



**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, 11th 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); Hon. A F Downie and Hon. J P Shimmin (Douglas West);  
 Capt. A C Douglas (Malew and Santon); 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 Rushen, Mr Gill, the Hon. Member for Rushen, Mr Rimington and the Hon. Member for Onchan, Mr Earnshaw.

## Questions for Oral Answer

### CHIEF MINISTER

#### Internal Memoranda Copies for Members concerned

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

*Will you arrange for all Departments and Boards to disclose any internal memoranda held on files concerning Members of Tynwald who hold responsibilities within Government to the Member concerned for his information both now and in the future?*

**The Speaker:** Hon. Members, we go onto Questions for Oral Answer and I call on the Hon. Member for Douglas North, Mr Houghton.

**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 Onchan, Mr Corkill, Chief Minister, to reply.

**The Chief Minister (Mr Corkill):** Thank you, Mr Speaker.

Mr Speaker, the Data Protection Act 2003 already provides the right for any person, including Members of Tynwald, of course, to access and obtain copies of any personal data that is held by a business or organisation.

Not only does this right provide access to personal data held on a computer system, it also provides access to any personal data held in paper records in a relevant filing system.

Requiring all Departments and Boards to routinely disclose any internal memoranda would create an

unnecessary administration burden, Mr Speaker. I would suggest that it would be more practical for any Member who wishes to know what information a Department or Board holds about him or her to exercise their right under the Data Protection Act.

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

**Mr Houghton:** Thank you, Mr Speaker.

Thanking the Minister for his answer, does he not agree with me that he is simply 'passing the buck' on this issue and would he reconsider my request and arrange for such secret memoranda to be circulated amongst Members? Would he agree to that?

**The Speaker:** Chief Minister to reply.

**The Chief Minister:** The Hon. Member, in his supplementary, talks about secret memoranda –

**Mr Houghton:** That is what they are.

**The Chief Minister:** – circulating to Members. Does he mean to the individual Member or to all Members? Because that, I believe, would be a breach of data protection.

There is no difficulty, in my experience, Mr Speaker, in Hon. Members accessing information out of Departments relevant to their duties and functions, or, indeed, any correspondence that they have had with the Departments. If Hon. Members no longer have personal copies, they have full access to be able to retrieve such information for their own purposes.

I would say, though, that in terms of doing it on a routine basis we would be having to set up a level of administration that really would serve little purpose and can I say, Mr Speaker, that, in order to achieve what the hon. questioner is saying, we would have a situation where all staff in Departments would need to be made aware that any internal memoranda concerning a Member of Tynwald would have to be disclosed.

We would then have to have each Department with someone dedicated to co-ordinating and collating all these memoranda so that they could be forwarded to Members. Importantly, each Department and Board has a duty of confidentiality and privacy with regard to the information that they hold and disclose, so each memorandum would have to be scrutinised so that any third-party information was removed. So it is a very time-consuming process that the Hon. Member is asking for and what I have said in my answer, Mr Speaker, is that Members have free access to Departments to retrieve the memoranda and data that they are looking for.

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

**Mr Houghton:** Thank you, Mr Speaker.

I thank the Hon. Minister, but he is batting off the answer somewhat, sir. I would clarify that these memoranda be circulated to those respective people that those memoranda do actually relate thereto. I would clear that matter up now.

But would he not agree with me, first and foremost – and it appears such in his supplementary answers – that

there does exist such memoranda? Does he agree that they do exist? These are secret memoranda held by Government Departments on individual Members. Does he first agree that they exist? It appears that they do, but can he confirm that?

And what I ask him again – I would like to ask him again – would he kindly arrange to circulate those that have text appertaining directly to Members of Tynwald to those individual Members for their reference, sir? Thank you.

**The Speaker:** Chief Minister to reply.

**The Chief Minister:** The Hon. Member, I think, is suggesting that there are files of secret memoranda in Departments about individual Hon. Members.

**A Member:** There probably are.

**Mr Houghton:** There are.

**The Chief Minister:** Can I say, Mr Speaker, that if an Hon. Member requests information or data personal to that Member then they are free to do that and that data and information will be provided.

To set up a structure which routinely distributes such volumes of information would be very, very resource intensive, because memoranda and other items of information will very often refer to third parties who, under the Data Protection Act, have protection, have confidentiality, so there would be a great deal of scrutiny required and personnel required to do this on a routine basis.

I am not aware, Mr Speaker, of any Member having contacted me in the time I have been Chief Minister to say that they have been unable to retrieve data which is personal to them from any Department or Statutory Board of Government.

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

**Mr Karran:** Vainstyr Loayreyder, could the Ard-shirveishagh just clarify what sort of secret information that his Department, the Council of Ministers, would have on Hon. Members? I think most of us have a pretty dull life, so it would be interesting to know.

**Mr Houghton:** There are loads of files on you, Peter! *(Laughter and interjection)*

**The Speaker:** Chief Minister to reply.

**The Chief Minister:** Mr Speaker, in answering this question and preparing for this question, I was of the opinion that, where Members and Ministers have been carrying out statutory functions within Departments, and so, as a result of that, writing memoranda, writing letters, being involved in the workings of that Department, writing to third parties outside of Government on behalf of the Department and that type of communication, then obviously copies of all that correspondence and details of that correspondence are held by that Department.

And can I say that any issue that Hon. Members have dealt with during their governmental responsibilities, if they wish to retrieve that information at a later date, even many years later, as we have seen in recent times, then it is

available to Hon. Members.

So this issue and this discussion about secret files and some sort of underhand protest going on is really outwith this question and is just not something that I can seriously consider, Mr Speaker, because it is not a practice that happens.

### Deception of Tynwald and Public Council of Ministers' action

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

*Following the decision of the House on 28th October 2003, in relation to the Hon Member for Ramsey's contempt of the House, what enforcement action do you and/or the Council of Ministers propose to take regarding the clear breach of duty, in the "Notes for Ministers" – "not to deceive or mislead Tynwald and the public"?*

**The Speaker:** Question 2. I call on the 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 Onchan, Mr Corkill, Chief Minister, to reply.

**The Chief Minister (Mr Corkill):** Mr Speaker, I have taken very careful note, not only of the decision of the House on 28th October 2003, but also of the opinions expressed by Hon. Members leading up to that decision.

I note, in particular, that the majority of the House voted against the amendment proposed by the Hon. Member for Ayre, Mr Quine, which included the suspension of Mr Bell from Tynwald for a period of two weeks. Instead, the House opted by a majority vote for the lesser option of censure.

My understanding of the intent of the House during this debate was that punitive measures were not deemed appropriate by the majority of Hon. Members.

Since then, I have considered even more carefully, Mr Speaker, what action should be taken and have concluded, on balance, that no action other than that already taken by this Hon. House is necessary by me.

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

**Mr Karran:** Vainstyr Loayreyder, a supplementary.

Would the Ard-shirveishagh not agree, in reply to a Question on 15th July from the Hon. Member for Rushen, Mr Gawne, you told Tynwald,

*I do not believe that it would be appropriate under any circumstances for a Minister to knowingly mislead Tynwald and to remain in office?*

Following the vote of contempt two weeks ago, have you asked the Treasury Minister to resign? Has he refused? And if you have not asked him to resign, was your reply in Tynwald misleading?

**The Speaker:** Chief Minister to reply.

**The Chief Minister:** Mr Speaker, I certainly do my best in answering, as I am sure all Hon. Members do, so that we do not mislead ourselves.

I think the hon. questioner is referring to the 'Notes for Ministers', which says that:

each Minister is responsible to Tynwald for the conduct of his or her Department and for the actions carried out by the Department in pursuit of Government policies or in the discharge of responsibilities laid upon him or her as a Minister. Ministers are accountable to Tynwald in the sense that they have a duty to explain in Tynwald the exercise of their powers and duties and to give an account in Tynwald of what is done by them in their capacity as Ministers by their Departments. This includes the duty to give Tynwald, including its select committees and the public as full information as is possible about the policies, decisions and actions of the Government and not to deceive or mislead Tynwald and the public.

This is a very difficult issue. It is related to other events, as we know, Mr Speaker. They are events that occurred a long time ago, for me, as Chief Minister of only two years standing. It was at a time when the Hon. Member was the Minister of a Department other than the Treasury and so I have no reason to believe that any of the actions of the Hon. Member for Ramsey, Mr Bell, in his capacity as Minister for the Treasury, have been questioned and I do not believe that he has knowingly misled the House in his function as Treasury Minister.

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

**Mr Quine:** Thank you, Mr Speaker.

Is the Chief Minister aware of any precedent either on the Island or at Westminster for a Minister found at fault for contempt of the House remaining in office?

**The Speaker:** Chief Minister to reply.

**The Chief Minister:** Well, of course, with events having been spread over so many years, Mr Speaker, one could argue that the Hon. Member for Ramsey did, in fact, resign his post as Minister for the Department of Tourism some years ago.

As current Chief Minister, I am dealing with the present situation, Mr Speaker, where Mr Bell has been the Treasury Minister for two years under my appointment and I have no reason to believe that he has knowingly misled this House, exercising those functions currently as Minister of the Treasury.

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

**Mr Cannan:** Will the Chief Minister give a clear and unequivocal answer, yes or no, to this question? Does the Chief Minister have respect for and confidence in the Management and Members' Standards Committee of this House? Yes or no, sir.

**The Speaker:** Chief Minister to reply.

**The Chief Minister:** I think the answer to that, Mr Speaker, is, yes, inasmuch as they had a very difficult job to do and we had a debate about that in this Hon. House not very long ago, but I did make reference at that point to the fact that the Committee had been unable to elect a chairman and I did ask the question of this House as to how the

Committee had been able to perform its function under those circumstances.

The debate ensued, Hon. Members made their decision and I fully respect the decision of the House of that time, Mr Speaker.

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

**Mr Karran:** Vainstyr Loayreyder, a supplementary.

Would the Chief Minister not agree that now that the Commission of Inquiry's findings have been supported by the Management and Members' Standards Committee and by this House itself, including one third of the Council of Ministers present and voting, does it not make the Treasury Minister's breach of 'Notes of Ministers' even more flagrant? And does it not make it more untenable for him to remain in this position?

**The Speaker:** Chief Minister to reply.

**The Chief Minister:** I have nothing else to add to what I have said this morning, Mr Speaker, to these supplementary questions, other than to say that the Commission of Inquiry into Mount Murray has not yet concluded.

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

**Mr Cannan:** Unfortunately, the Chief Minister failed to answer my supplementary in full and did not give an opinion as to whether he had confidence in the Management and Members' Standards Committee of this House.

**The Chief Minister:** I said yes to that.

**The Speaker:** Chief Minister.

**The Chief Minister:** I said at the beginning of my answer to that supplementary that the answer to that was, yes, that I did have confidence in the Committee, but I also reserve my comment that I had found it difficult to understand how the Committee had performed its duties without first appointing a chairman.

But I respect the views of the House during that debate, that, in fact, a report was provided, notwithstanding that difficulty, and the answer to the Hon. Member's question at the beginning of my comment was that, yes, I do have confidence that the committee is functional.

**The Speaker:** Hon. Member for Douglas East, Mrs Cannell.

**Mrs Cannell:** Thank you, Mr Speaker.

Is the Hon. Chief Minister aware that the UK ministerial code practised in Westminster, the Scottish Assembly and Northern Ireland deemed that, when a Minister knowingly misleads that House, that he is offered, or she is expected to offer, their resignation? Can I ask the Chief Minister, has the Hon. Member for Ramsey, Mr Bell, offered his resignation to you, sir?

**The Speaker:** Chief Minister to reply.

**The Chief Minister:** The hon. questioner will be aware that I have the responsibility on behalf of Tynwald to request

that decision of a Minister if I feel it appropriate and I would re-iterate that I am dealing with a current situation of the Treasury Minister of two years' standing.

I have a lot of confidence in Mr Bell and the job that he has been doing. That is echoed by a lot of people in the community, who also contact me and have my ear – as Chief Ministers hope to have the ear of people within the community – who are keen that Mr Bell continues as Treasury Minister at this time.

So these are the factors that I have had to weigh up and I would say, as I have said in my previous answers, that one could argue that, in fact, the Hon. Minister did resign the responsibility he had relevant to the criticism that he has received.

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

**Mr Karran:** Vainstyr Loayreyder, would the Chief Minister not state that, with regard to the Treasury Minister's reply in 1992, how does he still have your confidence as far as this and can you explain to this Hon. House how you do still have that confidence after such a unique situation that has happened in this Hon. House?

A further supplementary, Vainstyr Loayreyder: would the Ard-shirveishagh not agree that the problems that we had with the Management and Standards Committee is due to the structure of Government and this country and it is do with problems we have with the separation of function between the executive, with its power and its patronage, and its parliament trying to do its independent job of scrutiny, as far as this House is concerned?

**The Speaker:** Chief Minister to reply.

**The Chief Minister:** Answering the last point first, Mr Speaker, I have absolutely no problem as Chief Minister in ensuring that Isle of Man Government is exposed to the constructive criticism that all parliaments have a duty to provide against executive government.

Since becoming Chief Minister, can I say that we have changed a lot of things within Government, particularly in relation to our corporate planning process, where now we do expose ourselves even more than ever before to the scrutiny of Tynwald, and that is by the process of an annual report which now goes before another place each July, where we can be measured, standards can be compared with previous years.

So I would not want Hon. Members to think that, in some way, executive Government is trying not to be open for scrutiny. I think the reverse is true and I think that we have proved that.

In relation to what the Hon. Member said was a unique event, yes, it would seem that the Hon. House has concluded that this was a unique event back in 1992, but I am sure that there are many occasions which go unnoticed where Ministers inadvertently mislead Hon. Members, or one or two Hon. Members, because of the comments that are made. That is the case.

But my responsibility, I believe, Mr Speaker, is to deal with the currency of the situation, and the current situation is that, yes, I do have confidence in Mr Bell. I have said this publicly and I will say it again, and on a daily basis I work alongside Mr Bell for the good governance of this Island and in the two years and the years that I have worked

with him, Mr Speaker, I have not had cause for any indication that things are not working in the interests of the Isle of Man.

I would like to finish, if I can, Mr Speaker, by saying that I fully respect the decision of the House. I did not agree with it at the time, but the vote was taken a week or so ago and I respect that vote fully and the reality of the situation is that an amendment which talked of two weeks' suspension for the Hon. Member for Ramsey was dismissed by this House and, in my view, and I think the view of other Members, the lesser penalty, as it were, of a note of censure by this House was accepted and that has been guidance for me as Chief Minister in my deliberations since then.

### **'Notes for Ministers' and Ministerial Appointments Subjection to Tynwald approval**

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

*When a Chief Minister allows a Minister to flout the 'Notes for Ministers' with impunity, is it not time to subject all Ministerial appointments to Tynwald for approval, and to subject 'Notes for Ministers' themselves to Tynwald approval and enforcement?*

**The Speaker:** Question 3. I call on the Hon. Member for Onchan, Mr Karran.

**Mr Karran:** I beg to ask the Question standing in my name.

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

**The Chief Minister (Mr Corkill):** Mr Speaker, I would first like to suggest or venture that possibly this Question is actually contrary to Standing Orders, in that it is a hypothetical question which is offering an opinion and is not seeking to obtain information on a matter of fact. Therefore, when I read the Question, I was somewhat surprised, Mr Speaker, to see it on the Question Paper and that was my opinion. But, Mr Speaker, notwithstanding that surprise, I certainly will endeavour to answer the Question as best I can.

