



**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, 28th October 2003

Present:**The President of Tynwald (The Hon. N Q Cringle)**

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

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THE LEGISLATIVE COUNCIL DEBATES OFFICIAL REPORT

IN THE PARLIAMENTARY SESSION 2003-04

Tuesday, 28th October

Volume 121

Legislative Council

The Court met at 10.30 a.m.

PRAYERS

The Chaplain of the House of Keys

[MR PRESIDENT *in the Chair*]

Oral Answers to Questions

HEALTH AND SOCIAL SECURITY

Nursing and Community Care in the North Level of service and reduced support for new Community Care clients

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

As one of the Nursing Auxiliary (Health Care) Assistants in the North of the Island has been replaced by a qualified nurse,

*a. can you guarantee that there will be no reduction in the type of service offered to patients by the nurse; and
b. is the Department offering a reduced support package to new Community Care Clients?*

The President: Now, Hon. Members we turn to our Order Paper and the first item is for Questions 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, to reply.

Mrs Christian: Thank you, Mr President. I can confirm that care provided to patients living at home across the Island is determined on the basis of their clinical need and that

those assessed as requiring nursing care continue to receive it.

Social care provision, on the other hand, will be provided by Social Services, although the District Nursing Service will honour its commitment to providing social care to any of their existing caseload.

Turning to the second part of the Question, I can reassure the Hon. Member that the Department continues to strive to keep people in their own homes and offers a support package to people who need care in the community. This change is aimed towards ensuring that the most appropriate staff, determined by the client's needs, will, in future, provide that care.

The President: Now, Mr Singer.

Mr Singer: Can I thank the Minister for her answer on that, but would she agree with me that the replacement of the auxiliary nurse by a qualified nurse means that the remaining auxiliaries will have to undertake the work of the full number of auxiliaries – if she understands what I mean? There are going to be fewer auxiliaries doing the same amount of work.

Is that, in fact, true or, with the rundown of the auxiliary care nurse care and the replacement by homecare, is she expecting, therefore, that the people who need the service that was given to them by the auxiliary care will now have to, maybe, pay for it, where it was free before? They may be paying £8 an hour or so. Will she be giving supplementary grants to those people, and is it, therefore, the DHSS policy of transferring the financial burden onto the patients and carers by substituting this homecare personnel?

The President: Mrs Christian.

Mrs Christian: Mr President, I would suggest that the Hon. Member is misinterpreting the actions of the Department.

Every Department at the moment, given their financial position, is reviewing the best use of their resources.

What I said in my answer was that we will assess people's need: according to their clinical need, they will be given nursing care, and if they have social need they will be given social care. It is the fact that, in some cases, healthcare assistants have been delivering social care.

Now, that is inappropriate use of people with healthcare skills, and the emphasis in the future will be to make sure that we carry out proper assessments to determine the type

of care that is needed, so that, if a person's need is only a social care need, we will not be using healthcare and trained nurses to deliver that element of their care. What I have said is that, if in the past people have been receiving from the nursing service some element of social care, that will continue, but the fact of the matter is that the healthcare assistants' role itself will be changing. They will be encouraged to undertake additional duties, such as blood sugars and wound dressing, with the assistance and under the guidance of qualified nurses, so that we are quite clear about the type of care that will be delivered free under the nursing service.

Now, it is certainly the case that where social care is needed that *is* charged for. It always has been charged for and if people's resources are not sufficient to meet the need then they will be eligible to apply for benefits under the income support structures.

The President: Mr Singer.

Mr Singer: Thank you for your answer, but is it not a fact that for many, many years now nursing auxiliaries or healthcare assistants – however you wish to describe them – have been giving what the Minister terms 'social care', and that is now being withdrawn, apart from to any new patients, and that it is going to put a burden onto some people who do not actually fall into the particular section where they are eligible for grants? So, in fact, people will be paying for it and some people will not be paying for it and that is divisive.

Mrs Christian: Mr President, the only people who will not be paying for it are these transitional people who have currently been receiving social care from the nursing side.

We have reviewed our situation. We think it is inappropriate to be using trained nursing staff and healthcare auxiliaries to deliver what is social care, for which people are trained, but in a different way and for different purposes.

It has always been the case that social care has carried with it a charge. Now, what I am saying is that that social care has wrongly been delivered by the healthcare service in the past to some people and that will not continue in the future, given that we are being required to look very rigorously at budgets and the way in which we deploy our staff.

The people who currently have been getting that element of social care from the nursing team, as I have said, will, under a transitional cover, continue to receive it. But any new people coming into the service looking for care will be assessed as to whether it is social care that they need or nursing care. Those who need social care will pay for it, as they have done in the past, and, where their means are restricted, they will be entitled to benefits.

The President: Final supplementary, Mr Singer.

Mr Singer: So the Minister would therefore agree with me that social care – the financial burden – is now being transferred onto the patients.

Mrs Christian: Mr President, I would *not* agree with the Hon. Member that it is being transferred onto the patients. It always has been the responsibility of the client to pay for social care; it always has been.

The President: Mr Singer.

Mr Singer: Auxiliaries at present are giving social care, as the Minister says, free of charge. Now if that is being withdrawn, whoever is going to give it, it is transferring that particular service, the financial burden, onto the patients.

One more point, the Chief Minister wrote a letter to a person who wrote to him, saying:

nursing auxiliary support for tasks such as bathing and putting-to-bed service that have been available in the past are no longer available because of the difficulties in recruiting staff.

