

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

**Douglas, Tuesday, 25th 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); Hon. R P Braidwood and Mrs B J Cannell (Douglas East); Hon. A F Downie and Hon. J P Shimmin (Douglas West); Capt. A C Douglas (Malew and Santon); Hon. J Rimington, Mr Q B Gill (Rushen); with Mr M Cornwell-Kelly, Secretary of the House.

The Chaplain took the prayers.

Items Considered

Leave of Absence Granted	K410
Statement by the Chief Minister	K410
Bill for First Reading	K412
Gas and Electricity Bill – Third Reading Approved	K412
International Criminal Court Bill – Consideration of Clauses Concluded	K417
Heath Burning Bill – Clauses Considered	K421
Matrimonial Proceedings Bill – Council Amendments Agreed	K431
Statement by the Speaker	K433

Leave of Absence Granted

The Speaker: Hon. members, I have granted leave of absence from most of today's proceedings to the hon. member for Rushen, Mrs Crowe. I have also had a request from the Chief Minister requesting to make a statement to the House. I have agreed that that can be made and that the Chief Minister can make his statement immediately after questions have been completed.

Questions were taken at this point and concluded at 11.00 a.m. They are published separately.

Statement by the Chief Minister

The Speaker: Hon. members, I now call on the Chief Minister to make a statement. Chief Minister.

Mr Corkill: Thank you, Mr Speaker, for allowing me to have the opportunity of making a short statement to hon. members today on a matter of interest and importance to our Island and in line with guidance issued by you on 30th April 2002, I have circulated a statement in printed form to hon. members.

As members will be aware by now, Sea Containers Limited confirmed yesterday that it was putting the Steam Packet Company up for sale as an asset it describes as 'highly profitable'. This announcement introduces uncertainty as to the future ownership of the company.

However, I wish to reassure members and the public that whoever owns the Steam Packet, the protection afforded by the Linkspan User Agreement will remain in place.

This agreement, first approved for a 10-year period in 1995, gives the Steam Packet use of the Douglas harbour linkspan in return for undertakings on levels of service and fares. It also requires the company to consult with government on proposed timetables each year.

In June 2001 the company indicated that it wished to exercise its option to extend the agreement for a further five years, taking it up to September 2010. With the co-operation of the company the opportunity was taken to raise the levels of service contained within the agreement and, for example, the Steam Packet additionally now has to provide: a minimum of seven return sailings per week during the summer period to Liverpool; at least 7,000 lane metres of freight capacity per week plus a minimum of 10 per cent more freight lane metreage year on year; and a minimum of 764 return sailings per year to north-west ports.

The security of the user agreement has given the Steam Packet the confidence to embark on a positive growth-based strategy and ensures standards of service to the Island. The company has served the Island well in recent years, offering services beyond the requirements of the user agreement and establishing itself as a successful, profitable business operation,

having undergone a period of investment and modernisation.

Hon. members will be aware of the strong management of the company and I have no reason to think that the existing management structure will change in the near future.

No-one likes uncertainty and I appreciate that the prospect of a change of ownership may be unsettling for the Steam Packet's loyal workforce, but I do know that the company is in contact with its workforce and reassurances have been given.

Business is a dynamic activity and it is not possible to predict the future of any enterprise with certainty, but given the protection provided by the user agreement and the successful nature of the business, due to its strong leadership and management, I would suggest that there is no need for undue alarm at this stage, as the possibility of a change in the private ownership of the Steam Packet Company develops and becomes more of a reality.

In conclusion, I wish to thank the chairman and managing director of the Steam Packet Company for keeping me informed at each stage of these developments and that is the statement I wish to make this morning. Thank you, Mr Speaker.

The Speaker: Right, now then, as hon. members are aware there is no clear standing order in relation to statements made in the House. Therefore under standing order 2, I will exercise my authority in terms of allowing questions to be asked in relation to the statement, but I would ask hon. members to keep their questions focused on the specific issue.

Hon. member for Ayre, Mr Quine.

Mr Quine: Thank you, Mr Speaker. What protection, if any, is afforded under the user agreement in respect of the number, type and standard of vessels to be used or, in this case, to be maintained on the route? Is there anything in the user agreement which could prevent a diversion of the relatively modern and valuable rolling stock elsewhere and its substitution by stock of a much lesser standard?

The Speaker: Chief Minister to reply.

Mr Corkill: I do not have that specific information about the user agreement. I can assure hon. members that levels of service to and from the adjacent islands is a key aspect of the user agreement. The protection afforded by that to the company, of course, has enabled them to invest in new boats and we have seen the benefit of that in recent years but I have not got a specific answer to the hon. member for Ayre. I can certainly let hon. members know that aspect of the user agreement. I have been given no indication at this stage that that is something to be concerned about.

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

Mr Houghton: Thank you, Mr Speaker. May I ask the hon. Chief Minister how long his government

has been aware of this news and also what commercial value would he think the Sea Containers would put on the user agreement which is currently in place? What value would he put on that as part of this sale?

The Speaker: Chief Minister to reply.

Mr Corkill: That is a difficult question in terms of what the value of the user agreement is, Mr Speaker. As we know, it was approved that it be extended in recent times and for that we got a return in service levels increased over and above what we were entitled to before. So I have always seen the benefit of the user agreement as a benefit to the people of the Isle of Man rather than a benefit to the company –

Mr Houghton: It is now a benefit to the company, isn't it?

Mr Corkill: – but if you create a closed market in any situation then that does create a goodwill value to any operation when something is effectively licensed. So it will have a value to the company but I think that is a strength in as much as if the company does change hands then obviously we want it to be an asset that is worth having and worth looking after.

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

Mr Henderson: Gura mie eu, Vainstyr Loayreyder. Could the Ard-shirveishagh answer in terms of whether his government is actually going to consider buying into this particular company now that it has gone on the market or some sort of share option?

My second question, Vainstyr Loayreyder, is: how on earth is the Ard-shirveishagh certain that the user agreement will still be patent under a new company or a new régime if somebody does actually buy it out?

The Speaker: Chief Minister to reply.

Mr Corkill: It is not the intention of government to purchase a share or any element of the company. I think history might tell us that that would not be a good thing to do, so that is not on the agenda at all.

With regard to the user agreement, it applies to the Steam Packet Company, so whoever the new owner of the Steam Packet Company is the user agreement will apply in the same way as it is applied at the current time. The beneficial owner of the company at the moment is Sea Containers so they live with that situation. The new owner will have to live with the situation the same as it is.

With regard to the previous questioner – how long has government known about this? I can advise hon. member for Douglas North, Mr Houghton – I forgot to answer him before – that the chairman of the company advised me a few weeks ago that there were issues with regard to the reporting of the Sea Containers results that might give lead to public comment in the financial press and that has happened slightly prematurely which is why the announcement has been

so sudden. However, there has been this possibility which has really not been a decision of the company itself but comment by financial experts who scrutinise publicly listed companies, such as Sea Containers, all the time. They obviously make predictions as to what the future might hold, so there has been some speculation in the background for a little while.

The Speaker: Hon. member for Middle.

Mr Quayle: Thank you, Mr Speaker. I thank the hon. Chief Minister for the statement and in looking at that it refers to the Steam Packet as being 'highly profitable'. Could I ask him if he would agree that it is most important to encourage tourists to come to our shores to have attractive prices and that is to the benefit of our tourism industry as well as to the residents?

Noting that the current user agreement has been extended and presumably links increases to inflation or less, could I ask him, in looking at the user agreement in future – most companies nowadays have to achieve efficiencies and economies – that he bear this in mind so that we could see reductions in prices for the future?

The Speaker: Chief Minister to reply.

Mr Corkill: I cannot give any guarantees about fare structures this morning, Mr Speaker. The purpose of my statement was to give assurances that there is nothing untoward happening because obviously the Steam Packet Company is an important issue to Manx residents.

With regard to tourism, I have been encouraged very much over recent years that the current management – and I emphasise the *current* management, as opposed to historical management – have had a very good working relationship with the Department of Tourism and the Department of Transport in trying to make things work for the Island. I think the schedules, the sailings, the service and the fares have reflected a growth in business and obviously we want to see that continue. So hopefully, if there is a change of ownership, that relationship will not be changed and certainly that is where government will be working hard to make sure that that relationship between the departments and the company is maintained.

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

Mr Karran: Vainstyr Loayreyder, would you not agree that your statement seems to say 'let it rip and let us just keep our fingers crossed' as far as the government is concerned? Will the Ard-shirveishagh support my motion in Tynwald in order that we can have a select committee to look at the issues of whether we should be having the purchase and control in the interest of this company, as it is a lifeline? Can we be assured there will not be the dead hand of the executive block vote that this issue will not be properly investigated by a parliamentary committee?

The Speaker: Chief Minister to reply.

Mr Corkill: I am not aware of the hon. member's proposal, but I see no value in the Isle of Man Government having an interest or controlling factor of the company that is contrary to what is happening at the moment, it is contrary to what has provided success over the last five years or so, and I do not see that the situation warrants that.

The Speaker: Hon. member for Malew and Santon.

Capt. Douglas: Thank you, Mr Speaker. Would the Chief Minister please send a message from his government to all staff ashore and afloat with the company of the appreciation of his government and confidence in them, sir?

The Speaker: Chief Minister to reply.

Mr Corkill: Well, I am certainly aware of a letter that has gone from the management to all the personnel involved in the Steam Packet Company here on the Island and elsewhere which says that very thing. Certainly, I have no problem in endorsing the comments of the management of the company on behalf of government to say thank you for the loyal service and to give assurances to staff that what they are involved in is a very viable, profitable company and therefore any future owner will take note of that. It would make bad economic sense to disturb that structure, which is working well for everybody.

Bill for First Reading

The Speaker: Hon. members, we move on now to Bills for first reading and I call on the Secretary of the House.

The Secretary: Mr Speaker, the Bill for first reading is a Constitution (Legislative Council) Bill introduced by the hon. member for Ayre, Mr Quine.

Gas and Electricity Bill – Third Reading Approved

The Speaker: Hon. members, we now move on to Bills for third reading and we have the Gas and Electricity Bill. I call on the hon. member for Douglas West, Mr Downie.

Mr Downie: Thank you, Mr Speaker. The Gas and Electricity Bill that we have before us is a complex and many faceted Bill which updates existing legislation and introduces totally new functions to the Manx Electricity Authority. In moving this third reading I would just like to remind hon. members of the principal object of the Bill.

The prime purpose of the Gas and Electricity Bill is to enable the Manx Electricity Authority to move forward the natural gas project. It also proposes amendments to certain other related matters which I will outline to hon. members this morning.

The Bill before us today will enable the MEA to construct low pressure transmission mains for the purposes of distributing natural gas at suitable pressures around the Island which will be necessary if we are to facilitate the future distribution of natural gas outside the Douglas supply area.

The Bill will also enable the authority to wholesale natural gas to any public gas supplier that may wish to take a supply. This gas is to be supplied on fair commercial terms on a non-discriminatory basis with provision for arbitration in the case of any dispute.

In addition to this, subject to obtaining the approval of the DTI, the Bill will permit the MEA to retail natural gas to consumers. This approval may not be granted by the department without prior consultation with the public gas suppliers and is intended to cover situations where a public gas supplier may not be prepared to provide a supply, but where the MEA and government believes it to be appropriate.

The opportunity has also been taken to insert a power into the Gas Regulations Act for the DTI to make regulations for the approval of persons carrying out tests on Calorific values of gas.

Hon. members will no doubt be aware that the MEA has been very effectively trading electricity for a number of years as part of the operation of the interconnector cable. When the new power station is operational these opportunities are expected to increase.

In order to utilise the power station at its most economical and efficient operating levels, it is the intention of the MEA to export this excess generation capacity. The opportunity has therefore been taken in the Bill to make it clear that the authority has the statutory power to export this excess capacity.