The Hon. Member for Onchan is seeking to link what I regard as a non-existent hypothetical situation with a long-held desire of his that ministerial appointments should be subject to Tynwald approval. This is a matter which has been debated several times within Tynwald and is, I would suggest, a matter for Tynwald itself to decide and not for any individual.

I would point out, however, that each time it has been debated Tynwald has rejected this motion and in my view Tynwald has sensibly determined that, if the Chief Minister is to be responsible for his Council of Ministers, he must have the power to appoint them.

Turning to the document, 'Notes for Ministers', Mr Speaker, this is a document which is reviewed on a regular basis – always after a general election and, if necessity or changing circumstance dictate, as and when, between elections. This document is not a regulatory handbook; it is

simply an amalgam of information, guidance on practical matters, such as seating arrangements and so on and so forth. So I do not see that such a document is really of sufficiently high level to be debated in Tynwald, neither do I consider that much of the content of it lends itself to a need for enforcement.

Mr Speaker, I hesitate to go further in response to the Question but, if I were feeling brave, I might venture to mention that perhaps what the Hon. Member for Onchan should be seeking is a code of conduct for all Members. But that, sir, I understand and fully appreciate is a matter for the Keys Standards Committee to address, if they so desire, and not for me as Chief Minister.

However, can I say, Mr Speaker, if it is deemed appropriate for such a debate, I do have access to a first draft of such a code as a starting point for Hon. Members and I would be happy to provide this document for the House to consider.

**The Speaker:** Before we proceed, Hon. Members, can I just respond to the comments of the Chief Minister when he introduced his answer.

Can I just clarify for the Chief Minister and for the House that all Questions that are put to the Secretary for inclusion on the House of Keys Order Paper are scrutinised by myself and by the Secretary, with a view to seeing whether or not they comply with Standing Orders, and they only appear on the paper if they are not in total breach of Standing Orders.

I would, of course, clarify that my leaning is tending to be towards Members in terms of them being able to ask the Question. However, if there is a clear breach of Standing Orders, then a Question would not appear on the Order Paper and this Question was so scrutinised.

Hon. Member for Onchan, Mr Karran.

**Mr Karran:** Vainstyr Loayreyder, a supplementary.

Would the Ard-shirveishagh not agree that, by failing to enforce the 'Notes for Ministers' when they had been clearly breached, are you not telling the electorate that, yes, we have rules for ministerial conduct but, no, they do not actually apply to the Hon. Member for Onchan, the Chief Minister, the Ard-shirveishagh, Mr Corkill, or any of his Ministers?

**The Speaker:** Chief Minister to reply.

**The Chief Minister:** That is but one part of the Question that the Hon. Member has put down, of course, and I have tried to explain the status of these 'Notes of Ministers.' Yes, they are important; the conduct of all Members of this House, I believe, sir, is important and so, I would suggest, as I have ventured, that, if we are seeking to firm up codes of conduct in relation to Members, then that should be a matter for all of us and not just Ministers.

The 'Notes for Ministers' is freely available for people to look at and scrutinise. It is a guide. It is a useful handbook, as it were, but I think that the hon. questioner is trying to give the 'Notes for Ministers' a higher status than, perhaps, what the notes in there actually deserve. Maybe a code of conduct for all Members would be something that would be of a greater status and, as I have said, if Hon. Members are interested in this area, there is a draft floating around in executive Government, which might be a starting point for

the House to consider, but I will leave that to Hon. Members.

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

**Mr Quine:** Is it not almost inevitable, Chief Minister, that, for so long as the present despotic system of the Chief Minister appointing Ministers remains in being, the executive will continue to control parliament, which is the factual situation here?

Secondly, is his particular posture in regard to this matter not dictated by that fact and is that not why he is inclined to disregard parliamentary precedent and practice?

**The Speaker:** Chief Minister to reply.

**The Chief Minister:** Mr Speaker, I have been described as a lot of things in my time, but never a despot. But this morning has changed that.

I understand what the Hon. Member is saying: in a small parliament where the executive has to be formed to cover executive Government functions, there is this danger of having a block of people who are all whipped into line and we have this collective vote and parliament can go home. That is the fear, but can I say that the Council of Ministers is a minority group within the total membership of Tynwald. Hon. Members may well say, 'Well, there is departmental membership which goes along with that' and, yes, that is true, but I think that, if you look at the nature of votes that have been carried out in the House, there are times, particularly on sensitive issues, where Ministers quite clearly have a free vote – quite clearly, usually stated up front – and individuals make decisions in a parliamentary fashion.

It is a difficulty with the size of our parliament and without the structure of party politics. We look to another place, our adjacent islands across the water there, where you can have landslide victories in a two-party state system, where, in fact, the Parliament does almost have to go home because there is such a big majority.

It is never a perfect relationship whoever's the system is, Mr Speaker, and I understand what the Hon. Member for Ayre, Mr Quine, is saying.

But can I also say that there are two other points that I would just wish to raise in relation to the Hon. Member for Ayre. Firstly, in choosing the ministerial line-up, I try carefully, as previous Chief Ministers have, not to load one House of Tynwald more than is perhaps healthy, which is why it is always, I think, healthy for one, or maybe two, Ministers to be in Legislative Council. Otherwise we would have 10 votes in this Hon. House and the block vote issue would, perhaps, be more of an issue for people. So I would ask Hon. Members just to think about that in terms of any potential constitutional change that they may be considering, and I think it is quite important that the balance is struck.

I understand what the Hon. Member is saying, Mr Speaker, but I think it floats away from this issue.

The other issue about . . . Going back to the Question, which is: should Ministers, appointed by myself – well, appointed by His Excellency the Governor, on my recommendation – be approved by Tynwald?

Well, I think the point is that if you want to keep me on the hook, Mr Speaker, then you leave it the way it is. If you want to give me, as Chief Minister, an opt-out, so that I can blame Tynwald for certain appointments, then do the change. Make sure that Tynwald approves Ministers and then I will

have an easier life, Mr Speaker. Do Hon. Members really want that?

So it is finding the balance and I believe that it is still in its infancy, this ministerial governmental system. It can be fine tuned by constitutional change, but I think we need to just be careful about picking and choosing the arguments.

**The Speaker:** Now, Hon. Members, I have allowed that to drift a little bit away from the main Question. I would like Members to concentrate their questions on the basis of the main Question, which relates to 'Notes for Ministers.' Hon. Member for Douglas East, Mrs Cannell.

**Mrs Cannell:** Thank you, Mr Speaker.

I would ask the Hon. Chief Minister, what is the point of having . . . Can he explain to us why there is a code of conduct for Ministers which apparently appears to be ignored, as and when desired? Why have a code in the first place? Is it not to set the parameters of how a Minister should behave and should perform their duties? So why ignore it on this occasion?

Does he not agree with me that he has a discretion, as Chief Minister, to come forward with his list of preferred team for Council of Ministers and seek a vote, without Tynwald having to direct him to do so? So why doesn't he use that discretion, bearing in mind that Tynwald has the power to fire by votes of no confidence in Ministers, so why should not Tynwald have the power to hire, as well as fire?

**The Speaker:** Chief Minister to reply.

**The Chief Minister:** I wish to reassure Hon. Members that I have not put aside the 'Notes for Ministers.' There is a copy on my desk, which sits there all the time, which I refer to on a regular basis when issues crop up within the Council of Ministers' deliberations in respect of whether it is Members' constituency issues, whether it is a matter of conscience, all manner of issues in terms of what is expected of Ministers, and I think that the 'Notes for Ministers' does actually give good guidance for us all.

On the second point, which I thought I had answered, Mr Speaker, Tynwald hiring and firing Ministers, that is fine. Certainly the firing is an easy process, whether it be a Minister or any Member of this Hon. House who has other responsibilities on behalf of Tynwald. These issues are in the parliamentary gift, absolutely, but I would say to Hon. Members that, if you want to take away the role of the Chief Minister in terms of appointing, then you also give the Chief Minister of the day a whole basketful of excuses that could be played in the other direction.

I not believe, with this type of governmental system that we have, without a party system, but trying to hold the executive accountable, that Hon. Members really want that to develop that way.

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

**Mr Karran:** Vainstyr Loayreyder, does the failure to ask the Treasury Minister to resign not mark the end of the road as far as self-regulation of ministerial conduct? Would the Ard-shirveishagh not agree that people will be saying now that there is a need to place rules for ministerial conduct on a statutory footing, if ministerial accountability is to mean

anything at all?

Would the Ard-shirveishagh also not agree that the appointment of the hiring of Ministers in Tynwald is not the issue that we are asking Questions about at this present time? It is the issue of your own guidelines.

And would he also not agree that when you take Departments like the DHSS, he has 11 block votes in this Hon. House before he even starts?

**The Speaker:** Chief Minister to reply.

**The Chief Minister:** It is difficult at Question Time to answer fully some of the points that are raised, because, Mr Speaker, we really have drifted away from the Question on the Question Paper now.

The issue of block votes, whether it be executive Government block votes or other groupings' block votes, is the very nature of politics. Let us not forget that we, as Members, come together on certain issues because we agree with those certain issues and we want to promote those certain issues through the parliamentary structure.

So I really hope that Hon. Members will be very careful in the way that they consider the balance between executive Government and the parliament, because it is certainly an interface that we in the Council of Ministers sensitively deal with on a day by day and certainly on a Thursday by Thursday basis. There are issues all the time in relation to the parliament, which we have to deal with and I have, as recently as yesterday, written to the Tynwald Management Committee on a number of issues where we have potential conflict, but it is inevitable that we have to seek to resolve these things.

I cannot believe that I can actually add to the answers I have made, Mr Speaker, already to previous supplementaries. I just want to reaffirm to Hon. Members, that I respected the decision that occurred a week or so ago. I noted very carefully that the House wished to censure Mr Bell, the Member for Ramsey, that they did not wish to go further than that and all my deliberations have been based on that premise, Mr Speaker.

**The Speaker:** Hon. member for Peel, Mrs Hannan.

**Mrs Hannan:** Thank you, Vainstyr Loayreyder.

Could I ask the Chief Minister in relation to the question: has he, as Chief Minister, allowed a Minister to flout the 'Notes for Ministers' with impunity, because I feel that part of the Question has not been responded to?

**The Speaker:** Chief Minister to reply.

**The Chief Minister:** My belief, Mr Speaker, is that I have not allowed that to happen and I would be derelict in my duty if I did allow it to happen.

If it has happened without my knowledge, then that answer could mislead the House, but to my knowledge, Mr Speaker, I have not allowed with impunity any Minister to get away with that type of behaviour.

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

**Mr Cannan:** Does the Chief Minister not realise that the continuation of this matter of ministerial integrity is bringing into public disrepute not only the Isle of Man, but

the office of both the Minister concerned and, indeed, the Chief Minister?

Further, does the Chief Minister recall that at the time of the Falklands War the then Foreign Secretary immediately tendered his resignation as a matter of honour, right or wrong, and perhaps in those days there was parliamentary integrity?

**The Speaker:** Chief Minister to reply.

**The Chief Minister:** Certainly, it is fine for the Hon. Member to quote such a serious issue as the Falklands War in promoting his opinion, and I think that is unfortunate.

I still believe that there is honour within the parliamentary affairs of the Isle of Man. I think there is a great deal of honour within the Council of Ministers.

As I have said, we are all Members together and if there is this concern about conduct of Members, whether Ministers or not, I have, in a previous answer, suggested how I might help the House address that issue, because I believe that the conduct of Members is a wider issue than what the Question is being targeted at.

## HEALTH AND SOCIAL SECURITY

### New Hospital car parking Addressing shortage

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

*(1) Can you explain why the Department did not fully answer my October Tynwald Question as to when adequate car parking will be provided at the new Hospital, in the knowledge that during weekdays the 711 spaces are all taken, and cars regularly have to park up to the various stop signs in the main car park and in the access roads to the parking bays; and*

*(2) can you state when this unacceptable situation is to be addressed?*

**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 Glenfaba, Mr Anderson, Member for the Department of Health and Social Security, to reply.

**The Member for Health and Social Security (Mr Anderson):** Mr Speaker, the Hon. Member's previous Question on this subject, asked in another place, was based on his presumption that car parking space at the new hospital is inadequate. The answer given reflected the need to determine the actual situation.

I do accept there are occasions when patients, visitors and staff experience some difficulty in finding a parking space. Having said that, the hospital has been carrying out random checks of parking availability and so far there have

been no occasions when all spaces have been taken up.

**A Member:** Rubbish.

**Mr Houghton:** Rubbish, absolute rubbish.

**Mr Anderson:** It is the case that, unsurprisingly, the main car park area is the most heavily used. That being so, it is the intention to introduce a system whereby visitors are directed to an overflow parking area, when the situation is such as to make this necessary.

As the Hon. Member is aware, the car parking facility at the new hospital is more than double that previously available at Westmoreland Road. However, the Department will continue to monitor the situation to determine whether further action is required.

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

**Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.

Would the Hon. Member with responsibility for Health agree with me that I am not putting forward a perception, but it is a fact of the matter (**Mr Houghton:** Hear, hear.) that the car parking space at the new hospital, which his Department pushed forward as one of the main selling points for this £200 million venture, is actually not –

**Mr Corkill:** Point of order, Mr Speaker. Can I just say that the Hon. Member is in risk of misleading the House by quoting such a figure.

**Several Members:** Hear, hear.

**The Speaker:** Hon. Member for Douglas North.

**Mr Henderson:** Gura mie eu, Vainstyr Loayreyder. Would he not agree with me that all the car-parking spaces at the new hospital are regularly taken up and, in fact, I have had to witness that myself on many occasions and it is therefore not a perception, but a fact, sir?

**The Speaker:** Hon. Member for Glenfaba, Mr Anderson, to reply.

**Mr Anderson:** Yes, thank you, Mr Speaker.

There is little doubt that car parking availability at the new hospital is a cause for concern, but, as I have already stated, the number of spaces available are double that that was available at the old hospital –

**Mr Houghton:** Of course, because people were parking round the streets.

**Mr Anderson:** Yes, that is the case, there were people using the main road for parking on as well, so, maybe, therefore we should not be surprised when we see car parking in extreme situations taking place on the road leading to the car parks.

But, as I stated in the original answer, Mr Speaker, there are very few occasions when you cannot find a car park and it is the intention, as I said earlier, of the Department, to point people in the direction of these overflow car parks, namely the A and E car park and the Newlands car park and

the information the hospital has given is that, on random checks, there are always at least one or two spaces available.

I think it has to be borne in mind that there is a high turnover of cars using the car park and one does not have to wait very long in a situation in any car park to find somebody leaving and to get into that car parking space.

I am aware that, on certain mornings when there are certain clinics on, the car-parking spaces are fully utilised. However, with waiting, as I say, for somebody to leave, you do not have to wait very long before a car parking space becomes available.

But it is the intention of the Department to make sure that the signposted areas to the overflow parking is put in place in such circumstances.

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

**Mr Karran:** Vainstyr Loayreyder, would the Oltey son Slaynt, the Member for Health, agree that maybe a package of measures is needed?

