It is very important and I think we ought to be made quite clear of the legislation that we are passing. I asked a very serious question as to which countries were members and when they became members. I feel that that information is relevant to the passing of this legislation and the reason for this legislation's being before the House. So I am concerned that the mover of this legislation is suggesting that it does not form part of the record. I would have thought that it should form part of the record.

The Speaker: Can I just say to the hon. member and to the House, that the hon. member Mr Gill indicated that he would circulate the letter; he indicated that when he was responding to the hon. member for Peel. There are only two ways by which matters may appear in *Hansard*: one is by hon. members saying what they are saying and therefore it then is recorded within the transcript of *Hansard*; the other is for a member to request that something be printed in *Hansard* that has not been said within the House and it is then a matter for the House whether or not it wishes it to be printed in *Hansard*. I think the only way to resolve this issue is to put it to the House.

Do you wish this information to be printed in *Hansard*? Do I take silence to be your agreement? (**Several members:** Agreed.) Thank you hon. members. (*See K404 for a copy of the letter.*)

I would just make the point that it is in the hands of the members how they deal with any legislation and how they respond to points made and whereas any member may or may not be satisfied with a response from the mover of legislation or the mover of an amendment, the right is the members' how they respond to it. Therefore it is for the other member to endeavour to get the information out of them here in the House.

Hon. members, the motion before us is that clause 2 stand part of the Bill. All those in favour say aye; against no. The ayes have it. The ayes have it.

Hon. member for Rushen, Mr Gill, can I suggest that you take clauses 3 and 4 together?

Mr Gill: Yes sir, if I could perhaps just before we move onto that thank you for your guidance. I appreciate that and I assure the House there is no intention to withhold any information. I certainly share the hon. member for Peel's view, which I know is sincerely held, that this is a most serious piece of legislation and it is treated in that manner.

Clause 3 provides for the compliance with a request by the ICC in an urgent case for the provisional arrest of a person accused before or convicted by the ICC pending the issue of a proper request for surrender as described in clause 2.

Subclause (1) sets out the circumstances in which the clause applies. The Attorney-General receives a request from the ICC under Article 92 for the provisional arrest of a person who either is accused of or has been convicted by the ICC of an ICC crime and is believed to be in the Isle of Man.

Subclause (2) requires the Attorney-General to make an application to the High Bailiff for the issue of an arrest warrant based on a sworn statement, probably by a Home Office official, as to the ICC request and the presence on the Island of the person concerned. The High Bailiff is required to issue a provisional warrant for his arrest.

Clause 4 sets out the procedure to be followed when a person has been arrested under the provision of a warrant issued under clause 3.

Subclause (1) requires the person arrested to be brought before the High Bailiff as soon as practicable.

Subclause (2) provides that if a section 2 warrant is produced – that is a warrant issued by the ICC under article 58 or one issued by the High Bailiff under subclause (2)(iv) the the person is to be dealt with under that warrant.

Subclause (3) provides that if no section 2 warrant is produced, the High Bailiff is to remand the person either in custody or on bail.

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

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

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

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

Mr Speaker, I beg to move that clauses 3 and 4 stand part of the Bill.

The Speaker: Hon. member for Garff.

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

The Speaker: Hon. members, the motion before the House is that clauses 3 and 4 do stand part of the Bill. All those in favour say aye; against no. The ayes have it. The ayes have it.

Hon. member for Rushen, Mr Gill, clause 5, sir.

Mr Gill: Thank you, Vainstyr Loayreyder. Clause 5 provides for the making of a delivery order authorising a person who has been arrested under a warrant under clause 2 to be handed over to the ICC.

Subclause (1) requires the person arrested to be brought before the High Bailiff as soon as practicable.

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

Subclause (3) enables the High Bailiff to adjourn the case pending a decision by the ICC if the person contests the admissibility of the case for the ICC's jurisdiction for example: on the grounds of prior conviction for the offence.

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

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

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

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

Subclause (8) provides that in proceedings for a delivery order the High Bailiff has the same powers to adjourn the case and remand the defendant as in a summary trial. He must remand the defendant if he does adjourn the case and he can award the defendant costs out of government funds if he dismisses the case.

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

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

Mr Speaker I beg to move that clause 5 stand part of the Bill.

The Speaker: Hon. member for Garff.

Mr Rodan: I beg to second, Mr Speaker, and reserve my remarks.

The Speaker: Hon. members, the motion before the House is that clause 5 do stand part of the Bill. All those in favour please say aye; against no. The ayes have it. The ayes have it.

Hon. member for Rushen, Mr Gill clause 6, sir.

Mr Gill: Thank you sir. Clause 6 provides that if a person arrested under clause 2 or 3 consents to be handed over to the ICC, a delivery order can be made without an inquiry by the High Bailiff.

Subclause (1) enables a person arrested under a section 2 warrant or under a warrant under clause 3 to consent to his surrender to the ICC or to the state where he is to serve his sentence.

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

Subclause (3) requires the consent to be given in writing in a prescribed form and signed before a justice of the peace.

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

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

Mr Speaker I beg to move that clause 6 stand part of the Bill.

The Speaker: Hon. member for Garff.

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

The Speaker: Hon. member for Peel.

Mrs Hannan: Thank you, Vainstyr Loayreyder. It seems strange that somebody giving consent to surrender must, at some time afterwards, have to make

it writing. Normally I would have thought if somebody surrenders they wave a white flag because they are under some sort of imminent threat, but this seems to be very orderly. I just wonder how somebody might surrender at one time but then decline to put it in writing. How can it be fulfilled? That is what I would like the member to describe to us.

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

Mr Gill: Thank you sir. I take the hon. member for Peel's comment that it is strange to give consent. Well, possibly it would not be if the person claiming was sure of their innocence; they would welcome the opportunity to clear their name of such a horrendous crime. The requirements to give this consent in the manner that is required – that is, in writing on a prescribed form and signed in the presence of a witness who is a justice of the peace – seem eminently sensible safeguards to preclude any suggestion that there might be some form of undue or unseemly influence being applied, I hope that they will suffice to answer the points that the hon. member for Peel has made but I do take her comment about its being strange to give consent. That is the purpose of these clauses, sir.

The Speaker: Hon. members, the motion before the House is that clauses 6 do stand part of the Bill. All those in favour say aye; against no. The ayes have it. The ayes have it.

Hon. member for Rushen, Mr Gill, can I suggest we take clauses 7 and 8 together?

Mr Gill: Clause 7 deals with the case where the High Bailiff refuses to make a delivery order. In such cases the Attorney-General and the Home Secretary are to be informed and the defendant is to be either remanded in custody or on bail pending an appeal or released.