The Bill also proposes to extend the powers of the MEA to provide consultancy and advisory services relevant to its functions. This will enable them to provide such services off-Island, a service which is currently restricted to the Island itself.

Hon. members will be aware that as part of the electricity interconnector project a fibre optic cable was laid to provide telemetry communication and that a decision was taken to include extra fibres to future proof the cable against potential future demand.

The Bill which is before us contains a provision that would enable the MEA to utilise this as yet unused asset. The suggested power to provide telecommunication services would be subject to the consent of the DTI and the granting of a required licence by the Communications Commission. Any such licence would also be subject to the approval of Tynwald, so we are talking of an enabling power at this point in time. In addition, this would also enable the MEA to install and maintain associated telecommunications apparatus.

We believe that this is a sensible provision, as the fibres are now owned fully by the MEA and they have the expertise to operate them, should that be the will of Tynwald.

Finally, in order to support the MEA in carrying out these additional functions, it is intended to amend the constitution of the authority to allow greater flexibility in the number of members appointed to the board. The present membership is a chairman and four other members, and the Bill proposes that they should be changed to allow for a chairman and up to a maximum of six other members.

There were a number of questions raised at the clauses stage of the Bill and I would like to take the time to answer these. Re the question of the interpretation of clause 5(2) regarding the consent of the department – I think this issue was raised by the hon. member for Onchan, Mr Karran – the starting point for this should be to point out that as a statutory board the MEA are subject to the ultra vires rule; in other words, anything that it purports to do which is outside of its statutory powers is null and void. For example, under clause 1(2)(b) the authority needs departmental consent to supply gas. If it has not got that consent, a contract between the authority and a business or private consumer for a supply of gas would be void and unenforceable by either party. This would, of course, make life very tiresome for anyone having business dealings with the authority. Before they entered into any transactions they would have to check: (a) whether any departmental consent was required to a transaction of that kind; and (b) if so, whether such consent had been given. If the answer to the second question was no, the transaction would be void and either party would be able to walk away with impunity. Quite apart from the difficulties this would cause the MEA, an uncertainty of this kind is undesirable for the commercial reputation of the Isle of Man. Business expects such risks, when dealing with post-Soviet countries and set their prices accordingly, but not in this Island.

Accordingly, the new section 2(11) in clause 5(2) provides that third parties entering into business transactions with the MEA do not need to check whether any necessary departmental consents have been given, as such transactions between the business and the MEA are valid and enforceable.

The need for the consent is between the MEA and the department and if the MEA acted without first getting this consent, its members and officers would be in serious trouble; for example, if the MEA made a loss on a transaction for which consent was needed but had not been obtained, the public auditor could surcharge the members or officers responsible for the loss. As I have said, this would be of no concern of the other party in the transaction.

Similar provision is made in respect of subsidiaries of the MEA by the new section 3C(3) in clause 6(2). If the MEA needs consent then so does its subsidiary company, but a third party dealing with a subsidiary is not concerned.

I hope that this has made the intent of this clause clear and answers the hon. member's question.

On the question of clause 8, I would like to clarify this point: that powers granted under the Public Health Act are vested in the Department of Local Government and the Environment and the amendments to that Act contained within this Bill do not change that. However, the powers at the time of the reading of the clauses were to be transferred to the Waste Management Board on 1st April 2003 by virtue of the Waste Management Board Order 2002. It was only last week in another place that this commencement date was changed by virtue of the Waste Management Board Order 2003.

Again, the intention of this clause is to fill a loophole in the current Public Health Act and allow the Department of Local Government and the Environment to lay and own electricity cables for the transmission of electricity produced from the energy-from-waste plant.

These powers will be transferred to the Waste Management Board on 1st April 2004 – as I said, by virtue of the Waste Management Board Order.

Finally, the hon. member for East Douglas, Mrs Cannell, asked if the cable between the energy-from-waste plant and the MEA's distribution system in Pulrose had been laid. I can confirm that that cable has been laid with just the final connections between the distribution system and the energy-from-waste plant to be completed.

As this has answered the questions asked by the hon. members and rather than detailing any of the clauses further, I would seek the indulgence of the House, with your permission, Mr Speaker, to move that the Gas and Electricity Bill be read for a third time.

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 Earnshaw.

Mr Earnshaw: Yes, thank you, Mr Speaker. I have been happy to support this Bill, even though it extends the already considerable powers in the hands of the MEA, and I would like to thank the mover and trust it will become law in due course.

The powers within this Bill to some extent fly in the face of competition and under normal circumstances competition is something I warmly support. The strength of this Bill, however, is in its enabling powers. It is its powers to threaten competition and not the fact that it will. It is not that competition will arise, I think it is the fact that competition can arise and I believe plenty of positive benefits will be enjoyed by the Manx public in the years to come. Thank you.

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

Mr Karran: Vainstyr Loayreyder, I disagree with my hon. colleague; I believe that this Bill is a missed

opportunity. I believe that in primary law certain issues should have been addressed. In my amendment I wanted to try and deal with the issue of being able to open up this gas route for our consumers, as I believe it could well come back to haunt us if the regulations that have been promised do not come to fruition. If the mover of this Bill, the shirveishagh, does not come up with those regulations then we have got serious problems, because at the end of the day this Bill looks a very mundane piece of legislation but it is more than likely one of the most important pieces of legislation to affect so many people – not just in the home, every man, woman and child, but also in industry as well.

Whilst it has been a long battle since when I first stood in the House of Keys in 1981 to try and get an affordable and reliable energy for the Island, I believe that this Bill will be seen as a missed opportunity. I believe that we should have extended the facility of the structure so that pipeline could have been used on the same criteria as what would happen in the United Kingdom as far as how much they are allowed to charge for using other people's infrastructure and other people using the gas.

I think what summed it up for me was one of the shirveishaghs said, 'Well, it is the Manx way.' Well I would just hope that this Bill will not be 'the Manx way' where we see the consumer ripped off because of the lack of transparency and accountability. The cosy arrangements with the Arbitration Act 1976 I believe would be farcical as far as the complex issues that would have to be dealt with in order to sort out genuine grievances as far as this piece of legislation is concerned.

I thank the hon. mover for taking the time to come back to this hon. House with some of the questions I have raised and the issue that he mentioned about the department having the final veto of issues would be *ultra vires*. Who is the department accountable to when they are asked about their core policy decisions? Does the department have to come back to Tynwald? Does it have to come back to the Council of Ministers? I fear that one will find that it goes back to no-one else but the department.

So whilst it is a fig leaf as far as the issue of accountability is concerned – and yes, this hon. member and other hon. members in this hon. House can question the hon. member for the reason he has given the leeway to the MEA under this legislation – at the end of the day we are still impudent within this hon. House as far as being held to make the minister be accountable – I should say, the minister is the department under the legislation.

Hon. members, I would have liked to have seen in this piece of legislation the facility that somebody would have in the adjacent island where they can buy their gas from Virgin Gas or from United Utilities or whatever and their infrastructure where they work has set criteria as far as the using of that infrastructure. Now, it works quite well in the United Kingdom; it could work quite well within the Isle of Man but what we have allowed ourselves to do, is like the minister said, 'the Manx way.' The Manx way has been

allowed to be used and I believe it will be to the detriment of the consumer.

I do see this Bill as a glorious missed opportunity to make sure that we have effective competition as far as providing energy for our citizens.

I do hope that the minister does take on board my concerns in the regulations, but I fear that vested interest will make sure that that does not happen. I am very concerned about voting for the third reading of this Bill because I fear that the Manx way will then apply again and the Manx way will not be what the hon. member for Rushen was on about, but it will be the ripping-off of the consumer.

I am very tempted to vote against this third reading as a protest because I fear that the vested interest will stop the minister from coming up with the goods of what I wanted in this legislation in primary law. I think that will be a sadness, not just for the consumers on the domestic front but also in the commitment for diversification of the economy as far as getting light industry on this Island.

The Speaker: Hon. member for Peel.

Mrs Hannan: Thank you, Vainstyr Loayreyder. I support the legislation. I think it is an attempt to try to obviously bring about changes because of what has happened, bringing in natural gas to fuel the power stations.

However, I think that one of the things which concerns me is that we do not have some sort of regulator, simply because it could be construed that the Manx Electricity Authority are bringing in gas and supplying it to the gas people, who are saying, 'We are being charged too much so therefore we cannot do any development.' I think there needs to be somebody there to make sure that there is sufficient for development but that the profit is not going to their shareholder. This is what concerns me: yes, it is all very well developing; it is all very well supplying to the gas people. The gas people have submitted on 4th March a quite substantial document to us about LPG feedstock costs and all the rest of it. It shows that oil has gone up much more than gas, but that is not the point; the point is that all of these sales down the line . . . You have got the Manx Electricity Authority who are trying to get energy in and produce electricity under the legislation which is fine but they then end up with natural gas which we are saying should be supplied to a gas company but the gas company we know is not a Manx company and it does have huge profits and there is no way of knowing where and how these high profits are come by. Are they from our people or is it somewhere else?

It is this sort of regulator that I think should be put in place before the gas company is given any gas whatsoever. They say that they are possibly going to extend their services to other areas, but I do not believe that the electricity customer bringing in gas – because that is what the electricity customer is doing, paying for it over the years – should be supplied by anyone else without some sort of regulator.

It is no good saying 'the Office of Fair Trading can do research'; the Office of Fair Trading can comment. It is then up to somebody else to say, and I do believe that – it was moved in another place – it should be investigated, but I would hope that it is brought in as soon as possible, that we have a regulator, that we have someone who can go in, get the figures and can actually make sure that the public are not charged over the odds both for electricity, but most importantly for gas supply, especially when the gas supply people are looking at the end of the day for huge profits. Thank you, Vainstyr Loayreyder.

The Speaker: Hon. member for Middle.

Mr Quayle: Thank you, Mr Speaker, and in referring to the contributions so far, I wish to say that it really is important not to see the proposed legislation derailed at this time. It is very important, of course, to consider the protection of consumers and that quite rightly has been mentioned and was dealt with when we considered it in another place and with the resulting actions that ensued.

Mr Karran, hon. member for Onchan, obviously thought it looked mundane, but in fact this proposed legislation does so much because it can facilitate a lot of flexibility and provides for a number of options which will be conducive in the future for the economy of the Island.

In summarising, the fact is that this will enable the MEA to lay low pressure gas transmission mains around the Island permitting future distribution around the Douglas area with wholesaling natural gas to public gas suppliers on obviously fair commercial terms and on a non-discriminatory basis and with provision for arbitration in the event of any dispute, allowing flexibility there. The retailing of natural gas to consumers, subject, of course, to DTI approval and following consultation by DTI with existing gas suppliers, which is intended to cover situations when a public gas supplier may not be prepared to provide a supply but where the MEA and the government believes it to be appropriate. The fact that it allows the export of electricity to the United Kingdom is expected to allow access to further revenue and will permit reductions in the Isle of Man's electricity tariff – something that I am sure will be applauded by everybody.

In providing consultancy services off the Island, this obviously enables access to possible further revenue. I mention in particular the utilisation of the fibre optic cable, providing telecommunication services, subject again to the approval of DTI, and the grant of the required licence by the communications commission – such a licence if granted would also require the approval of Tynwald. This in itself is a very important aspect of the Bill and I would hope that nothing would derail it at this stage.

The fact that it allows also for the installation and maintenance of telecommunications apparatus as part of the provision of the services that I have referred to is again something to be welcomed.

So in closing, Mr Speaker, I have absolute confidence that this Bill will do much for business on the Island and certainly for the economy it will be much appreciated.

