



**HOUSE OF KEYS
OFFICIAL REPORT**

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P R O C E E D I N G S

D A A L T Y N

(HANSARD)

Douglas, Tuesday, 4th November 2003

Present:

The Speaker (The Hon. J A Brown)(Castletown); Mr D M Anderson (Glenfaba);
 Hon. A R Bell and Mrs A V Craine (Ramsey); Mr R E Quine OBE (Ayre); Mr J D Q Cannan (Michael);
 Mrs H Hannan (Peel); Hon. S C Rodan (Garff); Mr P Karran and Hon. R K Corkill (Onchan);
 Mr G M Quayle (Middle); Mr J R Houghton and Mr R W Henderson (Douglas North);
 Hon. D C Cretney and Mr A C Duggan (Douglas South); Hon. R P Braidwood and Mrs B J Cannell (Douglas East);
 Capt. A C Douglas (Malew and Santon); Hon. J Rington, Mr Q B Gill and Mr P A Gawne (Rushen);
 with Mr M Cornwell-Kelly, Clerk of Tynwald.

Business transacted

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House of Keys

The House met at 10.00 a.m.

PRAYERS

The Chaplain of the House of Keys

[MR SPEAKER *in the Chair*]

LEAVE OF ABSENCE GRANTED

The Speaker: Hon. Members, I have granted leave of absence to the Hon. Member for Douglas West, Mr Downie, the Hon. Member for Douglas West, Mr Shimmin and the Hon. Member for Onchan, Mr Earnshaw.

Questions for Oral Answer

CHIEF MINISTER

Gas Conversion Programme Improvement of Standards

1. The Hon. Member for Onchan (Mr Karran) to ask the Chief Minister:

What action is the Council of Ministers taking to protect vulnerable people from cold weather by improving standards for those responsible for the gas conversion programme, and will you prevent an increase in charges to cover poor management?

The Speaker: Hon. Members, the first item on your Order Paper is Questions for Oral Answer and I call on the Hon. Member for Onchan, Mr Karran. Question 1.

Mr Karran: Vainstyr Loayreyder, I beg to ask the Question standing in my name.

The Speaker: I call on the Hon. Member for Onchan, Mr Corkill, the Chief Minister, to reply.

The Chief Minister (Mr Corkill): Mr Speaker, the Chairman of the Office of Fair Trading attended the Council of Ministers' meeting on 2nd October and advised us on the situation surrounding the natural gas conversion programme. The Council offered any support it could to the efforts of the Office of Fair Trading in bringing about improvements to the levels of customer service being experienced by customers of Manx Gas Limited in the Douglas and Onchan areas.

Since then, I have spoken with the Chairman on a number of occasions and I know the Minister for Trade and Industry has also been in contact with the Office on several occasions and has received updates on actions taken by the Office.

These updates have also been relayed to the Council of

Ministers. I know that the Office has met with the Social Services Division of the DHSS to ensure that vulnerable members of our community can be assisted where required and, of course, the Division is already looking after many of those same people in any case.

The Office has also been in contact with the Civil Defence Division of the Department of Home Affairs (**Mr Houghton:** Hear, hear.) to ascertain what resources might be available for emergency use and, once again, the emergency planning officer has offered every assistance that he has been able to.

Mr Speaker, I am aware of the excellent work being undertaken by the Office of Fair Trading, not only in dealing with the actual complaints, but also in bringing about the improvements in customer service mentioned in the Question from the Hon. Member for Onchan, Mr Karran.

The Council of Ministers supports the actions of the Office in representing the concerns of consumers and highlighting deficiencies in the company's systems and procedures, whilst requiring the company to provide undertakings under the Fair Trading Act.

I am also aware that the Office and representatives met last week to discuss a number of new systems and procedures being launched by the company to prevent many of the problems that have arisen in the early stages of the conversion programme. This appears to be the only appropriate action possible at this time and I wish the Hon. Chairman and his staff at the Office of Fair Trading well in their endeavours.

Mr Speaker, with regard to the second part of the Question, I have to say that the Council of Ministers does not have the power to prevent any price rises without an investigation under section 19 of the Fair Trading Act 1996 as amended. Should an investigation determine that prices were excessive, then Council does have such a power.

We know what the expected cost of the conversion programme was and it will be some time before even the company knows what the final cost will be. However, I am sure that the company is fully aware of the sensitivity surrounding the disruption this project has caused and that everyone is watching what happens to the tariff price once the conversion work has settled down.

There is also the role of the expected regulator to consider, and that follows the amendment successfully moved in the recent Tynwald debate on the Council of Ministers' Report on the possible introduction of a gas regulatory body. It is simply too soon to assess what effect, if any, the problems associated with the conversion programme will have on the overall cost of the programme or, indeed, on the price payable by the consumer.

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

Mr Karran: Vainstyr Loayreyder, is the Chief Minister satisfied with Manx Gas's competence to continue with the gas conversion programme, without forcing them to stop undertaking any new phases before they have completed the work undertaken to a satisfactory level in the phases that they have already got?

The Speaker: Chief Minister to reply.

The Chief Minister: I am fully aware that the company has had a number of communication problems. The Office

of Fair Trading, with the assistance of the Department of Local Government and the Environment, is actually engaging an additional CORGI gas inspector for the remainder of the project to oversee the complaints involving defective workmanship, possible technical queries and safety related issues.

So without a doubt, Mr Speaker, the company will have to comply with proper standards.

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

Mr Houghton: Thank you, Mr Speaker. Due to the most horrendous experience many hundreds, if not thousands, of consumers have endured, for which Manx Gas and their agent contractor, Primeshade, should be truly ashamed of themselves, would the Chief Minister support the early introduction of a Bill which would give special powers to halt the progression of circumstances in which even he has had numerous complaints, whereby nothing less than a bunch of marauding gangsters appear to be able to ransack peoples' homes in Douglas and Onchan, willy-nilly? So would he therefore support such a Bill, sir?

The Speaker: Chief Minister to reply.

The Chief Minister: Mr Speaker, I am fully aware that the Chairman of the Office of Fair Trading, Mr Houghton, who has just resumed his seat, is extremely frustrated about this current situation, as, indeed, are all of those people who have been affected by this conversion. (**Mr Houghton:** Hear, hear.)

I understand that the Office of Fair Trading has received over 700 complaints, of which approximately 250 – the most serious ones – have been resolved, and I am told that that '250' does relate to elderly, disabled or families with young children. I give that information in result of the Hon. Questioner's Question, who is concerned, obviously, about the elderly, in particular, when the weather has gone cold. (**Mr Houghton:** Hear, hear.)

Certainly, I have had well over 50 complaints myself. I returned home after the weekend and I have got a folder here full of letters of people complaining about the current situation.

It does appear that the company's communication in the telecom's front has not worked, because I understand that, in the call centre operation that the company has, with six staff, they, indeed, as staff, are not that busy, but, in fact, the Office of Fair Trading has been taking all the phone calls, because people have come to the end of their tether over this conversion process.

It certainly has affected the lives of a lot of people and the full cost of that, as I have said in my opening comments, Mr Speaker, we are not fully aware of yet. All that I know is that the conversion cost was expected to be £10.5 million and the company was expecting to recover this over a 20-year period. Therefore, that then has to be put into context with relation to the price of gas in the future.

In relation to emergency Bills, Mr Speaker, I have a feeling that, even if the Bill were to be drafted quickly, taken through the Branches quickly, received Royal Assent quickly, we would be lucky to achieve that by the end of this calendar year – in fact, that might well be a record if we were able to achieve that – by which time, hopefully,

this conversion work will be mainly over. Certainly that was the original timescale of the company.

The Speaker: Before I invite the next Member to ask a Question, could I just remind the Hon. Member for Douglas North, Mr Houghton: whilst he may have frustrations, I would remind him of Standing Order 49.4 when making statements of Questions in the House.

Hon. Member for Onchan, Mr Karran.

Mr Karran: Vainstyr Loayreyder, would the Ard-shirveishagh reconsider the Question I put originally as far as the supplementary? Why does not his Government force them to stop undertaking any new phases before they have completed the work satisfactorily? (**Mr Houghton:** Hear, hear.) Why does he not do this?

If it was stuff for the likes of the ordinary working man to his detriment, we would find the powers to do it for them. Why are we allowing them to get away with something that could be potentially dangerous to the most vulnerable in our society?

Vainstyr Loayreyder, a further supplementary: will he take back to the Council of Ministers my concern of a constituent of mine whose bill from September to October has gone up from £0.947 per day to £1.826 per day in a month, in the rise as far as the costs are concerned, and will he look at both these issues: that pressure should be put on the company in order to be more sensible and try to get some of the work that should have been done before moving onto the next phase?

The Speaker: Chief Minister to reply.

The Chief Minister: If I can answer the second part of the Hon. Member's Question first, which relates to the pricing of gas, can I say that we had a full debate in another place, Mr Speaker, about this.

The reality is that the conversion process has capital costs associated. I understand that to be written off, as it were, over a period of 20 years. Therefore, that will be reflected by the company in terms of what it charges for natural gas over that 20-year period.

It was a decision that the company took to utilise natural gas, which, as we know, came to the Island for another purpose, which was to generate electricity for the new power station, but was made available to companies who wished to avail themselves of that new resource. Manx Gas has decided to do that and this is the ensuing problem as a result of that decision; that was a decision that company made.

So, in relation to price, I think it has always been made clear in any statement I have made that there would not necessarily be a price reduction for natural gas, when it came to those consumers who are able to have natural gas – and let us not forget, Mr Speaker, that many people around the Island will not have natural gas; they will continue with LPG for sometime to come.

What the outcome of the final price will be I cannot say at this time, Mr Speaker, but there are powers under the Office of Fair Trading, which I gave in my original comments. The Office of Trading, under the Fair Trading Act, have the ability to scrutinise price under certain circumstances. I think what is becoming apparent, Mr Speaker, is that the powers in that Fair Trading Act are not sufficient for this particular exercise, which is why the

Chairman of the Office of Fair Trading is so frustrated over this situation.

Historically, we have had investigations into gas prices before. There is the requirement to engage the Council of Ministers in that process and, as I have said, we have already given our full support to the Office of Fair Trading to make sure that those powers can be utilised. But the legislation does appear to be insufficient, which takes us to the very heart of that Report that we discussed in another place, Mr Speaker: that of a gas regulator and the regulation of gas suppliers on the Island – singular or plural – and I think that is important that we progress that element, so that we do have some control over monopoly providers of energy in this way.

I am quite sure that the gas company, quite rightly, will say that, if there is to be a regulator of gas, then there needs to be a regulator of all energy providers on the Island and that is the position that we are at, Mr Speaker, in relation to controlling the supply of gas to our consumers.

The Speaker: I would just remind Hon. Members that the question is in relation to what is going on in terms of the conversion programme, not about the whole policy of gas.

Hon. Member for Douglas East, Mrs Cannell.

Mrs Cannell: Thank you, Mr Speaker. Is the Hon. Chief Minister aware that post-conversion Health and Safety checks are revealing that, with a lot of these conversions, the connections that have been made to the gas are running too rich? (**A Member:** Hear, hear.)

In other words, the gas is running so rich that it is not only burning out, or potentially could burn out, people's boilers and appliances more quickly than otherwise, but is also perpetuating a rise in the cost of gas (**Mr Houghton:** Hear, hear.) and that that is adding further frustration to the whole conversion programme: when they are converting, having to bring in Health and Safety to make sure that they have done it correctly and then bringing the people to correct it and then, perhaps, Health and Safety again to make sure that they have complied?

Does he not agree with me that we need to be able to do something about this, not merely sit back and say, 'Well, our hands are tied. We do not have the legislative powers and, I am sorry, Manx public, you will have to get on with it'?

The Speaker: Chief Minister to reply.

The Chief Minister: Mr Speaker, the questioner will know that the Council of Ministers can only act within the legislation that is provided for us to act through, and the Office of Fair Trading is in that same position.

Certainly, I would not endorse any action on any entity, individual or company, that is outwith the law, so I would say, Mr Speaker, that Government is in no way sitting back over this situation. As I have said before, the Office of Trade Fair Trading, with the assistance of DoLGE . . . and can I say, Mr Speaker, I am not a technical person in relation to gas conversion –

Mr Houghton: I am though, now!

The Chief Minister: – but Mr Houghton, the Member

for North Douglas, I am sure, has rapidly become an expert on this, as I am sure all Members have who have this problem in their constituency. We are all learning rather rapidly about what is required, (**Mr Houghton:** Hear, hear.) but there is this additional CORGI trained gas inspector being employed by Government for the remainder of the project to ensure that these technical changes and queries and safety related issues are dealt with properly and that they are overseen.

The Speaker: Hon. Member for Michael, Mr Cannan.

Mr Cannan: To the Chief Minister: being aware of the constant complaints and dissatisfaction with the performance of Manx Gas, has the Council of Ministers given any consideration to the formation of a public utility board of electricity, water and gas and, by that, bringing into public ownership the public utility with the other public utilities (**Mr Houghton:** Hear, hear.) by issue of a bond (**Mr Houghton:** Hear, hear.) so that there can be even-handed Government responsibility for the provision of energy to the people of the Isle of Man?

Mr Houghton: Hear, hear.

The Speaker: The Chief Minister to reply.

The Chief Minister: I am trying to respect your comments, Mr Speaker, in relation to broadening this Question into a debate on gas policy issues.

I believe that supplementary Question from the Hon. Member for Michael brings in a great number of policy issues that are not directly related to this specific issue of gas conversion, but obviously I understand exactly what the Hon. Member for Michael is saying.

I would remind the Hon. Member that a bond, of course, is a borrowing (**Mr Karran:** Yes.) and that a company such as Manx Gas has a very decent, in financial terms, asset value. There is a political point as to whether Government should be nationalising certain industries, but, of course, when we do have monopoly situations, that is obviously one of the solutions that is open to politicians on this Island and we do have that situation in relation to the supply of our electricity, where we have a statutory Board of Tynwald providing that vital resource, as we do in fact, for water supply.

Whether the reality of Government-owned or privately owned entities would, in fact, deliver a conversion process any differently I do not know, Mr Speaker. I do know that this process is a very ambitious process – a total of 13,000 properties and 25,000 appliances need to be converted over a 17-week period and the programme is designed to finish on 17th December. That works out at 250 properties every two days being converted and, of course, we see the holes being dug on the promenade at the moment in relation to the central promenade area.

It is a very invasive and disruptive process and I do think that the company, although they did have some public relations, did not warn the members of the public, their consumers, sufficiently as to how difficult this conversion process would be. Maybe they did not know themselves, but certainly they have underestimated it. They have treated their consumers poorly, in my view, and I think it gives us, as politicians, more leverage when it comes to a policy issue

in relation to producing a regulator, (**Mr Houghton:** Hear, hear.) so that we have a body looking at what gas suppliers do on this Island – as, in fact, all other adjacent jurisdictions do, anyway.

The Speaker: Final supplementary, Mr Karran.

Mr Karran: Vainstyr Loayreyder, would the Ardshirveishagh not agree that it is not good enough to make excuses as far as the gas prices going up when, in fact, they have doubled in price in one month? Surely, we all expect the gas company to get their money back, but not at that speed.

And would he also not agree that, as far back as 1990, this Hon. Member moved a motion regarding a gas regulatory body to be set up? Does he not agree that, maybe, some of these issues should be addressed by backbench MHKs as a way of helping, not as an attack?

Mr Houghton: Hear, hear.

The Speaker: The Chief Minister to reply.

The Chief Minister: I am sure that we are all singing from the same song sheet on this particular issue, Mr Speaker, and I understand what the Hon. Member is saying. I think it was clear in that Report that we had only a few weeks ago about natural gas and how domestic consumers might make use of this valuable resource that a regulatory body is required.

But I would say, Mr Speaker, that it has to be agreed in the context of other energy providers as well, because people – admittedly it is a harsh choice and it is an expensive choice – do have the ability to choose, to some extent, the type of energy that they use within their homes. Therefore, it may be an issue that Members will have to think about carefully before they decide to regulate only one element of the energy provision on this Island.

Now, it may be that that is the way forward; I have to say, at this time, that is certainly the way I think is the way forward, Mr Speaker: that we should, sooner rather than later, have a gas regulator in place. The extent of that was covered in that Report and I will not go over that old ground.

The Hon. Member says that the price of gas has doubled in a month. I cannot comment on the figures that he has provided. I find that a very surprising statement, but certainly the Office of Fair Trading is tracking gas prices very, very keenly – I am sure on a daily basis – as well as this conversion process, and as I have said, I have been advised that the capital cost to this conversion is to be recovered, as it were, by the company over a period of 20 years; not on a month-to-month basis by doubling the price of gas, but recovering it over 20 years. £10.5 million or maybe £12 million of capital costs for the number of consumers involved will, in fact, take quite a bit of recovering by the company,

But, obviously, what the regulator would really need to know is what the profit margin of the gas company really is and I believe that, with the advent of natural gas, there will be complete transparency of natural gas price to the gas company and the Office of Fair Trading will know exactly what profit is being made in future and that is certainly one of the benefits that we have not yet reached.

TREASURY

Endowment Mortgages Representation of Views to UK

2. The Hon. Member for Douglas North (Mr Henderson) to ask the Minister for the Treasury:

- (1) *What is the position of any person in the Isle of Man who is the holder of an endowment policy to cover an endowment mortgage that is now projected on maturity not to cover the intended cost of the mortgage; and*
(2) *what action is the Treasury/Financial Supervision Commission able to take, or to represent Isle of Man views to the United Kingdom on this matter?*

The Speaker: Question 2 and I call on the Hon. Member for Douglas North, Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder. Ta mee shirrey kied yn eysht y chur ta fo my ennym.

The Speaker: I call on the Hon. Member for Ramsey, Mr Bell, Minister for Treasury.

The Minister for the Treasury (Mr Bell): Thank you, Mr Speaker.

Mr Speaker, as a result of a continuing period of stock market turbulence, the Government and the Island financial service regulators are aware that many holders of endowment policies taken out to cover mortgages are beginning to be advised of shortfalls appearing within this type of product.

The shortfall is, I believe, the difference between the current projected maturity value of a policy and its original target repayment value.

Most endowment policies rely, either directly or indirectly, on stock market returns to build up sufficient capital to meet the value of the outstanding mortgage at maturity. While not wishing to minimise the situation that some people are now finding themselves in, it should be noted that, at times when the stock markets perform well, the potential is there for endowment plans to exceed the original target, and, had investment markets continued to grow at rates experienced in the 1980s and 1990s, these complainants would not have a shortfall, but would be benefiting from the growth in value of the underlying investment and be able to pay off their mortgage early or be in receipt of a lump sum at maturity.

However, in light of current stock market valuations and in anticipation of more restrained future growth prospects, I am led to believe that many UK insurance companies now consider that certain plans may not be able to meet the original target value.

The Financial Services Authority in the UK, where the majority of companies who offered these policies are located, has directed that these companies must contact affected policy-holders to provide a warning when they believe an individual endowment policy is unlikely to meet its initial target value. This exercise has been underway for some time, hence the reason for the increased volume of enquiries on this matter. Notification includes policy-holders living in the Isle of Man.

Endowment policies do not provide, and never have

provided, a guaranteed way of repaying your mortgage at maturity. Therefore, those deciding to use such arrangements should have been aware that an element of risk is involved when opting for this method of mortgage repayment. However, if the policy-holder was not made aware of this fact at outset, it is possible that they may have been poorly advised when entering into such a contract.

Since the introduction of the Investment Business Act 1991, the Isle of Man has operated a regulated financial services market, where insurance agents or intermediaries are responsible to the Financial Supervision Commission (FSC) for the suitability of the advice they provide. Consequently, if the individual considers that the endowment was misrepresented at the point of sale and they were advised to take it out after 31st March 1992, when the Investment Business Act 1991 came into effect, they can file a complaint with the FSC, who will investigate this from a regulatory perspective.

I understand that the FSC has already investigated some complaints of this nature, although there have not been many. If the product was sold after 20th April 1999, the Financial Services Ombudsman could investigate the complaint.

Since most with-profits endowment policies are provided by UK companies regulated by the Financial Services Authority (FSA), affected policyholders might find it useful to look at the consumer section of the FSA website, which contains some helpful guidance and information on further advice available.

With regard to what action the Treasury or the Financial Supervision Commission has taken, this may be considered in two sections: the sale of the endowment and the policy itself.

