



**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, 24th February 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, Mr D F K Delaney,
 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*]

LEAVE OF ABSENCE GRANTED

The President: Now, Hon. Members, the Hon. Member, Mr Kniveton, is indisposed this morning and will not be in attendance. Mr Gelling is off the Island with Mrs Gelling, actually being indisposed, and Mrs Crowe, we understand, is equally off the Island this morning.

Question for Oral Answer

New consultant ophthalmologist Commencement of work and consequences of appointment

1. The Hon Member (Mr Singer) to ask the Minister for Health and Social Security:

1. *When is the new ophthalmologist consultant to commence work;*
2. *who will then be the senior consultant in that speciality;*
3. *is the present associate ophthalmic specialist staying in post; and*
4. *will patients be offered the choice of either phaco or stitch technique for cataract surgery?*

The President: We have but the one Question 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 Health and Social Security, Mrs Christian.

The Minister for Health and Social Security (Mrs Christian): Thank you, Mr President.

I can confirm that the recently appointed consultant ophthalmologist is due to take up post on 1st March. The new appointee will join an existing team, consisting of a consultant and an associate specialist, both of whom are remaining in post.

Ophthalmology is part of the wider Directorate of Surgery, which currently has, as its clinical lead, a consultant surgeon.

Turning to the final part of the Hon. Member's Question,

the new consultant ophthalmologist will be responsible for the introduction of phaco-emulsification treatments for cataract surgery. General practitioners will have a choice in referring their patients, based on the treatments considered most clinically appropriate for their patients.

The President: Mr Singer.

Mr Singer: Can I thank the Minister for her very welcome answer and, as you know, I have been concerned about the need for another ophthalmologist for quite a while. In part 2. of the Question, I was not quite clear: is there now going to be a senior consultant of that speciality or not? That was my first supplementary.

The President: Mrs Christian.

The Minister: Yes, Mr President, there is no formal recognition of seniority between consultants, who are all autonomous, except where an individual has been appointed as the lead clinician of a directorate, the clinical directorate, and as I indicated in my answer, the leader of the clinical directorate in which ophthalmology sits, along with ear, nose and throat, and oral surgery, is Mr Steve Upsdell, the consultant neurologist.

The President: Mr Singer.

Mr Singer: Up to now, Minister, there has been no choice of the type of surgery for cataract surgery that has been available on the Island and the type of stitch technique that is being used on the Island now is referred to as '1980s type', out of date, and I do not think there is anywhere in the world at the moment, or at least in Europe or America, where people actually practise that technique, but, whilst the doctors here have had no choice, you have said that they are now going to be offered the choice to whom they refer that patient. Will the doctors ensure they have the full details of the different types of surgery so they can make a judgement as to which specialist they wish to send their patient to, and will the patient have the differences explained to them of the two types of surgery and also be given a choice about which specialist they want to go to?

The Minister: Mr President, if I may answer that. I feel quite sure that the GPs will be well aware that we have appointed another consultant ophthalmologist and, indeed, that the option for phaco-emulsification in relation to cataracts will be available.

In that regard, I have to say we are extremely grateful to the Trustees of Noble's Hospital for providing that equipment.

We did have an associate specialist with skills in that area, but as Members will be aware, they have to be supervised by a consultant with the same skills. So our associate specialist will now be able to resume the clinical practice, because there will be a consultant there who can supervise him, which will extend the availability of practitioners who can follow this.

So, I feel quite sure that patients will be made aware. They should certainly have the options discussed with them, as they would in any other field of surgery, so that they understand what is available.

The President: Mr Lowey.

Mr Lowey: Would the Minister take it from me that the Isle of Man has been remarkably well served in this particular form of medicine – as someone who has benefited directly from what I would call state-of-the-art surgery – diagnosed in Noble’s Hospital, transferred to a specialist clinic in Liverpool – that, really, the people of the Isle of Man, while there is more and more of the pressure building on them, would the Minister take it from me that the Isle of Man has been remarkably well served by the team in that Department?

The President: Minister.

The Minister: Mr President, I have to agree that there has been a good service and I have to take issue somewhat with the words of the hon. questioner, Mr Singer, in relation to his description of the practice, which has been used hitherto.

I think, whilst practice has moved on and there are new techniques available, the outturn in respect of the procedures that have hitherto been used should be considered and I do not think that the outturns have been too bad in that regard.

The President: Mr Singer.

Mr Singer: The Minister has opened up a whole new aspect of the situation and the Minister has mentioned about the turn-out, et cetera, et cetera. I will not enter that, but I disagree with the Minister.