Now the Chief Minister is saying it is being withdrawn because we cannot recruit staff and the Minister is saying that it is not being given for a completely different reason. Who is right?

The President: Minister.

Mrs Christian: Mr President, I do not think I could be any clearer about my answer in saying that, if it is determined that social care is needed, there has been a charge for that and it will continue to carry a charge.

If, in the past, as I have said – and I am re-iterating what I have said twice now – nursing staff have been delivering social care for those patients, that will continue, but it was not appropriate and it will not be available on future cases according to the assessment. If they need nursing care when assessed, then they will receive that nursing care.

So far as bathing is concerned, that is a social care need and will be delivered by the social care staff.

Mr Singer: It is a change of policy.

Mrs Christian: It is not a change of policy. It is a determination of – a firming up on – what was policy and which has strayed somewhat from the intention of the nursing service.

The President: Mr Lowey.

Mr Lowey: Just one supplementary to the Minister.

Minister, are you satisfied that, if patients do not fall neatly into same boxes, medical and social care sometimes overlap? Is the policy now that, whereas one person dealt with that particular client, we are now going to have two people dealing with that client – or patient, whatever description you wish to give them?

And how will that be saving money, if you have got one person who can deal with it at the moment, whereas you are going to have to have two people dealing with it in the future?

The President: Minister.

Mrs Christian: Mr President, I take the point that the Hon. Member is making. We do have criteria determining what is appropriate for the district nursing service to deal with and what is appropriate for social care requirements.

Now, we have massive budgetary problems – and I will start telling you now, I have told you at the last two budgets, and I am going to shout it louder and louder as we go along, because the Treasury Minister has emphasised this in various presentations to the Court in another place and Members

need to register this.

We have got to get much sharper about the way in which we are deploying our resources. District nursing staff, trained nurses, have particular elements of skill and we need to make best use of those by deploying them across the areas where their skills are needed and it is not necessarily appropriate or best use of their time to spend their time on social elements of care when their nursing skills are needed across the population.

The President: Okay, Hon. Members, I think we have dealt sufficiently with that one.

Lupus sufferers Treatment provision

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

Is there a Lupus Consultant employed by the NHS; if not, are patients suffering from Lupus referred to a consultant in the UK?

The President: We will turn to question 2 and, again, the Hon. Member, Mr Singer.

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

The President: Minister, if you would, in response to Question 2.

Mrs Christian: Yes, thank you, Mr President.

Lupus is one of a range of rheumatic diseases, the management of which falls under the remit of the medical directorate of Noble's Hospital. The vast majority of patients diagnosed with lupus are managed by the hospital's consultant rheumatologist in conjunction with the patient's general practitioner.

Occasionally, patients are referred to a more specialist unit in the United Kingdom, where this is deemed clinically necessary.

The President: Mr Singer.

Mr Singer: The Minister has not quite answered the question. Has Dr Clague got a recognised qualification as a lupus consultant, and is the person – and I think the Minister is referring to sending people to Dr Bucknall in Liverpool – qualified as a lupus consultant, or have they got what is termed 'an interest in the illness'?

The President: Minister.

Mrs Christian: Mr President, Dr Clague, the consultant rheumatologist who deals with, I think, about 90 per cent of the lupus cases that are referred to Noble's Hospital, has substantial experience in this area. He has published journals in the matter. He is not a full-time lupus consultant.

With regard to the person to whom he refers people, I am afraid that I do not have the answer to that particular question, but I think, in terms of my original answer, I cannot

imagine that he would be referring people to someone in the United Kingdom who did not have sufficient knowledge in the area.

My answer said 'a specialist unit,' which implies that they have a particular interest in lupus matters.

The Hon. Member said I did not answer the Question; I think, perhaps, he is saying, 'Is there a lupus consultant employed by the NHS?' We do not have a dedicated lupus consultant employed by the NHS. The numbers in the Island are small; we could not justify a lupus consultant in the Isle of Man.

The President: Mr Singer.

Mr Singer: If I could just. . . When I use the term 'consultant', I mean somebody who is recognised by the College of Surgeons as a Consultant Specialist. That is what I meant by: 'Do we have a recognised lupus consultant?'

But can I ask the Minister, is she aware that – I am sure she is aware – lupus has got so many different conditions which are not obvious, and people need advice on lupus pregnancy, vasculitis, sticky blood syndrome, camouflage, renal lupus? Is she satisfied that the specialist, as she would term him, Dr Clague, or people to whom he refers, have got qualifications to deal with all these aspects of lupus? You do not get standardised symptoms of this disease.

The President: Minister.

Mrs Christian: Mr President, I am not a clinician, but I have said that patients are referred by Dr Clague and other consultants to a more specialist unit if they deem this clinically necessary.

Now, I cannot assess whether or not they are making appropriate referrals. I am not aware that we have had any complaint from any patient that they have not been appropriately referred.

Patients are entitled to get second opinions if they feel they have not been appropriately referred, and I am not aware that anyone has sought such a second opinion, nor has the Department – as far as I am aware – had any communication complaining of the service that is given in respect of lupus. So if any patient has such a concern, perhaps they would like to communicate with the Department.

The President: Mr Singer.

Mr Singer: Thank you for your patience – or 'patient', whichever we need to say.

