



**LEGISLATIVE COUNCIL  
OFFICIAL REPORT**

**RECORTYS OIKOIL  
Y CHOONCEIL SLATTYSSAGH**

**P R O C E E D I N G S**

**D A A L T Y N**

**(HANSARD)**

**Douglas, Tuesday, 3rd May 2005**

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

The Lord Bishop of Sodor and Man (The Rt. Rev. Graeme Knowles),  
 Mr D M W Butt, Mrs C M Christian, Mrs P M Crowe, The Chief Minister (Hon. D J Gelling),  
 Mr E G Lowey, Mr L I Singer and Mr G H Waft,  
 with Mrs M Cullen, Clerk of the Council.

**Business transacted**

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*The Council adjourned at 12.25 p.m.*

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## Legislative Council

*The Council met at 10.30 a.m.*

**PRAYERS**  
*The Lord Bishop*

[MR PRESIDENT *in the Chair*]

### LEAVE OF ABSENCE GRANTED

**The President:** Now, Hon. Members, we have apologies, this morning, from two Members: Mr Attorney and Mr Downie are both off the Island, on Government business.

## Orders of the Day

### BILL FOR SECOND READING

#### **Mental Health (Amendment) Bill** **Second Reading approved**

**The President:** So, we turn straight on to our Order Paper, and the first Item is the Mental Health (Amendment) Bill. It is for Second Reading. I call on the Hon. Member, Mr Waft.

**Mr Waft:** Thank you, Mr President.

If I could, first of all, Mr President, clarify the situation with regard to a query that was raised, during the First Reading stage, from the Hon. Member, Mrs Christian, with regard to the Mental Health Act in the UK.

Mr President, the issues first came to light in 2001. It was started by proposals by the Scottish Executive to replace their Mental Health legislation, which would result in the reciprocal arrangements for the transfer of mental patients ceasing to operate properly between Scotland and the Isle of Man.

The existing legislation in both jurisdictions, part 6 of the Mental Health Act 1998 in the Isle of Man, used the same concepts and machinery. That made it relatively straightforward to move a patient from a regime, for example, admission for assessment or treatment, a sectioning, in one jurisdiction to the corresponding regime in the other.

The new law in Scotland would use different concepts and machinery. These proposals have now been enacted, as the Mental Health Care and Treatment (Scotland) Act 2003.

There were also anomalies in respect of part of the reciprocal arrangements between Great Britain and the Isle of Man. The arrangements were, in part, contained in provision of Acts of Parliament which extended to the Isle of Man. The Mental Health Act 1983, subsections 84 and

88, and the Mental Health Act of Scotland 1984, subsections 82 and 84.

The principle of the law operating in the Isle of Man should be in an Act of Tynwald. The principle was accepted, but it was noted that these provisions could be repealed to the Isle of Man by an Act of Parliament only, since the Scottish Parliament cannot legislate for the Isle of Man.

Following a Green Paper, in 1999, and a White Paper, in 2000, the UK Department have proposed new Mental Health legislation for England and Wales. This will, similarly, affect the reciprocal arrangements between England and Wales and the Isle of Man, but also provides the vehicle for repealing the UK provisions which extend to the Isle of Man.

A draft Mental Health Bill was published, in 2002, and it was expected that it would be introduced in the 2003-04 session but a revised draft Bill was produced in 2004, for further consultation.

That Bill is in its final form, but the UK general election has delayed it. A significant amount of time has been invested in the Bill, by the UK. As it does not seem to be a particularly political matter, there is no strong reason to suppose that the Bill will not be introduced, in the foreseeable future.

Part 6 of the Mental Health Act 1998 needs to be replaced, and the provisions about patients absent without leave also need updating, to fit in with new legislation in Scotland, and that proposed for England and Wales.

The Isle of Man legislation will also be able to work with the old and the new law on a transitional basis.

In simple terms, Mr President, it was necessary for us to put forward the Mental Health (Amendment) Bill 2004, in order to comply with the new law already enacted in Scotland. When preparing the Bill, the UK was, indeed, proposing to change their legislation. There is an agreement with all three major political parties that the Mental Health legislation in the UK should be changed.

The Isle of Man is being reactive to the changes in Scotland, and, perhaps, proactive to whatever changes there will be in the United Kingdom.

In order to link in with changes in other jurisdictions, as and when they occur, the Isle of Man can deal with its own Bill, through transitional arrangements, using several Appointed Day Orders.

Mr President, I beg to move the Second Reading of the Mental Health (Amendment) Bill 2004.

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

**The President:** Mr Singer.

**Mr Singer:** Could I ask the mover: in moving the Bill, as it is printed now, are we, in fact, confident that the England and Wales Bill, when it is reintroduced, will be the same Bill as we are anticipating it is now? Otherwise, we might be making new laws here which, in fact, do not fit in with the England and Wales Act, which is, obviously, the intention of this Bill.

**The President:** Mrs Christian.

**Mrs Christian:** Mr President, it is interesting that devolution has triggered this, but it has highlighted, I think, some of the difficulties of keeping up with the changes of legislation in a number of areas, where we want to keep a

measure of reciprocity of treatment and standards, and so on, in relation to mental health. So, I will support the Second Reading.

I think, in terms of the issue that I raised last week, or whenever we considered this last, about the changes to come in the United Kingdom, I am reassured by what the Hon. Member has said, and, also, by clause 7, which allows the Council of Ministers, by Order, to amend the Bill, to take account of any change of law in any part of the United Kingdom or the Channel Islands, so that we will know what it is before we apply it, and that if we do not see fit to apply it, then Tynwald need not do so.

But I suspect that we would wish to, at least, examine what those changes are, in order to keep provisions in line, so that we can allow people to move to the United Kingdom for appropriate treatments, or, indeed, people from the United Kingdom, to come here under appropriate circumstances.

**The President:** Mr Lowey.

**Mr Lowey:** Yes, Mr President.

I have been here a long time, and I always remember the late 1970s. I am sorry to go back in history, but it does actually... Mental health now is not a taboo subject to talk about, and I believe it was in the past.

In the late 1970s, we brought our legislation up to speed, if you like. Much of it was dealing with legislation that was nearly 100 years old.

This Bill, on the contrary, is the opposite to that: it is anticipating legislation. I would rather it that way, than, actually, trying to catch up later on. I think it is a change in social acceptance of the illness – and it is an illness, and there is not a family, I suppose, in the Isle of Man, that we can all relate to, that has not suffered from that particular illness.

I find that the Bill does take note of Mr Singer's point, in the Appointed Day Order, that, as soon as this Bill comes to be passed, it actually allows the Department to bring in Appointed Day Orders, to deal with the legislation as it is now, and then, if you like, to change that in the future, as and when changes happen in... is it England and Wales? I forget the particular format now. It used to be the United Kingdom, but now we have got Ireland, Scotland, Wales and, in this particular Bill, the Channel Islands, as well.

I think it is a good thing; I think the Bill is right. I think the format is right, and I take recognition of that, and congratulate the Department in bringing this legislation forward, in the way it is, to deal with a very difficult problem.

**The President:** Mr Waft to reply, sir.

**Mr Waft:** Thank you, Mr President.

I would like to thank my seconder, and the Members who have spoken.

With regard to the Hon. Member, Mr Singer – 'are we confident the Bill will be enacted in the UK?' – well, I would not like to be confident about anything that the UK would do. However, the signs are that we are best guessing that there is not going to be any problem with the passing of this Bill.

With regard to the Hon. Mrs Christian's concerns about the problems of devolution, and how reciprocity has to be maintained, and the changes in the clause 4 order to amend do cover some of the situations. We would, of course, examine the changes, and enact the Appointed Day Orders, as and when necessary.

Mr Lowey, indeed, mentioned the Appointed Day Orders, that the point is that we have to deal with Scotland, as it is at the moment, and the law has been enacted in Scotland. In the rest of the United Kingdom, it will be enacted, and we are ahead of the game in one instance, but we are behind the game in the other, so you cannot win, at the end of the day.

All we can do is put forward this Bill, which allows a degree of flexibility for as and when the situations arise.

**The President:** Okay, Hon. Members, the motion that I put to Council is that the Mental Health (Amendment) Bill be read a second time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

### **Mental Health (Amendment) Bill** **Clauses considered**

**The President:** We turn, then, to the clauses, and first, Mr Waft, if we may take clause 1 and the schedule.

**Mr Waft:** Thank you, Mr President.

Clause 1 and the schedule: the clause replaces part 6 of the 1998 Act, which relates to the transfer of patients between the Island and other countries, with provisions set out in the schedule, to take account of recent and forthcoming changes in the Mental Health Law in the United Kingdom.

The replacement is necessary, because of changes in the legal regimes governing mental patients in other parts of the British Islands.

The existing part 6 assumes, as was once the case, there is an exact match between the various legal regimes – for example, in sectioning, guardianship, hospital orders, transfers, directions, et cetera, in all the territories of the British Islands – under which mental patients can be detained, or otherwise controlled, so that a patient in one jurisdiction can be transferred to an exactly equivalent jurisdiction in any of the others.

That assumption can no longer be sustained. Mental Health legislation in Scotland is already different from that of the Isle of Man, and, in England and Wales, it is expected, shortly, to take a different route. So, an element of flexibility must be introduced into the system, so that a patient can be transferred to the Isle of Man from another jurisdiction, and placed under whatever legal regime is suitable for his or her case.

In the schedule, Mr Speaker, section 88 is introductory.

Section 89 enables the DHSS to transfer mental patients from the Isle of Man to the UK or Channel Islands for treatment.

Subsection (1) defines the classes of patients who can be transferred under this section.

Subsection (2) enables the DHSS to authorise the patient's transfer, provided it is satisfied that suitable arrangements have been made for treatment, and that the transfer is in his interest.

