



**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, 7th December 2004

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

The Lord Bishop of Sodor and Man (The Rt. Rev. Graeme Knowles), The Attorney General (Mr W J H Corlett QC),
Mrs C M Christian, Mrs P M Crowe, Mr D F K Delaney, The Chief Minister (Mr D J Gelling CBE),
Mr J R Kniveton, Mr E G Lowey, Mr L I Singer and Mr G H Waft,
with Mrs M Cullen, Clerk of the Council.

Business transacted

	<i>Page</i>
Procedural□	61
1. Questions for Oral Answer	
1.1 Code of conduct for public servants and politicians leaving office – Question deferred.....	61
1.5 MEA compliance with financial regulations.....	61
1.2 Departments, Statutory Boards and Government Companies – Auditing and Council of Ministers’ directions	62
1.3 Ditching of ‘no national debt’ claim – ‘Circumnavigation’ of Tynwald branches through media.....	64
1.4 General elections and re□	... 65
1.6 MEA loans – Details, risks, and acceptable practice in negotiations.....	66
1.7 MEA Chief Executive – Control over conduct and responsibilities.	69
Orders of the Day	
2. Housing (Multi-Occupation) Bill – Bill amended –Third Reading approved.....	72
3. Veterinary Surgeons Bill – Third Reading approved.....	74
4. Constitution (Legislative Council) Bill – First Reading commenced – Bill referred to Committee of the whole Council	75

The Council sat in private at 12.37 p.m.

Legislative Council

The Council met at 10.30 a.m.

[MR PRESIDENT *in the Chair*]

PRAYERS
The Lord Bishop

Questions for Oral Answer

A MEMBER OF THE GOVERNMENT

Code of conduct for public servants and politicians leaving office Question deferred

1.1. The Hon. Member (Mr Lowey) to ask a Member of the Government:

In respect of public servants and politicians leaving office –

(a) do you intend to introduce a code of conduct governing the taking up of certain directorships and employment, and

(b) would you consider the introduction of a code similar to the UK system where there is a two-year moratorium?

The President: Hon. Members, dealing with our Order Paper, the first Item deals with the Questions which are down for Oral Answer. With the concurrence of the Hon. Member, Mr Lowey, Question 1 will be held over to another day.

Procedural

The President: Questions 2, 3 and 4: the Hon. Member, Minister for Treasury, Mr Bell, will attend at a suitable time later, when the relevant Questions which he is answering in another place are completed, and we will take those at that stage.

ATTORNEY GENERAL

MEA compliance with financial regulations

1.5. The Hon. Member (Mr Lowey) to ask H M Attorney General:

(a) Did the Manx Electricity Authority comply with Financial Regulations when obtaining the additional loans amounting to £120M, which were not notified to the Treasury or the Department of Trade and Industry;

(b) has this matter been referred to your Chambers, the Financial Supervision Commission, the Police or any

other regulatory body and, if not, why not; and (c) what action is to be taken to resolve this matter?

The President: That takes us straight through at this particular time to Question 5. I call on Mr Lowey.

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

The President: Mr Attorney.

The Attorney General: Thank you, Mr President.

It is not possible for me, at this stage, to form an opinion as to whether the Manx Electricity Authority complied with financial regulations at all material times when obtaining loans. My understanding is that officers within Treasury and the Authority's auditors met yesterday with the Authority, in order to ascertain the relevant information. Only when that exercise has been completed may a considered opinion be given.

In relation to part (b), I can say that this matter has been referred by Treasury to my Chambers, and I am in regular contact with Treasury, in order to advise on legal issues arising. I am unable to say whether this matter has been referred elsewhere.

In answer to part (c), I regret that it is impossible for me to indicate, at this stage, what action requires to be taken. The appropriate decisions will, I trust, be taken when all the relevant information has been collated and verified.

The President: Mr Lowey.

Mr Lowey: Thank you, Mr President, three supplementaries.

Could I refer to the learned Attorney and say: does he find it acceptable that, five weeks after it was raised at the Treasury, it has taken five weeks for the officials of the Treasury and the MEA to meet to get dates? Is this acceptable? Is it usual?

Secondly, the affair has been referred to his Chambers, and he said that he was unable to say whether it had been referred to the Financial Supervision Commission or any other body. Could he tell me what steps he took to find out whether any other bodies have had this matter referred to them and if not, why not?

The third question... I will leave it at that at the moment.

The President: Mr Attorney.

The Attorney General: Thank you, Mr President.

I do feel, with respect, that whether or not it is acceptable for five weeks to have lapsed before the matters are dealt with by Treasury is a matter which is within the knowledge of Treasury to respond to. As Hon. Members will appreciate, the role of Chambers is to advise, when asked to advise, and it is not, I believe, my function to take a proactive stance, at this stage.

In relation to the second part of the supplementary, the question asks has this matter been referred to various bodies, including my Chambers. I suppose the first point is the question does not make it clear by whom it has been referred. I do not think it is my role to ascertain whether, for example, a matter has been referred to the FSC and by

whom. I do not know who the complainant may be, but the FSC, of course, is primarily concerned with licensable activities – banks, insurance companies and so on – so, I would think it unlikely that the matter has been referred to the Commission; but I cannot say.

I am afraid I have not, personally, checked whether the matter has been referred to the Financial Supervision Commission, or the Police, but I would not, in any event, ordinarily make those enquiries.

The President: Mr Lowey.

Mr Lowey: If I may ask a final supplementary of the learned Attorney, he used the words ‘material times’. I am getting a little suspicious, Mr President, that we do seem to be getting what I would best describe as not straightforward answers. There are times; there are ‘material times’.

We get loans of £185 million for a scheme and then we are told, ‘Ah, but we have overrun that by £120 million and we don’t need to come back for that.’ No mention of that at the time.

What I am really saying to the Attorney is: my question was straightforward. Did the Manx Electricity Authority comply with financial regulations? It is either a yes or a no. It is not asked, ‘Did they comply sometimes, or at a material time, or did they have to?’. Did they comply or did they not? They either complied or they did not, I would have thought.

The President: Mr Attorney.

The Attorney General: Mr President, I have endeavoured to explain to the Hon. Member, and I do so, again, with the greatest respect, that it is quite impossible, in such a complicated matter as this, to form an opinion, albeit after five, six or seven weeks. Sometimes these matters take months to decide whether or not a matter complies with regulations.

Again, the reason I use the words ‘material times’ is quite deliberate. It was not designed to be evasive. The point is the question asks: did the Manx Electricity Authority comply with regulations when obtaining the additional loans? I do not know when the loans were obtained. I am simply saying to the Hon. Member, in reply, that at all material times, when obtaining the loans, it is quite impossible for me to say whether the regulations have been complied with.

I can, certainly, give an undertaking to the Hon. Member that I will do my very best to assist the Treasury, and any other body which looks into this matter, when all the facts have been obtained.

The President: Mr Lowey.

Mr Lowey: One final supplementary to the learned Attorney: have the learned Attorney or his Chambers advised the MEA, at any time, on these matters?

The President: Mr Attorney.

The Attorney General: Mr President, I have attended a meeting with the Chief Executive of the Authority and the accountant of the Authority, in company with the Chief Financial Officer of the Treasury. That was at a meeting, I think, a week last Saturday, in the afternoon, at the Authority’s

office, with a view, again, to discussing the general problems which had arisen, in relation to these loans; but I have not given any specific advice to the Manx Electricity Authority, or any officer of the Authority, in relation to the loans.

Mr Lowey: I thank the learned Attorney, Mr President.

Mr Bell entered the Chamber at 10.34 a.m.

GOVERNMENT

Departments, Statutory Boards and Government Companies Auditing and Council of Ministers’ directions

1.2. The Hon. Member (Mr Lowey) to ask a Member of the Government:

(a) *Are all Government Departments, Statutory Boards and wholly-owned Government Companies subject to the same auditing regime;*

(b) *can Statutory Boards and wholly-owned Government Companies be directed by the Council of Ministers; and if not;*

(c) *when will legislation be introduced to enable the Council of Ministers to do so?*

The President: Hon. Members, as I indicated earlier, when we started out on Item 1 on our Order Paper, I indicated that the Treasury Minister would be available to answer Questions 2, 3 and 4. At this stage, I welcome Mr Bell to our Council Chamber, and if you are ready, sir, we will revert to Question 2 on our Order Paper. That is in the hands of Mr Lowey.

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

The President: Mr Bell, we are treating you, in this particular case, as a Member of Government to answer Question 2.

A Member of the Government (Mr Bell): Thank you, Mr President.

In answer to the Hon. Member’s Question, I can inform the Council that, at present, there are arrangements in place, under the Audit Act 1983 and the Treasury Act 1985, to provide for both internal audit review within Government Departments and Statutory Boards, and which also govern the appointment of public or external auditors.

In respect of the internal audit arrangements, Hon. Members may, already, be aware of the Internal Audit Division of the Treasury, which delivers this service across the majority of Government Departments and Statutory Boards. This resource is supported by audit staff within Isle of Man Post, who conduct internal audits and more routine reviews at the various sub-post offices, reporting to the Chief Executive of Isle of Man Post and the Audit Committee of that Board.