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

Mrs Cannell: Thank you, Mr Speaker. I wish the hon. minister well with this legislation. I am pleased to support the third reading, but I felt it might be appropriate now just to ask about all of this, particularly regarding the Manx Electricity Authority. I do recall quite clearly during my time as a member for the Department of Trade and Industry that in securing the bond, and Tynwald voting on it, to be able to finance the gas station to bring in the pipe et cetera, part of the millions that were earmarked for that were also earmarked for wind energy. In fact members of Tynwald were advised in respect of that that it was not all going to be gas generated but there was provision of millions of the bond were earmarked for wind turbines, and I just wonder in considering the third reading as we are dealing with it finally before it goes to another place, whether the hon. minister can advise us on whether or not there has been any further progress since my departure from that department.

Prior to my departure from that department, Mr Speaker, we had wind monitors out for a number of years in various locations around the Island, National Wind were monitoring and receiving the indications there and I had the pleasure of actually going down to Plymouth to see the results as and when they were coming in via the monitors in the Island here, and also it was during the time when a previous chief executive headed the Manx Electricity Authority board the subsequently the member who is now the current chief executive was very supportive, along with myself, to get this provision in for wind energy for the Isle of Man – renewable energy. I just wonder, can he advise on where we are today, bearing in mind that Tynwald has voted and approved the moneys of such a provision? If he can advise the House I would appreciate it.

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

Mr Downie: Thank you, Mr Speaker, hon. members. First of all I would like to thank Mr Earnshaw for his support of the Bill. He is quite right: the powers that the Bill will bring in will actually enable the MEA to work in conjunction with the private sector. It will give us much more flexibility and I think it will provide a much more stable environment for electricity and gas prices. One thing it will bring in is a much more transparent system that we have got at the moment, so I thank him for his support.

The other hon. member for Onchan, Mr Karran, still is quite sceptical about the Bill; I am sorry about that. He says it is a missed opportunity, it is an important piece of legislation. I think we will all agree with that. It will affect a great many people living on

the Isle of Man and it is essential we have an affordable and reliable energy policy. I would fully accept and endorse that, but the object of the exercise is not to have the consumers ripped off, as he says. I do not think you can have anything more transparent than have your own system where the books have to be opened up, the accounts have to be laid before Tynwald, you can ask questions about various issues which arise; you cannot have a system more transparent than that, as far as I am concerned.

At the end of the day, the Department of Trade and Industry is answerable to Tynwald, the same as any other government department and if you do not think we are doing the job properly, you can make your views known and if you do not think that I am up to the job, you can move a vote of no confidence any time. That is your wish; I am here at the behest of Tynwald.

The hon. member still seems to be pushing on with this idea that people should be able to buy from a number of differing gas companies like the situation that has developed in the UK. Now this facility is only available in certain parts of the UK. The hon. member said Virgin was one of them. There are areas in the United Kingdom where the wholesale element, the middle man, in our case the Manx Gas Company, have actually got involved with a number of parties. In our particular area, we are looking to bring gas in through the MEA. We will know exactly how much that feedstock is going to cost Manx Gas so when working out what they charge for their gas we will know exactly what their base line product is costing. Now, that is the best indicator you can have. If you want to bring everybody else's gas through that pipeline, I would suggest, hon. members, that you will not have a clue what the basic price of gas is going to cost Manx Gas because if they are buying it from subsidiary companies in the UK or if they have got a nice cosy relationship, they can hide their figures. One thing about the MEA – you might not like it – but it is all there, it is all transparent. It is not a private company; you have got a say in it and you can get in and take the lid off and look at what the profit and loss figures are. You cannot do that I would suggest with existing gas companies at the moment.

I hope the hon. member for Onchan will actually support this Bill because I think the principles of it are very good. It will stand the Island in good stead and I can assure him that in putting together the regulations and the other components we will take very much on board what he has had to say at this particular stage.

Now, the hon. member for Peel, Mrs Hannan, she felt that she could support the legislation. She was concerned about regulation, an arbitrator and whether it was transparent. There is provision in the Bill to appoint an arbitrator should there be conflict between a wholesale of the gas and the MEA themselves, but as I said in my remarks about the hon. member for Onchan, Mr Karran, what we will be able to find out for the first time is exactly what price is being paid by the wholesaler for that gas. We have never been able to do that in the past and I think that while that situation exists, we will not have the present smoke screen that

trading standards and other government departments have been faced with when trying to work out what the base line is for wholesale gas, so I think this will be the first time that we will be able to look at the thing clearly and make our own mind up as to whether or not Manx Gas have been profiteering, as has been alleged in this House and in another place on a number of occasions.

I think that hon. members will be aware that following the successful motion in Tynwald we are looking at issues regarding regulation of gas prices and we are going to report to Tynwald again in the not-too-distant future.

At the end of the day we feel that we want to be here to do what we possibly can to benefit the Island's energy policy and also provide a mechanism where people are not overcharged and they feel that they are paying a fair price for two – what I would call – essential commodities: gas and electricity.

Moving onto the hon. member for Middle, Mr Quayle, I would like to thank him for his support throughout the Bill and his continued support in the department. He keeps himself aware of what is going on and keeps himself up-to-date with what the department has to get grips with from time to time and that is much appreciated.

The hon. member for East Douglas, Mrs Cannell, raised the issue of wind energy and stated that part of the bond was to provide funding. I am pleased to tell the hon. member that the wind energy is being pursued as we speak. There is a site selected. I think the figure that has been earmarked is in the region of £10 million and that is proceeding now for the advancement of a renewable energy policy.

I would also like to advise the hon. member that we have just taken onto our register a new build: a brand new ship which has been built in China. It has the capability of jacking itself up on six legs and this is a one-off. This ship has been developed at great expense and will be used in European waters for the attachment of windmills to the seabed. It is a project that the Isle of Man is very pleased to be associated with and it is one that is going to bring a lot of international acclaim to the Isle of Man. It is a first in this line and this will allow wind-energy installations to be placed offshore where they will not be intrusive and they will not cause environmental problems on land and they can be put in nice, quiet, out-of-the-way places where the water is quite shallow and groups of them can provide very significant amounts of energy.

So I hope I have dealt with everybody's questions. With that, Mr Speaker, I would just like to move that the Gas and Electricity Bill be read for a third time.

The Speaker: Thank you, hon. member. Hon. members the motion before the House is that the Gas and Electricity Bill be now read a third time. All those in favour say aye; against, no. The ayes have it. The ayes have it.

International Criminal Court Bill – Consideration of Clauses Concluded

The Speaker: Now, hon. members we revert to our consideration of the International Criminal Court Bill and we concluded our business at the last sitting on clause 43, so we are now ready to start with clause 44 and schedule 7. I call on the hon. member for Rushen, Mr Gill.

Mr Gill: Thank you, Mr Speaker. Part 5 of the Bill creates offences in Manx law equivalent to the ICC crimes, that is genocide, war crimes and crimes against humanity.

Where such a crime is being prosecuted in a territory of a state party it is not admissible before the ICC. Therefore, if a state party wishes to avoid having to send an accused person to the ICC for trial it is necessary for ICC crimes to be offences under its domestic law.

The UK government wishes to keep open this option in relation to crimes committed on British territory or by its own nationals, residents, or service personnel.

While it is intended that trials in such cases should take place in the United Kingdom and not in the Isle of Man, it is necessary that ICC crimes should be offences under Manx law as well as UK law in case a trial in the UK is not possible; for example, where an ICC crime is committed outside the UK by a foreign national who is resident in the Isle of Man.

Clause 44 and schedule 7 set out the meaning of genocide, war crimes and crimes against humanity.

Subclause (1) defines genocide, war crimes and crimes against humanity.

Subclause (2) requires any court to apply the elements of crimes for the time being adopted in relation to ICC crimes. They are eventually to be defined by the Assembly of States Parties, but in the meantime, the interim definitions set out in a report of the Preparatory Commission for the ICC adopted in June 2000 are to be applied.

Subclause (3) requires the Council of Ministers to make regulations setting out the elements of crimes for the time being in force.

Subclause (4) requires articles 6, 7 and 8(2) of the statute, upon which the definitions are based, to be interpreted in accordance with any reservation or declaration lodged by the United Kingdom when ratifying any relevant treaty or convention.

Subclause (5) enables the Council of Ministers to specify any relevant reservation or declaration in that order.

Subclause (6) requires regulations under subclause (3) and orders under subclause (5) to be laid before Tynwald.

Subclause (7) requires a court to take into account any case law of the ICC and any relevant rules of public international law.

Subclause (8) introduces schedule (7) which sets out articles 6, 7 and 8(2) so far as they are relevant.

Mr Speaker, I beg to move that both clause 44 and schedule 7 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: Yes, could I just ask the member: when someone is accused of genocide or war crimes or crimes against humanity, do they have the usual sort of rights that we would think of as being protected under human rights and that they would be innocent until proven guilty under the issues of international law; or does the International Criminal Court actually provide that their human rights, because they have been accused of these sorts of activities, do not in fact have that protection?

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

Mr Gill: Thank you, Mr Speaker. Yes, I can confirm that persons accused and brought before the court under this Bill would have the right of appearance, would have the right to silence and they would have the right to representation and that this Bill is compliant with the Human Rights Act.

The Speaker: Hon. members, the motion before the House is that clause 44 and schedule 7 do stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it.

Now, hon. member, if we can take clauses 45 and 46 please.

Mr Gill: Thank you, Mr Speaker. Clause 45 makes genocide, war crimes and crimes against humanity offences under Manx Law, if committed in the Isle of Man or by a person with a Manx connection.

Subclause (1) makes genocide, war crimes and crimes against humanity as defined in clause 44 offences under Manx law.

Subclause (2) limits such offences to acts committed either in the Isle of Man by anyone or elsewhere by a United Kingdom national, a Manx resident or a person subject to UK service jurisdiction. However, Mr Speaker, I would note that courts of British territories do not normally claim jurisdiction to try offences committed outside those territories by persons wholly unconnected with them.

Clause 52 is relevant to persons subsequently becoming resident in the Island.

Clause 46 makes conduct ancillary to acts of offences against Manx law even if the acts themselves are committed outside the Isle of Man; for example, if a person in the Isle of Man incites nationals of a foreign country to commit a crime against humanity in that country, the incitement would be an offence under Manx law, even though the crime itself would not.

Subclause (1) makes conduct ancillary to an act specified in subclause (2) an offence under Manx law,

even though the act itself is not an offence under Manx law. Conduct ancillary to an act, includes aiding, abetting, counselling, procuring or inciting it, attempting or conspiring to commit it, and so on.

Subclause (2) specifies the acts referred to in subclause (1) as acts committed outside the Island which would be genocide, war crimes or crimes against humanity if committed in the Island; for example, a crime committed by a foreign national who is not resident in the Isle of Man or subject to UK service jurisdiction.

Subclause (3) provides that conduct is ancillary to such an act if it would be an ancillary offence like aiding, abetting and so on, if the act itself were committed in the Island.

Subclause (4) limits such ancillary offences to acts committed either in the Isle of Man by anyone or elsewhere by a United Kingdom national, a Manx resident, or a person subject to UK service jurisdiction.

Mr Speaker, I beg to move that both clause 45 and clause 46 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: Can I just ask about the aiding and abetting? What happens if the person does not know they are actually aiding and abetting an act of genocide or a crime against humanity or a war crime – driving a vehicle maybe? I do not know what else would be described as aiding and abetting; not knowing that something was happening – would that be a defence under this legislation? Could I ask: whether the act has been in the Island or outside the Island, where would it be tried?

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

Mr Gill: Yes, thank you, Mr Speaker. I think in relation to the first point that the hon. member for Peel raises about degree of intent that the standard mens rea rule would apply and that would be a matter for the court to determine that there is a prima facie case to answer.

In the second part about where a crime would be tried, that would be in the Hague, sir, as has previously been stated in the preamble.

The Speaker: Hon. members the motion before the House is that clauses 45 and 46 do stand part of the Bill. All those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 47, sir – hon. member for Rushen.

