



**LEGISLATIVE COUNCIL
OFFICIAL REPORT**

**RECORTYS OIKOIL
Y CHOONCEIL SLATTYSSAGH**

P R O C E E D I N G S
D A A L T Y N
(HANSARD)

Douglas, Tuesday, 2nd March 2004

Present:

The President of Tynwald (The Hon. N Q Cringle)

The Lord Bishop of Sodor and Man (The Rt. Rev. Graeme Knowles), The Attorney General (Mr W J H Corlett QC),
Hon. C M Christian, Hon. P M Crowe, Mr D F K Delaney,
Mr D J Gelling CBE, Mr E G Lowey, Mr L I Singer and Mr G H Waft,
with Mrs M Cullen, Clerk of the Council.

Business transacted

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Legislative Council

The Council met at 10.30 a.m.

PRAYERS

The Lord Bishop

[MR PRESIDENT *in the Chair*]

Leave of absence granted

The President: Hon. Members, the Hon. Member, Mr Kniveton, is on airport business in London this morning.

Questions for Oral Answer

LOCAL GOVERNMENT AND THE ENVIRONMENT

Management of Health and Safety at Work Regulations 2003, section 16(2)(b) Effects re expectant mothers and smoking in workplaces

1. The Hon. Member (Mr Waft) to ask the Minister for Local Government and the Environment:

With reference to Section 16(2)(b) of the Management of Health and Safety at Work Regulations 2003 (SD 877/03), which states that no employer shall employ a child or young person for work “involving harmful exposure to agents which are toxic or carcinogenic, cause heritable genetic damage or harm to the unborn child or which in any other way chronically affect human health” –

*(a) why does this section only apply to children and young persons, and not to expectant mothers, and
(b) will these regulations necessitate a ban on smoking in workplaces, and if not, why not?*

The President: We have two Questions for Oral Answer, Hon. Members, and I call on the Hon. Member, Mr Waft.

Mr Waft: Thank you, Mr President. I would like to ask the Question standing in my name.

The President: I call on the Minister for Local Government and the Environment, Mrs Crowe.

The Minister for Local Government and the Environment (Mrs Crowe): Thank you, Mr President.

With regard to part (a) of the Hon. Member's Question, the section identified under regulation 16 requires the employer to protect children and young persons. Harmful agents are illustrated by type of substance, as defined by the primary adverse effect. The new and expectant mother is also protected under regulation 15. Under this regulation,

if the employer employs women of child-bearing age, then he is required to carry out a risk assessment to identify if any of the work carried out could involve risks to the new or expectant mother, or to the health of her baby.

With regard to part (b) of the Hon. Member's Question, employers have a duty to ensure, so far as it is reasonably practicable, the health, safety and welfare of their employees. These new regulations require employers to undertake an assessment of risks in their operation and to identify any measures they need to take to comply with relevant statutory provisions. Employers who permit smoking on their premises will need to assess the risks to their staff from tobacco smoke. They will wish to consider any relevant published guidance on the matter.

Current recommendations include introducing a policy to prevent the harmful effects of passive smoking at work. An effective policy approach might include installing extraction systems or creating designated smoking areas. Some employers may conclude their assessment by choosing to eliminate the hazard altogether by prohibiting smoking on the premises. So long as employees are protected from the possible effects of tobacco smoke, employers will be complying with Health and Safety law.

Smoking in the workplace gives rise to concerns and other health issues and employers will also need to assess the implications of allowing smoking in premises with high fire or explosion risks.

In addition to the statutory requirement, there is a voluntary award system currently being developed by my Department, in partnership with the DHSS and the licensing trade, for licensed premises which involve smoking controls. The award scheme will probably rank the premises from platinum: no smoking, down to bronze: some controls. The scheme will be well publicised and when the details have been fully agreed, then all licence holders will be encouraged to participate.

The President: Mr Waft.

Mr Waft: Thank you, Mr President.

I just wondered why, I appreciate section 15 does cover new and expectant mothers, Section 16 does not cover them at all, and section 16(3) makes the previous paragraphs non-effective, when it concerns where it is necessary for his training, where he will be supervised, where any risks will be reduced to the lowest level that is reasonable and practicable, et cetera, so it reduces the effectiveness of the previous section.

The Minister: Well, I think, with all Health and Safety legislation, the effectiveness is governed by the statutory provision that is in the Acts of Health and Safety at work, and indeed *some* employees are not covered by that scheme, as you rightly demonstrate.

The President: Mr Singer.

Mr Singer: Could I ask you, Hon. Minister, the Minister has told us about the various risk assessments that the companies, et cetera, businesses have got to do. Who checks that the risk assessment has been completed and necessary action taken by any firm, and whose responsibility is it to check this?

The Minister: It is the responsibility of the employer

Leave of absence granted

Management of Health and Safety at Work Regulations 2003, section 16(2)(b)
– Effects re expectant mothers and smoking in workplaces

to carry out a risk assessment on any firm and it is the responsibility of the employer to conform to Health and Safety Regulations.

Mr Singer: So Health and Safety would be making visits to premises to make sure that all this has been done?