I think the information that the Minister has been given has been given from within the Department. I think if the Minister was to look independently at information on the two types of techniques, then I think, probably, a better view would be before her, because the stitch technique of cataract surgery is referred to as a rather old technique and rather rare, and that is what we have had on this Island, but is not carried out anywhere else.

But my main concern is that the patients are given an explained choice, and the Minister said ‘Yes.’

Can I ask one more question on private ophthalmic surgery: will the new consultant be undertaking private work on the phaco technique, or will private work only be available under the stitch technique, as it is now?

The President: Minister.

The Minister: Mr President, I do not have with me details of the contract of the new consultant, but I cannot imagine that it is not one which will allow him to undertake private work. Most consultants do have a contract which allows them to undertake private work and he will be able to offer whatever facilities, whatever techniques he wishes to use.

Mr Singer: Perhaps the Minister could let me have an answer to that question privately some time, when she has found out the information,

The Minister: Indeed, Mr President, I would be happy to circulate that.

Orders of the Day

Criminal Justice (Arrestable Offences) Bill First Reading approved

The President: Right, Hon. Members. Having dealt with the Question, then, we turn to the Criminal Justice (Arrestable Offences) Bill. It is in the hands of Mr Attorney and for first reading.

The Attorney General: Thank you, Mr President.

As the long title to this Bill indicates, its object is: firstly, 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.

As Hon. Members will appreciate, amendments have been made to clause 2 of the Bill in another place, so as to make additional requirements which must be complied with before the Department makes an Order, adding to the list.

By way of background, Mr President, Hon. Members will be aware that this Bill has been prepared as a result of a reclassification of cannabis under the Misuse of Drugs Regulations in the United Kingdom last month. That has a direct consequence in the Island because of the way controlled drugs are defined and classified in our Misuse of Drugs Act 1976.

Under our Act, the 1976 Act, cannabis and cannabis resin are controlled drugs. The Act provides for three classifications of controlled drugs: namely class ‘A’, class ‘B’ and class ‘C’. Classification of drugs is based on the harm that they may cause, so that class ‘A’, the most harmful, for example, includes morphine and diamorphine, cocaine and Ecstasy. Class ‘B’, the intermediate category, includes amphetamines, barbiturates, cannabis and cannabis resin, and class ‘C’, the least harmful, includes anabolic steroids, benzodiazepines and growth hormones.

The 1976 Act does not contain a list of the drugs that make up the various classifications, but provides that, in a definition, ‘controlled drug’ means any substance or product for the time being specified in parts 1, 2 or 3 of schedule 2 to the Misuse of Drugs Act 1971, which is an Act of Parliament, of course, and ‘Class A drug’, ‘Class B drug’ and ‘Class C drug’ mean any of the substances and products for the time being specified respectively in parts 1, 2 or 3 of that schedule.

So, the effect, Mr President, is that, for the purposes of our 1976 Act, a substance is a controlled drug if it is a controlled drug in the United Kingdom and the classification is automatically the same as in the United Kingdom. As I have said, cannabis, and cannabis resin, is a class B controlled drug in the United Kingdom. It was before the amendment and, therefore, it is to be treated as the same under the Misuse of Drugs Act 1976.

The possession of cannabis will continue to be an offence and will attract a maximum penalty of two years’ imprisonment and/or an unlimited fine. Where there is possession, with intent to supply cannabis or cannabis

resin, the maximum penalty on conviction is five years imprisonment and/or an unlimited fine.

So, without this Bill, Mr President, the reclassification of cannabis and cannabis resin as class C drugs would have the effect that simple possession of the drug will not be an arrestable offence.

Possession of cannabis, with intent to supply to another, is not affected by the reclassification and will continue to be an arrestable offence.

So, Mr President, it is important, I think, that I guide Members on the meaning of an arrestable offence and the significance of it.

Section 27 of the Police Powers and Procedures Act 1998 specifies the offences that are to be treated as arrestable offences, and then sets out the actual powers of arrest that may be exercised in respect of arrestable offences.

Hon. Members may be aware that there are three classes of offence which are currently arrestable offences, and these are specified in section 27 of the Act.

The first classification is an offence for which the sentence is fixed by law. This means an offence for which there is only one penalty, such as life imprisonment.

The second category is offences for which the term of imprisonment is five years or more on conviction. The possession of class B drugs is such an offence and, therefore, an arrestable offence.

The third category consists of the specific offences that are listed in section 27(2). Because those offences attract a period of custody of less than five years, they would not be arrestable offences, unless they were specifically included in that list.

So, the list contains offences attracting custody for less than five years, which are regarded as sufficiently serious to warrant a summary power of arrest – that is, Mr President, a power of arrest without a warrant.

Now, as I say, there is a list in section 27(2); four offences have been added to the list since the 1998 Act was passed, and those amendments were made by primary legislation. So, the addition, if this Bill becomes law, of the offence of simple possession of cannabis would be the fifth addition.