The Manx Electricity Authority have their own designated internal audit team who act independently of the Treasury Internal Audit Division, and who, similarly, report to the

Chief Executive at the MEA, and the Audit Committee of that organisation.

The external audit for Central Government, encompassing all Departments, Statutory Boards, and a number of wholly-owned Government companies, is presently conducted by Messrs KPMG, who are appointed under the Audit Act 1983. In that respect, the same auditing regime is consistently applied to this sector of Government, although the external auditors themselves will determine the extent of their compliance testing in meeting their obligations under the terms of reference.

There are, however, some exceptions to this arrangement, such as Isle of Man Film Ltd, which, as a separate entity, has chosen to appoint its external auditors to conduct its regime audit under the auspices of the Companies Act.

In answer to question (b), in relation to the second part of this Question, may I refer the Council to the provisions of the Statutory Boards Act 1987, which provides at paragraph 12(1) of that Act for the following:

'The Council of Ministers may, after consultation with the Board, give to the Board such directions as to the exercise of its functions in relation to any matter which appears to the Council of Ministers to affect the public interest and the Board shall comply with such directions.'

Therefore, the Council of Ministers has a discretionary power, after consultation with the relevant Board, to give the Board directions as to the exercise of that Board's functions, in relation to any matter which appears to the Council to affect the public interest. The Board that has given the direction has a duty to comply with that direction of the Council of Ministers, which has the effect of a mandatory requirement.

I would also bring to the Council's attention the provisions of section 12(2) of the said Act, which provides an additional power to the Chief Minister alone to require information to be supplied to him, and for the Board to render such other assistance as he may require. In this respect, the Chief Minister can appoint a person or persons to inspect and copy certain documents and accounts of the Board specified in the section, and the Board has a mandatory duty to afford such explanation regarding the documents, which include accounts as the appointed person may reasonably require. The Statutory Boards, to which this applies, are specified in schedule 1 of the said Act.

With regard to wholly-owned Government companies, I am not aware of any such provision in Manx law that extends such a power to the Council of Ministers to give directions to such a company. However, whilst the position of the Council of Ministers in relation to providing direction to wholly-owned Government companies is not so well defined, it may be reasonable to interpret, from the provisions of the Statutory Boards Act quoted earlier, that this power should equally apply, in principle, to those wholly-owned companies within Government.

In relation to the third part of the Hon. Member's Question, there are presently no proposals being developed that would further empower the Council of Ministers, through legislation, to make directions in relation to Statutory Boards and wholly-owned Government companies.

The President: Mr Lowey.

Mr Lowey: Thank you, Mr President.

I thank the Hon. Member. Can I ask some supplementaries?

Audits: are they carried out – internal audit and external – all by certified accountants? That is number one.

The President: Mr Bell.

Mr Bell: Thank you, Mr President.

As far as I am aware, that is the case, but I could be proven wrong on that one. I do not have full information on this.

The President: Mr Lowey.

Mr Lowey: Is the regime, which is universal across Government, robust enough, in the light of present performance – that is the question I would like to ask – and does it apply to subsidiary companies?

In other words, we have got the position, now, where Boards are forming companies and calling them 'subsidiary companies', and, therefore, the message will be: 'If you want to avert the Treasury gaze all you have to do is form a company'. Will and does the Audit Act apply to those subsidiary companies?

Mr Bell: Mr President, it has not been brought to my attention, at Treasury, that there is anything but a robust audit system across Government, and, as far as it applying to subsidiary companies is concerned, it is my understanding that it does apply to all Boards and subsidiary companies; but, clearly, there are one or two issues which have been raised in recent matters which would require, I think, further reflection and consideration, whether, in fact, there needs to be a clarification of the linkage between subsidiary companies and subsidiary boards to the centre of Government.

The President: Hon. Member, Mrs Christian.

Mrs Christian: Thank you, Mr President.

Would the Hon. Member confirm that the Audit Act is now of some age, and is out of kilter with modern auditing practice and standards; and would he advise what priority the Treasury is giving to redrafting and bringing forward new legislation in relation to auditing?

Mr Bell: Yes, Mr President, I would fully agree with those comments. It is outdated: Treasury have been aware of this and, in fact, are currently working to develop a revised piece of legislation, which we would hope to have within the branches before the summer recess.

The President: Mrs Christian.

Mrs Christian: Mr President, a further supplementary.

The Hon. Member, in answer to part (b), indicated that the directive powers of the Council of Ministers in relation to Statutory Boards would appear to apply in principle to companies. Does he consider that that is a satisfactorily strong position?

The President: Treasury Minister.

Mr Bell: Again, Mr President, I think, really, in following up my previous comments, there are one or two issues which have been identified, of late, which are not necessarily deficient, but, certainly, need greater clarification. I think the issue the Hon. Member raises is one which, probably,

deserves closer attention, as the practice to set up independent companies is a relatively new one for Government and is something, I think, which needs to be clarified in the context of new developments.

Mrs Christian: A further supplementary, Mr President.

Can the Hon. Member indicate whether this principle that he referred to has ever actually been tested and, if so, has it been complied with by the relevant company, or defied by the relevant company?

Mr Bell: Mr President, again I am not aware of any occasion on which this has been tested, but, clearly, looking to the future, I think it is important now we recognise that, conceivably, there could be a difficulty at some point in the future, that we do clarify it sufficiently early to make sure that no problems do arise.

The President: Mr Delaney.

Mr Delaney: I defer from this, because I am sitting on a Committee of Tynwald which is looking at these problems.

The President: Mr Lowey.

Mr Lowey: Would the Hon. Member not agree that it has been questioned very recently, and that is why the MEA refused to answer questions from the Treasury, I presume, and the Chief Minister and the Statutory Boards Act had to be implemented, so therefore there has been a challenge very recently? And could the Hon. Member inform the Council what sanctions there are against anybody defying the order to comply?

The President: Treasury Minister.

Mr Bell: I would believe, Mr President, should such a situation arrive, it would be within the powers of the Council to actually remove the directors of that Statutory Board, and replace them with a body which, clearly, would respond to a directive from the Council.

Ditching of 'no national debt' claim 'Circumnavigation' of Tynwald branches through media

1.3. The Hon. Member (Mr Lowey) to ask a Member of the Government:

- (a) *When did this administration ditch the proud boast of the Island that 'we had no national debt'; and*
(b) *when did this administration decide to circumnavigate and marginalise Tynwald and its branches by answering in the media Questions posed to various Departments several days before the sittings at which the Questions were to be put?*

The President: We turn, then, Hon. Members, to Question 3. Mr Lowey.

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

The President: Hon. Mr Bell, the Treasury Minister, again I call on you to answer.

A Member of the Government (Mr Bell): Thank you, Mr President.

In response to the first part of the Hon. Member's Question, I can confirm that, in successive Budgets during this administration, we have stated that it continues to be Government policy not to borrow externally to fund Government Department spending. Borrowing for such purposes was extinguished in the previous administration.

However, it has also been Government policy to allow the trading Statutory Boards to take on external borrowing, the costs of which are met from income generated by the relevant Board, and not from general taxation.

Finally, I think it is worth informing Hon. Members that in the cases where Treasury has secured external borrowing for a Statutory Board, namely the Water Authority and the MEA, Tynwald approval to the borrowing was obtained.

Turning to part (b) of the Question, I assume the Hon. Member is referring to my remarks during a Manx Radio broadcast on Sunday, 28th November. During that programme, I was under pressure to provide direct answers to questions being asked, and I took the view that responding with the facts, as I knew them, at that stage, was an honest and reasonable approach to take.

There was no attempt on my part to circumnavigate or marginalise Tynwald, as suggested by the Hon. Member. It has always been my desire, wherever possible, that Members receive Answers to their Questions during the relevant sittings. However, on this occasion, the misinformation and speculation had reached such a point that I felt I had no option but to disclose the information, in advance of the sitting.

The President: Mr Lowey.

Mr Lowey: Would the Minister not agree – two supplementaries – regarding the latter part, you do not put yourself in a position where you are forced to answer questions, in the media, two days before the sitting?

And could I also say, on the borrowings, there is an understanding: when we borrow money, we come to Tynwald Court and borrow money, and we borrowed £185 million, or we... two loans. However, we borrowed – we permitted them to borrow £185 million – but was it not clearly indicated, at the time, that that was for the total bill for the regeneration of the energy industry infrastructure? There was not a scintilla or a sentence instilled into that debate that, 'By the way, we will be coming back for £125 million of extra borrowings without your permission.'

The President: Mr Bell.

Mr Bell: Thank you, Mr President.

Can I say, first of all, just repeating what, I guess, I have already said: there was no discourtesy to the Hon. Member intended in my comments on Manx Radio. It was just a position I found myself in, at that time. The subject of the programme was a general review of Manx politics – I think 'The Month in Politics', or something, it was called – and there was no indication, at that time, that that specific

question would have been asked; but, clearly, I like to be as straightforward and open with people as I possibly can. If I had tried to avoid or evade that answer, I think that might well have set even more hares running than the speculation, prior to that, was already generating; but I apologise to the Hon. Member if he felt any disrespect. That was not the intention, at all.