Mr Gill: Clause 47 provides for the prosecution, trial and punishment of genocide, war crimes and crimes against humanity and related crimes.

Subclause (1) defines the offences covered by the clause, genocide, war crimes and crimes against humanity, conduct which is an offence under clause 46 or an ancillary offence, aiding, abetting and so on.

Subclause (2) provides that the offence is triable only on information at General Gaol by a deemster and jury on information laid by the Attorney-General.

Subclause (3) provides that if the offence, whether genocide, a war crime or a crime against humanity amounts to murder or aiding or abetting murder and so on, it is punishable as though for murder, that is with custody for life.

Subclause (4) makes any other offences of genocide, war crime or a crime against humanity punishable with up to 30 years custody.

Mr Speaker, I beg to move that clause 47 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. members, the motion before the House is that clause 47 do stand part of the Bill. All those in favour say aye; against, no. The ayes have. The ayes have it.

Clause 48 and schedule 8; hon. member for Rushen, Mr Gill.

Mr Gill: Thank you, Mr Speaker. Clause 48 and schedule 8 make an offence against the administration of justice in the ICC, for example giving false evidence, an offence in Manx law.

Subclause (1) makes giving intentionally false evidence in the ICC an offence under Manx law, carrying up to seven years custody and or an unlimited fine.

Subclause (2) makes any other breach of article 70 of the Rome statute an offence in Manx law, carrying up to five years and or an unlimited fine at General Gaol, or up to six months and or a fine of up to £5,000 on summary conviction. This covers presenting false documents and bribing, threatening or harming witnesses or ICC officials and so on.

Subclause (3) requires the court to take into account any case law of the ICC and any relevant rules of public international law in applying article 70.

Subclause (4) limits such offences to acts committed either in the Isle of Man by anyone or elsewhere by a United Kingdom national, a Manx resident or a person subject to UK service jurisdiction.

Subclause (5) requires the Attorney-General's consent to a prosecution for an offence under this clause.

Subclause (6) introduces schedule 8 which sets out the text of article 70(1).

Mr Speaker, I beg to move that both clause 48 and schedule 8 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: Yes, Vainstyr Loayreyder, could I ask: in 48(4)(b) – this is something that has gone through each of the clauses that we have been considering – it relates to acts committed in the Island or outside the Island by a United Kingdom national or a Manx resident – what happens if they are neither or it says a person subject to UK service jurisdiction? Is the service in relation to the armed services or is it related to something else? If it was somebody who was not connected to the Island or a UK national would that UK service jurisdiction cover that?

The Speaker: Hon. member for Douglas East, Mr Braidwood.

Mr Braidwood: Thank you, Mr Speaker, just a point of clarification, if the mover could help me: on subsection 2(a) it says, ‘exceeding 5 years or a fine’. Now, it says the fine in (b) is £5,000 on summary conviction. Is there no limit to the fine or is there a maximum? There is no amount mentioned.

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

Mr Gill: Thank you, sir. The hon. member for Peel relates the concern about the ambit of service jurisdiction. Mr Speaker, as I understand it, that would be the Naval Discipline Act 1957, an Act of Parliament, the Army Act and the Airforce Act, both of 1955. As I understand it, sir, they are the relevant service jurisdictions. I will, of course, confirm that that is definitive, sir. Service personnel are covered in all instances under those whether they are on active operations or whether in times of peace, sir.

As to Mr Braidwood’s concern, sir, about the limits of a fine, I think the Summary Jurisdiction Act limits the level of a fine to £5,000 on summary conviction and this simply reflects that, sir, and as I said in my speaking notes, it is an unlimited fine if it is found in the Court of General Gaol by a deemster, sir.

The Speaker: Hon. members, the motion before the House is that clause 48 and schedule 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 49, sir.

Mr Gill: Thank you, Mr Speaker. Clause 49 applies provisions of Manx legislation for the protection of complainants and witnesses to offences under clause 45 or 46, which involve sexual offences or children or young persons.

Subclause (1) specifies the protection provisions applied by this clause: the Sexual Offences Act 1992 schedule 2 which provides for the victim’s anonymity

in rape cases and the Children and Young Persons Act 2001, part 8 proceedings involving children and young persons.

Subclause (2) provides that where the provisions apply to a specific offence like rape or child cruelty, they will also apply to an offence under clause 45 or clause 46 which involves conduct amounting to that specific offence and similarly to ancillary offences such as aiding and abetting. For example, rape is a crime against humanity and a war crime so a trial for a crime against humanity or a war crime consisting of or including rape would be subject to anonymity for the victim.

Subclause (3) defines terms used in subclause (2).

Subclause (4) is a transitional position in case the whole of Children and Young Persons Act 2001, part 8 is not in force when this Act comes into force.

Mr Speaker, I beg to move that clause 49 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. members the motion before the House is that clause 49 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 50, sir.

Mr Gill: Thank you, Mr Speaker. Clause 50 makes it clear that a commander or superior officer is legally responsible for war crimes committed by his forces or subordinates if he fails to control them. It corresponds to article 28 of the Rome statute.

Subclause (1) specifies the offences to which this clause applies, that is offences under clauses 45, 46 and 48 and offences ancillary to them.

Subclause (2) makes military commanders responsible for the crimes of forces under their command, if they knew or ought to have known they were committing them and failed to control them.

Subclause (3) extends subclause (2) to make superiors responsible for crimes of their subordinates as well commanders for their forces.

Subclause (4) provides that where a commander or superior is treated as responsible for a crime under subclauses (2) or (3), he is to be charged with the aiding, abetting and so on, of that crime.

Subclause (5) requires the court to take into account any case law of the ICC and any relevant rules of public international law in applying this clause.

Subclause (5) makes it clear that this clause does not mean that the commander or superior cannot find himself liable as a principle offender apart from this clause.

Mr Speaker, I beg that clause 50 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. members the motion before the House is that 50 do stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it.

Clause 51, hon. member for Rushen, Mr Gill.

Mr Gill: Thank you, Mr Speaker. Clause 51 provides that Manx legal principles are to be applied in deciding on a person's guilt and makes it clear that a guilty intent is normally an essential element of an offence under this part.

Subclause (1) provides that Manx legal principles are to be applied in determining guilt or innocence of an offence under this part.

Subclause (2) provides that whether a person has committed an offence under this part is to be decided with regard to the necessary mental element required by this clause.

Subclause (3) provides that the accused must be shown to have done an act knowingly and intentionally for it to count as an offence under this part, subject to any provision to the contrary in the relevant articles or elements of crimes. For example, knowledge and intent are not essential in the case of a commander deemed to be responsible for crimes committed by his troops.

Subclause (4) defines intent and knowledge for the purpose of subclause (3) above. If you mean to do the deed or cause the consequence or if you know that the consequence will normally ensue, you have the necessary intent. If you were aware that a circumstance exists or that a consequence will normally ensue you have the necessary knowledge.

Subclause (5) requires the court to have regard to any case law of the ICC on this issue.

Mr Speaker, I beg to move that clause 51 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. members, the motion before the House is that clause 51 do stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it.

Clause 52, hon. member, Mr Gill.

Mr Gill: Thank you, sir. Clause 52 makes an exception to the normal rule that proceedings can be brought for an act committed outside the Isle of Man only if it was committed by a UK national, a Manx resident or UK serviceman, in the case of a person subsequently becoming resident in the Island.

Subclause (1) provides that the clause applies where a person commits acts outside the Isle of Man when he is not a UK national, Manx resident or UK

serviceman and later becomes resident in the Isle of Man.

Subclause (2) enables such a person to be prosecuted for a substantive offence in respect of such acts if he is resident in the Isle of Man when the proceedings are begun and the acts would have been an offence if they had been committed in the Isle of Man.

Subclause (3) enables such a person to be prosecuted for an ancillary offence in respect of such acts if he is resident in the Isle of Man when the proceedings are begun and the acts would have been an offence if they had been committed in the Isle of Man.

Subclause (4) defines 'substantive offence'.

Subclause (5) makes it clear that this clause does not prevent a prosecution being brought for acts which could be prosecuted apart from this clause.

Mr Speaker, I beg to move that clause 52 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: Yes, could I just query, Vainstyr Loayreyder: is it time bound; how long after the offence could this person be then brought to trial?

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

Mr Gill: I am not aware that there is any statute of limitation on times as described by the hon. member, but again, sir, I will clarify that. That is the advice I would offer at this time.

The Speaker: Hon. members, the motion before the House is that clause 52 do stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it.

Clause 53, hon. member for Rushen, Mr Gill.

Mr Gill: Thank you, Mr Speaker. Clause 53 simply defines terms used in part 5 and I beg leave that it stand as part of the Bill, sir.

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

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

The Speaker: Hon. members, the motion before the House is that clause 53 do stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it.

Clauses 54, 55 and 56, hon. member.

Mr Gill: Mr Speaker, clause 54 applies section 20, which is relating to no state or diplomatic immunity, and sections 39 to 42, relating to detention to the UN tribunals investigating atrocities in Bosnia and Rwanda.

Clause 55 applies the Bill to the Crown and Crown property.

Clause 56 gives power by order to amend any reference to the Secretary of State in the Bill to reflect any transfer of functions in the UK.

Subclause (1) gives the Council of Ministers power by order to amend any reference in the Bill to the Secretary of State in case any of his functions are transferred to any other UK official.

Subclause (2) requires Tynwald approval to an order under subclause (1) as above.

Mr Speaker, I beg to move that clauses 54, 55 and 56 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. members, the motion before the House is that clauses 54, 55 and 56 do stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it.

Clauses 57 and 58, hon. member.

Mr Gill: Mr Speaker, clause 57 gives an index of definitions which appear in various places in the Bill.

Clause 58 makes a consequential appeal of the Genocide (Isle of Man) Act 1969. It is superseded by clause 45 which has the same effect.

Mr Speaker, I beg that clauses 57 and 58 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. members, the motion before the House is that clauses 57 and 58 do stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it.

And finally, hon. member for Rushen, Mr Gill, clause 59.

Mr Gill: Thank you, sir. Clause 59 gives the Bill its short title and provides for it to come into force on an appointed day to be fixed by order of the Council of Ministers. Mr Speaker, I beg to move that clause 59 stand part of the Bill.

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

Mr Corkill: I beg to second, Mr Speaker, and thank the hon. member for moving the clauses

(**Several Members:** Hear, hear.) on behalf of government. Thank you.

The Speaker: Hon. members, the motion before the House is that clause 59 do stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it.

Thank you, hon. member. Hon. members, that concludes the consideration of clauses of the International Criminal Court Bill.

Heath Burning Bill – Clauses Considered

The Speaker: We now move onto the next item on our order paper which is in relation to the Heath Burning Bill and consideration of its clauses. I call on the hon. member for Rushen, Mr Rimington to move clause 1.

Mr Rimington: Thank you, Mr Speaker. Since second reading there has been a delay in bringing the clauses stage, which has been beneficial in that a number of concerns and queries by hon. members have been fully explored and discussed with those members. There are a number of points that I wish to make as we move through the clauses to re-affirm the intention of the Bill so that there is clarity on its intent and how it is to be treated.

We do have to remember, Mr Speaker, just as a general point before we continue with the clauses, that the burning of heath, whatever the codes and whatever the legislation, is an inexact science in that, having taken all due precautions, had all the right people on board, notified all the right people, having all the numbers of people that one should have appropriate for the job in hand, you can set a match to the heath at the appropriate point and then find once the fire is going, everything is moving smoothly, and, completely out of your control, the wind changes direction. You then have a potential problem on your hands. It cannot always be regarded as an exact science and the department is well aware of that position and would not wish to be bringing in legislation which is not mindful of that situation.