Subclause (1) requires the High Bailiff if he refuses to make a delivery order under clause 5 to remand the defendant in custody or on bail and to notify the Attorney-General, who in turn notifies the Home Secretary.

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

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

Clause 8 provides for an appeal to the High Court against a refusal by the High Bailiff to make a delivery order on an application under clause 5.

Subclause (1) enables the Attorney-General to appeal to the High Court against a refusal by the High Bailiff to make a delivery order under clause 5; no leave is required for such an appeal.

Subclause (2) enables the High Court if it allows an appeal under subclause (1) either to make a delivery order itself or to remit the case to the High Bailiff.

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

Subclause (4) provides that a case is pending for the purpose of (3) above so long as there is any step left for the Attorney-General to take other than with leave to act out of time.

Mr Speaker I beg to move that clauses 7 and 8 stand part of the Bill.

The Speaker: Hon. member for Garff.

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

The Speaker: Hon. member for Peel.

Mrs Hannan: Thank you, Vainstyr Loayreyder. The mover has on, I think, two occasions mentioned the Home Secretary. It does not say this in the legislation; at least I cannot find it. I wonder when the mover is winding up could he point out where it mentions the Home Secretary. We are making legislation for here; therefore, I think the reference should be either to the Minister for Home Affairs or to the Chief Minister. It is our legislation; it should be straightforward to people here and should not make reference to some other jurisdiction. I hope the member will clarify that particular point.

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

Mr Gill: Thank you sir. Again I take the point from the hon. member for Peel about the rôle of the Home Secretary, Perhaps at the next reading I could come back with some more detailed clarification of that rôle. However, as I said in the preamble, whilst I hope that this legislation will be an Act of Tynwald its enforcement and application will involve the UK authorities. However, if I could perhaps come back at the next reading with some more detailed information about that, that would probably be the most helpful way.

The Speaker: Hon. members, the motion before the House is that clauses 7 and 8 do stand part of the Bill. All those in favour say aye; against no. The ayes have it. The ayes have it.

Hon. member for Rushen, Mr Gill, clause 9, sir.

Mr Gill: Thank you, sir. Clause 9 requires the Court to remand a defendant in respect of whom a delivery order has been made and to inform him of his right under clause 10 to a review of the order.

Subclause (1) requires the High Bailiff when he makes a delivery order to commit the defendant in custody or on bail pending the directions of the Department of Home Affairs as to his transfer, to tell him in a language that he understands of his right to a

review under clause 10; and to notify the Attorney-General.

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

Subclause (3) provides that the above procedure applies where a delivery order is made on appeal to the High Court under clause 8.

Mr Speaker, I beg to move that clause 9 stand part of the Bill.

The Speaker: Hon. member for Garff.

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

The Speaker: Hon. members, the motion before the House is that clause 9 do stand part of the Bill. All those in favour say aye; against no. The ayes have it. The ayes have it.

Hon. member for Rushen, Mr Gill, clause 10, sir.

Mr Gill: Mr Speaker, clause 10 gives a person who is ordered to be handed over to the ICC the right to a review of the order by the High Court unless he waives that right.

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

Subclause (2) gives the defendant the right to apply for a review of the order within 15 days.

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

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

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

Mr Speaker, I beg to move that clause 10 stand part of the Bill.

The Speaker: Hon. member for Garff.

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

The Speaker: Hon. members, the motion before the House is that clause 10 do stand part of the Bill. All those in favour say aye; against no. The ayes have it. The ayes have it.

Hon. member for Rushen, Mr Gill, clause 11, sir.

Mr Gill: Thank you, Mr Speaker. Clause 11 enables the person in respect of whom a delivery order is made to waive his right to a review under clause 10.

Subclause (1) enables the person in respect of whom the delivery order is made to waive his right to a review under clause 10.

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

Subclause (3) requires the waiver to be given in writing in a prescribed form and signed before a justice of the peace.

Subclause (4) provides that if the right is waived an application for review under clause 10(2) cannot be made and the delivery order is deemed to have been validly made and cannot be questioned in any other proceedings.

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

Mr Speaker, I beg to move that clause 11 stand part of the Bill.

The Speaker: Hon. member for Garff.

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

The Speaker: Hon. members, the motion before the House is that clause 11 do stand part of the Bill. All those in favour say aye; against no. The ayes have it. The ayes have it.

Clause 12, hon. member for Rushen, Mr Gill.

Mr Gill: Clause 12 provides that an arrest warrant under clauses 2 or 3 is equivalent to an arrest warrant issued under Manx law.

Subclause (1) provides that an arrest warrant under clauses 2 or 3 is equivalent to an arrest warrant issued for an offence committed in the Isle of Man.

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

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

Mr Speaker, I beg to move that clause 12 stand part of the Bill.

The Speaker: Hon. member for Garff.

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

The Speaker: Hon. members, the motion before the House is that clause 12 do stand part of the Bill. All those in favour say aye; against no. The ayes have it. The ayes have it.

Hon. member for Rushen, Mr Gill, clause 13, sir.

Mr Gill: Clause 13 sets out the effect of a delivery order. It enables the defendant to be taken to the ICC, kept in custody in the meantime and be re-arrested if he escapes.

Subclause (1) provides that a delivery order under clauses 5 or 8 authorises anyone acting on the orders of the Department of Home Affairs to receive the defendant, detain him and to take him to the ICC or to the state where he is to serve his sentence in accordance with arrangements made by that department.

Subclause (2) deems the defendant to be in legal custody while he is on Manx soil or on a Manx ship and being held or moved under the delivery order; that is, he can be detained against his will or re-arrested.

Subclause (3) gives the person receiving, detaining or conveying the defendant on the department's orders the same powers and privileges as a constable, including powers of arrest, entry and search, and obstruction is an offence.

Subclause (4) provides that a person subject to delivery order who escapes or is at large can be rearrested by any constable and taken to the place where he is supposed to be.

Mr Speaker, I beg to move that clause 13 stand part of the Bill.

The Speaker: Hon. member for Garff.

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

The Speaker: Hon. members, the motion before the House is that clause 13 do stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it.

Hon. member for Rushen, Mr Gill, can I suggest that we take clauses 14 and 15 together, sir?

Mr Gill: Yes, sir. Perhaps, sir, could I ask if we can take 14 to 17 together?

Mr Houghton: Hear, hear.

The Speaker: Yes, I am quite happy for that, hon. member – clauses 14, 15, 16 and 17.

A Member: Hear, hear.

Mr Gill: Clause 14 makes a general provision as to the High Bailiffs powers to remand the person in custody or on bail.