The Minister: Health and Safety Officers visit premises on the Island on a risk assessment basis, so some premises get visited more often than others, and, of course, in the case of fire risk or explosion, then there certainly would be guidance that there would be a no smoking policy in those work premises.

As for the other areas, it is up to the employers to decide how they protect their staff, and, of course, Health and Safety Officers will enforce the legislation that is appropriate.

The President: Mr Waft.

Mr Waft: Thank you, Mr President.

Page 6, Minister, of your policy document, states:

'You will safeguard the health and safety by those affected by workplace activities and protect the public health from nuisances such as smoke'.

How do you intend to do that, and does that include passive smoking? What I am saying is, *you* are saying, as making a statement to that effect, and yet in what you have just said now you are saying it is on a purely voluntary basis, which seems to... Can you clarify the situation?

The Minister: I do not think that that is the case, Mr Waft. I think the case is that employers that are covered by the Health and Safety Regulations are required to provide areas for smokers, are required to provide extraction systems, as, indeed, you have seen for yourself in all Government buildings, and that smoking – passive smoking – is not affecting others.

H M ATTORNEY GENERAL

Prisoners Rules re work in the community

2. The Hon. Member (Mr Delaney) to ask H M Attorney General:

- (a) *Are there any rules which govern prisoners undertaking work in the community, and*
(b) *if so, would these prohibit prisoners, who are prepared to do so, from working in the community?*

The President: Okay, Hon. Members, we turn then to Question 2, and I call on the Hon. Member, Mr Delaney.

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

The President: This time the answer is in the hands of Mr Attorney.

The Attorney General: Yes, thank you, Mr President.

I will endeavour to answer both parts of this Question together, if I may. There are no rules, as such, which govern prisoners undertaking work in the community. It is a matter entirely for the Prison Governor's discretion.

I understand that prisoners may undertake work, either as part of the Prison Community Project, or in work parties. In the case of the former, that is the Prison Community Project, if suitable work is offered, a prisoner would be released on licence to carry it out. It is necessary, however, for risk assessments to be carried out, both to ascertain the suitability of the work being offered, and to identify a prisoner who would be suitable, both to carry out the work and to be released on licence.

In the case of work parties, prisoners are supervised at all times by a prison officer, rather than being released on licence. Again, risk assessments are carried out as to the suitability of the work and to identify suitable prisoners. As the work is supervised, clearly, staffing issues must also be considered.

The President: Mr Delaney.

Mr Delaney: I thank the learned Attorney for his very comprehensive and clear reply and I am sure he realises this is leading up to a question of the Home Affairs Minister. Bearing in mind there is an awful lot round this table and in the other place, who actually can see a good purpose being served by prisoners, where suitable, being out in the community, who are prepared to serve their time knowing they have offended against society, but are prepared to work for society, can the Attorney give me an idea on where certain work is deemed to be 'not acceptable', because it is derogatory? Is this in the Human Rights Act or is this in some other Act, which allows the Governor of the prison not to carry out certain works, at her discretion, with prisoners who are in her control?

The President: Mr Attorney.

The Attorney General: Mr President, I do not think, in my answer, I referred to the concept of work which might not be acceptable. What I think one can clearly envisage is that when the Prison Governor exercises her discretion to allow work parties, or, indeed, individual prisoners to become involved in the Prison Community Project, inevitably there are questions of duty of care. In other words, like almost any other employer, the Prison Governor must be careful that the employee, that is the prisoner, who is allowed to work on licence, will not be subject to undue risk.

So, in other words, I am not suggesting for one moment that I am aware of any work which is not acceptable, all I am saying is that there are duty of care considerations which must be borne in mind by the Prison Governor.

The President: Mr Delaney.

Mr Delaney: Thank you very much.

Can I clarify. It has been accepted by the public and certainly the politicians of this Isle of Man that certain work is seen as demeaning, and prisoners, where they used to do certain works, helping out the community, cleaning the beaches, et cetera, are no longer allowed to do it, because it is demeaning, that work. It seemed to be that way under some Act outside of our control – Human Rights Act? Is that

a fact or not? Are there certain works that cannot be carried out because it is demeaning work?

The President: Mr Attorney.

The Attorney General: Well, Mr President, I will certainly look into this. I am not aware of that, but I will undertake to look into it, if there is some concept –

Mr Delaney: Well I cannot see why prisoners cannot assist in cleaning the Douglas Beach, or other beaches around the Island.

The President: Mr Singer.

Mr Singer: Could I ask the Attorney General, you told us that, theoretically, there is no problem with prisoners working in the community on licence, or working in parties. Can he tell me, though, how often this has occurred, say in the last 12 months, and what sort of jobs have the prisoners been allowed to undertake?

The President: Mr Attorney.

The Attorney General: Mr President, I am afraid I do not have that information available. The best I can do is to undertake to obtain the information, if I can.

The President: Hon. Member, Mr Waft.

Mr Waft: Could I ask, Mr President, leading on from Mr Delaney's comments on what has happened in the past, is the problem the fact that there is not enough staff available to see these resources, to resource the situation with regard to workplace activities outside the prison?

The President: Mr Attorney.

The Attorney General: Mr President, I am quite sure that that is a very relevant issue and, as I mentioned in my answer, particularly where work is supervised, there will be staffing issues which must be considered.