Is the Minister aware of the Louise Coote Lupus Unit in St Thomas's in London, which is a dedicated lupus outpatient facility, and actually has the largest number of registered lupus patients in the world, and these patients are referred on the NHS from all over the British Isles? Would the Minister be content to agree that patients could be referred there for second opinions to this world-renowned unit, where they are specialist doctors and specialist lupus nurses? Would the Minister not agree that lupus sufferers on the Island should have this opportunity, if they so wished, to receive the best treatment from the most highly qualified specialist?

The President: Minister.

Mrs Christian: Mr President, it is the 'if they so wish' that worries me a little bit. It is, first of all, a question of whether or not they are satisfied with the service in the Isle of Man. If they are not satisfied with the service or the suggested referral to the United Kingdom, then they have to make a submission, either through their GP or through the consultant whom they have seen, who might agree that they should be referred to somewhere else.

I would suggest that, if they want to be referred to that particular unit and the Isle of Man consultant is going to make a referral, that they might discuss that with the consultant here, as to whether or not they feel that that would be an appropriate placement.

I have to say that I am not aware of that particular unit, but there must be many medical specialties that I am not aware of. I would not say that, as a matter of course, everyone should be referred to that unit. I think it is something that has to be done in conjunction and discussion with our local consultants.

The President: Mr Delaney.

Mr Delaney: Yes, just a short supplementary, Mr President. As the Minister has been honest enough – we all do not know about this unit, either – would she agree that sometime to . . . And the public probably do not know that it exists, particularly lupus sufferers might not know, they will not know to be able to ask to be referred to it if they do not know it exists; could you make some steps to make sure that this unit is known by these sufferers in the Island?

The President: Mrs Christian.

Mrs Christian: Mr President, I suspect that the lupus group in the Isle of Man probably is well aware of these units.

Mr Delaney: Could we check then?

Mrs Christian: Well, I can certainly check whether they are aware of it or not, if you want me to take that step.

The President: Okay, Hon. Members. Final supplementary then, Mr Singer.

Mr Singer: Could I perhaps ask the Minister whether she could make herself aware of the Louise Coote Lupus Unit at St Thomas's, so that will give her the information that I have got, so that she will be aware of what I am talking about? And would she also make it clear that, if people talk to the specialists here and ask of this referral, that it is given a sympathetic hearing? Ask the specialist to give it a sympathetic hearing to make sure that he is aware of this unit as well and the good that it can do.

Mrs Christian: Mr President, there seems to be an assumption there that the consultant is not aware. I cannot answer for him at the moment, because I have not had an opportunity to ask him.

There may be reasons why people are not referred there. I do not know whether anybody has been referred there, and I am not at this point going to commit myself to committing a consultant to suggest that everybody goes

there. But I will enquire of the lupus group whether they are aware of it and I will enquire of the consultant what his view is.

COUNCIL OF MINISTERS

Report of the Legal Services Commission on Legal Aid Recommendations and reasons for delay in reporting

3. The Hon Member (Mr Waft) to ask a Member of the Council of Ministers (Mrs Christian)

- a. Are you in a position to give an update on the Report of the Legal Services Commission on Legal Aid and its recommendations; and
- b. what has been the cause of the delay in reporting?

The President: Okay, we will turn now to item 3, Hon. Members, and I call on the Hon. Member, Mr Waft.

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

The President: On this occasion, Mrs Christian answers as a member of the Council of Ministers.

Mrs Christian: Thank you, Mr President. The Legal Services Commission submitted their Report to the Council of Ministers in June. The Council considered that there were a number of matters which required further development, further consultation or research, before Council would be in a position to approve the report submission to Tynwald.

Firstly, the Chairman of the Commission is presently finalising the executive summary and it is anticipated that this will be completed shortly. The other members of the Commission have been asked to be circulated with a copy of that summary so that they can agree it before it is published.

Secondly, the Report was referred to the General Registry for thorough costings of the Commission's recommendations to be submitted to Council. Council was of the opinion that it was necessary to have these costings available to consider alongside the Report when it was published.

The costings have now been provided, but Council has not yet had the opportunity to consider them.

In answer to the second part of the Hon. Member's Question, unfortunately, there was a delay in the Chairman's taking up his appointment, which affected the initial timetabling of the Commission's work. The need for further work, which I have mentioned, has added to this delay. Nevertheless, Council hopes to be in a position to publish the Report in the near future.

The President: Mr Waft.

Mr Waft: Can I just emphasise, Mr President, that that answer was given in May, that it was going to be referred back to the Chairman of the Commission and there was some clarification needed.

I appreciate the need for the General Registry to do some costings, but there is some degree of urgency with regard

to Legal Aid, especially for people under notice to quit or eviction notices, and to try and find somebody who is able to take on Legal Aid, as people are becoming very, very few and far between, and their costs need to be addressed very urgently. So I would stress to the Minister, if she could, to try and hurry things along from her position within the Council of Ministers.

The President: Minister.

Mrs Christian: Mr President, I think the Council of Ministers was fairly frustrated by the fact that the Chairman of the Commission was a very long time undertaking his role and, I think, held up the work of the Commission, due to his other commitments in the United Kingdom for months on end. So that has been a very frustrating process.

We are now in the position of waiting for executive's summary. The Chairman knows that we are anxious to get on with consideration of this matter and I will take back your message to the Council of Ministers to see if, indeed, we can further press the Chairman to complete his work.