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

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

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

Clause 15 lays down certain conditions subject to which any application for bail is to be granted. In

particular, the ICC is to be consulted. Where any application for bail is made the High Bailiff must notify the Attorney-General who must consult with the International Criminal Court via the Foreign Office and the High Bailiff must consider any recommendations of the ICC, the gravity of the charges or offences and the measures to ensure the persons surrender to bail, for example surrender his passport or any security offered.

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

Subclause (1) enables a person in respect of whom a delivery order is made and who has not been handed over within 40 days to apply to the High Court for his release.

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

Clause 17 requires a person who has been arrested to be released where the ICC says he is no longer required. When the ICC notifies the Attorney-General that a person arrested is no longer required, for example, because it has been decided that his case is inadmissible, the Attorney-General must notify the High Bailiff who must then order the person's release.

Mr Speaker, I beg that clauses 14, 15, 16 and 17 stand part of the Bill.

The Speaker: Hon. member for Garff.

Mr Rodan: Mr Speaker, I beg to second and reserve my remarks.

The Speaker: Hon. member for Peel.

Mrs Hannan: Thank you. Maybe the mover can explain why the High Bailiff has to report to, consult and inform the Attorney General on this legislation. This is our legislation. I would have thought it is for us to be part of that. I would have thought that the High Bailiff should notify the government of what is happening here. Now, you might say that the Attorney-General is part of the government, but the Attorney-General does not have an executive rôle. The Attorney-General is not even a police prosecuting person; we do not have that facility here – it is the police that do the prosecution. So why should the High Bailiff report to the Attorney-General?

I see in the next clause of this Bill there is a mention of the department. Why does the department not come in before there is a request for transit? All of this, whether there is consultation with the ICC, surely this should be – I would have thought – even if it was only to inform the department and for the department to be involved with the Attorney-General, or even if it was to the Chief Minister, who would then inform the Attorney-General. It seems strange to me that we are creating legislation that precisely names the officer that should be consulted, informed and notified under this legislation, but not the government – the High Bailiff is not part of government and I would have

thought that there should be a reporting issue to government, so government knows what is going on. If somebody wants to tap somebody's phone or whatever, it is the government, the executive, the people who are responsible to the people who actually authorise that, and therefore I would have thought under legislation such as this that there should be a report. So I wonder what the thinking is of the legislation.

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

Mr Gill: Yes, thank you, sir. I am obliged, again, to the hon. member for Peel for comments which raise a fundamental issue that permeates this legislation. Yes, she is quite right to point out that the Attorney-General does have a conduit rôle in this process, but it is a judicial process not a political or a government process.

Again, sir, for the sake of clarity if I may undertake to circulate a written answer to give further information on this matter to all members if that would suffice. I would reinforce, sir, that this is a judicial process, hence the rôle of the Attorney-General, but I do accept the comments of the hon. member for Peel.

The Speaker: Thank you, hon. member. I think when issues have been raised on the floor orally, it is preferable for responses to be made orally in the House. You may wish to circulate the paper as well, but I just make the comment.

Mr Gill: Yes, sir, and I would say, sir, that the letter I propose, with your guidance, to circulate would be complimentary to the oral comments that this is a judicial process and –

The Speaker: I appreciate that, but I just make the point that we do not want to get into a stage where oral responses are provided by report. I make it as a general comment, not to you personally, but as a general comment of the House.

Mr Gill: Yes, sir.

The Speaker: Right, hon. members, the motion before the House is that clauses 14, 15, 16 and 17 do stand part of the Bill. 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 Rodan, Mr Quayle, Mr Gill, Mrs Crowe, Mr Houghton, Mr Henderson, Mr Cretney, Mr Duggan, Mr Shimmin, Mr Corkill, Mr Earnshaw, Capt. Douglas and the Speaker – 14

Against: Mrs Hannan – 1

The Speaker: Hon. members, the motion carries in the House with 14 votes for and 1 vote against.

Hon. member for Rushen, Mr Gill, clause 18, sir.

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

Subclause (1) deals with the procedure on a request from the ICC to the Attorney-General to allow a person in transit to or from the ICC to pass through the Isle of Man. The Attorney-General is to pass the request on to the Department of Home Affairs who must notify the Attorney of its decision.

Subclause (2) deals with the situation where the department agrees to the request for transit. The prisoner is treated on his arrival as though the ICC's request had been for his arrest and surrender, the ICC warrant accompanying him had been endorsed by the High Bailiff and he had been arrested under that warrant.

Then clauses 5 to 11 will apply with modifications. That is, he must be taken before the High Bailiff, who, if he is satisfied that the department has agreed to his transit through the Isle of Man and that he is the person named in the warrant, is to make a delivery order.

The same procedures under clauses 6 to 11 follow, except that an application to the High Court under subclause (10)(2) for a review of the order must be made within two days instead of 15.

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

Mr Speaker, I beg to move that clause 18 stand part of the Bill.

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

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

The Speaker: Hon. member for Peel.

Mrs Hannan: Thank you, Vainstyr Loayreyder. Could I ask why the department is involved if the mover of the legislation said under the previous clauses that this was judicial? So why does the department need to get involved in clause 18? This is only where a person is in transit being surrendered to a state other than the United Kingdom. So why does the department need to get involved in this particular area? It would be interesting to know that someone can be held and we go through all of these provisions – and that is judicial – but now suddenly, because they are passing through, it becomes something that the department is now informed about and the department has a responsibility. Obviously the department – that is government – does not have any say over this particular person because the person cannot be granted bail – not even, I presume, if that person was taken to

court during that time that they were here. It is possible, with international organisations, that maybe it is the government of the country that they were in, maybe they had been framed, they had been taken back to their country of origin to stand under the International Criminal Court or they had been taken to where the criminal court is – which I believe is the Hague – and they cannot be granted bail. So it could be that it was set up. How do we know it has not been set up?

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

Mr Gill: Sorry, I am a little bit uncertain about the term ‘set up’, sir, and of its relevancy here. The point, as I understand it, that the hon. member for Peel is making is: why does the Department of Home Affairs have a rôle in this? As we have seen previously, the Department of Home Affairs has a rôle, as the conditions under which a person will be held will be its responsibility, because the person would be either in custody or if they were on bail they would be liable to the control of the Chief Constable. So I think that is why the Department of Home Affairs would need to be aware.

Also re the issue, sir, about any expenditure implications, manpower, security and need to know in advance, I think, sir, it would probably also be fair to say that it would be pretty unlikely that the Department of Home Affairs would want to have anybody under these circumstances travelling through the Isle of Man. Of course, that would be a matter to be determined at the time, but that would be why the department would properly have a rôle in having a position within any such circumstances were that to arise, sir.

The Speaker: Hon. members, the motion before the House is that clause 18 do stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it.

Hon. member for Rushen, Mr Gill, clause 19, sir.