The President: Mr Gelling.

Mr Gelling: Is not the problem, Mr President, through you, it is not the work that is not suitable, it is the fact that the prisoner is recognised as being a serving prisoner by the public, and that is not acceptable?

The President: Mr Attorney.

The Attorney General: Again, Mr President, may I undertake to obtain further information, if I can?

The President: Mr Lowey.

Mr Lowey: History, and as a former Home Affairs Minister who had work parties in operation in the south of the Island and all over, it was, initially, manpower, because you cannot just have one prison officer, you have to have at least two. You have got transport arrangements, then, to make, and then feeding arrangements and ablutions, et cetera.

So, there are difficulties there. However, the work in

the community with sick people, for example: I know the prisoners were dealing with a gentleman at home, moving his muscles and turning him and what have you. Excellent preparation for the prisoners and that was encouraged.

Mr Delaney: What is the supplementary? *(Laughter)*

Mr. Lowey: The supplementary is, you can do all of these things if you have got the manpower to do it, and of course, when you take prison officers away from the prison, they are then light within the prison where they can be multi-use, and so there are practical reasons. I have not heard of the reasons moved by my hon. friend that the work is demeaning, I would imagine that if I were a prisoner I would much prefer to be out clearing the beaches than sitting in a cell.

The President: Do you wish to add, Mr Attorney?

The Attorney General: No, I entirely agree with the Hon. Member's information. *(Laughter)*

The President: In that case, Mr Delaney.

Mr Delaney: Thank you, Mr learned Attorney. I realised when I asked the Question, it is only for his legal interpretation and it is so because I can ask a question in another place of a person who should have the answers to what is being asked.

Can I ask the Attorney, then, if there are not rules governing – that you know of and you are going to find out – that type of work, why isn't it, even if we have got the manpower, that prisoners are spending 23 hours, as we all say, locked up, when some of them – there but for the grace of God go most of us – would be happy to be serving the public.

Mr Lowey: You and I!

Mr Delaney: Shut up, you pleaded not guilty! To actually serve the public that they may have offended against, and that seems to be an answer to a small community.

The President: Mr Attorney, do you wish to respond?

The Attorney General: I do not think I can usefully add anything, Mr President.

Orders of the Day

Criminal Justice (Arrestable Offences) Bill Second Reading approved

The President: In that case, Hon. Members, having completed the Question part of our Order Paper this morning, we now turn to the Criminal Justice (Arrestable Offences) Bill. This measure is in the hands of the Attorney and we completed the First Reading last week, so we formally need to take Second Reading now. Mr Attorney.

The Attorney General: Mr President, thank you very much.

As I explained at the First Reading, the Bill has a two-fold object. First of all to amend section 27(2), of the Police Powers and Procedures Act 1998, so that possession of cannabis or cannabis resin is an arrestable offence, and, secondly, to enable the Department of Home Affairs to add to the list of arrestable offences under section 27(2), in appropriate cases.

Of course, as we have seen, there have been extensive amendments made in another place to clause 2 of the Bill.

I hope I am correct in interpreting the comments made by Hon. Members, as suggesting that Hon. Members are broadly content with clause 1 of the Bill. (**Mr Delaney:** Hear, hear.) I believe that Hon. Members recognise that it is important that possession of cannabis and cannabis resin is an arrestable offence, and that that message should go out loud and clear to the members of the public.

However, it is also clear there is significant objection to at least clause 2 of the Bill, and again, if I can summarise it by saying that there is concern that there must be some parliamentary brake on the powers of the executive, in this case represented by the Department of Home Affairs. Hon. Members are concerned that it is not appropriate that the Department of Home Affairs can add to the list of arrestable offences, which, clearly, is an important and significant matter, merely by consulting with the Attorney General and such other persons as the Department considers appropriate.

Other Members, I think, consider that, perhaps, the amendments which have been made in another place have gone to far, and we are now left with a very cumbersome procedure. In particular, can I say that I believe that there may be some very real difficulty in the concept of consulting with the other Members of Tynwald. To me consultation means more than mere notification of the proposed amendment, it connotes some positive engagement in a process of discussion, exchange of views, and so on.

If the Department were to do its job properly in accordance with the amendments made in another place, time may very well have flown, and, therefore, it might be better, Hon. Members may think, to bring about a change to section 27 (2), by primary legislation, as, indeed, has been done in other cases as we noted at the last sitting.

As I understand the purpose of the Second Reading, it is to enable Hon. Members to take stock of the comments which have been made at the First Reading and to look at the general scope and form of the Bill.

Whilst, of course, I am in charge of the Bill, I think it is only fair that I should say that I would be unhappy if the Bill were to proceed with clause 2 in the form it has been amended in another place. I think I probably should not go any further than that, but I would, if I may, Mr President, formally move the Second Reading of the Bill in the hope and expectation that Hon. Members may have some comments to deal with those points.

The President: Mr Delaney.

Mr Delaney: I would be happy in seconding the formal Second Reading, and I would also like to thank Mr Attorney for giving time to speak to me last Friday on this particular matter.