Mr Speaker, in just moving clause 1 of the Bill, simply provides for the establishment of a register of heathland and that is covering all heathland on the Isle of Man, although as opposed to the 1939 Act which covers all land over half an acre, it would not be the intent of the department to be taking a register of people's private gardens which might have half an acre of heathland in it. I beg to move clause 1.

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

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.

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

Mr Rimington: Mr Speaker, clause 2 provides that a register may be kept other than in a documentary form but shall include a map and the register will also be open for public inspection and copies may be made of the details included in it and I beg to move clause 2, sir.

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

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

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

Hon. members, I call on the hon. member for Rushen, Mr Gill, clause 3, (*Laughter*) – sorry, Mr Rimington – it was a long time saying, ‘Mr Gill’, I apologise! Mr Rimington; clause 3, sir.

Mr Rimington: The details which may be included in the register of the heath are set out in clause 3. The department is required to consult bodies that appear to have particular knowledge about heathlands before details are entered in the register.

In considering eligibility of an area for registration, consideration may be given to such things as the vegetation and its value as a food source for both farm livestock and wildlife, including game. As well as descriptions of the ecology and habitat, factors may include archaeological information and a need to maintain certain areas undisturbed.

The department is required to inform the owner or occupier of the registered heath of the details entered and the owner or occupier may apply for a review if there is a disagreement over details of the registration. I beg to move clause 3, sir.

The Speaker: Hon. member for Douglas East, Mr Braidwood.

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

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

Mr Karran: Vainstyr Loayreyder, I wish to move an amendment:

Page 2 – omit lines 30 to 35 inclusive.

Clause 3(4) deals with the manner in which owners or occupiers of land are affected by an alteration to the heathland register and may apply for a review. The questions have arisen over the interpretation of parts (a) and (b) of the subclause and how it will work.

It was always intended to have the further prescription of the manner and timescales with the

details within the regulations. However, to avoid any misunderstanding, it is agreed to remove (a) and (b) and give a full description of the review process within the regulations, the drafts of which will be issued after further consultation and comment from interested parties, Vainstyr Loayreyder. I beg to move the amendment standing in my name.

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

Mr Henderson: I beg to second, sir.

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

Mr Quine: Yes, if I could just ask members to look at clause 3(2), which says, ‘Before entering particulars of any heathland on the register, or amending or deleting particulars of any heath land on the register [. . .] shall consult such persons as appear to have special knowledge or interest in the heath lands’, et cetera. Now, that is quite clearly geared towards consultation with people who have, as we said, a specialist knowledge of heathland.

When we come down to the next subclause which is (3), it says, ‘As soon as practicable’ after the heathland has been entered into the register, then of course notice is going to be served on the owner-occupier and the point I want to raise is that I think there is something missing in the consultation procedure. Surely, the owner or occupier should be consulted *before* an entry is made in the register, and then what you have got in (3) would be logical and sensible. In other words, he is consulted, if the department then decides that notwithstanding the input from the owner or occupier that they are going ahead and going to enter it into the register, then by virtue of (3) he has then got to review; but there is no provision here to bring the owner or occupier into the process prior to the entry being made in the register. This is something I was looking at last night, but I think the least that I would ask of the minister today – he may have an explanation for this and perhaps I have missed something in it – and it seems to me that the least that one would be expecting, is that by virtue of (2), or interest should be read wide enough to include consultation with the owner or occupier. Unless I have missed something, it seems to me that the owner or occupier is not consulted until after the entry is put in the register. Perhaps the minister could either correct me if I have read this wrongly or if I have read it right, provide some assurance that the owner or occupier will be consulted.

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

Mr Duggan: Thank you, Mr Speaker. I would just like to ask the minister regarding concerns which I have had put to me regarding the wildlife. Out towards Port Soderick the other week, sir, there was burning going on over there. All the heather and everything was burnt right down to the road, and not only that, but

there was also wildlife affected. I believe the birds were going mad and not only that, but there were also little rabbits running across the road. So that is a concern.

I had people actually phoning me up with their concerns about that. I was just wondering what the minister's view is? Surely they should stop any burning by the end of February possibly instead of letting it go on until March.

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

Mr Corkill: Thank you, Mr Speaker. Just following on from the comments from the member for Ayre, Mr Quine, about subparagraph (2), where he spoke about persons who have to be consulted and people who have special knowledge. It strikes me, in reading subclause (2), that on lines 19 and 20 it inserts the phrase, 'or interest in' –

Mr Quine: I pointed to that.

Mr Corkill: – and the way I read or interpreted that would obviously include ownership and occupation of land as well. So, I am interested that the hon. member read it differently from how I had read it, but in reading that it would seem that it does need to be clarified. Certainly, I think it is right that people with special knowledge have to be consulted but obviously owners or occupiers of land, in my reading of this clause, they definitely have an interest in the heathlands and that is know I have read it.

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

Mr Rimington: Thank you, Mr Speaker. First of all to the hon. member for Ayre, I can see that there is a potential for ambiguity in interpretation of the Act, but can I say clearly that it would be the department's firm intention that the first port of call for consultation should be the owner or occupier of that land. Obviously a lot of that land is actually owned by the department but is occupied by grazing tenants and also other bodies such as the shooting tenants that have rights on that. It would be wrong for the department to go ahead and start compiling a register without consulting those people who do either own or occupy that land, whether that is for livestock purposes or being a shooting tenant. So accepting that yes, there is an area where you can read it one way or the other, if I can make the department's intention clear on that issue.

To the hon. member, Mr Duggan, yes there is a concern; I know that that fire has taken place and it has been investigated by my officers. I do not have the details of that investigation to hand at this point in time, but a number of people have commented on that to ourselves and we are aware that there were significant concerns for wildlife there. Wildlife should be and is part of that consideration that we need to take on board throughout. Thank you, Mr Speaker.

The Speaker: Hon. members the motion before the House is that clause 3 do stand part of the Bill. To that we have an amendment in the name of the hon. member for Onchan, Mr Karran. All those in favour of the amendment say aye; against, no. The ayes have it. The ayes have it.

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

Now, hon. member for Rushen, Mr Rimington, can we take clause 4 and 5 please, sir.

Mr Rimington: Clause 4 provides that no person shall set fire to any registered heathland without a licence issued by the department. Penalties are provided for offences which included burning which occurs through neglect or default as well as through commission of an act.

It is a defence to show that the owner or occupier was obliged to carry out burning by another enactment or in pursuit of a pre-existing right.

However, where heathland has been burned through, for example, lightning strike, the circumstances would not give rise to an offence in terms of clause 4.

If, Mr Speaker, we could just focus on this clause 4(1), that is the critical part of the whole Bill that we will be referring to later on; it is there and is on this subsection (1) that an offence occurs and the burden of proof is clearly on the department to ascertain that an offence has been caused.

Clause 5, Mr Speaker, is the procedure for applying to the department for a licence to burn heathland, which is set out in this clause. If the department intends to refuse a licence or grant it subject to certain conditions it must consult those who appear to have a special knowledge of heathlands and consider any representations both written and oral from the applicant about its decision. That re-affirms that point from the previous discussion that there must be full consultation with the applicant in that case. The clause provides an offence for failing to comply with any condition subject to which a licence is issued. Mr Speaker, I beg to move.

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

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

The Speaker: Now, hon. members before we move on, I just wish to clarify for you: you have in your possession a paper which is in the name of the hon. member for Onchan, Mr Karran, in relation to suspension of standing orders and a series of amendments. The hon. member has advised that he does not wish to now move those amendments or seek suspension of the standing order.

So, we therefore proceed with clauses 4 and 5, hon. member for Glenfaba.

Mr Anderson: Thank you, Mr Speaker. As the minister has said, there has been consultation since the last stage of this Bill and maybe the minister could give a reassurance to the industry at this stage. In view of the concerns from the whole of the farming community and the shooting tenants, can he give some assurance that there is no intention whatsoever, to create a strict liability offence by clause 4(3) and similarly, there is no intention to impose liability on occupiers or owners of registered heathland for fires started by others?

Mr Houghton: Hear, hear.

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

Mr Rimington: Yes, thank you, Mr Speaker, that is precisely right and I do wish to make that and re-emphasise that point (**Mr Houghton:** Hear, hear.). There is no liability on any occupier or owner of land for acts which have been committed by another person, so any liability rests purely on the person who has created the offence under section 4(1) and the burden of proof for that obviously again is with the departments. An occupier of land has no liability for acts which have been carried out by another party, whether that is a wilful act or an act by default. One of the many examples of an act by default might well be a person deciding to have a little fire for their picnic on the heathland, then walking away, leaving it not properly put out. It then causes damage thereafter and that would be an act by default; it would not necessarily be wilful but they would be causing an offence under the Act. I hope that satisfies the hon. member.

The Speaker: Hon. members, the motion before the House is that clauses 4 and 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 Rushen, Mr Rimington, clause 6, sir.

Mr Rimington: Clause 6, sir: if it appears to the department that registered heathland is likely to be burnt other than under the authority of a licence they may take pre-emptive action and serve a stop notice on the individual. Clause 6 provides an offence of contravening a stop notice.

Where a stop notice is considered unlikely to be effective the clause provides that the department may apply to the High Court for an injunction. I beg to move, sir.

Mr Houghton: I beg to second, sir.

The Speaker: That was the hon. member for Douglas North, Mr Houghton, thank you. Hon. member for Peel.

Mrs Hannan: Thank you, Vainstyr Loayreyder. Could I ask the mover of this legislation: the

comments made by member for Douglas South with regard to burning, if due to climate warming and whatever else that is happening, things happen to start moving in the countryside, can the department under this particular piece of legislation change the burning times? (**A Member:** Hear, hear.) The birds are active building nests and all of that. Can any of this legislation change so that the burning does not end at the end of March, but maybe as the member for South Douglas suggested, the end of February and maybe be allowed to carry on at other times?

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

Mr Rimington: Yes, the hon. member for Peel makes a very valid point and I was thinking of commenting on that when the member for Douglas South was speaking. It is not built into the actual working of this legislation in terms of the times but it is within the code and would be within the regulations, which obviously will have to come to Tynwald to do that. The period now is from 1st October to the end of March and it may well be a valid point that that should be shortened (**Mr Duggan:** Hear, hear.) in respect of wildlife and the changing climate.

Obviously, the balance against that would be that it gives a smaller window for those that need to undertake heath burning to actually perform their duties, but that is an issue which we do need to consider (**Mr Duggan:** Hear, hear.) very sensitively. I think, as we have all seen, that blossoms and things are starting earlier and earlier year, by year. Thank you, Mr Speaker.

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.

Clause 7, hon. member for Rushen, Mr Rimington.

Mr Rimington: Where registered heathland has been burnt without a licence, the department issue a rehabilitation notice to the owner or occupier of the land requiring restoration of the area by preparing ground, seeding or planting and other work specified over a period, as set out in the rehabilitation notice.

Rehabilitation notices will only be appropriate in circumstances where an offence under clause 4(1) has been committed, i.e. a rehabilitation notice cannot be served on an owner or occupier of the land unless they are the person who is guilty of creating the offence under 4(1).

Where an appeal against a rehabilitation notice is pending under clause 8, a person shall not be guilty of an offence of failing to comply with the terms of the rehabilitation notice, i.e. that is where somebody is appealing against the terms of that rehabilitation notice then they cannot be prosecuted for not complying with it.

The department does recognise that this clause is going to have very limited application because the

ability to actually rehabilitate heathland once it has been burnt is very low and often not very practical. However, it is important that we do actually retain that ability and also as the department itself does have that ability to take out such works where it is appropriate. I beg to move.

The Speaker: Hon. member for Douglas East, Mr Braidwood.

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

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

Mr Karran: Vainstyr Loayreyder, my amendment is:

Page 5, line 27 –

after 'section (4)' insert 'or a condition attached to such a licence has been breached.'