In respect of the sale of the policy, as previously stated, the FSC has investigated some complaints, but, if the endowment policy was sold before the introduction of the Investment Business Act of 1992 or if the policy-holder was told of the possibility that the policy may not achieve its target value, there is little that can be done.

Due to the fact that mortgages are designed to spread repayment over a long period and the actual sale of the policy was probably some years ago, it is often difficult to ascertain whether the product was indeed mis-sold at the time of sale. As already mentioned, if the product was sold after 20th April 1999, the Financial Services Ombudsman could investigate the complaint. However, most endowment policies are likely to have been sold prior to that date.

With regard to the terms of the policies themselves, the same situation exists, albeit on a much larger scale with endowment policies taken to repay mortgages in the UK. Both the Financial Supervision Commission (FSC) and the Insurance and Pensions Authority (IPA) have in place and can use gateways to conduct discussions and exchange information with the FSA – in this case rate relating to particular products.

At this time we believe that the FSA has no issues with the actual policies themselves, although, as with the Isle of Man, there may be issues with the way the original sales of the contracts were conducted. On these grounds, we do not believe it appropriate for Treasury or the financial sector regulators to make any representations to the UK on this matter at the present time.

The situation will, however, continue to be closely monitored, especially in the light of the information being

provided to policy-holders or of any change in the perception of the products themselves.

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

Mr Henderson: Gura mie eu, Vainstyr Loayreyder. Will the Treasury Minister acknowledge that the people he calls 'complainants' are members of our community who are going to suffer extreme hardship from this situation? (**Mr Houghton and Another Member:** Hear, hear.)

And does he also realise that many of these policies sold on the Isle of Man were sold with the all-singing, all-dancing, lights-flashing salesman pitch, with the projected policy maturity figures at 8 per cent, 10 per cent, 12 per cent or 15 per cent – that was the push of the sales pitch – the small print was never really explained properly or in any great detail to many policy-holders and, in fact, the sales were pushed at what the probable outcome at that time of the maturity value was? Thereby one could allege mis-selling of these policies.

Could he give a better reassurance to members of our community here that our own FSC may be able to help in any small way that it can and assist people and advise them in how to progress their complaints to the UK if necessary?

The Speaker: The Minister for the Treasury to reply.

The Minister: Thank you, Mr Speaker.

Of course, I am aware that the 'complainants', in my terminology, are residents of the Isle of Man; that was the whole basis of the Question.

I also accept the comment that the Hon. Member made that, perhaps over the years, some of these policies were sold with glowing recommendations as to what they could deliver at the end of it.

Do not forget that a huge majority of these policies, which are now coming close to fruition, were taken out a very long time ago when stockmarkets were very buoyant and the likelihood of surpluses, not deficiencies, were the expectation at that time.

So it is easy to look at this situation, I think, in the context of today's very unfortunate situations, which I know a number of people are finding themselves in, but we do need to look back to the starting point, when times were a lot more buoyant.

As I said in my answer, if there is evidence at all that these policies were mis-sold, no matter how far back, there is the possibility of a complaint being lodged against the seller of that policy, and I would advise the people who do feel aggrieved by this to contact either the Financial Services Ombudsman, who, I think, probably, would be more useful in this case, or the FSC itself, depending on when the purchase date of the policies took place. I am sure they will certainly give all the advice that would be required for them to take their complaints on further, especially if it has to go to the United Kingdom.

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

Mr Houghton: Thank you, Mr Speaker. May I ask the Treasury Minister: in absence of the appointment of a political chairman of the FSC, could he ask the FSC if they

would produce an appropriate briefing paper for Members of Tynwald, because this matter is of growing concern throughout the public? Also, would he arrange for the FSC to give a presentation to Members of Tynwald on that briefing document just to give us an idea of the gravity of the situation which is developing, sir? Thank you.

The Speaker: The Minister for Treasury to reply.

The Minister: Yes, Mr Speaker. Certainly, I am as aware as anyone else that there are these problems within the Island. At the moment we have no clear idea at all as to what the extent of these problems are, whether at the moment there are only isolated incidences or, in fact, whether or not they are more widespread.

But, certainly, I would be quite happy, through Treasury, to provide a briefing paper for Members to give them a more up-to-date and, perhaps, a more detailed explanation as to what the problems might be.

I doubt at this point, though, whether, in fact, that paper is likely to actually say very much more than what I have already said in the answer, but I am certainly prepared to take it back and have a word with the relevant bodies –

Mr Houghton: Thank you.

The Minister: – and arrange for a briefing paper.

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

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

I acknowledge the Treasury Minister's positive responses to this important issue, but would he further give an undertaking, if necessary, once the situation has become clearer, that if, indeed, there are some serious complaints, if it was possible, he or the FSC would progress issues towards the UK in representing affected Island residents here?

The Speaker: Minister for Treasury to reply.

The Minister: Mr Speaker, within the Isle of Man there are now established channels for complaints if policyholders feel aggrieved at the situation they find themselves in. I am sure the advice will be made available to those complainants, either through the FSC or the Financial Ombudsman.

As I have said, if these complainants wish to take their complaints to the FSA in the United Kingdom to pursue these complaints in the United Kingdom . . . So I am sure we will be able to arrange for this facility to be made available to whoever would feel justified in taking advantage of it.

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

Mr Karran: Vainstyr Loayreyder, would the Shirveishagh come back to this Hon. House more on the lines of what the differences are as far as the legislative protection for consumers in the Isle of Man are concerned and in the United Kingdom? And will he convey to the Council of Ministers the importance of that?

If interest rates rise as well and there is a problem as far as the housing market is concerned, we need to see some

proactive action on this, not reactive action.

The Speaker: Minister for Treasury to reply.

The Minister: Mr Speaker, I think Government has been taking proactive action over the last few years by strengthening the local legislation, the Island legislation, through the FSC and the IPA, and, of course, with the establishment of the Financial Services Ombudsman as well. These are great strengthenings of the system already and, as far as I am aware, the actual protection now available on the Isle of Man is every bit as good as in the United Kingdom.

I think what we need to recognise is that a lot of the problems we are facing now are historic and that most of these endowment policies were sold a great many years ago in a totally different climate altogether, and this is really what we are suffering from. It is almost entirely down to the severe economic downturn over the last two or three years, in the stockmarkets in particular, which have created this shortfall.

So I am confident that the protection that we have on the Isle of Man is as good as is available anywhere else, but I will certainly make enquiries to see whether, in fact, there are any deficiencies which we need to, perhaps, plug the gap in at some point in the future.

The Speaker: Hon. Member for Garff, Mr Rodan.

Mr Rodan: Thank you, Mr Speaker. Would the Hon. Treasury Minister agree with me that, notwithstanding the unfortunate effects of lower investment returns on endowment policies as investment products, nonetheless, the holders of these policies have, of course, seen substantial increases in the value of their investment, namely the houses thus mortgaged? And would he further agree that, in the Isle of Man, investment holders and endowment policyholders have been at some advantage over their UK counterparts, in that they have enjoyed the benefit of income tax relief on the contributions to the policies as well, of course, as full mortgage relief on the associated interest payments?

The Speaker: Minister for Treasury to reply.

The Minister: Yes, I would agree with the comments made by the Hon. Member.

Clearly, as many or most of these mortgages were taken out 15 or 20 years ago, the escalation of house prices over that time has equally benefited the owners. Yes, the interest relief that is available in various guises is available on the Isle of Man, whereas, I think, in most cases it is not in the United Kingdom. So there certainly are some pluses as well as minuses.

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

Mr Henderson: Gura mie eu, Vainstyr Loayreyder. In acknowledging the Education Minister's input, would the Treasury Minister reconfirm, though, that, although house prices may have gone up to the benefit of people, there are still a number of people in our community who will be affected by the negative equity situation, irrespective of the

rise of house prices and irrespective of the tax relief. They are still going to find themselves in problems and if he could just confirm that I would be grateful, Vainstyr Loayreyder.

The Speaker: Minister for Treasury to reply.

The Minister: Yes, Mr Speaker. I fully acknowledge that there may well be some problems evolving over the next year or three as these policies come to maturity.

I also do recognise and I acknowledge the point that the Hon. Member has made that whilst, yes, house prices have risen tremendously over this last few years, the actual householder cannot financially necessarily capitalise on that until the house is sold. So whilst they may have a capital asset under their belt, they do not necessarily have the cash to meet the final payment. So I do recognise there are problems on that front as well.

AGRICULTURE, FISHERIES AND FORESTRY

Bradda Head

Environmental Impact Assessment of Blaze

3. The Hon. Member for Douglas North (Mr Henderson) to ask the Minister for Agriculture, Fisheries and Forestry:

Will your Department be undertaking an environmental impact assessment on the damage caused to valuable eco-systems during the recent Bradda Head blaze?

The Speaker: Question 3 and I call on the Hon. Member for Douglas North, Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder. Ta mee shirrey kied yn eysht y chur ta fo my ennym.

The Speaker: I call on the Hon. Member for Rushen, Mr Rimington, Minister for Agriculture, Fisheries and Forestry to reply.

The Minister for Agriculture, Fisheries and Forestry (Mr Rimington): Mr Speaker, Bradda Head has already been visited and a preliminary appraisal of damage has been carried out.

This highlighted the very serious nature of the damage, in particular the fact that a considerable proportion of the soil and peat surface layer has been destroyed by the intense heat of the blaze. Where this has occurred on steep slopes and exposed hilltops, there is a serious risk of erosion.

Nevertheless, it must be clearly understood that the practical options for restoring the area are very limited, especially at this time of the year. It must also be borne in mind that the majority of the affected area is in private ownership and the owners' wishes would have to be observed.

However, the Department would make a number of recommendations, one of which is that the opinion of professional ecologists with experience of similar severe burns on coastal heath should be sought as a matter of priority. The available restoration options can then be considered, one of which may be to undertake a more detailed assessment of the damage.

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

Mr Henderson: Gura mie eu, Vainstyr Loayreyder. I thank the Shirveishagh for the Department of Agriculture, Fisheries and Forestry (DAFF) in his positive response to this.

Would he acknowledge, in this situation, that Bradda Head and the surrounding lands have been classed by one expert as probably one of the most interesting heathlands in the Island and that, indeed, does deserve closer scrutiny and input from his Department?

Would he also give an undertaking to actually access the expertise that is out there in our community in non-government organisations, such as the Manx Wildlife Trust, who may be able to assist his Department in this difficult task?

The Speaker: Minister for Agriculture to reply.

The Minister: Yes, Mr Speaker, I recognise – and the Hon. Member has pointed out – the recent classification of this area and it is very disappointing that that has been recognised as a very unique ecological habitat and then to find it to be predominantly destroyed is actually very distressing.

We do accept that we have to look at all available expertise to try and see what mitigation can be . . . and, yes, we would be more than willing to discuss with local expertise on that issue.

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

Mr Gill: Thank you, Mr Speaker. First of all if I could thank the Minister for his speedy response by commissioning the initial assessment of the damage to Bradda, but can I ask him for some clarity on what timescale the 'priority' assessment he described by relevant experts means? Is that a matter of weeks or months?

The Speaker: Minister for Agriculture to reply.

The Minister: I am afraid I could not give a timescale at this time, Mr Speaker, as we would actually need to source the particular individuals who might have that expertise.

Such intense fires in a coastal situation are fairly unique, so it would be a question of actually resourcing that expertise, though obviously we recognise that there is also expertise on the Isle of Man. (**Mr Henderson:** Hear, hear.)

Effectively, there is actually little that can be done. Even if it was completely owned by Government, there is little that can be done during the winter months and, unfortunately, the land is at the mercy of the elements.

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

Mr Houghton: Thank you, Mr Speaker. In view of the serious blaze that took place over many days on Bradda Head, some short number of weeks ago, would he join me in praising and paying tribute to the Fire and Rescue Service, ably led by the Chief Fire Officer, who is retiring, Mr Allan Christian, and his deputy, who ably assisted the works there,

(Mrs Hannan: Hear, hear.) Mr Brian Draper, who should have been appointed the Chief Fire Officer of this Island?

And may I also pay tribute – and would the Hon. Minister join with me – to Mr Martin Blackburn, the Emergency Planning Officer, and his wonderful team in the Civil Defence for all the sterling work that they did keeping the fire brigade officers going for such a long period of time and all the other works and incidents that the Civil Defence has, indeed, attended, even thus far, for many hours in Ramsey on the gas problem. So would he join me in paying tribute to those wonderful, wonderful servants of this Island, sir?

The Speaker: Minister for Agriculture to reply.

The Minister: Of course, Mr Speaker, I would, and obviously, living very close to the area, I was there to see the action that was taken by the services and very conscious of the extreme effort they put in to try and control the situation, whether it was the Fire Service, aided by the Civil Defence, and, indeed, members of my own Department were down there latterly on the last day.

Bradda Head Institution of Recolonisation Programme

4. The Hon. Member for Douglas North (Mr Henderson) to ask the Minister for Agriculture, Fisheries and Forestry:

Does your Department intend, in connection with other bodies and conservation organisations, to institute a habitat and recolonisation programme for Bradda Head to mitigate the extreme fire damage which has effectively sterilised large areas of valuable habitat?

The Speaker: I call on the Hon. Member for Douglas North, Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder. Ta mee shirrey kied yn eysht y chur ta fo my ennym.

The Speaker: I call on the Hon. Member for Rushen, Mr Rimington, Minister for Agriculture, Fisheries and Forestry, to reply.

The Minister for Agriculture, Fisheries and Forestry (Mr Rimington): While the land in question is believed to be mainly in private ownership, the Department recognises the high wildlife importance of this damaged ecosystem and would wish to encourage joint action to hasten the recovery of the area. The majority of the heathland might be expected to recolonise naturally, as this habitat is well adapted to fires.

However, the severity of the burn means that it will take a considerable length of time to recover on the most seriously affected areas. During this time the area will be very vulnerable to trampling, vehicle damage and natural weathering processes.

DAFF is keen to work with other conservation bodies and to assist landowners where practical. Some of the structural damage, such as dry-stone walls knocked down when providing access and burnt fences, is already covered

by one landowner's participation in the Department's agri-environment scheme.

The necessity and practicality of assisted habitat recolonisation will need to be evaluated with the help of experienced professionals both on and off the Island.

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

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

Again, I thank the Minister for his positive response to the matter. Again, I have to ask him: will he not utilise the local expertise instead of waiting for off-Island expertise? Will he acknowledge there are plenty of trained experts already here on the Isle of Man that could help his Department?

And, further to that, would he acknowledge that, although there may not be too much that can be done over the winter months, action is better sooner rather than later in this instance, because of the severe burn? Is he aware that rare birds and animals, such as the choughs, which we have living on the Island – one of the best British Isles' populations – use Bradda Head as a feeding population, thereby illustrating its significance and that a 'sooner rather than later' action plan would be more relevant to this situation?

The Speaker: Minister for Agriculture to reply.

The Minister: Thank you, Mr Speaker. Yes, I confirm that we will obviously use expertise on the Island as our first choice, but it may be because of the unique nature of the damage that has taken place that we may have to resort to expertise outside.

Obviously, our first choice would be to look at the resources we have on-Island. In particular, we have considerable resources within our own Department, but they recognise their own limitations of knowledge with this particular damage that has taken place.

Mr Speaker, yes, it would be desirable if we could have habitat recolonisation, but the practicality of putting that into effect may not be as simple as we would like, especially in the areas that have been damaged, where the soil and the peat layer – a very thin layer – has been reduced to powder and that, in the winter months, is likely to blow away or even wash away. A lot of the damage has taken place on very severe slopes going down to the sea, for which there is very little chance of human access.

So, where we can – and if landowners wish that we would help them to do so, because we cannot do things on private land without landowners' co-operation – we will do so, but at this early stage it is difficult to say precisely what can be done.

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

Mr Gill: Thank you, Mr Speaker and I thank the Minister for the answers to this Question and the previous Question.

Given the answers that we have heard, could I ask what methods the Minister intends employing to keep our constituents, and others that we have heard of from the previous questioner, who are concerned about the damage to Bradda, advised about his current plans and future plans for this situation, sir?

The Speaker: Minister for Agriculture to reply.

The Minister: Mr Speaker, I think, when we have taken a more considered view of what can and cannot be done – and please remember it is only now just over two weeks since the fire was extinguished and, indeed, even last weekend there were still areas which were smouldering – then we will advise not only Hon. Members here, but make that information known for people in the locality as well.

We have made an approach to the Department of Transport in relation to the footpath through the area, because there may be a very good case for that footpath to be closed for a period to minimise the damage that might take place, but that issue will be addressed by the Department of Transport very shortly.

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

Mr Houghton: Thank you, Mr Speaker. The Minister will also be aware that the fire got very, very close to Fleshwick Plantation; in fact Fleshwick Plantation was nearly burnt down. Is he aware that that plantation consists of dead vegetation? There are no fire breaks in that plantation and, as I say, there was an occasion where there was quite considerable concern that a nearby house was under real threat because of that plantation.

Can he offer any assurance that that plantation now will have fire breaks cut into it in order to make the matter safe if, in the unfortunate event of a reoccurrence, that plantation goes on fire, sir?

The Speaker: Minister for Agriculture to reply.

The Minister: Mr Speaker, there was an expectation that the plantation would catch alight and I was there at the time when the fire approached the plantation and was there to see that, luckily, it did not catch alight.

Yes, as with all plantations, there would be a lot of dead vegetation in there; had the fire got in strongly, then the plantation was at risk of going up. The plantation was affected by the fire, it did get in into the top corner, but measures were taken to minimise the damage that took place and it was unable to spread.

The householder at the bottom of the plantation was very much alive to the situation and action was taken by members of my own Department to try and create a fire break, in conjunction with the rest of the emergency services, and we did not believe that his house was at risk, though obviously all precautions were taken.

Animal Health

Checks on Livestock Importations

5. The Hon. Member for Glenfaba (Mr Anderson) to ask the Minister for Agriculture, Fisheries and Forestry:

Can you confirm –

(1) that the animal health status of the Island is still the highest priority of the Animal Health Division of your Department; and

(2) that since January 2002 when Foot and Mouth

livestock import restrictions were lifted, over 30% of livestock importations have not been met and checked at the port of entry?

The Speaker: Hon. Member for Glenfaba, Mr Anderson.

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

The Speaker: Hon. Member for Rushen, Mr Rimington, Minister for Agriculture, Fisheries and Forestry, to reply.

The Minister for Agriculture, Fisheries and Forestry (Mr Rimington): I can confirm that the animal health status of the Island is a high priority of the Animal Health Division and the Department.

Since January 2002, 68 per cent of all livestock consignments were met at the port on arrival and subject to a document check.

Mr Speaker, like all averages, the figure of 68 per cent gives a somewhat distorted picture. To try and clarify the matter: in 2002, 85 per cent of the consignments were met at the port, whilst to date in 2003, 33 per cent have been met.

The level of surveillance is based on risk assessment and is under constant review. The number of portal inspections has been reduced in 2003, but each inspection has been made more meaningful, in that consignments may be followed from the port to their destination and the unloading witnessed.

Animal health controls on the importation of livestock are now the tightest they have ever been, apart from periods of epidemic elsewhere. These controls start at 21 days before importation and continue from between 21 days and up to one year after importation.

Mr Speaker, my Department's Chief Veterinary Officer is satisfied that the present level of surveillance is proportionate to the risk and balances the requirement to protect the Island's national herd with the requirement to allow and maintain trade in an environment of acceptable levels of restriction.

The Speaker: Hon. Member for Glenfaba, Mr Anderson.

Mr Anderson: Thank you, Mr Speaker. In thanking the Hon. Minister for his reply, would he not agree that it should be mandatory for all importations to be met at the port of entry and that, from his figures given over the past two years – 18 months in fact – that, on average, there has only been one importation per week? Is that not too much for his Department to actually meet at the port of arrival and check?

And would he not further agree that it would only take one unscrupulous importation to upset the whole apple cart as far as the agricultural industry is concerned, and, in light of that, does he not think it is important that every individual importation is met at the port of entry?

The Speaker: Minister for Agriculture to reply.

The Minister: Thank you, Mr Speaker.

My Department's Animal Health Division does not consider it is necessary to meet every inspection and,

therefore, would not wish to see it mandatory that every inspection is met.