Mr Gill: Mr Speaker, clause 19 requires a prisoner in transit to or from the ICC who makes an unscheduled landing in the Isle of Man to be held pending a request for transit from the ICC.

Subclause (1) requires a prisoner being surrendered to the ICC who makes an unscheduled landing in the Isle of Man to be arrested and brought before the High Bailiff.

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

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

Subclause (4) provides that where the Attorney-General receives a request for transit within 96 hours

he is to notify the High Bailiff, who is to terminate the remand and proceed in accordance with clause 18.

Mr Speaker, I beg to move that clause 19 stand part of the Bill.

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

Mr Corkill: I beg to second and reserve my remarks, Mr Speaker.

The Speaker: Hon. members, the motion before the House is that clause 19 do stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it.

Hon. member for Rushen, Mr Gill, clause 20, sir.

Mr Gill: Mr Speaker, clause 20 provides that a person’s state or diplomatic immunity will not normally prevent any action under this part against him, except in the case of a state not party to the statute.

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

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

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

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

Sir, I beg to move that clause 20 stand part of the Bill.

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

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

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

Mrs Hannan: Presumably, Eaghtyrane, what the member is saying is that anyone connected with Israel, China, the United States of America, India, the Vatican – which is quite amusing, really, the Vatican has objected to being signed up and other Catholic nations objected to some of the text relating to sexual crimes – does not come under this legislation! I find it absolutely mind-boggling that we are introducing legislations such as this, especially when, at the moment, what is before us is the suggestion that there is going to be a war, of which the United States are

going to be the prime leaders, and Israel, who are at war with the Palestinians at the moment and creating problems. Yet we are passing this legislation – you could say that half the world does not come under it and yet we are introducing it. I just think it is rather strange that we are introducing it when it does not relate to these particular huge areas in the world.

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

Mr Gill: Thank you, sir. Again, I find myself in sympathy with the sentiments of the hon. member for Peel, but this is a matter of extensive jurisdiction and as far as the Isle of Man is concerned we are signing up in the proper manner, I would contend, sir. It is a shame, but there is really, frankly, very little that we can do about other nations who choose not to follow that example. Again, sir, I take the point but I do not think that is really an issue that I could helpfully comment on other than to accept the extensive jurisdiction that the hon. member for Peel flags up and locate that within the clauses that we are debating, sir.

The Speaker: Hon. members, the motion before the House is that clause 20 do stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it.

Clause 21 and schedule 2, hon. member for Rushen, Mr Gill.

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

Part 1 deals with criminal proceedings.

Paragraph 1 defines the term ‘criminal proceedings’.

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

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

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

Part 2 deals with extradition proceedings.

Paragraph 5 defines ‘extradition proceedings’.

Paragraph 6 makes similar provision to paragraph 2, where a request from the ICC for the surrender of a

person arrives while extradition proceedings are pending against him. They are to be adjourned pending the making of a delivery order and if one is made the Attorney-General may decide that the ICC request is to have priority and direct that the extradition proceedings discontinue.

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

Part 3 deals with other delivery proceedings, for example, proceedings for surrender of a person to a Tribunal set up by the UN to try cases arising out of the atrocities in Bosnia or Rwanda.

Paragraph 8 defines ‘other delivery proceedings’.

Paragraph 9 makes similar provision to paragraph 2 and 6, where a request from the ICC for the surrender of a person arrives while other delivery proceedings are pending against him. They are to be adjourned pending the making of a delivery order and if one is made, the Attorney-General may decide that the ICC request is to have priority and direct that the other proceedings discontinue.

Paragraph 10 deals with the case where a request from the ICC for the surrender of a person arrives when a delivery order under other proceedings have been concluded. The court is to suspend or revoke the order so that he can be handed over pursuant to the new ICC delivery order.

Mr Speaker, I beg to move that both clause 21 and schedule 2 stand part of the Bill.

Mr Houghton: I beg to second sir.

The Speaker: The hon. member for Douglas North, Mr Houghton, seconded. Hon. members, the motion before the House is that clause 21 and schedule 2 do stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it.

The member for Rushen, Mr Gill, clause 22, sir.

Mr Gill: Mr Speaker, with your indulgence, could we – ?

The Speaker: And 23.

Mr Gill: – thank you, sir. Clause 22 provides that copy ICC warrants, certified copies of these copies and faxed documents are to be treated as originals. It also provides that this part applies to an amended warrant as it applies to the original.

Subclause (1) provides the copy ICC warrants and certified copies of these copies are to be treated as originals.

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

Subclause (3) provides that this part applies to an amended warrant as it applies to the original.

Subclause (4) is a saving for the validity of anything done on the original warrant where it is amended.

Clause 23 defines terms used in part 3.

Mr Speaker, I beg to move that both clause 22 and clause 23 stand part of the Bill.

Mr Houghton: I beg to second.

The Speaker: Thank you. Hon. members, the motion before the House is that clauses 22 and 23 do stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it.

Clause 24, hon. member for Rushen, Mr Gill.

Mr Gill: Thank you, Mr Speaker. Part 3 of the Bill deals with assistance to be given to the ICC in connection with investigations carried out by the ICC and its officials into ICC crimes and requires action to be taken by Isle of Man authorities.

Clause 24 introduces the provisions of part 3 under which assistance is to be given to the ICC in investigation ICC crimes.

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

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

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

Mr Speaker, I beg to move that clause 24 stand part of the Bill.

Mr Houghton: I beg to second.

The Speaker: Hon. members, the motion before the House is that clause 24 do stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it.

Hon. member for Rushen, Mr Gill, clause 25 and schedule 3, please.

Mr Gill: Thank you, Mr Speaker. Clause 25 and schedule 3 provide for the questioning of the suspect at the request of the ICC for the purpose of an investigation.

Subclause (1) sets out the circumstances where this clause applies. The ICC requests the Attorney-General to assist in questioning a suspect.

Subclause (2) makes it clear that a person must be informed of his rights under schedule 3 and cannot be interviewed without his consent.

Subclause (3) introduces schedule 3 setting out article 55 of the Rome statute which sets out the human rights of suspects.

Subclause (4) provides the consent under subclause (2) may be given by the person himself or by an appropriate person on his behalf, for example if he is mentally disordered or unconscious.

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

Mr Speaker, I beg to move that clause 25 and schedule 3 stand part of the Bill.

Mr Houghton: I beg to second.

The Speaker: Hon. member for Douglas North, Mr Houghton, seconded. Hon. members, the motion before the House is that clause 25 and schedule 3 do stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it.

Hon. member for Rushen, Mr Gill, clauses 26 and 27, sir.

Mr Gill: Thank you, sir. Clause 26 enables evidence to be taken or documents produced at the request of the ICC for the purpose of an investigation.