Would he also not agree that one of the problems is the part that is being used for Park and Ride to get into Douglas? Would he consider trying to have a go at the unaccountable management and the fact that he is only in charge when it suits the Minister and the management in the DHSS, (**Mr Houghton:** Exactly.) like the problems that we had? Will he try and institute the proposal that I put up for the old hospital and that is when people get their appointment, they get a parking permit with it, which would not cost much in administration? That way you could have disc parking up there and you could make sure that there is some way of making sure that these people, who have the stress of being ill, do not have the stress of having (**Mr Houghton:** Hear, hear.) to try and walk for miles, trying to get a car parking space.

Will he try and get through to his boss that this issue should be addressed? It would be simple to do and this would be one way of helping to ease the problem that is there, no matter how much he is trying to look the other way.

**Mr Henderson:** Hear, hear.

**The Speaker:** Hon. Member, for Glenfaba, Mr Anderson to reply.

**Mr Anderson:** Yes, thank you, Mr Speaker.

There are several issues raised there by the Hon. Member for Onchan. Firstly, the allegation that some people are using the hospital car park for parking and riding. The Department is investigating these allegations. We are very well aware that one or two people have made these allegations that people were parking in the hospital car park and then utilising a secondary lift, if you like, into town. This is being investigated. So far evidence has not been found of this, but it is being investigated.

As far as the parking permits that the Hon. Member raised, this is the first time I have heard of this –

**Mr Karran:** Well, we tried.

**Mr Anderson:** – idea. In the UK it is fair to say that the majority of UK Trust Hospitals actually charge patients or visitors for using their car parks and this is an income generation idea. Maybe the Hon. Member thinks that might be an idea –

**Mr Karran:** No, I do not.

**Mr Anderson:** – and in relation to a quick fix, there is not a quick fix to this situation. Extra car parks would require planning permission. There was very strict guidance put into the conditions when the hospital was allowed to be built there.

It would also raise the problem of where that funding comes from. We have, as every Department has, a three year business plan. We have nothing in our three year business plan to fund any extra car parking space, so, therefore, we have to make the most of the car parking spaces that we have, and, as I suggested earlier, we will continue to monitor the situation and to utilise the car parking we have at the new hospital most fully.

**The Speaker:** Hon. member for Douglas East, Mrs Cannell.

**Mrs Cannell:** Thank you, Mr Speaker.

Can I ask the Hon. Member with responsibility in this area: has he any idea of what proportion of those cars that are parked there for long periods of time belong to staff that work in the hospital? Has he any idea of the proportion of the utilisation on staff reasons?

Further, can he advise on the overflow area, which he alluded to in response to the first question, where people may be directed to, how many extra spaces that would provide, because my understanding is that is only a very small area, in fact, if my understanding is correct, does he agree with me that it is next to the Diabetic Centre, where there is a very small and limited area?

Further, would he also agree with me that, at Westmoreland Road, apart from patients having to utilise the best part of my constituency to park within the streets there, we also enjoyed a very good and improved bus service there for Westmoreland Road?

Further, rather than just try to defend his Minister and the Department, who is not answerable in this place, would he please give us an assurance that he will take this seriously and look at and consider all the string of measures that have been proposed to him this morning in order to better improve the service for patients, for users of the hospital and for staff, so that we will not be facing the same questions to the Hon. Member in 12 months' time, when the population will increase and car ownership will exceed today's level?

**The Speaker:** Hon. Member for Glenfaba, to reply.

**Mr Anderson:** Yes, thank you, Mr Speaker.

The staff car parking does exist at the rear of the hospital, but it is not big enough to accommodate all the staff, so there is an element of staff car-parking taking place within the main car park and part of the solution to this problem is to make sure that as many of the staff as possible utilise the staff car park when they can.

However, there are 711 car-parking spaces at the hospital and, when it was designed, the formula used was one taken from UK NHS Trust, which said that 711 spaces would be adequate.

Can I just raise the points that disabled car parking has been increased since the hospital opened and now there does not seem to be a problem with the disabled car-parking spaces. In fact, quite a bit of the time in the main car park

there are disabled spaces available when most of the car park is full and, maybe, we should look at readjusting that ratio, but we do think it is important that disabled car parking is given priority.

The Hon. Member mentioned improving the bus service and the Hon. Minister for Transport has agreed to look into increasing and looking to enhance that service in response to the Hon. Members for Rushen in another place recently, so that is being looked at. (**A Member:** Hear, hear.)

However, the situation is being monitored, as I have said and the Department will seek to find the best solution within the resources it has.

**Mrs Cannell:** Overflow area.

**Mr Anderson:** As I stated earlier, we have nothing in our three-year business plan. We have to try and make the most of what we have got and it might be a case of trying to educate people to use their car-parking habits in a better way.

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

**Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.

I am pleased that the Hon. Member for Health has surrendered to my concerns and that his Department is looking into things, but will he not agree that, for people waiting to park in the cluttered car park, 711 spaces or not, it is regularly full? Cars are regularly up to the halt signs in the access to the parking bays and it is not a matter of waiting a few minutes, it is a matter of maybe waiting for half an hour?

Would he further concur with me that much of this is due to clinic times and out-patient appointments all being at the same time?

A further supplementary, Vainstyr Loayreyder: would he not agree with me that using the Newlands car park is totally impractical, say, for an elderly couple trying to make their way to an out-patient appointment, because it is quite a long distance to walk from the Newlands car park over to the new hospital?

**The Speaker:** Hon. member for Glenfaba, Mr Anderson, to reply.

**Mr Anderson:** Thank you, Mr Speaker, starting with the last point first. Yes, I do think it is inappropriate that elderly people should be using the Newland's car parking spaces and then walking to the main entrance of the new hospital. I would hope that such people would have car parking priority, as they would have disabled stickers.

But I would encourage members of the public to, actually, when they know they are going to need to be there, especially in the mornings for clinic appointments, to get there in good time or to utilise public transport, which is to everybody's benefit. (**A Member:** Hear, hear.)

Can I just finally say to the Hon. Member that we have taken note of people's concerns. I have been up there and seen the car park extremely busy as well and we are looking at ways in which we can reduce the number of people there at any one time and clinics are one thing that we are looking at.

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

**Mr Houghton:** Thank you, Mr Speaker.

Has this matter really been contributed to by the fact that there was no proper survey with the staff using the hospital and the fact that they were unaware of the number of staff who required to use their own vehicles for parking all the time? Also, is it not a further fact that, because of the serious issues regarding the drainage there, that a lot of the staff car parking has been dug up in order to put a proper drainage system in there that was seriously lacking? Is that not a second pointer for the reason why there has been such severe inconvenience for the public up there, sir?

**The Speaker:** Hon. Member for Glenfaba, Mr Anderson, to reply.

**Mr Anderson:** Thank you, Mr Speaker.

No, I do not believe that the digging of the drains has impacted on the car-parking spaces at all. However, I do believe that there was a survey done on the way people would utilise the hospital, as far as staff is concerned, and an indication was then made to the management on how they would travel to the hospital.

I would point out there is staff transport available to staff coming from Douglas and this is being utilised by a small number of people, but, maybe, it needs highlighting that it is available and maybe that would free up extra car-parking spaces.

**The Speaker:** Hon. Member for Douglas South, Mr Duggan.

**Mr Duggan:** Thank you, Mr Speaker, I would just like to ask the Member in charge, could the car park not be extended, because there is plenty of land up there? I would like to also confirm, Mr Speaker, I have had complaints even from the clergy about why they cannot park their vehicles.

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

**Mr Anderson:** Yes, thank you, Mr Speaker. The option to create additional parking always exists, but, as I said earlier, there is a financial and environmental cost, and also it would be subject to planning approval. So anything would have to be quite a long way down the line in regard to both those issues.

**The Speaker:** A final supplementary on this question. Hon. Member for Onchan, Mr Karran.

**Mr Karran:** Vainstyr Loayreyder, is the Member aware that there was a problem with people parking all day at the old hospital, as far as the issue of parking is concerned, where there was a lot less of a problem with parking then than there is now?

Would he not agree that, if there is a problem as far as parking and riding into Douglas, that one of the ways is to extend the disc-zoning to around the hospital and to bringing in what we wanted to bring in many years ago, where, when a patient's appointment came out, their appointment had a parking permit for the day of the appointment in order to

make sure that that was the only way of doing it, as far as making sure there was adequate parking there?

Will the Member look at the issues that were proposed several years ago for the old hospital that were not able to be addressed because the management was out of control and did not have to listen to Crookall House?

**The Speaker:** Hon. Members, that question has been asked before. It has been answered before by the Hon. Member for Glenfaba.

#### REMEMBRANCE DAY SILENT TRIBUTE

**The Speaker:** Hon. Members, may I invite you to stand for two minutes, please.

*Members stood in silence.*

**The Speaker:** Thank you, Hon. Members.

#### HEALTH AND SOCIAL SECURITY

##### Twilight Nursing Services Cut in resources

5. The Hon Member for Onchan (Mr Karran) to ask the Member for Health and Social Security:

*Can you assure this Hon. House that resources are not being cut for twilight nursing services by your Department?*

**The Speaker:** I call on the Hon. Member for Onchan, Mr Karran.

**Mr Karran:** I beg to ask the Question standing in my name.

**The Speaker:** The Hon. Member for Health and Social Security, Hon. Member for Glenfaba, Mr Anderson, to reply.

**The Member for Health and Social Security (Mr Anderson):** Thank you, Mr Speaker.

I can confirm that resources provided for the twilight nursing services are not being cut. However, it is the case that the number of staff available for the service has reduced significantly over recent years, due largely to the unsociable hours aspect of the work.

In addition, the type of support provided is of a non-nursing nature to the extent that new clients are referred to the Social Services Home Care Services. At present, the twilight service, which in the past has cared for up to 25 patients, is currently looking after five patients only. The District Nursing Service will continue to honour its commitment to these individuals, although recent staff resignations might require the service to be contracted out for the purpose.

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

**Mr Karran:** Vainstyr Loayreyder, would the Oltey son

Slaynt, the Member for Health, not agree that the issue as far as getting people to actually work in this service is not because people do not want to; it is little facts like if they have no insurance cover, they have no sick pay cover, they have no pension entitlements, they have no holiday pay for people who work in this most important service, to a very vulnerable section of the community?

As a further supplementary, would the Member not agree that, at the present time, there seems to be an awful lot of vulnerable people out there – a cutback as far as, not just this service, but also Home Care Service? What are you going to do to advertise the rights of individuals, as far as having this service provided for them, instead of this situation where it seems to be going into ‘it is not what you know, it is who you know,’ when you can get the services for these vulnerable people in our society?

**The Speaker:** Hon. Member for Glenfaba to reply.

**Mr Anderson:** Yes, thank you, Mr Speaker.

I do not believe that the conditions are all the reasons why people are not continuing to work for this service; I think it is because there are greater opportunities and there are very unsociable hours to this element of working and people have opted to go where they can work longer hours, and these hours are rather restricted, and they cannot actually work more than maybe two or three hours in one go. Therefore they are only working a handful of hours a week, whereas they could work in a more sociable job, doing the same sort of work, and they would get significantly more money. Therefore, it is becoming an unsociable job to do because of the hours.

There are not any cutbacks, in the respect that people will always be looked after. Access to care services is provided.

The Hon. Member makes mention of making this known to people. I am sure that, if anybody has problems with looking for Home Care Services, they can approach the Department and they will be redirected to the appropriate section. In the future this is likely to be more a Social Services delivered service than the Health Service Department.

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

**Mr Karran:** Vainstyr Loayreyder, would the Member not agree that the issue of the fact that these people who do this important work, having no sick pay, no pension rights, no holiday pay and no insurance cover for industrial accidents, would deter as many people as anything else? And would he also not agree that that issue should be resolved? Will he force his Minister to address the issue, as he would not do it when I was a Member for Health?

And would the Member also not agree that, whilst he is right that the money is available as far as this work is concerned, it is at the very times when a certain section of the community, with kids, who want to be earning some extra money – maybe with the likes of mortgages going up – that they have got that opportunity because their partners are at home to look after the children? Will he review the pay structure as far as these individuals are concerned to give them the cover, and also will he have an advertising campaign so that people who need this service are told about the fact that there is such a service, in order to put very profoundly disabled people to bed, where their partners are

too old or too sick to be able to do this duty?

**The Speaker:** Hon. Member for Glenfaba, Mr Anderson, to reply.

**Mr Anderson:** Yes, thank you, Mr Speaker.

The service that has been provided has been provided since something like 1990 and the number of people accessing this service has significantly reduced. Most of this is now going over to the Home Care System in Social Services and that would seem to be the way to redirect people for the future. However, as I have said, there are still five people accessing this service and, although we have problems in recruiting people to care for those people, it is fair to say that we are looking at ways of getting around that.

Coming back to the Hon. Member's points about increasing their rate of pay and their working conditions and various elements that the Member mentioned, I am sure that most people would agree that anybody working a handful of hours a week is not going to receive those sort of conditions; it does not happen in the real world. What we are looking to do, if we cannot provide this service ourselves, is either to contract it out in the short term, and, in the longer term, these sorts of patients will be transferred over to the responsibility of Social Services and the Home Care System.

**Mr Karran:** Vainstyr Loayreyder, a further supplementary.

**The Speaker:** Hon. Member for Onchan – and before I invite the Hon. Member, can I encourage the Hon. Member to ask questions and not continually use the questions to make statements. Hon. Member for Onchan.

**Mr Karran:** Vainstyr Loayreyder, in reply to the previous question to this Hon. House, but the Oltey son Slaynt, the Member for Health, he said that they could not expect the cover of sick pay and other things to be included. Would the Member go back and check up that part-time staff are covered for the likes of sick pay, insurance cover and holiday pay by many firms who do three or four hours?

This is an excuse for not addressing the issue, because the issue of numbers in the number count as far as the employment of members of staff; nothing to do with what would happen outside. It is purely not to have them as confirmed permanent members of staff.

**The Speaker:** Hon. Member for Glenfaba to reply.

**Mr Anderson:** I do realise that there is the head-count issue here.

**Mr Karran:** Yes, and that's the reason.

**Mr Anderson:** However, I do also realise that we are in the real world and we must use the funds that we have appropriately.

I have said to the Hon. Member before, we are looking at a short-term solution which seeks to possibly use an outside contractor to look after these folk and, in the longer term, to transfer the responsibility for the people looking after this service to Social Services.

### Standing Order 43 suspended to continue Question Time

**The Speaker:** Now, Hon. Members, under our Standing Orders – and I have allowed extra time due to the Remembrance – we now complete our Standing Orders in terms of Questions.

Hon. Member for Middle, Mr Quayle.

**Mr Quayle:** Mr Speaker, may I suggest, as there are only two Questions remaining, under the appropriate Standing Order, that we suspend Standing Orders in order to allow for these two to be answered, sir. They are brief.

**Mr Houghton:** I beg to second, sir.

**Mr Henderson:** I beg to second.

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

### TRANSPORT

#### Dropped Kerbs for Disabled Drivers Department's policy

6. The Hon Member for Middle (Mr Quayle) to ask the Minister for Transport:

*Will you outline your Department's policy concerning provision of 'dropped kerbs', in respect of existing roads, and new developments, to aid disabled drivers?*

**The Speaker:** Therefore we continue to complete our Questions for Oral Answer; I move on to Question 6 and I call on the Hon. Member for Middle, Mr Quayle.