But every importation of animals is subject to licence and subject to controls and all importers of such animals know that they quite possibly will be visited at the port or even on the farm.

Yes, I acknowledge that, if you have an unscrupulous importer who has sought to evade the quite strict controls that are there, both before importation and after, then potentially there is always going to be a problem, but then, in so many other areas, we are subject to the actions of unscrupulous people.

The Speaker: Hon. member for Glenfaba, Mr Anderson.

Mr Anderson: Thank you, Mr President.

Would the Minister not agree with me that the recent outbreak of sheep scab over the last two to three years has been a direct result of importations that possibly could not have been met and that is one possibility how sheep scab has reoccurred on the Island? It is costing the industry a significant amount of money and creating extra work for the farming community.

Furthermore, does not the Minister agree with me that, due to the enormous sacrifices made by the tourist industry due to the foot-and-mouth restrictions two years ago, there is a moral obligation that his Department should police every individual importation to this Island?

The Speaker: Minister for Agriculture to reply.

The Minister: Without details on the issue of sheep scab, I would be reluctant to say either way, whether it was a result of importation or how that arose, but I do accept that sheep scab has been present on the Island and that does cost the producers - and the Department, but predominantly the producers - quite a lot of work and cost in trying to eradicate that disease.

I do not believe it is necessary that every importation should be met at the point of entry and checks undertaken on those. We are, in this matter, between a rock and a hard place because there are a number of very responsible importers of animals who find our restrictions and our licensing regime on importation quite onerous and are constantly asking for relaxations in that area, and, yet, on the other hand, we have requests to make it even more onerous. So we do try and find the right balance between those two conflicting areas.

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

Mr Quine: Yes, would the Minister not agree that the additional cost would really be inconsequential, given the number of shipments that are involved here? It would appear, at least, to be a cost well worth carrying by way of insurance so far as one can insure against these eventualities. Can he not offer a better explanation than what he has to date for failing to provide the Island with that insurance?

The Speaker: Minister for Agriculture to reply.

The Minister: Mr Speaker, I am confident that my Animal Health Division is strong in its enforcement of our regulations and strong in ensuring that the Island's animal

health status is maintained.

The deployment of resources within that Division . . . although the Hon. Member says it is one per week, obviously they do not come in as a trickle of one per week, they will come in at certain times of the year. Therefore, it will not be a question of putting an officer there once a week. The importations will be much more concentrated, I presume, but I am happy that they are making sure that animal health status on the Isle of Man is maintained.

The Speaker: Hon. Member for Middle, Mr Quayle.

Mr Quayle: Thank you, Mr Speaker. I wonder if I could ask the Hon. Minister: would he be aware of the potentially devastating consequences if disease of any description was introduced into the Island and the consequences it would have on the national herd and flock and that it would, indeed, be a very small price to ensure careful monitoring of all the livestock importations into the Island, which would protect potentially the Treasury of the Isle of Man from absolutely devastating consequences if disease reached the Island?

The Speaker: Minister for Agriculture to reply.

The Minister: Yes, naturally we are aware of the cost of any importation of disease. We know what the potential cost might be if it was foot-and-mouth. We know what the cost *has* been when, in recent years, TB has come to the Island. Although that has not been devastating, it certainly has imposed a cost on those producers who had been affected. So, yes, we are very much aware of that.

But, I repeat, it is the Division's responsibility to ensure that the animal health status of the Island is maintained and I accept their reasoning that their proper deployment of resources does not necessarily require them to meet every importation at the point of entry. It is for them to make that professional assessment on what is the best way to ensure the animal health status of the Island is maintained, and for Hon. Members to stand up and insist that a certain particular action should be taken, without necessarily that professional background and looking at the best deployment of resources, I find is possibly extending things a little bit too far.

The Speaker: A final supplementary, Hon. Member for Glenfaba, Mr Anderson.

Mr Anderson: Thank you, Mr Speaker.

Would the Minister not agree that it would be significantly cheaper to meet each individual importation rather than having a quarantine station on the Island?

The Speaker: Minister for Agriculture to reply.

The Minister: I believe the Question is slightly beyond the brief that I have in front of me today.

I certainly do not have the cost of a quarantine station in front of me and we, as a matter of policy, would not agree on having such a quarantine station. The quarantining of animals is best done on the individual farms to which the importation is made. So, therefore, I cannot answer the Question, because we do not know such costs of a quarantine station and the issue, as I have already explained, is there: I believe we are undertaking all the necessary and proportionate checks on the importation of animals.

**Standing Order 43 Suspended
Remaining Questions for Oral Answer Taken**

The Speaker: Hon. Members, that concludes the time permitted under standing order 47 for Questions for Oral Answer.

Hon. member for Douglas North, Mr Houghton.

Mr Houghton: Thank you, Mr Speaker. I beg to move the suspension of Standing Order 43(2) to permit the remaining Questions for Oral Answer to be taken at this sitting, sir.

Mr Henderson: I beg to second, sir.

The Speaker: Hon. Members, the motion before the House is that Standing Order 43 in its total, be suspended. All those in favour say aye; against, no. The ayes have it. The ayes have it.

Therefore, Hon. Members, Questions will continue until we complete the Questions for Oral Answer on the Order Paper.

HEALTH AND SOCIAL SECURITY

**Board of Visitors' Responsibility
Children in Secure Unit for Welfare Reasons**

6. The Hon. Member for Douglas North (Mr Houghton) to ask the Member for Health and Social Security:

Why do the Board of Visitors have no responsibility towards those children placed in the Secure Unit for welfare reasons?

The Speaker: I call on the Hon. Member for Douglas North, Mr Houghton: Question 6, sir.

Mr Houghton: Thank you, Mr Speaker. I beg leave to ask the Question standing in my name, sir.

The Speaker: I call on the Hon. Member for Health and Social Security, Mrs Hannan, Member for Peel.

The Member for Health and Social Security (Mrs Hannan): Thank you, Vainstyr Loayreyder.

The Secure Unit fulfils two distinct functions: first, that of a custodial institution for young people who are placed there for justice reasons; and second, that of a secure care home for young people who need security on welfare grounds.

There are two appointed groups of independent people who have been charged with engaging with each of the two groups of young people resident in the Secure Unit: the Board of Visitors for those in custody and the Criteria Review Panel for those who are placed on welfare grounds.

The difference in the legal status of the two groups of young people determines the responsibility of the relevant independent body.

The Board of Visitors provides five members and their functions are described in the Secure Unit's Care Custody Rules, paragraphs 49 and 50. These relate only to those

young people placed in custody. This relates closely to the role of the Board of Visitors appointed for adults in custody in prison.

The rationale for the existence of the Board is the same as that for adult prisoners and essentially ensures that standards of care are adequate and that the rights of the individual are being observed.

The position of those young people placed in security on welfare grounds is different, in that they will always have a social worker and in most cases also a court-appointed guardian ad litem to look after their interests.

In legal terms, their position is dealt with under the Children and Young Persons Act 2001, the Secure Accommodation Act 2002 and the Placement of Children (General) Regulations 2002.

Thank you, Vainstyr Loayreyder.

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

Mr Houghton: Thank you, Mr Speaker. I thank the Hon. Member for Peel, as the Member in charge of Social Services for her very comprehensive answer this morning.

May I just ask for her opinion: is it not illogical that the Board of Visitors cannot also have the responsibilities of those children who are in welfare, who, generally, can usually be one and the same person, sir? Although they are put there in different categories, one for welfare and the other as a detainee, surely, whilst the Board of Visitors are there, their responsibilities should really be extended to cover both categories, sir. Does she not agree with that?

The Speaker: Hon. Member for Peel to reply.

Mrs Hannan: No, their responsibilities are quite different, as I spelt out in the reply I gave to the Member a moment ago.

I think, maybe, there is some confusion because some of the members are on the Board of Visitors and also on the Criteria Review Panel, but the role and purpose of this panel is different from the Board of Visitors, and the young people themselves are generally kept separate within the secure home. So the responsibility is quite different for both bodies and I think both bodies understand that.

In the actual invitation for people to be involved with regard to the Board of Visitors was quite specific that the appointee's role . . . It states:

There are two specific roles for which the Department is seeking suitably qualified, fair minded and independent individuals with a view to overseeing key aspects of the safety and appropriateness of arrangements for secure care. Underpinning this is the philosophical view that withdrawing the liberty of a child or young person should be seen as the last resort and not something that should be done lightly or easily.

The roles complement each other in the way that the care is quite different for children that are put there by the courts, and children that are put there for welfare reasons, which might be just in the short period before they appear in the court.

But certainly the responsibility within the secure home is quite different for children that have been placed there by the court, or for welfare grounds, and it is recognised by having these two areas of supervision.

Thank you, Vainstyr Loayreyder.

The Speaker: Member for Onchan, Mr Karran.

Mr Karran: Vainstyr Loayreyder, would the Member not agree that the issue of the Board of Visitors' ability to visit these children in the security unit is one of a number of shortcomings within her Department? Will she go back to the Department and express concern from this Hon. House that other sections of the community should have the ability of having people being inspected from lay bodies, for example, the elderly in nursing and residential homes, where, under the law, they only have to have two visits a year, one announced and one unannounced?

Does she feel that this issue that the Hon. Member for Doolish Twoaie, Douglas North, has raised, as far as the Board of Visitors is concerned, should be put into a package of measures, in order that her staff can be held accountable with some of the most vulnerable members of our society, not just in secure units, but in the likes of our nursing homes and our residential homes, which might also help to prevent other tragedies in the future, and in houses in the community?

The Speaker: Hon. Member for Peel, Mrs Hannan, to reply.

Mrs Hannan: Thank you, Vainstyr Loayreyder.

I think the Member was saying that he sees the Board of Visitors having a relevant place within the Secure Unit and I think he is suggesting that, maybe, we ought to extend this to other areas.

Of course, some of the responsibilities within private accommodation is down to the people that are running these homes and also the owners of these facilities. That is quite clearly what the law says.

What we are looking at is bringing our inspection under the one area, and that is under Social Services, as opposed to having one area for its inspection within the Health Service, and one area of inspection within Social Services, to try to make it more relevant to the changes that have taken place and also so that we can have more inspections.

Of course, in other areas it is possible for any concerns to be brought to the attention of either the Health Services

Mr Karran: You can't get in.

Mrs Hannan: - the Social Services and that can be investigated on inspections.

If we are going to extend the inspection or a board of visitors to these areas, we do need people in the community to do that and this is an area which the Division has been giving consideration to. But when we have the Board of Visitors and also the Criteria Review Panel, which does have some similar membership, I think we would be looking at quite a considerable number of people and it might be the same people throughout. But I know this is something that the Member has expressed concern about and it is something that the Department is looking at.

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

Mr Gill: Thank you, Mr Speaker. Can the Hon. Member

reassure the House that, when she describes the young people in care as having an allocated social worker, what provisions are made if that social worker is absent, for example, on long-term sick; and, sir, would the Board of Visitors or their counterparts have a role in ensuring this provision?

The Speaker: Hon. Member for Peel, Mrs Hannan, to reply.

Mrs Hannan: Well, the Criteria Review Panel can talk to young people and also the Board of Visitors, can, obviously; that is their role. Their role is to act as an independent ear for young people, should they wish to express views in any of the areas, but I think the responsibility for covering when a social worker is off is with the Department and is with the Social Services Division.

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

Mr Karran: Vainstyr Loayreyder, would the Member not agree that the Board of Visitors' idea is an excellent idea as far as children are concerned for these units?

Would she also not agree that this principle should be extended to other sections of the community - the likes of the elderly and other sections - in order that they can have the protection of people from outside, especially when the legislation is so short-sighted? And will she go back to the Department and raise the issue of trying to get this resolved, as the former Member for Health could not get this resolved when the Department was getting bullied by the proprietors of the likes of nursing homes. There should be a lay body, not just for kids with emotional troubles but there should be a lay body for the likes of nursing homes, residential homes - a lay body of governors - independent of the Department, to help the inspection team and to verify they are doing their job.

Also for houses in the community, would she be prepared to -

The Speaker: Hon. Member, I have difficulty tying it in with the main Question. In fact, your supplementary broadens out very much from the main Question. I leave it to the Hon. Member for Peel whether she wishes to respond to the point that you have asked.

Mrs Hannan: I thought I had responded, Vainstyr Loayreyder.

HOME AFFAIRS

'Lottery' Investigation by Cheshire Constabulary Cost to Taxpayer

7. The Hon. Member for Douglas North (Mr Houghton) to ask the Minister for Home Affairs:

(1) Has the investigation by the Cheshire Constabulary into the "lottery" been concluded; and, if so

(2) how much did that investigation cost the taxpayer?

The Speaker: Hon. Members, Question 7. I call on the Hon. Member for Douglas North, Mr Houghton. *(Interjection by Mr Karran)*

Mr Houghton: Thank you, Mr Speaker. I beg leave to ask the Question standing in my name, sir.

The Speaker: I call on the Hon. Member for Douglas East, Mr Braidwood, Minister for Home Affairs.

Mr Karran: I did everything.

Mrs Hannan: You didn't!

The Speaker: Hon. Members, please! Mr Karran! Member for Douglas East.

The Minister for Home Affairs (Mr Braidwood): Thank you, Mr Speaker.

The Cheshire Constabulary concluded the investigation relating to an unlawful lottery very speedily. The evidence was forwarded to the Attorney General's Chambers, who decided that it was not in the public interest (**Mr Houghton:** Hear, hear.) to prosecute any of the parties involved.

In the meantime, and having regard to the circumstances, the Chief Constable has also determined that no disciplinary action will be taken against any of the parties.

Mr Speaker, the cost of the investigation amounted to £1,309.06.

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

Mr Houghton: Thank you, Mr Speaker.

Can I ask the Minister what he thinks about this inquiry in the first place. Did he support it; did he support it going ahead?

And also, with respect to the costs of £1,309, does that include two officers of the Cheshire Constabulary visiting the Anthony Nolan Charity head office in Scotland? Did it include that? And what portion of the £1,309 was spent on that, sir?

The Speaker: Minister to reply.

The Minister: Thank you, Mr Speaker.

The Hon. Member is well aware that the Minister of Home Affairs cannot interfere in certain operational issues within the Isle of Man Constabulary.

In actual fact, I wrote to the Hon. Member on 4th September and, if I can just quote from an extract of the letter,

The Police Act 1993 through section 3(1)(c) and section 4(2)(a) and (3) quite clearly states that the Chief Constable shall be responsible for the discipline and disposition of the police force. The Department may give to the Chief Constable general directions in writing as to the exercise of this his function. However, the Act implicitly states that no direction may be given with respect to the discipline or disposition of the police force.

Therefore, Mr Speaker, it is regardless of my own personal views; it comes under the auspices of the Chief Constable.

In answer to the other part of the Question of two officers with the Anthony Nolan Trust, I do not know the answer to that, Mr Speaker, and I do not know if that cost is included in this amount, or, if it is, what amount it is.

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

Mr Houghton: Thank you, Mr Speaker.

With regard to the last part of the Hon. Minister's final answer, can he find out whether that was the case and can he report back to Members of this House in writing, please.

And also, since the matter has become an absolute lost cause, that he was advised about it in the first place, has he asked the Chief Constable - has he approached the Chief Constable - why this was pursued by him when it was well known by all that it was a lost cause and it simply was set out to damage morale in the Force?

The Speaker: Minister to reply.

The Minister: Mr Speaker, in answer to the first part, yes, of course, I will try and find those figures.

Mr Houghton: Thank you.

The Minister: On the second part, as I have said, it is entirely up to the Chief Constable.

The philosophies of the Chief Constable's policing are honesty, integrity and ethical practices –

Mr Houghton: And criminal damage.

The Minister: – and of course, the main thing, transparency and accountability and, when faced with allegations, even if it is a minor nature, the police have to respond. We cannot hide it under the carpet, Mr Speaker.

The Speaker: Before I call on the next Hon. Member, I must again caution the Hon. Member for Douglas North, Mr Houghton, on his words that he uses in the House. Can I remind him of Standing Order 49(4) and it states:

A Question shall contain no argument, inference, imputation, epithet or ironical expression.

I think the Hon. Member should please keep that in mind when asking some of the questions.

Hon. Member for Onchan, Mr Karran.

Mr Karran: Can the Shirveishagh son Cooishyn Sthie just clarify this investigation has concluded and there is no further action being taken. If so, fair enough; but, if there is further action to be taken, should we be raising it in this Hon. House?

The Speaker: Minister for Home Affairs to reply.

The Minister: Mr Speaker, the investigation has been concluded and no further action is to be taken.

Listening Device**Home Affairs Minister's October Speech**

8. The Hon. Member for Douglas North (Mr Houghton) to ask the Minister for Home Affairs:

(1) *Who prepared your speech regarding the statement in the October Tynwald relating to a listening device; and*

(2) *why did it contain an allegation which had not been investigated and therefore not properly verified?*

The Speaker: Question 8 and I call on the Hon. Member for Douglas North, Mr Houghton.

Mr Houghton: Thank you, Mr Speaker.

With regard to your warning about my speak in the Hon. House, you have my apologies, sir, but in the Standing Order that you read out, does that also include being truthful and accurate, sir?

Mr Speaker, I beg leave to ask the Question standing in my name.

The Speaker: Just before I call on the Minister, I would ask the Hon. Minister to read Standing Order 49 in its entirety.

Hon. Minister for Home Affairs to reply.

The Minister for Home Affairs (Mr Braidwood): Thank you, Mr Speaker.

Insofar as my speech to Tynwald is concerned, this was prepared by the Chief Executive of the Department of Home Affairs, in close consultation with the Chief Constable and the Chief Secretary.

The speech was largely drafted along the lines of an earlier statement made by the Chief Constable to every member of the Isle of Man Constabulary on Thursday 16th October.

Mr Speaker, I considered the draft speech and agreed it with the Attorney General before presenting it to Tynwald.

The allegations are being investigated and it is thoroughly proper in the circumstances that a police force independent of the Isle of Man Constabulary should undertake this task.

An allegation of the use of a covert listening device to listen in to conversations between persons suspected of criminal offences and their advocates is one of particular seriousness, which is why it was important that Tynwald be advised of it at an early stage.

I therefore believe it was proper, in the circumstances, that Tynwald was given notice of the nature of the allegation, albeit, at this time, it really is quite inappropriate for me to disclose matters uncovered by the investigation thus far.

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

Mr Houghton: Thank you, Mr Speaker. Taking cognisance of what the Hon. Minister has just said, that, indeed, this statement was drafted by the Chief Constable initially, did he not consider the really serious implications of releasing such uncorroborated innuendo before it was properly investigated in order to provide accurate answers?

The Speaker: Minister for Home Affairs to reply.

The Minister: Mr Speaker, I am in a no-win situation here. I would be damned if I had not made the statement and I am damned because I made the statement to Tynwald.

Mr Houghton: It is what you put in the statement.

The Minister: I had to make the statement to Hon. Members because, if the investigation had carried on, it would have come out into the public domain, Mr Speaker.

The Speaker: Hon. Member for Middle, Mr Quayle.

Mr Quayle: Thank you, Mr Speaker.

In relation to the allegations that have been made, and noting the front page of the *Isle of Man Examiner* of yesterday evening and today, would he consider the report in the *Isle of Man Examiner* to be a case of sensational or responsible journalism, when it refers to £500 million possible implications?

Mr Houghton: Hear, hear. It is ridiculous.

The Speaker: Minister for Home Affairs to reply.

The Minister: Mr Speaker, the investigation is ongoing, so, at this stage, it is only speculation and guess work.

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

Mr Houghton: Thank you, Mr Speaker. My final supplementary, sir:

Does the Minister not really agree with me that this rather unprofessional handling of this matter has been brought about by an over-zealous Chief Constable and can he confirm to me today, and this Hon. House, that he is happy and content with the conduct of his Chief Constable, sir?

The Speaker: Minister for Home Affairs to reply.

The Minister: Mr Speaker, I am not going to answer that question. I have also said that it would be totally inappropriate for me to give any more information at the present time.

I said in my statement, when I have more information I will come back to Hon. Members of this House.

OFFICE OF FAIR TRADING**Gas Service During Conversion
Maintenance of Standards**

9. The Hon. Member for Onchan (Mr Karran) to ask the Chairman of the Office of Fair Trading (Mr Houghton):

What steps has the Office of Fair Trading taken to maintain standards over service for gas consumers with the gas conversion programme?