This enables the department to serve rehabilitation notices to restore heathland which has been burnt without a licence. There is also risk of damage occurring under a licence burn where the conditions of the licence have been breached. It would be valuable to be able to serve a rehabilitation notice in these circumstances. The amendment is consistent with clause 5(7), which makes it an offence to have failed to comply with such conditions of this licence, Vainstyr Loayreyder. I move the amendment standing in my name.

The Speaker: Hon. member for Douglas North.

Mr Henderson: I beg to second, sir.

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

Mr Rimington: Thank you, Mr Speaker. Just to say, I thank the hon. member for moving the amendment, which is a department amendment and was picked up from the second reading from the points made by the hon. member for Garff in respect of that section 7.

The Speaker: Hon. members, the motion before the House is that clause 7 do stand part of the Bill. To that we have an amendment in the name of the hon. member for Onchan, Mr Karran. All those in favour of the amendment say aye; against, no. The ayes have it. The ayes have it.

I now put clause 7 as amended. All those in favour say aye; against, no. The ayes have it. The ayes have it.

Hon. member for Rushen, Mr Rimington, clause 8, sir.

Mr Rimington: Thank you, Mr Speaker. Clause 8 sets out an appeal procedure for persons aggrieved by

either a review decision in connection with an entry in the register, by a licensing decision either to refuse or rescind a licence or grant one subject to certain conditions, or by the service of a rehabilitation notice.

The clause details the composition of an appeals tribunal under the chairmanship of the High Bailiff. A further level of appeal is provided for by reference to the High Court. The department may make further regulations setting out the procedures to be doctored on appeal, and I may just at this point, Mr Speaker, in section 6(b) the scientific advisory committee is synonymous with the wildlife committee set up under the 1990 Act and comprises the chief veterinary officer, the chief forestry officer, the chief agriculture adviser and the chief conservation officer of the department but also is as appropriate includes members from the Manx Bird Atlas, Manx National Heritage, the Freshwater Biologists and the Department of Local Government and the Environment. I just make it quite clear that the member who would be nominated by the committee to sit on such a tribunal would not be a member of the department because that would obviously be wrong in terms of procedures and human rights et cetera; so it would be an independent member of that committee that would be part of that tribunal.

The Speaker: Hon. member for Douglas East, Mr Braidwood.

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

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

Mr Karran: Vainstyr Loayreyder, clause 8 provides for the appeals procedure and subclause (6), establishes the membership of the appeals tribunal. This would be chaired by his worship, the High Bailiff.

One of the tribunal is nominated by the Scientific Advisory Committee – this is effectively, the department's wildlife committee and represents the expertise on wildlife and ecological factors; one member is nominated by the Manx National Farmers' Union, this member will represent the agricultural industry.

Additionally, a nominee of the Manx Game Preservation Society provides representation in the interests of game management, whilst maintaining the make-up of the tribunal to be consistent with the stated aims of the heather registration as described in clause 3(1). I beg to move this amendment standing in my name:

Page 7, line 26: after –

'(c) one member who shall be nominated by the Manx National Farmers Union' add

–

'; and

(d) *one member who shall be nominated by the Manx Game Preservation Society.*

The Speaker: Member for Glenfaba.

Mr Anderson: Thank you, Mr Speaker. I would welcome this amendment and I thank the department for taking this one amendment on board. I am just wondering: would the tribunal still be called a 'tribunal' with the extra person in it? *(Laughter)*

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

Mr Rimington: Thank you, Mr Speaker. I am not sure of the correctness of my answer, whether a tribunal with four members is still a tribunal; that is an issue – not of semantics as such – but of language, which it is probably best not give a clear ruling on spontaneously. I think the hon. member will appreciate that the intent is there; whether that should be a 'quad-bunal', I am not really sure!

The Speaker: Hon. members, the motion before the House is that clause 8 do stand part of the Bill. To that I have an amendment in the name of the hon. member for Onchan, Mr Karran. All those in favour of the amendment please say aye; against, no. The ayes have it. The ayes have it.

I now put clause 8 as amended. All those in favour say aye; against, no. The ayes have it. The ayes have it.

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

Mr Rimington: The department may authorise persons in writing to enter any land to first of all assert whether an offence has been or is being committed and ascertain whether notices of conditions are being complied with, or survey the land for the purpose of a licence, notice or condition, or for carrying out rehabilitation works. Circumstances are set out in which entry may be authorised by a warrant form from the justice of the peace. It is made an offence to obstruct and authorised person in the exercise of powers of entry. I beg to move, sir.

Mr Houghton: I beg to second, sir.

The Speaker: Hon. member for Douglas North, Mr Houghton, seconded. 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 Rimington, clauses 10 and 11.

Mr Rimington: Clause 10 deals with procedures by which proceedings for an offence shall be conducted. As some areas of heath are in seldom frequented areas proceedings may be initiated within six months from the date when the offence was discovered, rather than within six months of

commission of the offence, provided that no proceedings shall be brought more than two years after commission of an offence.

Clause 10(5) also requires the Court to have regard to whether the person convicted has obtained any benefit from the commission of the offence when it sets any fine.

Clause 11 deals with offences committed by bodies corporate. I beg to move.

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

Mr Houghton: I beg to second.

The Speaker: Hon. members, the motion before the House is that clauses 10 and 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 Rimington.

Mr Rimington: Mr Speaker, clause 12 simply deals with the interpretation of words and phrases used in the Bill and I think everything there is self-explanatory. Just one very minor point: in botanical terms under 'vegetation', it is quite a free translation of Manx gorse being *Ulex gallii* – 'gallii' meaning 'French'!

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 12 do stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it.

Clause 13, hon. member for Rushen, Mr Rimington.

Mr Rimington: Thank you, Mr Speaker. Clause 13 is a very important part of the Bill and the department is given powers under this clause to make regulations to give effect to provisions of the Act.

All regulations must be approved by Tynwald before coming into operation. The department may also, subject to Tynwald approval, make orders approving codes of practice, giving guidance on practices detrimental to heathland and for avoiding or minimising damage.

Whilst contravention of a code of practice would not be an offence in itself, it will be used as an indicator for determining liability, and if I may draw members' attention to lines 21 and 22, that is subsection (4), it says, 'The department may by order approve any code of practice issued (whether by the department or not, and whether in the Island or elsewhere)' and I think hon. members on the first reading of that you wonder 'Why is that there?' and possibly on the second reading you might still wonder the same. However, the purpose for its inclusion in

there by the legislative draughtsman is as standard language, in that if in any other jurisdiction there is – well, across the water – a judicial decision which might need to be incorporated within the code or any other improvement in the code of practice then there is the ability to bring that into the code of practice and to clarify where that has come from. It is purely, from the legislative draughtsman's point of view, a standard procedure but I would just like to reiterate that it is not the intention of the department to have a code which is not particular to the Isle of Man, and that is quite clearly the intention. Tynwald, I presume, would not approve of any code which was not specific to the Isle of Man and its positions, but just a generalist application which the legal draughtsman has required.

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

Mr Houghton: I beg to second, sir.

The Speaker: Now then hon. members we have before us a paper which is circulated in the name of the hon. member for Malew and Santon, which is in two parts. The first part will be the hon. member's need to seek a suspension of standing order 1542 (b) to enable the second part which of course is the proposed amendment to be put so I invite the hon. member for Malew and Santon to move that he seeks a suspension of standing order.

Capt. Douglas: Thank you, Mr Speaker. I move:

That standing order 154(2)(b) be suspended to allow the following amendments to the Heath Burning Bill 2003 [standing in my name] to be moved at this sitting.

Mr Duggan: I second, sir.

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

Mr Rimington: I believe that it is actually unnecessary that this needs to be brought in at this point into primary legislation. It is clearly covered within the code of practice and there is a clear –

The Speaker: Hon. member could you just resume your seat for a second. Could I ask the hon. member for Douglas South, Mr Cretney, and the hon. member for Douglas West, Mr Downie: if you wish to talk, gentlemen, could you please keep your voices as quiet as you can? (**Several Members:** Hear, hear.) Hon. member for Rushen, Mr Rimington.

A Member: Members, not gentlemen!

The Speaker: Member gentlemen. Members.

Mr Rimington: In terms of general principles, the code, while it is specifically targeted in respect of damage to registered heathland, does encompass

damage to all sorts of other areas where that would be plantations, adjoining land in terms of the licences, in terms of people's houses within the proximity. There is no necessity to actually single out highways for particular mention in the primary legislation; all that would be encompassed within the code itself.

The Speaker: I call on the hon. member for Malew and Santon to reply to the move for the suspension.

Capt. Douglas: My apologies first of all to the minister for the short notice. It was something that has been running around in my mind for quite a while, sir, and I felt that perhaps I should not let the opportunity go. I am aware, of course, that clause 13 does provide the prime purpose of the code which is in fact to in relation a protection of the heathland itself, but I do not think it actually precludes actually putting in a clause that is specific. I am concerned that in the past there have been a number of accidents on roads where heath burning has taken place – perhaps not on the Isle of Man, but that may well have happened here. So I really wanted to make the extra clause to be quite specific, to make sure that there is an example contained in that clause that smoke nuisance should not be permitted on adjacent highways. Sorry, can I move?

The Speaker: Just beg to move the suspension –

Capt. Douglas: I beg to move, sir, the – (**The Speaker:** Suspension.) suspension of standing orders. Thank you.

The Speaker: Hon. members the motion before the House is that standing order 154(2)(b) be suspended to allow the following amendments in the name of the hon. member for Malew and Santon to be moved. 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 Cretney, Mr Duggan, Mr Braidwood, Mrs Cannell, Mr Downie, Mr Shimmin, Mr Bell, Mr Earnshaw, Capt. Douglas and the Speaker – 16

Against: Mr Quayle, Mr Rimington, Mrs Hannan and Mr Corkill – 4

The Speaker: Hon. members, the motion carries with 16 votes in favour and 4 against. Therefore, I invite the hon. member for Malew and Santon to put his amendment motion forward.

Capt. Douglas: Mr Speaker, I beg to move the amendment standing in my name which is:

Subsection (4), page 11, line 30 –

after subsection (b) add –

‘and

- (c) *Ensuring that any such code of practice will clearly indicate that at all times every reasonable precaution will be taken to avoid smoke nuisance to an adjacent highway.’*

Mr Speaker, I beg to move.

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

Mrs Cannell: Thank you, Mr Speaker. I beg to second the amendment in the name of the hon. member for Malew and Santon and in so doing I would suggest that it is a good amendment. I believe that it should be included in primary legislation so that it can at least exercise the mind of the agriculture department when it comes up with its code of practice. I think that when you look at clause 13(4) and it states ‘the department may by order approve any code of practice issued (whether the department or not, and whether in the Island or elsewhere) for the purposes of – ’ and then it goes onto say, ‘(a) giving practical guidance to persons engaged in agriculture and forestry with respect to activities which may be detrimental to registered heathland; and (b) promoting what appears to it to be desirable practices by such persons for avoiding or minimising damage to registered heathland.’ I think this is where the hon. mover of the amendment is coming from. It is talking in terms of a code of practice, advice, information on heathland.

Now there have been concerns in the past. There continue to be concerns when heathland is being burned and it does create an awful lot of smoke and smoke does from time to time cover the highway and I know this from my own previous experience, Mr Speaker. I was coming back from Peel early one dusky evening, proceeding into Crosby and there was burning taking place. It was getting dim, light was diminishing – and it is hard enough when it is not quite lighting up time, but you are on the road and you are driving with care – and then all of a sudden, four cars, my own included, were engulfed in black smoke which just hung in the valley of the road and we could not see anything; we had to stop. We had to pull over and we had to stop.

So I think it is eminently sensible for members to consider supporting this. It is not saying that they shall; it is clearly indicating that ‘at all times every reasonable precaution’ – it is not saying ‘shall make reasonable precaution’, but ‘at all times every reasonable precaution will be taken to avoid smoke nuisance to an adjacent highway.’