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

**The Speaker:** I call on the Hon. Member for Douglas West, Mr Shimmin, Minister for Transport, to reply.

**The Minister for Transport (Mr Shimmin):** Thank you, Mr Speaker. It is my intention that the Department's 2004 Business Plan will include the objective that the street environment will be improved for disabled persons and state that we will complete consultations on access requirements with disabled persons groups by June 2004, and that areas requiring improvements will be identified and a costed schedule of works drawn up for implementation beginning in that year.

The Highways Division is presently in consultation with the Disability Access Officer from the Manx Foundation for the Physically Disabled regarding the provision of dropped kerbs. The Disability Officer is looking into disabled routes around all the towns and villages on the Island and he is currently carrying out a survey in Peel. The routes he identifies will be used by the Department to plan and programme future works.

It is current departmental practice to install new dropped kerbs at junctions on both sides of a road when footpaths are being resurfaced or reconstructed. When the Department receives requests for specific sites or routes to have dropped kerbs installed, these requests are usually accommodated.

Two examples of such extra work being carried out in recent times by the Department are 13 sets of dropped kerbs installed on Victoria Road, Douglas, and a series of dropped kerbs installed in Port Erin to facilitate access to the shopping centre.

Furthermore, a new Road Agreement Scheme was introduced by the Department on 1st December 2002. Under the provisions of this scheme, new developments must provide dropped kerb crossings at all road junctions. The Department has procedures in place to ensure that developers comply with these requirements.

Thank you, Mr Speaker.

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

**Mr Quayle:** Thank you, Mr Speaker.

In thanking the Minister for that reply, could I ask him if he has, in fact, any person or persons that are given responsibility within his Department to assess the problems, as they currently exist in each region of the Island, so that the appropriate works can be arranged and undertaken, allowing for the fact that he is having this business plan next year, which will take some considerable time?

**The Speaker:** Hon. Member for Douglas West, Minister of Transport to reply.

**The Minister:** I apologise, Mr Speaker. I missed the first part of the Question, but I hope I will pick it up. If I do not answer all the questions, I apologise.

We do have inspectors in all of the regions around the Island. They are tasked with looking at areas where there is a need to improve the circumstances for the pedestrian areas. The inspectors go round looking for faults in pavements, but they also look for the access paths that would be improved in the future.

We have a limited budget. However, we are putting this as a high priority and I am delighted that the Department has made this explicit commitment to increase the amount of disabled access which was started, I believe, in your time, Mr Speaker, or maybe your predecessor, and we are now formalising that. But we have more work to do throughout the streets of the Island to try and make more disabled access available.

**The Speaker:** Hon. Member for Ramsey, Mrs Craine.

**Mrs Craine:** Thank you, Mr Speaker.

May I ask the Minister if the Department actually seeks the professional advice of the Disabled Access Officer in providing these dropped kerbs, because it does seem, certainly in Ramsey, there have been such facilities provided, which are inaccessible to wheelchairs.

**The Speaker:** Minister to reply.

**The Minister:** I am grateful to the Hon. Member for drawing those to my attention. I have personally met with the Disability Access Officer whilst formulating the way

forward. It would concern me if our best efforts of attempting to make an improvement has actually not been realised.

There is an issue at times, where inconsiderate motorists still park blocking disabled access routes. That is an ongoing problem for disabled persons and the Department, but certainly we have inspectors out there. If they are not conforming to good practice or are inaccessible, I would like to know about those, so they can be rectified, sir.

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

**Mr Quayle:** Thank you, Mr Speaker.

Could I ask the Minister what funds are available for provision of the dropped kerbs? Are they sufficient and is the matter given appropriate priority?

And, furthermore, is sufficient co-ordination and liaison taking place, for example, between his Department and various contractors or authorities around the Island to ensure dropped kerbs are provided when, for example, repairs or works are being undertaken? To give an example from Little Switzerland, towards Groudle, an area was done there for some considerable time and no dropped kerbs were put in at all.

**The Speaker:** Minister of Transport to reply.

**The Minister:** Mr Speaker, I am delighted to be in charge of a Department which is putting higher up the agenda than ever before the installation of the disabled accesses for members of the public.

Each dropped kerb costs approximately £1,200; that is £2,400 for either side of a road. This year we will be allocating a specific amount of money for that and hope to grow that year on year. However, I cannot give the Hon. Member that figure today.

I have met with the Hon. Member's constituent, who has been in regular discussion with the Department, and he makes some very strong points to which I am very sympathetic.

The Hon. Member asks about working with other utilities and contractors. This is an area we are tentatively looking at. However, there will be considerable cost problems and what I do not wish to do is start introducing more bureaucrats going around with clipboards, rather than actually getting these things done.

So it is trying to get the balance of utilising what moneys are made available to us in order to try and deal with all the responsibilities of the highways, of which this is an important aspect. However, all Hon. Members would realise there are many aspects, not least those which may cause trip hazards for other members of the public, which we have to try and deal with.

## HOME AFFAIRS

### Appointment of Chief Fire Officer from off-Island

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

*Why did your Department appoint a person from outside the Island as Chief Fire Officer when a Manx applicant*

*held a higher rank than the successful candidate?*

**The Speaker:** Question 7 and I call on the Hon. Member for Douglas North, Mr Houghton.

**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.

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

The current rank of the officer is relevant in setting the criteria for the application process, as is probably the case with most posts advertised across Government. Whilst it does demonstrate the attributes someone has attained in order to achieve a specific rank in the Fire Service, it is but one of the criteria taken into consideration.

The panel looked to assess a level of experience, the breadth and depth of knowledge and strategic awareness of the candidate, in order that he be able to fulfil the role of Chief Fire Officer.

All candidates were given the same opportunity to demonstrate their knowledge and skills and all were tested fairly and openly throughout the process, with the most appropriate candidate, in the view of the panel, being offered the post.

The process, in my view, was fair, rigorous and non-discriminatory. It created a level playing-field, against which all candidates were assessed.

The preferred candidate selected for the post of Chief Fire Officer has extensive experience, which was evidenced throughout the application and selection process and which placed him ahead of the other candidates, including the Isle of Man candidate.

The gentleman concerned has held senior posts in a variety of disciplines within the Fire Service, as well as undertaking external development work and courses. Additionally, coming from a bigger service in the United Kingdom, currently of over 600 staff, he has extensive responsibilities within his current role which can only add value to the Isle of Man service.

I should add that the interview panel were unanimous in their decision to offer the post to the off-Island candidate. Whilst at a lower rank than the current Deputy Chief Fire Officer, the successful candidate has the maturity, intellect and experience to develop innovative solutions, whilst keeping a rational perspective.

It is the Department's public duty to seek to appoint candidates who appear to be the most appropriate for the position. The position has been offered to an off-Island candidate, but this will, of course, be subject to work permit application.

The Department has received confirmation from the candidate that he wishes to accept the post and the Department will be submitting an application for a work permit in due course.

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

**Mr Houghton:** Thank you, Mr Speaker. Notwithstanding the Minister's answer this morning, he

will inevitably know that the Isle of Man Fire and Rescue Service are already an extremely well content, well organised and professional service, headed up by Mr Christian currently, with his deputy, Mr Draper, in charge when Mr Christian is away. Mr Draper's abilities –

**The Speaker:** Hon. Member, please, I had to advise you at the last sitting of the House not to make statements. Now, Hon. Member, if you continue to do it, I will not allow you to continue with statements. Please ask a question.

**Mr Houghton:** Thank you, Mr Speaker. Does the Minister not agree with me that the proven abilities of the Deputy Chief Fire Officer are there for all to see, and why did he not take that into account when assessing those candidates, sir?

**The Speaker:** Minister to reply.

**The Minister:** Mr Speaker, I have the highest regard for the Deputy Chief Fire Officer.

**Mr Houghton:** Not quite enough.

**The Minister:** As I said, all the short-listed candidates were assessed against a certain criteria. Those criteria were strategic awareness, experience with the management of change, operational incident command experience, to demonstrate leadership skills, well developed interpersonal and people skills, self-motivation, flexible, and ability to adapt to change et cetera.

It was, in the view of the interview panel, which consisted of members of the Department: Mr Cannan, Mr Gill, myself and also an independent adviser from Her Majesty's inspectorate of Scotland for the Fire and Rescue Service, that the most appropriate candidate was one from off-Island and that is what has happened, subject to work permit, Mr Speaker.

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

**Mr Quayle:** Thank you, Mr Speaker.

It has been very helpful, I think, having this Question put on the paper today. Could I ask the Minister if he can confirm: will he be replying in writing to my letter to him of, perhaps, almost a month ago on this very subject? It is something that concerned me and I am disappointed not to have had a reply –

**Mr Houghton:** Hear, hear.

**Mr Quayle:** Although he has verbally said I will be getting one, can he please confirm that I will, in fact, get a reply to a letter that he has had within the last three or four weeks concerning this very matter that is on the Order Paper for us today?

**The Speaker:** Minister to reply.

**The Minister:** Yes, Mr Speaker.

**The Speaker:** Hon. Member for Douglas East, Mrs Cannell.

**Mrs Cannell:** Thank you, Mr Speaker. Can the Hon.

Minister explain what contingency his Department has, should the work permit application fail?

And further, will he be reliant upon the current Deputy to hold the fort, (**Mr Houghton:** Hear, hear.) once the current Chief has retired, (**Several Members:** Hear, hear.) and for what length of time would he expect that to continue?

And has his Department learnt nothing (**Mr Houghton:** Hear, hear.) when such a situation arose with respect to the Director of Education some time ago?

And further, is he not aware and should he not be aware, that the policy and the rules of the Work Permit Committee are that if a local person is suitably qualified and able to do the job then the preference should go towards appointing that person as opposed to an off-Island candidate, who would require a work permit. Has he learnt nothing and what is his contingency?

**Mr Houghton:** Hear, hear.

**The Speaker:** Minister for Home Affairs to reply.

**The Minister:** Mr Speaker, I am not going to pre-empt the decision of the Work Permit Committee. Of course, the interview panel knew that, if we appointed an off-Island candidate, we would have to submit a work permit application.

Precedent has already been set on, as the Hon. Member for East Douglas has already stated, the Director of Education. We know it happened at one time for the position of the Chief Fire Officer –

**Mr Houghton and Another Member:** That's right.

**The Minister:** I am also well aware of the work permit regulations and, in actual fact, the Chief Fire Officer is continuing in place until his replacement has been appointed.

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

**Mr Henderson:** Gura mie eu, Vainstyr Loayreyder. Could the Shirveishagh answer me this question: how come the Department or the interview panel turned down our own local Deputy Chief Fire Officer and yet they still see fit to have him run the Isle of Man Fire Service now? Could he answer that dilemma? If he is not good enough for the job, how is he good enough to be Deputy?

**The Speaker:** Minister to reply.

**The Minister:** Mr Speaker, I have already said I had the highest regard for the Deputy Chief Fire Officer. It was the unanimous decision of the interview panel to appoint an off-Island candidate and that is still subject to work permit application.

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

**Mr Gawne:** Gura mie eu, Vainstyr Loayreyder.

Bearing in mind the police services' recent comments about the suitability of Manx workers and this particular incident, could the Minister confirm or deny that his Department has a policy of discrimination against Manx workers?

**Mr Houghton and Another Member:** Hear, hear.

**The Speaker:** Minister for Home Affairs to reply.

**The Minister:** Mr Speaker, my Department does not discriminate against anybody, we take everybody on a level playing-field and this is what happened in this case.

**The Speaker:** Hon. Member for Douglas East, Mrs Cannell.

**Mrs Cannell:** Thank you, Mr Speaker.

The Minister, when responding to one of the questions, gave an explanation as to the current preferred appointee having a lot of experience, having attended a lot of courses. If that is the case, how come the Hon. Minister, in accepting that, and, bearing in mind he may or may not be appointed, subject to work permit rules, how can he expect the rest of the force to gain the essential necessary experience required from leading from the top, if he is pre-empting or preventing them from ever going up the ladder?

**Mr Henderson, Mr Houghton and Another Member:** Hear, hear.

**Mrs Cannell:** And furthermore, by appointing or going for a preferred candidate with all this raft of experience, although qualification is lacking, does his Department have some kind of hidden agenda here? Should his first priority not be – bearing in mind that these officers put their lives at risk to save us (**Mr Houghton:** Hear, hear.) – keeping them happy and content (**A Member:** Hear, hear.) rather than causing strife, which his Department currently is?

**The Speaker:** Minister to Home Affairs to reply.

**The Minister:** Mr Speaker, all officers in the Isle of Man Fire and Rescue Service are given the opportunity to go on divisional command courses. The Hon. Member for East Douglas mentioned lack of qualifications for the preferred candidate –

**Mrs Cannell:** He is three ranks below.

**The Minister:** Rank is not relevant when we are looking to appointing somebody.

**Mr Houghton:** Rank is experience.

**The Minister:** Can I just say that the person who has been appointed, subject to work permit, is already accepted on the Brigade Command Course in the UK.

In actual fact, all Chief Fire Officers in the United Kingdom have to be appointed after they have completed the brigade command course. This gentleman is one of 30, out of 150 applicants to the Brigade Command Course. He also has to have references from his Chief Fire Officer, that he is capable of doing the Brigade Command Course; to achieve the position on the Brigade Command Course, he has to go through three days of interviews and assessments.

So, when we are talking of lack of qualification, I do not know where the Member for East Douglas is coming from.

**Mr Cretney:** East Douglas. (*Laughter*)

**Mr Houghton:** Same place as you. (*Interjection by Mrs Cannell*)

**The Minister:** Secondly, at the present time, it is not a requirement for the Chief Fire Officer in the Isle of Man to go on a Brigade Command Course, but times are changing, we are moving ahead. We might have to send our officers on the Brigade Command Course in the future.

We want somebody to develop and motivate the Fire and Rescue Service in the Isle of Man and we feel that the candidate who is being appointed, subject to a work permit, is a suitable man.

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

**Mr Houghton:** Thank you, Mr Speaker.

Is the Minister aware there is a shed-load of written objections on their way to the Work Permit Committee and, in order to avoid further embarrassment to him and his Department, may I ask him again to review his decision?

**The Speaker:** Minister of Home Affairs to reply.

**The Minister:** No, Mr Speaker, I will not review the decision of the interview panel and the Department, and I do not think this is the right forum to pre-empt any decision of the Work Permit Committee.

**Mr Corkill:** Hear, hear.

**The Speaker:** Hon. Member for Michael, Mr Cannan. (*Interjection by Mr Houghton*)

**Mr Cannan:** Will the Minister kindly explain to those Members who query this appointment that it is the duty of the Department to appoint the best man for the job on merit – alternatively, not to advertise the job and just appoint on length of service, which could lead to very serious shortcomings?

And will he further confirm that if that is the policy of Government, that all deputies are automatically to be appointed chiefs, then it follows that every deputy headteacher will become a headteacher, every deputy everywhere will become the head, regardless of merit and regardless of ability, and is that what the Isle of Man Government want?

**Mr Houghton:** And that is what happened in the Constabulary.

**The Speaker:** Minister of Home Affairs to reply.

**The Minister:** Mr Speaker, I can concur with some of the sentiments expressed by the Hon. Member for Michael. I believe – my own personal view and it was that of the panel – that you cannot just appoint deputies; every person has to be assessed to see if they are suitable for the top position and this is what happened in this case.