The Speaker: Question 9. Hon. Member for Onchan, Mr Karran.

Mr Karran: Vainstyr Loayreyder, I beg to ask the

Question standing in my name.

The Speaker: I call on the Hon. Member for Douglas North, Mr Houghton, Chairman of the Office of Fair Trading.

The Chairman of the Office of Fair Trading (Mr Houghton): Thank you, Mr Speaker.

The functions of the Office of Fair Trading are laid down in the Consumer Protection Act 1991, which states:

The function of the Office is to protect, inform, advise, support and generally represent the interest of consumers as such and provide information and advice to persons on legislation for which it is responsible.

The Office is able to protect consumers by introducing legislation which may provide specific rights to consumers or power for the Office to provide a level of protection through its ability to conduct criminal investigations or request civil proceedings be taken.

The Office is currently responsible for enforcing 26 separate Acts of Tynwald and advising on many more consumer related statutes.

In other instances, the office may use media campaigns to inform consumers of their general rights, and in approximately 4,000 cases each year the Office provides consumers with advice on how to resolve their individual complaints.

Where the Office is able to identify trends and complaints, this information is passed back to suppliers to enable them to make improvements in their dealings with consumers.

In the case of the gas conversion programme, I have to say that we have used all the measures available to us to some effect and will continue to do so, as long as those complaints are being received.

It might help if I explain the scale of the problem which we are currently experiencing. The conversion programme has already covered more than 8,000 homes with approximately 13,000 appliances converted to run on natural gas. So far, the Office has received over 700 complaints or enquiries, of which about 200 have been resolved. Many of the complaints or enquiries related to minor matters, such as the temporary hobs or cookers not being to the satisfaction of the householder, and this situation was exacerbated by the lack of information coming from Manx Gas Limited.

The complaints resolved have, therefore, related to more serious matters, where households may have been left without heating or cooking facilities for any length of time and, again, the more vulnerable members of society, such as the elderly, disabled or families with young children, have been given priority.

There have undoubtedly been mistakes made by Manx Gas and its contractors, Prime Shades Contracts Limited, and these created an avalanche of complaints in the early stages of the conversion programme. Indeed, the Office of Fair Trading has had to set up its own call centre to handle all the complaints we have received and, of course, once the complaints have been received, we have to do something with those complaints, sir.

The Office established a liaison point with Manx Gas Limited so that complaints could be passed to the company, with those of high priority marked for urgent attention. Because of the lack of feedback from consumers and the

company in the early days of the programme, the Office has had to conduct ongoing telephone surveys of its complainants to ascertain if the company has indeed addressed the various complaints.

I would like to pay tribute to the staff of the Office of Fair Trading, who have worked late into the evening to contact consumers to ascertain if their particular complaint had been resolved, so that an update of the list of complaints can be issued to the company.

This work is likely to continue for some time and will probably continue after the conversion programme has been completed, but I am pleased to report a decrease in the numbers of complaints currently being received, which suggests that certain procedures being adopted by the company may be improving.

In tandem with our handling of the complaints, we have also been pressing Manx Gas Limited to make improvements in their systems and procedures for carrying out the conversion work and for providing customer service. I think it is fair to say that the company has been overwhelmed by the sheer volume of calls it has received and have, in many respects, been fire-fighting, instead of improving their systems, to help reduce the complaint numbers in the first place.

The Office has met with representatives of Manx Gas Limited on two occasions in recent weeks in an attempt to get undertakings from the company that they will provide certain levels of customer service when carrying out the conversion work. The Office has also notified the company that, if such undertakings are not forthcoming, then the Office will request the Attorney General to issue proceedings in the High Court under the Fair Trading Act 1996. This will effectively mean that the High Court seeks such undertakings and further breaches of that undertaking would lead to contempt of court, sir.

The powers available to the Office to seek assurance of this nature are very complex and time consuming. I must express my dissatisfaction with this legislation that does not permit us to take more effective and immediate action, and I shall certainly be looking to make amendments to this legislation at the earliest possible opportunity.

Nevertheless, we are continuing to progress our case under the existing legislation until such time as the company provide us with the necessary undertakings and can demonstrate real improvements in its customer service systems.

In short, we are doing all that we can to ensure that Manx Gas Limited is providing reasonable levels of customer service to all of its customers, but I would stress that the Office is not responsible for the actions of Manx Gas or its contractors and, unfortunately, has no specific powers to dictate to the company. However, it should act.

That it is more the role of a regulator: of course, that is what we further await, sir – the role of a regulator in order to control things in the future. I thank you, Mr Speaker.

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

Mr Karran: Vainstyr Loayreyder, I would like to thank the Office of Fair Trading; they have done an excellent job.

But would the Chairman of the Office of Fair Trading circulate to Hon. Members the sort of legislation that his Office of Fair Trading feels needs to be addressed, in order that Hon. Members in this Hon. House can be aware of

where the inaction is, as far as the Council of Ministers is concerned?

Would the Chairman also not agree that the issue seems to the man in the street that, once again, this Government is not prepared to hold to account big business, but would have done if it had been an ordinary man in the street (**Mr Houghton:** Hear, hear.) who had done anything a fraction as bad as what some of these people have had to endure by the irresponsible actions and poor management of the gas board?

The Speaker: Chairman of the Office of Fair Trading, Mr Houghton, to respond.

Mr Houghton: Thank you, Mr Speaker. I thank the Hon. Member for his question.

Just to explain that this, of course, to a certain extent, has already been gone through at the last sitting of the Hon. Court of Tynwald, sir, when an amended motion brought by your good self, sir, will now bring forward, hopefully at a rapid rate, the issue of a regulatory body, hopefully, of course, undertaken by the Office of Fair Trading. So a lot of that position has been covered, but I am quite willing to update the Hon. Member with a further briefing on this as to matters towards that direction, if he so wishes, sir.

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

Mr Karran: Vainstyr Loayreyder, would the Chairman not agree that, once again, we have got a motion here in the last sitting of Tynwald as far as this issue is concerned, but when this was raised, back as far as 1990, by this Hon. Member about the issue of a gas regulatory body, does he feel that, once again, we are having to react, instead of being proactive in this case?

The Speaker: Chairman to reply.

Mr Houghton: Mr Speaker, I fully concur with the Hon. Member's remarks. That matter should have taken place long since and, indeed, I am grateful for his raising this issue, but perhaps now we can move speedily in that direction to put matters right for the future, sir.

The Speaker: Hon. Member for Middle, Mr Quayle.

Mr Quayle: Thank you, Mr Speaker.

Appreciating the very hard work that the Office of Fair Trading Chairman has done and his input into working on behalf of everybody to do with the gas problem, has he anything that could reassure my constituents in Middle that the situation will have improved before the gas company and their officers step over the border and start in November, I understand, the conversion programme in Middle? And could I hope that he might encourage the gas company to make sure all problems are resolved before coming to Middle?

Mr Karran: Go ex-directory, Martin!

Mr Corkill: I will give you a couple of decent phone numbers to ring.

The Speaker: Chairman of the Office of Fair Trading to reply.

Mr Houghton: Thank you, Mr Speaker.

I thank the Hon. Member for Middle for that question, who also is a very valued member of the Office of Fair Trading assisting me. I can give him no assurance. All I can paint is a very black picture of something heading in your direction that you can do nothing about. Your constituents are going to be left freezing cold for weeks and months and the whole situation will continue to exacerbate well into the New Year. Look forward to going back, sir!

The Speaker: Hon. Members, that concludes the Questions on our Order Paper for oral answer.

We have two Questions for written answer which will be circulated to Hon. Members in due course.

Questions for Written Answer

TREASURY

UK Inland Revenue Unpaid Taxes Treasury Impact Assessment

1. The Hon. Member for Douglas North (Mr Henderson) to ask the Minister for the Treasury:

Given recent UK press reports indicating that the UK Inland Revenue Department were to seek to recoup alleged unpaid taxes in funds held in off-shore jurisdictions, which include the Isle of Man –

- (1) have the Treasury made an assessment of this;*
- (2) will there be any implications for the Island;*
- (3) will the Treasury work upon an impact assessment if (2) is the case, and advise Members accordingly; and*
- (4) if (2) is the case, work up a strategy to minimise any possible effects?*

Answer: The action being taken by the UK Inland Revenue is not new. Over the years there have been various initiatives undertaken to deter tax evasion by UK residents and to seek to recoup tax lost on funds held in offshore jurisdictions.

(1) It is very difficult, if not impossible, to identify funds held in the Isle of Man by persons liable to tax in the UK which are not being declared for UK tax purposes. This is because you first have to identify whether there is a UK tax liability and, secondly, that the tax liability is being evaded. For example, income on funds held by individuals who are resident for tax purposes in the UK but who are not domiciled in the UK will not have an exposure to UK tax unless actually remitted to the UK. The Treasury considers that the Isle of Man can draw some comfort from the sound regulatory system adopted in the Island that will have some deterrent effect for potential wrongdoers, including tax evaders. It should also be recognised that the Isle of Man has a longstanding exchange of information provision within the Isle of Man / UK Double Taxation Arrangement.

(2), (3) and (4) It follows that, unless the amount at risk can be identified, there can be no effective or meaningful assessment of the implications for the Island and no specific strategy.

This does not mean that the Treasury has ignored

potential impacts where an assessment is feasible. The Hon Member will recall the recent Tynwald paper on the potential impact of the EU Savings Directive that identified a possible reduction in gross domestic profit of 2.2% and £2.4m in tax receipts.

As to strategies, I believe the economic strategy and taxation strategy combined with the Treasury's active marketing policy are positive actions to help mitigate the effects of external threats.

TRANSPORT

Ramsey Swing Bridge Times of and Reasons for Closure

2. The Hon. Member for Ramsey (Mrs Craine) to ask the Minister for Transport:

- (1) *What dates has Ramsey Swing Bridge been closed to vehicular traffic in the first 10 months of 2003; and*
(2) *will you give the reason for those closures?*

Answer: (1) The bridge has been closed on the following occasions this year, according to our records:

- (a) 5th to 9th June Inclusive
(b) 12th July to 20th August inclusive
(c) 8th October to present date.

(2) The Ramsey Swing Bridge is over 110 years old and, despite the fact that it is subject to quarterly servicing and an annual survey, it is still likely to suffer breakdown. Parts are difficult, if not impossible, to obtain 'off the shelf' and may have to be manufactured specially, which takes time. The causes of the above closures were:

- (a) Gearing problem, which was repaired 'in house' by Department staff with some help by an Island contractor.
(b) A large threaded shaft sheared and the repair involved the manufacture of a new shaft and retaining nut, which had to be carried out in the UK.
(c) The wedge motor burnt out and we are currently awaiting delivery of a replacement motor from the UK, which is expected by the end of October.

Orders of the Day

Race Relations Bill

Second Reading – Debate commenced

The Speaker: Hon. Members, we now move on to item 3 on the Order Paper, Bills for Second Reading.

I call on the Hon. Member for Onchan, Mr Corkill: the Race Relations Bill.

Mr Corkill: Thank you, Mr Speaker.

It has been established for a long time that provision would be made in the legislative programme for the accommodation of a Race Relations Bill, which would, in turn, demonstrate that the Isle of Man meets the requirements of the International Convention on Racial

Discrimination.

This requires the pursuit of policies to eliminate racial discrimination and to provide redress for individuals who have suffered such discrimination. The Isle of Man Government therefore has a responsibility to ensure the Island complies with its international obligations.

Furthermore, the Isle of Man's reputation in the international community could be damaged for this seeming lack of social legislation.

Consequently the issue of racial discrimination was referred to the Social Issues Committee by the Council of Ministers back in 1996, when Council agreed that the Racial Discrimination Bill should be included in the 1998 legislative programme.

Let me say, Mr Speaker, that the Race Relations Bill is somewhat different from the United Kingdom legislation, in that it is a much smaller Bill, being more concise and imposing general obligations relating to racial discrimination, whereas the United Kingdom legislation deals with discrimination in particular circumstances.

It is, perhaps, worth mentioning that the broad interpretation of the term 'discrimination' in the convention exists to cover less obvious minority groups, for example, the Irish or Jewish nationalities, who may also suffer racial prejudice and discrimination, as well as the more obvious nationalities.

I would also add that, whilst it may be perceived that there is little problem on the Island at this time, other conventions have been rigorously applied on the Island, even when it has been deemed that there is no problem, for instance, at present.

After full consideration of the Race Relations Bill by the Social Issues Committee, the Bill was subjected to a wide and open consultation process that included initially all Government agencies and the police. At a later date the Bill entered the stage of public consultation, with advertisements being placed in the local press and Manx Radio running several interviews about the consultation process.

There were also direct approaches made to Hon. Members, local authorities, the First and Second Deemsters, the Chamber of Commerce and, indeed, the Isle of Man Trades Council. They were all invited to make their comments on the draft Bill.

Mr Speaker, I would add, at this point, that 11 responses were received as a result of this consultation process, 10 of which supported the legislation, but with amendments to the provisions as drafted. However, one was totally opposed to race relations legislation.

Mr Speaker, I believe it would be useful at this point to highlight the main areas that the Bill covers.

The Race Relations Bill quite clearly sets out that discriminatory treatment on the grounds of colour, race, nationality or ethnic or national origin is unlawful, and this applies not only to private individuals, but also to action by public authorities.

The Bill imposes a duty on all public authorities to make appropriate arrangements with a view to securing that their various functions are carried out with due regard and to eliminate unlawful racial discrimination, and also to promote the equality of opportunity and good relations between persons of different racial groups.

The Bill also sets out to eliminate any bullying tactics by those who do discriminate, and it would become unlawful

for certain types of victimisation on the grounds of colour, race, nationality or ethnic or national origins and for these to be treated as discrimination. This class of discrimination arises where there is victimisation of a person, because that person has, for example, exerted their right under the Act.

It would also be unlawful to instruct another person to discriminate and this will particularly apply in respect of a person who has authority over or influence over another person. Under this Bill, such persons as this must not put pressure on another person to discriminate and this applies where a person induces or attempts to induce another person to do an act of unlawful discrimination.

Mr Speaker, another area which must not be forgotten is that discriminatory adverts are unlawful under this legislation. It would be unlawful for a person to publish or cause publication of an advertisement which indicates or might reasonably be taken to indicate an intention to do an act of discrimination.

It is accepted, however, that there may be cases where it will be difficult for a publisher of advertisements to know whether or not a particular advertisement is unlawful and there are provisions within this Bill to cover this possibility.

It must be emphasised that an employer is liable for any action, with or without his knowledge or approval, by one of his employees in the course of his employment.

A principal is liable for any act done without his authority, whether expressed or implied and whether given before or after the act by his agent. In these situations, the agent or employee is treated as having aided his principal or employer. In other words, the principal and the agent and the employer and the employee are all liable for the unlawful act.

However, an employer who would otherwise be liable for an unlawful act by one of his employees, can use a defence if he can prove steps had been taken as were reasonably practicable to prevent the employee from committing the unlawful act in question or unlawful acts of that kind.

However, there are special rules with respect to the person to be treated as the employer of the police constables and this applies rules set out in the Police Act 1993.

Mr Speaker, it is unlawful for a person to knowingly aid or assist someone else in an unlawful act and this would include acts of an unlawful discrimination or victimisation and this person is treated as himself having committed the act. Both the aider and the person aided are liable for that act of discrimination.

However, a person is not treated as having aided another if he reasonably relied on a statement by the other person that a provision of the Bill prevented the conduct in question from being unlawful. So it must be remembered that the Bill does have an effect on contracts which contain discriminatory clauses. In general, a term in a contract, the inclusion of which constitutes a contravention of the Act, or which is in furtherance of or provides for such contravention, is void and unenforceable.

However, where the victim of the discrimination is party to the contract, the term is not void, but is unenforceable against him.

The Bill goes on to provide that any person with a concern in a contract which contains such a discriminatory term - that is, one that is not void but is unenforceable - may seek an order from the High Court revising the contract, so as to remove or modify the terms. The Bill does not

exclude the constitution of charities which may contain an object which is discriminatory.

Mr Speaker, where a charitable instrument contains a provision for conferring benefit on members of a particular racial group, defined otherwise than by reference to colour, the Bill does not render unlawful anything done to give effect to that provision.

However, if on the other hand, a charitable instrument contains a provision for conferring benefit on a class of persons defined by reference to colour, the provision has effect from the commencement of the proposed Act, as though it provided for conferring the benefits in question on the class of person which results if the colour restriction is disregarded, or, if the original class is defined by reference to colour only, on persons generally.

Mr Speaker, it must be emphasised, I think, that the Bill provides that only remedies for acts that are unlawful under the Bill are those provided by the Bill. This ensures that a person or body does not face double liability under this Bill and other provisions.

It would be timely, I think, now to make reference to the claims that could be made under this Bill.

All complaints relating to discrimination, which is made unlawful under this Bill, are dealt with by civil proceedings in the High Court. This applies also to acts treated as being unlawful under the Bill by the provisions for aiding unlawful acts and the liability of employers and principals. There are, of course, time limits for these proceedings and I will make reference to that later.

I would add, Mr Speaker, that legal aid is available to assist persons who consider they may have been discriminated against. Where the High Court finds in favour of the complainant, it will usually make an injunction or, indeed, order damages.

Awarded damages may consist of damages for any expenses or loss sustained by the claimant for which it is possible to make substantial precise calculations, for example, loss of earnings, and also damages for any loss which cannot be precisely calculated, such as for injured feelings.

There is, of course, a right of appeal to the staff of Government Division of the High Court, that is, the Appeal Division, against a decision of the High Court.

The Attorney General will be able to apply to the High Court for the issue of non-discrimination orders. The definition of a 'non-discrimination order' is an order of the High Court that requires a person not to carry out a discriminatory act, to advise the Attorney General of changes brought about to comply with the order and to furnish other information that is reasonably required by the Attorney General.

The established procedures to be undertaken before applications are made to the High Court include notification of the person to whom the complaint relates and consideration of any comments made by that person.

If a non-discrimination order is made, the Attorney General can report a failure to comply to the High Court after the expiry of six weeks from the making of the order. The High Court has powers to deal with such cases as contempt of court, if necessary. The Attorney General does have a number of law enforcement powers under other legislation and I would assure Hon. Members that this Bill does not affect or limit those other powers.

With regard to enforcement, those areas dealing with

discriminatory advertisements, instructing others to discriminate or putting pressures on others to discriminate, can only be enforced by the Attorney General. The Attorney General can enforce these areas by applying to the High Court for an order, declaring the relevant act unlawful and an order or an injunction restraining repetition of the unlawful act.

Mr Speaker, there are set time limits for the bringing of procedures under this Bill. For civil claims under this Bill, an individual may complain to the High Court within six months from the date of the act complained of. The same period applies in respect of applications under discriminatory advertisements, instructing others to discriminate, and putting pressure on others to discriminate for a decision that a contravention of the Act occurred.

In respect of an application for an injunction under section 14(3), the time limit is five years. However, the court has discretion to consider a complaint out of time, if, in all the circumstances of the case, justice requires.

Subsection 4 contains rules for calculating the time limit in special cases.

The Bill will enable the Department of Home Affairs to issue codes of practice containing practical guidance for the implementation of the Act. The elimination of discrimination and/or the promotion of equal opportunity between persons of different racial groups.

Before issuing such a code, the Department must consult with interested parties and shall lay that code before Tynwald. A failure by a person to observe the provision of such code does not itself render them liable to legal proceedings.

In any proceedings under the Bill, a code of practice issued by the Department is admissible in evidence and if the court considers a provision of the code to be relevant to any question arising in the proceedings, it will take that provision into account in determining the question.

Mr Speaker, where offences are committed, with the consent or connivance of, or are attributable to the neglect of officers or those involved in management, then the officer, as well as the body, can be prosecuted. This applies in respect of companies of all types, including limited liability companies.

It is important to define what we mean by 'racial grounds' and 'racial group' for the purposes of this Bill. 'Racial grounds' means colour, race, nationality, including citizenship or ethnic or national origins and a 'racial group' is one defined by reference to colour, race, nationality, including citizenship, ethnic or national origins.

There are specified acts that are not rendered unlawful by the Bill and these are listed in the schedule, Mr Speaker.

There will be a training cost involved to enable Government bodies to comply with the proposed legislation. It is envisaged that this cost will be approximately £104,000. The Bill is not expected to have any other immediate effect on the expenditure and income of Government.