Subsection (3) makes special provision for a restricted patient – that is, one ordered to be detained by a criminal court with special restrictions – and, in that case, the Department of Home Affairs can make arrangements for his or her detention and custody, until the transfer.

Subsection (4) makes further provision for restricted patients, as does subsection (5).

Section 90, Mr President, of the schedule, sets up a legal regime corresponding to part 2, to various criminal procedures and provisions under which a mental patient transferred to the Isle of Man, from the UK, or Channel Islands, will become liable to be detained under Manx law.

Subsection (1) enables the DHSS to make regulations, specifying what legal detention regime is to be deemed to be applied to such patients, by reference to the legal regime to which he was subject in his home jurisdiction.

Subsections (2) to (5) set out various conditions, whereby the patient is deemed to be subject to the particular form of mental disorder, as set out in a record made on transfer, in accordance with regulations, and the restriction or order has the same duration here as the similar order in the home jurisdiction.

Section 91 makes a similar provision for transferred patients who are not liable to be detained, and sets up a legal regime, in which a patient transferred to the Isle of Man will become subject to guardianship, or to supervision and treatment, under Manx law.

Subsection (1) enables the Department to make regulations, specifying what legal and non-detention regime is deemed to apply, again by reference to the regime in the home jurisdiction.

Subsection (2) provides that a patient so transferred is subject to an equivalent regime under Manx law on arrival.

Section 92 makes special provision for a conditionally discharged restricted patient, which is a restricted patient who has been released, subject to conditions as to reporting, treatment, et cetera.

Section 93 makes a similar provision to section 91, for certain other patients who are not liable to be detained, and again sets up a legal regime under which a patient moving to the Isle of Man will become subject to aftercare, under supervision, under Manx law.

Section 94 re-enacts the existing section 94, under which a mental patient who does not have a right of abode in the Isle of Man can be sent to his home country or other territory.

Subsection (1) defines the patients to which the section applies.

Subsection (2) enables the Department to authorise such a transfer, provided it is satisfied that suitable arrangements have been made for transfer and treatment there.

Subsection (3) requires the approval of the Mental Health Review Tribunal to a transfer.

Subsections (4) and (5) make further provisions for such a restricted patient.

Section 95, Mr President, gives a legal power to detain a patient absent without leave from another jurisdiction, or who is in transit into, or out of, the Isle of Man, under the above provisions.

Subsection (1) gives power for the approved social worker or constable to hold a patient who is absent without leave from the UK or Channel Islands, and return him there.

Subsection (2) provides that a patient being transferred, under sections 91 and 92, and on his way to a hospital, or other place, is deemed to be legally in legal custody, and, if he escapes, he can be taken by an approved social worker or constable.

Subsection (3) enables regulations to be made by the Department, to extend the powers of an approved social worker or constable to cover a person of specified description, for example, an English social worker bringing a patient to the Isle of Man.

Mr President, I beg to move that clause 1 and the schedule stand part of the Bill.

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

**The President:** Hon. Member, Mrs Crowe.

**Mrs Crowe:** Thank you, Mr President.

I would like to move an amendment to clause 1 and the schedule, and it is the amendment that you have printed before you today:

*Page 12: In the new section 95, in subsection (2) [subsection (2) was inserted by amendment in the House of Keys] omit the words 'taken into custody in the Island and'.*

It was an amendment moved, actually, in the Keys, and it was not moved in the usual manner now, in another place, but, in fact, Standing Orders were suspended to move this amendment, Mr President.

I think, on reflection, members of that Department feel that it might be better in the way in which I have placed the amendment before us today.

I beg to move the amendment standing in my name, please, Mr President.

**The President:** It is, Hon. Members, an amendment to the schedule.

**Mrs Crowe:** It is on page 12.

**The President:** On the bottom of page 12, where, in fact, the Keys had inserted:

*'A person shall not be taken into custody in the Island and returned to a relevant territory under subsection (1) unless the Department is satisfied that the return is appropriate in the circumstances and has authorised it.'*

Mrs Crowe is suggesting that, in fact, the words, 'taken into custody in the Island and' are omitted from that particular paragraph.

**Mrs Crowe:** So, it will read, Mr President:

*'A person shall not be returned to a relevant territory under subsection (1) unless the Department is satisfied that the return is appropriate in the circumstances and has authorised it.'*

**The President:** Mr Gelling.

**Mr Gelling:** I will second it, Mr President, but I would like some explanation, if I can, in speaking to the actual section 89, and the amendment moved in another place, which, the mover has just said, will take out 'taking into custody in the Island and'.

Now, I am a little concerned as to, then, if you go to page 9 of the actual Bill, where it, then, says:

'the Department of Home Affairs may direct that the person be kept in custody in such place of safety as that Department may direct until such removal.'

Now, in the explanatory memorandum that was on it, section 89, it says:

'This enables the DHSS to transfer a patient suffering from mental illness from the Isle of Man to another territory for treatment if suitable arrangements have been made and if it is in the patient's interests to transfer. It also enables restricted patients (i.e. someone ordered to be detained by a criminal court or transferred from prison) to be transferred with permission of the Department of Home Affairs',

which the mover of the Bill emphasised, in his presenting this particular clause.

Now, I am a little concerned that if it is taken out – 'taken into custody in the Island' – does that, in fact, circumvent the Home Affairs having any jurisdiction over the transfer?

I am just a little concerned. I know the Attorney is not here, but I just wondered whether the mover of the amendment, to remove that, out of another place's amendment, in fact, whether that has been explained, as to why we are taking out 'taking into custody in the Island'. I thought that that actually implied that, if they were, as the original Bill says, in custody, the Home Affairs would be the ones who made that decision.

I just wondered whether the mover could, perhaps, explain, as to why it was thought that that should be in, and the first, where it was amended in another place, and then we are removing 'taken into custody in the Island'.

**The President:** It is not quite as simple as that, even, is it? Although the Home Affairs would have... I take your point, Mr Gelling, that, in fact, the person could be in custody, as a result of either tribunal action or, in fact, the action of the relevant territory, which a transferee was either going to or coming from.

**Mr Gelling:** Yes, that's right.

**Mrs Christian:** Mr President.

**The President:** Mrs Christian.

**Mrs Christian:** I did not second, for similar reasons to my hon. colleague, because we have had little explanation of why these words are being taken out, unless it is that, in clause 95(1) –

**Mrs Crowe:** That's it.

**Mrs Christian:** – we are already dealing with the custody issue.

That says:

'Any person who under any provision corresponding to or similar to section 18 or 134 may be taken into custody in the relevant territory may be taken into custody in, and returned to the territory in question from, the Island by an approved social worker or a constable.'

We go on, then, to the amendment which was moved in another place, with the introduction of a new paragraph (2), the one which Mrs Crowe now seeks to amend:

'A person shall not be taken into custody in the Island and returned to a relevant territory [...] unless the Department is satisfied...'

Is it being taken out, because it has already been dealt with? (**Mrs Crowe and another Member:** Yes.) I think we need to know that, before we can vote on it, otherwise one would wonder why the provision to take into custody is being removed.

**The President:** Right, I am aware that Mrs Crowe wishes to come back, but, perhaps, we could get any other comments made, before you come back on it. Mr Lowey.

**Mr Lowey:** Again, it is just for clarity, really.

For an individual, a patient, who is in custody and who has got a tribunal ruling that he should be either deported, or whatever the terminology is – removed to another jurisdiction – it is quite clear. It says for foreign – not the UK but for external ones – the Department, and it says it in 94, page 12, 'Removal of foreign patients', in subsection (3):

'The Department shall not exercise its powers' –

that is, whichever Department of Government it is –

'under subsection (2) in the case of any patient except with the approval of the Tribunal.'

So, it is not that... Although it says, here, that the Department will do the thing, if this individual is under a tribunal ruling, then it can only be done by the Department with the approval of the Tribunal, and that just seems to me to be another caveat to the amendment. I wonder: has it been thought through and does it make it impractical? I do not know.

**The President:** Mr Singer.

**Mr Singer:** Can somebody give me a definition of 'relevant territory', because I have not got a...?

**The President:** I think that is in the start of 88, on page 8. Lord Bishop.

**The Lord Bishop:** Another interpretation is that 'any person may be taken into custody', which is 95(1) – any person – and then 'a person shall not be returned' – that is a person, whether they are in custody or not in custody. So, in fact, it is a wider interpretation.

So, the person might be in custody or might not be, but the new subsection (2) says that any person, whether they are in custody or not, shall not be returned.

So, in fact, one way of interpreting is that it is broadening it so that a wider group of people is involved. They may be taken into custody, under 95(1); new 95(2) says, even if they are not in custody, they shall not be returned, unless.

**Mr Gelling:** Could I ask, Mr President, the mover of the Bill: was he consulted by the Department, which I take it is the Department of Health, before this amendment was put through, as to whether or not it would have that effect on the Bill, sir?

**The President:** Mr Waft.

**Mr Waft:** Thank you, Mr President.

As soon as I got the word of the amendment, I

immediately contacted the Attorney General's Office and the Department of Health and Social Security. Neither of them had any problems with this amendment going through. It did not reflect, to any greater or lesser degree, the spirit of the situation, in that area.

**The President:** Mrs Crowe, do you want to come back on all of those comments?

**Mrs Crowe:** Thank you.

Actually, I think the Bishop, once again, has summed this up rather well. It is, I think, widening it, so it is the taking into custody piece that was added, which is, once again, deleted.