**The Speaker:** Final supplementary; I turn to the Hon. Member for Malew and Santon, Capt. Douglas.

**Capt. Douglas:** Thank you, Mr Speaker. Is it a fact, Minister, that it never has been a requirement for the Isle of Man Fire Brigade to send their officers on a Brigade Command Course? And if this is so, will he take steps to ensure that, in future, this will be rectified?

**Mr Houghton:** Hear, hear.

**The Speaker:** Minister for Home Affairs to reply.

**The Minister:** Mr Speaker, I think I already answered that question in previous supplementaries.

**The Speaker:** Hon. Members, that concludes Questions for Oral Answer.

We have three Questions for Written Answer which will be circulated to Hon. Members.

## Questions for Written Answer

### HEALTH AND SOCIAL SECURITY

#### New Hospital drainage deficiencies Responsibilities and costs

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

- (1) *Who is responsible for the deficiencies in the drainage system at the new hospital;*
- (2) *how much will it cost to remedy the drainage system;*
- (3) *who failed to supervise this work during construction;*  
*and*
- (4) *who is responsible for meeting the remedial costs?*

**Answer:** (1) Defects have been found primarily in the drainage systems installed by Crowe EPH Ltd (WP A2222/2223: Ground Floor Slab & Drains — Zones 2 & 3) and JCK Ltd (WP A9011: Perimeter Collector Drainage)

Whilst there may be evidence to suggest that certain defects are contributable directly to the work undertaken by these work package contractors, it needs to be recognised that other defects such as broken pipes may have been occasioned by other work package contractors undertaking subsequent works – eg. External landscaping works.

A full assessment regarding responsibility for these defects has yet to be made.

(2) Whilst defects which were perceived to threaten the safe operational use of the hospital have been rectified, less critical defects remain to be addressed. These form a part of the Defects List which has now been prepared following the expiry of the Defects Liability Period. Only when this work has been completed will it be possible to identify the final costs of remedying the drainage system.

(3) Supervision responsibilities in respect of the construction works lie with two parties – (a) the Works Package Contractor and (b) the Management Contractor.

(a) In the Terms and Conditions of the Works Contract which exists between the Management Contractor (Bovis Lend lease) and the Work Package Contractor certain

obligations are placed on the work package contractor whereupon he is called upon to warrant to Bovis Lend Lease that the Works Contract Works shall be

carried out in a good and workmanlike manner and in accordance with good building practice and that all Materials used in the Works Contract Works shall be of good quality and free of defects .

and

in the performance of its duties hereunder including the preparation of any Works Contractors Design, the Works Contractor shall exercise the skill and care and diligence reasonably to be expected of a Works Contractor suitably qualified and experienced in undertaking such duties in connection with projects of a scale and character similar to the Projects.

(b) Clause 1.5.5 of the Management Contract which exists between the Department and the Management Contractor (Bovis Lend Lease) requires the Management Contractor, during the progress of the Project, to:-

provide continual supervision of the Project and perform and provide everything necessary for the organisation and management of the Contract.

Any proven failure to supervise the works during construction will therefore be attributable to one or both of these parties.

(4) Costs of remedying defective contract works are laid against defaulting work package contractors and are not an additional cost to the Client.

## HOME AFFAIRS

### Dogs at Large Prosecutions for Allowing

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

- (1) How many people have been prosecuted for allowing their dog to be at large this year; and  
(2) how does this compare to the previous year?

**Answer:** From 1st January 2003 to date, six people have been prosecuted for allowing their dog to be at large. There is currently one case pending.

This compares to a total of three people being prosecuted in 2002.

## LOCAL GOVERNMENT AND THE ENVIRONMENT

### 'Modernising the Planning System' Enforcement of planning policy

3. The Hon. Member for Rushen (Mr Gawne) to ask the Member for Local Government and the Environment:

*In August 2002, the Department of Local Government and the Environment produced a consultation document*

*entitled 'Modernising the Planning System'. Paragraph 10.2 stated that:*

*'Enforcement is a key element in providing a credible approach to the application of planning policy. The integrity of the process is damaged when people act outside the system and proceed with development rather than first obtaining planning permission.'*

*With this in mind can you tell the House –*

*(1) how many –*

*(a) Enforcement Notices have been issued;*

*(b) Stop Notices have been served; and*

*(c) High Court injunctions have been sought by your Department in relation to planning since August 2000;*

*(2) how many site inspections have been undertaken by Planning and Building Control Officers to the Heritage Homes development at Truggan Road, Port Erin since the development work commenced; and*

*(3) how many failures to comply with planning regulations have been identified at Heritage Homes and other major development sites since October 2002?*

**Answer:** (1) (a) The Department does not issue Enforcement Notices as such. There is a provision to do this under Part 4 of the Town and Country Planning Act 1999 which has yet to be brought into operation, but which, subject to Tynwald approval of various Orders and Regulations, should be in operation by the early part of 2004. At the moment, breaches of planning control are referred by the Department to the Attorney General for consideration of legal proceedings under section 8A of the Town and Country Planning Act 1934.

In the period to which the Hon. Member refers, seventeen cases were referred to the Attorney General. Of these, nine have resulted in court judgements to date.

Generally, prosecution is and should be, a last resort in terms of seeking compliance with any legislation. The Department's policy in respect of securing compliance with planning legislation follows this principle. Where breaches of planning control are identified, it is usual for the developer to be given an opportunity to regularise the development by submission of an appropriate planning application. The Courts expect procedures to have been exhausted before matters are brought before them.

Directly comparable figures to the dates in the Hon. Member's question are not available. However, in the years 1999-2001, a total of 736 complaints were received which resulted in 286 planning applications being submitted. Comparable figures for 2002 were 294 complaints and 114 applications, and to date in 2003, 378 complaints have been received resulting in 147 applications.

Many initial complaints are resolved without recourse to any action either because what is complained about does not require planning permission or because the alleged breach ceases or is remedied and no further action is required.

(1) (b) Since August 2000, nine Stop Notices have been served.

(1) (c) At present, there is no specific facility in law for the Department to apply to the High Court for an injunction. Consequently, no such injunctions have been sought. However, there is such a provision in section 37 of the 1999 Act, and this facility should therefore be available to the Department once the remainder of the Act has been brought

into operation early in 2004.

(2) Planning and Building Control Officers have inspected building works at Truggan Road, Port Erin on approximately sixty occasions. Most of these inspections have related to the Building Regulations.

(3) This information cannot be supplied at present as no central record is kept of this aspect. However, new enforcement procedures introduced earlier this year will enable this information to be collated in future.

## Orders of the Day

### Tribunals Bill

#### Second Reading approved

**The Speaker:** Hon. Members, we now move on to item 4 on the Order Paper, 'Bills for Second Reading', and I call on the Hon. Member for Douglas North, Mr Houghton, the Tribunals Bill.

**Mr Houghton:** Thank you, Mr Speaker.

The purpose of the Tribunals Bill 2003 is to ensure that Manx tribunals are constituted in compliance with the European Convention on Human Rights.

Article 6 of the Convention gives all individuals the right to a fair trial, and I quote as follows:

in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the party so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

Therefore, any proceedings before a court or tribunal in which the civil rights and obligations of a person are an issue, must fulfil two conditions. If the European Union Convention on Human Rights is to be complied with, the first condition is that the court or tribunal must be independent and impartial and the second is that, as a general rule, the hearing and judgement must be in public and within a reasonable time.

Once the Human Rights Act 2001 is brought into force, if these conditions are not fulfilled, the proceedings may be held to be unlawful under section 6 of the Act. There are 19 administrative tribunals established under Manx law which have been identified as being within the ambit of Article 6.

An administrative tribunal is one which hears appeals from decisions taken by Government Departments, or Statutory Boards, or bodies relating to members of the public. These tribunals are listed in schedule 2 to the Bill.

In order to be regarded as sufficiently independent and impartial, a tribunal must be independent of the executive of the parties in dispute and of the legislature. However, this is not the case with Manx tribunals, either because their members are appointed by the Department against whom the appeal is made, or because they are appointed by the

Council of Ministers, the Chief Minister or the Governor in Council.

In exploring possible solutions to this situation, consideration was given to vesting the appointment powers in the Lieutenant Governor, who, as a representative of the Crown, would be considered as more independent than a Department, or the Council of Ministers. However, this was eventually dismissed as being a retrograde step in terms of constitutional development.

In drawing up the legislation, reference has been made to the report of Sir Andrew Leggatt in March 2001, of the Review of Tribunals under the United Kingdom to ensure that users would have confidence in the independent and effectiveness of the tribunal system.

The central recommendation of the Leggatt Report is that responsibility for administration and funding of tribunals, in many cases presently in the hands of the Department whose decisions the tribunals review, should be centralised under the Lord Chancellor, who should also be responsible for all appointments to tribunals.

Because the position in the Island, with regard to the administration and funding of tribunals, is very similar to that in the United Kingdom, the Council of Ministers agree that a centralised tribunal system should be established here. Appointments to tribunals would be made by an appointment commission, consisting of five members, appointed by the Council of Ministers. The appointments of members to the commission would be approved by Tynwald. No Member of Tynwald should be a member of the commission. The appointment should be for a fixed term of five years.

In addition to the tribunal being appointed by an independent body, its members must also be independent of the legislature and the executive; thus Members of Tynwald, serving civil servants and other servants of a Department or Statutory Board are debarred from being members of certain tribunals.

Members of tribunals must also have security of tenure during their period of office, to ensure that they are not similarly removed or sidelined. The Bill, therefore, provides that tribunal members are to be appointed for a minimum period of three years, in order to ensure their independence; this is acceptable, in Convention terms, for unpaid appointees to administrative tribunals.

Some tribunals are at variance with Article 6 of the Convention, since their proceedings are required to be held in private, or there is an option for the proceedings to be private. The Convention provides that the proceedings of a tribunal are to be in public, unless the tribunal, in its discretion, decides to hold them in private. Any such discretion must be exercised in compatibility with the Convention.

The Convention also requires that there is a right to a hearing within a reasonable period of time. The principle here is that it is important to render justice with the minimum of delay, so that its effectiveness and credulity are not jeopardised. This is an issue which will be addressed in the subordinate legislation, which will be made under this Bill.

It is recognised that adequate training is necessary to ensure that tribunals exercise their discretion during periods, in a manner compliant with Article 6 of the Convention, and that situations giving rise to concerns regarding impartiality can be avoided.

Also the chairman of the tribunal must be an experienced

legal practitioner of at least seven years standing. To effect this, the Bill also enables the Treasury to pay for training for tribunal members, including attendance allowances.

In addition to this primary legislation, it will be necessary for the various Departments concerned to bring forward amendments to subordinate legislation in due course.

Mr Speaker, I beg to move the second reading of this Bill, sir.

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

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

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

**Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.

This Bill is being advanced this morning in support of the Human Rights Bill and, specifically, Article 6, and my hon. colleague from his notes, presumably prepped up from the Attorney-General's Chambers, is pointing us to - and no disrespect to my hon. colleague - but the legal advice is pointing Hon. Members to the fact that there is a grave problem here with Article 6, and that certain measures have to be taken in order to remedy this perceived contravention of the Article 6.

However, having examined the situation myself and in consultation with other folk who are legally qualified, it transpires that the intention of this Bill may be a little too much for what is actually required to meet the points within Article 6 of the Human Rights Bill.

One of the main issues or main things that this Bill will do, if it is passed, is remove all Government employees who currently sit on 18 of the 19 tribunals, as mentioned in the opening speech. These are volunteers, who go onto such committees, or who are put forward by organisations such as the Isle of Man Trades Union Council and do not represent union input as such; they are there representing all employees of the Isle of Man when they are a delegate on such a tribunal.

These people have worked hundreds and hundreds of voluntary hours in pursuit of their duties, which they have tried to carry out in the utmost professional manner and they have done so for many, many years and, up until now, there certainly has not been a problem with conflict of interests. I think it is fair to say where there has been conflict of interest at certain times in the past; a member has withdrawn himself or herself from such a tribunal.

I see this as a sledgehammer to crack a nut, and the other side of the coin is, if we follow this principle to its logical conclusion, then it should apply to many employers and employees in the private sector, too. For example, why should the owner of a business with a trading contract with a Government Department be eligible to sit on a tribunal that should hear a case about a Government employee or about a competitor. (**Mrs Hannan:** Hear, hear.) Thus, according to the Bill's reasoning in clauses 3(3) and 4(3), virtually everyone in the private sector ought to be disqualified as well.

Surely, the true remedy lies in provisions being enacted to prevent a conflict of interest from arising in a particular case - and that is the point - rather than a wide ranging ban that is precisely what is being recommended at the minute.

I have to say that my concerns here will be addressed

shortly, because I intend to do either of two things: one, to move some amendments at the clauses stage of this Bill to address my concerns; or make a move to have the Bill sent to committee, which may be the right direction, at the end of the clauses stage, because there are too many unanswered questions here and there is too many unresolved issues with this Bill, just producing the blanket ban that it is proposing to do now.

It is certainly going to cause an awful lot of disquiet in staff side organisations of the Isle of Man, who have diligently offered up members to sit as delegates on these tribunals year in and year out, and, as I have said, they are not there representing their own organisations, they are there as employee delegates, as neutrals, or as a balance to an employer delegate -

**Mr Corkill:** Individuals.

**Mr Henderson:** - and it has worked very well.

The other thing for Hon. Members to recognise is that there seems to be a sense of urgency progressed with this Bill and I can say to Hon. Members that that really is not the case and should not be seen as a sense of urgency, because one thing that has come to light is the fact that there is no UK precedent set currently that has generated this Bill here.

The situation in the UK currently, as far as I understand it, is that the tribunals over there run similar to ours and there is no blanket ban on Government employees attending these important settings and venues. There is no case currently in UK law that I am aware of that said otherwise, or indicated a contravention to Article 6. That is very important to remember, Hon. Members, and I think, really, we need to address the concerns here.

Far be it from trying to hype up some trouble; what I am trying to do is point out some problems with the Bill, some technical issues that will have a great social impact on the fabric of working tribunals at the minute, and those points need to be addressed in more detail, whether by way of amendment or by way of committee, I am uncertain yet.

I will listen to the debate with interest, I will listen to the Chief Minister's possible input into the debate, which I feel could be forthcoming, and that will direct me as to which way I should go in the future.

Vainstyr Loayreyder. Gura mie eu.

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

**Mr Corkill:** Thank you, Mr Speaker.

Can I say at the outset that I take on board fully the concerns that the Hon. Member for Douglas North, Mr Henderson, has voiced in this area.

We are - certainly I am - very aware of certain representations that have been out there in the community, particularly from the Government employee side of things, in relation to how this legislation can be framed.

I just want to put one thing quite clear: there is no absolute urgency or rush to get this legislation on the statute book, other than the need to comply with Article 6 of the Convention on Human Rights, but, as Hon. Members will be aware, I have, unfortunately, had to write to Hon. Members in recent days to say that the Government timetable of being able to sign off the Appointed Day Order on the Human Rights Legislation in this current year will

by necessity have to be delayed, hopefully only for a short period of time.

This legislation is but one of the hurdles that we have to knock down out of the way in order to get to that point where we can sign off the Appointed Day Order, so it is in the timetable from that point of view, but not in terms of actual content of the written green Bill.

