



**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, 22nd June 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 J R Kniveton, 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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The Council sat in private.

Legislative Council

The Council met at 10.30 a.m.

PRAYERS

The Lord Bishop

[MR PRESIDENT *in the Chair*]

Questions for Oral Answer

LOCAL GOVERNMENT AND THE ENVIRONMENT

Northern Swimming Pool Replacement proposals

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

Can you confirm that your Department has proposals to replace the Northern Swimming Pool within its current business plan?

The President: Hon. Members, we have two Questions for Oral Answer this morning, and I call on the Hon. Member Mr Singer.

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

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

The Minister for Local Government and the Environment (Mrs Crowe): Yes, Mr President, I can confirm to the Hon. Member that a replacement swimming pool for Ramsey is included in my Department's budget.

Mr Singer: I was expecting slightly more information, so I will see if we can get more information, Mr President.

Can you tell me what is the timescale for the development of the swimming pool in Ramsey, because, four years ago, we were told that there was a seven-year life on the swimming pool. Could you possibly add to –

The President: Is there a timescale?

The Minister: Yes, indeed, Mr President.

In fact, we are in the hands of the Northern Swimming Pool Board, and we wrote, last September, confirming that the programme was exactly as we had stated and, indeed, that we had the deficiency payment funding, which, of course, we will be meeting, for the construction of the pool, and, also, we have got the funding for the design works.

But, of course, we need to know where the Northern Swimming Pool Board wish to site this pool.

The President: Mr Singer.

Mr Singer: Can I ask the Minister, has not the Northern Swimming Pool Board actually stated their preferred site, which is on the Mooragh, and that your Department would rather have it on the Peveril plot? That is one question; is that a reason for the hold-up?

Secondly, have you yet appointed a design team, so that the design team could be investigating all the sites possible, that might be suitable sites – because it is only a case of digging a few holes – to find out if the sites are suitable, and then that could be already in hand for when the final site is decided?

The President: Mrs Crowe.

The Minister: Like with a lot of local authority things, there always seems to be a great deal of misinformation, but I can confirm to the Hon. Member that we wrote, in April this year, confirming what I have previously said about the funding, design team et cetera.

The issue is that the Northern Swimming Pool Board, and Ramsey Town Commissioners must resolve quickly whether the swimming pool should be located on the Mooragh or the Peveril plot. My Department is awaiting a response.

Mr Singer: But you have not appointed a design team, as yet.

The Minister: Certainly not, no. The design will, of course, all be dependent upon where the pool is sited, and the design team will be briefed accordingly.

COUNCIL OF MINISTERS

Isle of Man College Registered blind students

2. The Hon Member (Mr Singer) to ask a Member of the Council of Ministers:

A. How many 'registered blind' persons have undertaken courses at the Isle of Man College for the years commencing:

a) September 2001

b) September 2002

c) September 2003

d) September 2004 (estimated)

B. What courses are they taking or have taken?

The President: Question 2, the Hon. Member Mr Singer.

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

The President: Mrs Christian.

A Member of the Council of Ministers (Mrs Christian):

Prayers

Northern Swimming Pool – Replacement proposals
Isle of Man College – Registered blind students

Mr President, in the year commencing September 2001, there were no registered blind persons undertaking courses at the Isle of Man College.

In the year commencing 2002, there was one registered blind person undertaking an adult leisure and recreation course in ceramics and pottery during the day time. She was accompanied by her guide dog.

In the year commencing September 2003, there was one registered blind young person attending on the 14-to-16-years-old taster programme in catering, whilst remaining a pupil at Castle Rushen High School. She was accompanied by a support worker. This student has made application to enter the College as a full-time office-skills student from September 2004.

The President: Mr Singer.

Mr Singer: Can the Minister tell me why has the College not developed suitable courses for registered blind people, because surely it is incumbent on the College, in line with anti-discrimination laws and human rights, to treat all those wishing to be educated, to offer them suitably designed courses, so that they can qualify for jobs in the wider community and contribute to society, rather than rely on social services.

Why has the College not developed and encouraged these registered blind people, and other handicapped people, to have full-time courses at the College?

The President: Mrs Christian.

The Minister: Mr President, I can only answer on the basis of the information I have been given by the Department.

Discussions are currently being held between the Manx Blind Welfare Society and the Isle of Man College, concerning offering a course in office technology to their members in a training facility in Corrin House, which, it is intended, will be taught by College staff from September 2004.

This is likely to be a part-time provision, during one or more afternoons a week.

I would venture to suggest that the College, as in other Departments, has to consider the availability of its resources and plan these things in.

I do accept that they, along with other Departments, will have to have an eye to the needs of the disabled, perhaps a more focused eye, in the future with the Disability Discrimination Bill coming on stream, we hope, in the not-too-distant future.

The President: Mr Singer.

Mr Singer: Is the Minister, therefore, saying that the College is only going to be forced to undertake these courses because of the Disability Discrimination Act, and the fact is that they appear to have ignored it over the last few years because they have not had to do it?

Is it not also a fact that, unless they provide full-time courses for students – and what we have heard today, they have provided part-time courses – these do not attract grants? You have got to have a full-time course to attract a grant, and, therefore, it makes it very difficult for students who wish to do things like IT or business studies courses, because they

will not attract grants.