Now, I am advised, Mr President, by the draftsman, that there are two possible additions in the pipeline which might be added to that list of arrestable offences under section 27. The justification, if I can put it that way, of allowing the Department to add to section 27(2) – the list of offences there – is that sometimes there is a need for a prompt response in an unusual and important case, where, sometimes, Mr President, it would be, perhaps, overcumbersome and we would not be able to react swiftly by insisting on primary legislation, and that is why the second part of the Bill contained in clause 2 enables the Department of Home Affairs, if satisfied that the list needs to be added to, to make an Order.

As you will have seen, Mr President and Hon. Members, from the Bill as originally drafted, the Department must not make an Order under that subsection unless there had been consultation with the Attorney General and such other persons as the Department considers appropriate.

The requirements of section 27A(2) have been significantly added to by amendments in the other place, so that now there has to be consultation not only with the Attorney, but also with the other Members of Tynwald and there is a further requirement that the proposed Order must be laid before Tynwald at the sitting before that at which the motion for

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

So, Mr President, with that broad explanation of the rationale of the Bill, which I would commend to Hon. Members, I move that the Criminal Justice (Arrestable Offences) Bill 2004 be read a first time.

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

The President: Hon. Members, the motion –

Mr Lowey: Yes, yes.

The President: Yes, Mr Lowey.

Mr Lowey: Thank you, Mr President. I have been noted in this Council for speeding things up and making things happen for various reasons. This Bill: the gestation period was very short, and I do not have any difficulty at all with the eminence that was placed on the cannabis thing, but, sometimes, you make haste in making law and you repent at leisure.

What I dislike immensely about this Bill is clause 2.

Not only have we dealt with what I would call the specific cause for the Bill – cannabis – we then deal with making it convenient for the Home Affairs to bring in more legislation, and I note the learned Attorney and his usual explicit advocacy – and I commend him for it – gave examples of what arrestable offences were and, sometimes, he has given no example of reasons why the extra powers should be included in clause 2. ‘Sometime in the future there may be a need’ – well, really, is that a reason for giving the executive those powers?

Really, I think before I... although he then argues against himself by saying the amendments made in another place, to this Bill, contradict the speedy enactment of these urgent powers that are contained in that Bill. So, there is a contradiction there in the amendments that have already been made.

The reason is to quickly enact something – that is the reason for it – and yet we have put amendments in that make that speedy enactment almost impossible to deliver. I just wonder what on earth possessed the Home Affairs Department to, if you like, shove in a second clause to cover a particular emergency which they have not specified. I think, if we are dealing with arrestable offences which can deprive people of their liberty, then I think we ought to ‘make haste slowly’.

I have not heard or seen any justification for clause 2, even though it has been passed in an amended form by another place, and the case made by the learned Attorney this morning – and, perhaps, I have rambled and not been as specific, but I am sure the Attorney knows where I am coming from – the arguments are clear, but there have been no examples given. Another place has amended it, so the reason given by the Attorney for it in the first place have been watered down somewhat, and no examples have been given.

Now, if four examples since 1998 are reasons that are being propounded for why it should be... no-one has produced any of those four reasons – four examples with two

more in the pipeline, I think the learned Attorney said – they have not brought the wheels of justice to a grinding halt.

I do believe, sometimes, we need to ‘make haste slowly’ when dealing with law, and, therefore, I am very, very, very concerned with clause 2 of this particular Bill.

The President: Mr Singer.

Mr Singer: Thank you, Mr President.

I could not understand, at the very beginning, why the Department of Home Affairs felt dropped on, that they had no indication that this was going to be introduced and they suddenly seem to be saying ‘Well, we did not know’. I do not know why that happened, but I do think that, at the moment, there is a big gap left in the control of people who take and possess drugs. At the moment, because simple possession is not an arrestable offence, then people have no fear of the police.

Mr Lowey: That is right.

Mr Singer: And that is why I think, when Mr Lowey referred to the gestation period being necessarily short, it is important that this gap is closed quickly, because, if simple possession is no longer an arrestable offence, but dealing is an arrestable offence, to me that is a mixed message. Either it is an offence to possess cannabis, or it is not, and I think that the situation we had, where the police had a certain amount of discretion... I think all Members of Tynwald supported the fact that, if a young person was found to be in possession of cannabis, and the police said ‘Look, we are going to give you a warning’ and they gave him a warning, I think that was the right way to go about it.

But we also have people turning round and saying, ‘Well, what about alcohol and what about tobacco? These are just as harmful.’ Well, it is lawful to be in possession of those, and perhaps we should be prosecuting Sir Walter Raleigh over that, but it is a bit late! The fact is that –

Mr Delaney: Get him under the Import Act.