On the second part, the Hon. Member is absolutely right: it was very clearly indicated to Tynwald, and it is recorded in *Hansard*, when the bond issue was debated in Tynwald, which I think was 2001, that that would be the sum total of borrowings, in relation to the infrastructure development.

In defence of the MEA, there have been subsequent developments, particularly in relation to the development of the gas pipeline, which, I understand, necessitated further capital expenditure. But, certainly, the Hon. Member is absolutely right: a clear message, during the Tynwald debate on the bond issue, was that that would be the sum total of the infrastructure costs.

The President: Mr Delaney.

Mr Delaney: With the answers in the media, Minister, could you tell me at this moment, the answer that you gave at that time, with a little knowledge of what had gone on, obviously: is it going to be the same answer continued through, that the Treasury did not know that the borrowings had been made?

Mr Bell: The first time we became aware of this extra borrowing was about a month ago, perhaps a little bit longer now, when we first received the draft annual accounts for the year 2003-04 at Treasury. That was the first indication we had of any extra borrowings having been taken on.

There had been no approach from the MEA, at any point, to indicate to us that there had been further borrowings considered, nor, indeed, were there any applications to Treasury for consent for that borrowing.

The President: Mr Delaney.

Mr Delaney: Can I ask the Minister: so, that situation has stayed exactly the same, and no Member or officer of the Treasury knew what was going on?

Mr Bell: To my knowledge, Mr President, no-one in Treasury was aware of the situation, until we received the draft annual accounts.

Mr Delaney: Thank you.

The President: Mr Lowey.

Mr Lowey: Can I refer – you must think I do nothing else on a Sunday but listen to Manx Radio; it is only the last fortnight that I have done it on a Sunday! – an ex-Member of this Court, and a leading presenter, claimed that he asked you on a programme, in February, whether you were aware that there were extra borrowings required for the MEA, and your reply was that you did not know, you were not aware of any, at that time, obviously. He made the claim that he heard rumblings that there were borrowings, and no-one in the Treasury had picked that up.

The President: Mr Bell.

Mr Bell: Mr President, I have actually been asked this question in another place, this morning, and, I have to say, I have no recollection of what was said on that programme. It was 9 or 10 months ago, and I really cannot remember, now, what the context of the discussion was. All I can say is that the first I was aware of it, with any clarity, was, in fact, on the receipt of the draft annual accounts, and that if, in fact, that question was put to me in February, that was an honest answer at that time.

We had no knowledge whatsoever of any further borrowings. We are all aware of the rumour mill on the Isle of Man, from time to time, but, clearly, Treasury cannot follow up every bit of gossip which we pick up and, therefore, that was the position, as we saw it, at the time.

The President: Mr Lowey.

Mr Lowey: Can I have one final supplementary of the Treasury Minister? Will this extra borrowing by the MEA affect any other Government scheme that requires borrowing? In other words, will it impact on our ability to perform other things?

The President: Mr Bell.

Mr Bell: Mr President, as far as the borrowing is concerned itself, at the moment, if the Hon. Member means will it impact on, for example, a capital programme, then, to my knowledge, there is no impact on that at all, it is a separate issue altogether; but, clearly, there are servicing charges on this borrowing, and the impact of that may be felt in other areas, such as tariffs.

General elections and referenda Costs

1.4. The Hon. Member (Mr Lowey) to ask a Member of the Government:

- (a) *How much will a referendum cost the public purse, and*
- (b) *what was the cost of the last two general elections?*

The President: Hon. Members, we turn then to Question 4 finally, for Mr Lowey.

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

The President: Mr Bell.

A Member of the Government (Mr Bell): Thank you, Mr President.

As the Isle of Man has never held a referendum, it is not possible to accurately estimate what the cost would be to the public purse. However, in 1996, the cost of the General Election was £102,230; and in 2001, the cost was £114,509.

Whilst there would be different costs accumulated for an election to those arising out of a referendum, there are certain

similarities, and this is the closest reasonable comparison available, at this time.

The President: Mr Lowey.

Mr Lowey: No supplementaries, sir.

The President: Mr Singer.

Mr Singer: Obviously, this referendum, Minister, these discussions come because of the Constitution Bill. Can the Minister, possibly, tell me what the other place felt was the need to have the referendum after the legislation, rather than before the legislation?

The President: I think we are going down a totally different line. I think, in fairness, we can leave that one aside.

Procedural

The President: Okay, Hon. Members, can I say thank you very much, Mr Bell, for your attendance here, this morning, and thank you for coming to answer those Questions on behalf of Government.

Mr Bell: Thank you, Mr President, always a pleasure. *(Laughter)*

Mr Bell left the Chamber at 11.00 a.m.

TREASURY

MEA loans

Details, risks, and acceptable practice in negotiations

1.6. The Hon. Member (Mr Lowey) to ask a Member of the Treasury:

In relation to the two loans to the Manx Electricity Authority of £50M and £70M –

(a) what was the date of the two loans;

(b) who were the loans obtained from;

(c) what commission, if any, was paid and to whom;

(d) what guarantees or collateral were given in respect of the loans;

(e) what financial risk is there to lenders of money when dealing with the Isle of Man Government; and

(f) is it acceptable for employees of Statutory Boards to negotiate loans for the Statutory Board, if they are also connected with financial institutions?

The President: Question 6, then, Hon. Members. Mr Lowey.

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

The President: In this case, Hon. Members, as we have a Member of Treasury in our midst, I call on Mr Gelling.

A Member of the Treasury (Mr Gelling): Yes, thank you, Mr President, and I do thank the Hon. Member for his Question.

I would, firstly, point out that, of course, the two loans were not taken out in the name of the Manx Electricity Authority, which has already been stated, but rather in the name of a subsidiary company named Manx Cable Company Ltd.

In respect of the first part of the Question, I would advise Hon. Members that the first loan was for £70 million, and was authorised by Manx Cable Company, on 4th July 2003; and the second loan, for £50 million, was authorised on 27th February 2004.

In answer to part (b), I would advise that both loans were obtained from Barclays Private Clients International Ltd.

In answer to part (c), I have been advised by the Manx Electricity Authority that neither Manx Cable Company Ltd nor any other member of the MEA Group paid any commission to any party, in respect of these loans.

With regard to part (d), I can advise Hon. Members that the MEA is guaranteeing the payments in respect of both loans on behalf of Manx Cable Company Ltd.

In respect of (e) the financial risk to Government, I can advise that there is little risk to lenders of money, when advancing funds to the Isle of Man Government. Members will be aware that the Isle of Man holds an AAA credit rating. That means that it has a very high standing in the financial world.

This rating gives a clear signal to potential lenders that there is very little likelihood of the Isle of Man Government being unable to meet its obligations. This is then demonstrated by the low interest rates that are then quoted to Government, should it wish to borrow.

Mr President, finally, I would have to advise that, in Treasury's view, such a course of action would not normally be acceptable. Civil servants are bound by strict codes of ethics and Civil Service Regulations, which would not permit such a situation, without express permission having been sought from the Minister concerned. I would have expected similar systems of governance to be in place, where the employees concerned are not civil servants.

And those are the statistical Answers to the Questions, Mr President.

The President: Mr Lowey.

Mr Lowey: Could I ask: is the Manx Cable Company a limited company?

The President: Mr Gelling.

Mr Gelling: Yes, it is.

Mr Lowey: How can a limited company, then, draw loans of this magnitude? Can I ask the Hon. Member of Treasury: are the figures correct – £50 million and £70 million? My belief is, in fact, it is £125 million that they have the ability to borrow, that they have negotiated. It is not £120 million; it is £125 million. Could he confirm that?

And how can the MEA guarantee loans to a limited company that, by law, has a limited liability, and yet it borrows these vast sums of money?

The President: Mr Gelling.

Mr Gelling: Well, first of all, Mr President, the figures of the loans that were taken out, of £70 million and £50 million, are correct, in that context. There is a situation yet to be clarified, that they had made an arrangement of a further £5 million. That is something that, as yet, I have no detail, that that £5 million was not part of the two tranches of £70 million and £50 million, it was another loan, which was more for a working, rather than a loan for a specific.

Mr Lowey: So, there could be more loans to come – that is the point I am making.

Mr Gelling: I could say, Mr President, that is the only one that we know of, at this time, other than those that are already in the public domain.

The President: Mrs Christian.

Mrs Christian: Thank you, Mr President.

Could the Member of the Treasury indicate, please, what assets of the MEA were offered as collateral, in respect of the loan? What is the total value of the MEA? And whilst he has commented that the Isle of Man has a AAA rating, when a subsidiary company goes out and borrows huge sums of money, at what point does he consider that a loan taken out without Treasury authority would prejudice the AAA rating of the Isle of Man?

The President: Mr Gelling.