With regard to costings related thereto, I feel quite sure that these will be not inconsiderable and will need to be considered in the light of the overall budget position that we find ourselves in in the coming year, along with the demands for every other department.

HEALTH AND SOCIAL SECURITY

Disability Discrimination Bill Consultation Completion of consultation process

4. The Hon. Member (Mr Waft) to ask the Minister for Health and Social Security (Mrs Christian):

Has the consultation process in connection with the Disability Discrimination Bill now been completed?

The President: Question 4; Mr Waft.

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

The President: Minister for Health and Social Security, Mrs Christian.

Mrs Christian: Thank you, Mr President. The Department has now completed a second round of consultation with the relevant Government Departments – Education, Trade and Industry, Tourism and Leisure, Transport, Local Government and the Environment – and the original drafting instructions are now being amended accordingly.

The process of amendment has proved to be more complex than we did anticipate and it is regrettable that we had to go for a second round of consultation, because, when our original round had been completed and we submitted proposals back to the Departments on the back of those consultations, they were not happy with them – which meant that we have had to go through the exercise further, and I would point out to the Hon. Member that this, although it is being put together by my Department, very much involves

a wide range of Departments, and that has perhaps meant the process has not been as fast as we would have liked.

But we are putting additional resources into this exercise now, in order to complete this task as soon as we can.

Mr Waft: Thank you, Mr President. I just want to remind you that this has been going on for years, Mr President.

Could I ask the Minister – which is reflecting the lead Minister and the lead Department with regard to this – when she expects to have this legislation begin its process through the Chambers?

The President: Minister.

Mrs Christian: We have commissioned someone to assist our Director of Social Services now to finalise the drafting instructions, which we would hope to get to the Attorney General's Chambers by the end of this year.

Orders of the Day

Companies, etc. (Amendment) Bill First Reading approved

The President: Okay. Hon. Members, we then turn to item 2 on our Order Paper, and it is the Companies, etc. (Amendment) Bill for first reading. I call on the Hon. Member, Mr Gelling.

Mr Gelling: Thank you, Mr President, I am pleased to present the Companies, etc. (Amendment) Bill 2003 for its first reading.

I think the title, Mr President, is quite apt – 'Companies, etc'. The purpose of the Bill is to make urgently required amendments to, and to remove anomalies from, the Companies Act 1931 up to 1993 and other related legislation.

Now, the Financial Supervision Commission has, over a two-year period, been involved in extensive consultation with all interested parties on the contents of this Bill. Many of the changes are the result of representations from the private sector and others adopt international accepted standards of best practice and corporate governance.

However, Mr President, the Bill also makes many minor changes which are necessary, because our company law is now over 70 years old and has not been updated since the Companies Act 1992 was enacted, which was over 10 years ago.

There is, therefore, a pressing need to tidy up the Companies Act and related legislation and to carry through the changes identified by the private sector. The Bill, therefore, is an interim measure to achieve an immediate objective, namely to address the concerns that the industry has raised during that consultation.

Treasury's aim is to bring business to the Island and grow the economy by complementing the introduction of the zero rate of corporate tax with the promotion of a more attractive corporate product. Corporate services make a significant contribution to the Island's economy and it is important that our company and insolvency legislation should place the Island as a jurisdiction of choice for

company incorporation and CSP business.

The development of company and insolvency law is an evolving process and the purpose of this Bill is to make only the most urgently needed changes.

The Financial Supervision Commission, in conjunction with the Assessor of Income Tax and the industry, will shortly be embarking on a fundamental review of the whole concept of the corporate product. This review will look at the suitability of today's conditions of the Island's current company and insolvency law. Any further changes to company law should be deferred to allow for their full consideration in the proposed law review.

The Bill is complex because it amends other legislation and has to be read with the relevant legislation. Many of the changes effected by the Bill are of a minor nature and do not significantly alter the current law. For example, Mr President, the new provisions relating to the use of undesirable company names draw together existing provisions in two separate Acts and clarify current practice in respect of the Financial Supervision Commission, giving guidance on what it considers to be an undesirable name.

There are, however, some key issues to which I would like to draw Hon. Members' attention.

Part 1 of and Schedule 1 to the Bill amend the Companies Act 1931 in the following respects:

In the filing of a prospectus, the law has been changed to simplify the rules for the filing of a prospectus for the public offer of shares or debentures in a listed company. Companies listed on recognised stock exchanges would not, therefore, be required to produce their prospectus in two different forms, one for our Isle of Man Registry and one for the listing stock exchange.

Now, if we turn to bearer shares, in the Home Office review of the financial regulations in the Crown dependencies in 1998, Mr Andrew Edwards expressed concern in respect of the Isle of Man companies' ability to issue bearer shares. This is because the identity of a company's owner can be hidden behind bearer shares, which might, therefore, provide the opportunity for criminal abuse.

The Bill changes the law so that a company will no longer be permitted to issue bearer shares, but holders of bearer shares already in issue will be able to exercise their rights to dividends or to vote at a general meeting of the company by identifying themselves to the company and registering as shareholders.

There are new alternative procedures for company dissolution. Hon. Members will be aware that the Financial Supervision Commission now licenses and regulates corporate service providers – or, as we refer to them, the CSPs – who, broadly speaking, provide services in relation to the formation and administration of companies for clients. The Bill is, in many ways, complementary to the CSP regulatory regime, as it also aims to raise standards of corporate governance.