Mr Singer: Yes! The fact is that not only is cannabis a dangerous substance and there is more and more evidence being shown that it is a dangerous substance. What has happened in areas where they have relaxed the possession of cannabis, is that drug dealers of the stronger drugs, the class A drugs, have been mixing in the area and they have been saying to people, ‘Sorry we have not got any cannabis, but would you like to try this?’, and that is how people are being hooked onto the class A drugs.

As far as clause 2 is concerned, I have looked at these amendments and I do not see the point in the first one or the third one, only merit in the one which says: ‘and shall be laid before Tynwald at the sitting before that at which the motion for approval of the Order is made.’ That means that Tynwald Members will be able to approve or disapprove of anything that is added under clause 2.

I know I asked Questions a while ago on air rage: what we were going to do about air rage, and whether we were going to introduce a law. This is a possible example where the Department of Home Affairs (DHA), in co-operation with another Department, can introduce an important piece of legislation without having to go through primary legislation, but Members, as I see it, will still be able to comment on it,

vote it in, or vote it out.

I think that, regarding the amendment asking for eight weeks before the motion of approval is made, you might as well go through primary legislation. I think that is totally, totally unnecessary, and if we go through to as far as that stage, I believe that that is the only one of the amendments that we should approve.

However, I do support clause 2, in the fact because if we do not, there is going to be a great administrative burden placed on the Department of Home Affairs on the time and their resources, which I do not think that they can afford.

So, I am fully supportive of this Bill. I believe there is a large gap in our legislation and I would certainly support that we put this legislation through as soon as is possible to support the police.

The President: Mr Delaney.

Mr Delaney: Excuse me, I have got a frog in the throat.

The situation has been well covered by Mr Lowey, but I had the concern – and I was surprised, in reading *Hansard*, when I looked at the amendment – because what they are doing here, as I see it, I believe the police need all the powers in the world to do their job, but at the same time I am worried about the Robespierre situation, where Orders are made and then put out, bypassing legislative procedures.

This actually does that quite clearly, because even the amendment that has come from the other place, where the Attorney generally put in: ‘and the other Members of Tynwald’, as if: ‘Oh, well, tell them as well – but we are still going to do it.’ I do not accept that.

One of the things that upset me about this Bill – and I said it at the private meeting we had with the Members – is the way it was put out to the media. One of the things I always understood and thought was wonderful that we could pass a Bill here and get Royal Assent, if it was there, virtually in hours – less than hours. So, therefore, if there is a need for such legislation to be brought into this clause 2, we can sit here and do it very quickly, and do it in the procedure that is laid down and democratic.

I do not accept that you can just put a piece of paper out and tell people and that is the new law. I do not think that is the way to do it at all.

I think Mr Lowey put it well, but I believe that to support this clause as it is would be wrong. It would be doing away with parliamentary procedure. I know it is contained in separate other Bills, I am aware of that in certain areas, but not to the magnitude this is, where somebody can be lifted off the street on a piece of paper that has been agreed by the authorities and not by the legislator, even with the way it is written here on the amendment.

I am surprised my colleagues in the other place have been that light on it. I thought it would have been a stronger view and I am sorry to – I see he is here this morning – the Minister at this time: I want to see the police doing the job and having the resources to do the job and the powers, but this is not the way it should be done, I am sorry. I would like to hear more, a fuller explanation, as Mr Lowey would, of exactly how this is going to work.

The President: I believe Mr Lowey wishes to come back.

Mr Lowey: Yes, it is just a passing comment by my

good friend, Mr Singer, when he says possession is now not an offence. It is an offence, possession of drugs A and B is still an offence –

The Attorney General: And of C.

Mr Lowey: – and of C – still, the point being that under this, under the cannabis one, it was not. I just wanted to make that point quite clear, because I am sure Mr Singer may have been misreported that, somehow, because the UK passed that particular piece of legislation, therefore, it was not available to us, because it was not included in our lists. That might have been the message that got out.

But I come back to the point to Mr Attorney, if he could give me an example of... it has been given here as an example: air rage. But if that is so important, I believe there are proper procedures that should be adopted, that are laid down now and could be dealt with, as has been said, if we choose under the existing legislation.

The President: Mr Waft.

Mr Waft: Thank you, Mr President.

Just on that particular one, it is an arrestable offence, as I understand it, and it is down to the police officer whether he arrests a person, and we cannot get away from that.

Just on the broader way of looking at it, we have the likes of Peter Lilley, a former leader of the Conservative Party, arguing for cannabis to be legalised. (**Mr Lowey:** Yes.) We have the Welsh Minister of Health, Jon Owen, just recently left, who said we should be legalising for medicinal or recreational purposes. Then we have Anne Widdicombe, who opposes virtually all that sort of freedom.