Certainly, when this Bill first surfaced, I was very pleased that the Hon. Member for Douglas North, Mr Houghton, so readily accepted to take this Bill for Government, because, as I put it to him, it was a non-contentious Bill, that just merely put us in line with the Human Rights Legislation, so I apologise to the Hon. Member, Mr Houghton, for that, because it was only after he agreed to take the Bill that some of these issues started to surface.

Indeed, I had a meeting in my office, between the Attorney General, the legal draftsman, Mr Gumbley, and Mr Moffatt, on behalf of the Trades Council, in relation to the issue that the Hon. Member for Douglas North, Mr Henderson, has now raised.

I am sure that we, in this House, are all aware of the great public service that many people in the Isle of Man in order to make Government systems work,

**(Mrs Craine:** Hear, hear.) and I take my hat off to the many, many people who do that, because it is for the good of the Island and for the good of the structure of our way of life.

The problem we have, as a small Island and a small jurisdiction, is we do not really have enough people to go round to do all the separation and to do all the duties that are expected by things such as the Convention of Human Rights. That is causing a problem in this particular area, because the Attorney General and the legal draftsman's very firm advice, which I have tested on four or five occasions and queried very deeply, keeps coming back to me that, in fact, in order to comply with Article 6, then Government employees, whether it is a bus driver or a civil servant, right across Government, need to be separated from this tribunal process.

Now that is a painful thing, as a community, for us to accept and so the reason the Hon. Member may think there is some urgency in terms of this Bill is that I have been quite keen to make sure it gets to the floor of this House, for the principles that are included in this second reading.

Now having got it to the floor of this House – and I have had a lot of dialogue with the Hon. Member, the mover, Mr Houghton, in relation to this – there is absolutely no great haste now to rush through the readings of this Bill, and I hope that, if we do get the second reading approved today, that that will allow the Government and the mover of the Bill to actually sit down with the people who have expressed a deep interest in this issue in relation to public service employees (*Interjection by Mr Henderson*) to look at what amendments may be suitable and may work, and, during that time, still stick to the road of having to comply with the Convention.

My concern on the international front is that, if we do something which suits our own local circumstances –

**Mr Henderson:** The UK are not doing it.

**Mr Corkill:** – and the Hon. Member says the UK is not

doing it and there is an issue there, because Government is so much larger there, than here –

**Mr Henderson:** That's not Human Rights, though.

**The Speaker:** Hon. Member, please!

**Mr Corkill:** – then the issue really is how do we deal with our own circumstances and yet still comply?

And we all know that, when external bodies of an international flavour, come along and inspect us as to whether we are a modern and up-and-coming jurisdiction, they tend to have a tick-box mentality and there are certain issues to do with tribunals here in the Isle of Man, where they will not at the moment be able to put a tick in that box and so we are quite keen that, before we get to that position, we deal with the issue properly.

So I am still hopeful that there is some sort of compromise amendment which allows us to comply and yet deals with this public service ethos, which I would be the very last person who would wish to drive into the ground. After all, out of the best part of nearly 40,000 employees on the Island, probably 9,000 or 10,000 of those actually work for Government in one way or the other and I have raised this issue with the Attorney General's Chambers and, notwithstanding those concerns, they have repeatedly come back to me and said that it is their legal opinion that to get compliance with Article 6, this is what has to be done.

That debate is not finished by any means and so I would wish to give a guarantee to the Hon. Member and to other Hon. Members who have an interest in this important issue that we would probably be best served by having a period of consultation with this Bill, looking at what amendments surface, so that when we do come back to this Hon. House, we do, in fact, have all the potential amendments circulated well in advance, so that people can take advice well in advance before we get to the clauses stage debate.

And can I go one step further and say that, if at that point, with those amendments clearly in front of us, we are still struggling to come to terms with this, if a committee of this House was formed to take the issue to the next step, that would probably be of great help, in a way. But I really think that is a decision, as the Hon. Member has said, that we could, perhaps, consider at the clauses stage.

I would ask Hon. Members to support the broad principle which is within this Bill at this stage, and, hopefully, that the assurances I have given will enable a debate to occur.

The Bill did go out for consultation in the normal way, but we all know that some Bills go through quite easily in that way and some come back recycled and we have to go through the consultation process again. We do not have a problem with that and, in fact, the very fact that we have delayed the deadline on signing of the Human Rights Appointed Day Order does give us a little bit of breathing space, anyway. It was our timetable, it is Government policy, which has been public, to have that Human Rights Act in force by the end of this year, and so, when we come to parliamentary scrutiny of the Annual Report next July, that will be an area where Government will be seen to have failed in its target and I thought it was a duty to inform Hon. Members in advance of that.

We are nearly there and this is a difficult issue. I just want to reiterate that people, who, of their own time and own volition, do work on tribunals to help society on the

Isle of Man, are very much appreciated and I can well understand public sector employees being concerned that they are arbitrarily, perhaps, being ruled out of a situation. That is far from the case, but we do have to comply with this Article eventually and it may be that further legal advice is still required to see how much further we have to go in that respect. If that is legal advice parallel to the advice that I received, which is available to me as Chief Minister, from the Attorney General's Chambers, well, so be it.

So I hope those assurances will help Hon. Members support this Bill.

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

**Mrs Hannan:** Thank you, Vainstyr Loayreyder.

I am grateful to the Chief Minister for his clarification regarding this legislation. I do think this is extremely important legislation. I do think the Human Rights legislation was introduced without much thought about what would happen and this is part of that consideration.

I think it does not matter what tribunal it is, if someone can go to a court of law and say they have not had a proper hearing because the tribunal that heard them was not impartial, fair and independent, then I think there would be an added responsibility on us as lawmakers to question what Government had been doing, not considering the issues that are before us in this legislation.

I think it has been known to us for a long time that tribunals and courts of law should be independent, separate from the legislative side of parliament and, therefore, I think it is important to respect this legislation that has been drawn up in respect of Article 6 of the Convention.

I feel it is important that we should recognise that it is not just the tribunals that, maybe, we should be looking at in the future, that are not necessarily seen to be independent, and that there are other tribunals and other hearings and other appeal bodies that will also need consideration and separation. One that comes to mind that is not in this legislation, but I think, maybe, in time the Government will look at it, and that is the position of the Attorney General, who sits on the Legislative Council, who is also the prosecutor, you might say, and, therefore, there is, I would have thought, a suggestion there that maybe that position is not actually independent of the legislature and the judiciary.

There are a number of areas; I do not think it is just Government employees and, maybe, it could be seen that the Government employees that we actually use now, could, in actual fact, be used on a different tribunal which would then be seen to be impartial and separate from because they are looking at a different issue which does not, maybe, encroach on their actual responsibilities at that particular time.

So, I think there are a number of issues which can be looked at and can be addressed, but I think there are other issues that will come out of Article 6 and the right to be heard by somebody, a body who is independent, separate and the like.

In relation to the schedules, could I just refer the mover to – if I can find it, I think it is Schedule 1 – resignation, et cetera, of a member – and we have to remember that we are not going to have that many people who are going to be this independent – but on 2(a) it says, re resignation of the member:

that the Council of Ministers is satisfied that a member of the Commission (a) has been absent from meetings of the Commission for a period longer than 12 consecutive months without the leave of the Commission.

Why wait 12 months? I would have thought, if somebody is ill, if somebody is absent for whatever reason, they would, in fact, give their resignation if they were not going to attend for 12 months, or if it was going to be for 12 months for a good reason, that it would have been with the leave of the Commission, so that the Commission would actually know why that person was not attending for 12 months.

If it was without leave of the Commission, I would have suggested three or six months. There is a relationship to this in local authorities and I think in our Standing Orders as well. So whether that comes under the Article 6 of the European Convention on Human Rights, I do not know, but I would have thought, if somebody has not appeared, not made known to the Commission or the Council of Ministers why they are not attending for 12 consecutive months, that there is something obviously very wrong there and I would have thought that that should be less than 12 months.

But I do think this legislation is something which is necessary to comply with Human Rights legislation and I think, while the Chief Minister says it is not urgent to get it through, if it relates to the date when the legislation is brought into action with an Appointed Day Order, then I do think that it should be progressed, not necessarily as quickly as straight through, but I think that there should be some clarification of the issues and, maybe, as was mentioned at the last sitting, an explanatory meeting for Members, because of the concerns that have been expressed should be held before the next meeting.

Thank you, Vainstyr Loayreyder.

**The Speaker:** Hon. Member for Douglas West, Mr Downie.

**Mr Downie:** Thank you, Mr Speaker.

I am brought to my feet, really, following the remarks that were made by the Hon. Member for North Douglas, Mr Henderson, and I, too, as a Member who has an interface with the trade union movement on the Isle of Man, would like to put on record my appreciation for the work that they have done and continue to do regarding tribunals and tribunal membership. It is a very valuable role and I do not think it is any secret that, when this Bill was being worked up, I did express my concern about the input that these people had, the amount of expertise that they built up over the years and how sad it would be if we lost their advice and assistance in providing this very valuable service to the Isle of Man.

However, I have argued the case on a number of occasions with the Attorney General and other people and, as I see it now, we have to comply with Article 6 of the Convention on Human Rights.

The situation in the United Kingdom is slightly different. I am advised that it is only employees of the UK Department of Trade and Industry who are excluded from tribunals, and the reason for that is that they generally service the regime in the United Kingdom and they provide secretarial services, et cetera, so they would have a knowledge of what was going on.

The Hon. Member for Peel made reference to other hearings, other appeal bodies. I would say to Hon. Members in this House, if you think what we are doing now is maybe a little bit draconian, you have seen nothing yet: Article 6, in my opinion, is quite clear. It will bring an end to the Petition of Grievance. In my opinion, there is no way this House can sit in judgement on decisions that we have made in the past on behalf of those that we represent. I think that issue, although it is yet to be determined . . .

I am pleased to advise Hon. Members that we have made some progress recently on the situation regarding the setting-up of an independent ombudsman, and I am hopeful that in the next few weeks a paper will go to the Council of Ministers for consideration, and, in the new year, this matter can come, hopefully, before the Branches.

So, with that, Mr Speaker, I would finally like to reinforce my thoughts on the excellent work that is carried out by the trade union movement and the Government employees in the Isle of Man and I would just ask Members to think, if we divorce ourselves from this obvious level of enthusiasm and expertise, we are going to have a difficult time to fill these important positions, so I think we have to have confidence of that as the Bill progresses. Thank you.

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

**Mr Karran:** Vainstyr Loayreyder, there are a couple of points that I would like to raise as far as this Bill is concerned.

I think the previous speaker has raised a point, but I think the problem we have is, when we talk about petitions of grievance in this Hon. House and in another place, is with the separation of function between executive and parliament. We have battled for years with the likes of the Public Accounts Committee, where we had the absurdity of ex-Chief Ministers and Treasury Members on the Public Accounts Committee. It is almost wanting them to be poacher and gamekeeper, and that is something that we will have to recognise as far as our structure within this House, and I think regarding the point that the Hon. Member brings up: if we do not address that issue, then there is legitimate claim for conflict of interest, as far as many of these issues are concerned.

I find it very concerning, one of the things the Ard-shirveishagh . . . is the fact that they have been wanting to move amendments since August, I believe, in their Council of Ministers' minutes, as far as this piece of legislation is concerned. It is very concerning that we have not got it here in front of us today, and, allowing for the fact that the way we are structured, if those amendments could have been up before us today, then people have the opportunity to move amendments to them, because, under our present structure, the problem will be, at the next sitting, you will have to suspend Standing Orders in order to move an amendment if you were not happy with the Council of Ministers' proposed amendment. That would be near on impossible in this Hon. House, allowing for the number of Ministers and the number of Members of the Department that it would affect. There is virtually no chance to suspend Standing Orders, unless you have the sanction of the Council of Ministers to do so.

So it is a bit disappointing that we could not have seen any proposals as far as amendments to this Bill before us, before debating it, and that is why I would support the

Member for Doolish Twoaie, Douglas North, on the issue of a committee.

I think that the executive needs to consider that point if it really wants to play and support an active and pro-active parliament in this Hon. House, that these amendments, when they are coming to the Council of Ministers, if they are given in a reasonable time –

**The Speaker:** Hon. Member, could I just ask you to take your seat. Can I just say, all you have got before you is a Bill - nothing else. Whether or not any amendments come forward, we will find out in due course. The procedure before the House is quite straightforward and I would ask you to keep to the issue before us, which is actually the Bill.

The Chief Minister has made clear in his contribution, and Members have to just take what has been said, so I would just ask the Member –

**Mr Corkill:** Could I just make a point of information, Mr Speaker.

**The Speaker:** Yes, Chief Minister.

**Mr Corkill:** Just briefly, on a point of information, Mr Speaker, the amendments the Hon. Member refers to, which were in the Council of Ministers' minutes, are technical issues that I believe are coming from the Treasury and they will come forward in the normal way.

**The Speaker:** And the Members of this Hon. House will have every opportunity to debate those amendments and either support them or not. And, to be quite honest, and the Hon. Member for Onchan knows only too well, the Hon. Member, Mr Karran, if Members wish to bring amendments, the provision is there, regardless of whether or not somebody else will bring amendments forward, and I would just ask the Hon. Member to concentrate on the Bill. I accept the point he is making that there may be amendments, but there again, Hon. Member, there may not be.

Hon. Member for Onchan, Mr Karran.

**Mr Karran:** Point of order, Vainstyr Loayreyder. He has already said that there will be amendments. But the point was being able to put amendments to those amendments, if they could have been here –

**The Speaker:** Hon. Member, the position is quite clear: you cannot put amendments to amendments. If you wish to put amendments, that will be a matter for you. If not, I would suggest, maybe, you wish to talk to the Chief Minister, outside this Hon. House, to see what he is doing, and if you do not agree, or he will not tell you, then you have the provision to bring amendments. The procedure is quite clear, Hon. Member.

Hon. Member for Onchan.

**Mr Karran:** Yes, it is, Vainstyr Loayreyder, and we will beg to differ.

But the point is that the other thing that concerned me from the issue as far as the Ard-shirveishagh's input was concerned, was the issue as far as, 'not enough suitable people' on the Island for this sort of carry on –

**Mr Corkill:** I did not say that. Mr Speaker, I do object to that comment. I said that the relative numbers of people made it difficult for the number of jobs that are available for people to do. I did not talk about suitability. I know what the Hon. Member is trying to paint, that I am against the working person and the Government employees of this Island, and I object to that imputation.

**The Speaker:** Hon. Members, could I ask the Hon. Member for Onchan, Mr Karran, to concentrate on the Bill before us, please.

**Mr Karran:** Vainstyr Loayreyder, I am happy to accept the clarification, as far as the Member's concern. I was not trying to do that. What I was on about was the issue of there not being enough people, or whichever way you want to put it, that is what the Ard-shirveishagh . . . Of course, he is right, if we have the worthy list. We have the worthy list; we want to broaden the worthy list out.

I know, as the Member for Health, I was told who I was supposed to have, from that, for the different committees of the worthy list. The point is we have a wealth of knowledge in this Island, (**A Member:** Hear, hear.) which is not tapped at the present time, and I would just think that the Council of Ministers need to try and get away from this idea that, just because they do not personally know them, there are people out there with a wealth of knowledge which could be tapped. At the end of the day, we are the people who have the mandate and we make the decisions, but there is a lot of people out there, and I just hope that the Hon. Member takes that on board.