Subclause (1) sets out the circumstances where this clause applies. The ICC requests the Attorney-General for assistance in taking evidence or producing documents.

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

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

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

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

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

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

Subclause (2) is introductory.

Subclause (2) enables the High Bailiff to take evidence in camera.

Subclause (3) requires a record of the proceedings to be made in the order book.

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

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

Mr Speaker, I beg to move that both clause 26 and clause 27 stand part of the Bill.

Mr Houghton: I beg to second, sir.

The Speaker: The member for Peel.

Mrs Hannan: Thank you, Vainstyr Loayreyder. Could I ask the mover why it is necessary that the entry shall not be open to inspection except authorised by the Attorney-General or with the leave of the High Bailiff? Surely these two persons – it does not matter who is in the position – should not have to make a decision such as that. Either the legislation says that it is available to the public – and I believe that it should be available to the public – or that it is not available to the public. We are looking at people who are

concerned with extremely serious offences, but I think that law and order mean that we should still be open and I would have thought that human rights, surely, exist even for people such as this, and therefore I would have thought that to protect these people that the entries and inspections should be open to the public. I am extremely concerned that we start doing something here under the International Criminal Court legislation, which is what these people might have done in their own countries to allow some of these criminal acts to take place, and therefore I find it extremely worrying that we have terms such as the 'High Bailiff may if he thinks it is necessary in order to protect . . .'. I know the High Bailiff can decide that something is in camera for a time, but not to have the entry recorded I think is really playing into the hands of the people, the level of whom we should really be above, and I hope the mover can explain why this should happen in this particular legislation.

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

Mr Gill: Yes, sir. The presumption in these cases is one of openness, as in all criminal matters but, as we all know, there are occasions where it is quite appropriate for entirely justifiable reasons, such as 'in order to protect' – and I am quoting from the Bill – 'victims and witnesses or a person is alleged to have committed a crime or if there is confidential or sensitive information', that is a matter, clearly, for the High Bailiff to determine. The presumption is one of openness, but there are those restrictions which we already experience, and I think this hon. House has welcomed it in cases such as rape where the purpose of holding matters in camera is to protect the victims. Certainly it is not the intention to protect the alleged wrongdoer.

The Speaker: Hon. members, the motion before the House is that clauses 26 and 27 do stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it.

Hon. member for Rushen, Mr Gill, clause 28, sir.

Mr Gill: Thank you, Mr Speaker. Clause 28 enables a summons or other document from the ICC to be served in the Isle of Man.

Subclause (1) sets out the circumstances where this clause applies: the ICC requests the Attorney-General for assistance in serving a summons or other document.

Subclause (2) enables the Attorney-General to direct a coroner to serve the document personally.

Subclause (3) requires the coroner to report service to the Attorney-General.

Subclause (4) also requires the coroner to report to the Attorney-General if he cannot serve the document.

Mr Speaker, I beg to move that clause 28 stand part of the Bill.

Mr Houghton: I beg to second, sir.

The Speaker: Hon. members, the motion before the House is that clause 28 do stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it.

Hon. member for Rushen, Mr Gill, clause 29, sir.

Mr Gill: Mr Speaker, clause 29 provides for the temporary transfer to the ICC of a prisoner in a Manx institution with his consent for the purpose of identification or giving evidence.

Subclause (1) sets out the circumstances where this clause applies: the ICC requests the Attorney-General for the transfer of a prisoner or detainee for the purpose of identification or giving evidence.

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

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

Subclause (4) applies clause 13, the effective delivery order, and clause 21 with schedule 2, the delivery of the person subject to criminal proceedings, to such a transfer warrant.

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

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

Subclause (7) defines the Immigration Act.

Mr Speaker, I beg to move that clause 29 stand part of this Bill.

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

Mr Houghton: I beg to second.

The Speaker: Seconded. Hon. members, the motion before the House is that clause 29 do stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it.

Hon. member for Rushen, Mr Gill, clause 30, sir.

Mr Gill: Sir, could I take clauses 30, 31 and schedule 4?

The Speaker: I would prefer you to take clause 30 on its own.

Mr Gill: Sir, as you wish. Clause 30(1) provides that where the Attorney-General receives a request from the ICC for assistance requiring the exercise of powers of entry, search and seizure he is to direct a

constable to apply for a warrant or order under part 2 of the 1998 Act.

Subclause (2) applies the provision of part 2 of the 1998 Act relating to a serious, arrestable offence to an ICC crime. Sir, if I could clarify that the 1998 Act which I am referring to is the Police Powers and Procedure Act.

Sir, I beg leave that clause 30 stand part of the Bill.

The Speaker: Member for Douglas North, Mr Houghton.

Mr Houghton: I beg to second.

The Speaker: Member for Peel.

Mrs Hannan: Thank you, Vainstyr Loayreyder. Could I ask the mover: it says here 'the Attorney-General receives from the ICC . . .' – does this not go to the Chief Minister or the Minister for Home Affairs? It seems strange to me that again we are introducing legislation where the contact with the ICC is through the Attorney-General, who is not answerable to anyone. Part of the objection by some of the countries has – and obviously maybe it is because of the content of this legislation – argued that prosecutions should require the consent of the government of the accused. This is not even the government of the accused. This is an application from the ICC to our Attorney-General – who as we know does not happen to be our Attorney-General; he is Her Majesty's Attorney-General – but without reference to the government, and maybe the government can explain why they do not think it is necessary for an application from the ICC to at least go to them as well as the Attorney-General. I find it very odd that the Attorney-General receives instructions from the ICC without any reference at all to our government.

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

Mr Gill: Thank you, Mr Speaker. Again, I take the hon. member for Peel's comments, but again, sir, I would revisit that the Attorney-General is in this a conduit of a judicial process not a political process. This House and another place have previously and quite properly accepted and enshrined the concept and practice of separating political and judicial processes, although on occasion there is an area where the two impact. Of course we all appreciate that, but again, sir, as we have discussed previously, the rôle of the Attorney-General in this matter is to act as a conduit in a judicial process. I cannot really think of anything more helpful to add to that.

The Speaker: Hon. members, the motion before the House is that clause 30 do stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it.

Clauses 31 and schedule 4 and clause 32 and clause 33, sir.

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

Subclause (1) introduces schedule (4).

Paragraph 1 requires the Attorney-General to nominate a court to supervise the taking of fingerprints or non-intimate samples where the ICC request him for assistance in identifying a suspect, he tells the ICC that other methods have failed and the ICC still wants assistance.

Paragraph 2 enables the court to order a constable to take fingerprints or a sample or both. Samples must be sufficient for testing and samples of hair must be taken in accordance with the 1998 Police Powers and Proceedings Act.