Now, we have yet to hear any comment from our own medical officer of health – I do not know what we call him now – ‘community physician’, I think it is, or perhaps we have moved on from that again – offering any advice on this legislation, any comment whatsoever.

But this is not the forum for a debate on the legalisation of cannabis; it is purely to stop a loophole and it only keeps the right of arrest for possession the same as it was in the UK, before the classification was changed.

Now, it does concern me that we are always told that we must keep in line with UK legislation with regard to criminal matters, because of the appeal procedures, when we do get involved in making our own legal implications for certain offences and then we have an appeal court judge that comes from the UK to make appeal court decisions. I know that is at the other end of the scale, but we are tampering with one end of it and the reason for it is purely a pretty quick fix for what does seem to be a problem by some people. Maybe the mover would like to comment on that situation.

Police tend to do their own thing with regard to drugs in different areas of the UK. There is a little bit of ‘postcode justice’, and depending on where you are, and how the Chief Constable decides to interpret whether cannabis is a big problem or it is not a big problem.

What does concern me in the broad scheme of things is: we are still waiting for a dedicated drug and alcohol detoxification centre and we have not addressed the after care for discharged inmates who have drug problems. I am reminded of one young man who, many years ago, died of the effects of a hard drug – him and a young Manxman, in a Bristol flat – and it was a very sad case, indeed. The complete

waste of young lives; it does take place.

I am in favour of the legislation, but clause 2 does give me some concern, and I think we should address that later, perhaps.

Thank you, Mr President.

The President: Lord Bishop.

The Lord Bishop: Thank you.

Mr President, I am quite happy with clause 1 as it stands. I, too, would like the further debate on the use of cannabis in health matters, because I think we could find ourselves, if the possession of cannabis is an arrestable offence, later on down the line, when somebody is actually using cannabis for health reasons, people move to a vindictive prosecution, rather than a legal prosecution that one would look to with the police. So, I need assurance of that. I am more than happy with clause 1.

Clause 2 just strikes me like another carriage from another train that has been added onto this (**Two Members:** Yes.) particular Bill and it does concern me. I, too, with Mr Lowey, feel that the amendments that have been placed on it from the other place have slowed down the fast track. So you have got the train going very fast at one stage and then all these amendments are hauling it back. I would much prefer to see the primary legislation and, if necessary, a sitting through the night and having another train, because I am just slightly worried about what can slip in and what we are allowing to happen by clause 2.

I, too, am really worried by law that is made quickly because we will, I am sure, live to regret it, if we legislate too quickly.

The President: Mrs Christian.

Mrs Christian: Yes, thank you, Mr President. Perhaps I can comment on some of the points that have been raised in relation to health. First of all, can I point out that the use of cannabis for health reasons is not legal, and I would endorse the comments that have been made that cannabis can be very harmful to certain individuals and I think there is, perhaps, more and more evidence coming forward in terms of its long-term effects and so on.

So far as medicinal use is concerned, there are trials going on in relation to the use of cannabis, but it will not be produced in the leaf form for smoking, because smoking cannabis is more harmful, probably, than smoking tobacco in terms of its tars and other substances! So, we need to get away from, perhaps, considering that somehow medicinal use is different. It is illegal, in the same way as any other use is, and we do need to look at developing drugs which will help those people who claim to find benefit from the use of cannabis.

Insofar as getting a medical view on these particular changes is concerned, the director of Public Health is on the Drug and Alcohol Committee and that Committee has had cognisance of the reclassification in the United Kingdom and, as has been said, the current way in which we define our lists is by tying ourselves to the United Kingdom’s lists because, in the past, it became very laborious having to take primary legislation through every time there was a need to change the lists.

Now, we could always, of course, move back to the old system and define our own lists in our own legislation, but,

at this present time, that is not the position we are in and so the Drug and Alcohol Committee have had cognisance of the advisory council on the misuse of drugs and accepted that cannabis should be reclassified. That is, again to emphasise, it does not make it legal and there is this confused message going out.

But I do think in terms of the legislation that we are on first reading today which is dealing, first of all, with the principle of whether we shall reclassify and, if we do not, we have this hiatus between the application of the United Kingdom legislation and our own; and the second issue is in relation to arrestable offences and whether or not the additional mechanisms in here are appropriate – and I can see, potentially, some interesting amendments coming forward, Mr President!

But if we are simply dealing with the first reading today and the principle of whether or not we should deal with this change of classification and make the possession of cannabis still an arrestable offence under certain circumstances then that, I think, is the prime mover for the Bill and these other matters can be considered further when we get to clauses, as to whether or not they are appropriate.