For example, the Bill introduces a new procedure for the dissolution of companies to facilitate compliance with company law. This procedure should encourage CSPs to dissolve companies in an orderly manner and not to place the companies for which they are responsible into what has been termed as 'free-fall' by not filing annual returns, resigning all the directors and secretary provided by the CSP, and or withdrawing registered office facilities.

The new procedure, Mr President, places responsibility on the Financial Supervision Commission, rather than on

the company itself, and, consequently, on the CSP responsible for a company that its client no longer wants, to advertise the intention to dissolve the company and to check whether Income Tax, Customs and Excise or the Attorney General has, indeed, any objection.

CSPs should benefit from this measure, which will considerably reduce the cost of dissolving unwanted companies in an orderly manner. Furthermore, by encouraging good corporate governance, there is also a benefit to the public insofar as the records available for public inspection at Companies Registry should be kept in better order than when companies were regularly allowed to go into what I have already stated, free-fall.

Now, if we turn to the Companies Registry, the Bill also makes amendments specifically aimed at increasing the efficiency of the Companies Registry and the usefulness of publicly available information. The ability to incorporate companies on-line and to search company files remotely from your own computer is a service that the Companies Registry wishes to offer to the public, and, to allow for these technical advances, the Bill makes provision for prescribing the form in which documents may be submitted.

To ensure that the information held at the Companies Registry is current, a foreign company that has established a place of business in the Island will be required to file a form of annual return. This is a similar requirement, which will apply to the registration of business names.

If we turn now, Mr President, to the foreign companies: whether or not a foreign company has established a place of business in the Island depends on its particular circumstances. However, the Bill introduces a power for Treasury to make regulations – that is, if it is necessary to do so – to define particular activities as requiring a foreign company to register.

Part 1 of and Schedule 1 to the Bill amend the Limited Liability Companies Act 1996 as follows:

The Limited Liability Companies Act: although there are a large number of changes to the Limited Liability Company Act 1996 the majority of these are not significant, as they merely import provisions of the Companies Act which already apply to limited liability companies. This will allow the Limited Liability Companies Act of 1996 to be read without referring to other Acts.

Some provisions are, however, new. The Bill introduces an alternative procedure to dissolve a solvent limited liability company which follows the new procedure to dissolve a company under section 273A of the Companies Act of 1931.

A dissolved limited liability company will also be able to apply to the Financial Supervision Commission to be restored to the register, whereas, currently, it can only apply through the courts.

Part 3 of and Schedule 1 to the Bill make necessary updating changes to the Registration of Business Names Act 1918.

Part 4 of and Schedule 1 to the Bill amend the Partnership Act 1909. That is done as follows: the Partnership Act is one of the measures identified in relation to Treasury's promotion of a strategy for the development of the funds industry was that the growth of the industry would be assisted if limited partnerships could be used as vehicles for collective investment schemes.

The Bill introduces a power for the Financial Supervision Commission to make regulations to exempt any class of limited partnership from the requirements to register

certain particulars and to assist the funds industry.

Schedule 1 to the Bill does, indeed, amend the Industrial and Building Societies Act 1892; the Companies Act 1974; the Interpretation Act 1976; the Companies Act 1982; the Income Tax (Exempt Companies) Act 1984; the Legal Practitioners Registration Act 1986; the Financial Supervision Act 1988, the Companies Act 1992; the International Business Act 1994; and the Companies (Transfer of Domicile) Act 1998.

Schedule 2 to the Bill repeals certain enactments, the most significant of which is the removal of the restriction in the Companies (Transfer of Domicile) Act 1998, which currently only allows listed companies or their subsidiaries to apply to transfer their domicile either into or out of the Island. This will allow all types of companies to use the Act, and this extension of the application of the Act is expected to be of particular benefit to the funds industry in allowing collective investment schemes to transfer their domicile into the Isle of Man.

A further amendment to the Companies (Transfer of Domicile) Act of 1998 was made in another place, which removed the prohibition on banks and investment businesses from using the Act. Extending the Act in this way might encourage banks and investment businesses to transfer their domicile into the Island by facilitating restructuring.

Mr President, with that explanation at the first reading, I am pleased to move that the Companies, etc. (Amendment) Bill be read for the first time, sir.

The President: Hon. Member Mrs Crowe.

Mrs Crowe: Thank you, Mr President, and I am pleased to second.

The President: Mr Kniveton.

Mr Kniveton: Yes, thank you, Mr President. I do thank the Hon. Member for the way he has put forward that first reading at some length to this Bill. I certainly am not going to repeat all that he has said to us today, but he has confirmed much of the way that I see it.

I understand the purpose of this Bill is to make amendments to the Companies Act of 1931 through to 1993.

Furthermore, sir, final representations from the private sector, there are a number of other, perhaps, smaller amendments, I am given to understand, and I am very pleased to understand that there has been an extensive period of consultation by the Financial Supervision Committee.

Interestingly, when I read about the issue of bearer shares, it takes me back to my banking days, which ended in 1966 –

Mr Singer: I wasn't born!

Mr Kniveton: You might not have been born, Mr Singer. *(Laughter)* These were the days when we had to cut off the attached coupons from the bonds and send them for collection to the companies, who had a collection of dividends, and bonds were passed around virtually like £50 notes. That is how simple it was. I remember full well when I was down in Westminster Bank those days and I had to cut the coupons out.