The effective operation of the Bill relies to some extent upon functions that are conferred upon the Attorney General. There may, of course, ultimately be resource implications for the Attorney General's Chambers, but this will depend on the frequency of use of those functions, and, at the present time, it is not really possible to assess the extent of those implications.

It should be said, at this time, that the Race Relations Bill was intended to run in parallel with the Employment

Discrimination Bill. However, because of the complexity of that Bill and the fact that it will not be introduced into the branches until the 2005-06 legislative programme, the Council of Ministers agreed that the Race Relations Bill should be progressed at this time as a separate issue.

There have also been views that there should be a ceiling figure in the amount claimed as compensation under this Bill, similar to that in the current employment discrimination legislation. I have been advised that the possible circumstances in which there can be a claim under the proposed Bill are almost limitless, unlike, in employment cases, where the breaches are likely to be more limited in their ambit. It would be a very unusual step to impose a limit on the amount of damages that the High Court could award, although the situation is different with a tribunal.

I wish to emphasise, and I hope I cannot emphasise enough, the importance of this legislation: it will bring the Isle of Man into line with the International Convention on Racial Discrimination. The Bill is very clear and straightforward in what it aims to achieve. I would emphasise once again that employment discrimination is not included in this Bill and will be a matter of a separate Bill, which will come to the Branches at another time.

Mr Speaker, I would ask Hon. Members to support this Bill as a sensible, modern part of our social legislation framework. I beg to move sir.

The Speaker: Hon. Member for Garff.

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

The Speaker: Hon. Member for Peel, Mrs Hannan.

Mrs Hannan: Thank you, Vainstyr Loayreyder.

I welcome this legislation. However, there are just one or two points that I would like to raise with the mover of this legislation.

I take it that, by the exemptions, that the use of the expression 'Manx worker' or an expression such as that, will be lawful under the Act, because it has a legislative framework to it.

Also, could I ask the mover, whether, under this legislation, there is a relationship of the terms to the Manx, or Manx in any of these areas; would that be against this particular legislation? I think it is important that that issue is spelt out, because it could be that, while we introduce legislation to improve race relations, it would cause problems for other minorities in the community, and, therefore, I would just like clarification as to whether that is protected and whether employers can ask for Manx workers, or Manx registered workers or Manx under the work permit legislation.

With regard to the assistance that the mover spoke about, £104,000 is being recognised that would be required for training Government bodies to comply with the proposed legislation. Could I ask the Chief Minister and mover of this legislation: will any assistance be made available to the public to train in this area?

Somebody, I would have thought, needs to offer advice under this legislation, but if it is going to cost Government £104,000 to train, when, under this legislation, there is the schedule with makes certain acts not unlawful under this Act, I wonder how the public are to be assisted in the use of

this legislation and the coming to terms with the change that this could possibly bring.

If it is going to bring a change within Government, where we need £104,000 for training, I wonder how other people in the community are going to cope with this legislation. Obviously, we have got to find £104,000 to educate - not only us, but also the workforce - but then it must be difficult in relation to this legislation, which does impact on employers and other people within the community: they may have difficulty with it. We are talking about civil action and legal aid, and those sort of issues, but I wonder how it is going to be brought into the public arena, whereby the public are going to understand and be able to relate to the full responsibilities under this legislation.

I wonder if the Chief Minister - he said that this is a shorter Bill than the United Kingdom legislation, and, obviously, it does not relate to issues which are the responsibility of the UK when it comes to immigration and those sort of issues - could spell out some of the differences that do not occur in our legislation and the reasons why they have not been included.

Thank you, Vainstyr Loayreyder.

**Welcome to the Hon. Bill Drabble
Member of the St Helena Legislature**

The Speaker: Hon. Members, just before I call on the next Hon. Member to speak, could I just welcome a distinguished visitor to the Island, the Hon. Bill Drabble, Member of the St Helena Legislature, who is joining us this morning and is on the Island in connection with the Department of Education; you are most welcome sir.

We have a strong connection in the Isle of Man with your country in that Mark Wilks, a Manxman, was the Governor of St Helena in 1813-16, during the period when Napoleon was exiled there, and, of course, also in 1823, during that period, he was also Speaker of this Hon. House. So welcome to our temporary home, you are most welcome here, and I hope you enjoy your visit.

Several Members: Hear, hear.

Mr Drabble: I thank you, Mr Speaker, Hon. Members. Also, there is another connection: one of your representatives, Mr North, was a regular visitor as purser on the Union Castle Line (*Laughter*). He paid many visits.

The Speaker: So that is where he was. (*Laughter*) But, unfortunately, he never got exiled there, sir. (*Laughter*) Right, Hon. Members - as I say, welcome.

**Race Relations Bill
Debate continued
Second Reading approved**

The Speaker: Hon. Member for Rushen, Mr Gawne.

Mr Gawne: Gura mie eu, Vainstyr Loayreyder.

I, too, welcome the publication of this Bill. I think it is timely and many of its provisions will be helpful.

There are a few issues which I am a little bit concerned about, which I am hoping that the Chief Minister will be able to clarify. In the introductory text of the Bill, we are told that it is about,

‘ . . . public authorities exercising functions, in a manner that promotes good race relations, to make discrimination on grounds of colour, race, nationality or ethnic or national origin unlawful in the Isle of Man.’

I am just a bit concerned to know whether ‘nationality’ or ‘ethnic or national origin’ actually covers Manx-born people. Are we considered to be a separate nationality or ethnic group, or of separate national origin? I think that is important to understand where we stand on that.

Certain Members will be aware of my passionate interest in Manx language and cultural matters, and, again, there are concerns which I have, which have been brought home to me by the situation in Scotland and Wales, whereby - particularly in Scotland - last year the Scottish Commission for Racial Equality actually attacked the policy of Scottish Local Education Authorities in teaching Scottish Gaelic, but not teaching Urdu or Hindi, or whatever.

The issue was eventually resolved that the protection of native languages in their native countries does not constitute a breach of race relations, but I think these sorts of issues are important.

Again, it could be argued that, for many years, the Manx people have been discriminated against in the education system, in that we have not had a Manx curriculum which addresses Manx history, Manx culture. It is excellent that the Department of Education is addressing this and I welcome the moves to introduce Manx history and culture into the education system, but what concerns me again is that we may, under this legislation, be introducing a potential wedge by which other ethnic groups could claim for the inclusion of their particular cultures and histories to be taught in the Manx education system.

Again, I think this would undermine the work that has been going on in recent years to actually cover Manx language, history and cultural issues, so I think that is important that we have an assurance. I do appreciate that the Schedule exempts education in the Bill, but an assurance that that is actually the case would be helpful.

There is also, again, the issue, the commonly expressed view of certain Manx people, that Manx people are discriminated against in terms of getting top jobs, whether there is any truth or not in that, I am not so sure, but I would also like to be reassured by the Chief Minister, that if there was evidence that this was the case - that Manx people were discriminated against, purely because they are Manx, and that was why they were not given top jobs - such issues would be covered in the provisions of the Bill. Gura mie eu.

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

Mr Quine: Thank you, Mr Speaker.

I feel reasonably well placed to say something about the issue of racial harmony, but what I really wanted to speak on was to point out in a way the inevitable limitations of what we may be trying to do here.

I think it is difficult to come to terms fully with just what you are trying to deal with, because it depends whether

you are in on the inside looking out, or the outside looking in. I spent over 30 years in a multi-racial society and, indeed, as a minority group, although perhaps not necessarily in the position of those that we maybe wish to protect the most today, but certainly as a minority group in a multi-racial society and I think if you live in a society of that nature, perhaps we see things slightly different than what we do if we come at it from a more academic point of view of us trying to prescribe for somebody else.

I accept, and the Chief Minister I think has accepted, too, that it is a very complex problem, it is not one that we are going to be able to wave a magic wand and come up with the solution for. I suppose, at this point in time, we should be happy with the thought, as the Chief Minister has said, that we do not have a discernible problem to deal with and that is a decided plus for us. Whatever we do - and I will come to this a little later - we must not do something which contributes to creating and making an issue of it, because that is counterproductive as well.

So I am at one with the Minister when he says that we have a very real and we have a very serious problem and I think there is, undoubtedly, an issue of us playing our part. There is an international perspective to this, there is a convention background to this. But, at the end of the day, the issue is not one of racial discrimination per se; it is one of inadequacies in certain individuals, based on bias, based on bigotry, based on ignorance, based on a sense of insecurity and, really, until we can look at the problem and try to do something to make those issues of less proportion, I do not think we will make great headway.

Notwithstanding our abhorrence - and I am sure that abhorrence of racial discrimination is strong within this Hon. House - I think we have to be careful, when we are party in legislation, to ask ourselves whether what we are doing is going to help or hinder the cause.

The first point I was going to ask the Chief Minister about is this: ideally we should be able to deal with the problems that are manifestations of racial discrimination through more general legislation. The Chief Minister did say that the Attorney General has available to him enforcement powers of a more general nature which can and, no doubt, would be used, and I would like to think that, whatever we are going to put in place as a consequence of, hopefully - almost assuredly - support here today, there is no need for that to substitute for more general legislation; it is much better if we can minimise the perspective of the problem and deal with it through general legislation, than to have dedicated legislation.

There is a real danger, in attempting to deal with this matter through dedicated legislation - accepting that our approach is more general and less embracing than the UK, and I am all for that, I think that is a sensible approach - there is a danger that, when you take this approach to deal with a subject such as this, with its sensitivities, that you are going to set racial groups apart and you are going to place them in the spotlight and, given certain circumstances, that, in turn, can give rise to a perspective from other people that they have preferential treatment, that it will certainly create in the minds of bigots and those who are that way minded envy, as they see it, because they are getting this preferential treatment and that can be counterproductive.

So I think we need to reassure ourselves that we are not doing that with whatever we are going to put in place. There may be a timing issue here because it is one thing for us to

put in place legislation, but, perhaps, it does not need to become immediately active. I do not know, it is a matter for us to debate, a matter for us to decide, but certainly the thought that this Hon. House, this Hon. Parliament, through its natural desire to do what it can to deal with this problem, through our zealousness to deal with it that we do not hinder the process, rather than help the process, that we do not substitute, in seeking to deal with bigotry, and bring about a situation where we create envy which can be just as bad and just as wicked.

At the end of the day it is going to come down to 'education, education, education' - if we steal a phrase from somebody else - and I am sure, in our schools and in our different institutions, we are not going to neglect that.

It is going to come down at the end of the day to education in the home, in the school, in the workplace, in our social pursuits; it is going to come down to getting to know and getting to understand other cultures. It is going to come down to tolerance for other culture and a willingness, in other peoples' parts, to accept that there are differences and some of those difference are to be welcomed, not to be shunned.

I think it is also going to, at the end of the day, come down to a requirement on our part to look inwardly at social policies, because, no matter what we may do here through trying to prescribe against social discrimination, if we have adequate social policies, which can range from matters of residential control, housing, a whole list of these things . . . If those social policies are inadequate, then we are going to create tension and problems which will be, in certain circumstances, made manifest through antagonism towards different racial groups.

I do feel that, on balance, we have reached a situation where we should be seen to be putting legislation of this nature in place; I have convinced myself that that is appropriate. I would like to think that that legislation is going to be as general as possible and it is not going to cover areas which can be dealt with through other legislation, which may not have the title of 'racial discrimination' but can deal with the problems in a way that is just as effective.

I would like also to think that we are going to take a view of this, where this is, perhaps, just an opportunity for us to refocus on this issue and that, carrying on from this, going off at a tangent from this - and the Chief Minister has referred to one aspect of what I have got in mind, which is, of course, discrimination in employment - there are other areas where we need to cast our mind in terms of the adequacy of social policies.

So, yes, we are here today to look at this piece of legislation and determine whether or not we give it our blessing and approve it in principle. I have no difficulty with that, but I do hope I have used at least a few minutes of our time to put down a marker on some of these other issues and to make us, perhaps, a little more discerning about what we eventually put in place.

Thank you, Mr Speaker.

The Speaker: Hon. Member for Onchan, Mr Corkill, Chief Minister to reply.

Mr Corkill: Mr Speaker, I would like to thank everybody who has contributed to this first airing, as it were, of the Race Relations Bill. As we know, at first reading stage there is no debate; this is the first time, in public,

Members have had the opportunity to express themselves and I would thank the Hon. Members for their questions and their considered views.

If I can take them in chronological sequence, the Member for Peel, Mrs Hannan, raised this issue of Manx worker status and how that fits in relation to this new piece of proposed legislation. We come across that expression in the employment legislation, so I think other speakers and my introductory comments, I hope do give comfort to the Hon. Member for Peel, that the employment side of life - the discriminatory processes that can occur in employment - are currently dealt with by employment legislation and there is more on the way.

It is a very complicated area, and can I say that, as a single point of principle, I have always had the belief that we would be best placed, if we could have a single piece of legislation which dealt with all discrimination issues, whether it be social, workplace, cultural, whatever. The practicalities of that - I have to confess and to say that I am disappointed from a personal point of view - have defeated us; the drafting of such legislation is so difficult that it has defeated us, I have to say.

So we are, by necessity, coming to this Hon. House with elements, which is why, in my opening comments I made special reference to the employment anti-discrimination legislation, which will be forthcoming and, can I say this, Government is very committed to making sure that that progresses as quickly as is feasible.

This is about protecting minorities, it is the decent thing in a modern society to attempt to do.

The Hon. Member for Peel also made reference to costs for Government and then also 'what does that mean in the private sector and for individuals?' We have a very deliberate, a very strong scrutiny of Bills coming to this House at the moment. Every Bill that comes through the Council of Ministers is scrutinised for cost, like it has never been scrutinised before, and that is our best figure that we can produce at the moment. Really, what we are trying to do - or what we as a public sector ought to be trying to do - is designing out, in the public service, any elements of discriminatory practice that might be there.

We are not aware that there is a great deal and, hopefully, there is none; certainly I, as Chief Minister, do not get contacted about such events and perhaps Hon. Members do not - hopefully not. But we do have to have a system of training in place, we have to make sure that the way our officers at the front counter deal with members of the public, that they do not inadvertently - by accident, because of ignorance or because of insensitivity, whatever you call it - start saying the wrong thing, and so it is all about training. I think it is incumbent upon Government to make sure that the public sector leads, in such a structure being in place.

Probably 99.999 per cent of what is done at the moment complies with what such training will be talking about, but it will be highlighting to officers of the public service, how they have to go about their day-to-day business with members of the public.

With regard to the private sector, to individuals, I cannot say what their costs will be, but, hopefully, they will be able to pick up on Government's example, on how to do things properly and we will be able to feed off Government's example at not too great a cost.

Obviously, UK companies, who are used to having this type of legislation in the UK, will probably already have a

culture within their organisations to deal with such issues, which probably already overflow into our Island. But, for smaller concerns and for perhaps one-man businesses - one-person businesses I should say; I do not want to be discriminatory in another sense! - they also will have to look at how to, perhaps, change the way they deal with matters on a day-to-day basis.

I was thankful for the Hon. Member for Rushen, Mr Gawne; I think he said it was timely and welcomed the Bill and I thank him for that. I think that the assurances that he was seeking are there in the Bill and I would certainly support him in that. I believe that cultural traditions, particularly in this case, Manx cultural traditions and way of life, are protected by this legislation and are recognised in the Schedules which are very important at the back of this Bill.

I was interested in his issue about Scots Gaelic and Urdu, because my understanding is that, in Scotland, there are more people speaking Urdu than speak Scottish Gaelic, so that really is a sign of a changing culture; you can then, of course, extrapolate that logically to say, 'Well, Urdu needs to be taught, because . . .' et cetera, et cetera.

But I think the issue that Mr Quine raised about making sure that there is understanding of cultures, that there is tolerance and that we do not set groups apart - using the words of the Member for Ayre - I think we do need to be careful in that respect so that we do not set up barriers that do not exist there at the moment by drawing attention. So the education aspect, I believe, is dealt with and covered in the Bill.

He did say that there had been discrimination in the educational curriculum on the Island against Manx scenarios, for some time, but then went on to acknowledge the improvements and so I thank him for that acknowledgement.

Then there was the issue of top jobs not going to local people, and that is always a sensitive issue, but we are into employment legislation again, and, as I have said, there is other legislation dealing with employment scenarios. Can I say, to reassure the Hon. Member, that I am very supportive of the work permit legislation, and the requirements that are therein.

I would like to thank the Hon. Member for Ayre, Mr Quine, for his experience and his point of view and for pointing out the limitations of this Bill, because this Bill is here because it is the right thing to do, it is expected of us internationally. But I am not putting it forward as a solution to anything in reality and we must be careful, I think, not to take too much of an academic point of view. So, in that respect, I fully concur with everything he said, but, can I tell you, that there is no place in a modern society - as I hope the Isle of Man is - for the raw bigotry, the raw racial prejudice, which happens from time to time in other places. We must make sure that we have legislation to deal with that, that the courts are able to have sufficient recourse to penalties to deal with people who perhaps deliberately engage in that type of bigotry.

There is bigotry by ignorance, by lack of education - and the Hon. Member said: 'Education, education, education' - but there is also deliberate, calculating bigotry, which has no place in such a community as the Isle of Man.

The Hon. Member talked of wider social issues, including residency control, and, of course, we do acknowledge - I hope - that, for immigration purposes, the

way the legislation is, as at present, we are inside the United Kingdom legislation net, there is a common travel area, which includes the British Islands, UK, Channel Islands, the Isle of Man, and indeed, the Republic of Ireland, and many, many people, now in relation to the EU, of course, have the right to circulate in this particular area. They do not have the right to work in our area, and we need to jealously guard that type of social legislation, in my view, so that we have those sorts of controls for our own purposes – not for the purposes of discrimination in any way whatsoever, but for the purposes of controlling our economy and the well-being of all of our people on the Island.

Of course, in the terms of 'Isle of Man workers', as defined by the Act, that does not just include Manx people, it includes many other people these days, so it is about protecting our community as it is today, and so it is very important, I think, that we do recognise that there are certain constraints with all of our legislation, bearing in mind that a great deal of UK immigration law is applied and we are a part of that legislation.

And can I say that there are particular areas within that legislation, in relation to the powers of His Excellency the Governor, that need further scrutiny and are being looked at in relation to who makes the decisions.

The Hon. Member for Ayre said that the time is about right, he agrees with the principle, but there are other areas of social policies that need to be carefully looked at. I certainly do hope that this Bill is a gentle step forward; it is certainly not designed to draw any lines in the sand to separate groups in any way whatsoever, and I think our legislation that is proposed, to some extent, is better than the UK legislation, where the UK Act defines a whole list of specific situations – as they have had to deal with specific situations, their legislation has grown up around that. Ours is more general, it is talking about designing out any desire for co-ordinated bigotry, to educate ourselves into the years ahead, so that we do not have that bigotry on a non-educated basis. And that will take time, and it is not something that a piece of legislation will do; that is something that life's experiences will bring into account for various people in our community.

So I hope Hon. Members will accept this piece of social legislation as a good step forward, that we are internationally obligated to have such legislation on our books, and, can I say that some years ago a draft Bill which looked very different from this, which was very much based on the UK Bill, appeared on my desk when I was in the Home Affairs Department and I was Minister there, and I sent it back to the Attorney General's Chambers, saying: 'Not for us, this is not required at this time', and it really did, I believe, harbour all the dangers that the Hon. Member for Ayre has highlighted.

This is more general, it is several years late as a result of that re-think, but, in this type of area, there is no real rush to introduce this type of legislation; it progresses with consultation, and I believe this Bill is something that our community will live with and accept as a proper piece of modern legislation.

I beg to move, sir.

The Speaker: Hon. Members, the Motion before the House is that the Race Relations Bill 2003 be now read a second time. All those in favour say aye; against, no. The ayes have it. The ayes have it.

Insurance (Amendment) Bill **Second Reading Approved**

The Speaker: Hon. Members, Item 2, Insurance (Amendment) Bill. Hon. Member for Ramsey, Mr Bell.

Mr Bell: Mr Speaker, the Insurance (Amendment) Bill 2003 is promoted by the Treasury on behalf of the Insurance and Pensions Authority.