The other issue that I would just like to raise was the issue from the Member for Peel, which was a valid point, about the issue of 12 months without turning up to regular meetings, and I think that she has a very valid point; it does seem a bit ridiculous, as far as that is concerned. But I also feel that, maybe, if it goes to a committee, there might be reasons for a defence for an individual, as far as why they cannot turn up on those specific dates when that tribunal was on, and if they can prove some sort of engineering, so that it is very difficult for that individual to be able to attend that meeting, then that should be a reasonable defence.

**Mrs Hannan:** Read Schedule 1.

**The Speaker:** The Hon. Member for Douglas North, Mr Houghton, to reply to the debate.

**Mr Houghton:** Thank you, Mr Speaker.

To summarise this whole situation: Article 6 has to be complied with. It is as simple as that.

Now, in complying with Article 6, we must look at whatever alternative amendment that my Hon. Colleague has already put forward, as far as the spirit of that amendment, in detail, so that we can put the appropriate technical legislation through this Hon. House when we get to clauses stage. But it must be transparent and there must be no conflict of interest.

I am concerned about many scenarios, whereby there can be other issues on the Isle of Man which have a conflict of interest, which indeed itself would go against Article 6, so it has got to be looked at, and I am quite willing to look with the Chief Minister at any amendments that could be looked at before it comes before this Hon. House, before it

can be properly explained to all Members in the proper form. That is what I believe: in good legislation, we are legislating for the future and we must take everything seriously.

To that end, I am quite willing to put the clauses stage of the Bill on hold until we can achieve that. I have never got a problem with that and I support everything the Chief Minister has said in that area.

My Hon. Colleague for North Douglas made a number of points which, of course, I think I have summarised to a great deal there, which have clearly been answered by a supportive Chief Minister on this point, and to which I am quite willing to attend – well obviously, I need to attend – such future meetings with my hon. colleague and anybody else who has a concern.

I would say that that would possibly be better done that way than sending the Bill at clauses stage to a committee of this House. But if that is the case, well then so be it, but if we want to go about it in a rational way I would quite support that.

But, because we have not got any – because this is the second reading stage – amendments in front of us at this time, there is no point in me discussing or explaining anything to do with any amendments at this stage, until we see them, and I do support my Hon. Colleague in working up an appropriate amendment that is to the satisfaction of all, hopefully, which would come through the House comfortably after it has been carefully researched and scrutinised, in order for good legislation to go through the Keys.

The Hon. Member for Peel, Mrs Hannan, brought about a good point and asked for clarification on Schedule 1.2(a) about something that could go on for 12 months. My only explanation of that would be: not necessarily does a clear situation become about right at day one. Something happens where somebody takes ill and is then not able to make it, and time goes on, and the situation develops, whereby that person, that member of that tribunal, falls foul or short of his attendance. It is not necessarily known, and I think if it was a known fact, then it would be right and proper for him to so resign and be removed from it. But there are circumstances - and I am sure the Hon. Member will agree with me - which develop because an illness develops, therefore the time goes along and, of course, that has to be a calling to an end of that scenario at some point in time.

Set in the Bill, of course, is a 12-month period, which I feel is fair, to allow for someone who wishes to serve the Island's interests on a tribunal, for him to be given time.

Indeed, the Hon. Member for Onchan, Mr Karran, also supported the Hon. Member for Peel: those who fail to turn up at regular meetings in a case of three or four months in a year, rather than 12, should be precluded. But I have to say, Hon. Member, if you were on one of those committees, you would be precluded within a three-month period for failing to turn up. (*Interjection by Mr Downie*) So that is the situation.

**Mr Karran:** There are two laws in this place.

**Mr Houghton:** I thank the Hon. Member, Mr Downie, for his supportive comments also.

But, the proof of the pudding is in the eating. That is at clauses stage; I am quite willing to put the Bill on hold until we investigate an appropriate compromise, if that can be up, in order for good legislation for this Island.

And so, at this stage in the second reading, sir, I beg to move.

**The Speaker:** Hon. Members, the motion before the House is that the Tribunals Bill 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 17, Noes 1*

FOR	AGAINST
Mr Anderson	Mr Henderson
Mr Quine	
Mr Quayle	
Mr Gawne	
Mr Houghton	
Mr Cretney	
Mr Duggan	
Mr Braidwood	
Mr Downie	
Mr Shimmin	
Mrs Hannan	
Mr Bell	
Mrs Craine	
Mr Karran	
Mr Corkill	
Capt. Douglas	
The Speaker	

**The Speaker:** Hon. Members, the motion carries in the House with 17 votes for, 1 vote against.

## Construction Contracts Bill

### Clauses considered

**The Speaker:** We move on the next item on our Order Paper, Item 5, ‘Consideration of Clauses’, Construction Contracts Bill; Hon. Member for Douglas West, Mr Downie.

**Mr Downie:** Thank you, Mr Speaker. It has been some time since this Bill was before the House; I will just give a brief background to Members.

This Bill was to give the parties to construction contracts new rights and to enable a scheme for adjudication of disputes to be set up. It originates from *Constructing the Team: a Final Report of the Government/Industry Review of Procurement and Contractual Arrangements in the United Kingdom Construction Industry*, known as the Latham Report.

Latham concluded, inter alia, that the contractual system under which the UK construction industry operated was defective in two main respects: there was a need for a simple procedure for settling disputes over payments quickly and cheaply; some common terms of construction contracts were unfair on small sub-contractors and should be outlawed.

These recommendations were accepted by the United Kingdom Government and were implemented in Great Britain, for example, England, Wales and Scotland, as part two of the Housing Grants Construction and Regeneration Act of Parliament 1996, which came into force on 1st May 1998. To ensure that the construction industry in the Isle of Man, which effectively operates as part of the British industry, operates under rules which are no less fair than

those applying in Britain, this Bill makes provisions closely following part II of the UK 1996.

Clause 1, Hon. Members, defines, in wide terms, the construction contracts to which the Bill applies.

Subclause (1) defines ‘construction contract’ as an agreement with a person for (a) carrying out construction operations defined in clause 2; (b) for carrying out construction operations by others, for example, a main contractor, where some or all of the work is to be done by sub-contractors; or (c) providing labour for carrying out construction operations, labour only or labour and materials - also in (2). This is from the UK Act, section 104.

Subclause (2) provides that construction contract also covers design contracts by architects, surveyors, engineers, decorators et cetera, in connection with construction operations.

Subclause (3), however, excludes a contract of employment, as defined in the Employment Act 1991, for example, a contract which creates the relationship of employer and employee or master and apprentice between the parties.

Subclause (4) enables the Department of Trade and Industry to amend the definition of construction contract by Order, to keep in line with any similar amendments made in England and Wales. Such an Order requires Tynwald approval.

Subclause (5) makes it clear that, where a contract covers both construction operations and the other matters, for example, erection of a factory and the installation of an assembly line in it, the Bill applies to it only insofar as it covers the former and relates to the matters within 1 or 2, or both. So it is the building and not the machinery which is separate.

Subclause (6) makes it clear that the Bill applies only to construction contracts entered into after it comes into force: for example, it is not retrospective and relating to works in the Isle of Man, so it will not apply to a contract between two Manx companies relating to work to be carried out in England; such a contract would naturally be subject to United Kingdom Acts.

Subclause (7) provides that the Bill will apply to a contract for work in the Isle of Man, even though the terms of the contract provide that it will be subject to the law of another territory. For an explanation of applicable law, there is a note on clause 14.2 below, and this is also from the UK Act, section 104.7.

Mr Speaker, I beg to move that clause 1 stand part of this Bill.

**The Speaker:** Hon. Middle for Middle.

**Mr Quayle:** I beg to second and reserve my remarks.

**The Speaker:** Hon. Member for Ayre.

**Mr Quine:** Yes, I apologise over the Bill if I have asked this point before, but I – I can see my note – cannot recollect if I asked the question, and that is whether or not this clause, or how this clause impacts upon management contractors. It talks here about the construction contract, carrying out of construction operations, the ranges for the care of construction operations by others, whether, under sub-contractors or otherwise, providing of labour, et cetera, none of that fits with management contracting, and then, of

course, we go on to architectural advice, et cetera, in part 2.

I am not quite sure how this relates – whether or not it relates – to contracts which are for management contracting, because there are, of course, in some cases a direct relationship with contractors and sub-contractors, and, in other cases, management contractor, of course, has to certify the work before payment can be made and I am not sure, therefore, how it sits.

**The Speaker:** Hon. Member for Douglas West to reply.

**Mr Downie:** Yes, I am advised that there is a provision which deals with management contracts and this will be addressed when the regulations are drawn up and, of course, the Hon. Member will be aware that the Department of Trade and Industry has powers to make variations in the legislation – under the legislation – so if a PFI scheme was coming forward, or, as the Member indicates, some sort of a management contract, we could insist that that terminology is covered.

So the main objective of the legislation is to provide a framework to deal with a dispute when it arises and not leave it until the end of the contract, when people may have gone out of business by then, and also to be able to ensure that there is a mechanism that sub-contractors can get involved in, because, really, they are the ones who have been suffering when major contracts have gone wrong or a dispute has arisen part way through a project.

So it is to try and redress the balance, as it were, and introduce the legislation which is currently available in the UK, but I will carry out some further research and I will get confirmation that management contracts are covered within the legislation.

**The Speaker:** Hon. Members, the Motion before the House is that clause 1 do stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it.

Hon. Member, clause 2, please.

**Mr Downie:** Clause 2 defines construction operations, for example, the works to be carried under a contract, if this Bill is applied to it. They cover a wide range of activities more or less connected with the building trade, but with significant exceptions.

Subclause (1) lists six main classes of construction operation covered by the Bill: (a) work relating to buildings and other structures, including construction, altering, repairing, maintaining, extending, demolishing and dismantling them; (b) similar works relating to works which form part of the land, for example, walls, roads, apparatus, docks, railways, waterways, pipelines, water mains; (c) installing fittings in buildings and structures, for example, heating, lighting, ventilation, power supplies, drainage, water supply, communications systems; (d) covers the cleaning of buildings and structures in the course of work within (a); (e) groundwork for work within (a) to (d); (f) decorating a building or structure.

Subclause (2) sets out exceptions, for example, work which is not construction operations, and, for example, (a) drilling for oil or gas; (b) mining; (c) installing or demolishing plant on the site of a power station, waterworks, sewage works or bulk store for chemicals, oil, gas, steel, foodstuffs, et cetera; (d) manufacture or delivery of

materials, plant, machinery or components, except where installation is included. (e) covers sculptures and other artistic works.

Subclause (3) enables further works to be added or to be excluded from (1) or (2) above, by Order of the Department, and this would be subject to Tynwald approval.

I beg to move that clause 2 stand part of the Bill.

**The Speaker:** Hon. Member for Middle.

**Mr Quayle:** I beg to second and reserve my remarks.

**The Speaker:** Hon. Members, the motion before the House is that clause 2 do stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it.

Clauses 3 and 4, sir.

**Mr Downie:** Clause 3 excludes from the Bill contracts with a residential occupier. This enables other classes of contract to be excluded by Order, and, naturally, if there was a situation with a residential occupier, it does not take away the rights to go the Office of Fair Trading or Trading Standards, should a dispute arise.

Subclause (2) defines contracts with a residential occupier as a construction contract, relating to work on a dwelling, for instance, a house or flat, but not a block of flats, occupied or to be occupied by one of the parties below.

Subclause (3) enables (2) to be amended by Order of the Department, subject to Tynwald approval.

I will move to clause 4. Clause 4 limits the operations of the Bill to contracts in writing.

Subclause (1) provides that the Bill applies only to construction contracts in writing and any agreement relevant to the Bill, for example, as to payment, and is effective for the purposes of the Bill, only if it is in writing.

Subclause (2) explains what is meant by an agreement in writing: (a) an agreement made in writing; (b) an exchange of communications in writing, for example, an exchange of letters; (c) an oral agreement evidenced in writing, for example, the minutes of a meeting, et cetera.

Subclause (3) provides that, where parties make an oral contract incorporating written terms, for example, if they agree orally that the JCT Minor Works Contract is to apply, that counts as an agreement in writing.

Subclause (4) provides that a minute of an oral agreement taken down with the authority of the parties counts as evidenced in writing within section 2C.

Subclause (5) provides that, where the existence of an agreement is alleged in proceedings, for example, in arbitration, and is not denied, that counts as an agreement in writing.

Subclause (6) makes it clear that writing includes any kind of record, for example, it covers electronic communications, such as e-mails.

I beg to move that clause 3 and 4 stand part of the Bill.

**The Speaker:** Hon. Member for Middle.

**Mr Quayle:** I beg to second and reserve my remarks.

**The Speaker:** Hon. Members, the motion before the House is that clauses 3 and 4 do stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it.

Hon. Member, clause 5, please.

**Mr Downie:** Clause 5 gives either party to a construction contract the right to refer a dispute to adjudication as a quick and cheap form of dispute resolution, either under the terms of the contract, provided that it complies with the requirements of this clause, or, if it does not, under a statutory scheme to be imposed under clause 11.

Subclause (1) gives a party to a construction contract the right to refer any dispute or difference under the contract to adjudication in accordance with this clause.

Subclause (2) lays down the procedural requirements which a contractual form of adjudication must comply with if it is to be acceptable: (a) a party must be able to refer at any time; (b) the timetable must enable the adjudicator to be appointed and a reference made within seven days; (c) he must make a decision within 28 days, unless a longer period is agreed by the two parties; (d) he must act impartially; and (e) he must be able to act on his own initiative.

Subclause (3) requires a contractual form of adjudication to provide for the adjudicator's decision to be binding, unless and until it is overturned by the court in arbitration, if the contract provides for arbitration, or by agreement. An agreement to accept this decision as final and binding is valid.

Subclause (4) requires a contractual form of adjudication to provide that the adjudicator and his staff are not to be liable personally for his actions, unless bad faith is proved.

Subclause (5) provides a default provision if the contract does not comply with (1) to (4) above. In that case, a statutory form of adjudication will apply, as set out in a scheme under clause 11 below. The adjudication system for Wales and England is in part I of the Scheme for Construction Contracts Schedule to Regulations.

Subclause (6) enables such a scheme to incorporate provisions of the Arbitration Act 1976, which provides standard terms for contractual and statutory arbitrations. From the UK Act, 108, section 6, the UK scheme incorporates the Arbitration Act 1968 and the court may order enforcement of arbitrator's order. There is no equivalent in the Manx Act.

Mr Speaker, I beg to move that clause 5 stand part of the Bill.

**The Speaker:** The Hon. Member for Middle.

**Mr Quayle:** I beg to second and reserve my remarks.

**The Speaker:** The Hon. Member for Douglas East, Mrs Cannell.

**Mrs Cannell:** Thank you, Mr Speaker. I welcome this legislation and, indeed, I know that the same was being looked at some five or six years ago by the Department of Trade and Industry. I am a little bit disappointed that it has taken us so long to get to this point, but, nevertheless, I welcome the provision of putting in place in legislation an adjudication provision.