Mr Gelling: I think the Hon. Member is getting right into the very depth of this, and this is where, I must say, it was given to understand to the Hon. Member about the meetings, and five weeks is a long time before a meeting. Well, of course, there have been several meetings from the first time that this was brought to the Treasury.

Again, can I emphasise, Mr President, when we talk about the Treasury, we have to be careful that we are talking about the Treasury Department i.e. the political Members in the Department and, perhaps, when it was brought to the Treasury officials' attention.

I think we must be careful of the answers given, as to when it was brought to the attention of, say, the Minister and the Members: it was obviously at a Department meeting.

Taking the question from the Hon. Member, Mrs Christian, obviously, the assets of the MEA are quite enormous, inasmuch as you see the infrastructure that has been put in. However, we cannot hide behind the fact that the MEA, obviously, is an authority and a board of Government, so I would say the bank that is loaning the money is quite assured that they will have a return of their capital, and they, obviously, give a rate which is becoming to the situation of a AAA rating that the Isle of Man has. That is the whole idea of the risk factor. It is very low for someone loaning money to the Government so, therefore, they put in a far better deal.

As to what the total assets of the MEA are, I am sorry, I do not have that information to hand to answer Mrs Christian, but I would say you have only got to see what has been built in infrastructure, that it is a colossal amount of infrastructure gone in over the last five years, so it must be quite enormous, the actual asset value.

The President: Mrs Christian.

Mrs Christian: Mr President, whilst accepting that there has been a huge infrastructure installed, against that there is a huge debt (**Members:** Hear, hear.) of over £185 million, so the balancing asset is a question, really, I suppose, I am asking about. However, is the Treasury not concerned that, in a situation like this, a utility in respect of the Isle of Man could fall out of ownership of the Island?

The President: Mr Gelling.

Mr Gelling: When the Hon. Member says 'fall out' of ownership of the Island –

Mrs Christian: Well, let us suppose that the lender called in their loan.

Mr Gelling: Well, I am quite sure, Mr President, that the lender of the loan to the Manx Cable Company is quite assured that the MEA are the ones who have given them the assurance that it will be paid and, at the end of the day, the Isle of Man Government, I would suggest, would not allow the MEA to go bankrupt and the Manx Cable Company with it. At the end of the day, it comes to the Isle of Man Government and the Treasury.

Mrs Christian: Yes, and the taxpayer, Mr President.

Mr Gelling: And the taxpayer.

Mrs Christian: Whilst I accept all that, is the Treasury Member not concerned that the Isle of Man taxpayer could be put in a position of having to meet these debts in the longer term, and, indeed, could, if this situation pertained in other areas, be faced with unknown debts of an unknown magnitude?

The President: Mr Gelling.

Mr Gelling: Yes, I think that is why, Mr President, Treasury, obviously, are concerned about the situation and, therefore, they are very keen to find out where and why and how this all happened, and to make sure that the scenario that Mrs Christian, the Hon. Member, has stated does not happen.

Of course, the proviso in the question was 'could', and these things could happen, but if you await the outcome of the meetings with the MEA, I am sure that you will find that all of the monies that have been spent, and, indeed, borrowed to spend, are all legitimately spent on infrastructure that the Isle of Man will benefit from.

It is not just electricity we are talking about here, Mr President; we are talking about gas infrastructure, the cable. We are talking about a lot of areas where this capital has been spent, but, ultimately, you also have to consider that the Isle of Man Government have funds, obviously, invested themselves, and those funds are very well protected. It was a policy of the Government to build up and, in fact, it was during my time, we even paid our small bondholders, who had loans into the Government, so that we were totally free from any borrowings – that was Government free from borrowings and, if you notice, the Hon. Minister for the Treasury said, in his statement, that it referred to Departments. He did not say anything about Statutory Boards, but it is a situation that, at the end of the day, we have to accept that Government

are the ones at the end of the trail and, therefore, as I have repeatedly said, banks will loan money to a Government, or a Department, or a Statutory Board, if they believe, which, in this case, they obviously did, that the Government would pay the loan, if it was called in.

The President: Mr Delaney.

Mr Delaney: Yes, I am interested in the last statement by the Member of the Treasury, and I understand the difficulties they find themselves in but, he has quoted himself, given the possible expenditure this money was used for over and above what Tynwald passed, is the Member in a position to give us a breakdown of what this extra £120 million, possibly £125 million, was spent on, and would he give us that now, please?

The President: Mr Gelling, if you have that, you could give it, but if you have not –

Mr Gelling: I do not have that, but I am quite sure it is available.

Mr Delaney: That is my point, Mr President. I am asking a genuine question trying to be helpful here for the people outside.

There are, with due respect, Hon. Member, there are the people at the end of this trail, and is it not true – and this is a question – that the debt which is incurred by this body is passed on to the people, and if you take the population of the Isle of Man, men, women and children, it has virtually put everyone £1,500 in debt, but to lord knows where? That is the reality of the situation, is it not?

The President: Mr Gelling.

Mr Gelling: The ultimate situation is that, at the end of the day, Mr President, as I have said, Government will, obviously, be the ones that would have to, and we are back to: if it happens, and it is called in and, ultimately, the taxpayers – all taxpayers in the Island and ratepayers and electricity payers – it will be paid. That is why lenders of money are quite keen, in fact, to lend to Government, because they know they are assured of their money.

The President: Mr Delaney.

Mr Delaney: Well, in that case, the Member, in answering my colleague's question, talked about the cost of the extra cable and everything else, the initial money for all that was agreed by Tynwald. We all agreed in Tynwald, if you go through it, and the situation is now, is it not true – and I will ask the question, because nobody else seems to want to ask it – that most of this money was on overspend on that project?

Is it not also reasonable, even for somebody who is as thick as I am, to work out, if they got permission for £185 million, when they went to overspend, they would have come back to the original lender, which was Tynwald, to ask for that permission to overspend?

The President: Mr Gelling.

Mr Gelling: That, Mr President, is the concern of

Treasury, and that is why Treasury has brought this situation to light. It is because they were concerned that that did happen, and they were not properly briefed as to what, and how, that money would be spent.

Also, you have to, again, remember that the meetings that are going on between the MEA, the auditors, the legal representatives and the Treasury, are to try to ascertain the very fact that the Hon. Member has brought up, as to why they came for £185 million through the channels of Treasury, to Tynwald and then the subsequent loans were taken out by a subsidiary company. That is the very nub of the whole question that Treasury is asking: why is that the route they took?

Mr Delaney: I thank the Member for his reply.

The President: Hon. Member, Mrs Crowe.

Mrs Crowe: Thank you, Mr President.

I was just interested in hearing the Hon. Member for Treasury saying any Government Department, any Statutory Board, any wholly-owned company could borrow and, of course, the banks were very eager to lend. I would like the Hon. Member of Treasury to confirm that one would expect any bank lending money to any Government Department, and any Statutory Board, as part of their general governance on loans, to have expected to see a letter of concurrence from Treasury. I cannot believe –

Mr Delaney: It is a mortgage.

Mrs Crowe: – that any bank on the Isle of Man would lend to myself, as a chairman of a Statutory Board, a sum of money of this nature, without seeing the relevant documentation to say one had achieved Treasury concurrence to this loan.

The President: Mr Gelling.

Mr Gelling: Well, Treasury concurrence was not given to the loan, and the bank has loaned it on the concurrence of the MEA board.

The President: Mr Lowey.

Mr Lowey: Would the Hon. Member say, on that same line, is it not a fact that the chairman of the bank that was lending the money is the Chief Executive of the MEA?

The President: Mr Gelling.

Mr Gelling: Correct – and in the subsequent question, I will explain that, sir.

The President: Mr Lowey.

Mr Lowey: Could I ask, then, who are the directors of the Manx Cable Company?

Mr Gelling: I gave that answer last week at this sitting.

Mr Lowey: Are they directors of the MEA?

Mr Gelling: Some of them are. (*Interjections*)

Mr Lowey: Some of them are. Do they get directors' fees?

Mr Gelling: I would imagine they did. I am sorry, I cannot – (*Interjections*)

The President: Mr Lowey, if we are going down that line of questioning, we are broadening out from your original question, sir. I appreciate the need to do that at times but, nevertheless, we have got to acknowledge the fact that there is no point in us asking questions, if the Hon. Member is not briefed to reply.

Mr Lowey.

Mr Lowey: Could I then come back to the last part. Is it acceptable for employees to negotiate? I got a reply, and I noted what my good friend the Member of the Treasury said, where he said you have strict codes of ethics in the public service. Are those quite as strict in the private sector?

The President: Matter of opinion, Mr Gelling.

Mr Gelling: Yes, I would expect so, but, again, the Hon. Member poses a question of trying to compare the private sector with the public sector – (*Interjection by Mr Lowey*)

The President: Now, Mr Lowey.

Mr Gelling: - and it is different. I would say that, probably, you would find in the private sector that heads of department and managers are brought more into the decision making in boardrooms, than actually happens in government.

Now that I have got the information from last week, could I answer the directors of the Manx Cable Company, to get it on record, please. The directors are: Messrs McCallion and Ferrer – and they are the two that are also on the board of the MEA, so it is just two; and then there are Messrs Proffitt and Spencer – and Mr Spencer is an ex-employee of National Grid, which was in partnership with Cable, at the onset, if you recall.