These provisions are already, as the Hon. Member, Mrs Christian, has mentioned, already in 91 –

**Mrs Christian:** In 95.

**Mrs Crowe:** – in 95, that is already covered in 95 and this, as I say, is just a tidying-up exercise. It was felt that the amendment, when moved, perhaps, did not create any difficulties, but, on reflection, I think, the feeling is that, as the Bill stood, to read:

'A person shall not be returned to a relevant territory under subsection (1) unless the Department is satisfied that the return is appropriate in the circumstances and has authorised it',

really was more appropriate. Certainly, 'taken into custody in the Island' might not, necessarily, apply, if it was someone that did not need to be in custody, and, perhaps, just had some slight mental handicap, at the time.

**The President:** Mrs Christian.

**Mrs Christian:** May we speak to the clause?

**The President:** I think we can continue with the whole lot, at the present time.

**Mrs Christian:** Right, thank you.

The clause itself is very short, and I think the devil is in the detail of the schedule, which is quite difficult to read. In fact, I did have first sight of this, when I was in the Department – as the hon. mover has said, proposals of this nature came forward in 2002 – and I remember struggling to get the full understanding of the clause, at that time!

But I do think that we should be supporting it. It is in respect of people who are subject to various orders and, therefore, their mental health condition is a serious one. It is important that, if a person came to the Island who should have been detained in the United Kingdom, it is appropriate that we have satisfactory legal mechanisms in place, to ensure that they are safely returned, both for their own protection and for the protection of other people.

I think that is, essentially, what this is all about. It is not simply people... although there has been a move to treat people in the community more now, this is not about people who are in the community; it is people who are on orders, either for assessment or for their treatment. It is also appropriate that, however well meaning people might be, if they were to assist someone to abscond from another country, that is short-sighted in terms of both the patient and the care

that we would expect to give to the wider community.

The other issue that I think is quite complicated in all of this, and I am not sure whether the mover can clarify it, in terms of the people referred to in 94 of the schedule, which are not United Kingdom, or British or Commonwealth citizens, but from other countries, we are putting in place here mechanisms for their transfer back to those countries.

Does it take place through the United Kingdom, i.e. are there two stages in this? Because most people do not go direct from the Isle of Man, they go via somewhere in the United Kingdom, would the mechanism be to transfer them to the United Kingdom and thence to their country of final destination, or would the Isle of Man have jurisdiction, through the United Kingdom, to the final destination?

**The President:** Hmm, and I suppose the other query which crossed my mind was, in all these orders and restriction orders, assessment orders, custody orders, or whatever, in relevant countries, who actually makes sure that, in fact, the documentation is travelling one to the other?

Mr Singer.

**Mr Singer:** This is what I was going to speak about, originally. It concerned me, a little, that people can be removed totally out of the British Isles. Who ensures that sending this person back to a country, maybe, thousands of miles away, they will be receiving adequate treatment, when they get back there? Who can ensure this? (*Interjections*)

**Mrs Christian:** It has got to be the relevant countries. They cannot just go in there.

**Mr Singer:** No, but if you send them back to their own country. This is what we have just said now.

**The President:** It has to be under –

**Mrs Christian:** It has got to be a 'relevant country', Mr President.

**The President:** We can only transfer, can't we, under page 8 'relevant country...?'

**Mrs Christian:** With suitable and equal treatment facilities to our own.

**The President:** Page 8.

**Mr Singer:** So, we would send somebody back to one of the five countries, under 'relevant countries', and they would, then, deal with that person and, possibly, send back to their own country. Is that what we are saying?

**Mrs Christian:** Mr President –

**Mr Singer:** This is what I find a bit confusing.

**The President:** Mrs Christian.

**Mrs Christian:** It seems to me that if, for example, there was a person here from the United States of America, who had been subject to some sort of control order in the United States, and happened to have got here, if that country was a relevant country in our terms, i.e. a country which would

provide appropriate treatment for that person, then it would be deemed here, and only with the Department's approval, that the person should be sent back to that country.

If there was no satisfaction on the part of the Department and tribunals, and so on, that they were going to get appropriate treatment in that country, they would not be allowed to send them back.

**Mr Singer:** So, we are talking about, say, an African country, someone had been under an order in their own country, but they were put under an order when they were here, would they be sent back from here? Would they be sent back through the UK?

**Mrs Christian:** Mr President, it deals with people on orders, so if they were not on an order in the United Kingdom, we would not send them. They may get under an order here, if they were ill here.

**Mr Singer:** If they are put under an order here, then it would not be a case of sending them anywhere?

**Mrs Christian:** No.

**Mr Singer:** Fine, that is what I wanted to know.

**The President:** Right. Mr Waft, reply to the clause 1 and the schedule.

**Mr Waft:** Thank you, Mr President.

I think that Members have sorted it out between them, basically. (*Laughter*)

We do not have any reciprocal arrangements, for instance, with Southern Ireland, and the repatriation for such patients is on a voluntary basis. For instance, we had a patient from Holland, some time ago. What happened was they waited until he was well enough to be transferred and he was transferred, but, in actual fact, there was no reciprocal arrangement.

I know, from my own experience, we did, from time to time, get, for instance, fishermen in from different boats from around the world, wherever they came from, and they were treated here, and when they were well enough, they were transferred back, purely on a voluntary basis, when they were well enough to travel. But that was a situation with that.

With regard to the amendment, I think I have mentioned the Department is happy with the amendment and, indeed, the Attorney General's Office, so I do not think there is anything more to be said on it, Mr President.

**The President:** In that case, Hon. Members, the motion that I put to Council is clause 1 and schedule 1 do stand part of the Bill, but to that you have the amendment circulated, on the white paper, in the name of the Hon. Member, Mrs Crowe. First, the amendment, Hon. Members: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 1 and the schedule as amended, Hon. Members: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 2 then, Mr Waft, please.

**Mr Waft:** Clause 2, Mr President, includes a new provision, part of the mutual assistance scheme between the Isle of Man, the United Kingdom and the Channel Islands, to prevent people assisting mental patients to escape, go

AWOL, et cetera.

It makes it an offence, in the Isle of Man, to assist a mental patient to escape or go or remain AWOL from the United Kingdom, or the Channel Islands, or to breach a treatment or other condition there. It also corrects a mistake in the 1998 Act, and removes a reference to the United Kingdom legislation, which is to be repealed.

Subclause (2) corrects a mistake in the 1998 Act, which refers to 'imprisonment', although that term was made obsolete by the Custody Act 1995, which uses instead the term 'custody'. This term is substituted for 'imprisonment', wherever it appears in the 1998 Act.

Subclause (3) removes a reference to the 1998 Act, section 131, which enables a search warrant to be issued for missing patients, to provisions of the Mental Health Act 1993 and the Mental Health Act (Scotland) 1984, which enable a patient AWOL from England and Wales or Scotland to be retaken in the Isle of Man and returned there.

On the principle that powers exercised within the Isle of Man should be conferred by Act of Tynwald, and not by Parliament, provision to the same effect is made by the new section 90(1) and (3), and the United Kingdom Department of Health has been asked to approve the repeal of the United Kingdom provisions in the forthcoming Mental Health Bill.

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

**The President:** Mr Lowey.

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

**The President:** The motion I put to Council is that clause 2 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 3.

**Mr Waft:** Clause 3, Mr President, makes amendments to the Mental Health legislation to remove the procedure through which a defendant found not guilty by reason of insanity is ordered to be detained during Her Majesty's pleasure and removed to Great Britain.

Where a defendant is found not guilty by reason of insanity, by a jury or on appeal, he or she is ordered to be detained during Her Majesty's pleasure – Criminal Jurisdiction Act 1993, section 54. He is then removed to a hospital in Great Britain, by warrant of the Secretary of State under the United Kingdom Mental Health Act 1993, section 84, or the Mental Health Act (Scotland) 1984, section 82, which extend to the Isle of Man, and are part of Manx law.

On the principle that powers exercisable in the Isle of Man should be conferred by Act of Tynwald and not by the UK Parliament, it is intended that, in future, the court should make a hospital order, with a restriction order, which limits the power to release the defendant, as in other cases, where the defendant is found to be mentally disordered, and the UK Department of Health has been asked to include a repeal of the UK provisions in the forthcoming Mental Health Bill.

Mr President, I beg to move that clause 3 stand part of the Bill.

**The President:** Mr Lowey.

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

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

Clause 4, Mr Waft.

**Mr Waft:** Clause 4, Mr President, amends the provision of the 1998 Act, which is incompatible with article 8, 'respect for private life', of the European Convention on Human Rights.

A lynchpin of Mental Health law in the United Kingdom and the Isle of Man is the nearest relative of a detained mental patient who is given various rights to act on behalf of the patient, for example, to apply to the Mental Health Review Tribunal for his or her discharge.

Generally, the first person specified in the list in the 1998 Act, section 37, becomes the patient's nearest relative, automatically the patient's husband or wife, son or daughter, father or mother, brother or sister, and so on. The eldest in any degree is taken first.

But, under section 40, the High Court can substitute another person, including the DHSS, on the application by the nearest relative, any person with whom the patient was living or an approved social worker.

In the case of one situation, the Secretary of State for Health, in 2003... the patient alleged that her nearest relative had abused her, but could not apply herself for his removal. An English court made a formal declaration that this would be incompatible with article 8.

Subclause (1) amends the 1998 Act, section 40, so as to enable the patient to apply for the removal of the nearest relative, and includes the patient's objection to the nearest relative as an additional ground for removal.

I beg to move, Mr President, clause 4 stand part of the Bill.

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

**The President:** Mrs Christian.

**Mrs Christian:** Mr President, I think this is an important change. I think the example that the Hon. Member has cited is just horrifying, isn't it, to think that the law allowed that to be the case?

So, I think this is a very important provision, (**The Lord Bishop:** Hear, hear.) to change it, in respect of giving the patient more control over who might be appointed, where it is appropriate.