I have to say, I have seconded the Bill, but I do consider that the amendments made in another place and the periods of time put in there almost render it just as good to go back to primary legislation. So, that was, perhaps, a compromise in another place which we shall have to consider when we get to the clauses.

The President: Mr Singer wishes to go back.

Mr Singer: I just have a couple of points. On this ‘simple possession’, there seems to be some difference in opinion here. I am sure I heard the learned Attorney say that the simple possession was no longer an arrestable offence. Now, perhaps, he could explain that.

And I think we also have to look at the wider picture as to why we are sitting here today: it is because in the United Kingdom – it was not because cannabis suddenly became a less dangerous substance – the reason was that they did not have the resources there for the police to go and arrest people and stop people possessing cannabis because they want you to concentrate on the other drugs, the stronger drugs, the class A and class B drugs. That is not necessarily a consideration that we should be making – the reasons why they wanted to do it in the United Kingdom.

We also have to remember that cannabis now is not the cannabis that one used to read about years ago, the one you had to plant and it used to grow in a pot in the greenhouse. Cannabis is now often made within the laboratory and is probably 10 times or more the strength of the cannabis that was used in the 1960s, which Mr Delaney is... I do not know why you are smiling, Mr Delaney; you remember...? *(Laughter)*

Mr Waft: Steady on, steady on.

Mr Delaney: Grow your own!

Mr Singer: So it is a dangerous product, and I do not believe it should be in class C anyway.

As far as licenced medication is concerned, the research that is being done now into the use of cannabis and its effectiveness – and there is some doubt on that now, whether

it is effective or not with certain diseases – *that* cannabis is after all the hallucinogens and the harmful carcinogens have been taken out, which is a totally different picture to somebody smoking cannabis as it is now. So, I fully support and I have always fully supported the use of licenced cannabis products – medication.

So, thank you, that is my further contribution.

The President: Right. Mr Lowey, I think, finally.

Mr Lowey: Yes, indeed.

I would just like to... Dealing with cannabis has always been... It is a changing pattern, anyway, and rightly so. We learn more about these things as we go along. Possession in the Isle of Man of the smallest amount meant a prison sentence. That was the policy of the Isle of Man. It is not many years ago when we had, on the boats: if you were caught in possession of this you would go to jail. End of story.

I can remember local students being put in jail – a lady – for the smallest possible amount. She was not a distributor. She was using it, obviously, for herself.

Like most of these things, Mr President, the people who use these drugs for relaxation, or for whatever, they are the foolish ones. The real bad ones are the suppliers and the people who make an industry out of it and make money out of it.

But the idea that we are winning this battle is silly in the extreme. We are losing this battle. Our attempts in the past have slowed it down a little, but it –

A Member: Thank goodness!

Mr Lowey: Well, it slowed it down a little. Prison sentences and all the rest of it – we have tried the hard stuff and it has not worked. We are in a much worse position today than we were before.

It is now used widely on the Isle of Man and nobody can say that it is not; it is. That is the reality. That is from somebody who leads a boring old life – I am teetotal and I do not smoke and never have and I do not know what I have been missing but all I can say is I am sure I am not missing anything – but the serious point I am making is that it is changing *(Interjection by Mr Delaney)* and there is no simple, one-stop answer.

I only say to the Minister of Health: when was the last time there was recorded in the police official files any public disturbance of people who were using cannabis? And I do not think... I can tell you a load of other ‘socially acceptable’ drugs which do affect public law and order, and we do not seem to be addressing that one with as much vigour as we have with this.

So, again, I agree with every speaker that has spoken so far. The first clause I have no difficulty with and will vote for – no difficulty – but the second one gives me the gravest concerns.

The President: Right, Mr Attorney.

The Attorney General: Mr President, may I thank Hon. Members for their very interesting contributions to a very important debate – and I certainly do not want to underestimate the importance of this Bill.

I think, Mr President, as I understand the gist of Hon.

Members' comments, they are broadly content with clause 1, which deals with the fact that possession of cannabis or cannabis resin will be an arrestable offence, but the real concern relates to clause 2. Perhaps I can just make my position clear in relation to clause 2.

It gives me no pleasure, Mr President, to come forward with clause 2 in the form it is, after the amendments in another place. It seems to me, with respect, that, perhaps, we have the worst of both worlds. We had originally in the Bill, as originally drafted, some brake on the power of the Department arbitrarily to add to the list of arrestable offences, namely that there had to be consultation with the Attorney General – well, if we, perhaps, ignore that for the moment – but also the Department has to consult with such other persons as the Department might consider appropriate. That, of course, may very well deal with the Drug and Alcohol Consultation Committee and other persons who might be interested and, of course, it had to be approved by Tynwald. So, that was the brake on the power of the Department arbitrarily to add to the list of offences.