Mr Lowey: Who is the Chairman of the company?

Mr Gelling: I am not sure, I am sorry.

Mr Lowey: There are four members there. To help, Mr President, where I am coming from: there are four members of that board. There has to be a chairman with a casting vote. Two of those members are off-Island, if what you have told me this morning is correct. Well, is the other gentleman on-Island?

Mr Gelling: No, McCallion, Ferrer, Proffitt, and Mr Spencer is the only one I can think of that is off-Island.

Mr Lowey: I accept that. Okay, but the point being that there are two directors of the MEA and two non-members of the board, and yet it is the Government – i.e. the MEA – that is guaranteeing that loan. I find that awfully strange, that the bank would accept a loan from a company that was a subsidiary, which is, if you like, wholly owned. It has no

accounts held to account by the Government.

The President: We are trying to envisage what the bank thought. Mr Gelling.

Mr Gelling: Yes, I am not clear, as I was not there. All I know is that Mr Proffitt declared an interest, and the board were quite specific in what they stated which, I think you will find in the following question, was that he took no part, whatsoever, in that particular negotiation.

Mr Delaney: Well, can I ask this then, Mr President: if Mr Proffitt did not act on behalf of the MEA, or the subsidiary company, did he act on behalf of the bank?

Mr Gelling: No, that is what I am just saying, he did not take any...

Mr Delaney: Well, how do we know that?

Mr Gelling: Well, I do not, I am crystal gazing, but –

The President: Mrs Christian.

Mrs Christian: Thank you, Mr President.

Could the Treasury Member indicate when it will be possible to make it known to the public what these borrowings were spent on?

The President: Mr Gelling.

Mr Gelling: I am quite sure it will be, because I think, after yesterday's meeting, those figures are now virtually available, and I am quite sure Members will have those figures and the breakdown of it circulated very quickly, if not today.

The President: I appreciate, Mrs Christian, the question was asked before, and Mr Gelling said he was unable to give the answer at this time. Can I suggest to Hon. Members that, as soon as Treasury have the figures available, they circulate to Members, and I think that is the best, at this stage, I can do.

MEA Chief Executive Control over conduct and responsibilities

1.7 The Hon. Member (Mr Lowey) to ask a Member of the Treasury –

- (a) *Who controls the Chief Executive of the Manx Electricity Authority – is it the Chairman of the Manx Electricity Authority or the Board of Directors, or both;*
- (b) *does the ultimate responsibility for the conduct of the Chief Executive rest with the Directors;*
- (c) *is it desirable that the Chief Executive should also be a Director; and*
- (d) *is it desirable for the same person to be part of the decision-making process and also responsible for its implementation?*

The President: We turn then, Hon. Members, to Question 7 and, again, Mr Lowey.

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

Mr Gelling: I am sorry, Mr President, but, again, I think we will probably repeat some of the things because it is so involved, and I do thank the Hon. Member again for his Question and would advise that it is the members of the Board, who are responsible for the control of the Chief Executive of the Manx Electricity Authority.

I say 'members of the Board', Mr President, because they are not termed directors (**A Member:** No.) as the MEA is not a limited company, but rather a Statutory Board of Government. As such, there are no shareholders to control the MEA and control, ultimately, resides with the Council of Ministers, who appoint the members of the Board, and who may remove such members from office, by virtue of section 3(3) of the Statutory Boards Act 1987, which was something that the Hon. Treasury Minister also stated in a supplementary to, I think it was Mr Lowey.

In respect of part (b), with regard to the second part of the Question, I would advise the Hon. Members that the responsibility for the conduct of the Chief Executive rests with the members of the Board. It would be argued that the powers held by Council of Ministers could be used to exercise ultimate control over the Chief Executive, however, this would have been seen as an extreme option.

In answer to Question (c), I would advise that, in company terms, it would not be unusual for a chief executive to occupy a position on a board of directors. The term 'Managing Director' is perfectly normal in businesses. There should not be any reason in principle, why the objectives of the Chief Executive, and his or her board, should in any way be mutually exclusive.

However, in the context of a publicly-owned organisation like the MEA, it would be unusual for such a situation to exist. In government, the role of officers is to advise the decision-makers as to the options available and make a recommendation. Following a decision, the officers will then implement such a decision.

Then (d), finally, in accord with the Answer given in part (c), I would suggest that 'desirability' is a subjective term and will differ from organisation to organisation. In the private sector, as I said before, Mr President, it could be considered desirable for senior managers to be given a position on a board of directors and play a part in the decision-making process.

With regard to the public sector, there has traditionally been a clear distinction between the making of decisions, and the implementation of such decisions, as described in my previous Answer. However, if we look at paragraph 3 of schedule 1 of the Electricity Act 1996, it states that the Chief Executive Officer of the Authority shall be eligible to be appointed a member, other than the Chairman of the Authority. This option has not been taken up by the MEA to date, sir.

The President: Mr Lowey.

Mr Lowey: Could I just get it quite clear in my mind. It is the members of the board of the MEA, who are responsible for the conduct of the MEA, so borrowings and

commitments, overspends, production of the results is the responsibility of the members, not the Chief Executive of the Department?

The President: Mr Gelling.

Mr Gelling: Yes, the Board has the ultimate responsibilities of the MEA and its Chief Executive.

The President: Mrs Crowe.

Mrs Crowe: I wonder, perhaps, a word from the AG? Are the Board... In the same way as members of Commissioners would be liable for surcharge, if payments or moneys were used ultra vires, as it were, would the members of a Statutory Board bear the same responsibility?

The President: Do you need to research that answer, sir?

The Attorney General: I am sorry, Mr President, I would prefer, if I may, to take some time about it. It is such an important question.

Mr Delaney: Mine is short and sweet. Would the Member of the Department, recognising the difficulties, revisit the situation we had some years ago, where we had an elected member of the people on these boards and it was removed at the request of the Government of the day, through Tynwald and now we have no members of the public on so, therefore, there is no-one answerable to the public from Tynwald?

The President: Mr Gelling.

Mr Gelling: Yes, Mr President, I well recall that, and that was the reason there were quite a number, who thought that a political chairman... but, of course, of recent times, we have heard all about political chairmen and the infiltration or the influence of political members into what is otherwise seen as authorities, boards and regulators that should be at arm's length. I am not saying that if there had been a political member as the board chairman, that the result would have been any different; all I am saying is that, certainly, was one of the areas that was of concern, at the time.

Back to what Mr Delaney has said is the accountability: the accountability of someone to the electors of the Island, but it is certainly not something that I have heard of, during talks, that is under scrutiny or possible change.

The President: Mr Delaney.

Mr Delaney: My question is that if one Member of Tynwald had been on, he would have a duty to Tynwald to report back what was going on? Is that not true?

The President: Mr Gelling.

Mr Gelling: I can accept the statement of the Hon. Member.

Mr Delaney: Does not have to be chairman, just a member.

The President: Mrs Christian.

Mrs Christian: Mr President, would the Member agree that there is a difference between the position on a Statutory Board and on an enforcement body?

Mr Gelling: Yes, I certainly do agree.

The President: Mrs Crowe.

Mrs Crowe: Yes, thank you, Mr President, I have just two small questions.

I wondered if, at the present time, and in view of the circumstances, has the board of the MEA invited any Member of Treasury or, indeed, an officer of Treasury to sit in on any board meetings that they are holding at the present time?

The second part of my question is: the closing date for applications for the new Chief Executive of the MEA, I think, is in eight days' time, and will there be any input from Government, or indeed from Treasury, into the appointment of the new Chief Executive for the Manx Electricity Authority?

The President: Mr Gelling.

Mr Gelling: First of all, the first question: certainly accountants from Treasury have been sitting in – I would not say at a board meeting; it depends on how you would describe a Board meeting, in other words, a board meeting of the Board called for doing their general business. They certainly have sat in on meetings with 'the board' regarding the problems that we have at the moment, or the perceived problems that might be there, so, certainly, our accountants are – again I have to choose my words carefully – working within, to try and find a solution to what is there at the moment.

As for the input of Treasury, I would say that, certainly, my knowledge would be that Treasury will not have any input into the Chief Executive that is so elected, because again, we have to recall, we were talking about subsidiaries of the MEA, and if you look at the MEA Act, you will find that, in fact, Treasury has no input into them setting up a subsidiary, but the Department of Trade does. They have to get approval from the Department of Trade as set up.

So, within there, there is a corporateness, that, in fact, they do have to get permission for both borrowing and the financial, which is Treasury, and then the other, which is the Trade.