But can I ask the Hon. Mover: what does he envisage, or how does he envisage, the adjudicator so appointed to work? Are we looking at a panel of local adjudication officers, or are we looking to bring somebody in from off-Island? Is there anybody at present on the Island who is

qualified to be an adjudicator to settle disputes in this way? And under clause 5(5) and (6), it states that:

a scheme under section 11 may include provision —

Now, this is if subsections (1) to (4) under this particular clause are called into being. In other words, (1) to (4) provides how the complaints should be dealt with, what the adjudicator should consider in so looking at all of this and the parties who may or may not agree. And then, of course, it says in subsection (5):

If the contract does not comply with the requirements of subsections (1) to (4), the adjudication provisions of the scheme under section 11 apply.

And when we look at that, which is yet to be moved, it says that the Department may - or shall, in fact - bring forward regulations to provide the meat on this particular section. My question to the Hon. Mover is: when would he envisage having the regulations prepared and ready to be brought forward and are they ready to be brought forward?

I would have thought that putting in place such legislation as this primary legislation would be totally ineffective once it has got its Appointed Day Order, unless we have got the regulations ready to roll as well. So, if he could provide some information, I would appreciate it.

**The Speaker:** The Hon. Member for Douglas West, Mr Downie, to reply.

**Mr Downie:** Thank you, Mr Speaker.

I thank the Hon. Member for Douglas East, Mrs Cannell, who gives her support to the measures that we are introducing. I totally concur with her, they are long overdue, and I was privileged, in this House, to sit on a Select Committee and one of the recommendations of that Select Committee was that we adopt the recommendations which were laid out in the Latham Report and here we are a number of years later, actually pushing forward with the legislation.

Now, regarding an adjudicator or an arbitrator, I would assume that there will be someone from off-Island, initially, who has the necessary experience. The system has operated in the United Kingdom for a number of years now. It has turned out to be very, very successful and, of course, a lot of UK companies operate in the Isle of Man. They do employ local sub-contractors and one of the main reasons is to get this commonality in contractual form so that everybody knows exactly what it is they are signing up to and what the relative routes are, should a problem arise during the contractual period.

We have already a set of draft regulations. I think that, following the passage of the clauses stage through this House today, those regulations will go forward. We are just making sure that there are no problems arising at this particular end, but I hope to bring this legislation in as soon as practically possible. It is very well accepted by the local industry. They want it in as quickly as possible, because they see it as a way of dealing with problems that arise from time to time and it is seen as a benefit to the construction industry on the Isle of Man.

So I hope that has answered Mrs Cannell's questions and I beg to move.

**The Speaker:** Hon. Members, the motion before the

House is that clause 5 do stand part of the Bill. All those in favour, say aye; against, no. The ayes have it. The ayes have it.

Now, Hon. Member, I wonder if we can take clauses 6, 7, 8 and 9 together, please.

**Mr Downie:** Clause 6 provides that a party to a construction contract is entitled to stage payments, unless the work is to take less than 45 days.

If they have not agreed on the terms for stage payments, the statutory scheme under clause 11 imposes terms on them.

Subclause (1) provides that a party to a construction contract is entitled to stage payments, unless the contract specifies, or the parties agree that the work is to take less than 45 days.

Subclause (2) provides that the parties can agree, in the contract or separately, the amounts and the dates of stage payments.

Subclause (3) provides a default provision, if the parties do not agree under (2) above. In that case, statutory terms for stage payments will apply, as set out in a scheme under clause 11 below.

The statutory terms for England and Wales are in paragraphs 1 and 2 and part II of the Scheme for Construction Contracts Scheduled to Regulations (1998/649).

Subclause (4) makes it clear that reference to payments under the contract in the Bill include payments under this clause.

Clause 7 requires every construction contract to provide for determining what payments are due under it and when for a final date for payment and for the payer to notify the payee promptly of every payment due and how it is calculated. If it does not, the statutory scheme makes such provision.

Subclause (1) requires every construction contract to provide: (a) for determining what payments are due under it; and (b) for a due date and a final date for payment. The parties can agree on the due date and the final date for any payment; for example, 14 days, 21 days, 3 months.

Subclause (2) requires every construction contract to provide for the payer to notify the payee within five days after the due date of every payment due and how it is calculated. This applies even where the payer claims that the other party is in default, or claims a set-off or abatement.

Subclause (3) provides a default provision if the contract does not provide as in (1) and (2) above. In that case, statutory terms will apply, as set out in a scheme under clause 11 below.

The statutory terms for England and Wales are in paragraphs 3 to 9 and part II of the Scheme for Construction Contracts Schedule to Regulations (SI 1998/649), under section 114.

Moving on to clause 8, Hon. Members, this clause restricts the rights of a party to a construction contract to withhold payment. He must notify the other of the amount withheld and the grounds for withholding it, not later than a fixed period before the final date for payment.

Subclause (1) prevents a party to a construction contract withholding payment unless he has notified the payee of his intention to do so in accordance with (2) below. A notice under clause 7(2) above will do, as long as it complies with (2).

Subclause (2) requires a notice under (1) to specify the

amount withheld and the reason for withholding it and each amount, and each ground, if more than one. It must also be given not less than the stated period - see (3) below - before the final date for payment.

Subclause (3) provides that the parties can agree what the period should be, but, if they do not, the scheme under clause 11 below will do so.

The statutory period in England and Wales is seven days under paragraph 10 of part II of the Scheme for Construction Contracts Schedule to Regulations.

Subclause (4) provides that, where notice to withhold payment is verily given, but an adjudicator decides that it is wholly or partly due, it is to be paid within seven days of the decision or by the final date for payment, if later.

I beg to move that clauses 6, 7 and 8 stand part of the Bill.

**The Speaker:** The Hon. Member for Middle.

**Mr Quayle:** I beg to second and reserve my remarks.

**The Speaker:** Hon. Members, the motion before the House is that clauses 6, 7 and 8 do stand part of the Bill. All those in favour, say aye; against, no. The ayes have it. The ayes have it.

Hon. Member, clauses 9 and 10, please.

**Mr Downie:** Clause 9 gives a person who has not been paid in full by the final date for payment, of any sum under a construction contract, the right to stop work until he is paid.

Subclause (1) gives a person who has not been paid in full by the final date for payment of any sum under a construction contract, the right to suspend performance, for example, stop work, refuse to deliver materials, et cetera.

Subclause (2) requires the claimant to give at least seven days' notice to the party in default, stating the grounds for suspending performance.

Subclause (3) provides that the right to suspend performance comes to an end when the amount due is paid in full, for example, the claimant must then start work again or deliver the materials, et cetera.

Subclause (4) makes it clear that, where a claimant suspends performance in accordance with (1) to (3) above, the time for finishing off his work or anyone else's work affected is extended accordingly, whether it is set as completion within a stated period or by a stated date. For example, A is required to do a job within four weeks of a stated date and another sub-contractor, B, is required to do another job dependant on A finishing his job within seven weeks after the same date. A suspends performance for two weeks for non-payment and is then paid in full, A's four weeks is extended to six weeks and B also has two extra weeks to finish his job. So there is a programme built in.

Moving to clause 10, this clause outlaws contract terms under which a contractor is not bound to pay a sub-contractor unless he has been paid by the client or main contractor, except in a case of insolvency. For example, client A engages main contractor B to put up a building. B engages sub-contractor C to do plumbing work, on terms that B is not liable to pay C unless B has been paid by A. B does not press A for payment, so C is not able to demand payment from B.

Subclause (1) makes the contract term in the above

example invalid. So C would be able to demand payment from B, even if B has not been paid by A, with one exception: if A is insolvent.

Subclause (2) explains what is meant by insolvent, in the case of a company where it is wound-up either voluntarily as an insolvent company or compulsorily in the High Court under the Companies Act, and this is from the UK Act, section 113(2), which has no equivalent of administration or administration receivership in the Isle of Man.

Subclause (3) explains what is meant by 'insolvent' in the case of an individual. He either is made bankrupt or makes a composition as a deed of arrangement with his creditors.

Subclause (4) explains what is meant by 'insolvency' in the case of a firm, where any member of the firm becomes insolvent within (2) or (3) above.

Subclause (5) provides that the parties can agree other terms for payment, where a term is made effectively by (1) above. If they do not, statutory terms will apply as set out in a scheme under clause 11 below.

Mr Speaker, I beg to move that clause 9 and clause 10 stand part –

**The Speaker:** Subclause (6), Hon. Member.

**Mr Downie:** Subclause (6) deals with the statutory terms for England and Wales. Those are in part 2 of the Scheme for Construction Contracts Schedule to Regulations. That is what I have got, okay?

**The Speaker:** Yes, thank you, Hon. Member. The Hon. Member for Middle.

**Mr Quayle:** I beg to second and reserve my remarks.

**The Speaker:** Members, the motion before the House is that clauses 9 and 10 do stand part of the Bill. All those in favour, say aye; against, no. The ayes have it. The ayes have it.

Now, Hon. Member for Douglas West, can we take clauses 11, 12 and 13, if you are happy.

**Mr Downie:** Clause 11 requires the Department of Trade and Industry to make regulations setting up a scheme containing provisions as to adjudication and payment under construction contracts, as required by clauses 5 to 10 above, where they apply by default under those clauses. Such provisions will be incorporated in the contracts as implied terms.

Subclause (1) requires the Department of Trade and Industry to make regulations setting up a scheme, containing provisions as to the adjudication and payment under construction contracts, as required by clauses 5 to 10 above. The regulations require Tynwald approval.

The UK regulations in force in England and Wales are the Scheme for Construction Contract (England and Wales) Regulations 1998.

Subclause (2) requires the Department to consult interested parties before making regulations.

Subclause (3) provides that, where provisions of the scheme apply by default, for example, under clause 5(5) 6(3), 7(3), 8(3) and 10(6), those provisions will be incorporated in the contract as implied terms.

Clause 12 provides a set of rules for the service of notices and other documents or communications under a construction contract or this Bill, if the contract does not provide its own rules.

Subclause (1) provides that the parties to a construction contract can agree on rules for service of notices, claims and other documents and communications under the terms of the contract or of this Bill.

Subclause (2) applies the following rules about service if, or to the extent that, the parties have not agreed on any rule themselves.

Subclause (3) provides that any effective means of service of a notice or other document is valid, for example, any means whereby it is brought to the recipient's notice, as seen in (4) below.

Subclause (4) says that service by post is deemed to be effective for the purpose of (3), for example if the document is sent by addressed and pre-paid post and delivered to the appropriate address; for example, (a) an individual's last-known residence, or, in the case of a firm or an individual carrying on a business, his or its last-known business address or (b), a company's or other body's registered or principal office.

Subclause (5) excludes the above provision in the case of legal proceedings, where provision is made by rules of court for service of documents.

Subclause (6) makes it clear that any communications that include letters, faxes and e-mails, is covered by 1(5) above and 'service' has an appropriate meaning.

Clause 13 lays down rules for calculating periods of time for the purposes of the Bill.

Subclause (1) is introductory. The following rules for calculating time apply for the purposes of the Bill, for example, under clause 5(2)(b), 7(2) above, they will also apply for the purposes of the scheme under clause 11 of the Interpretation Act 1976, section 29A.

Subclause (2) provides that, where something is to be done within a specified time after a date, for example, not later than 5 days after the date on which a payment becomes due, in clause 7(2), then the time begins to run on the next day. To give an example, payment is due on 1 February. The five days begin to run on 2 February, so a notice under clause 7(2) must be given not later than 6 February.

Subclause (3) provides that Christmas Day, Good Friday and bank holidays are excluded from the calculation and, for example, payment is due on 23 December, the five days begin to run on 24 December, so a notice under clause 7(2) must be given not later than 30 December, not 28 December.

I beg to move that clauses 11, 12 and 13 stand part of the Bill.

**The Speaker:** The Hon. Member for Middle.

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

**The Speaker:** Hon. Members, the motion before the House is that clauses 11, 12 and 13 do stand part of the Bill. All those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clauses 14 and 15, Hon. Member.

**Mr Downie:** Thank you, Mr Speaker. This clause provides definitions for certain terms used in the Bill. It

also makes a transitional provision.

Subclause (1) defines various terms used in the Bill, principally by reference to clauses 1, 2 and 4 and there is a drafting provision.

Subclause (2) makes a transitional provision pending the commencement of section 2 of the Contracts (Applicable) Law Act 1992, which lays down new rules for determining the applicable law of a contract, for example, what country's law applies to determine what it means, how it is to be enforced and so on, replacing the common-law rules for determining the proper law of a contract.

Section 2 is not yet in force, so, pending its commencement, the reference in clause 1(7) to the applicable law of a contract must be construed as a reference to its proper law.

Clause 15. This clause requires orders under clauses 1(4), 2(3) and 3(1) and (3), regulations under clause 11(1), to be approved by Tynwald.

I beg to move that clause 14 and clause 15 stand part of the Bill.

**The Speaker:** The Hon. Member for Middle.

**Mr Quayle:** I beg to second and reserve my remarks.

**The Speaker:** The Hon. Member for Douglas East, Mrs Cannell.

**Mrs Cannell:** Thank you, Mr Speaker.

Again, I congratulate the hon. mover for getting through all of the clauses today.

Can I ask him, though, when it comes to the regulations, which he has advised are currently in draft form, and, presumably, have been out for wide consultation, which I am sure he will have undertaken, within the construction industry, when those regulations are ready, will it come at the same time as the Appointed Day Order, which I hope will be the case, and what sort of time span is he hoping to succeed with in terms of this? What month of the year are we looking at next year for the introduction of the Appointed Day Order and also Tynwald's acceptance of the regulations? What is he hoping for? I hope it is sooner rather than later and I wish him well with it.

**The Speaker:** The Hon. Member for Douglas West to reply.

**Mr Downie:** Thank you, Mr Speaker. As I indicated earlier, I want to progress this piece of legislation as quickly as possible. However, I do not have any control over its passage through another place. As is their wont, they may seek to amend it in some form.

**Mrs Cannell:** They wouldn't dare.

**Mr Downie:** As far as the regulations go, we are progressing those quite quickly. They are in draft form. There has been consultation with the industry and I hope that, once the Bill, in whatever final form, becomes law, we can implement it as quickly as possible. It is long overdue and it is really required by the construction industry quite quickly. Thank you.

**The Speaker:** Hon. Members, the motion before the House is that clauses 14 and 15 do stand part of the Bill. All those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 16, sir.

**Mr Downie:** Thank you, Mr Speaker. This clause provides for the short title and commencement of the Bill.

Subclause (1) gives the Bill its short title.

Subclause (2) provides the Bill to come into force on an appointed day or days, to be fixed by Order of the Department, since Orders and regulations need to be made and approved by Tynwald before the Bill can work properly. So every Member will receive a copy of the regulations at the proper time and there will be, I would take it, an opportunity to air them on the floor of Tynwald, if you wish.

I would just like to thank the House, in moving clause 16, for their support today. It can be quite an onerous task. Some of the clauses are very, very complex, and I thank the Members for their support.

**The Speaker:** The Hon. Member for Middle.

**Mr Quayle:** Thank you, Mr Speaker. I beg to second and reserve my remarks.

**The Speaker:** Hon. Members, the motion before the House is that clause 16 stand part of the Bill. All those in favour, say aye; against, no. The ayes have it. The ayes have it.

Now, Hon. Members, that concludes our business. The House will now stand adjourned until 10.30 a.m. on 18 November, in Tynwald Court. Thank you, Hon. Members.

*The House adjourned at 1.05 p.m.*

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#### **Corrigendum**

On Page 28 K121, second column, seventh paragraph, for people who are already not up to the job , read people who were really not up to the job .