It is quite obvious to me, as a layman, never mind as a Member of the Tynwald Court, that it is our function, where possible, if the law has been changed, to amend that law, if

we find it is in the best interests of the people we serve, but with an Order you have no choice, under Standing Orders, at this moment in time, you have to either accept it, or vote against it. I do not find that a satisfactory law at all, and I would like always to have an opportunity to get the best of the ability of a Bill to change it to suit the public better, rather than just accept or divide an Order coming through from the Department.

I will be voting against clause 2, but accepting wholeheartedly clause 1 of this Bill, and I beg to second, Mr President.

The President: Mr Waft.

Mr Waft: Yes, just on clause 2, which has just caused me concern, I just refer the Attorney General, who will know more about this than I, to section 28 of the Police Powers and Procedures Act, which states:

‘Where a constable has reasonable grounds for suspecting that any offence which is not an arrestable offence has been committed, or attempted, or has been committed or attempted, he may arrest the relevant person if it appears to him that service of a summons is impracticable or inappropriate, because of any general arrest conditions.’

et cetera. That covers some of the problems that seem to be coming up at the moment. I do not think clause 2 is necessary.

The President: Mr Lowey.

Mr Lowey: Yes, Mr President. I, too, as Members will recall last week, had great reservations about clause 2, and, looking at it in a practical way, like Mr Delaney, how do you amend it? I have come to the conclusion that the only way to amend it is to amputate the clause 2 from the Bill. It is a Gordian knot, really.

The reason for the clause 2 was to speed things up, to allow the Department to move in, and, as an example was given: air-rage. Well, I find that example rather strange, because legislation is in being in the UK now to deal with air-rage and yet we have not applied it, but there may be a moral in that somewhere, perhaps it is long-distance flight that air-rage applies to. However, be that as it may, if you look at the clause, as amended in another place, which we have got to deal with, then how can you amend that?

You could amend, I suppose, in a variety of ways, but that would make a complicated situation even more complicated, and I would have thought it is easier, in the long term, to amputate by voting the clause out, as opposed to amending it, and, if you like, allowing the Department to come back with the tried and trusted way, if they have a rush job on, it needs to be dealt with in emergency, then the branches have always been accommodating to meet that need.

So I would say the Gordian knot should really be cut at a stroke; I think it was Alexander the Great, maybe my history is all wrong, but he wielded a sword. I think we should act like Alexander the Great and wield the sword on clause 2.

Could I come to clause 1, and I accept clause 1, but I did note in another place that the Hon. Member for Peel asked the Minister for Home Affairs how many stop and search for drugs occurred in the past three years, particularly with cannabis in mind, and the police could only answer, I think, part 1 and the last part of the question and a whole series of

questions of how many drugs, et cetera, was there. So we are not getting the full facts of the picture, because of the manpower implications, and that is understandable, because the police have got various problems on their minds, and last weekend has added to those problems.

However, I think we ought to, when we are dealing with these sort of problems, wherever possible, get all the facts in the public domain and, perhaps, although they were not able to do it at the time, the Home Affairs Department might be able to make those sorts of facts and figures more readily available to us in particular, and the general public in the round. So, why they were not able to answer that Question in February... perhaps, later on, when times are calmer, they may be able to get that information into the public domain.

As I said, like most Members, the Bill was required to clarify a particular situation, and I have no doubt at all and no difficulty in supporting that to the full, but this added clause, or the amended clause, clause 2, I think is surplus to this Bill.

If that is the case, then there may have to be an amendment to the main title, of course, because it is the Criminal Justice (Arrestable Offences) Bill, in the plural, and if you only deal with clause 1, I think it is 'an offence', you know, an arrestable offence, not offences. So, just as a matter, I would hate it to come back and say, on a technicality, it may need to be amended again, so I draw attention to that, as well, while I am on my feet.

The President: Mrs Christian.

Mrs Christian: I think, like other Members, we have been addressing the issue of, first, the principle of the Bill, which most people accept in dealing with clause 1, but have concerns about clause 2.

Now, there is one way one could deal with it, but I am not sure it is a practical one, and that would be to delete the amendments which were made in another place, but really takes us no further forward. It will lead to conferences with another place, and the general tenor of the debate seems to indicate that we should ditch clause 2 and use the full legislative process to bring the changes in that area, which, given the concern in another place, might meet with their approval. Not that we should be doing it in order to do that, I am trying to find a practical way forward, so, having considered amending clause 2, I think that my stance on it would be now to see what the feeling of Council was with regard to, in the words of the Hon. Member, amputation. So I think it is not practical, perhaps, to amend it.

The President: Mr Gelling.

Mr Gelling: Not being here and, therefore, unable to hear the Attorney's introduction, certainly I could not quite understand the open-window opportunity of putting clause 2 in and I am even a little more, I suppose, against it, now I see it amended, so I would go along with what has already been said that we set out to deal with one particular area, took an opportunity to put something in, which I do not think is correct and good legislation.

The President: Mr Singer.

Mr Singer: Like everyone else, Mr President, I support

clause 1, but I think the principle of clause 2 should not be thrown out, the reason for what the Minister was trying to do, because I think the Minister was trying to help other Departments when situations arose, which needed urgent action. I know it has been mentioned, air travel is one of them. I certainly think, at the present time, immigration control could be another one, so to ensure that we kept in line with the United Kingdom.