Could I at this time, Mr President, to try to be helpful, as the breakdown of the expenditure incurred was of interest to Members, actually read those amounts out for you, Mr President, so that it is on the record? If I could say, the preamble to it is: in recent weeks, the Treasury has been requesting details of the moneys expended by the MEA, and the Minister is pleased to confirm the information that we have received. The breakdown of the expenditure incurred to date which totals some £295 million, is as follows: new power station, £87 million; gas pipeline construction, £23 million; power cable costs, £54 million; electricity network reinforcement, £50 million; gas spur and gas pressure reduction station, £20 million; MEA project costs, £9 million; Douglas station workshop, £3 million; repayment of Government loan, £5 million; repayment of lease finance, £3

million; repayment of existing bank loan, £5 million; bond issue costs, £2 million; and loan interest capitalised, £26 million; and the annual payment for the capacity agreement in respect of the gas pipeline, £8 million; which gives you a total of £295 million.

Mr Delaney: Mr President, can I now ask that the Members get those figures?

The President: A question?

Mr Delaney: Now that the figures are there, Hon. Members, is it not true, then, that this £120 million is an overspend on all the projects that they were undertaking at that time, and the fact is that it was in their interest to keep it quiet, away from us?

The President: Mr Gelling.

Mr Gelling: I cannot say, in my opinion, that it was in their interest to keep it quiet, because I do not think that it would ever be kept quiet because they have to produce their annual accounts which are audited and produced and, of course, we receive them, so it could never be kept quiet.

Basically, I think we have a situation where the £185 million that was borrowed was the initial estimate of what the cost would be. You well know that the power station and building ran into serious problems, which you have to say that, perhaps, only for the Chief Executive that was in, they might not have been resolved today. However, we got our power station, and it was at that time, actually, that we were being informed that it had saved money on the actual completion of the station.

However, you will notice, by the breakdown, that the part of the new power station compared to the gas pipeline, the cable costs, the gas spur, has accumulated, and you would probably find in – I am just taking the point of trying to keep it quiet – the draft accounts that have come available to the Treasury – they are the draft accounts which would then, subsequently, come to Tynwald – will probably show the breakdown of where and how that money has been expended, and the reason why they had to go out and re-borrow.

The biggest problem of all is, if they had come round the way that they did in the first one – through Treasury to get a further borrowing – it would have been much clearer and much easier to accept.

The President: Hon. Members, I think we need to be just a little wary; we are going round and round in circles. You have now been given further detail. Now, let us not use that detail as another herring, to run evermore.

Mrs Christian.

Mrs Christian: No, Mr President. I think we had better wait for further information.

The President: Mrs Crowe.

Mrs Crowe: Yes, I would just like to point out that the Energy from Waste Plant ran into serious difficulties when the manufacturer of the main gas boiler went bankrupt; but I feel certain we would have had to come back to Tynwald for extra borrowings, if we had needed them.

My question to the Hon. Member was: there is a number

of interest charges shown on the repayments that you have just stated; I wonder, could you tell us – and you may not have this information – whether any of these repayment charges are interest being charged by the banks for reallocating loans from one place to another, or, indeed, payments being made for interest being claimed at an earlier date.

The President: Mr Gelling.

Mr Gelling: The answer is, Mr President, I do not have that information.

The President: Mr Delaney.

Mr Delaney: My question, let me get this question clear and precise: had they used the procedure to come back and tell Tynwald that they were £120 million overspent for different reasons, is it not a fact that the democratically elected Members would have a chance to question what is going on, rather than now after the Chief Executive is leaving? The main player is leaving the stage; now we are asking the questions that should have been asked when the £120 million overspend was happening.

The President: Mr Gelling.

Mr Gelling: Yes, again, I think I would express caution on overspend. What I would suggest is: if you look at it, the first bond that we speak of goes back to – February 2003, is it? – It is quite a while ago, so, in other words, we are not dealing with an overspend; we are dealing with an ongoing situation to which they wanted to invest more money, and they went out and did it in that way.

Had they come to Treasury, or to Government, and explained what they were going to spend this on, because it was going to improve infrastructure and come through Treasury and come through Tynwald, of course, we would not be here today asking the questions as to why the other way was felt best by them.

The President: Mr Singer.

Mr Singer: Does the Hon. Member remember that within that £185 million, there was £10 million –

Mr Lowey: For windmills.

Mr Singer: – for wind energy, so obviously that £10 million has ‘gone with the wind’, as they say, so that must be an overspend?

The President: Mr Gelling.

Mr Gelling: I do not know, Mr President. I know there was allocation for wind farms, and if the Hon. Member says it was £10 million, then I can accept that. Now, we have not got windmills, so, obviously, that is somewhere in there, but I have no knowledge as to where it is, and what that possibly may have been spent on.

The President: We are getting out too broad. Finally, Mr Lowey.

Mr Lowey: Thank you, Mr President.

Would the Hon. Member, and, in particular, in the light of what has happened in the last few days, could he give an undertaking that the Treasury will look at getting some legislation urgently in, to deal with the regulation of utilities, so this cannot occur again? And no matter how the Hon. Member of the Treasury dresses it up and says it is not an overspend: £125 million of money over and above the £185 million which we gave that Authority to put its infrastructure into place is an overspend, by any stretch of the imagination.

The President: Mr Gelling.

Mr Gelling: In answer to the Hon. Member’s first part of his question, obviously this will be something that will end up in the Council of Ministers, once Treasury has sorted out and knows exactly what this situation is. And we will be looking at that situation, regardless of whether it is legislation, or whatever, to make sure that that position does not occur again.

The President: Right, now Hon. Members, I think that draws our Question session to finality.

Orders of the Day

BILL FOR THIRD READING

Housing (Multi-Occupation) Bill

Bill amended

Third Reading approved

2. Mrs Crowe to move:

That the Housing (Multi-Occupation) Bill be read the third time and do pass.

The President: We then turn, Hon. Members, to Item 2 on our Order Paper, which is the Housing (Multi-Occupation) Bill.

Now, Hon. Members, you will be aware that we had a number of queries on the Housing (Multi-Occupation) Bill at our two previous sittings, in dealing with this matter, and, in fact, on the last occasion, actually, had a representative of the Department of Local Government and the Environment sit in with us.

The upshot of that is that, as we are possibly facing amendments to the Bill at this particular stage, which I think we accepted at the last, at the secondary clauses stage, it would be a practical proposition for us to handle them at today’s Third Reading.

So, in order to progress the matter, could I invite Mrs Crowe to formally move the Third Reading of the Housing (Multi-Occupation) Bill.

Mrs Crowe: Thank you, Mr President.

I would like to beg to move the Third Reading of the Housing (Multi-Occupation) Bill 2004, and, in doing so, I do realise that in some of the clauses we did agree that we would look very carefully at the wording of some of the clauses. I believe the first clause that we need to look at

would be clause 5.

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

The President: Having moved to Third Reading, Hon. Members, and seconded by Mrs Christian, are we agreed that we take that the Third Reading be approved. Agreed, Hon. Members? (**Several Members:** Agreed.)

Now, in that case, Hon. Members, we are agreeing sort of halfway through the situation. What we really need to do is approve that as we have amended it, at the completion. So, we have now reached the stage where, in fact, I think it would be appropriate if we had the amendments moved.

So, can I invite the Lord Bishop to move his amendment, please.

The Lord Bishop: Mr President, I beg to move the amendment standing in my name:

Clause 5, page 6, line 38:

Insert the following definition after the definition of 'owner' –

“single household” means a single economic unit in which the liability for the housing and living costs is assumed and discharged by one or more members of that unit by reason of common occupation of all areas of domestic habitation;’

It has taken quite some time for the drafters to look through what we were discussing last time. So, if you see, the amendment is the addition of a definition of ‘single household’: rather than changing the first clause, it was thought that it would be wise to put a definition in.

So, the single household is now defined. It means:

‘a single economic unit in which the liability for housing and living costs is assumed and discharged by one or more members of that unit by reason of common occupation of all areas of domestic habitation;’

and I think that gets as near as we can to defining the problems we saw about friends sharing a house, and not falling into the other definition of what the group of people at which this Bill is aimed.

So, therefore, I beg to move the amendment.

Mr Singer: I beg to second.

The President: Mr Singer has seconded.

Mrs Christian: Mr President –

The President: Ah, I think we will deal with them one at a time, Mrs Christian. Do you wish to speak to that one? (**Mrs Christian:** Yes.) Right, okay.

Mrs Christian: There has been some difficulty in the Department, and between the legal draftsmen and those who are going to have to enforce this particular piece of legislation. In coming to a workable definition, a number of possibilities were explored, all of which either curtailed potential for the enforcement of the Act, or led us into further complications of definition of family, and so on.

So, I am happy to support this particular definition, which, it is believed, will be workable, and may well fall

in line with definitions elsewhere, giving us some sort of precedent by which to assess whether a household is, indeed, a single household or not.

The President: Mrs Crowe.

Mrs Crowe: As the mover of the Bill, Mr President, I am very happy to accept the amendments. I know that Mrs Christian is now a Member of the Department, and has discussed this at length with the enforcement agency. I do believe that this could be a workable solution.

The President: Now, Hon. Members, if we could just try to put that all into context. As I understand it, what we are doing, Hon. Members, the amendment as moved by Mrs Christian would remove from –

Mrs Christian: Mr President, I have not moved it yet!