I hope, Mr Speaker, we are not going to start hearing all sorts of red herrings running in terms of how are you going to avoid it? How can you manage it? How can you prevent it going across the road? Are we talking about electric fans to blow it somewhere

else? I think it is a rational reasonable and very sensible to be moved in the hon. member’s name, bearing in mind, Mr Speaker, that the hon. mover is in fact charged with the responsibility, under delegated responsibility with the department of transport, for the issue of highways. (**Mr Quine:** Hear, hear.) So he is very concerned about ensuring that the highways are safe for our people to travel on and ourselves.

So I hope members will support the amendment. I see no problem whatsoever in it being in primary legislation, and at least making it safe for users within the vicinity where the heathland is being burned I think is a good move. I would ask members to support it. Thank you.

The Speaker: Hon. member for Peel.

Mrs Hannan: I am quite surprised by this because there is the code already without the law, but even in the code it states that you must not start a fire which is likely to injure, interrupt or endanger road users, so that is under the law. You must not cause a nuisance through the creation of smoke. So that is on page 2 of the actual code and that is the law already.

With regard to page 4, public safety: ‘Do not create hazards to road users and the public.’ Now, I am sure that the mover of the legislation is going to explain the construction of the legislation, but I do not see any necessity at this stage to introduce this particular area to the Bill, especially when we have been circulated with the Heath Burning Code. I have it in my file and it does state that by law burning is allowed and a number of other issues, and that relates to nuisance and also ‘injure, interrupt or endanger road users’, and I would have thought that the actual instance that the member for Douglas East was talking about, action should have been taken in relation to that because it did interrupt the road users and in relation to the code itself the ‘not to create a hazard to road users and the public’. Under that particular code, under public safety, it says: ‘Do not burn when the direction of the wind is likely to cause hazard or annoyance from smoke’, and the law: ‘Know and comply with national legal requirements and restrictions, know and comply with local by-laws’ and you can be fined heavily for breaches of the law. I think, until the law is actually applied when people do cause nuisances, that there will be calls for including this sort of legislation in the Bill when it is actually covered in other legislation.

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

Mr Corkill: Thank you, Mr Speaker. I am sure we all agree with the hon. member for Malew and Santon, who is moving this amendment, that the issue he is raising is an important safety aspect and a very desirable thing to take account of, which is the very thing that the codes is there for, of course.

My concern, I think, Mr Speaker, in not being able to support the clause but supporting the principle, is that if we introduce into the primary legislation at this

stage a specific issue which is to do with road safety and smoke going across the road, one could equally argue for a whole list of other things that will be in the code anyway.

So the point I am making, Mr Speaker, is that you start the process of incorporating the code into the primary legislation which then in future actually gives us less flexibility. Obviously the code has to go to Tynwald and is laid before and is therefore available for any member to pick up for scrutiny at a subsequent sitting, and that may happen from time to time.

So, I hope the hon. member will not think that I am against the principle of what he is stating, because it is a very sensible thing. My concern is: do you want it in primary law when the whole purpose of this clause is to make it mandatory on the department to have this code? There will be more flexibility and I would suggest more application by making sure this code works.

So, it is just that point: that if we are going to incorporate things into the primary law then I am sure hon. members all around this House could find a whole list of things that they would like to see in the code as well as this, and I think it leads us down a different path. That is the point I want to make, Mr Speaker.

The Speaker: Hon. member for Middle.

Mr Quayle: Thank you, Mr Speaker. I, too, would applaud the efforts in relation to ensuring road safety, but I rise to oppose this amendment because I do think it is covered very well within the code. As we see on page 2, by law you should not start a fire which is likely to 'injure, interrupt or endanger road users'; that is clearly covered. It does not seem to warrant duplication by putting something now into the Bill which is already covered in the code. Page 4: public safety and there it says: 'Do not create hazards to road users and the public', and I wholeheartedly agree with the hon. Chief Minister in the way that he has just aptly put the situation that it would be duplicating what I have just mentioned.

I would also say that with regard to the amendment, where it says, 'every reasonable precaution will be taken to avoid smoke nuisance to an adjacent highway' then perhaps we ought to have a definition of to what extent that actually is covered, with 'reasonable precautions'; how were they defined and what is he envisaging when defining reasonable precautions? Thank you.

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

Mr Karran: Vainstyr Loayreyder, I tend to agree with the Chief Minister (**Several Members:** Oh!) (*Laughter*) – just occasionally, Vainstyr Loayreyder, he can get things right, you know! (*Laughter*) I would just like to ask the mover why we have got to have this, as we have got the Highway Act. I hope it is not going to be an excuse because your staff have abandoned the roads now and they are going to go and look (*Laughter*) at the heather beds because you have

given up on trying to maintain the roads! (*Interjection by Mr Quine*) I am sure that is not the case, Vainstyr Loayreyder!

Mr Cretney: Not a smokescreen!

Mr Karran: However, I do feel it is important that the member argues his point as far as the Highway Act, because it is covered under the Highway Act. The issue is that that is where it should be and it should be in the regulations. Whether it should be in primary law – it just concerns me: another department needs to worry about its problems instead of worrying about the agriculture department's problems.

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

Mr Rimington: Mr Speaker, I would just speak to the amendment. This was an issue that was considered when the draft Bill went through the Council of Ministers and the scrutiny that was there and the potential smoke nuisance was brought up. The Chief Minister has made all the very correct points in terms of bringing in elements of the code into the primary legislation: do you, at this point, want to discern which elements of the code should be in primary legislation and which should not? All these matters are quite correctly dealt with within the code.

If I may just read out to members the advice that was given at that point: 'Where there appears to be the potential for a smoke nuisance to occur, the department would have the powers to refuse a licence under section 5(2)(b). Alternatively, under clause 5(2)(a) the department may insert a condition requiring that a burn must only take place when weather conditions are appropriate, such as when smoke would not be blown in a particular direction. Failure to observe a condition of licence is an offence under clause 5(7)(b) and would be subject to a fine at summary jurisdiction of up to £5,000, or to an unrestricted fine on conviction on information'.

Then more importantly: 'Irrespective of any licence issued by the department permitting heath burning to be undertaken, persons involved are obliged to comply with the provisions of the Public Health Act 1990, section 1(2)(g) provides that where a nuisance is caused by the emission of quantities or densities of smoke as a statutory nuisance for the purposes of the Act.'

So the legislation does quite clearly cover both in general legislation and in the code the particular circumstances which the hon. member is quote rightly bringing to our attention.

However, perhaps in the long interval between second reading and the clauses stage, if the hon. member on behalf of his department had come to see me then we could have clarified these issues more fully and perhaps reached a better position than having to deal with them at this moment in time.

A Member: Hear, hear. (*Interjection*)

The Speaker: Right, hon. members, before I just call on the hon. member for Malew and Santon to respond to his amendment, I would just make the point to the last hon. contributor, the member for Rushen, Mr Rimington, that any member has a right not to do anything. (**Members:** Hear, hear.) If they so wish to wait and move a motion in this House that is their right. (**Members:** Hear, hear.) Hon. member for Malew and Santon.

Capt. Douglas: Thank you, Mr Speaker. I was almost reaching for the white flag when the Chief Minister spoke but I left it in my pocket! (*Laughter*) Can I thank first of all my seconder, hon. member for Douglas East, Mrs Cannell. Thank you, madam, for your words in support. It is a very serious matter. There is lots of legislation, there are lots of codes of practice and every day we drive around and we see cars parked on double yellow lines, on pavements, in awkward positions.

Mr Houghton: Police doing nothing.

Capt. Douglas: There are lots of times when you would wish the police to come along and put these law breakers in place – perhaps not in jail. However, my own experience, sir, of codes of practice is that they are excellent when people bother to read them, and if I achieve today then getting some publicity then I would be well pleased (**Several Members:** Hear, hear.).

I think being a sailor man, it comes naturally to me to notice which direction the wind comes from. Sometimes it comes from unexpected quarters, (**Several Members:** Hear, hear.) (*Laughter*) and –

Mr Karran: That is no way to talk about the Council of Ministers!

Capt. Douglas: – that is what you have to be careful for, Mr Speaker.

If I can speak to Mrs Hannan's, the hon. member for Peel, can I just reiterate that yes, I know it is in the code of practice, what you said on page 2 and page 4 is quite clear that the code of practice does advise people how to go about it and how to take care, but I think really it needs something to alert people a little bit more than a code of practice. I think this amendment that I have put forward is perhaps a strengthening measure, if you like, a belt and braces, and I hope she can see it that way when it comes to the vote.

For the Chief Minister, I quite understand, sir, with your great experience of this hon. House that specific issues perhaps are difficult to weave into the law in primary legislation, but then equally there are lots of other things that I have heard in this House that have found their way into primary law.

I am looking for flexibility and I am looking for something at the same time that we could hang this whole Bill on that would alert the folk outside, and perhaps bring to the attention of people, that there are dangers in heath burning through road accidents. This is not a bad way of doing it, so I hope we will gain

some publicity at least, even if it does not pass into primary legislation.

For my good friend the hon. member for Middle, perhaps not being in too much of a coastal constituency, sir –

Mr Houghton: Take him out and throw him overboard!

Capt. Douglas: (*Laughter*) I know that there is some coastline in your constituency and people of course –

A Member: Keelhaul him.

Capt. Douglas: Well, I am trying to find the parliamentary term for that, sir –

A Member: For keelhauling?

Capt. Douglas: – I am struggling at the moment! I think that what I was trying to do is have a piece of common of sense in this clause and that was what I was trying to do.

I am quite excited at the response it has had and I do apologise if anybody is late for lunch, as I have sat here at times before and my heart has sunk when a debate has started at one minute to one and I certainly did not intend to do that, so apologies to all rumbling tums. (*Interjection by Mr Cannan*)

To the member for Onchan: we are very fond of the heather, sir, in our department (*Laughter*) and I would like to dispel –

The Speaker: Hon. members, can I say to hon. members, can we just move on to tidy this issue up? I know the time is getting on. Can I ask the hon. member for Malew and Santon just to sit down a minute? It is my view that we have just three small clauses left after this and we have what is a relatively small issue and, unless the House does not want to, it was not my intention to adjourn the House until we had finished those items, as I believe we could complete them by half past one.

Several Members: Hear, hear.

A Member: Common sense.

The Speaker: It might just help, therefore, if the hon. member for Malew and Santon was not interrupted quite so often. Hon. member for Malew and Santon. (*Laughter*)

Capt. Douglas: Thank you, sir. Just briefly to finish, sir, I am sure I speak on behalf of my own minister that heather comes quite high on our priority list in the Department of Transport and certainly we have not given up on the roads.

To the minister, can I again apologise, sir, for the late arrival on the scene for this clause, but it was quite important to me and I did give it considerable thought. I think it is worth the hon. members considering it and

I would be very pleased indeed if, besides all the points that you so eloquently made, these things are highlighted within in legislation elsewhere and within the code of practice I would hope that the members can support the amendment in my name. Thank you, sir.

The Speaker: Hon. member for Rushen, Mr Rimington, do you wish to reply to the debate, sir? (**Mr Rimington:** No.) Right, hon. members, the motion before the House is that clause 13 do stand part of the Bill. To that I have an amendment in the name of the hon. member for Malew and Santon. All those in favour of the amendment say aye; against, no. The noes have it.

A division was called for and voting resulted as follows:

For: Mr Cannan, Mr Houghton, Mr Duggan, Mrs Cannell and Capt. Douglas – 5

Against: Mr Anderson, Mr Quine, Mr Rodan, Mr Quayle, Mr Rimington, Mr Gill, Mr Cretney, Mr Braidwood, Mr Downie, Mr Shimmin, Mrs Hannan, Mr Bell, Mr Karran, Mr Corkill, Mr Earnshaw and the Speaker – 16

The Speaker: Hon. members, the motion for the amendment to clause 13 fails to carry with 5 votes for and 16 votes against.