I am not against clause 2 as it is. Mrs Christian did mention that there was concern in another place when the amendments were passed, but, in fact, I think the voting pattern showed a large majority in favour, so there may have been a lot of discussion, but, in fact, that was not reflected in the actual voting.

Looking at the amendments, I see no need for the first one on the paper or the third one on the paper, but I do think there is merit in page 2, line 12, which says:

'after Tynwald and shall be laid before Tynwald at the sitting before that at which the motion of approval of the Order is made'.

I do see merit in that. If Members felt, if the majority felt, that they disagreed with clause 2, and they wished to delete clause 2, if I was in a minority I would support that, because I do think that the main point today is to pass clause 1, (**A Member:** Hear, hear.) but I do not think that we should just throw out clause 2, because it is something added on to the Bill. I think it is possibly an important... (*Interjection by Mr Delaney*) but can I ask a question please of the Attorney General? I am not quite sure, when we look at these amendments, could we accept certain of these amendments and not others, or do we either accept them all, or throw them all out?

The President: No, I would be prepared to take them in sequence, if that is what Members wish, so I think we can deal with it in that manner, I do not think Mr Attorney would worry over it. The Lord Bishop.

The Lord Bishop: Thank you, Mr President.

I think like everybody else, I have no problem at all with the first clause. I think there is a real problem of principle about the second clause, and I do not actually agree with Mr Singer. Immigration and air-rage have been with us a long time, and they are not things that need to be rushed through.

If we have to get in line with the UK, then we can do it. It has been said round this table that we can sit through a day to make it happen, and I would not want us to have the almost blackmail of saying, we need it for immigration and air-rage, because they –

Mr Singer: With due respect, that was an example.

The Lord Bishop: Yes, I know, but I think that I am saying that the examples are not good examples of what would need to be rushed through quickly, and I think there is much more to be said, that these are matters which would need full debate in the Tynwald Court. We need to have a mind, if we are using them as guides, about air-rage, and about immigration, and we would need to debate that, rather than reject or accept.

So, I would urge Members to ditch the whole of clause 2, and say 1 is fine, but there is a real principle about allowing a Department to put an Order through on really quite important matters. Thank you.

The President: Now, Hon. Members, I appreciate that we are going round and basically discussing the pros and cons whether you leave clause 2 in, or take clause 2 out, and I do not want to get too involved in repetition, if we can avoid it. Mr Waft.

Mr Waft: Just a point of clarification. To arrest someone is a very serious situation, and if you do arrest someone, you have the ability to actually search their homes: once they are arrested you can search their homes, even without a warrant.

The President: Mrs Christian.

Mrs Christian: I just want to raise a point of procedure and clarify the point that you made about how you would handle this. The clauses are a part of the Bill –

Mr Lowey: They are now.

Mrs Christian: – and they cannot be discussed separately as such. If you want to make changes to what was done in the Keys, you have to move amendments to take it out again.

The President: We would have to take the whole of the three out and replace it with something else, if that is what you wish to do.

Mrs Christian: But each would have to be dealt with as an amendment to the clause.

The President: Mr Attorney to reply.

The Attorney General: Well, Mr President, it seems to me that many of the comments that have been made by Hon. Members will be appropriate to the clauses stage, if we get that far. But, perhaps, at this stage, can I say that I actually have a fairly neutral stance on this, and the message I think I am instructed to convey from the Department is that the Department would be far more content that clause 2 be excised from the Bill. Far better that than to have clause 2 with the panoply of amendments that have been made to it.

I think that you will have seen that I have not pressed very hard the examples of air-rage and immigration. I fully understand the force of the comments that have been made by the Lord Bishop and others about those being examples.

I think the Hon. Member, Mr Lowey, has raised a very interesting point about the long title to the Bill, and perhaps, although I always hesitate to make any suggestions without the draftsman, it would almost be more appropriate to say that this Bill should be the Police Powers and Procedures (Amendment) Bill, or something along those lines, rather than as we have it at the moment, because arrestable offences in the long title clearly anticipated that additional offences would be added to the list. I am not sure that I can really add anything further.

I find myself in a difficult position. I think I really have to be guided by Hon. Members. As I understand it, the Second Reading has been seconded, I have asked that the Second Reading be read and that has been seconded. So, Mr President, perhaps these other issues would be dealt with at the next stage, if Hon. Members would wish that to happen.

Mr Delaney: Can I just clarify Standing Orders? As I understand it, we understand it as well, if you do not move clause 2 it is not moved, and this is no longer part of the Bill, so, therefore, that would be the wish.

The President: That is true. The Member in charge of the Bill could make that decision, presumably. The reverse is also true. The Member in charge has a duty to put the Bill before Council, and my preference would be for the Bill to be put before Council, and if Council wishes to take that line, well, then it is entirely up to the Council to do so.

So, Hon. Members, bearing that in mind, can I put to you formally that the Criminal Justice (Arrestable Offences) Bill 2004 be read for a second time? Those in favour, please say aye; and against, no. The ayes have it. The ayes have it.