The Minister: Mr President, I think that is a rather uncharitable interpretation of what the College has provided in the past, bearing in mind the numbers who have actually applied to be on the register, and the Hon. Member has defined it in terms of registered blind persons. There are many young people with visual problems who are not registered blind, as such – not all wish to be registered blind – so the College is making some provision with students with disabilities on mainstream courses.

However, I do not doubt that they would wish to improve that facility, within the resource that they have available.

The Hon. Member has said, ‘Why aren’t the College doing this so they don’t have to go to Social Services?’ Both Departments do try and co-operate together in providing support for people with disability, and encourage them to get into the workplace and have a reasonable – I would say, comparatively good – success rate in that regard.

The President: Mr Lowey.

Mr Lowey: I am not being uncharitable, Minister.

Would you not agree that, in educational terms, we adopt an all-embracing... In other words, the handicapped are taught in mainstream schools and not segregated, and does it not strike you as rather strange that further education, of which the College of Further Education is an extension...? It does seem strange that children should finish school at say 16, 17 or 18, then seem to have no full-time courses in our only place of further education on the Island, because since 2000, if we take the figures you have given, two individuals have availed themselves – one of a part-time course.

That is hardly inclusive, would you not agree? Sorry I am so long there.

The President: No, that is fine, but I think that the Question and the Answer are related to the blind. Mrs Christian.

The Minister: Thank you, Mr President.

It is difficult for me to answer, not knowing, perhaps, what the demand might have been for such places. The programme area manager for learning services at the College is registered with the RNIB as a teacher of the blind and, one would, therefore, suspect, has an interest in the position of blind people in the education programme.

I do not doubt that we could all do better for the disabled, in whatever field we are providing services, and, perhaps, we will have to focus more resources on that, but then it needs everybody to think about what resources they are going to provide for the Departments that have to provide those services.

The President: Hon. Member, Mrs Crowe.

Mrs Crowe: I think, Mr President, in order to be helpful to the Minister in answering this, I would ask her if she would agree with me, because I do have some information, as a Member of the DTI, and I am surprised the Hon. Member has not mentioned this for some time.

Of course, the DTI provided access-to-work courses for registered blind people, and, indeed, those with visual impairment, and not only provided the training, but provided

all the equipment that they needed, and, in fact, one of our consumer advisers down in the OFT at the time did go through that particular course.

So, there are many other areas in which training takes place on the Island. Blind Welfare also has an input into the training, so it is not just the Isle of Man College.

Thank you, Mr President.

The President: Mrs Christian, would you agree with that?

The Minister: I acknowledge, I agree that what the Hon. Member has said is correct. Indeed, that is another avenue through which blind people may resource training.

However, I accept the point that the hon. questioners have made, that we would, in an ideal world, see a facility at the Isle of Man College for blind people who want to undertake full-time courses.

The President: Mr Lowey.

Mr Lowey: Would the Minister not agree with me that we thought that we were trying to make accessibility to disablement not a bar to be jumped over or a specialist? It was available to people to have.

And would she not agree that the College of Further Education is an institution of further education that should be available openly and readily to disabled people, just as it is to able-bodied people?

The President: Mrs Christian.

The Minister: I do not disagree with that general statement, Mr President.

The President: Finally, Mr Singer.

Mr Singer: Can the Minister not see that there has been an apparent lack of interest by the College in providing resources, in providing suitably qualified teachers, to be able to provide these courses for the registered blind people, who are just as entitled to be able to be trained to go out into the outside world, to do exactly what normal-sighted people can do.

The fact is, it is the College that has not provided the teachers, resources or the equipment, so, of course, they cannot provide the courses for them?

The Minister: Mr President, the hon. questioner is expressing an opinion. He is not asking a question, except that I agree with an opinion.

I am not in a position to say whether the College has displayed an apparent lack of interest. I do not know what the difficulties at the College are, in respect of making further provision for the disabled. So the Hon. Member's question relates only to opinion.

The President: Okay.

Orders of the Day

Representation of the People (Amendment) Bill

First Reading approved

The President: Hon. Members, having dealt with that part of our Order Paper then, can we turn now to Item 2 on your Order Paper which is the Representation of the People (Amendment) Bill.

It is in the hands of the Hon. Member, Mr Delaney, and is for First Reading.

Mr Delaney: Thank you, Mr President.

Members are aware in the Bill that it has got four clauses, of which the last two are consequential to the main purpose of the Bill, which is to amend this situation, and clarify the situation where a Member of the House of Keys has a clear road to resignation.

I have always thought, as other Members have informed me, that there was a clear road anyhow, but it seems that there was not and that the House – this is a housekeeping exercise – want to establish a clear route to carry out that exercise when a Member so wishes.

The Bill itself has no major bearing on any expenses of the public and I have no difficulty at all in saying there are two items here which Members have raised with me before the Bill arrived.

One is, in the Bill, where the Speaker himself, when his resignation is opposed, tells the Governor. This question was asked by the Hon. Member for South Douglas in the other place and the answer, of course, he was given, as Members may have read, was that, of course, the Speaker cannot report himself, but I always thought, as a Deputy Speaker, it would have been more appropriate to do it that way.

But the House so determined – and he would have informed the Governor, obviously – to do it in the form that the green Bill takes, and I do not have, and I do not believe anybody else has, a right to tell them how to run their own House.