Now, it seems to me, Mr President, that what we are doing, in an effort to curb the powers of a capricious Department of Home Affairs, is putting such a weight of parliamentary scrutiny on it that I entirely agree with the comments of Hon. Members: we may as well not have the clause at all, to be perfectly frank. I think that people who are involved in the enforcement of law would be gravely concerned that, in an emergency situation, we had to go through all the hoops which are laid out in the amended clause 2 – and it is only because the amendments have been made that I have the duty to put the Bill to Hon. Members at this stage.

I think, Mr President, in a nutshell, the parliamentary control in clause 2, as amended, is far too heavy, indeed.

With that, can I just endeavour to go through the points which have been made by Hon. Members.

First of all, the Hon. Member, Mr Lowey has indicated that no rationale has been advanced as to a power to add to the list of offences without going through the full panoply of primary legislation which, in fairness, is the way we have dealt with it in the past. There is no doubt about it that the amendments, or the additions to the list of arrestable offences, have been made by primary legislation.

So, it is for the Department and for me, as the mover of this Bill, to explain a justification for that, and the only way I can describe it, Mr President, is this: that there will be occasions, I feel sure, in the future when the Department, on behalf of the legislature, has to move nimbly to move with an emergency situation

Now, perhaps, that is putting it a little bit too high, but the example that has been suggested to me by the draftsmen is that – and there have been changes to the Aviation Offences Act 2003 in the United Kingdom – and it is, I would suggest, entirely appropriate that where behaviour on board an aircraft endangers that aircraft, or a person on an aircraft, we ought to be able to move quickly so that an offence which is arrestable in the United Kingdom is arrestable in the Isle of Man.

I do feel, Mr President, that it is extremely important as a matter of principle that people who embark on a course of conduct or omission in the United Kingdom, say in Liverpool, are not subjected to a different regime when they come into the Isle of Man so far as criminal law is concerned. I think it is terribly important that there be consistency in the criminal law on one side of the Irish Sea and the other, if I put it that way. Otherwise we do have a situation where

we can have absurd differences.

There have been other... The second example that has been put to me is in relation to false statements to obtain passports. Now, again, Mr President, one can easily see that in this current environment, where we are so concerned with terrorism, people adopting false identities and moving from place to place, that we should be able to move nimbly to amend our legislation.

Now, one way that is suggested in this Bill is that the Department be given the power, subject to consultation and subject to ultimate Tynwald approval. That is one way.

The other way – and I entirely accept it is an entirely appropriate way to deal with it – is that we pass primary legislation and it may be that we have to bring it in at the beginning of the day and work right through it until it is passed. That is the other way of doing it, and it really is up to Hon. Members as to how that be done. As I say, the way the Department looks at it is that there are examples where we have to move quickly and that the legislative process is sometimes too cumbersome – I put it no higher than that.

Mr President, in relation to the comments made by the Hon. Member, Mr Singer, I think it is important to make the point that the Department of Home Affairs was not taken by surprise by the developments in the United Kingdom. In fact, there were one or two – certainly two – papers to the Council of Ministers where this amendment in the United Kingdom was kept under close scrutiny and, in fact, the Council of Ministers were frustrated by the varying messages which were being given out by the relevant department in the United Kingdom. The Council of Ministers has tried to anticipate this, but without success.

The Hon. Member, Mr Singer, has also referred to the fact that there is a discretion on the part of the police in relation to arrestable offences. That is quite right. The legislation makes it perfectly clear that there is a *power* to arrest in relation to various offences, not a duty. So there will always be a power to arrest, or not arrest, depending on the discretion of the police and the protocol which is circulated by the Chief Constable to guide officers in that respect.

In relation to the comments made by the Hon. Member, Mr Delaney, I hope I have dealt with those quickly.

Mr Delaney: You've covered that.

The Attorney General: I hope I have dealt with those to his satisfaction; thank you.

In relation to the Hon. Member, Mr Waft, I have dealt with the power of arrest.

With respect I do not think that this Bill is the correct vehicle to deal with the very wider and deeper problems about legalisation of cannabis that no doubt will be debated at a later time, and I think there was a little while ago a Private Member's Bill in another place which anticipated these issues.

One very interesting point, though, that the Hon. Member did make was a comment in relation to the appeal court, and if I can just say that my reasons for pleading that the criminal law be the same in this area on both sides of the Irish Sea has nothing to do with the identity of the appeal court judges; it is the way that legislation is applied consistently for the people who come from the United Kingdom to the Isle of Man and vice versa. The fact is that when appeal court judges come here, they do not apply English law; they must apply Manx law.