Criminal Justice (Arrestable Offences) Bill Procedural

The President: Now, Hon. Members, I have recognised Mr Attorney's comments in relation to the long title of the Bill, as a result of Mr Lowey's question. If we were to continue with the clauses in the normal form, taking clause 1, clause 2 and clause 3, Hon. Members, perhaps if we were to deal with that, Mr Attorney may have time to consider what would happen to the long title when we come back.

Mr Delaney: We can move an amendment.

The President: Were you going to move an amendment? Well, okay. In that . . .

Mr Singer: In my view, on the document here, it is cannabis and cannabis resin, which are slightly different items, so that it is arrestable for more than one offence, one is for cannabis and one is for cannabis resin.

Mrs Crowe: Well, there is an expert, (*Laughter*) as a pharmacist.

The President: Well, let us not get bogged down, then, let us just take it step by step, and I think... Mrs Christian did you wish to add?

Mrs Christian: I was simply going to say, Mr President, to give time for proper consideration to that, it might be appropriate to seek to move an amendment at the Third Reading on another sitting.

The President: That is exactly the point that I would make, that on the long title we could probably, though Mr Delaney indicated that he has got an amendment now, so...

Mr Delaney: Just a point, as I understand it, from some 20 years ago. If you are debating a Bill, it is easier to move the amendment when the first clause comes up, to the title of the Bill, so, then, if the amendment is accepted, you are then discussing that Bill. It is virtually a new Bill, really.

The President: Mr Attorney was making the point, I think, that it may be better, in discussion with the draftsman

or the Department, to change the title to something like a Police Powers and Procedures (Amendment) Bill. But let us deal with the clauses, Hon. Members, and then we will come across the long title, I am sure, in due course.

Criminal Justice (Arrestable Offences) Bill **Clauses considered**

The President: So, can we deal then and invite Mr Attorney to move clause 1.

The Attorney General: Thank you, Mr President.

Clause 1 of the Bill amends section 27 of the Police Powers and Procedures Act 1998 by inserting a new paragraph in subsection (2) of that section. The effect is to add the offence of simple possession of cannabis or cannabis resin to the list of specific offences that are arrestable offences under the 1998 legislation.

Mr President, I beg to move that clause 1 do stand part of the Bill.

The President: Mr Delaney.

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

The President: In that case, Hon. Members, the motion I put to Council is that clause 1 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Now, clause 2, Mr Attorney.

The Attorney General: Thank you, Mr President.

Clause 2 adds a new section, 27A, to the Police Powers and Procedures Act 1998. The clause will enable the Department of Home Affairs to extend the list of arrestable offences in section 27 (2) of the 1998 Act.

Subclause (1) of the new clause confers the power on the Department to make Orders to add offences to the list of arrestable offences. The Department must be satisfied that the offence is sufficiently serious to warrant being treated as an arrestable offence.

Subclause (2) of the proposed new clause, as originally drafted, required the Department to consult the Attorney General and such other persons as the Department considered appropriate. To that clause, subclause (2), amendments have been made in another place and, perhaps, I could, as it were, consolidate my summary of those amendments by saying it will be necessary that there be consultation not only with the Attorney General and such other persons as the Department considers appropriate, but also the other Members of Tynwald, and the Order must be laid before Tynwald at the sitting before that at which the motion for the approval of the Order is made.

Further, not less than eight weeks before a motion for the approval of such an Order is made, the Department must give notice of the proposed Order in two newspapers, having a general circulation in the Island.

Subclause (3) of the clause ensures that an Order under the new clause will not come into operation until it has the approval of a resolution of Tynwald, in accordance with that procedure.

So, Mr President, I move that clause 2 do stand part of

the Bill as amended.

Mr Lowey: Mr President, all that I would say is –

The President: Are you seconding?

Mr Lowey: No. Well, I... No.

The President: Mr Singer.

Mr Singer: I will second, and I would seek advice as to how we would further amend to take out those two sections that I do not think are applicable, but keep in page 2, line 2.

The President: To do so, Mr Singer, you would have to move an amendment to delete those two.

Mr Delaney: To the clause you have just seconded. (*Laughter*) Difficult, isn't it?

The President: So, we are getting into a strange area there. Mr Lowey.

Mr Lowey: Yes, Mr President. While speaking against the clause, I think we have to go back to what the Learned Attorney told us was the *raison d'être* by the Department for introducing it in the first place, and it was for speeding up, as we have cited earlier.

Then we have to look at why another place amended the original clause, and there is no doubt whatever that the other place were having similar discussions to what we are having now, and they accepted the amendments, which, in effect, was to claw back, or to use a Manx phrase, put a bit of rick on the executive, and I am sure Hon. Members know what I mean by that, and that is the purpose of the clause.

Having done that, with the best intentions in the world, they have actually defeated the object of the clause in the first place, so it is bad – we often used to be told that we were getting the best of both worlds – I would suggest this is a classic example of where we are getting the worst of both worlds, and I would suggest it would be doing the Bill a kindness if we – and I come back to that phrase – ‘amputated’, instead of trying to fix it. So, this is broke, it cannot be fixed and I think it is time for the scrapyard and I would urge Members to vote against clause 2.

The President: Mr Delaney.