I will be moving the First Reading now. I believe the Bill is of no consequence to the capital expenditure of the public and I would, therefore, move the Bill itself.

The President: Hon. Member, Mr Kniveton.

Mr Kniveton: Yes, sir. I am happy to second that First Reading.

The President: No other Member wishing to speak to the First Reading of the Representation of the People (Amendment) Bill, I formally, then, put to the Council that the Representation of the People (Amendment) Bill 2004 be read for a first time.

Those in favour please say aye; against, no. The ayes have it. The ayes have it.

**Representation of the People
(Amendment) Bill
Standing Order 22.2 suspended
to take Second Reading**

The President: Mr Delaney.

Mr Delaney: I was going to move to suspend Standing Orders to take the next reading of this particular little Bill, as it is a matter that some urgency is required, as Members are well aware. I beg to move:

That Standing Order 22.2 be suspended to allow the Second Reading of the Bill to be taken at this sitting.

Mr Singer: I will beg to second that, Mr President.

The President: Seconded by Mr Singer, that we suspend Standing Orders to take the Second Reading. Are we agreed, Hon. Members?

Members: Agreed.

The President: In that case, Hon. Members, Mr Delaney, formally take the Second Reading, sir.

**Representation of the People
(Amendment) Bill
Second Reading approved**

Mr Delaney: I thank Members, Mr President. Thank you, sir. The Second Reading: can I take you to clause 1.

The President: We must deal with the Second Reading, before we deal with the clauses, sir.

Mr Delaney: On the Second Reading, well, clause 1 is the major part of the two clauses I referred to in the First Reading, and the Bill itself is just to carry out an exercise to give Members a clear road, a clear path.

The second part, which I had a query on here, was why it is that it took so long for it to become apparent that there was not a clear road for Members to resign. Well, as I said on the First Reading, I always thought there was, but it seems that the Committee of the House found this loophole, or think they found the loophole, at a sitting when it was brought to their attention, when a Member with a particular interest in the subject wished to carry out an exercise in relation to resignation – that is what I am given to understand – and they have then determined that they need this Bill to clarify it.

It is self-explanatory, Mr President. I believe it is the will of the House that they have this Bill, and it is my purpose to take the Second Reading through.

I beg to move.

The President: Mr Kniveton.

Mr Kniveton: Yes, sir.

I am again happy to second that Reading. I have no problem in accepting this Bill in its entirety, concerning both the resignation of any Member of the House of Keys, or the Speaker, and for the manner and consequence of that

action to be taken.

Quite frankly, until recent times I, like Mr Delaney, always thought that this was already permitted. So, I cannot understand that the Representation of the People Act 1995 did not permit the situation.

I believe that this Bill makes complete sense, and I look to see why it should not be, Mr President, and I cannot see one single reason why a Member should be forced, by law, to stay in office against his will, because that is what it really amounts to.

Do the constituents of a Member really wish to force their elected representative to stay in office, if he or she does not want to represent them, is not interested? No, I do not believe so. Should a Member receive his remuneration and not want to do the job he is expected to do? Of course not, he should be permitted to go. Would Sir Alex Ferguson keep a centre-forward on his team, if that player did not wish to score goals? He should be allowed to go, too.

Mr Singer: You don't know something we don't know, do you? *(Laughter)*

Mr Kniveton: Well, there may be personal circumstances that presently forbid a Member to resign, genuine reasons. He should be allowed to go, if he has genuine reasons. When the representative is elected and does not wish to continue for any reason, then he should be allowed to go. I will not go on and on. I believe I could do, many reasons, and I believe I have illustrated enough.

I am happy to second.

The President: Mr Lowey.

Mr Lowey: Yes, far be it from me to impinge on other people's grief, if they wish to resign.

I find the Bill innocuous, I really do. I would have questioned really whether there was a necessity for it, but I am told there is. I only would like to reiterate, my friend Mr Delaney, the mover of the Bill's thing on the role of the Governor. Now, I have been pushing for constitutional reform, along with many others, for a long time and I, too, share Mr Delaney's view that I do not think that the Governor should be involved in the resignation stakes. I think the Deputy Speaker of the House of Keys should have been, but if the Keys... I think there would have been a simple way of applying like they do in another place for the Chiltern Hills. There is a formula there.

Mr Singer: The Chiltern Hundreds.

Mr Lowey: The Chiltern Hundreds. Chiltern Hills! Well, there you are! That is where I am – *(Interjection)* Near enough!

The fact is it is a fictitious constituency, and they apply for the stewardship of that. We could have done that, if you wanted to make a Manx thing apply for the stewardship of Tynwald Hill, and follow that formula through.

However, they have chosen this particular way. I am certainly not going to oppose the Bill, but I do think, in what I would call constitutional advancement, this clinging to the Governor's thing is something that I would have liked to have seen broken. However, as I say, I will certainly not be opposing this particular Bill. But like most other Members, I cannot believe that, if you wanted to resign, you could

not have resigned simply by writing a letter. However, so be it.

The President: Mrs Christian.

Mrs Christian: Mr President, I think we are all of a similar view that we are tidying up a legal fine point here, but, if that is necessary, so that the constituency of the person concerned can continue to have proper representation, then it is appropriate that we amend the legislation accordingly.

I do have views on the grounds under which a person should be allowed to resign, but we will come to that in the clauses. However, I am not against the principle of supporting the ability to resign for appropriate reasons, in order that the constituency can have further representation.