So I note, sir, that this Bill makes changes in the law relating to these bonds, and I can quite understand the

changes. *(Interjection by Mr Delaney)*. In short, sir, again I note changes to the operations of the Companies Registry, for instance, foreign companies will have to submit annual returns and how modern technology comes in here.

Other important matters relating to foreign companies are contained in this Bill, which we will see, of course, when we come to the clauses stages.

Mr President, this Bill covers a huge area concerning companies, including dissolving companies and destruction of company documents. So, sir, this Bill, I believe, was not easy to follow unless one has been involved in the finance sector – and I am not telling anybody that I have been involved deeply in the finance sector – and also company legislation appears to be a non-controversial technical Bill.

So, sir, as I say, I am pleased to support that reading.

The President: Mr Lowey.

Mr Lowey: Yes, Mr President, I am supporting the Bill because I think its objectives are right. I have to say that I have spoken with individuals in the finance sector, who assure me that it will be a very important piece of legislation and will certainly assist an inward flow of investment, and I think that is what we are all looking for.

The only query I do raise, and I think somebody has to raise it, is when the mover of the Bill says that they consulted the industry – that is fine, and most of these recommendations come from the industry – that may very well be correct, but who is looking after the investor? I think, somehow, you then have to say where does the investor . . . It is all fine . . .

If I take the speech of the Hon. mover who said that the limited liability part of the clause deals with the ability of a limited company to cease trading and then to reapply to be reconstituted. At the moment that has to go to the courts to decide. Obviously, if I have read the mover right, it will be a decision of the Financial Supervision Commission whether that company can then apply.

Now, I can see in my mind's eye that, if I had been investor in a company and for whatever reason – if I can look on the black side, and, let us face it, not many of them are black stories, most of it is success – but having said that, if there is a downside and that particular investor loses, I think I would be irked because it is a limited liability – and that is exactly what it is, limiting liability – if then that same company can open up again without having to go through many hurdles. Again, I am quoting not a specific but the generality of who is looking at the investor, and therefore I need some assurance on that from the Hon. mover.

But the Bill itself, having spoken with . . . and I would stress in the light of what, maybe, the Minister has said – although I do not wear her hair shirt quite so much about how bad the economy is doing – the economy according to the Treasury figures which we had on our desks last week actually convey the opposite, if you look at it. It is about time we shouted a bit of good news: 19 per cent up on income, 9 per cent down on expenditure. Now, if I can quote – who was it that said, 'Income £1, expenditure 19 and six–

Mr Delaney: Micawber.

Mr Lowey: Micawber – Dickens – I knew I would get there. I knew either my learned colleagues would soon come to my aid.

Well, Dickens had it about right and I just think that that is good news. And somehow we do love to lay into ourselves and 'woe, woe and thrice woe'. We are doing a good job. I think this particular legislation will assist in encouraging that and that is why I will be supporting it, but I do want to know what safeguards and what consultation there has been with the investor.

The President: Mr Singer.

Mr Singer: Just one small point, if I could ask the Hon. Member: it says the new section 17 provides for the Commission to issue guidance notes on what criteria it will apply to deciding whether a name is undesirable. What does that mean: 'undesirable'? Does it mean that it is too much like a company that is already formed, but that there are powers to stop that now? What does that actually mean?

The President: There is an interpretation in clause 1(2) of 'undesirable'. Mr Delaney?

Mr Delaney: I will wait until we get to the next reading.

The President: Mr Attorney.

The Attorney General: Mr President, if I may, just one point to take up: an interesting point made by the Hon. Member, Mr Kniveton, who referred to bearer bonds. I would just like to make the point, Mr President, that, in fact, the clause 3 of the Bill, which deals with the prohibition of share warrants to bearer, does not, in fact, refer to bearer bonds as such. It refers to bearer shares.

I think we are all familiar with the issue by companies of bearer bonds. The new clause will have no influence on bearer bonds. It is designed to prevent new companies being established with bearer shares or 'share warrants to bearer', as they are referred to in the Bill.

Mr Delaney: Hiding the beneficial owners.

The President: Mr Gelling.

Mr Singer: Mr President, can I just come back on –

The President: Mr Singer.

Mr Singer: – the point I made before? I can see where it says, 'Undesirable means misleading, offensive' but who determines this and how does the Financial Supervision Commission determine what is misleading, what is offensive? I wanted a bit wider an explanation.

The President: Mr Gelling, if I may. Mr Waft.

Mr Waft: Mr President, just on a similar vein to that of the Hon. Member, Mr Lowey, with regard to past companies being able to close down and perhaps another brother taking on another name and the firm continuing as before, and the people who are owed money by the first firm lose out because of the mechanics that we have in place. I was hoping for that to be addressed within this Bill. Thank you, sir.

The President: Right. Mr Gelling.

Mr Gelling: Thank you, Mr President. Well, first of all,

I thank all those Members who have raised points and have obviously taken an interest in the Bill and, indeed, in the fact that we have consulted for two years with the private sector and I think, generally, there is support for the Bill.

Now, we have touched on the company registry, foreign companies and I think Mr Kniveton said it is a technical Bill. It is very much a technical Bill, but, of course, in looking at it as a technical Bill, it is also making it possible to do more work through advanced technical ways, IT and so on.