Mr Delaney: In brief, I have had the opportunity to speak to one or two of the Members who supported that amendment and are prepared to change their mind on what has happened here on the reality, because it is a truism in there, they want good law – like ‘keep politicians as far away from law as possible’. It has probably been proved true here, because they were trying their best, I believe, to actually get back to what they were entitled, as public representatives, to make and to alter the law when necessary and they threw it out with this clause. I honestly believe that, and I think they have had a chance to rethink, I hope they have all had a chance to rethink.

The President: Mrs Christian.

Mrs Christian: Mr President, I would endorse that. I

would have thought that this has been a step which has gone some way to giving more control over the changes, but it is so close to going through the proper legislative procedures of three Readings in three places, which can be done rapidly if it is felt appropriate.

The only difference I would suggest, well, no, the only difference might be in a summer recess where the legislative process, if it were to undergo the normal sittings, would take a little longer than the process set out, as amended in the clause before us. However, there is always a power to recall Tynwald if a matter is absolutely, crucially urgent.

So, I do think it was an attempt, as Members have commented, which has created not a real improvement, and is not as good as having a proper legislative process, if time is a matter of concern.

The President: Mr Singer.

Mr Singer: I felt it important to second because I believe, at this stage, the views should be expressed and should be there in *Hansard* to show what our views are, but I understand what has been said round by other Members and I will not proceed with any amendments, although they are written here.

The President: Mr Attorney, do you wish to reply to that?

The Attorney General: Mr President, unless Hon. Members would wish me to, or you would wish me to, sir, I think that all the points have been covered previously.

The President: Okay, Hon. Members, the motion that I put to Council is that clause 2 do stand part of the Bill. Those in favour, please say aye; against, no. The noes have it.

A division was called for and voting resulted as follows:

FOR	AGAINST
None	The Lord Bishop
	Mr Lowey
	Mr Waft
	Mr Singer
	Mrs Christian
	Mr Delaney
	Mr Gelling
	Mrs Crowe

The President: Hon. Members, the vote against is unanimous, so we have defeated clause 2 of the Bill.

We then turn to the short title, and clause 3. Mr Attorney.

The Attorney General: Thank you, Mr President.

This clause provides the short title for the Bill, namely, the Criminal Justice (Arrestable Offences) Bill 2004. I have considered the point which was raised by the Hon. Member, Mr Lowey, previously this morning. It seems to me, on balance, it is probably justifiable to keep the short title as it is.

The reason I say that is that the section 27 of the Police Powers and Procedures Act 1998 does, in fact, provide for the powers of summary arrest to be applied to various offences, first of all (a) offences for which the sentence is fixed by law,

such as murder, and (b) offences for which a person of 17 years of age or over, and not previously convicted, may be sentenced to custody for a term of five years. Then, thirdly, or in (c), as it appears in the legislation, to the offences to which subsection (2) applies.

So, as I think I indicated at the First Reading, subsection (2) of section 27 then contains a list of offences, Customs and Excise, Official Secrets, Obscene Publications, and so on. Therefore, if Hon. Members were content, what we are doing here is actually adding to the list of arrestable offences, which already exist.

Mr Delaney: It should not have been amended, then?

The Attorney General: I think, Mr President, it is appropriate and logical, we, therefore, refer to arrestable offences, because we have a list of them in the existing legislation, and, therefore, Mr President, I move that clause 3 of the Bill, which will now be clause 2, do stand part of the Bill.

The President: Mr Delaney.

Mr Delaney: I would be happy to second that, if the Attorney is happy. It is just that I thought, as it is amending the list, it is an Amendment Bill, so it is the Criminal Justice Arrestable Offences (Amendment) Bill, but it is okay, I am going to have to go along with the Attorney, if he is happy.

The President: Any other Member wish to comment? No? In that case, Hon. Members, the motion I put to Council is that clause 3, which becomes, as Mr Attorney has indicated, clause 2, do stand part of the Bill. Those in favour, please say aye; and against, no. The ayes have it. The ayes have it.

Criminal Justice (Arrestable Offences) Bill

Long title discussed

Standing Order 22(2) suspended to take Third Reading

The President: Mr Attorney.

The Attorney General: Mr President, the Bill having received its Second Reading and consideration of the clauses, I wonder if Hon. Members would be content that I move that Standing Orders be relaxed to enable the Third Reading to proceed.

I was, of course, very keen that there should be ample time that all these important points should be aired. I hope that they have been, and, because it is such a short Bill now, even shorter than it was before, that we can move to the Third Reading.

The President: Mr Lowey.

Mr Lowey: I would support that on this occasion. I think I used the word 'amputation', I think the blood has stopped running now, so I think we can continue and fit the artificial limb to the Bill. Yes, I would support it.

The President: Mrs Christian.

Criminal Justice (Arrestable Offences) Bill – Clauses considered

Criminal Justice (Arrestable Offences) Bill – Long title discussed – Standing Order 22(2) suspended to take Third Reading

Mrs Christian: Can we just have some guidance please as to the long title, and whether we may still need an amendment to the long title, having taken out clause 2.

The Lord Bishop: Everything after the semicolon.