The President: Mr Waft.

Mr Waft: Thank you, Mr President.

I have read through the Bill, and read through the *Hansard* from another place. I do not see there are any problems in it whatsoever, and I fully agree with it.

The President: Mrs Crowe.

Mrs Crowe: Mr President, yes, it seems such a simple and innocuous Bill, and I do think there are going to be some problems over this resignation issue, and how and why, when we explore it a little more thoroughly, but I would just like some clarification from the Attorney General: is it correct that there would be no representation, if a resignation was forthcoming in letter form or any other form? I just wondered if we could have a little view from the Attorney General.

The President: Mr Attorney.

The Attorney General: Mr President, is the enquiry if a Member were to purport to resign, without having the power to do so, whether the constituency would be without representation? Is that the point?

The President and Mrs Crowe: Yes.

The Attorney General: Well, Mr President, it seems to me the provisions of section 6 of our Representation of the People Act 1995 are quite restricted – surprisingly so, I entirely agree with Hon. Members. One would have thought that, under the heading ‘Vacancy in Seat’, there would indeed be expressed provision for someone to be able to resign, but if, in fact, you had someone who was determined not to fulfil his or her functions, and was a wholly unsatisfactory candidate for the constituency, nonetheless, the constituency would, in fact, be left without representation, because they could not get rid of him or her, unless he or she becomes bankrupt or is incapable of managing his affairs, and so on and so forth.

So, I think that this provision will actually have the effect of enabling the constituency to be properly represented, and so that, in many ways, is a very firm and good reason for the legislation.

The President: Could I, Mr Attorney... Is it not equally true that if a Member is elected and then, in the eyes of some, still does not carry out his duties or does not wish to

carry out his duties, and does not resign, in fact, there is no mechanism for getting rid of them either, until the following General Election?

The Attorney General: Well, there is, Mr President, of course, a provision at the moment that, if someone fails to attend various meetings of Keys and Tynwald – this is section 6(2)(b) – If he fails to attend a certain number of meetings, then the Keys may pass a resolution declaring the seat to be vacant but –

The President: He could sit there.

The Attorney General: He could sit there, and not contribute, and be a wholly unsatisfactory representative.

The President: The Lord Bishop.

The Lord Bishop: Can I just follow that through? There is a terrible logic in all of this, because it means that if somebody dies, their seat is not actually vacant, because the law does not actually say that death declares the seat vacant.

The President: I think it does.

The Lord Bishop: That is the awful logic of the – (*Interjection by Mr Singer*) The seat becomes vacant because they do not turn up. That is –

Mr Delaney: The Speaker notifies the Governor of his death, surely, Your Worship, and –

The President: The Lord Bishop has the floor.

The Lord Bishop: I just want to follow through the logic that just because it does not say you cannot resign...

Mr Lowey: And we have had resignations –

The Lord Bishop: Sorry, yes, I have finished.

The President: Mr Attorney.

The Attorney General: Mr President, it would seem to me that death would constitute a casual vacancy.

The Lord Bishop: Right.

Mr Lowey: That is a nice way of putting it! (*Laughter*)

The President: Does any other Member wish to speak again to the Second Reading of the Bill? No? Mr Delaney to reply.

Mr Delaney: Well, I thank, first of all, the Attorney General for that clarification under the Standing Orders as they are. To the Bishop: a lot of people out there think we are dead already, Bishop, (*Laughter*) so I do not think resignation comes into it for that reason!

To Mrs Crowe, of course: she raised a point with the Attorney General that I cannot really say... except how pretty in pink she is this morning!

An interesting point came from Mr Lowey, and from Mr Kniveton, really, and it is on the same theme: that we have been around an awful long time and, depending on whose side of the story you read, whether it is thousands of years or hundreds of years, it seems that we managed for generation after generation of politicians, but now we seem to find that none of them resigned.

In my lifetime, I know, one excellent Member for South Douglas found it necessary to resign, and I always took that that was the way. I have been told that that slightly changed in the early 1990s possibly, and the Attorney General is nodding to me so maybe my homework is correct in that.

The situation is, of course, that we are not in a position to tell them how they should think or how they should do it, but the interesting one that still comes to me as you get through this Bill is that you have got a Deputy Speaker and a Speaker, and then the Speaker, in his turn, when he wants to go, will tell the Governor, but as you have got a Deputy Speaker, wouldn't it be more proper to tell the Deputy Speaker and he tells the Governor? I did not understand that logic myself, even though I am taking the Bill through, but that is not for me to tell them how to do it. Nobody seems to have raised that in the House of Keys in debate, which surprised me. Only Mr Cretney and a couple of others raised points, with relevance to that, and nobody raised that issue.

But it is not for me to say how they should do it. I am here just to take the Bill through, at their wishes, and the points raised by the Members are through experience. Around this table here there is a wealth of experience in how things are done. Even yourself, sir, although you cannot be political, you are well aware of how things work here, or are supposed to work, and all I can say is that, if Members wish to support this Bill, they will support it on behalf of the House, who want to carry out this housekeeping exercise.

I ask Members to support the Second Reading and vote for the Bill.

The President: Yes, Hon. Members, I put to the Council that the Representation of the People (Amendment) Bill be read for a second time. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Representation of the People (Amendment) Bill Clauses considered

The President: We will deal with the clauses. Mr Delaney, clause 1.