I now put clause 13 to stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it.

I now call on the hon. member for Rushen, Mr Rimington to take clauses 14 and 15 and the schedule, sir.

Mr Rimington: Thank you, Mr Speaker. Clause 14 provides that the powers conferred on the department by the Bill are in addition and not in derogation of the many other statutory powers of the department.

Clause 15: the Heath Burning Act 1939 as amended by the Statue Law Revision Act 1982 and the Fines Act 1986 are repealed by clause 15.

Clause 16 gives the Bill its short title and provides for an appointed day order to be made to give its provisions effect.

I beg to move clause 14, 15 and 16.

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

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

The Speaker: Hon. member for Glenfaba.

Mr Anderson: Thank you, Mr Speaker. Can I just ask the minister: will the regulations be going out for consultation and what is the timescale before they will come back?

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

Mr Rimington: I can certainly confirm that the regulations will most definitely be going over to consultation (**A Member:** Good.) and I cannot tell you what the timescale is. I would envisage that we would wish to have this in operation by the coming winter and that it may well be the October Tynwald before the regulations are laid, before giving quite a lengthy period of consultation; but the precise timescale is not known.

The Speaker: Hon. members the motion before the House is that clauses 14, 15 and the schedule stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it.

And finally, hon. member for Rushen, Mr Rimington, clause 16.

Mr Rimington: I have moved that and done that.

The Speaker: Right, well, as you were too quick for me (*Laughter*) – I only invited you to move clause 14 and 15 – but accepting what you have done, can I therefore put that to the House – because I did not put that to the House – that clause 16 stand part of the Bill. All those in favour say aye; against, no. The ayes have. The ayes have it.

Matrimonial Proceedings Bill – Council Amendments Agreed

Item 6. Mrs Cannell to move:

That this House agree with the Council amendments to clauses 32 and 61 of the Bill.

The Speaker: Right, hon. members, if we now just move onto to complete our business on the order paper which is Matrimonial Proceedings Bill, amendments made by the Legislative Council, and I advise hon. members that this is covered under standing order 160 and there are a number of options there for the House. I now call on the hon. member for Douglas East, Mrs Cannell, to move this matter.

Mrs Cannell: Thank you, Mr Speaker. Members may recall that on 12th November last year, when taking third reading of the Matrimonial Proceedings Bill, I did advise them and had circulated previously a letter from the Attorney-General's Chambers and also a letter from the First Deemster, His Honour, Deemster Kerruish, outlining his concerns. Certainly, there was a degree of dissatisfaction at that time. It was quite clear that members felt that we should, as a House, have been correcting the defects as they had been judged in the legislation before sending it to another place for consideration. It was said on 12th November 2002 by myself and one or two others that we could expect the Bill to be returned because the two amendments which are on the agenda, clause 32 and 61, which were

moved by the hon. member for Rushen, Mr Gill, have in fact been removed by the Legislative Council.

They have been removed for all the same reasons that I tried to reiterate at the third reading and also during the clauses stages: that this is primarily a piece of civil legislation dealing with social issues, dealing with matrimonial proceedings and that the amendments that were moved and supported by a majority of those members here present and voting were introducing a criminal element into a civil piece of legislation; that, hon. members, Mr Speaker, is unworkable.

I am happy, Mr Speaker, to move the Legislative Council amendments which are to remove the amendments at clause 32 and 61.

Clause 32, is on page 25 of the Bill, if members still have it with them: at line 2, omit subclause (5).

At clause 61, which is page 52, line 5: omit subclause 5, which was inserted during the clauses stages.

Mr Speaker, I hope hon. members will see sense and will reinstate the Bill as it was, as it should have been, because failure to do so would render the whole of this piece of legislation as ineffective. In other words, defective, and as such would never come on the statute law books and would never become law of the land.

Further, Mr Speaker, I think those hon. members who supported the amendments to the clauses at the time, despite my reservations, despite the reservations of the deemster – and clearly I am quite irritated by this, Mr Speaker – I think we owe an apology to the people outside who have been waiting for this to become law, in particular in respect of the new provisions to deal with domestic violence.

We are here today considering amendments by Council some four months after I took the third reading. In hindsight, perhaps we ought to have supported the deferment of the Bill, the adjournment for a month, reinstated it and sent it off, and possibly it could have been going for the seal of approval.

Mr Speaker, I beg to move that we approve the Legislative Council amendments at clauses 32 and 61, sir.

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

Mr Gill: I rise to second, sir. If I could in doing so, reiterate some of the comments that have been touched on by the previous speaker.

Yes, at a previous meeting I did move an amendment to clause 32 and rather than it being overwhelmingly, it was actually *unanimously*, sir, supported – including by the mover – so let us have no re-writing of history.

Mrs Cannell: No. It is incorrect.

Mr Gill: Sir, if we just reiterate that the purpose of the amendment in the wording that ‘the Court shall in particular have regard to any allegations of abuse against a child made by one of the parties against the other which is found to be made maliciously or

without any reasonable or probable basis.’ That is what we considered; that is what we accepted unanimously as 32, sir.

However, as the hon. member for Douglas East, Mrs Cannell, quite rightly states, we were advised subsequently by a letter from the First Deemster about his reservations about locating such an amendment in the Bill. This was considered on 22nd October and as previous, to take clause 32, and on that date in October, clause 61 was considered and the same amendment was accepted, this time with 10 for and 4 against. The subsequent vote was 12 for and 3 against; so yes, sir, it was overwhelming. The principle of it, certainly I will contend, was overwhelmingly supported in this House again.

Mr Speaker, at that time it was noted by the mover, Mrs Cannell, that she had reservations and she anticipated that the Legislative Council might also share them and we had a frank discussion about that. I fully accept that she had those reservations and indeed she has been proven right. I have no way of confirming the veracity of her claim that people have suffered as a consequence of that delay, but I accept it on face value.

Anyway, sir, further to that consideration at that time, together with the learned Clerk, I met with Deemster Kerruish. He certainly both accepted the genuine motivation and overwhelming support for the principles of my amendments. However, as a result of this conference he suggested other routes which could be explored to progress my concerns.

Sir, I can report that I am doing exactly that and I have corresponded with the Social Services Division, the probation service, the Police Family Protection Unit and Relate about these matters and they all acknowledge the purpose of my amendments.

As I say, I rise to support this; I have no problem with supporting the Legislative Council amendments, given the overwhelming indication of support my amendments have received in this House previously, and that has allowed me the opportunity to progress this very important issue in the manner determined at our meeting.

So on that basis and with those caveats, Mr Speaker, I am happy to support this amendment.

The Speaker: Hon. member for Peel.

Mrs Hannan: Thank you, Vainstyr Loayreyder. I would just like to say that whether the support for the amendments was overwhelming or not is immaterial in relation to the areas that were pointed out to us at the third reading. There was a problem and I think it was at that stage that the member for Ramsey suggested that we should not proceed with third reading, we should maybe take stock of the situation and not proceed to a third reading. The House decided that that should happen, having the letter in front of us, but without taking any notice of what the member for Ramsey was trying to get over to us, and I think supported by a number of people within this hon. House when we were saying that we should not leave it to the Legislative Council to actually save us. We were told, we were informed, we had the letter in front

of us – and some will have the letter in front of them even now – that the issues before us were quite straight forward.

The issues were that it was incompatible with the legislation that was before us. We had had advice from a deemster. We knew that if the legislation did proceed that it would not go anywhere, even if it went through the Legislative Council we were told it would not go anywhere, but we still proceeded to send it to the Legislative Council for them to put right.

I would suggest to this hon. House that we should not be leaving it to another place when we know it is wrong. We can always say, ‘Well, we did not know that’ when we are sending something to the Legislative Council; it is something that maybe we did not think about proceeding with.

However, the issue is that we actually knew. We had the letter in front of us, but we decided to take no notice of it whatsoever and I do think that we are wrong and I think we should be big enough to say that we are wrong. I think the opportunity was given by the member for Onchan that maybe we should not move it, we should defer doing the third reading. We should actually take time, take stock and look at the situation possibly in the cold light of day in relation to moving this.

I would say there were only four members that supported that particular issue and I do think that the member moving this legislation was put in an extremely difficult position, because on that occasion the Chief Minister supported, knowing that it would go. He had more information on it, I think – possibly with the exception of the mover of the amendments and the mover of the legislation – but still voted for it to go to the Legislative Council for them to look at it and send it back again.

I think it is something that we should really look at in the future: when we know something is wrong, we should not proceed with it. It could have gone into law and, as the mover suggests with this legislation, we have held it up. We could have held it up even further, because it would not have gone anywhere had those sections been left in the legislation and therefore it would not have been in the best interests of the people of the Isle of Man.

So I support the action that the mover is taking now, but I do think in future we should, in actual fact, have a bit more consideration, not only the mover, but also anybody who contacts us and states the facts to us.

The Speaker: The member for Douglas East, Mrs Cannell, to reply.

Mrs Cannell: Thank you, Mr Speaker. I thank the two hon. members that have responded to the debate so far. I thank the hon. member for Rushen for seconding the motion to return the Bill as it was originally drafted. However, I have to take issue with some of what he said because it is misleading, to put it mildly, to say that hon. members were advised subsequently by the deemster’s letter. When I was charged with taking this Bill and was moving through 140 clauses, I was beset with all manner of amendments coming

from all sorts of members, dealing with all sorts of issues. What was described to me as non-controversial became fairly controversial at times; nevertheless I was charged with the responsibility and stood fast in defending the Bill as drafted. (**Mr Corkill:** Hear, hear.)

When we got to the clauses that were sought to be amended by the hon. member for Rushen, at clause 32, I defended the position and said that we should not accept the amendment to that particular clause, explaining that it would create a situation where you had a criminal hearing within a civil hearing – you just do not operate like that in the courts of the Isle of Man or anywhere else in a high court. Hon. members were aware of that.

I was the messenger charged with taking the legislation through for the Council of Ministers and despite standing firm with the legislation, arranging for briefing sessions for members, arranging for around-the-table discussion with the Attorney-General, the hon. member for Rushen and the Chief Minister and despite correspondence between the legislative draftsman and the hon. member for Rushen prior to reaching clause 32 and 61, he continued to charge forward, wanting to change and bring in the areas which he has a great concern about. I admire his concern, but what I do not admire is trying to mislead the House by being economical with the truth and putting your own slant onto it.

The Speaker: I think, hon. member, if I can just ask you to take your seat, I really would just caution you re standing orders and whether or not you feel you need to make the points you are when you are recommending approval. Hon. member for Douglas East. (*Interjections*)

Mrs Cannell: Mr Speaker, I will wrap up now, but I think it has to be said, I was put in an intolerable position (**Mrs Hannan:** Hear, hear.) to save the face of another hon. member simply because I do not wear trousers in this place, Mr Speaker. (**Several Members:** Oh!)

I am happy to have taken the Bill through. I am happy for the Bill and all that it entails to become law of the land and I am more than happy that it improves social situations for the people that we represent in the Isle of Man. I beg to move.

The Speaker: Hon. members, the motion before the House is that the amendments made by the Legislative Council to the Matrimonial Proceedings Bill be approved. 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 wind up I really must comment on the remarks made by the hon. member for Douglas East. Whether or not a member of this House wears trousers or not is totally irrelevant to their status in this House.

Mrs Cannell: Mr Speaker, I apologise.

The Speaker: The other issue I would just like to say is, at the end of the day the House determines by a majority of its members what it wishes to do. Once it has made that decision it goes to another place for consideration and all I can say is that the process that is in place in our parliamentary structure seems to have worked.

Hon. members, the House will now stand adjourned until 10.a.m. next Tuesday, 1st April and I thank you for your attendance.

The House adjourned at 1.35 p.m.