**The President:** Do you wish to add to that, Mr Waft, at all? (**Mr Waft:** No.) In that case, Hon. Members, the motion I put to Council is that clause 4 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

We turn to clause 5, please.

**Mr Waft:** Clause 5, Mr President, remedies another breach of the European Convention on Human Rights by the provisions of the 1998 Act, which deal with the discharge of a patient by the Mental Health Review Tribunal.

Under part 5 of the 1998 Act, the Mental Health Review Tribunal has power, on an application for the purpose, to order the discharge of a detained mental patient.

In the case of *R (H) v Mental Health Review Tribunal (North and East London)*, the English High Court formally declared that the equivalent English provisions were incompatible with article 5 'Right to Liberty', of the European Convention of Human Rights, because they imposed a burden of proof on the patient to show that he ought not to be detained.

A remedial Order, SI2001/3712, under the United Kingdom Human Rights Act 1998, amended the Mental Health Act 1993, to remove the incompatibility, by reversing the burden of proof, and this clause mirrors those amendments.

This clause is in similar terms to the Tribunals Bill, schedule 3, paragraphs 13 and 14. In view of the delay in the progress of that Bill, the opportunity has been taken to include the amendments in this Bill.

Subclause (1) amends the 1998 Act, section 80, which enables the Tribunal to discharge a patient who is liable to be detained. It provides that the Tribunal is to discharge the patient, unless they are satisfied that he ought to be detained, for example, placing the burden of proof on the institution seeking to detain him, instead of on the patient.

Subclause (2) amends the 1998 Act, section 81, which enables the Tribunal to discharge a restricted patient. Again, it requires the Tribunal to order his absolute discharge unless they are satisfied that they ought to refuse discharge, or order his conditional discharge – for example, the burden of proof is on the institution seeking to detain him, not the patient.

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

**The President:** Mr Lowey.

**Mr Lowey:** Beg to second, sir, and reserve my remarks.

**The President:** Mrs Christian.

**Mrs Christian:** Mr President, this is also, I think, an important change, with the burden of proof being transferred to the Tribunal.

It is interesting that, so soon after 1998, we are still trying to catch up with some of this legislation, in relation to the Human Rights position. I guess that will go on for some time.

Whilst it will meet the Human Rights requirements, I should think that it will be an important change to monitor, over the course of time, to see what effect it actually has, in terms of appropriate discharge, because it is not an easy decision either way around. But I guess it is easier for a Tribunal to determine whether a person meets criteria for detention, than it is for a patient to prove that they do not.

**The President:** Mr Lowey.

**Mr Lowey:** If I can take that point one step further: the Hon. Member will be aware that it is only the things that go wrong that will be reported, and not the 99 per cent of the success rate. It is the one that has horrible consequences.

I just would like to ask the hon. mover: there used to be a thing called 'sectioning' people, where they had to have

magistrates, and I presume that still applies.

We have all, I am sure, been progressively involved in that sort of thing – I know I have been brought in, to try and persuade people that they really should go into hospital for their own good, as opposed to being ‘sectioned’, and have been successful in getting them persuaded, at the end of the day. But I presume that does not alter this particular bit of legislation.

**The President:** We have just dealt, Hon. Members, with the nearest relative point, in clause 4, and we are now dealing with the discharge, and Mrs Christian has made the point that it is an updating, which I think is probably right.

If, in the case of a partner, in modern terminology, or a common-law wife or husband making the application to a Tribunal, are there any restrictions on how often they can make that application to the Tribunal? Alright, Mr Waft.

**Mr Waft:** Thank you, Mr President.

I would just like to concur with the Hon. Mrs Christian, with regard to the European Convention of Human Rights. That will be, probably, continually meeting with situations where we have to change our legislation, and it is an updating, to a greater degree.

With regard to the sectioning, it does take place from time to time, but it usually is a last resort, and is only for a limited time. The Mental Health Review Tribunal is set up to deal with those matters, as and when they arise, with regard to appeals, et cetera.

As to the point of how often they can apply to the Mental Health Review Tribunal, that information escapes me, at the moment, but I can clarify that for you, Mr President.

**The President:** In that case, Hon. Members, the motion I put to Council is that clause 5 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Now, we deal with clause 6, as amended, Hon. Members, in another place. We are dealing with clause 6. Mr Waft.

**Mr Waft:** Thank you, Mr President.

Clause 6 amends the constitution of the Mental Health Review Tribunal, by increasing the number of medical members from three to five and the number of lay members from three to four.

The constitution consists of: (a) the High Bailiff and two other persons, being barristers, solicitors or advocates of not less than 10 years’ standing appointed by the Governor; and (b) three persons being registered medical practitioners appointed by the Chief Minister, after consultation with the Isle of Man Medical Society, and three persons appointed by the Chief Minister, after consultation with the Department, and having such experience in administration, such knowledge of social services, or other such qualifications or experience, as the Chief Minister considers suitable.

I beg to move clause 6 stand part of the Bill, Mr President.

**The President:** Mr Lowey.

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

**The President:** Mrs Christian.

**Mrs Christian:** Yes, Mr President, whilst the numbers of people on the Tribunal are being increased, I wonder if the mover could say whether they simply have to have a quorum to sit, because I can imagine, if you had to have all these people together at one time, you would have a great difficulty in assembling your Tribunal.

But he might be able to indicate that these numbers are being increased simply to make it easier to get a quorum. I wonder if he could let us know what the reason is for changing the numbers on the Tribunal.

**The President:** Mr Waft to reply.

**Mr Waft:** Thank you, Mr President.

I am sure it would be virtually impossible to get all these people together, in one room, at the same time, and there will be a quorum. Exactly how many, again, I am not sure, but it will be down there somewhere, in the detail, which I have not got to hand, at the moment.

**Mr Lowey:** The Tribunals Act was passed.

**Mr Waft:** The Tribunals Act, which, I am sure the Member knows, has just been passed by ourselves, with regard to mental health and, especially, with regard that they should have some knowledge of psychiatric medicine, rather than just general practitioners. I think that was agreed.

But as to the number on the quorum, the number escapes me, at the moment.

**The President:** Now, Hon. Members, what I put to you is that clause 6 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 7 and clause 8 together, Mr Waft, please.

**Mr Waft:** Thank you, Mr President.

This clause corrects a missed consequential in the Limitation Act 1984, and enables references to the UK Mental Health legislation, in that Act, to be amended by Order of the Council of Ministers, subject to Tynwald approval, to take account of any past or future changes in that legislation.

The Limitation Act 1984 imposes time limits on bringing legal proceedings to pursue civil claims, for example, for damages or for the recovery of money or property. Generally speaking, under section 26, time does not run against the defendant, if he is under a disability, which, so far as material, is defined in section 36 thus:

‘(2) For the purposes of this Act a person shall be treated as under a disability while he is a minor, or suffering from a mental disorder.

(3) For the purposes of subsection (2) a person suffering from a mental disorder if he is a person who, by reason of mental disorder within the meaning of the Mental Health Act 1974, is incapable of managing and administering his property and affairs.

(4) Without prejudice to the generality of the subsection (3), that person shall be conclusively presumed for the purposes of subsection (2) to be suffering from a mental disorder –

(a) while he is liable to be detained or subject to guardianship –

(i) under the Mental Health Act 1998

(ii) under the Mental Health Act 1983 or the Mental Health (Scotland) Act 1984, Acts of Parliament, or the Mental Health (Northern Ireland) Order 1986 [...]; or

(iii) in pursuance of any order for his detention as a person of unsound mind or a person suffering from mental illness made under any law for the time being in force in any of the Channel Islands (including any such law relating to criminal lunatics);...’

It corrects the reference to the Mental Health Act 1974 – in section 36(3), it should have been amended by the 1998 Act, schedule 5, which was overlooked – and enables section 36(4)(a) to be amended, to take account of any change in the UK or Channel Islands legislation, for example, the replacement of the Mental Health (Scotland) Act 1984 by the Mental Health Act (Care and Treatment) (Scotland) Act 2003 and the Mental Health Act 1993, by the forthcoming UK Mental Health Bill.

Such amendments could have been made by Order, under the Amendments Bill, but that Bill was rejected by the Keys in 2003.

Mr President, I beg to move clause 7 do stand part of the Bill.

Clause 8 gives the Bill its short title and provides for the commencement of clauses 1 to 3 and the schedule.

Subclause (1) gives the Bill a short title.

Subclause (2) provides for clauses 1 to 3 and the schedule to be brought into force by one or more Appointed Day Orders, the timing of which will depend on: (1) the making of the regulation to give effect to the new part 6 – see clause 1 of the schedule; and (2) the repeal of certain UK provisions by the proposed United Kingdom Mental Health Bill.

The rest of the Act will come into force on the day it is passed, i.e. the day Royal Assent is announced to Tynwald.

I beg to move clauses 7 and 8 stand part of the Bill, Mr President.

**The President:** Mr Lowey.

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

**The President:** Mr Gelling.

**Mr Gelling:** Mr President, I just noted the mover move in his chair when he mentioned the word ‘lunatic’. I thought that was a word that was now in our history, and I do not think I was ever so glad to see a building come down as the one at Ballamona that had on the end ‘Lunatic Asylum’. Do I take it that that is only in the notes for the Hon. Member to move it or... It is not going to be in any orders or anything appertaining to this Bill?

**Mr Lowey:** External.

**The President:** Mrs Christian.

**Mrs Christian:** It is simply, Mr President, to note that this is the section which allows a Council of Ministers to bring us into line with any changes in the United Kingdom or Channel Islands – any part of the United Kingdom, whether it be the England and Wales bit, or Scotland, or whatever.