Mr Delaney: Mr President, as I said, there are two main clauses, clause 1 being the first clause.

You will be aware this Bill is on behalf of the Management of Members' Standards Committee, which has pointed out, and has asked for this clause that is before you today. Now, because it is the duty of the Speaker to notify casual vacancies to the Governor; where the vacancy arises from the Speaker's own resignation... In other words, it is no longer necessary to inform the Governor, only to inform the Speaker, except when the Speaker wishes to resign himself. That is the point I raised on the Second Reading.

This clause now says, quite clearly: the Member tells the Speaker, the Speaker tells the Governor and the situation is then, if the Speaker is going, he tells the Governor directly about his own resignation. That is what is in the Bill.

That is the first clause, and I beg to move the first clause.

Mr Kniveton: I beg to second, sir.

The President: The motion, Hon. Members, 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.

Clause 2, Mr Delaney.

Mr Delaney: This clause includes two new subsections (9) and (10), in which a Member may give notice in writing to the Speaker entitling him to resign their seats on giving one month's written notice, and there are two amendments.

The first amendment to the Representation of the People Act 1995, after subsection (8) includes:

'(9) A sitting member of the Keys other than the Speaker may resign his seat on giving the Speaker one month's previous notice in writing of his intention so to do, and at the expiry of such notice his seat shall thereupon become vacant.'

The new subsection (10) is:

'The Speaker may resign his seat on giving to the Governor one month's previous notice in writing of his intention so to do, and at the expiry of such notice his seat shall thereupon become vacant.'

I beg to move clause 2.

Mr Kniveton: I beg to second, sir, and can I just ask one question of the Attorney General, please: prior to the Representation of the People Act 1995, have I picked up that Members were entitled to resign and it was not picked up in the 1995 Act? That is it.

The President: Mr Attorney.

Mr Kniveton: I just want it clarified, sir.

The Attorney General: I will just look if I may, Mr President, excuse me.

Mr Kniveton: I just want to clarify this point, sir, is right. I believe it is, but... Sorry about the delay!

The President: I think the question is, really, prior to 1995, was there anything that precluded them resigning?

Mr Delaney: Can I just read something which will keep this... while the Attorney General is looking at it.

The President: I am happy, Mr Delaney, providing our *Hansard* is turning. Yes? Continue, sir.

Mr Delaney: I am reading from the Management of Members' Standards Committee, which I perused, the session of the 2003-04, and going through the information they had listed on their deliberations, they said:

'The previous law. Section 123 of the House of Keys (Elections) Act 1924 explicitly recognised the resignation of a Member of the House; the section also appears in the Appendix. It was first modified by section 157 of the Representation of the People Act 1951. For reasons which are not clear, that provision has not been carried forward into the modern legislation the 1995 Act. A review of Hansard for the relevant changes in the legislation has not disclosed any discussion on this particular issue.'

So it seems, Mr Attorney, that that is what was listed by the Committee and the –

Mr Kniveton: What has gone into it.

Mr Delaney: – indication by Mr Kniveton, our colleague, it seems to be correct that it was not carried through.

The Attorney General: I am sure that must be right, Mr President.

Mr Kniveton: Yes, I am happy, thanks, Mr Attorney.

The President: Okay. Now, if the Member who was asking the question is happy with Mr Delaney's explanation, reading from the Committee Report, does any other Hon. Member wish to speak to clause 2?

In that case, Hon. Members, I will formally put to Council that 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.

Clause 3, Mr Delaney.

Mr Delaney: Thank you, Mr President.

Clause 3 is consequential, of course. It is very supplemental. It makes just a minor amendment to section 9 of the 1995 Act, to provide for the office of Speaker to fall vacant if he resigns from the House. Quite a simple, normal thing, that if the Speaker resigns then it is obvious that the office of Speaker falls vacant, and I beg to move that particular clause.

The President: Mr Kniveton.

Mr Kniveton: I beg to second, sir.

The President: Mr Lowey.

Mr Lowey: Just on the point, again, you do not have a vacuum in life, it is abhorrent to, and in political life, you do not have a vacuum, although the Speaker's job may go there is a Deputy there, or they will appoint a Deputy, and I am back to that very question, that I did pose, of confidence in our own abilities. We talk about more independence and more...

And I would have thought that if we were moving along that line the Keys may have done it. They have not, and I am quite happy to go along with what they want, but it does, in my view, underline, what I would call, a lack of joined-up thinking, which, if we are pushing for more and more independence, when we are dealing with this we should have taken the opportunity.

However, I am not going to push the point. I have stated it, and I am quite happy to support the Bill as printed.

Mrs Christian: Mr President.

The President: Mrs Christian.

Mrs Christian: The comments of the Hon. Member have just raised another vision in my mind, and that is – perhaps some advice from the learned Attorney again on this point – if circumstances are such that Mr Speaker resigns at any time, and then an Acting Speaker or Deputy takes his place, and if some other Member then seeks to resign, does the wording of the clause which we have just passed, which says a letter must be submitted to the Speaker, is the Acting Speaker empowered in that circumstance, as the Speaker would be?

The President: Mr Attorney.

The Attorney General: Well, Mr President, the 1995 Act does not include a definition of 'Speaker', to include Deputy Speaker.

Mr Lowey: You are right.