Paragraph 3 enables the court to order the suspect to attend at a police station to provide fingerprints or samples at a stated time, but with at least seven days' notice warning him that if he fails it can issue an arrest warrant. If he is in custody or otherwise detained, for example, as a mental patient, the fingerprints or samples can be taken where he is detained.

Paragraph 4 enables fingerprints or samples to be taken with the appropriate consent – that is, the suspect's consent or if a minor, his parents, or subject to paragraph 5, without consent.

Paragraph 5 requires the Chief Constable's authorisation to the taking of fingerprints or samples without consent. The suspect must be notified of the authorisation.

Paragraph 6 requires a record to be kept of any consent or authorisation and any notification under paragraph 5.

Paragraph 7 provides that fingerprints or samples can only be used in connection with an investigation into an ICC crime or an equivalent offence in Manx law and the suspect must be told of this.

Paragraph 8 requires fingerprints or samples to be destroyed if the suspect is cleared of that crime.

Paragraph 9 defines the 1998 Act.

Subclause (2) defines 'fingerprints' and 'non-intimate samples' by reference to the 1998 Act.

Mr Speaker, I beg to move that clause 31 and schedule 4 stand part of the Bill.

Mr Houghton: I beg to second, sir.

The Speaker: Hon. members, the motion before the House is that clause 31 and schedule 4 do stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it.

I had indicated we would take a couple together, so can I suggest to the hon. member, we take clause 32 and 33 together?

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

Clause 33 provides for the production to the ICC of records of evidence, police statements and so on taken in the Isle of Man which are required in connection with the investigation of an ICC crime.

Subclause (1) sets out the circumstances where this clause applies. The ICC asks the Attorney-General for records and other documents relating to evidence taken in the Isle of Man in connection with an ICC crime or the results of an investigation into such a crime, for example, police statements.

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

Mr Speaker, I beg to move that both clauses 32 and 33 stand part of the Bill.

Mr Houghton: I beg to second.

The Speaker: Thank you, Mr Houghton seconded. Hon. member for Peel, Mrs Hannan.

Mrs Hannan: I wonder if the mover could explain at the next sitting of the House where we consider this legislation the equivalent of the Attorney-General in this legislation to other jurisdictions. Is the Attorney-General named in every jurisdiction? I think it should be considered with this legislation because as we go through the clauses it is the Attorney-General, the Attorney-General, the Attorney-General.

I would also like to know, in other countries where this legislation is introduced, whether the government of that country are informed in any way whatsoever or whether it is just the judiciary that are involved because the International Criminal Court is seen to be above government. Maybe that would give me some clear understanding of what this legislation is about and why it is written in the way that it is, and I would be grateful to the member for supplying that at the next sitting, Vainstyr Loayreyder.

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

Mr Gill: Thank you, sir. The two points from the hon. member for Peel in relation to the equivalent of the Attorney-General in other jurisdictions which are signatory to the statute, and also the comparison with our proposed judicial and government separation under this Bill – certainly, I would be very happy to undertake to come back with that at the next reading. I would just, if I may, flag up that with 84 signatories that might be quite a lengthy piece of information I might be providing. Equally it might not be, but I just flag that up for consideration at this juncture.

The Speaker: Hon. members, the motion before the House is that clauses 32 and 33 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it.

Clause 34 and schedule 5, hon. member for Rushen, Mr Gill.

Mr Gill: Thank you, Mr Speaker. Clause 34 and schedule 5 provide for the issue by the High Court of orders and warrants to assist the ICC in investigating the proceeds of any ICC crime.

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

Subclause (2) introduces schedule 5.

Part 1 provides for production orders and access orders.

Paragraph 1 gives any judge of the High Court – that is, a deemster or deputy or acting deemster – power to make an order under this part for production of or access to any specified material, for example, financial records, on an application by the Attorney-General under subclause (1), which may be made in chambers without notice to the person concerned but may not apply to a matter subject to legal privileges.

Paragraph 2 requires the judge to be satisfied that there are grounds for suspecting that a specified person has benefited from an ICC crime and that the material in question is of value to the investigation.

Paragraph 3 deals with standard orders for production of or access to existing material in the control of a person named in the order, like a banker. He can be required to produce it to a constable or give him access to it within a specified time, usually seven days.

Paragraph 4 makes provision for special orders where the material is not in the person's control but is likely to come into his control in the next 28 days or does not yet exist but may do so in that time. The order can require the person to notify a named constable when it comes under his control.

Paragraph 5 provides that production or access orders have effect as orders of the High Court, so disobedience can be punished as contempt of court. Rules of the High Court are to deal with procedural matters and the revocation or variation of orders.

Paragraph 6 applies such orders to material on a computer, gives exemption of privileged documents, excludes any rule of confidentiality or non-disclosure and applies the rules in the 1998 Act as to access to and copying and retention of material.

Paragraph 7 enables such orders to be made and enforced in respect of material held by government.

Part 2 provides for search warrants.

Paragraph 8 gives any judge of the High Court power to issue a search warrant to look for material.

Paragraph 9 provides that a search warrant entitles a constable to enter and search specified premises and seize material likely to be of value to the investigation, except matters subject to legal privilege.

Paragraph 10 sets out the grounds for issue of a search warrant where a production order or access order has not been complied with, there are grounds for suspecting that a person has benefited from an ICC crime and from making production for access order but no-one is available to produce the material or give access to it, or the investigation will be frustrated if immediate access is not obtained, or there are grounds for suspecting that a person has benefited from an ICC

crime but the material sought, although relevant and probably of value to the investigation, cannot be specified and no-one is available to grant access or access will be denied without a warrant or the investigation will be frustrated if immediate access is not obtained.

Part 3 defines terms used in parts 1 and 2.

Paragraph 11 defines 'constables' including 'a customs officer' and other terms by reference to the 1998 Act.

Mr Speaker, I beg to move that both clause 34 and schedule 5 stand part of the Bill.

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

Mr Houghton: I beg to second, sir.

The Speaker: Hon. members, the motion before the House is that clause 34 and schedule 5 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it.

Clause 35 and schedule 6, hon. member for Rushen, Mr Gill.

Mr Gill: Thank you, Mr Speaker. Clause 35 and schedule 6 provide for the making of temporary freezing orders at the request of the ICC to preserve property which may be subject to forfeiture by the ICC if a person is convicted of an ICC crime. The Attorney-General is required to apply for a freezing order under schedule 6, where the ICC requests the Attorney-General for assistance in freezing the proceeds of an ICC crime or other property or assets which may become liable to forfeiture.

Schedule 6 – paragraph 1 enables the High Court to make a freezing order on an application under clause 35. The order may be made in chambers without notice to the person concerned.