So, whilst I did have reservations about that before, I think that it is satisfactory, in that the Council of Ministers will make the Orders, and Tynwald will approve, when we see what the changes are in the United Kingdom.

So, I am happy to support it, Mr President.

**The President:** Okay. Hon. Members, the motion I put, then, to the... Do you wish to reply, sir?

**Mr Waft:** Yes, just a quick one, Mr President.

I am sure that will not be in any legislation, but I was disappointed to read it this morning. I will see to it that the Members’ comments are passed to the Department.

The other point you raised, Mr President, earlier, was the number on a quorum. It is three, I am assured by the Hon. Clerk.

**The President:** A tribunal! (*Laughter*) In that case, Hon. Members, may we deal with the motion that I put before you, that clause 7 and clause 8 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

That completes our clause stage of the Mental Health (Amendment) Bill.

## CONTINUATION OF FIRST READING

### Constitution (Legislative Council) Bill

#### First Reading approved

**The President:** Hon. Members, we now turn to the Constitution (Legislative Council) Bill. Now, Hon. Members, this is for continuation of the First Reading of this particular measure, and I propose to suggest that we, effectively, start all over again. So, Mrs Crowe.

**Mrs Crowe:** Thank you, Mr President.

So, effectively, I am starting all over anew. I just thought, for the sake of people that may or may not... and some Members of Council made some comment, last time we spoke, about where this Bill had come from, and the state of reform of Legislative Council, which I know I need to remind few of the seasoned Members of Council about.

But I just want to say that Legislative Council reform is, of course, not a new issue, and has been taking place over the last 50 years. In 1961, the Isle of Man Constitution Act reduced the powers of Council over legislation and, subject to certain conditions, allowed for a Bill to be passed by the Keys without the Council’s approval.

In 1969, the Isle of Man Constitution Act increased the number of Members of Council elected by Keys, from five to seven, and, in 1971, the Isle of Man Constitution Act removed the Attorney General’s vote from Council.

In 1975, the Isle of Man Constitution (Amendment) Act removed the First Deemster from membership of the Council and introduced one more elected Member.

In 1980, the Constitution (Legislative Council) (Amendment) Act removed the Governor General from presiding over Council, and, in 1981, the Constitution (Amendment) Act formally established the office of President of Council.

In 1990, the Constitution Act established the office of President of Tynwald, elected by the Members of Tynwald Court, who would also act as ex officio President of Council.

These reforms, as you can see, clearly demonstrate the evolving nature, composition and role of the Legislative Council.

In January 2004, leave was given for the Chairman of the Select Committee which had been looking into legislative... the Select Committee on the Constitution

(Legislative Council) Bill to introduce a Private Member's Bill to provide that:

'any Bill passed by the House and sent up to the Council shall, if not approved by the Council within three months, with or without amendment, return to the House; and the House shall, on a motion made, again consider the Bill as it was passed by the House at its third reading, and shall either approve or reject the Bill.'

Such a Bill:

'shall require sixteen votes of the Members present and voting to be approved by the House.'

That Private Member's Bill: that was the rationale, because there was not a directly elected Council.

Now, the Bill we have before us at the present time, also moved by the Chairman of the Select Committee on the Constitution (Legislative Council) Bill: I thought it might be helpful if I read some comments of the Select Committee, at that time, because it would seem, in substance, this is what this Bill seems to be encompassing.

It is the directly elected Tynwald, which would then be divided into two committees, that of Keys and Council:

'Under this option one general election would take place with 32 or 33 Members, perhaps in single seat constituencies or perhaps in a mixture of single and multi-seat constituencies [...] Following the election (and the election by Tynwald of a President and a Chief Minister), some Members would then be selected to serve as the Legislative Council. The number selected may be eight, which would produce a Council of eleven, assuming that the Attorney General, Bishop and President of Tynwald continue to sit in the Council and maintain parity with the existing size of Council. [...] Alternatively, the membership of Tynwald Court could be divided into two equal halves' –

I am reading... These are the advantages and disadvantages from the Select Committee, which, really, have established this Bill that is before us today.

'Under this model the role of Keys and Council would change quite considerably. Tynwald Court would exclusively deal with all issues except legislation. Policy, finance, the scrutiny of government, Question Time, the tabling of motions etc. would all be the sole prerogative of Tynwald Court. The Keys and Council would deal solely with legislative matters. In performing this legislative role, the Keys and the Council would be regarded as "Legislative Committees" of Tynwald, or retain their own status, but as distinct branches[...]

'There are a number of alternative possibilities regarding the actual legislative powers of the Council under such a system. It may be that its powers would be limited to the revision of primary legislation and scrutiny of secondary [legislation]. But since all its members are popularly elected to Tynwald Court, it could legitimately be given equal powers to those of the Keys in matters of legislation. If so, Bills could be introduced in the Council before the Keys. In such circumstances the Keys would then act as a revising chamber, but if the Council membership was only eight, the twenty-four members of the Keys might then fundamentally seek to alter the Bill. This would support the proposition that Tynwald would be better divided into two equal parts. Any inter-chamber conflict resulting from this equality in legislative power could be resolved by the use of a Conference or a joint vote in Tynwald. Whichever model was adopted, presumably there could be no objection against Council Members being eligible for inclusion in Executive Government, given that they would be elected to Tynwald by the people.'

The advantages, your Select Committee in Tynwald noted, of this tricameral system, would be that the structure in the sense that Keys and Council would be equivalent to the existing legislative branches of Tynwald and, therefore, keep some historic link with our parliamentary structure,

as at present.

It is already noted that the Committee viewed of importance the maintaining of:

'a link with the historic structure of the Manx parliamentary system.'

In the advantages are that:

'The work of Tynwald would now be performed entirely by a popularly elected, democratic body. Members of the Council would be directly elected, through Tynwald elections, and therefore able to claim complete legitimacy in the exercise of their functions.

'As already noted, [this principle had been endorsed and] underpins the approach to Legislative Council reform.

'This model would enable Tynwald to focus its attention on scrutiny of government while the Keys and Council would focus on legislation.'

It should avoid duplication. The Committee in this case considered that there may be advantage, in that it avoids the duplication and, to some extent, it enables the Keys and Council to focus entirely on the vital work of dealing with legislation. They also noted there could be no objection to Council Members being appointed Ministers or members of Government.

'If both Chambers had equal powers, Bills could be introduced in either chamber first. This would assist in spreading the work-load...

and the Committee, at that time, accepted the logic of the argument.

The Committee was:

'not fully persuaded that holding separate elections for [Council] would cause undue problems with voters...'

Now, they did discuss some disadvantages, Mr President, in the system, as well, and I thought that it would be quite helpful, if these were noted, also:

'The electorate would not know, when they cast their votes, whether the candidates they were voting for would end up as Members of the Keys or Council, and neither would the candidates themselves. Furthermore, if the Council's powers were less than those of the Keys this may well actually discourage members from wanting to go to the Council. [...]

'With regard to the fact that at election time neither voters nor candidates would know who would end up as members of the Council, [the Committee agreed] that this is not a significant issue, provided that Tynwald Court in which all members [...] also sit, is intended to have sole parliamentary jurisdiction over all matters except legislation.

'However, Members would certainly be reluctant to join the Council if its powers were, or were thought to be, inferior to those of the Keys [...]. Moreover, if the chambers were of unequal size, then a joint vote of Tynwald Court to resolve the disputed issue might merely serve to emphasise the limits of a smaller Council's collective will, and add to the reluctance of members to join it.

'The electorate would not actually choose Council members, that responsibility resting elsewhere.'

However, in the Committee's views of this time, they did not see that as a significant problem, in the fact that all Members were from Tynwald.

It was also suggested that:

'there could also be serious potential conflict between the Keys and Council since both would claim equal democratic legitimacy and equal power – the danger of conflict depending on the size of Council in relation to the Keys.'

The Committee suggested, at that time, that:

'tension between the chambers might be seen as a contentious matter, but given the restriction of the powers of the Council [...] to that of a legislative committee, and the tri-cameral structure providing for a joint vote of Tynwald Court to resolve disputes, then the opportunity for inter-chamber conflict is likely to be less apparent than in practice. [It also indicated that] clearly prescribing the powers of the Council in statute is likely to weaken the argument about inter-chamber conflict that is often suggested.

'A major issue that would have to be dealt with is the most appropriate mechanism for selecting those members of Tynwald to go to the Council' –

whether that be 8 or 16, whatever. The various options that could be adopted were:

'If there were 32 or 33 single seat constituencies, Tynwald Court could then vote as a body to elect members of the Council.

'If certain constituencies were allocated an additional seat in order to equalise the representation on a broadly geographic basis and thereby provide an additional seat for the purpose of providing for Council membership, one of the elected members for that constituency would be chosen by all the elected members for that constituency. If the members for those constituencies could not agree on who should go to Council then a vote by Tynwald Court could decide the matter. This is the solution proposed by Hon S C Rodan MHK in the second model',

which he had outlined already in the paper. However, the Committee suggested that:

'This may be seen as unfair on the electors in those constituencies that do not have an additional seat, as they would have no input into choosing the Council.

'In those constituencies that have the additional seat, the member with the lowest, (or possibly highest) number of votes should automatically be the one to go to Council.'

**Mr Singer:** Or the one in the middle! (*Laughter*)

**Mrs Crowe:** I thought it would be helpful for you to hear these comments! (*Laughter*)

'Having considered all these options, if the model were to be adopted, your Committee would favour Tynwald Court voting as a body to fill the seats on the Council. We believe that this is much fairer and ensures that the electorate all have an input into Council membership.

'If the Council were a smaller body of eight members, then some members of Tynwald may opt to go to the Council, believing that they could have more authority or influence on its collective decisions, particularly if the Council's powers were equal to those of Keys.'