Mrs Crowe: Nothing is simple!

The Attorney General: Under the existing Act, Mr President, the office of Speaker shall be vacated on the death of the Speaker, on his resignation by notice in writing to the Members of the Keys, on his removal by a vote of the Keys and finally by the dissolution of the Keys.

So, it would follow, wouldn't it, that on his death the office of Speaker is vacated? There is nothing in the Act to say that the Deputy Speaker immediately takes the place of the Speaker. I wonder, Mr President, I know this is a Bill that has to go through –

The President: It is in Standing Orders I think.

The Attorney General: It may well be.

The President: You have to elect a new Speaker.

The Attorney General: Yes, the learned Clerk has very kindly shown me Standing Orders, Mr President – Standing Order 14:

'At the meeting of the House next following the election of Mr Speaker (or on a vacancy occurring in the office now referred to) a Member shall propose some Member of the House to take the Chair in the absence of Mr Speaker, and the same procedure shall be followed as for the election of Mr Speaker.'

And then it goes on:

'Such a member shall hold office, and assume the powers of Mr Speaker when either Mr Speaker is absent from the Island or when Mr Speaker is not present at any sitting of the House.'

So, presumably, if he –

Mrs Christian: So the Acting or Deputy Speaker could accept the resignation of another Member?

The Attorney General: He could, yes.

Mrs Christian: However, notwithstanding, it is not statutory, but it is in Standing Orders.

The Attorney General: It seems to be in Standing Orders.

Mrs Christian: Right.

The Attorney General: Thanks.

The President: Any other Hon. Member wish to comment on clause 3? Mr Delaney do you wish to reply, sir, or are you content?

Mr Delaney: Well, that is an excellent question. It is around the question, the first point I raised, when I opened up the Bill and said I cannot understand why the Speaker tells the Governor. Why does he not tell the Deputy Speaker, because, when he is not there, he has just as much power as the Speaker.

But that is for them to sort out, and if they decided that they want this route, I am not one to criticise that. The Keys are elected by the people.

I do think it is a good point, and it may need to be looked at to clarify it, even to give it a bigger clarity in this situation. It is a method they have chosen, and I do not wish to try, or I hope nobody else will try, to amend it at this point.

I beg to move clause 3, Mr President.

The President: In that case, Hon. Members, we put formally to Council that clause 3 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Finally, we just deal with the short title, Mr Delaney.

Mr Delaney: The short title is the Representation of the People Bill 2004, and I beg to move that, sir.

Mr Kniveton: Again, sir, I am happy to second.

The President: Hon. Members, the motion that I put to Council is that clause 4 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

**Representation of the People
(Amendment) Bill
Standing Order 22.2 suspended
to take Third Reading**

The President: I feel, Mr Delaney, that you might want to take another step.

Mr Delaney: I ask the suspension of Standing Orders, so I can take the Third Reading, Mr President, please, with the courtesy of the Members.

I beg to move:

That Standing Order 22.2 be suspended to allow the Third Reading of the Bill to be taken at this sitting.

The President: Mr Singer is prepared to second. Hon. Members, are we content to take the Third Reading this morning?

Members: Agreed.

**Representation of the People
(Amendment) Bill
Third Reading approved**

The President: In that case, Hon. Members, with agreement that we should take the Third Reading, Mr Delaney.

Mr Delaney: I am grateful to Hon. Members. I know that the House will be grateful as well, hoping that this Bill can be put in the right place at the right time.

I would say that the points made by the Hon. Members are not lost on me, and I hope they are not lost on another place. I think that the Bill, now, will go to where its destination is sending it, and I beg to move the Third Reading of this particular Bill, the Representation of the People (Amendment) Bill 2004.

Mr Kniveton: Yes, sir, I, too, am pleased to second that, sir. All I would say is: I think we have gone into it quite thoroughly this morning, and, I dare to say, even more thoroughly than our colleagues in another place, sir – but that is another matter!

The President: Mr Waft.

Mr Waft: Just one point, Mr President: we refer back very often in this Bill with regard to the 1995 Act. In the 1995 Act, section 6, 'Vacancy in a Seat', with regards to mental disorder it refers to:

'The Keys may by resolution declare the seat of a Member of the Keys to be vacant where he has been certified by a Clerk of the Rolls to the Speaker to be incapable, by reason of mental disorder, of taking care of himself or managing his own affairs.'

I would have thought that should read 'psychiatric illness', but that is by the by. There are many different types of mental disorder, from simple neurosis to a full-blown psychosis and a lot of these illnesses these days can be cured quite simply and in a short space of time. There are different... Without going through a list, you can have schizophrenia in various forms, simple depressions, going right through the whole gambit. I just wonder where the situation arises – maybe the Attorney General might be able to tell me (*Laughter*) – the Clerk of the Rolls, his say so in the whole scheme of the gambit of psychiatric illness, and who advises who, by which psychiatrist or GP or whoever. I just wondered what the process was? Maybe the Attorney General might like to clarify that point for me.

The President: I think we are straying really into almost an amendment of the 1995 Act, but nevertheless, Mr Attorney, we are working you hard this morning, in that case.