The Lord Bishop again referred to the debate, perhaps, for the future of cannabis and health matters, but again raised a very interesting point about vindictive prosecutions, or that prosecutions might be perceived to be vindictive and that is, in fact, an issue I have had to deal with in the past. It gives us very real problems for prosecutors, knowing whether prosecutions must be made in respect of people who are taking cannabis for obvious medicinal reasons and, of course, until cannabis is legalised for medicinal use, the user has to involve himself with the illegal supplier. This is something which I think is an extraordinarily difficult area which needs to be tackled sooner rather than later.

The Hon. Member, Mrs Christian, has, again, referred to the use of cannabis for health reasons and I do not think I can usefully add anything to what she has said in her usual helpful way.

I just want to make it clear, in relation to the supplementary issues, Mr President, that simple possession of cannabis, if it remains to be classified as class 'C', will not be an arrestable offence. The reason why we have to reclassify is that... Excuse me, I have got that wrong, haven't I? I do beg your pardon.

Simple possession of cannabis will continue to be... I have got this completely wrong. I am sorry.

Simple possession of cannabis, at the present time, has a sentence of two years attached to it, and, therefore, it is not an arrestable offence. It is important for the reasons which have been explained, because cannabis is a dangerous drug. It is important that cannabis should be an arrestable offence and, therefore, it needs to be re-classified. I am sorry about that.

Mr President, the Hon. Member, Mr Lowey, has explained that possession of cannabis in the past has resulted in prison sentences and, of course, that is true. The judiciary at one stage imposed prison sentences by way of deterrent. That has not worked. The judiciary, with new sentencing guidelines, has changed its approach. That is entirely appropriate – we get wiser as we get older. But I do not think that those powers of sentencing really are triggered by the debate in this Bill.

Mr President, I am sorry that, perhaps, I have gone on a little longer than I had anticipated, but it is an important Bill and I do commend the First Reading of the Bill to you.

Mr Lowey: Could I, Mr President – ?

The President: With respect, Hon. Members, what we are dealing with this morning is the First Reading and I think, in fairness, we have given it a good airing. I can understand Members wish to continue, but, nevertheless, what I will put to Council is that very motion which is in our Order Paper: that the Criminal Justice (Arrestable Offences) Bill be read for a first time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Criminal Justice (Arrestable Offences) Bill

Discussion of next stages

The President: Now, that actually draws to conclusion our Order Paper and if we are content –

Mr Singer: Mr President, could I move that Standing Orders permit us to take further stages of this Bill, because I believe it is an important Bill. I believe we have certainly come up against some matters which obviously need to be further discussed and –

The President: Can I make it plain: I understand where the Hon. Member is coming from, but I would prefer, in fact, to have the view of the mover as to whether or not he is prepared to go to the Second Reading stage, and I think that would be more appropriate than somebody else moving it.

The Attorney General: Yes. Well, Mr President, can I say that I think it would probably be unwise for me to press for the Second Reading and the clauses and the Third Reading at this stage. I think, with respect to the substance of the comments that have been made by Members, it would be as well if I were to reflect on the comments. It may be that amendments will be made to clause 2. I think that Hon. Members should be given the opportunity to consider those.

What, perhaps I could do, subject to Hon. Members' approval, is indicate that, perhaps, at the next reading we might be able to make some further progress.

The President: Mr Waft.

Mr Waft: Could I just ask the mover, Mr President, in the meantime, if he could get more information available to Members, so they are able to make a more informed judgement on where we are going with this Bill?

The Attorney General: Could I ask Hon. Members –

The President: In relation to any specific points?

Mr Waft: With regard to arrestable offences, and the priority that the police have with regard to whether to arrest, or not to arrest – it seems to be a very grey area.

The President: It is back to the words 'they have the power' –

The Attorney General: Yes, the 'power'.

The President: I think it is quite explicit in the Police Powers and Procedures Act that they do have power and

even 'reasonable cause' power. Mr Delaney?

Mr Delaney: I was just going to say I would like to meet the Attorney General. I think he understands where I am coming from. I still want to make it clear – and I think he was agreeing to some extent with me – that it is just as quick to sit in an assembly where we are called in to move this legislation, as we are trying to do, quickly, rather than going through the whole procedure laid down here to put an Order through Tynwald.

The President: Right, well, Hon. Members, in fairness

and bearing in mind, then, the words of the mover, Mr Attorney, who feels it might be appropriate, Mr Delaney apparently wants to meet him, and Mr Waft is asking for further information, we will not progress any further with the Bill this morning. So that actually brings to conclusion the business in front of Council for this morning.

The Council will now sit in private to consider the Council of Ministers' summaries. Thank you, Hon. Members.

The Council sat in private.