The Bill represents an important and timely updating of the Island's insurance regulatory framework and follows a review of the Insurance Act 1986 by the Insurance and Pensions Authority (IPA). It updates the provisions of that Act and also the Insurance Intermediaries General Business Act 1996. It also makes several amendments to the Retirement Benefits Schemes Act 2000, in the light of a number of issues which have arisen since the introduction of that legislation.

The legislation takes account of the core principles of the International Association of Insurance Supervisors, which formed a central part of the assessment of the Island's regulatory framework by the International Monetary Fund (IMF) in October of last year. It also takes account of the previous reviews to which the Isle of Man has been subject to in recent years, such as Edwards and the Financial Action Taskforce.

It includes provisions in respect of the responsibilities and supervisory powers of the Insurance Supervisor and the IPA, including, for the first time in Isle of Man legislation, a statement of regulatory objectives, and also introduces provisions abolishing the requirement for insurable interest to be present in contracts of life assurance written on the Island.

Part 1 of the Bill, including Schedule 1, amends the functions of the Insurance Supervisor and the IPA. It includes a statement of regulatory objectives for the Insurance and Pensions Authority and the Insurance Supervisor.

This is the first time that such a statement of objectives has been included for a regulator in any financial services legislation in the Island. Its inclusion helps to demonstrate the intention of the Island to provide a modern and transparent regulatory framework, the objectives of which can be clearly understood by those persons to whom the legislation applies.

These amendments provide much more clarity for the purpose for the persons subject to the legislation, as to the scope of the Insurance Supervisor and the IPA powers, and the objectives for which they are to be exercised.

They also set out much more clearly the distribution of powers under the Act between the Supervisor and the Board of the IPA. The effect of this is that the executive powers of the Act are exercised by the Supervisor, but that the Board of the IPA has a clear responsibility to oversee the actions of that Supervisor in exercising those powers. This will ensure that the Supervisor is always available to take supervisory action in a timely manner but that there is always proper oversight of the way in which he exercises his powers.

In line with other more recent financial services legislation, the Bill also transfers the power to make regulations under the Act from the Treasury to the IPA, although the Authority must consult with the Treasury before making such regulations.

Part 2 of the Bill abolishes the requirement for an insurable interest to be present in contracts of life assurance written on the Isle of Man. The concept of insurable interest derives from the Life Assurance Act 1774. It restricts the ability of persons to take out life assurance on the lives of other to quite a narrow range of people, for example, only husbands and wives.

The original purpose of the Act was to prevent unrelated persons, in effect, gambolling on the life expectancy of well-known people, for example royalty or notorious criminals, and thereby protect insurance companies against fraudulent claims.

However, the nature of life assurance business has changed fundamentally since that time and it is no longer considered necessary, or appropriate, for its restrictions to apply. Today many life assurance contracts are taken out as a form of investment, rather than solely to provide cover in the event of death.

The decision to adopt these provisions was taken after extensive consultation with the Island's life assurance industry, which is very supportive of the proposed change. The change will help demonstrate that the Isle of Man is one of the most up-to-date and forward-thinking jurisdictions in this area.

Part 3 enhances and clarifies the powers of the Insurance Supervisor in respect of insurance business carried out on the Island. Since the Insurance Act 1986 was passed, there have been considerable developments in supervision internationally, and the authorities and the Insurance Supervisor's powers are now rather limited, in comparison to the financial services legislation here and elsewhere.

The Bill, therefore, provides a significant up-dating of the powers in order to reflect modern standards and practices. In particular, it updates the provisions, which, in respect of the appointment of directors, controllers and senior managers of insurers, expands the powers to obtain information, and of inspection and investigation under the Insurance Act 1986, allows for the imposition of civil penalties for breaches of the Act, introduces new provisions to safeguard confidential information and allow its release only in proper circumstances, introduces provisions to allow the Supervisor to issue public statements about breaches of legislation and introduces provisions to enable the Supervisor to issue binding guidance notes to insurers.

Many of these additional powers will have little effect on the day-to-day business of insurers here. However, they will ensure that the Supervisor has an adequate range of powers available to him in circumstances where regulatory intervention is necessary.

In updating these powers, the IPA has taken account of the core principles of the International Association of Insurance Supervisors, which forms the basis of the IMF's recent assessment of the insurance regulatory framework on the Island.

Part 4 contains a number of miscellaneous amendments to the Insurance Act. Importantly, these include a revised and expanded right of appeal in respect of decisions made under that Act, to reflect the wider powers given to the Authority and the Supervisor, as reflected in Part 3.

They also include an amendment to Section 27 of the Insurance Act to allow the IPA to prescribe the business that registered insurance managers may undertake to allow for developments in this area of the market.

Part 5 amends the Insurance Intermediaries (General

Business) Act 1996 and clarifies and amends slightly the business to which it applies. The provisions introduce a power for the Insurance Supervisor to wind up a general intermediary which the existing legislation does not include. Importantly, they also introduce new appeals provisions in respect of decisions made under the Insurance Intermediaries (General Business) Act 1996, in line with the new provisions that are being introduced in respect of decisions made under that Act.

Finally, they provide a revised definition of 'advertisements' in the Act, to take account of all the various forms of media now used to advertise.

Part 6 contains various supplementary provisions and the short title. It also includes the Schedule 2 to the Bill which contains amendments to the Retirement Benefits Scheme Act 2000, which are necessary in the light of the IPA's experience in implementing the provisions of that Act.

This is essentially an enabling Bill and a clarifying Bill to reflect the new position that the IPA and the Supervisor find themselves in in the modern-day environment on the Island.

Mr Speaker, widespread consultation has taken place on this Bill; it has had strong support, I believe, from the industry and, therefore, I beg to move the second reading.

The Speaker: The Member for Onchan, Mr Corkill.

Mr Corkill: Mr Speaker, I beg to second the second reading of this Bill.

I would also just give notice to Hon. Members that I have some technical amendments, which have come via the Treasury, to move to this Bill in due course at the appropriate time, and I will be circulating some explanation to Hon. Members about those amendments, because, having read them two or three times, I am not so clear on one of them myself. I think it goes to show that this particular area is actually fluid and moving all the time and we need to keep our legislation up to date.

Since the draft Bill has surfaced, further consultation with the industry has required some of these technical amendments, which do not really change the substance of the Bill, and I just wish to bring it to Hon. Members' attention that they will be coming.

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

Mr Gill: Thank you, Mr Speaker.

I welcomed that preamble from the Treasury Minister, but if I could ask: in amending the functions of the regulatory bodies, as described, what, if any, personnel implications are there and at what cost will those be?

The Speaker: Hon. Member for Ramsey, Mr Bell, to reply.

Mr Karran: Oh, sorry!

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

Mr Karran: Vainstyr Loayreyder, I was interested in the Mover's input into this piece of legislation. There was a couple of points that I would like him just to clarify. One is that he says, with life insurance now, that we are going to change the situation where you do not have to be a direct

relative in order to insure someone's life; can you just clarify? Obviously, I would just take it that it would be the investor that would get the money from the demise of the individual, not the next of kin. Is this the case?

Does this legislation . . . ? Whilst I am a little bit concerned about that, I would say that if it is to help the likes of same-sex marriages, so that the next of kin can cover for whatever you want to say the person is, the wife or husband or whatever, I have no problem with this as a proposal, if this is the case. I think it is an outrage, and I have seen constituents of mine where they have fell foul of the law in that they should have been recognised as the next of kin. I welcome this amendment, if it is to help that situation.

But I am a little bit concerned that I could take out a life insurance on a colleague in this Hon. House, and the fact is that the anthrax does not affect me at the present time in this Hon. House!

But what I am concerned about is the fact that it does just concern me that somebody could take out a life insurance on a third party with no direct . . . Is there anything that needs to be made public as far as a disclosure, as far as an individual profiting large-scale from the demise of an individual that they are not connected to? And just the issue: obviously, I take it that the cash would go to the investor and not into the party's estate.

The other issue that I would like to ask the mover is the issue of the IPA. I have to say, I do not have the complaints about the IPA that I have about the FSC being out of control and unaccountable. In this piece of legislation, are we to see any more input into ways of . . . ? Obviously the IPA . . . I would not want it to be seen as a criticism of them, but are we using this opportunity of this Bill to put in for more input, so that there is more accountability, as far as the IPA is concerned? Is the structure of the IPA going to be more consumer friendly? I know that, compared to the FSC, that would be . . . Maybe that is a bit hard a criticism, but I would just like to know whether the mover could tell us about that.

And the other issue, as far as this Bill is concerned, that I would like to ask is: are there any moves regarding the Insurance (Amendment) Bill, as far as an issue that I tried and failed to get addressed as a Member of the Department of Health and Social Security? When we talk about retirement benefit insurance schemes – the issue of where people go into old people's homes – I wanted the state to do a scheme where people who are born after a certain date pay an extra National Insurance contribution for their liabilities, if they have the misfortune to end up in an old people's home or nursing or residential home. Will that sort of insurance be part of, hopefully, a new avenue of business for the Island as far as the insurance business work is on the Island? Thank you, Vainstyr Loayreyder.

The Speaker: Hon. Member for Rushen, Mr Gawne.

Mr Gawne: Gura mie eu, Vainstyr Loayreyder. I do not claim to have a full grasp of all the 25 clauses and the provisions contained therein, and, to a large extent, we are relying on the Treasury Minister. I think some of the remarks the Chief Minister made there are all part of the reason why I am wanting to make a few comments here.

Obviously, I welcome the fact that the Treasury is listening to the industry, working with the industry and

moving things on, and it is a good thing that we are doing that.

The thing that concerns me a little bit, certainly from what one remark from the Treasury Minister was, this whole talk about extensive consultation. There are some Departments of Government who have differing views as to what exactly extensive consultation might mean, so I think really, I want to have two confirmations, I suppose, from the Treasury Minister: Is the whole of the insurance industry content with the provisions within the Bill? – certainly from what the Chief Minister is saying, there are certain issues there that are not necessarily fully agreed with; and, also, whether it was possible for the Treasury Minister to let us know whether there are any significant parts of the industry who disagree with any elements within this Bill. Gura mie eu.

The Speaker: Hon. Member for Ramsey, Mr Bell, to reply to the debate.

Mr Bell: Thank you, Mr Speaker.

I thank the Members who have spoken, for their general support for the Bill. If I could just answer the small number of points which have been raised.

First of all, as far as the Hon. Member for Rushen, Mr Gill, is concerned, what is the financial cost and personnel: it is my understanding that there will be no further demands on personnel at this time and there is a limited extra cost, but that has already been budgeted for in this year's budget, so there will be no further expenditure, as I understand it, in relation to this.

The Hon. Member for Onchan, Mr Karran, makes reference to insurable interest. I have to say, when I first heard this, I did not know insurable interest was myself. I had never heard of it, but, at the moment, there is a limited number of opportunities for any individual to take out life insurance, and it is usually on the spouse.

There has been a lot of pressure, though – because this is happening in all jurisdictions as well now – because of the complex international financial operation now based on the Isle of Man, and indeed in other jurisdictions, it can often be that the insurance that is taken out is through trusts and various other company structures, and this is a way of, probably, still insuring the same peoples' lives, but it can be in a more convoluted route, if you understand what I mean. This is essentially what it is: it is broadening out. Now you can do it on grandchildren, you can do it on. . . Although it is not specifically mentioned in the Act about same-sex marriages, recognised partners of that nature, I think, will come into it as well.

A Member: I hope so.

Mr Bell: So I am sure that will be covered, but I can check on that point, but I am almost certain that that issue is covered by the purport of the Bill.

The Hon. Member asks for more accountability and for it to be more consumer-friendly. I take his point entirely on the comparisons he has made; certainly, in the early days, the comments I was receiving were far more favourable towards the IPA than they were to the FSC. I am hoping now that that is changing and changing for the better.

Accountability: yes, we are having a more transparent regime now in the IPA as a result of this legislation. For the

first time, those involved in the industry will be able to understand clearly and quite specifically what the roles and responsibilities, first of all, of the Insurance Supervisor himself has, and, also, the role of the IPA as a supervisory body and, of course, the relationship between those two. So this is the first time in legislation it has been clearly spelt out precisely what the various relationships are and this should make it very much easier now for the industry to understand the regime that they have to work within.

Because of the slight changing of emphasis within that relationship, between the IPA and the Supervisor, one of the benefits which is likely to come out of it which will help the industry is that there should be an enhanced speed of decision-making, because more powers now are vested in the Supervisor himself to make decisions, without necessarily always having to refer it back to the IPA, although the IPA does have that continuing supervisory role.

The Hon. Member makes a comment about his proposals for the extra NI contributions for certain people to go into homes. I am not aware of any implications for that type of insurance business at all, but that would be a separate issue, I think, which perhaps might need to be looked at at some point in the future.

The Hon. Member for Rushen, also, Mr Gawne asked about consultation. As far as I am aware, there have been several months of consultation with the industry and a number of the issues, particularly the issue of insurable interest, has been put in the Bill at the direct request of the industry and it is something that they are very anxious to have on statute to give the Isle of Man an advantage over many other jurisdictions, which, hopefully, will then generate new business for the Island.

He asked if anyone is disagreeing: I think, at the early stages of this consultation, there were concerns that we were bringing in another layer of regulation, which, perhaps, the insurance business in particular has not been used to, whereas the other financial services on the Island have, and this really goes back to the point that the Hon. Member for Onchan mentioned about the difference of approach by the IPA and the FSC historically.

My understanding now is, though, that, although no-one particularly likes to be regulated when they have been used to having a free – or freer – environment to work in, we have to recognise the requirements now, on the Isle of Man, to have a regime in place which meets current international standards; that is the only way, in the long term, the Isle of Man is going to be generating new business and we will be able to meet our international obligations.

I am expecting the report back from the IMF towards the end of this month and, of course, the review from the IMF was of all the regulatory regimes that we have on the Island, both with financial services generally and within the insurance business. A number of these issues raised in this Bill are based on recommendations which we know will be coming from the IMF, so it is to bring our regulatory base up to international standards. There are no major deficiencies, it is simply just up-dating it and, in fact, restating, in many cases, what the situation is.

And, just finally, the Hon. Member – I think, if I heard him right – was saying that, maybe, there have been some doubts about the Bill, because the Chief Minister has suggested that he is going to bring forward some amendments. These are only technical amendments, I think they are very minor in their nature, but they were just

oversights, I think, when the Bill was drafted. So it is not a fundamental rethink; it is just a technical adjustment that is needed.

So on that basis, Mr Speaker, I beg to move.

The Speaker: Hon. Members, the motion for the House is that the Insurance (Amendment) Bill 2003 be now read a second time. All those in favour say aye; against, no. The ayes have it. The ayes have it.

Hon. Members, we will adjourn now until 2.30 this afternoon.

*The House adjourned at 12.55 p.m.
and resumed its sitting at 2.30 p.m.*

Constitution (Amendment) Bill

Debate Concluded

Second Reading approved

The Speaker: Now, Hon. Members, we continue our business with Item 3 on the Order Paper, Constitution (Amendment) Bill 2003. Hon. Member for Middle, Mr Quayle.

Mr Quayle: Thank you, Mr Speaker. It is my very great pleasure to promote this legislation on behalf of the Council of Ministers, as I have had a particular interest in this matter for some considerable time.

In fact, after receiving the *Hansard* of Tynwald proceedings of June 2001, which arrived in the summer of 2002, and referred to the particular issue before us, I discussed the matter in some detail with the Clerk of Tynwald and also with the President of Tynwald, to indicate my intention to bring forward a Private Member's Bill to bring the matter to a satisfactory conclusion.

However, I did not initiate a Bill, as, when discussing the matter with the President earlier this year, I became aware that there was a distinct possibility that Her Majesty the Queen, Lord of Mann, could very well be gracing us with a visit for Tynwald Day this year and, so, for obvious reasons, I deferred matters.

Mr Speaker will be aware that, within the Select Committee to consider reducing the number of committees, it cropped up there and I indicated my intention to pursue the matter, following on from Tynwald Day. Having had a continued interest, therefore, in pursuing this particular matter, it transpired that the Council of Ministers had been considering it again in September 2003 and I was, therefore, very pleased indeed to be invited to, hopefully, take this Bill through the House.

Although not a lengthy Bill, it is legislation that has significance for the Isle of Man and its people. It is legislation that continues the evolution of our parliament in a small but incremental way. It removes the anomaly that has allowed the Lieutenant-Governor to continue to preside over the Tynwald Day sitting more than a decade after his power to preside at all other Tynwald sittings ceased.

In essence, this Bill proposes a change to the proceedings of Tynwald Day, so that the President of Tynwald, rather than the Lieutenant-Governor, shall preside over the sitting of Tynwald that takes place in the Royal Chapel of St John's.

The Lieutenant-Governor would still preside over the

state occasion on Tynwald Hill, when the Acts of Tynwald are promulgated, in accordance with the Promulgation Act of 1988. This Bill also preserves the right of Her Majesty, or a person authorised by her, for example, another member of the Royal Family, to preside at any sitting of Tynwald.

Mr Speaker, the changes embodied in the Bill we have before us today reflect long-held sentiments by many Members. Accordingly, I think it appropriate to take a few moments to review the background to this proposed legislation.

As you will know, the Lieutenant-Governor presided at all sittings of Tynwald until 1990. The Constitution Act of that year provided for the election of the President of Tynwald to serve as its presiding officer and limited the Lieutenant-Governor's role in Tynwald to presiding at the annual sitting at St John's.

Six years later, in 1996, Tynwald was determined to complete the process and resolved that a Bill be introduced to provide for the President of Tynwald to preside on Tynwald day. The Council of Ministers then referred the matter to its Constitution and External Relations Committee, with an instruction to produce a draft Bill to do so.

However, in its research, the Committee identified a serious constitutional issue. If the President of Tynwald were to preside on Tynwald Day, it would cease to be a state occasion and become, instead, a purely parliamentary ceremony, and this would mean that many of the historic traditions of Tynwald Day could be lost.

For example, the Committee found that it would not be possible for the Hill to be fenced as a means of calling the proceedings to order. This uniquely Manx practice is judicial, rather than parliamentary, and would need to cease if the Tynwald ceremony were purely parliamentary.

Similarly, the participation of the Deemsters, who, historically, were Members of Tynwald but now have no parliamentary status, would be inappropriate. Our Island's clergy and civic leaders would simply be invited guests, rather than participants in the ceremony.

The Committee also concluded that the oaths could not longer be administered to the Coroners, who, as members of the judiciary, are independent of parliament. In this day and age, it is important that the separation between the judiciary and parliament is clearly evident, even on our national day.

The implications of such changes caused the Council of Ministers to delay the production of the Bill. Instead, the Committee recommended that the Lieutenant-Governor should no longer officiate at the Royal Chapel sitting, but should continue to preside at the part of the proceedings taking part and placed on Tynwald Hill, where the Acts of Tynwald are promulgated in Manx and English.

As the Committee concluded, this amendment to the arrangements would allow for the President to fulfil his role as presiding officer at the parliamentary element of the Tynwald Day ceremony, whilst enabling the Lieutenant-Governor, as representative of the Crown, to preside over the section of the Tynwald ceremony on the Hill, which is the state element of the occasion.

In other words, this arrangement would reflect the position of the President as presiding officer of Tynwald, whilst allowing the traditional elements of the Tynwald Day ceremony to be retained, and which is enjoyed by so many around the Island.

The report by the Constitution and External Relations

Committee, in which these observations were made, was approved by Tynwald in June 2001. However, the Bill could not be brought in before the general election later that year.

A brief summary of the Bill: to the extent is that clause 1(1) makes the necessary amendment of section 1 of the Constitution Act 1990. Under the new subsection (1) the Governor is to preside only at that part of the ceremony taking place on Tynwald Hill, so that the President of Tynwald will preside at the rest of the sitting, in accordance with the existing section 4(1).

A new subsection (1)(a) saves the right of Her Majesty, or a person authorised by her, for example, another member of the Royal Family, to preside at any sitting of Tynwald. Clause 1(2) makes a consequential amendment and clause 2 provides the short title of the Bill and provides for it to come into force in time for the next Tynwald Day, 5th July 2004.

The Bill will have no effect on public revenue, expenditure or manpower. I look forward to hearing comments from Hon. Members, but, in the meantime, Mr Speaker, I beg to move that the Constitution (Amendment) Bill 2003 be read for the second time.

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

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

The Speaker: Hon. Member for Rushen, Mr Gawne.