Paragraph 2 sets out the grounds on which a freezing order can be made. The court must be satisfied that either the ICC has made a forfeiture order or it is likely that it will do so and that the property in question is or may be subject to the order.

Paragraph 3 explains what a freezing order does. It prohibits any person dealing with specified property except in accordance with the order and also provides for notice of it to be given to persons affected like bankers or company registrars.

Paragraph 4 enables a freezing order to be varied or revoked and requires it to be revoked at the end of the relevant ICC proceedings.

Paragraph 5 enables the High Court to appoint a receiver to take charge of and, if appropriate, realise any property the subject of a freezing order.

Paragraph 6 enables a constable to seize any property the subject of a freezing order in order to prevent it being taken out of the jurisdiction.

Paragraph 7 makes provision for a freezing order affecting registered land or an application for such an order to be noted on the title register.

Paragraph 8 makes similar provision in the case of land, the title to which is unregistered.

Paragraph 9 provides the property subject to a freezing order and any proceeds of such property realised by a receiver under paragraph 5 does not vest in the owner's trustee if he was subsequently declared bankrupt, but a receiver cannot exercise any powers with respect to property which was previously vested in the trustee.

Paragraph 10 makes similar provision in the case of the winding up of a company. The liquidator cannot dispose of property which is a subject of a prior freezing order but a receiver cannot exercise any powers if the freezing order is made after the winding up began.

Paragraph 11 protects a bankruptcy trustee, liquidator or the like against claims where he has dealt in good faith with property which is the subject of a freezing order.

Paragraph 12 defines terms used in the schedule.

Mr Speaker, I beg to move that both clause 35 and schedule 6 stand part of the Bill.

Mr Houghton: I beg to second, sir.

The Speaker: Hon. members, the motion before the House is that clause 35 and schedule 6 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it.

Clause 36, hon. member.

Mr Gill: Thank you, Mr Speaker. Clause 36 exempts from production or disclosure under any powers conferred by this part any documents or information which would prejudice national security.

Subclause (1) exempts from production or any documents or information which would prejudice national security.

Subclause (2) makes a certificate of the Home Secretary or the Chief Minister that the exemption in subclause (1) applies conclusive.

Mr Speaker, I beg that clause 36 stand part of the Bill.

The Speaker: The member for Douglas North.

Mr Houghton: I beg to second, sir.

The Speaker: Hon. members, the motion before the House is that clause 36 do stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it.

Hon. member for Rushen, Mr Gill, clauses 37 and 38, sir.

Mr Gill: Thank you, sir. Clause 37 enables the Attorney-General to give directions as to how any material obtained in compliance with the request from the ICC is to be verified, for example, exhibited to an affidavit in order to be used as evidence before the ICC.

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

Mr Speaker, I beg that clauses 37 and 38 stand part of the Bill.

The Speaker: Hon. member for Douglas North.

Mr Houghton: I beg to second.

The Speaker: Hon. members, the motion before the House is that clauses 37 and 38 do stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it.

Hon. member, Mr Gill, clause 39, sir.

Mr Gill: Mr Speaker, clause 39 makes provision for a person convicted of an ICC crime by the ICC to be detained in the Island, provided the Isle of Man Government agrees.

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

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

Subclause (3) enables a warrant under subclause (2) to be varied – indeed, it must be varied if the ICC varies the sentence.

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

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

Mr Speaker, I beg that clause 39 stand part of the Bill.

Mr Houghton: I beg to second, sir.

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

Mrs Cannell: Thank you, Mr Speaker. The hon. mover when moving this particular clause, when referring to 1(c) the Secretary of State, where it is worded that, ‘the Secretary of State is minded that the prisoner should be detained in the Island’, and he cited the example that the prisoner’s family may live here, is it not also fair to say that, as the wording of the legislation is such, the family of person to be detained may not live in the Island – in fact, may not have any connection with the Island whatsoever? And can he give this House some reassurance that this particular clause is not going to open the door for such detainees, such prisoners, to be offloaded onto Island shores for the purposes of the United Kingdom and the ICC? If we have a situation in the United Kingdom where their prisoners are overflowing, which is generally the case,

and we have space here, does the imposition of this clause not put the Island potentially under some kind of pressure through the ICC and the United Kingdom?

I accept that under subsection (2) it says that ‘if the department agrees that the prisoner should be detained in the Island it shall issue a warrant authorising . . .’ and then it goes on and it also then says that such a person will not be released early, in other words they will not allow a temporary release on licence. Nevertheless, if the department does not agree, bearing in mind that a lot of the power in this piece of legislation is referred onto the Attorney-General, where does that put the Isle of Man? And if the department in fact did not agree for a particular detainee to come here could the imposition of this particular clause not put us in a unenviable position whereby we could be forced to actually take somebody? I do not see anywhere in the Bill a procedure for if the department disagrees or to say that if the department disagrees they are in a strong position to resist a detainee being forced upon them for the purposes of this legislation. If the hon. member could clarify that position, please.

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

Mr Gill: Thank you, sir. Yes, I think I can bring some reassurance to this House. The provisions of this clause depend on the government through the Department of Home Affairs agreeing to a prisoner coming here, that consideration would be primarily on the welfare of the prisoner, but I would remind members that currently the Isle of Man has no provision to accept category A prisoners and the nature of the crimes under this Bill would be that each prisoner would need to be held, I feel sure, under category A provision.

I would further say that this is an enabling provision and not a general case, and there is a clear caveat that the Isle of Man Department of Home Affairs have to agree to a prisoner being here before that could occur. I think there is little more I can add other than to reassure the House in those terms, sir.

The Speaker: Hon. members, the motion before the House is that clause 39 do stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it.

Hon. member for Rushen, Mr Gill, clause 40, sir.

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

Subclause (1) sets out the circumstances where this clause applies: the ICC requests the Department of Home Affairs to return a prisoner who is serving an ICC sentence in the Island to the ICC temporarily or to transfer him to another state to serve his sentence.

Subclause (2) requires the department to issue a warrant for the return or transfer of the prisoner and to

give directions for his conveyance in accordance with the arrangements made with the ICC.

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

Sir, I beg to move that clause 40 stand part of the Bill.

The Speaker: Hon. member for Douglas North.

Mr Houghton: I beg to second.

The Speaker: Hon. members, the motion before the House is that clause 40 do stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it.

Hon. member for Rushen, Mr Gill, clause 41, sir.

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

Subclause (1) sets out the circumstances where this clause applies: the Home Secretary, Northern Ireland Secretary or Scottish Executive makes an order with the consent of the Department of Home Affairs for the transfer to the UK of a prisoner serving an ICC sentence in the Island, either to serve his sentence there or to attend criminal proceedings or a public inquiry in the UK.