Mrs Christian: If it is, given guidance from the Attorney General, appropriate to move everything after 'offence', put a full stop and delete the rest, I will prepare to move an amendment to that effect, Mr President, and support the suspension of Standing Orders.

The Attorney General: Mr President, I am very grateful to the Hon. Member, Mrs Christian, for pointing that out, and I think that it follows logically from what we have said earlier, that the long title will have to be amended, so that the words after the semicolon should be deleted from the long title.

The President: Hon. Members, having noted Mrs Christian's comment in relation to the long title, and the explanation from Mr Attorney, I think it does read correctly, because, from the semicolon onwards, it deals with the adding to the list of arrestable offences by the Home Affairs Department. Hon. Members, are you prepared to accept that that would be an amendment? Mr Attorney is agreeing. I think if we accept, Hon. Members, that the long title would have to be amended, if we are prepared to accept that, I will put it formally to Council, so that it is on our record that the long title will be amended. *(Interjections)* Are you going to hold me up?

The Clerk: We have not suspended Standing Orders and gone on to that stage yet.

The President: Well, we have not suspended Standing Orders to take Third Reading, so we are still dealing with clauses. Right, okay. We will suspend Standing Orders and take the Third Reading, if that is the wish? **(Several Members:** Hear, hear.) Does any other Member wish to speak to it? No.

In that case, Hon. Members, I put it to you formally again that we suspend Standing Orders to take the Third Reading of the Criminal Justice (Arrestable Offences) Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Criminal Justice (Arrestable Offences) Bill **Long title of Bill amended**

The President: Now we will take the Third Reading, Mr Attorney.

The Attorney General: Mr President, I am most grateful to Hon. Members for allowing suspension of Standing Orders. It seems to me the first item of business, therefore, on the Third Reading is to ask that the long title of the Bill be amended, so as to delete the words after the semicolon. That, of course, will delete reference to the Department of Home Affairs' power to add to the list of arrestable offences. I think, as I understand it, I would have to invite another Hon. Member to move –

The President: I think we can take the Third Reading on the understanding –

The Clerk: We are having it printed at the moment – Mrs Christian is moving it.

The President: Okay, right. Mr Attorney, there will be formally an amendment coming forward.

The Attorney General: I am most grateful, Mr President, thank you. Well, again, I hope I will not do a disservice to Hon. Members by suggesting that all the relevant points have been dealt with at the First and Second Readings.

Clause 1 does introduce an important addition to the list of arrestable offences, which appears at section 27 of the 1998 Act. Hon. Members, and in particular, perhaps, the Hon. Member Mr Waft, has emphasised how important arrestable offences are and that consequences flow from an offence being categorised as an arrestable offence, and that is something which the Department, and, indeed, the Attorney General's Chambers do not underemphasise.

But, as I indicated, it is important that our legislation be the same as that in the United Kingdom, in the context of the misuse of drugs legislation. There has always been a policy, at least in the recent past, that our legislation, our Misuse of Drugs Act 1976, should contain the same lists of controlled drugs as appears in the 1971 Act of Parliament, and that our categorisation should be the same.

Mr President, with that, I hope that Hon. Members will be content to support my request that the Bill be read a third time.

The President: Mr Delaney.

Mr Delaney: I beg to second.

The President: Mrs Christian.

Mrs Christian: Mr President, may I move an amendment to the long title of the Bill at the Third Reading:

Delete ' ; and to enable the Department of Home Affairs by order to add to the list of arrestable offences under section 27(2) of that Act in appropriate cases.'

The Lord Bishop: I am happy to second that.

The President: Yes, seconded by the Lord Bishop. Yes, Mr Lowey?

Mr Lowey: Mr President, the role of the Council is always to try and make the legislation as practical and as workable and to meet its aims and objectives, and I think the Council has exercised that in this particular bit of legislation that has been before us.

I do think it may appear to outsiders, maybe the press, that sometimes we are nitpicking, but that is part of the role of the Council, and to make sure it is, I think, there is one here that we have got ourselves, with the best of intentions, into a worse position than was intended in the first place.

I think that it is right that we should amend the legislation to make it as practical as we possibly can. I think that, at the end of the day, the Department will really thank the Council, in retrospect, for rescuing them from perhaps a fate worse

than – well, I will leave it at that.

Procedural

The President: Do you wish to add, Mr Attorney?

The Attorney General: No.

The President: Hon. Members, what we have, then, is the Third Reading of the Criminal Justice (Arrestable Offences) Bill and we have an amendment proposed by Mrs Christian to amend the long title, taking out the words from the semicolon onwards.

First, Hon. Members, those who are happy with the amendment to delete from the semicolon onwards of the long title. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

With that long title being amended, Hon. Members, I put to you formally the Third Reading of the Criminal Justice (Arrestable Offences) Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

The President: Hon. Members, that means, with deleting clause 2 and making that amendment to the long title, the Bill will have to go back to another place, so it will go back there for their consideration. It also means, Hon. Members, that we have cleared the business before Council, and, as I understand it, it is unlikely that there will be any business before us from the other place for next week, so the Legislative Council will be adjourned until 23rd March, or Tynwald in the sitting.

Hon. Members, with that, thank you for dealing with the business before us this morning. Council will adjourn until 23rd March. Thank you.

The Council adjourned.