Mr Gawne: Gura mie eu, Vainstyr Loayreyder.

I am happy to support the Bill up to a point. I think it is good that we are progressing this issue. There is certainly a concern from many people that, effectively, the position of Tynwald is undermined by having a representative of the British Crown presiding on Tynwald Day.

I do think, though, that this is a little bit like 'a death of a thousand cuts'. It seems to me fairly inevitable, in the hopefully not-too-distant future, that eventually we will become grown up enough to have our own elected people presiding over our own affairs, and I feel that, perhaps, this Constitution (Amendment) Bill 2003 does not actually go far enough.

There is one small item of concern that I also noticed in the actual Bill itself. This may be just my lack of understanding of the situation, but I notice, in the explanatory notes, we are talking about the 'Lieutenant-Governor' but in the actual Bill we talk about 'the Governor'. I am just wondering what the actual situation is here: are we talking about the Lieutenant-Governor, are we talking about the Governor? What is the Governor? Which is the correct title?

I think that there is a bit of a concern, as well, that the Select Committee actually looked at this issue in 1996 and recommended that the President of Tynwald preside on Tynwald Day. He did not recommend that the President preside on a little bit of Tynwald Day; it was the whole of Tynwald Day.

I do think that this is a little bit of a situation, where, if you are out on a walk in the countryside, and you come across a rabbit, a bunny, with 'mixi', you do not push it neatly into the hedge and say, 'Ah, poor little thing. It can carry on for a little bit longer.' The decent thing is to knock it over the head and put it out of its misery (*Laughter*) and I feel that this is the case here: we are prolonging the agony

unnecessarily and the sooner we 'grasp the nettle' the better. Gura mie eu.

The Speaker: Hon. Member for Michael.

Mr Cannan: Mr Speaker, I would just like to express a contrary view to what has been expressed.

The Hon. Member talks about a 'death of a thousand of cuts' and, yes, a large number of people outside there do see this as a 'death of a thousand cuts' – perhaps more than Members realise. They see that the office of Lieutenant-Governor, which many, many people - whether you like it or not - see as, perhaps, a safety net from the excesses of Government. They respect the office of Lieutenant-Governor and they do not wish, from what I am told . . . and I am only representing views that I hear, on occasions, from people from all parts of Island, at functions that I attend. They see the role - even the symbolic role - of the Governor being constantly reduced and, as the Member has said, 'the death of a thousand cuts.'

People see the role as a safety net, as I have just said, against the excesses of Government, and particularly at this time. There has been a lot of comment, when, perhaps, outside there, there is more scrutiny than ever on the integrity and credibility of Government and the standards of conduct in public life.

I will say no more, Mr Speaker, but I believe that I am speaking for a considerable number of people out there, in what used to be called by a certain Member of this Hon. House, who has moved on now to higher things, 'out there in the blue yonder.'

The Speaker: Member for Rushen, Mr Gill.

Mr Gill: Thank you, Mr Speaker. I do not propose to offer an opinion today about the rights and wrongs of this Bill, other than to look for some clarity, sir, in it and, to do that, rather than rephrase the answer I have been given from our learned Clerk, perhaps, if I could put two questions that I sought advice on, sir, and the answers, because they will become pertinent in due course.

First of all, sir, I asked, if, for the sake of argument, is it possible for Her Majesty, the Queen, to authorise the Lieutenant-Governor or the person acting in that role? This, sir, relates to 1(1).

And, secondly, I asked, because this Bill refers to 'Her Majesty', would it need amending for 'His Majesty' if in some time, in due course, we have a king as Lord of Mann, sir, rather than the present incumbent?

So the advice I had, sir, is that:

Clause 1(1)(a) clearly now allows for the Lieutenant-Governor to preside at any sitting at all and to displace the President, since this Act would override section 1(2) of the 1990 Constitution Act.

So, then the opinion goes on:

I would very much doubt if this was meant, but it is an action for the clauses stage to amend (1)(a) to prevent it overriding (2) by revising any and substituting such as .

That probably does not make very much sense as I am saying it now, but I think when we read it in *Hansard* . . . The effect of it is that it would need some clarity, so that this would actually do exactly what it is supposed to 'say

on the tin', rather than what it could be interpreted as it currently stands. So, sir, I would look for the Hon. Mover to give me a comment on that.

On the second point, sir, I am satisfied that the explanation that 'Her Majesty' and 'His Majesty' are interchangeable and would not need any change to the Bill as we have before us.

But, I do flag that up, there was the possibility of an amendment, in due course, to direct this Bill in the manner and the spirit it is intended, because, at the moment, there is some ambiguity. So, just with that proviso, sir, I would have nothing more to add at the present time. Thank you.

The Speaker: Hon. Member for Peel, Mrs Hannan.

Mrs Hannan: Yes, just to follow on from the previous speaker. I can see the reason for his comments on the second part of clause 1, where there could be an authorisation; Her Majesty could authorise any other person to preside at any sitting of Tynwald, so I accept that could happen, so it does need an amendment, I would think.

I am somebody who supports traditions, but, over time, things have changed and I am sure when Tynwald Court first sat, the Court was not fenced. You know, I think, maybe, as the population got more understanding of politics, maybe, that is why the Court needed to be fenced to keep out anybody who should not actually be in there, and I know over the time, security has increased, as we see in this Hon. House.

I believe that there could be other changes, other than just the Governor sitting on the Hill, and I take the point made by Member for Rushen that this could be seen as 'a death of a thousand cuts.' We have changed over recent times, but it could be that people are talking about traditions and, if we talk about traditions, nothing would ever change. People would not have got the vote. The public would not be involved in this House. It would have continued the same, looking at legislation, with the Council and the Governor being the Government of the Isle of Man.

So I think, all right, pass this legislation, but I think that we need to think bigger. We need to think that things have changed and the Member for Michael says this is a safety net against, more or less, you could say, disreputable government or parliament; I would think that he ought to examine his own position when he makes statements such as this and it is all very well people saying: 'Oh, we should hold Government to account' and 'transparency' and all the rest of it, but we should also examine ourselves and examine our position in all of this, when seemingly to be attacking someone else.

It is all very well to say that the UK is the responsible for the good government of the Isle of Man, but you have only got to look at some of their actions recently in entering other countries without proper authorisation and the like. I do not think that they can be held up as this beacon that they should be responsible for us, when they cannot even take care of their own affairs.

As to the Governor being somebody who can safeguard us, I think we also ought to look to where this particular Governor came from: somebody who was out selling arms around the world.

So, I think we ought to actually be more responsible for Tynwald Day. It should move on. We should become more responsible for what happens. We, only just this morning,

Vainstyr Loayreyder, considered race relations legislation, and I think one of the comments was made that the clergy would not necessarily attend if it was not the big formal state occasion.

But I think that, when we are looking at race relations and issues such as that, and religions and rights, what about other world religions? If people are coming to live here, should their religions also not be represented at a state sitting of Tynwald? I know on Commonwealth Parliamentary Day, even in Westminster Abbey, they have a multi-religious service and I think that these are some of the things that we ought to be looking at in the future, and I think, yes, it is a minor change to our legislation, but I think, in the future, we have to look at what we would see necessarily as tradition; but it does move on and, if we are ever going to be steeped in tradition, we will not move on. Sometimes we have to make the big change, look at the big picture and make some of these changes.

I would prefer the Coroners to be more proactive in doing their job than being encouraged to come to Tynwald for a state occasion. I would prefer that the Coroners carry out their responsibilities for the state and I think these are all the issues which Government should be looking at, instead of turning out on a purely state occasion to receive the staffs.

So I would hope that some of these issues can be looked at in the future. I will support the legislation, because I think it is a very minor issue and I do not think it will stop Mr Quayle getting his knighthood, so (*Laughter*) I will support the legislation and with an amendment from Mr Gill.

Thank you, Vainstyr Loayreyder.

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

Mr Karran: Vainstyr Loayreyder, I moved a motion in Tynwald on 12th July 1995 to give greater importance to the Tynwald Ceremony and make it more relevant to the people of Mann and even put a minority report to provide for the President, our Eaghtyrane, to preside over Tynwald, and requested leave to introduce for a Bill and to do so in May 1997. So my record, as far as this issue is concerned, has been consistent.

But part of the logic behind my thinking is that we should get things right as far as executive government and this parliamentary assembly is concerned.

So I should be welcoming Mr Quayle's Bill here today, but, like so many other issues I have raised when they are untenable, unquestionable and unpopular, I am glad to see some of the seeds that we have sown do actually flourish at a later date.

When it comes to getting rid of the Governor, it is something that I used to be very keen on, because the Governor, to me, as to the vast majority of ordinary working people in the Isle of Man, is used to symbolise the unjust, undemocratic, corrupt old ways, of when it used to be: 'It was not what you know, it was who you know'. And you could not fight them, because, at the end of the day, they made the rules up as they went along and they hid behind no transparency and no accountability, Vainstyr Loayreyder.

So, the moving of the President being the presiding officer at Tynwald Hill - from the Governor to the President - was supposed to symbolise a new dawn for this country.

However, since the failed introduction of my Bill in 1997, and, with the shenanigans we saw over the re-election of the former Eaghtyrane, former President, and the

problems that he had with regard to his electoral college, being this Hon. House and the Legislative Council, and the people who had an interest in creating a vacancy from the top to get more promotion changes further down the electoral college, we have seen an increasing deterioration between the regard of the separation between parliament and the executive and the sorry state that the Council of Ministers are in at the present time, and this Hon. House being able to hold them to account.

I do support that the presiding officer of Tynwald should be the people's representative and I fought for this, because I believe things have changed and parliament respected its people and its people respected us.

I could have supported this Bill, Vainstyr Loayreyder, if the Attorney General's department had not refused to draw up my amendment to this Bill, which would have said that it came into effect from the day when the Eaghtyrane, the President of Tynwald, is elected by the people of this country. This is when we should support Mr Quayle's Bill in my opinion, as far as the presiding officer is concerned.

I would like to just say one or two points as far as the debate is concerned. I find myself in the very strange situation, Vainstyr Loayreyder, with the Hon. Member for Rushen with his 'thousand cuts' as far as the Governor is concerned. One of the things that he must remember is that part of the problem with the Governor, for an awful lot of Manx people who were not the colonial Manx, who have thrived under the ways of 'it's not what you know, it is who you know' and things like that, was that the Governor was part of that set-up.

I think that the Hon. Member might find that - like I have found in recent times, that people whose credentials are as good as mine, as far as being a nationalist - and the Hon. Member for Rushen - say at the present time, 'The worse thing that could happen is for the colonial Manx that run the Government in this Hon. House should have total independence at the present time.'

I believe that, unfortunately, with recent events, we are premature. Until we get a proper opposition, a proper Public Accounts Committee - whilst I would totally agree with the Hon. Member's intent - I think at the moment we have to get our priorities right, Vainstyr Loayreyder.

As far as the Hon. Member for Peel is concerned, I think she wants to forget that we do not want to make things personalised. There are basic principles that need to be addressed and basic standards that, if we want to be an active democracy, (**Mrs Hannan:** Yes.) then we have to abide by them without fear or favour. I would hope that, when she thinks about the issue of individual Members in this Hon. House, we have to try and make sure that we are not seeing the individual as the individual, but the office that that individual holds.

Now, I know that is a problem but, at the present time, I do feel that the stick that some of us get from the Hon. Member is a little bit unjust, because, at the present time, what some of us see in this situation, as far as constitutional development is concerned, we have got to sort out the basic facts of life of what a modern democracy is.

All I see at the present time is people wanting to put the old regime back, with an elected President of Tynwald. That is not what I want. As I said in my speech, Vainstyr Loayreyder, it was to symbolise a new dawn of a new future, where the people were in control, and the people were able to respect the assemblies that were in this Island - not

disrespect them like they used to when I was a youth.

So I do hope that the Hon. Member, who is moving this Bill, does not think that we are against the principle, but, at the moment, I think that the danger would be with the Hon. Member for Rushen's viewpoint about a 'death by a thousand slashes' . . . What I am concerned about is making sure that we do not end up putting this Island on the same basis as many of our Commonwealth countries that are in Africa, and the 'death of a thousand slashes' might not be the Governor, but the rights of the individual, or the ordinary working man in this Island.

I feel, at the present time, that this Bill. . . If the Member could find a way of getting the Attorney General to accept that we should be allowed to bring this as enabling legislation, for when the President is democratically elected from outside this Hon. House and outside Tynwald, when he is elected by the people, then I would support that.

The Speaker: Just before I invite the next Member, can I just really clarify a point the Hon. Member for Onchan has just made about the Attorney General allowing: it is a matter for this House whether or not the law is changed, amended or made, not a matter for Her Majesty's Attorney General.

Mr Karran: I must say, it was his legal adviser, it was not the Attorney General and I admit it to that effect.

The Speaker: Well, the Attorney General's Chambers: it is not a matter for them to determine the law of the land. It is a matter for this House - with the other branch and then collectively.

Hon. Member for Onchan, Mr Corkill.

Mr Corkill: Thank you, Mr Speaker, and you have clarified a point that I was actually going to bring to your attention, in relation to the previous speaker, who has resumed his seat, because, certainly, I would be concerned, as an individual Member of this House and as Chief Minister, if I was conscious of the fact and nothing was done in relation to the rights of a Member to have an amendment drafted to put for consideration before this Hon. branch of Tynwald.

I think it is quite wrong if what the Hon. Member has said has had an influence on this particular debate. The Hon. speaker who has just resumed his seat obviously had a point of view that he wished to put across to this particular debate on this Bill and, for whatever reason, now that has not happened. I think that that is unfortunate.

So, thank you for those comments, Mr Speaker, because I think that is important.

I just want to make it clear to Hon. Members that this Bill, which comes via the Council of Ministers - and I am very pleased that the Hon. Member for Middle, Mr Quayle, agreed to take this Bill forward on behalf of Government - has come about as a result of a Tynwald resolution.

In terms of holding the executive accountable - and we hear much of that these days - I can just see the opposite side of the debate, Mr Speaker, where, if we had not responded to what Tynwald resolved in July 1996, then we would have been, perhaps, seen as somehow disregarding what Tynwald had expressed at that time - and that could not be further from the truth.

The fact is that the Constitutional External Relations

Committee - okay, it has taken a long time - has considered what Tynwald decided on that day, and, as the Hon. mover of the motion said in his opening comments, there are some real difficulties with what Tynwald decided that day, which was to have the President of Tynwald presiding on the Hill.

And he has explained what those issue are: the fact is that Tynwald Day is a state occasion, the whole ceremony is a state occasion. It involves not just the parliament, but the judiciary, the clergy, and, indeed, the Lord of Mann's representative on the Island, and so we have all these elements, welded together over time, for our national day.

This Bill does not in any way, in my view, change that situation. Now, for some, that is not enough, it is too little; for others, it would seem it is still one step in the wrong direction, and it will be ever thus, because this is such a sensitive issue.

There are some practical considerations on Tynwald Day that have to be considered, flowing from this particular legislation, and that is the fact that, under this legislation, we do have a short sitting of Tynwald, with the President presiding, and the clergy and the judiciary, and, indeed, His Excellency the Lieutenant-Governor have to know where their positions are, in practical terms, where their positions are, whilst this sitting happens in the way that this Bill envisages. So there are some practicalities to be dealt with which are causing some thinking to be done, in relation to what happens back inside the church.

There was this issue about what 1(a) really means and I think the Hon. Mover of that will be able to clarify that by the time we get to the clauses stage. It is, certainly, not my belief that this Bill in anyway changes the position in relation to the rights of Her Majesty and who she appoints to preside on particular occasions. I do not believe this law before us actually changes that position, but, bearing in mind it has been raised, in all good faith, I am sure by the time we get to the clauses stage we can have that clarified.

I was a bit concerned by my Hon. colleague from Onchan, Mr Karran's comments, one or two of his comments - which we get used to - some throwaway lines. I ignore quite a few of them, because I think it is the right thing to do, because it would be confrontational to pick up on every single one, but I think a comment such as: 'The colonial Manx who run the Government today', I take that with a pinch of salt. Perhaps it was meant with a pinch of salt - I hope it was - if it was not, then in fact, it could be regarded as insulting, perhaps.

At the end of the day, we have a constitution that we are all part of and we all have a view on what that actually means, but we have a duty, I believe, to make that constitution work as it stands, and, if we feel as though constitutional positions need to be amended, we have the privilege, though this Chamber, to be able to put those arguments forward, and that is why I was disappointed that the Hon. Colleague from Onchan, Mr Karran's amendment - or proposed amendment - for whatever reason is not drafted and is not on the floor of the House for us to discuss, because it is here where these changes start.

If we want to amend the constitution that determines the lives of the people of the Isle of Man, it is we 24 Members who start that process. We can have debates in Tynwald and we can have declared resolutions about what we would like to see - declarations of intent - but it is this legislative body who make the changes, who start the incremental changes.

I believe, whichever side of the camp you are on with this particular Bill, that it is something which, perhaps, for those who would wish to see greater change, may well be seen as a first step - maybe the first cut of a thousand!

I do not see it that way; I actually see it as something that regularises - which is a bit of an Americanism, I apologise for that - the position that actually occurs now, and makes it quite clear for all those involved, where the lines of demarcation are in relation to our constitutional day.

For those who do not wish to see any change, or wish to see the powers of the Lieutenant-Governor and his responsibilities changed, then this is, perhaps, a step which we should not be taking, but I bring us back to the original point, which was: the Council of Ministers, through its Constitution and External Relations Committee, is attempting to respond to what Tynwald asked us to do back in 1996, and this is the best we can do, without breaching the constitutional position that we find ourselves in, for whatever reason.

So, I hope Hon. Members can accept this Bill in the spirit that it is meant. It is minor, I believe, in its impact, but, hopefully, is one step along the road for the greater autonomy of this Island.

I know and I take note of the fact that, as this Island does get more mature, and as it does get itself in a position to take more decisions for itself, to some of those who have fought long and hard over the years to actually achieve that situation I could say, I could argue back that they are getting cold feet. I could argue back that, perhaps, they never appreciated the change was ever possible. It is very easy to argue for something when you know that it is never going to be realisable, very easy to argue those points in a parliamentary setting, where you know that the buffer is there, because the majority will stop that change ever happening.

Here is a little bit of change that I would hope that all Members could take heart from and get behind. I hope the Hon. Member moving this Bill is successful and, certainly, he has my support in moving forward something which is quite delicate, but I think is quite useful for us.

The Speaker: Hon. Member for Middle, Mr Quayle, to reply to the debate please.

Mrs Craine: Oh, Mr -

The Speaker: Oh, sorry, Hon. Member. The Hon. Member for Ramsey, Mrs Craine, did catch my eye. My apologies.

Mrs Craine: Thank you, Mr Speaker.

I have been listening to the debate this afternoon and I think, as my Hon. Colleague from Rushen, Mr Gawne, has said, for many of us this does not go far enough, but the wheels turn exceedingly slow and they grind exceedingly small; I am grateful to be given this opportunity of reducing the role of the Lieutenant-Governor, just by a little bit, in the Isle of Man.

I think that we have exclamations of nationalism from the Member for Onchan, and I think, deep-seated amongst every Member of this Hon. House, there is a sense of pride and nationalistic feeling. (**Mr Corkill:** Absolutely.) Nobody, I think, can avoid the fact that to be conferred as President

of Tynwald is the highest honour that can be conferred upon any person who has come through the portals of this House.

And I regret the remarks of the Member from Michael, who suggested that there are many people out there who respect the office of Lieutenant-Governor. Indeed, they do; but is it not time that we developed our own maturity (**Mr Gawne:** Hear, hear.) and began to recognise that we have a President of Tynwald? The role itself might be in its infancy yet, but if there is a lack of respect for that office, then that comes from within, and I would like to see Members of this House and, indeed, of Tynwald, take a greater pride in our overall positions and that of Mr Speaker and Mr President in their presidential roles within Tynwald.

I regret that it is considered that the role of Lieutenant-Governor is worthy of greater respect than our own President of Tynwald (**Mr Gawne:** Hear, hear.) and I would suggest that our friend from Michael has lost touch with the real world of Manx people out across our Island.

Mr Cannan: Not our constituency.