I think that really touches on one of the other areas – I think Mr Lowey raised it – which was information technology is enabling, for argument's sake, lawyers to be able to – or they will – without going up to do their searches, will be able to do it on their own desks, but we need this for that to happen.

I am encouraged that Mr Lowey has, in fact, shown his support for this, because I know he is always very keen to see that the investor is protected, but the one assurance that I would give all Members, in particular Mr Lowey, is that when I mentioned about free-fall, what this does is really tidy up that whole situation, whereby in the past, if they were logging their accounts every year or whatever, into the Registry, that really . . . There was no 'regulation'. It just happened in a very haphazard, and I would say, often unsavory way that they just dropped off the end eventually.

Now, this will enable the FSC to be able to keep a very tight control on the way in which they operate – not just because they make their returns – and to regulate the way in which they operate.

That brings me straight on to the fact that then companies . . . You mentioned going into courts – well, it will prevent that or, shall I say, it will make it that that is not necessary, because the FSC will, in a very orderly fashion, actually make sure they are taken off the register in a proper way, which then allows, if that company is to be then re-formed, they already have the knowledge of why that company went off and, therefore, would enable it to go back on again if it was in the interests of the investor.

I think that is the important part: that the investor is covered. I think what we were saying was, 'Who is looking after the investor if the Financial Supervision Commission are?' and I think this really was the result of the Registry going into the FSC, so that, rather than just being a place where you lodged things, they are regulated.

Now, if I could then move on, Mr President, to – raised by Mr Singer – 'undesirable'. We have had a situation where, before, people would apply to the Registry to register a name and they would accept that, but then it would be sent over to the FSC to see whether, in fact, this name misled people and I think, to give you an example, if there was a company that wished to register as 'Isle of Man Financial Services Limited' and they were not actually doing that and it misled people to think they were people who would give advice, that is an undesirable name.

So the Financial Supervision Commission will keep a tight control on the names that are used within a name that could, in fact, give the wrong impression. That is really what that is all about: whatever that name is must give the people dealing with that company an indication of what they are doing – not misleading them into thinking they are international investment companies, when they are actually not. The use of the word 'Isle of Man', the use of the word 'Island' or whatever that might give people – internationally

even – the wrong impression of what that company is doing in the Isle of Man.

I think it was touched on: the fact that this will enable people to re-domicile back into the Isle of Man. We will look into that, to be prepared, and we will accept as long as the jurisdiction from whence they are coming also have been informed so that, again, people know what is going on.

I have a slight problem – I have already spoken with Mr President and I want to check – because I was hoping in summing this up that, if Members were content, I would have liked to have taken second reading today, but not clauses, because, in another place an amendment was made, and I just feel that the numbering has not been addressed. I think in one section, (1) and (3) have been removed, but it does not say to renumber them then back to number (2) being number (1) and so on. So that would enable us, Mr President, to make sure that that is correct and, if not, to be able to re-amend it at the clauses stage.

So, on that basis, Mr President, in thanking Members for their interest, I would like to move that the first reading is given today, sir.

Mr Delaney: Can I ask a point of clarification, Mr President?

The President: Mr Delaney.

Mr Delaney: In the excellent summing up, the Member talked about ‘Isle of Man Limited’ being one of the names. I always understood – I thought it was still the case – that if somebody used ‘Isle of Man’ they have to get permission from the Isle of Man establishment to use such a name.

The President: The Registry.

Mr Delaney: Is that not correct, so that is . . . ?

The President: Yes. Mr Gelling.

Mr Gelling: It was again the Registry and that was one that obviously was very well protected. But of course you often get ‘Joe Bloggs (Isle of Man) Limited’. Well –

Mr Delaney: I thought that was illegal and I would sue without your permission. (**Mr Gelling:** No.) (*Interjection*) Any hard reference to the Isle of Man had to be as we agreed .

Mr Gelling: No, there was actually a company – if I can just explain, Mr President – registered ‘(Isle of Man) Limited’ and the Isle of Man Government actually bought it to get it . . . In fact –

Mr Delaney: I must tell you, before I declare an interest, then. I have a company – Isle of Man Public Relations Limited, which is my own company, so just in case I get into any catch of interest

I was not asking for that reason, I was just asking for . . .

Mr Gelling: We might catch up with the Hon. Member.

The President: All right, the point is made, and I think it is something which we will look at, but, Hon. Members,

the easy way of dealing with this, I think, is to formally take the first reading. Mr Gelling has already indicated that he may very well seek to go to second reading today, excluding the clauses, so I will be in your hands in relation to that.

So I will formally put to Council that the Companies, etc. (Amendment) Bill be read for the first time. Those in favour please say aye; against, no. The ayes have it, the ayes have it.

Companies, etc. (Amendment) Bill
Standing Order 22(2) suspended
Second Reading approved

The President: Right, okay, having accepted that, the Companies, etc. (Amendment) Bill is read for a first time within Council, Mr Gelling.

Mr Gelling: Yes, if Hon. Members would oblige, Mr President, I would like to take the second reading.

I have said, and I think Members do appreciate that we are trying to get this as soon as possible because there are those waiting in the wings for whom it might very well make the transition into the Isle of Man a lot easier. But if it was permissible to take the second reading today, my intention, sir, would be that, next week, if we could have taken the clauses and the third reading, we would very much like to have it through for next Tuesday, if that is possible, sir.

The President: Mr Gelling is effectively moving suspension of Standing Orders in order to take the second reading, Hon. Members.