The President: Right, okay, we are still dealing with yours. Right, okay. I come back to Mrs Christian, then, and, perhaps, we should move Mrs Christian’s amendment at this stage, and then try to tie the two in with the clause 5.

Mrs Christian.

Mrs Christian: Yes, Thank you, Mr President. Yes, this is also an amendment to clause 5:

Clause 5, page 6, lines 37 and 38:

In the definition of 'owner' delete –

‘, or who would receive the same if the premises were let at a rack rent.’

There were queries at the clauses stage about the definition of owner in respect of comment about persons who had received rent, if the premises were let at a rack rent. There were queries about what that meant and what the relevance of that was for this particular legislation. It transpired that this piece of definition had simply been transferred from another piece of legislation. It does not actually add anything to the sense of the Bill and I beg to move that we delete the words:

‘or who would receive the same, if the premises were let at a rack rent.’

It will still be very clear and it will get rid of an unnecessary additional definition, which nobody understood anyway.

Mrs Crowe: I am happy to second that!

The President: Mr Gelling seconds the amendment, Mrs Christian. Are we content at this stage, Hon. Members, in relation to clause 5? Yes.

So, we make it plain, then, Hon. Members: what we have, in relation to clause 5, is a new definition of ‘single household’, which appears after the definition of ‘owner’ in the interpretation clause 5, and in the interpretation clause relative to ‘owner’, we have the final piece deleted ‘or who would receive the same if the premises were let at a rack-rent.’ That will be deleted.

So, we have a deletion in relation to ‘owner’ and we have a new interpretation in relation to ‘single household.’

Are we content with those amendments Hon. Members? Do you agree? Against, no. In that case, Hon. Members, I accept that clause 5, that will be the interpretation that Council puts upon it.

Perhaps, at this stage, we would turn to clause 9, on page 8, and I call on Mrs Christian again.

Mrs Christian: Yes, thank you, Mr President.

It was pointed out, when we considered clause 9, that there may be some difficulty in respect of the wording of clause 9(3), in that it provided for the Act coming into operation on a single day. As you rightly pointed out, sir, this may cause some difficulty in respect of the introduction of the Regulations.

Therefore, I beg to move an amendment standing in my name in respect of (3), so that we substitute for the wording that is in the Green Paper, the following:

*Clause 9, page 8, line 8:
For subclause (3) substitute –
'(3) This Act shall come into operation on such day or days as the Department may by Order appoint.'*

I beg to move.

Mr Gelling: I beg to second.

The President: Seconded by Mr Gelling. Noting the amendment, Hon. Members, does Council agree that the amendment should stand part of the Bill? Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

The amendments then, Hon. Members, circulated to you this morning on the white papers relative to the Green Bill, having been moved and accepted at this stage, we revert to Third Reading. Does any Member wish to further comment in relation to the Third Reading? Then, Mrs Crowe, do you wish to further comment as the Member in charge?

Mrs Crowe: No. I thank Legislative Council. I do think it is very important to have got not only the interpretation in the primary legislation in a way in which not only enforcement officers, but, of course, primary law. It is important to make sure we have a clear definition, and I am grateful to Members of Legislative Council for pointing out some of the errors that remained.

The President: Hon. Members, in that case, I put to you this morning that the Housing (Multi-Occupation) Bill – noting the amendments which we have made to clauses 5 and clause 9 – receives its Third Reading. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Veterinary Surgeons Bill Third Reading approved

3. Mr Waft to move:

That the Veterinary Surgeons Bill be read the third time.

The President: We turn, then, Hon. Members, to the Third Reading of the Veterinary Surgeons Bill and this is in the hands of the Hon. Member, Mr Waft.

Mr Waft: Thank you, Mr President.

In taking the Third Reading, I have to refer to the questions which have been asked to me during the past Readings: those such as the supplementary register and of veterinary surgeons; and whether a mouth is a body cavity, and what can be done in a mouth of an animal such as cleaning, descaling, rasping, et cetera of the non-sensitive parts of the teeth; and what cannot be done, such as extraction or interference of any of the sensitive tissues of the mouth. Those, certainly, would be contrary to the Bill.

There was a query as to lambing, and who would be able to carry out certain procedures. The criteria appear to be that where ordinary lambing situations arise, there are no problems with regard to lambing in the normal sense. But there may be a problem with regard to cutting into a body cavity, especially when a calf is wrongly presented and there would be a need for a decision to be taken, whether it is an emergency procedure, in order to save the life of the animal. Emergencies are allowed for in the Bill.

I also went through the list of countries which can be on the college register and allowed to practise within the UK, which was another question which was fully answered last week. Last week, there were also questions as to the administration of injections and worming procedures, and the administration of pills and application of ointments to the eyes. I have had notification from the Chief Veterinary Surgeon, who is with us today, and I am thankful for that, if I get any more questions. *(Laughter)*

I would qualify what has been said and make sure everybody is aware, administration of minor medical treatments – for example tablets, ointments, eye or ear drops – to any animal by its owner, member of the owner's family or employee of the owner is permitted. In addition, owners of livestock and horses and their employees are permitted to carry out additional medical treatments, for example giving injections.

Minor surgery is also permitted on livestock and horses, provided that such surgery does not involve surgical entry into a body cavity: for example, rasping of the horse's teeth is permitted because surgery is not needed to gain entry to the oral cavity. Extractions of a horse's tooth would not be permitted, as that would be classified as minor surgery.

Lay assistance, when an animal is giving birth, is allowed under part 1(3), the rendering of first aid in an emergency for the purpose of saving life or relieving pain and suffering.

Sections 1 and 2 of the Bill and schedule 1 are basically unchanged from the 1949 Act, and the Department has never been aware of any particular difficulty in interpretation. So, that was the official line from the Department with regard to those questions. The Veterinary Surgeons Bill will consolidate and amend the provisions of the existing primary legislation, the Veterinary Surgeons Act 1949.

The main problem with the 1949 Act is that there are no means of amending it. Some of the provisions set out in the 1949 Act are no longer appropriate. In order to bring our legislative provisions up to date, and to build in flexibility for the future, this Bill sets the current benchmark, but, more importantly, contains enabling powers for the Department of Agriculture, Fisheries and Forestry to come back to

Tynwald and seek approval for necessary amendments, as times change and technical skills and ethical considerations change with them.

In order to come into force, an Appointed Day Order will be necessary. It would be DAFF's intention to come forward with any necessary subsidiary legislation at the same time as the Appointed Day Order, in order to deal with matters such as rectal scanning, et cetera.

Mr President, I beg to move the Third Reading do pass.

Mr Gelling: I would like to second, Mr President.

The President: Mrs Christian.

Mrs Christian: Can I thank the Hon. Member for his detailed reply, and for clarifying and confirming the issues that were queried last week. I think that it is a benefit that people will understand clearly what they can and cannot do, and I am very happy to support the Third Reading, Mr President.

The President: Mr Waft, do you wish to reply at all?

Mr Waft: I would just like to thank the Members for indulgence and the Chief Veterinary Officer for coming here and giving me support, and I beg to move the Third Reading for the third time and do pass. *(Laughter)* Thank you, Mr President.

The President: In that case, Hon. Members, the motion is that the Council support the Third Reading of the Veterinary Surgeons Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

BILL FOR FIRST READING

Constitution (Legislative Council) Bill

First Reading commenced

Bill referred to Committee of the whole Council

4. Mr Delaney to move:

That the Constitution (Legislative Council) Bill be now read a first time.

The President: We turn now Hon. Members to Item 4 on our Paper, which is the Constitution (Legislative Council) Bill. It is in the hands of Mr Delaney and today for First Reading. Mr Delaney.

Mr Delaney: Mr President, this is the sweet course on today's menu. I am aware that Members will have variations of their own opinion of what is needed for the Constitution of the Isle of Man.

The Bill in front of Members is not – and I want to emphasise it now – the original Bill that was put forward some time ago. This has been amended several times, and the printed copy they have is to require Members of Tynwald to be subject to popular election and to make new provision for the constitution of the House of Keys and Legislative

Council and connected purposes.

By 'connected purposes', some Members might think they are, virtually, misconnected. I, myself, have my own view on what and how the Constitution of the Isle of Man should step forward, and this Bill, I must say at this time, is not the perfect answer I would put forward.

Each Member, as I have said, will have his own view, but it has been democratically passed by another place, and, with that in mind, I believe it is the duty of this Council to give it due consideration, thought and, if necessary, to put forward the case as they see it, either individually or collectively, of where the Isle of Man is going with its Constitution.

This is not the time, Hon. Members, to have some sort of crisis in the Constitution of the Isle of Man; we have enough battles to fight out there with other matters. We need to duly consider this, and where we think possible give it the support. It is, obviously, the view of the other place, albeit some Members will have had a letter from one person who voted for it, who is not happy with it. I do not know exactly where that puts me, trying to move and do what I think is right, as I am probably working – and some Members could argue with me – on behalf of a minority. I am not; I am doing what the majority voted for and what their individual views are, what is in the Bill.