Subclause (2) requires the department to issue a warrant for the transfer of the prisoner and to give directions for his conveyance in accordance with the order. Please note that this clause will also apply to sentences imposed by a UK tribunal that has been investigating the atrocities in Bosnia or Rwanda if they had any effect here, sir.

The Speaker: Do I have a seconder?

Mr Houghton: I second, sir. (*Laughter*) I thought he was winding up.

The Speaker: I know it is very relaxing, hon. members! Right. The motion before the House is that clause 41 do stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it.

Hon. member for Rushen, Mr Gill, clause 42, sir.

Mr Gill: Thank you, Mr Speaker. Clause 42 provides that a person who is in transit under a warrant under this part and is not in an institution so he is not technically in legal custody under the Custody Act 1995 is nevertheless treated as if he were in legal custody so, for example, he can be arrested if he is at large and anybody harbouring him would be committing an offence.

Subclause (1) sets out the circumstances where this clause applies: where a warrant under this part is

issued but the prisoner is not in legal custody under the Custody Act 1995.

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

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

Subclause (4) provides that a person designated under subclause (3) has the same powers and privileges as a constable including powers of arrest, entry and search; obstruction of the same would be an offence.

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

Please note that this clause is also applied to sentences imposed by a UN tribunal investigating atrocities in Bosnia and Rwanda.

Sir, I beg to move that clause 42 stand part of the Bill.

Mr Houghton: I am very happy to second, sir.

The Speaker: Thank you, hon. member. Hon. members, the motion before the House is that clause 42 do stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it.

Hon. member for Rushen, Mr Gill, clause 43, sir.

Mr Gill: Thank you, sir. Clause 43 enables regulations to be made for the enforcement of other orders of the ICC, for example fines, forfeitures and compensation.

Subclause (1) enables the Council of Ministers to make regulations providing for the enforcement of orders made by the ICC like fines, orders for forfeiture of property and orders for reparations to victims.

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

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

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

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

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

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

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

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

Subclause (10) requires Tynwald approval to the regulations.

Mr Speaker, I beg to move that clause 43 stand part of the Bill.

The Speaker: Hon. member for Douglas North.

Mr Henderson: I beg to second, sir.

The Speaker: Hon. member for Peel.

Mrs Hannan: Thank you, Vainstyr Loayreyder. Can I ask: the Council of Ministers *may* make provision and the regulations may authorise the department – what happens if the Council of Ministers, which is the government of the Isle of Man – I do not know why it does not say that – do not make provision? Do the ICC regulations still hold good?

Subclause (7) – ‘the regulations *may* for that purpose apply only statutory provision relating to the enforcement in the Island of orders of the court of a country or territory outside the Island’ – maybe the mover could explain what that means. I am not sure what that relates to. Does it relate to the orders that the Council of Ministers may make or does it relate to any of the orders? I would welcome the comments of the mover, because it does not say that the Council of Ministers should make provision for regulations or that the department, even if the Council of Ministers make provision, should make, then, provision. I would like clarification of that, Vainstyr Loayreyder.

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

Mr Gill: Thank you, Mr Speaker. In relation to the hon. member for Peel’s first point about the wording that the Council of Ministers ‘may’ make provision, I think that is the standard wording to allow for the matter to be dealt with on its individual merits. That will be a matter for the court. I would imagine that most people would have more grave concerns if –

Mrs Crowe: If it said ‘shall’.

Mr Gill: – the Council of Ministers were required with ‘shall make provision’. (**Mrs Crowe:** Yes.) That would be altogether more restrictive and would, I would suggest, be contrary to the spirit of the Bill and our autonomy to apply it appropriately.

In relation to section 7, again, I take the point and I would not feel confident in offering an opinion here today. Perhaps if I could come back at the next reading with some clear advice about that.

The Speaker: Right, hon. members, the motion before the House is that clause 43 do stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it.

Now, hon. members, that concludes the business for today. The House will now stand adjourned until 9.45 a.m. on Tuesday next, 18th March, in our own House.

The House adjourned at 5.35 p.m.

**Letter to Mrs Hannan from Mr Gill –
Re: the International Criminal Court Bill**

During the clauses stage of this Bill, on 11th March, you made an enquiry regarding clause 2(1) relating to the appropriate involvement of the Attorney-General in procedures to the exclusion of executive government. I replied at the time that this was a judicial process, not a political one.

This is a matter of international judicial co-operation, and in Manx law the Attorney-General is the usual and proper channel for such co-operation. For example, where evidence is sought for presentation in an overseas criminal court, the 'letter of request', goes via the Attorney-General under the Criminal Justice Act 1991 section 21.

The Order in Council relating to the UN tribunals on Yugoslavia and Rwanda [SI 1997/282] specifies the secretary of state as the channel between the tribunals and the Isle of Man, but this was not considered to be a suitable precedent.

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

In a further query, you also asked who performs this rôle in the other countries who have made domestic legislation for the court, and whether executive government is involved in those countries.

To date, 89 countries have ratified the Rome Statute. Not all of those countries have yet enacted domestic legislation implementing the provisions of the statute and enabling co-operation with the newly formed court. Not all the countries who have enacted domestic laws operate with a similar enough legal system to provide a useful comparison. For example, Belgium and Germany have incorporated the ICC by the addition of another layer onto their penal or criminal code, and so the legislation is not comparable. Other states, such as Ireland, have mirrored existing provisions for co-operation with the ad hoc tribunals dealing with Rwanda and the former Yugoslavia.

The rôle which, in this Bill, is fulfilled by Her Majesty's Attorney-General is variously filled by different office holders in different countries: Norway uses a combination of the Ministry of Justice and the King; in South Africa provision is made by the 'National Director'; Spain uses the Ministry of Justice; Switzerland created a new office for this particular rôle – 'the Central Authority'; and the UK uses the term 'Secretary of State'.

Many other states do use the Attorney-General or his equivalent, including Australia and Canada. Others

have divided the rôle between the Minister for Justice and the Attorney, such as New Zealand and Malta.

It should be noted that the model legislation provided by the Foreign and Commonwealth Office for the use of British Overseas Territories suggests that the rôle should be filled by the Governor. This was not considered appropriate in the Island's case.

You also enquired as to why clause 7(1)(b) refers to the Home Secretary and not the Minister for Home Affairs. I'm afraid that my apologies are in order. A previous draft of the Bill referred to the Secretary of State but the reference had been removed in the green Bill. Unfortunately, the reference remained in the notes on clauses and consequently crept into my speaking notes. I am sorry for any confusion this has caused.

I hope that this clarifies the issue sufficiently, and thank you for your interest in the Bill.

Yours sincerely,

Mr Q B Gill MHK