Mrs Craine: I would just like to endorse one part of the Bill that was raised by Mr Gill and that is that I would like to seek further clarity on the fact that Her Majesty can authorise - and we are given an example here - another member of the Royal Family to preside at any sitting of Tynwald. If we are talking about a member of the Royal Family, how far does that extend? Are we talking about cousins or corgis? (*Laughter.*) Can we have some clarity on that? I thank you, Mr Speaker.

The Speaker: Hon. Member for Middle, Mr Quayle, to reply to the debate.

Mr Quayle: Thank you, Mr Speaker.

I thank Hon. Members, all of them, for their comments, because it has been an absolutely fascinating afternoon so far.

Firstly, I would like to thank the Hon. Member for Onchan, the Chief Minister, Mr Corkill, for seconding the moving of the second reading of this Bill.

Firstly, we had the contribution from the Hon. Member for Rushen, Mr Gawne. The first thing I would like to say, in that he is happy to support it up to a point, to clarify the point he made about the 'Governor' and the 'Lieutenant-Governor': the Interpretation Act, Section 2, actually does allow for 'His Excellency the Lieutenant-Governor' to be treated the same as 'Governor', in fact, throughout any of the legislation, so I hope that clarifies that point.

He also mentioned that this goes back to 1996, when the President was to preside over the whole of Tynwald Day. Well, there are many reports that any Member here will be able to avail themselves of and read in the greatest of detail.

I think there have been many, many years spent discussing the particular issue of whether or not the President should preside on the Tynwald Hill, or whether or not it should be the Lieutenant-Governor. I think that was something that was decided some time ago; my own feeling is that, for most people in the Isle of Man, they have no difficulty whatsoever in acknowledging the paramount position of the Crown, as it is at the moment, and the position of the Governor in our own community, I think, is recognised by the fact that he is Her Majesty the Queen, our Lord of

Mann's representative, who, on our National Day, is representing Her Majesty on Tynwald Hill itself.

So, I think, not only in that respect, but we have the historical continuity, along with the pomp and circumstance and pageantry of Tynwald Day. This, perhaps, is about the only part of the ceremony left unchanged over centuries, where the Lord of Mann, or her personal representative, presided on Tynwald Hill. I think it is a visible and effective conduit between the Crown and the people here on the Isle of Man, and I would not seek to be changing that. I think that is important, for all the reasons I have mentioned.

What I think this Bill that I am moving today is doing, is that it is a small incremental advancement, in that with the captioning of the Acts in the Royal Chapel itself, which is a sitting of Tynwald Court, effectively, I think it is most important that our President can, as he usually does in Tynwald, preside over the proceedings, so that that would remove the Governor from effectively presiding over a part of Tynwald proceedings, which, in this day and age, I do not consider appropriate.

So, we also had the contribution about the rabbits and grasping nettles and I hope that they will not get stung by that and I hope people will not feel that they are getting stung by this particular legislation, because it is a very small step along the constitutional path.

Mr Cannan, as we heard, had a contrary view: the symbolic role of the Governor perhaps being chipped away, but I think, for what I have just mentioned earlier, I would hope to reassure him that this particular Bill would not interfere with His Excellency the Lieutenant-Governor's position by actually sitting on the Hill itself and presiding there.

I thank Mr Gill for his comments and I know that he looked for clarity on one or two issues and, certainly, I welcome the great interest he has expressed in this; I would wish to clarify the particular points that he has raised in order to reassure him.

The business that he mentioned to do with 'Her Majesty': it is again my understanding that the Interpretation Act would deal with 'Her Majesty' or 'His Majesty', which would prevent any particular problem in the future.

I thank the Hon. Member for Peel, Mrs Hannan, for her comment and I think she, thankfully, supported this minor advancement. There are Members who, I realise, would like us to go further along a particular road, but I think this is one small step which, hopefully, most people can live with.

I thank the Hon. Member for Onchan, Mr Karran, and I acknowledge and recognise that he, too, has had a long interest in aiming for constitutional advancement, and I hope, for a sense of consistency that, in fact, he will be minded to support this particular small step, although I appreciate that he shared with us his aspirations that it should only come into effect when a democratically-elected President is put in place by the people, so I thank him for his interest in that.

And, finally, again, I thank the Hon. Member for Onchan, the Chief Minister, Mr Corkill, for providing a great deal of clarity and answering some of the points that had been already mentioned. I thank him most sincerely for his generous support.

I think I would also wish to conclude by suggesting that, in fact, this is only a very small incremental change, and I do hope that . . . Any of the points that I have not actually clarified, then I would certainly wish to speak to any

Members that might wish to raise any points with me.

The final point I would make actually, though, is the very fine contribution from the Hon. Member from Ramsey, Mrs Craine, and I thought that this was an excellent contribution in terms of the sense of pride that we all have in our constitutional advancement. I think she spoke very much from the heart; in fact, the very first President of Tynwald was her late father, Sir Charles Kerruish, and I concur entirely with her that the highest honour that we can give anybody on the Island, I think, is electing that person to be the President of our Tynwald. I would agree that Tynwald Court and another place has developed from maturity and the Presidency, although it has not been with us for many years, has certainly earned the respect of the people around the Island for this high office and I can only concur with all that she has said.

And as far as the Lieutenant-Governor being more respected than the President, or indeed, yourself sir, Mr Speaker, I would think that it is an entirely different issue. I think that people around the Island are happy to have respect for the President of Tynwald, yourself Mr Speaker, and, of course, His Excellency the Lieutenant-Governor.

So I conclude by begging to move that the Constitution (Amendment) Bill 2003 be read for the second time, and hope that Members can give it unanimous support. Thank you.

The Speaker: Thank you, Hon. Member. Hon. Members, the motion for the House is that the Constitution (Amendment) Bill 2003 be now read a second time. All those in favour say aye. Against, no. The ayes have it.

A division was called for and voting resulted as follows:

In the Keys – Ayes 19, Noes 1

FOR	AGAINST
Mr Anderson	Mr Karran
Mr Cannan	
Mr Quine	
Mr Quayle	
Mr Rimington	
Mr Gill	
Mr Gawne	
Mr Houghton	
Mr Henderson	
Mr Cretney	
Mr Duggan	
Mr Braidwood	
Mrs Cannell	
Mrs Hannan	
Mr Bell	
Mrs Craine	
Mr Corkill	
Capt. Douglas	
The Speaker	

The Speaker: Hon. Members, the motion carries with 19 votes for and 1 vote against.

Protected Cell Companies Bill **Second Reading approved**

The Speaker: Hon. Members, we move on to the Protective Cell Companies Bill and I call on the Hon. Member for Ramsey, Mr Bell

Mr Bell: Mr Speaker, this Bill will enable the establishment on the Island of cellular companies, in which each cell has its own assets and liabilities. It does this by creating a framework for formation of PCC's under the Companies Acts 1931–1993, and for the conversion of an existing company to a Protected Cell Company (PCC), provided that it is a company limited by shares.

The Bill has been the subject of consultation exercise with interested parties, and, as a result of that consultation exercise, a number of amendments have been made to it. In addition, leading counsel's advice was also taken before it was drafted.

The legislation is seen as being of particular importance to the captive insurance sector, where it provides a relatively low-cost opportunity to enter the captive market. This is because it enables companies that might be otherwise too small to form their own captive insurer, with the relative high capital commitment that that usually entails, to participate in a cell arrangement where the amount of capital that they have to contribute is very much less.

This is because the core capital for a PCC arrangement is usually provided by the sponsor of that arrangement, that is, the person establishing the protected cell company.

In addition to the opportunity provided to smaller companies to participate in the captive market, the legislation will also provide an opportunity for some of our larger single-parent captives to convert into a PCC. The attraction of doing this, is that for large diverse multi-national companies, it enables each division's captive insurance programme to be handled through a separate cell, thus providing a great focus within each division on the cost of risk. It is seen as being attractive for such companies when they participate in joint-venture arrangements.

Similar provisions in Guernsey have resulted in significant growth in the captive insurance sector there in recent years. Other jurisdictions are now also developing this area of business successfully, including some states of the United States.

Furthermore, other uses for cell companies are now being developed and this legislation will allow for the extension of its provisions to other areas, as the need arises, through regulations.

Part 1 of the Bill concerns the formation of PCCs. It allows for the conversion into an existing company into a PCC and includes provisions requiring a company status as a PCC to be identified clearly in its name and memorandum of association. This is to ensure that people having dealings with a PCC are quite clear to the nature of the company.

This part also includes provisions restricting the uses of a PCC to insurance business within the meaning of the Insurance Act 1986, or such other business as may be prescribed.

Part 2 deals with the creation of cells within a PCC and the designation of the assets of a PCC as being either cellular or non-cellular. This is, of course, one of the fundamental principles of the Bill.

It also deals with the duties of the directors of a PCC, including their responsibility to keep the assets of each cell separately identifiable for non-cellular assets.

Part 3 deals with the creation and issue of shares by a PCC in respect of any of its cells. It also deals with the payments of dividends in respect of cell shares. The reduction of cell-share capital safeguards the creditors, in this regard, the liability of holders of cell shares and the

creation of offences, if an officer of a PCC conceals or misrepresents certain matters in connection with those aspects.

Part 4 of the Bill deals with matters in connection with both the cellular and non-cellular assets and liabilities of PCCs. These include the position of creditors of a PCC and their recourse to cellular assets. The transfer of cellular assets from a PCC, with the approval of the High Court and the circumstances in which the Court may make an order allowing such a transfer.

Part 5 confers powers on the High Court to make a Receivership Order in respect of the business and assets of a cell of a PCC. A receivership order will enable the business and assets of a cell to be wound up and the assets distributed to those entitled.

The provisions then go on to cover the persons who may apply to the court for the making of an order, the procedures to be followed, the discharge and variation of such an order, and the functions and the remuneration of the receiver. It will be seen that the High Court is given a role in a number of areas in relation to this legislation. This is to provide the various parties involved in or with a PCC with further safeguards in respect of their interests.

Part 6 deals with certain matters in connection with the liquidation of a PCC and clarifies that the provisions of the Companies Act in relation to the distribution of property apply.

And, finally, Part 7 includes some general provisions.

It has long been the wish of a section of the industry on the Island for this legislation. It has been particularly noticeable and effective in Guernsey over the last few years. It now seems to be a well-established business practice, and, therefore, we are anxious to see this Bill move forward quite quickly because we do believe it will open up new business opportunities for the Isle of Man, Mr Speaker. So I beg to move.

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

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

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

Mr Quine: Yes, I have just one question. I understand, of course, the need for what we are about to do. We have a single legal entity and various components make up that legal entity; I follow that.

What I am concerned about is the exposure of the public or the other parties that deal with these individual components: are the rights of the individuals who deal with a component, a cell of a company, in some way going to be limited? In other words, are their rights to claim going to relate to the legal entity as a whole, or are their rights and ability to claim to be limited to the assets of a particular cell?

I think this is very important, because I can see the practical value, from the business point of view, of doing this - I can see that, and I can understand how it functions. But if, indeed, those who are going to be trading with these cells are going to have reduced coverage in terms of their liabilities - because the claim lies against a cell and not against the company; the company would be able to hold itself out as being huge assets - when it comes to an

individual or a corporate body seeking a claim, if that claim is going to be limited to the assets which are ring-fenced within a cell, then there is something wrong with that. Perhaps the Minister could explain to us precisely how that operates and to what extent is the exposure, should we say, of the customers going to be different from a single company.

The Speaker: Member for Onchan, Mr Karran.

Mr Karran: Vainstyr Loayreyder, I was originally going to vote against this proposal until I realised that it is purely for the captive insurance market. I was a little bit concerned that we could see this being established for basic companies, which I believe is not the case, and I am sorry to the mover of the Bill for not going to his presentation – if he did have a presentation, as far as this issue is concerned – because it is something that has given me some concern.

Like the previous speaker, I was a little bit concerned; whilst I think it is important, we have got to get in there quick when we are looking for new markets, and we need to keep the economy of the Isle of Man flowing, I have a concern with this Bill.

If you had the likes of – we will use a fictitious – ‘Karran’s Insurance Limited’, which has billions of reserves, as far as its promotion is concerned, and then you find out that you have taken out your insurance, not under the heading of Karran Insurance, but you find that you are in Karran Marine, or Karran Car Insurance Limited and you find that the situation is that Marine – because of some ecological disaster with a big ship – has just had a major call on that cell, what I am concerned about is the issue that you can have the status of a company that you believe to be a billion-pound asset company, whilst it has an association with billions behind it, you find that your claim for your little boat has got no cover because of some big oil tanker that has collapsed and crashed into some rocks. My concern is: what sort of safeguards can we have for the Island, that we do not end up with that sort of scenario where the Island could get bad press as far as that is concerned?

I am also interested, with the mover, in the issue of profits. How do we distribute profits within a PCC? Does the head office have the profits? Or does the likes of the Karran Marine Insurance take the profits that come from the Marine? Does the car insurance section or cell just have the profits from there or do the profits from the whole organisation get distributed amongst the whole company?

I just think that this is a very complicated proposal. I do not understand insurance business. I have asked a few of my friends, as far as this Bill is concerned, from abject horror to quite a sensible progressive policy of the Treasury to come up with such a Bill. So I have not been able to get any continuity as far as this piece of legislation is concerned.

But I am concerned that the problem I see is that I could be quite innocently paying my insurance premium, thinking that I have got the backing of the conglomerate, the major front office company, and find out, when I make a claim, that, whilst it has got that fancy office with all its assets, the cell company that is part of this thing has got no recourse as far as the assets are concerned.

I would be interested to know if that is the case and maybe it could be possible that we could have a presentation, if Hon. Members have missed that opportunity of a presentation, maybe, in the Millennium Room sometime

before the clauses of the Bill, Vainstyr Loayreyder.

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

Mr Corkill: Thank you, Mr Speaker. I have found the comments of the previous two speakers interesting, because this protected cell legislation is not a new concept and other jurisdictions did introduce it some years ago.

When I was at the Treasury, along with Treasury colleagues, some of whom are here today, we took a very cautious view on the protected cell legislation at that time, and we were criticised by the insurance industry at that time for not being proactive enough and not going down the road quickly enough of protected cell legislation. That must be seven years, or maybe longer, ago that this debate started.

The reason that was given then for our reluctance was almost the opposite of what our two previous speakers have spoken about today, Mr Speaker, inasmuch as the issue of having assets protected in a cell, if that is what the legislation says and if that is what the intent is, then that is what must happen. Those assets need to be protected in that cell and not available to other cells in the structure which could draw out assets across the Chinese walls that are in place between these cells, when that is not what was intended at all.

So, in terms of the public, I think, it is important that we pass legislation, in that it is not a situation where the assets of the overall structure are available to an individual if something happens; what we should be talking about is ensuring that these protected cells are really protected and that the purpose for which they are there and the assets that are backing that purpose are available only for that purpose, and that you do not get this cross-flow of activity reaching those cells, because that then would potentially leave people exposed, thinking that assets were protected in a cell, when other parts of the structure could suck out those assets under a particular situation.

It was the Treasury’s view at that time, Mr Speaker, that, perhaps, it would be wise to see one of these structures to be tested in the UK courts, for instance, to see whether that structure was as strong as other jurisdictions were saying. We, at that time, had a doubt that that might not be the case.

My understanding is that the years have gone by. A number of other jurisdictions, big and small, now have this legislation. It has become accepted as business practice. There is a wide knowledge throughout the world now about this type of legislation, but I do not believe it has ever truly been tested in the courts.

But I think the Treasury now and the Government of the Isle of Man is more comfortable with the concept, because we have seen how other jurisdictions have been able to deal with it. So, rather than go down the road of the two previous speakers, where members of the public should have access to all the cells if something goes wrong, really we should be talking about access to a contained cell, because that is what these special purpose vehicles are all about.

I just found the comments interesting, because the caution has always been from the other side of the debate. That was my contribution, Mr Speaker.

The Speaker: Hon. Member for Ramsey, Mr Bell, to reply to the debate.

Mr Bell: Thank you, Mr President, and –

A Member: Not yet!

Mr Bell: Sorry, Mr Speaker – being in the same Chamber, I am getting confused!

If I could start with, perhaps, the comments from the Chief Minister first, Mr Speaker, and, in the main, I would compare with his description of how the system operates. He is quite right when he said that Treasury was cautious about this in the early days and this certainly goes back to the mid 1990s, because, particularly the former Member of Council, Mr Crowe, was extremely enthusiastic about that at the time and raised it at every opportunity. But I think Treasury, because it was still a relatively new creature at that stage, exerted considerable caution until they had actually seen it in working practice.

Guernsey, in particular, is the jurisdiction that gets referred to me more often. It was one of the early operators of this system and it is clear now that it works very well and has been very successful in Guernsey and, in particular, in stimulating the captive insurance business in that jurisdiction.

The Chief Minister is right, though, that the structure as such, as far as we have been able to tell, has not yet been tested in court, even though it has been operating for a great many years. We have taken advice from leading counsel, though, before drafting this, to test it certainly at that level, and we have taken the best advice we can get, really, in terms of constructing this. Therefore we are confident, at the moment anyway, that this process will work.

But there is now a long established working practice in other jurisdictions to show how it works and this is why Treasury now is more relaxed, I think, about its introduction.

Of course, also, as I said earlier, Mr Speaker, we are also responding to the industry, which has been pushing this now for quite some time and, perhaps, it has been highlighted with the turmoil in the insurance markets over the last year or two and this is really what has brought it to the fore again.

If I could go then to Mr Quine, Hon. Member for Ayre: he has, in effect, commented on, as I understand it, the creditor's exposure to the cell. As the Chief Minister said, the whole purpose of a cellular structure is that it is cellular; the assets of that cell are contained within that cell and, therefore, if there was a problem with that cell, it would not be able to draw on the assets of the other cells. But, as I understand it, it does ultimately have the ability to draw on the assets of non-cellular funds within the structure.

So, if you have a company at the top forming the umbrella over, say, half a dozen cells underneath it, the assets of the other cells cannot be used to offset the creditors in the cell which is in trouble, but those creditors then do have access above the cells to the overall corporate assets.

So the asset of the cells themselves are protected, so the other cells are inviolate, they cannot be touched, but you can draw on the assets of the overall company, in exactly the same way as you would do now with a straightforward company.

The Member for Onchan, Mr Karran, is concerned about people thinking they are investing in one vehicle and yet their funds ending up in another. It is very clear in this

legislation that anyone dealing with . . . There is a major onus on the protected cell company, if it is dealing with the public, or whatever body it is dealing with, that they do clearly represent that this is a protected cell company, so that they are not conned into believing this is just a normal company and yet they suddenly find themselves dealing with a PCC. That is quite clear and there seem to be quite strict rules on that, so misrepresentation, which I think the Hon. Member is actually getting at, is – we hope, anyway – avoided by the legislation which is here and there are stern penalties for those people who fail to live up to that.

But, essentially, Mr Speaker, the intention of this Bill is, at the moment, at least, is strictly to deal with captive insurance. This is the area we are looking at; it is insurance business. There will be a facility there to extend the idea of PCCs into other areas, but that is a separate issue altogether which will need the IPA to consider should such a proposal come along.

So we are dealing with captives at the moment and, therefore, I think the number of the issues that the Hon. Member is referring to may well appear further down the road if this type of operation is extended, but, at the moment, I think the answers I have given him will solve the problems that he has been raising.

The only other point he raises, Mr Speaker, is whether or not Members wanted a presentation. There has not been a presentation, but I can certainly arrange for the IPA to give a short presentation to Members if they feel that would be appropriate. That would be no difficulty at all. I fully accept that, unless you are involved with this sort of thing, it is quite complex –

Mr Henderson: It is.

Mr Bell: – and I have had to struggle myself these last few weeks to get on top of these Bills, which have been coming at me thick and fast.

So I fully appreciate that Members may not always even understand the terminology that gets used, let alone the actual direction of the Bill. So, if Members feel that would be appropriate, we can do that at very short notice and we can put a short presentation on, Mr Speaker

Having said that, I beg to move.

The Speaker: Hon. Members, the motion before the House is that the Protected Cell Companies Bill 2003 be now read a second time. All those in favour say aye; against, no. The ayes have it. The ayes have it.

Now, Hon. Members, that concludes the business before the House. The House will now stand adjourned until 10 a.m. on Tuesday 11th, back here in our own Chamber.

The House adjourned at 3.45 p.m.

Corrigendum

For the reference to Mr Delaney, page 37 K121, 2nd column, substitute Mr Cretney.