The Committee commented that it believed that:

'this problem would in practice be confined only to the legislative power of the Council. The perception of having more influence in a smaller body could be addressed by enlarging the Council membership to sixteen.

'Having considered the option of directly electing Tynwald and then selecting the Council from its membership, [the Committee considered] that this model is a serious option that has much to commend it and could be made to work in the Manx context.'

Those, Mr President, were the words of the Committee which you may, or may not, find will be helpful in our deliberation of the Bill.

I am moving the original Bill today, in the way in which we had it presented to us. This is the Constitution Bill 2004, moved in another place, by Mr Rodan and, Mr President, I beg to move the First Reading of the Bill.

**The President:** Mr Singer.

**Mr Singer:** Mr President, I think, listening to those –

**The President:** Are you seconding, sir?

**A Member:** No harm! (*Laughter*)

**Mr Singer:** Yes, I will second, because I am seconding the principle of election.

But listening to that explanation, at the end, there, from the Committee, reminded me a little bit of one of Shakespeare's plays, *A Comedy of Errors*, because it just did not make sense. When you say, 'You have got three people in a constituency: you may elect the top one; but you may feel it is necessary to elect the one at the bottom, with the least votes; but then, of course, you could elect the one in the middle, I suppose', that, to me, is just ridiculous.

This Bill, Mr President, is changed out of all recognition to the original which was a Bill from Mr Quine and, if we accept it, as it has come to us, we will see the eradication of our historical parliamentary structure. We will be accepting evolution, but this is revolution.

We have, in fact... Mrs Crowe has outlined all the changes that have taken place, which I would, certainly, class as evolution, which were accepted and have been accepted, and have worked.

There is no doubt, in the present form, this Bill makes us unicameral: it makes us a one-chamber parliament, with two legislative committees. The House of Keys and the Legislative Council will, in fact, disappear, whatever name or title you give to the two legislative committees. There will be no need for a Speaker, unless you have two Speakers, by title, although there will only be a chairman, one in each committee.

To me, the talk in the Select Committee of keeping a link – 'a parliamentary link', I think the words were – that is only the way you would put a plaque on a building and say, 'This happened here, and this person lived here.' I do not think, in practice, that is true.

So, I oppose the principle of this Bill, as it is, and I would wish us to return, somewhat, to the previous Bill, which retains the present structure, as we see it now, albeit the upper House is elected.

The other point I want to make is this nonsense of receiving Royal Assent to a Bill, which then goes out to a referendum. You usually ask the question to the public, for them to indicate which way you should be moving, not asking them whether they approve of legislation which has been passed by the branches. If they say, 'No', it has just been an absolute waste of everybody's time.

I would like us to retain the tricameral system, with elections at different times, and I, personally, favour the eight constituencies. I notice that even Mr Rodan's comments were that he saw representation on a 'broadly geographic basis'. I think those were his words.

So, I, also, do not accept the argument that Legislative Council Members will have more power, if we go out to eight constituencies, because the duties of the Legislative Council, again, as has been said this morning, can be clearly defined, to indicate that the Keys are the powerhouse of Manx politics, if that is what Tynwald wishes.

There will be a weakness in scrutiny, if we go out to popular election, because there is no guarantee there will be any previous experience of Members from the Keys here, but that would be a risk that one would take, in order to bring in popular election.

But I must say, Mr President, having sat in the Keys, as most Members have, and then coming here, it is only when you get here that you realise, and sitting here, you appreciate, the important and detailed scrutiny that does take place in here. I have been very surprised – very pleased – that, in fact, the Legislative Council does take so much time in looking into the Bills, as they come here. I think that is something which is not appreciated outside.

I do see the difficulty in splitting off people to two unequal sized committees. In fact, I do not think that there would be any change now, in the ability to elect people from the 32, to put them into a Legislative Council Committee, and I think that, whilst the Keys, and other people, say the present system brings the Legislative Council or the Keys into disrepute, because they cannot elect people, I can see it being just as difficult with the method that is proposed by the House of Keys' Bill.

Having said that, Mr President, I would give notice that I have written to the Attorney General's Office, and I have asked them to address suitable amendments or changes – some would be changes, rather than amendments – which I would want to bring at the clauses stage.

One is to have eight constituencies; the second is that the election for the Legislative Council takes place 30 months after the general election, meaning that it is half-way through a parliament – I would still see a five-year term, with the elections taking place halfway through; thirdly, that the referendum would take place before the Bill is passed, not after.

Thank you, Mr President.

**The President:** Hon. Members, the Bill is before us, because, although Mr Singer is seconding the Second Reading, and we are quite happy to discuss it, I think what he was doing was seconding the principle of popular election of Members to the Council. But, as is evidenced from his final comments, he has a number of disagreements with the Bill, as printed.

Mr Gelling.

**Mr Gelling:** Yes, I think, taking the previous speaker, when he said he did not agree with the principles of this Bill, but he agreed with, perhaps, the principles of the other Bill. But the Bill that we have is the Bill that is in front of us today.

Somewhere in there, as the Member has gone through his thoughts, I think there are areas where I could certainly agree with, but one of them, probably, I would not agree with, and that was the constituencies.

I would, probably, be more in favour of an all-Island election. I agree with the principle of the popular election, but I think, if we want to get ourselves away from this representation of persons, and if the Chamber is so designated as being a revisionary Chamber, and that is made quite clear to the people of the Isle of Man – you are electing people, hopefully, of standing, who have been through the Keys, and they have got certain experiences – that is what they will elect.

If they elected those persons on an all-Island basis, those persons would know that they were there to revise, to look at and to check what was coming out of the Keys, on a 'what is best for the whole of the Isle of Man' situation.

I think I can agree with the Hon. Member that an election for the Legislative Council, when the people know exactly

what the Legislative Council will be doing, at a separate time, midway point... I can accept that.

I firmly believe that, if we go down the road of destroying the Keys and the Legislative Council, and we end up with two committees, we are actually going backwards to where we were, certainly internationally. If you went into an international forum and said, 'Oh, well, I am in the Committee of the Lower House,' they would think we were back into the council chamber of the Corporation, or whatever.

So, I think we have got to think of the history and the way that others do, in fact, compliment us on the way our system works, because if you got down to an election, whereby you elected all the people of Tynwald, I would suggest, therefore, you might as well stop there and say, 'Well, we will just elect 24 people, have the House of Keys, end of story. That is the parliament of the Isle of Man.'

I just think we would lose the very thing that the previous speaker has just said: the people who revise it, look at it, go back again. They do a good job, and I am delighted that the Hon. Member has seen that, having been up here, that, in fact, we work in a way to try to be helpful.

I would, certainly, like to think – and I am quite sure we will, Mr President – that we have a Bill in front of us that just will not work. However, I think, with amendment to this Bill, and, in some way, it might be having to replace certain clauses, that we can go back to the Keys with a Bill that will work.

Now, whether or not that Bill in its form of working will then be acceptable to the Keys is another matter, Mr President, but, certainly, I can take the principle of, yes, election to the Legislative Council for a proper laid out job that they do. Do not let us go backwards into a Keys position, where we have... As the Hon. Member says, why have a Speaker? You might as well have a chairman, or both, and we are into a Council situation again.

So, as far as I am concerned, I can support the First Reading, inasmuch as I believe that we will amend it, in such a way that it will work, but it is going to be most interesting, as we have immediately had two contributions, and we are at odds as to whether it should be all-Island or eight constituencies.

But I think the principle is right, and what will come out will be a democratic decision, I feel sure, Mr President.

**The President:** Mr Butt.

**Mr Butt:** Thank you, Mr President.

I speak with a fresh pair of eyes. I was pushed, or guided, towards the Select Committee Report, by Mrs Crowe, which I have read, over the last weekend –

**Mr Singer:** How sad! (*Laughter and interjections*)

**Mr Butt:** – and I am much wiser! (*Laughter*) My comments last week were fairly naïve, but now I have actually read the Report, I understand a lot more of the basics.

**A Member:** I didn't understand the Report! (*Laughter*)

**Mr Butt:** I was quite disappointed to find that, for the Select Committee, only three Members of Tynwald actually put contributions in, towards the Report, considering it is

such a serious constitutional matter, and just four members of the public.

The conclusions that the Committee came to were, basically, that there was no conclusion. None of the Committee had a majority support for any of the many schemes mentioned in the Report and there are, probably, nearly a dozen different versions of what could happen.

But, the one thing they did agree on, unanimously, was that there should be a publicly elected chamber, in whatever way, but, when you read the nitty-gritty of what they all say, especially the experts like Prof. Kermode, if you started with a clean sheet of paper, you would have 32 elected Members, one chamber. The House of Keys would disappear, the Council would disappear, and you would have one Tynwald.

Strictly speaking, that is, perhaps, the best idea, if you are starting from scratch; but we are not starting from scratch, we have a history to look after.

I would agree with Mr Singer's comments, and Mr Gelling, that, having arrived here, again, with a fresh pair of eyes, I am impressed by the degree of scrutiny that is given here and the detail and the knowledge and expertise that is used in this Chamber, which I think would be lost, if we went for committees within Tynwald.

Having said that, I tend to think that the single chamber of 32 people, elected in one chamber, is possibly the way that, if you were a new parliament, would be the way to go.

**The President:** Mrs Christian.

**Mrs Christian:** Thank you, Mr President.

At an earlier stage I did comment on some of the inadequacies of the Bill, in terms of its drafting – we will deal with that, I expect, when we come to clauses.

I do think that rarely do we get a Bill where it is difficult to find someone who truly supports it, and will take it through, and I commend the Hon. Member for being willing to take it, and the seconder, simply to get it before us, for us to do our job, as a revising chamber.