The Attorney General: Yes, well, Mr President, the only way I can answer that, I think, is by way of reference to the Mental Health Act, when an application has to be made to the court for the appointment of a receiver when a person is incapable of managing his affairs and the Clerk of the Rolls, the First Deemster, is well used to dealing with such applications. The condition of being incapable of managing one's affairs is normally approved by a certificate from a

medical practitioner, Mr President, and I would have thought that precisely the same procedure would apply.

I fully agree that the incapacity to manage your own affairs can be down to all sorts of medical conditions, but that is the specific answer, I think.

The President: Mrs Christian.

Mrs Christian: Yes, Mr President, the measure is a fairly simple and straightforward one. I think that in the light of... Well, one would hope that this does not happen very often, because people do stand for election on the basis that they (**Mr Delaney:** Hear, hear.) anticipate representing their constituents for a five-year term of office. One would also hope, and expect, that the only reason for invoking the new powers would be reasons that they truly want to be away from the political scene, perhaps for reasons of health or family circumstances.

What the Bill does not exactly specify, and what one would hope is not going to happen, is that people use this for political reasons. I think that would be a complete abuse. It would result in the additional expense of by-elections, and whilst one would not want to prevent someone from standing again at the next general election, perhaps because circumstances had changed or they had a change of heart, I think any abuse of this as a political process mid-term would be entirely inappropriate. There is nothing in the Bill, particularly, in relation to that.

Obviously, one assumes that reasonable consideration was given to that issue, and it was decided to keep it a simple measure.

The proof of the pudding will be in the eating, and I think that, certainly, in this Chamber we would be viewing with interest the way in which the powers in the Bill were exercised in the future.

The President: Mr Delaney to reply.

Mr Delaney: Well, if I can start from the back, the excellent point raised by Mrs Christian was discussed in the House of Keys, which has made them all aware of that situation. I am hoping, obviously, if they find there is something that can be used tactically in politics there – which most things are, by the way – that they will clarify it and clear it up in their Standing Orders, sometime in the future.

The other matter about the mental stability of a Member: I was told, 30 years ago, the furthest number of signs you can look out for a politician, when he has actually got mental problems. Firstly, is when he starts believing what is in his manifesto, and the second is when he starts believing what he is saying! I do not believe that entirely, of course, but the problem we have got here is that modern terminology being brought into the old Standing Orders and, of course, if the Member feels that way, and I know of his experience in life on that, he should possibly take it back to the Standing Orders and get someone to raise it with the Standing Orders of the House of Keys Committee, and they can look at it.

I beg to move the Third Reading of the Representation of the People (Amendment) Bill 2004, Mr President.

The President: And that, Hon. Members, is what I formally put to Council that the Representation of the People (Amendment) Bill of 2004 be read for a third time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

National Health Service (Amendment) Bill

First Reading approved

The President: So, we move on to take the National Health Service (Amendment) Bill. It is on our Order Paper for First Reading this morning and I call on the Hon. Member, Mrs Christian, Minister for Health and Social Security.

Mrs Christian: Thank you, Mr President.

The Bill, which is a fairly short measure has two principal effects. First of all, it introduces greater flexibility in the provision of primary healthcare. Members will know that there has been much discussion about the nature of the contracts, particularly with the medical profession and other primary healthcare providers in the recent past, and that the nature of the contract has changed recently in England and Wales.

The Department's Health Service is very much aligned to the NHS, primarily in England and Wales, and many of our staff, of course, are recruited from the United Kingdom. In order for us to provide the same kinds of contract as are applicable in the United Kingdom, it is necessary for us to amend our Health Service Act 2001. This measure will introduce the flexibility that is required, in order that we can enter into these new contracts and, additionally, it deals with superannuation matters, in relation to Health Service staff.

Mr President, that essentially is the function of this Bill. It has been out to consultation with the consultation body established under clause 2 of the 2001 Act. They have no observations about it, and are content with it. It has been discussed with various practitioners, on whom this impinges, and, again, the only comments coming back have been from the Civil Service Commission, who raised issues on the superannuation of Health Service workers, and their wishes in this matter to transfer the control of pensions to the DHSS have been met in the drafting of the Bill.

I, therefore, beg to move the First Reading of the Health Service (Amendment) Bill 2004.

The President: Mrs Crowe.

Mrs Crowe: I beg to second, Mr President, and reserve my remarks.

The President: Mr Singer.

Mr Singer: Thank you.

I do support the Bill, Mr President. I am not sure we should be changing because of the UK, but changing because we believe it is the right way forward, and the Bill, as the Minister says, is probably making changes for the right reasons, and I think that is the main reason we should be changing and bringing in the new Bill.

One comment I would like to make, which I believe could cause problems in the future, and that is the Bill permits the Minister for Health of the day to unilaterally come to agreement on services, with the medical profession, and sign the agreements, and I believe that, perhaps, this could put the Minister in a difficult position, that any Minister would wish to receive the backing of his or her ministerial colleagues to such important agreements.

Under the Bill, the Minister is, perhaps, exposed, and could be placed in an invidious position, because there is

no further negotiation, and it may well be that the Minister signs an agreement and there is a problem, it is not seen by the Department and after signing it, nothing more can be done to change that decision.

I suppose the Minister may choose to consult Council of Minister colleagues before signing an agreement of such magnitude, but I would like to see the safety net incorporated into the Bill by the Council of Ministers' approval being mandatory, and this offers, then, necessary protection to the Minister, and the Council of Ministers, and to the public.

The President: Mr Lowey.