Mr Lowey: I would second that and I would also say that, by the time this Bill and legislation is in being and has got Royal Assent and regulations that can be applied under this Act, it is the end of the year and companies are making investment things and I am let to believe it is very important that we get it and I would support that.

The President: In that case, Hon. Members, I put to you that we suspend Standing Orders to allow the second reading stage of this Bill to be completed this morning. Those in favour please say aye; and against, no. The ayes have it. The ayes have it.

Mr Gelling.

Mr Gelling: Yes, thank you very much and thank you, Members, for allowing me to put a second reading.

Again, I would like to present the Companies, etc. (Amendment) Bill for its second reading, sir, and, as I just explained, the purpose of the Bill is to make urgently required amendments to and to remove anomalies from, the Companies Acts of 1931 to 1993 and other related legislation.

The Financial Supervision Commission has consulted – as it has been agreed by Hon. Members – with all interested parties on this Bill. Many of the changes are the result of the representations from, indeed, the private sector, and others, and, Mr President, the review and development of the Island’s company and insolvency law is an evolving process.

This Bill is an interim measure which is the forerunner of the proposed fundamental review of the Island's company and insolvency law. Any further changes to company law should, therefore, be deferred to allow them to be considered in the context of the company and insolvency law review, which is to be undertaken.

Therefore, Mr President, having just put the first reading to you, I will not prolong it any longer but I would propose to give Hon. Members obviously a fuller explanation of each of these measures and the other amendments at the clauses stage.

I would therefore beg to move that the Companies, etc. (Amendment) Bill be, indeed, read for a second time this morning, sir.

The President: Mrs Crowe.

Mrs Crowe: I am pleased to support that, Mr President, and I think, in view of many of the comments that we have heard today, seconding this gives me pleasure this morning.

The President: Mrs Christian.

Mrs Christian: I am happy to support for a variety of reasons, not least of which is the indication that this will generate revenue (*Laughter*) because, notwithstanding the Hon. Member's comment about 'hair shirts', we do have to wear hair shirts in some Departments where our growth of expenditure is in excess of that of the economy. So anything that will increase the take to Government will be helpful in respect of the work of many Departments.

Mr Lowey: Get in a few more bob! (*Laughter*)

The President: Mr Gelling, do you wish to reply, sir?

Mr Gelling: Just in replying, there were two other items. I think the one was 'undesirable names': actually those guidelines are already out there. In other words, they have not to be upped; they are already there.

The other was the companies and the way they are regulated, and the interests of the investor again: actually, this already applies to the private companies. So it is just a little bit of information.

With that, Mr President, I beg to move that the second reading is taken this morning.

The President: Hon. Members, the motion I put to you is that the Companies, etc. (Amendment) Bill of 2003 be read for a second time. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Hon. Members, sometimes I find it difficult to be quiet and, perhaps, if accepting that the clauses stage will be taken next week, if I could just refer Mr Gelling, if I may, with your permission, Hon. Members, to clause 26. I found it interesting that, in fact, for the first time in clause 26 – I think for the first time in law – I have seen the use of the website being used, instead of being published in two newspapers. I thought that was an interesting point to pick up.

It also refers to a 12-year period, and that 12-year period crops up again in clause 28, and I would imagine that is in relation to possible court cases in limited liability companies. I wonder if there is a confusion there with the

Statute of Limitation Act.

The other question which I would like to ask Mr Gelling is with reference to the naming of the company which Mr Delaney has raised: is there an intention within this Act to restrict the use of the company memorandum being in a wide form, regardless of the name of the company?

With those comments, Hon. Members, I am sure Mr Gelling will pick it up for the clauses stage.

Manx Museum and National Trust One Member elected

The President: We turn, then, to item 3, Manx Museum and National Trust, the election of one member in place of Mr Crowe. Hon. Members.

Mr Singer: Could I propose Mr Gelling.

Mr Kniveton: I would like to second Mr Gelling, sir.

Mrs Christian: I propose Mrs Crowe.

Mr Lowey: I would be happy to second.

The President: Right, okay. Mr Gelling was proposed by Mr Singer, seconded by Mr Kniveton. Mrs Crowe is proposed by Mrs Christian and seconded by Mr Lowey.

Hon. Members, we are in a position of requiring ballot papers.

Mr Lowey: Democracy breaking out! (*Laughter*)

The President: It may be useful, Messenger, if you could just locate Mr Delaney. I know he had a bit of a coughing fit and left us earlier. On this occasion it might be ...

Mr Delaney, we have reached a position where we have two people nominated for the position on the Manx Museum and National Trust. I thought it might be practical to have you back, sir.

So, we have the two nominations, Mr Gelling and Mrs Crowe. Hon. Members, you are voting for one place.

Mr Lowey: STV. (*Laughter*)

The President: And I think we will have Mr Attorney do the counting! (*Laughter*)

Mr Lowey: Is he qualified adequately as a CA? (*Laughter*)

Mr Gelling: He did well in Tynwald last week!

The Attorney General: Yes!

A ballot took place.

The President: Okay, Hon. Members. The result of the ballot is that Mr Gelling is elected.

Mr Gelling: Thank you very much, sir.

The President: So Mr Gelling will serve on the Manx

Museum and National Trust as the Council member.

Hon. Members, Council will now sit in private to discuss the summaries of the proceedings of the Council of Ministers in July and August. Thank you.

The Council sat in private.