In most cases, there is at least some nugget in it which you can latch on to – or more than a few nuggets – but, in this case, I would agree that the only one, possibly, is this question of whether or not Council should be elected by popular franchise.

In terms of what the Bill deals with, Mr President, they start off by saying that they should elect 32 Members, and this, fundamentally, is a change. Indeed, if you are going down that route, I would agree you are creating, effectively, a unicameral parliament.

But then they go on to subdivide it, in such a way that it simply would not work. If it is a unicameral parliament, everyone is elected on the same basis, with the same authority and powers. Splitting it then into two unequal bodies, both numerically and functionally, in my view, would not work.

Looking at what they propose in the Bill, in terms of the first function being to elect a legislative committee, here, I have to say, Mr President, that, whatever you feel about change, I do not think there is a need to dumb down the title of the second, or one of the chambers, even if you are changing its function. It takes away too much, I feel, of the Island's history.

I am sure they would not wish to become a committee, and if you are treating all Members as equal, then that would be the answer. But I could see, as well, working as two separate committees, retaining the titles, even if you change

the structure and numbers in those committees.

Mr President, the mover said, 'Where did this all come from?' and I think it did come from the issue of there being difficulties in getting Members elected by another place to this Council, and the growing – I will not call it a clamour, but – the growing noises about the Legislative Council not being directly elected.

I think we are all of a view that you can overcome that, by going to the public for the election for Council, and you can do it, without this major change that is proposed in this Bill. There is no real clamour, as I understand it, for a change in the functions of the Council.

I believe that, if we are going to have a change, evolution is better than revolution, and we should evolve, in the sense that, first of all, Council becomes elected, but nothing else changes. Our functions could remain the same, our powers vis-à-vis the Keys could remain the same.

Whether or not we feel there should be some slight tweaking of those powers when it comes to matters of policy and finance, as we will all be supported by the population, would bear some consideration, I think, but in terms of...

Again, I am interested to quote the Hon. Member of Council, Mr Singer, who talked about the Keys being the 'powerhouse'. I do not consider that the Keys are the powerhouse. The Keys are the elected body. They are a legislative body. They have a power in Tynwald. Numerically, they may be the powerhouse, but I would not say that necessarily in Tynwald, where policy and financial matters are determined, that they necessarily hold sway. I know we are only a delaying chamber, but if you take the votes as a whole, I think that we can influence matters to a considerable degree.

Mr President, the reason behind this, as I have said, was a clamour for popular election, partly brought about, I think, by the failure or difficulty that the Keys have experienced, in recent times, in actually coming to a conclusion with their elections of Members to Council.

As has already been illustrated, this Bill does nothing to change that. It provides that they have got to elect the new body, Tynwald has got to elect certain of its Members to a separate body. It is not popularly elected; it is elected by the same... well, not the same, an electoral college of elected Members.

So, the principle there has not changed very much, and there is nothing in the Bill which says a person has to accept nomination. What if Members refuse to accept nomination? What sort of constitutional crisis are we going to walk into, immediately this thing takes effect?

So, Mr President, I do think that they have been hasty, in their wish for change, and have come up with a bit of a dog's dinner, which does not provide for a clear-cut constitutional change, in terms of a unicameral system, with equally-divided legislative committees, and all decisions on other matters being taken by the House, by the parliament voting as one. That would have been a proposal, which is a radical change from what we have now, but it would have been clear-cut and, possibly, workable.

This, however, is a compromise between that and keeping some elements of Legislative Council function, as they are now, losing the name, and trying to define that they have certain other scrutiny roles, in respect of European legislation.

So, it is not going to work, Mr President, in my view. Whilst I will support the First Reading, I think it is for the purpose of us bringing forward a series of amendments, to try

and create some sort of structure which does not undermine, too much, the present position, but would make Council popularly elected.

**The President:** The Lord Bishop.

**The Lord Bishop:** Thank you, Mr President.

Speaking as the dinosaur of this particular body, in the sense of: I sit here, not because of my bishopric, but because of my barony, and, therefore, representing a sphere of influence on the Island which the baronies, in their day, represented – those bits of influence that the then Governor would want to have around him, I think that is in a way quite a good model to use – a sphere of influence model.

So, I will be following, I think – because I am a creep, basically! – the Chief Minister, in saying that I look to a whole-Island approach to the elections to this particular body, because I think, in that way, the electorate has the opportunity to elect people to this particular body for the character of the person and the qualities that they will actually bring to the task that this body will do. I think, I want to see the thing task driven, rather than simply the great cry for democracy.

Yes, I do see the point that 32 people elected sitting in one House might be a good idea, but I would be willing to bet that, within a year, there would be new legislation coming before that body, to recreate this body, in order to do the scrutiny work that this body actually does, because I do not think 32 people could actually sit down and do what we have done this morning with the Mental Health (Amendment) Bill 2005. Thirty-two people expressing their view on all the clauses would drive them all to need the Mental Health (Amendment) Bill 2005 very quickly. (*Laughter*)

So, I think we need to say, the system we have got, albeit a strange one and a unique one, actually does work. We have the Tynwald Court doing the principal work, and we have us doing the very careful, detailed work. I think, once again, if the electorate understand that that is what they are electing people to do, then that is fine.

I am not particularly bothered about the power business – where does power reside? As the outsider, I see that power actually resides in the full sitting of the Tynwald Court. The Members of the House of Keys might like to think that power resides with them, but it does not. It is only when we get into the full sitting of the Court that power is truly and properly exercised.

I also think that it is important for the Keys to be the people who have constituents. Working on the UK model, you know who your Member of Parliament is and you can go directly to them, and, I think, the House of Keys represents that body of people, to whom the general public go to lobby, to ask questions, to get them to move.

I do not think this Council, actually, should have that relationship with the electorate. I think the electorate should be electing people here to do a job, and to get on and do it. Yes, we – or the majority of you – will be elected to it, but I think it needs to be task driven.

So, in my turn, as Mr Singer will be putting an amendment in one form, I shall be putting another amendment, saying that election should be Island-wide.

**The President:** Hon. Member, Mr Waft.

**Mr Waft:** Thank you, Mr President.

I think we have got to approach this Constitution Bill,

whether we like it or not, in a degree of stages.

First of all, we have to decide whether we are going to go for the popularly elected Legislative Council, and that has to be gone through first. I think, from what I have heard up to now, probably, we are going to go down that road.

Then we have to decide that it is essential for the continuity, from the general public's point of view, and, certainly, the financial sector, to ensure that there is a continuity of government, that they have a government that will satisfy their needs, and they are happy with the situation and they can attract people to the Island, knowing that we have a stable government in place.

We have to avoid the possibility of this Legislative Council evolving into some sort of short-term populism by the general public. It should be separated, somewhat, from that.

So, I would agree with the separation from the Keys and the Legislative Council, with the elections – and it has been suggested by one Member – 13 months after the election could be a possible time to do that.

There has been a great deal of hype, in the past, over the conflict between chambers, which has totally been hyped up in my view.

The referendum: I think it is quite extraordinary that somebody should suggest that we do the referendum after the legislation is in place. I just cannot get my head round that, at all. But, having said that, the referendum could be done *before* the Bill is enacted, and I think that that should be done.

There has been a suggestion of an all-Island election or eight constituencies, irrespective of when we get to the Bill, and how we deal with that will, nevertheless, be sorted out at the clauses stage.

There was concern expressed about the needs for some addressing of the problem with the Legislative Council and, perhaps, that has been highlighted by the elections to the Legislative Council in another place. I would put it to Members that this has only been a fairly recent occurrence, because of the changes within the other place, with regard to elections to the Legislative Council, inasmuch as they can elect people from the floor and take it quite quickly, in one day, and elect them, but they failed, or they got the amount of votes required within a very short space of time.

All in all, Mr President, I think, the First Reading I would support, and we will have to deal with the clauses stage, as and when we reach it.

**The President:** Mr Lowey.

**Mr Lowey:** Thank you, Mr President.

I, really, should start off by saying I want to be a friend to the House of Keys. So, in that case, I should pass this Bill, as presented by the House of Keys.

What a shambles! It would be inappropriate for me, really, to remind Hon. Members and the House of Keys that, if they had accepted the Bill that had been approved by this Council in 2000, they could have already had elected Members to the Legislative Council, in being, in 2001. They chose to reject it.

And, by the way, the Bill that was passed is almost identical to the one that was introduced by my good friend, Mr Quine, whose Bill seems to have started the thing, and this Bill bears no resemblance to that original Bill. So, that is number one.

The second point I just want to get rid of, is the myth

that, somehow, the Council is delaying this particular piece of legislation. I know the Chief Minister has had to answer Questions today, from one of the architects of this wonderful piece of legislation, Mr Cannan, that the Bill is being delayed by this Council.

I think it ought to be spelt out to our friends in the media, who seem to report these things, that, actually, we could not do it any quicker, because of the Keys' actions, or inactions, in electing somebody who actually was the Member in charge. We started our considerations within minutes of them doing their job. We, actually, got back down to the business of trying to address this particular piece of legislation.

Mr President, I am not going to go through all the details. I am minded not to support the First Reading, because I am being asked to support a piece of legislation which I know is flawed in so many different ways, as highlighted, this morning, by various Members.

The answer to that is: to have a referendum, after you have made the decision, is absolutely... Now, this is not a suggestion, as the adjective that was used; this is *approved* legislation, which is being now... We are going to be accused of overturning the will of the elected House. Isn't it right that the elected House should be reminded of what I would call an elementary provision, such as that? I think that is reasonable.