Mr Lowey: Yes, Mr President, I support the Bill – that is first and foremost.

I think they need to be flexible, and I have no difficulty with the powers, because, on clause 1, the word 'shall' is appearing, except at the end of subclause (5):

'shall be such as the Department may from time to time determine.'

Everything else is 'shall be'. So, I have no difficulty with that.

But as the last Bill which we took through shows, we are making law here, and while I have every confidence in the present Minister and the present Department Members, we have got to make sure that the law that we are putting in place will be practised in the future, in a realistic way.

It does say in subclauses (6) and (7) that it has got to be laid before Tynwald, but that is reactive. In other words, the thing would be in place, so there is no pre-emption. In other words, what could happen is, if a wrong decision had been made, it could very well be in practice, before it could actually be.

I am trying to pick a scenario, perhaps, that the present Department could not do, but if we are laying the law down then I think we have to make absolutely sure that there is every safeguard in that for the Department, for the Minister of the day, whoever he or she may be, and I am just wondering: is there not a consultation and a reassurance for the Department and the Minister in somehow getting advice beforehand that makes it compulsory that it should be done beforehand, I suppose.

That is the point I am making, and I have, perhaps, not spelt it out, but I look at this, and I am comforted by the word 'shall', but then I am looking for that safeguard for if there is something done that is not right, and the only safeguard we have is that the Minister or the Department has to report those procedures to Tynwald after it has been done, then it is a bit like shutting the door after the horse has gone.

So that is the point I am making there: is the Minister satisfied that what we have got here is safeproof? That is really the answer.

The President: Hon. Member, Mr Waft.

Mr Waft: Yes, thank you, Mr President.

I thank the Minister for contacting the Civil Service, and the reply that she had I think clarified most of the situation.

It is just with regard to the staff who will be having the scheme taken from the Civil Service to the DHSS, and their ability to make schemes and payment et cetera. Normally, when pension schemes change their place of origin,

especially in the private sector, it does give concerns as to the whole stability, but as it is just within Government, I do not see any particular problems, but I just wondered whether there had been any contact with the staff who would be in receipt of these pensions, or is there need to be any contact with them?

Thank you, Mr President.

The President: Mrs Christian to reply.

Mrs Christian: Thank you, Mr President.

Whilst we are on First Reading, we seem to be getting into certain of the detail, but I am very happy to respond to it.

Members have expressed a concern that, in the wording, the Department, or the Minister, shall be making certain determinations, and there is a suggestion that the Minister should consult, and have Council of Ministers' approval to any agreement as a mandatory matter. I am not quite sure how such a suggestion would actually sit with the definitions, and the statutory position, in relation to ministerial responsibility. I do not think there is any statutory provision, where the Council of Ministers has a function which overrides a ministerial responsibility, but I would take advice from the learned Attorney on that.

Members have said that one hopes that the Minister of the day would have the agreement of their colleagues. I cannot speak for how other Ministers exercise their functions in their Departments, but, certainly, in my Department, it is very much run on a consensus basis, usually. There are very rare – indeed, I cannot think of any – occasions when I have not had the majority, if not the unanimous support of colleagues.

Now, as I say, I cannot speak for any other Minister, but apart from that, and it being good practice, in my view, if you have got departmental colleagues, to at least solicit their views, and be swayed by their arguments – at least influenced by their arguments, to some degree – if they are not in line with the Minister's own view.

But, if I can respond to the point raised by Mr Lowey, he will see that within the provisions of clause 1 the Department, in any case, in determining any of these matters about services, has to consult, under clause 2 of the original Act, which is a consultative body, and, perhaps, I can read out to him their functions just for clarity:

'The Department shall establish a body'

and it has already done this, of course, under that Act

'whom it shall consult on such general matters relating to the services provided under this Act and such questions relating to those matters as the Department may refer to it. A body established under subsection (1) may tender to the Department its views on any general matters relating to the services provided under this Act. In exercising its function under this Act the Department shall have regard to any views given by the said body pursuant to subsections (1) or (2), and the Department can also establish other committees for consultative purposes.'

It is clearly laid down in this Bill that we have to consult on these matters and that consultative body contains a variety of representatives, including lay people, which should give an overall view. In addition, the Act requires that we discuss with the specific professions that are directly involved, and that we have to have consultation with them, as well.

So, I feel that, before making any determination, there

would be an adequate consultation exercise, and from my experience, if anybody who has been consulted does not like what is going to be determined, they are not shy about making that known to the wider political body. So, I think that also is some protection in there.

With regard to the pensions issue, Mr President, I am not in a position, today, to answer whether or not there has been any consultation with staff, but I feel quite confident that the Department has, perhaps, indeed, more expertise in the pensions area than the Civil Service Commission has exercised in relation to the running of these pensions and that it... (*Interjection and laughter*) well, there have been issues – and I think that the clause also ensures that there are transitional provisions protecting the schemes as they are transferred.

So, I hope, Mr President, notwithstanding the specifics

that the Members have mentioned, and which they are free to propose amendments on, should they see it fit, that the principles of the Act are appropriate for the way in which healthcare should be delivered in the future.

The President: Hon. Members, what I put to Council is that the National Health Service (Amendment) Bill be read for a first time. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

That concludes our Order Paper for this morning, Hon. Members. We will now sit to consider the Council of Ministers' Minutes.

The Council sat in private.