Can I also say, we talked about history - and we just glibly talk about history - 'we will have a committee'. I can just imagine committee chairman 1 and committee chairman 2. I have already expressed, in the past, my views, that we started on the ministerial road to try and speed things up, and I think it has been relatively successful, in economic terms: it is not for internal, within the Isle of Man, consumption, because the Chief Minister is still known as Donald. I am sorry to have to say it, but he is; but, externally, we have a Chief Minister, and it is for the external world that these titles, and all, come in to play.

As far as I am concerned, redesigning Tynwald Hill at St John's is going to be a problem, Mr President, for you and your successors. How are they going to reshape the multi-tiered thing to just an ordinary mound? But that is a side issue.

**Mr Singer:** Put another tier on.

**Mr Lowey:** Well, or demolish it and have two mounds. They are minor details.

However, I come down to the principle of election. This House has already accepted that, and accepted it in the year 2000. We produced a working document and could I suggest that the media get a copy, get their hands on that, from the Library, and they will be able to see exactly what was proposed and approved by this Council, then. It differs very little from what was in Mr Quine's mind, at the time. But because it came from this Chamber, the collective wisdom was to reject it.

I find it very strange, Mr President, that this urgent matter of reform... I am back to the words 'revolution' and 'evolution', and I go very much along with the school of evolution, because it has worked for the Isle of Man and, as itemised by the mover of the Bill, our history of evolution has been pretty constant. Every 10 years, there has been a nice steady progress, we have been able to assimilate and move on to the next.

It is like getting rid of the Governor's functions. We have

got rid of the bulk of them, but there is a tidying-up exercise. There is a tidying-up exercise to be done on the Legislative Council, in my view, as well.

Unlike many Members, who talk about power, there will, eventually, if you accept the election to this Council, come the day where - not, maybe, in my lifetime - there will be the seeds of discontent on the size of the election. How can you say to somebody who has to fight an election for one seat, with three times the electorate, and just because it is a different year from the general election, that, somehow, he has got to compete for three times the vote, and then is going to be in an inferior position?

As sure as eggs... as night follows day, there will be, in the future, something. And I do not think you do that, in constitutional terms - build in what I would call the seeds of future discontent - not if you are interested in a stable, parliamentary democracy. You try and iron them out, when you actually lay the groundwork down. It is the foundations that I think are important.

Mr President, why should I vote against the Bill? I think sometimes you have got to say... This Bill is not in need of... As Mrs Christian said, it is the odd nugget you can hang on to. I do not think there are any nuggets in here, really. The proposition has come up - we have already accepted that on the election. I have no difficulty with that myself now, but the answer is the rest of it, I think, will need *major* surgery.

I am speaking, maybe, injudiciously here, but I think the House of Keys would accept any Bill that we send down to them, and that is the message that I get.

They will accept any amendments that we send down to them, with the proviso that they will alter it, at the first opportunity. So, I think in trying to resolve this problem, it would be better if they were told, 'Here's your original Bill, get on with it,' and it is so inefficient that they would throw it out.

I do believe, myself, that I will not support the First Reading of it, on principle.

**The President:** Mrs Crowe to reply.

**Mrs Crowe:** Well, thank you.

It should make for an interesting time for me moving this Bill. I have always said that I enjoyed legislation - not as skilled at it as many of the Members of the Council, but, nevertheless, still enjoy it. So, I think I am in for quite an enjoyable time, if it gets any further than today. But I will make some comments.

The Hon. Member of the Council, Mr Singer, made reference that he had already placed, I think, before us, three amendments, all with the Attorney General - three amendments, and one is regarding the referendum - and he also said. I would agree with him in this, because for me, too, I was really impressed, when I joined Council, at the amount of discussion that legislation and the number of errors that we are able to correct in this Council - like today, as one we were talking about.

So, yes, I, too, am impressed with the work that the Legislative Council does and, indeed, I think one of our problems is the fact we do not publicise that work and the work we do in Departments.

Mr Singer said that he would like to go for eight constituencies and that he would like the election to the body to take place 30 months after the general election, all of which will be coming before us, I believe, as amendments.

The Hon. Member of the Council, Mr Gelling, mentioned that he actually would go for an all-Island constituency, so we are going, as I say, once again, to be debating these issues. He also commented about the way in which – as did the Hon. Member, Mrs Christian – the Members of the House of Keys, once again, in this particular Bill, will be electing Members who have been elected already by the public. It will be the House of Keys, or the body, whatever committee it is called – it will be their position to elect these Council Members, which could, in fact, as has been commented on by more than one Member, cause constitutional crisis, if we did not get an elected committee on the first vote, or whatever. We would be in for difficulties.

The Hon. Member of the Council, Mr Butt: I am very pleased that he was pushed to read – most Members do not say that they were ‘pushed’ by me, (**Mr Butt:** Guided.) guided, yes – this wonderful document before us, which I may add took many months – in fact, I think it was more than 12 months – to actually come to fruition.

The option, as I read out, that has been chosen from this document did not have popular support within the Committee. In fact, they could not agree on any way, and this was a House of Keys Committee that solely sat to look at the way the Legislative Council should be elected. So, one can take your own reading from that.

And, of course, Mr Butt commented, if we were a brand new parliament, as Prof. Kermodé, the expert in parliamentary history, had said, a clean sheet of paper, we could do it whichever way we want, but, unfortunately, as Mr Butt pointed out, we are not in that happy position.

The Hon. Member of the Council, Mrs Christian, with her usual detailed eye for legislative matters, has noted that there are many parts of the drafting that she would be wishing to look to amend. She commented that there is no real clamour for the change in the functions of Legislative Council, that there has been a call for a popularly elected Council. But, maybe, that can be achieved in something other than this hasty Bill, which we have had presented to us for constitutional change, which is a Bill of compromise and which, indeed, as she commented, she feels will be completely unworkable, in its present form.

My Lord Baron, the Bishop, or my Lord Bishop, the Baron, wishes to see an all-Island election, but, once again, commented that he would like to see the functions of the Legislative Committee far more clearly identified.

He did comment that the unique system that we have today does work and that he felt that the Members of the House of Keys – or Committee Number 2, whichever way you care to name them – should be the people that have the constituencies. But I fear, my Lord Bishop, that when we are all elected, we will all have constituencies, in whichever shape or form it is.

Mr Waft commented that he would like to see this gone through in stages, for the continuity of Government, and I do think, once again, that has been another mention about the difficulties, if, indeed, this Bill was to be adopted.

We have difficulties, at the present time, electing Members of the Legislative Council with a very simple system. I am not sure that I can pick up from Mr Waft that he has difficulties in recognising how Members are going to actually be elected to the Legislative Council, unless, indeed, as Mr Singer first commented, they are 50 per cent of those elected, or they are the ones in the constituency with the

highest, the lowest or, indeed, the media vote, whichever it might be.

Mr Lowey’s comments, in fact, were that the Bill was an absolute shambles, and that, in the year 2000, the Legislative Council presented, to the House of Keys, a Bill which would, indeed, have left the Council in the position, today, where Members were being elected by popular election, which was overthrown by the other place.

He finds that the Bill is so flawed that he really feels there would be difficulty in amending the Bill. I think it is a matter that has been commented on by the media in many shapes, Mr President, the fact that we have sat in committee, which was, indeed, in private, but I think I would have to say, at this time, that all we discussed, during that time, was the way in which we could amend a Bill that was, in the terms of one Member of the Council, ‘a dog’s breakfast’. I think there was nothing more sinister in the fact of us sitting in private than, at the present time, in our Standing Orders, it says that, in committee, we sit in private.

But Mr Lowey has, as I say, pointed to the fact that, if the election to the Legislative Council is to be carried out by way of popular election, we will, indeed, be building the seeds of discontent into our parliament, because the size of the constituencies of Council Members will, in time, become a problem.

I am not sure whether he will or will not support the First Reading of the Bill today, but I will agree with him when he says that the Bill requires major surgery, because, from all I have heard from the Members today, there is a number of amendments floated.

These amendments are not to be divisive, or not to slow the progress of the Bill, but, indeed, are to make the Bill into a working document, that will produce another raft of constitutional change, which has been taking place, as I read out, for many years, but taking place in a way that has enhanced the parliament of the Isle of Man.

I think, what I have listened to, from Members of the Council today, is that they wish for a Bill to do exactly that: to enhance the standing of our ancient parliament by progressing to a constitutional change that encompasses, in some way, the election of Members of the Legislative Council by members of the public.

Thank you, Mr President.

**The President:** Hon. Members, the motion that I put to Council is that the Constitution (Legislative Council) Bill be read a first time. Those in favour of First Reading, please say aye; against, no. The ayes have it.

*A division was called for and voting resulted as follows:*

<b>FOR</b>	<b>AGAINST</b>
The Lord Bishop	Mr Lowey
Mr Waft	
Mr Singer	
Mr Butt	
Mrs Christian	
Mr Gelling	
Mrs Crowe	

**The President:** With Mr Lowey voting against, Hon. Members, the motion for First Reading, therefore, carries.

**Procedural**

**The President:** Hon. Members, can I just point out, before we go for adjournment, that, whilst I take Mr Lowey's point entirely about the question of sitting, and no delay on this particular matter, whilst the Keys were filling the seat of the original mover of the Bill, can I also make it absolutely plain that the Legislative Council did sit in private.

They were sitting as a committee, as we had decided, right at the very outset, a committee of the whole of the Council, and during that committee stage, we have had before us a number of suggested amendments, which have been already drafted by the legal draftsmen.

How it unfolds after this, Hon. Members, when you get to that particular stage, in dealing with it in public, will be entirely in your hands, but I think the Legislative Council's job is to deal with the particular Bill, as it comes from the Keys. That is what the Legislative Council have now decided they will formally do, having accepted the First Reading of the Bill.

Hon. Members, the adjournment of the Council is to 10th May next.

Thank you, Hon. Members.

*The Council adjourned at 12.25 p.m.*