I have had a chance to speak to so many Members, Mr President, as I have tried to keep you abreast of what I have been doing. The situation is, I cannot find a majority of Members who agree with the Bill in its entirety, so I think I am being asked to bring it to us and to send it back amended, so that they, possibly, will be able to get the best out of what has been put in front of you this morning.

With that, I am moving the First Reading, and I am hopeful that Members will give me the courtesy of not voting it out, but voting for it, and then let us move on from there, and try to take the Constitution of the Isle of Man forward – maybe only a small step, but take it forward.

I believe in democratically elected Members of Tynwald, and I hope the majority of Members do as well. If not, let us send it back to them and say that we do not. But be straight with this: let us not play constitutional games, and let us not cause a constitutional crisis. Let us give our full thought to this Bill in front of you.

I beg to move the First Reading.

The President: Mr Singer.

Mr Singer: In principle, I support the change in the Constitution that the Members of this Council should be elected. But I must say that this Bill that has come to us now –

The President: Are you seconding?

Mr Singer: I am seconding, sir.

This Bill, as has been said by the mover, has gone almost beyond all recognition from the original Bill that came from Mr Quine. There he talked about direct election to the Council, and the need for eight constituencies, and I think, therefore, quite clearly, the Members would be elected by the people.

This new Bill, where people are elected to Tynwald and then allocated to a committee: to me, first of all, you have to get eight people to accept a nomination. But to me, actually

that is no different from what is happening now, in that the Keys are sending people who are elected to the Keys up to the Legislative Council.

So, I think, that this is something that has come into this Bill, which is not what the original feeling was.

I also refer, another point is on the Lord Bishop. Now, Members will remember, I was the one who moved last time that the Lord Bishop should retain his vote and, in fact, that was the only clause that got through before the Bill collapsed.

Now, it appears to me that the Keys have done a U-turn, maybe for expediency, and, suddenly, they did not want the Lord Bishop to have a vote. Suddenly, they have turned round and said maybe he should have a vote. That is not, in their view... I cannot see how that, in their view, is the democratic decision of everybody who votes, having been elected by the people.

So, I think that a lot of this is unworkable. I think the eight four-seat constituencies is absolutely ridiculous, (**Mr Kniveton:** Hear, hear.) from the point of view that it will not work: we are not here working under political parties, where you have got lots of workers to go out and you have got lots of money. People who wish to stand will find that they are limited, because they cannot afford to have their election leaflets printed. They will not be able to get round, on their own, round the size of the constituencies; you are mixing the towns with the countryside.

There are a lot of questions here; in fact, it is almost going to be like a mini-American election, where you can only stand, if you can afford it, if you have got the money. So, I think that is something that really needs looking at.

As far as its referendum is concerned, I cannot understand the situation there at all, particularly having the referendum after the Bill has been passed. You would say to the public, 'Do you think we should have it?' If they say yes, then you would go into the subject, and you would decide whether you want this or not.

So, I think there is a lot to do, and a lot to consider, and whilst I do believe – and I agree with the mover – that the principle of change is right, I really think that it wants looking into a lot, by this Council, looking into things that the Keys have pushed aside, in order to get approval.

I think they have pushed a lot aside: they know – we have heard them stand up and say, 'We know' – there are weaknesses in this Bill. I cannot remember, when I sat in the other place, anybody ever saying, 'There are weaknesses in this Bill, and we are sending it up to Legislative Council, to let them sort it out.' I would have thought that the first priority of the Keys was –

Mrs Crowe: To get it right.

Mr Singer: – not necessarily to get it right – to *believe* they have got it right. And they do not believe that they have got it right, so why send it to us to get it right?

I am sure whatever happened, we would have wished to look at it properly, and make changes, but it is quite clear that certain Members there wish to say – to me, it is clear – that they wish whatever will come from this Council, we will take the blame or they will put the blame onto us, as far as the public is concerned, and I do not think we should do that.

I do think we do have the duty to the public, to look at this Bill properly and to make sure that whatever we send back to

the Keys, will work, and that may take a lot of work here, so probably, I would think that this has to go to committee.

But, in principle, Mr President, having said that, I would second this First Reading.

The President: Mr Waft.

Mr Waft: Thank you, Mr President.

There is no doubt about it, that there is a majority of Members in the other place determined to have every Member of Tynwald elected, that goes without saying.

This concept I have no particular problem with, apart from the fact that the group who will occupy this section of Tynwald will not be able to peruse the legislation, as we have been able to in the past. A lot of consideration will be given to the next election, as has happened in another place, and that is something that should be borne in mind.

Having said that, it is not beyond the bounds of reason to be able to do that, and I would hope they would have their objectivity still in place.

There have been constant media calls for reform, especially from the editors, without giving any thought to how that reform should take place. It becomes a popular call, from the editors, particularly; the details they leave to someone else to work out, but not the editors. As a response to this pressure, the result has been this rather disappointing Bill.

We have had a Bill presented to us, the details of how it all should it happen are just not in there, and really it is left to someone else to work out the details, and I am afraid it is down to us at this stage in the process. The devil is in the detail, and if this Bill is to become law, the detail must be in place.

I do not feel the Island should be divided up into eight constituencies; the possibility of having 16 two-seat constituencies would have been a much better idea. And to tell the Boundary Commission to go down the road of having eight, without having thought out the consequences, is, to say the least, going to upset a great many people throughout the community, not least to say, the Members who are actually having to rethink their own boundaries, and to have the Commission faced with this before they even start their deliberations, is a mistake.

Mr Rimington has identified this mistake, and to his credit has owned up to it and has tried to rectify it, and it is up to us, at the end of the day, to try and make a more acceptable recommendation, which causes the least destruction to the Island, and gives a fairer representation.

The last time the Boundaries Commission went down that route, that was found to be unacceptable to Tynwald. We do not want to go there, without some workable and acceptable options to be put in place, otherwise it will extend this even further.

There is also the problem of how Tynwald elects the Legislative Committee, because if no-one wants to sit on that Committee... and who would, when they are suddenly faced with having to examine all the legislation that is coming out of Brussels? And the problem is, there will be no Keys until the Legislative Committee is elected –

Mr Lowey: That is right.

Mr Waft: – and having no Keys, means there is no Speaker, either.

So, how the Legislative Committee is elected is of prime importance, and yet the Bill is silent on that issue.

This leads me onto the renaming of the Council to a committee. I well remember, not too long ago, (**Mr Lowey:** Branding.) when the Chinese took over the responsibility for Hong Kong, they did not remove the Legislative Council; they kept it, because they knew the kudos that a Legislative Council represents throughout the world, and what it has for a government rather than just having a committee. The name 'Legislative Council' is internationally recognised and respected. I feel that the name Council should remain, irrespective of what happens to the rest of the Bill.

Mr President, these are just a few of my thoughts on the Bill. I have read all the *Hansard* debate that has been produced up to now, and there does seem to be a lot of haste in getting this Bill through –

Mr Lowey: I have not seen it.

Mr Waft: – and as we all know, that haste does not bode well for the future, when the Bill does become an Act and people will have to put everything in place.

Thank you Mr President.

The President: Hon. Member, Mrs Crowe.

Mrs Crowe: I think we have had two fairly articulate accounts of why we need to really re-examine this Bill from beginning to end. It does seem a shame that the Members of the House of Keys did not get to be admitting to the fact that they are sending it up to us with errors, before we have even started to discuss it.

I actually think it is amazing, and I really do believe that I can only suggest that this needs thorough examination in committee. I firmly propose that this Bill is sent to committee, and that it is examined in some detail before we even start to examine it as Council. I cannot think that it can be done any other way, so I would propose, Mr President:

that this Bill is sent to a Committee of the whole Council.

The President: Mrs Christian.

Mrs Christian: Thank you, Mr President.

Constitutional change takes place over aeons, and in looking at the First Reading, what we are really considering is what is set out on the first page and that is to require Members of Tynwald to be subject to popular election, and to make new provision for the constitution of the House of Keys and the Legislative Council, and for connected purposes.

I think, Mr President, we need to give some thought as to why this should be necessary in the first instance. I think a view has evolved that it is necessary, both in the minds of the public and of those in another place. I, however, find it very difficult to understand why, when Members in another place are given a mandate by their constituents to make decisions on important matters for the Isle of Man, they somehow consider that the decision to appoint Members to this Council is beyond them. It just defies logic, in my view.

However, there is this mantra that people in the Legislative Council should be elected by members of the public. That has its downside, as the Hon. Member, Mr Waft has illustrated. Whilst we do, from time to time, see, in the

Council, territorial attitudes occasionally appearing, by and large, Council Members, I believe, take a national view on matters which are before them, and I think the fact that they do not go to the electorate for their election, assists in that process, because you do not have to represent a specific area of the Island, and you are, to a degree, freer to take a wider view.

However, the way in which another place has treated Council in recent years, maybe 10 or 15 years, in terms of the elections of Members to this Council, has been most ambivalent. It is a kind of love-hate relationship: 'We want to put you there, but when we have got you there, we will kick you like mad. Council? People on Council should not participate too much in Government, certainly should not be Ministers' – well, what about being a Chief Minister? (*Laughter*) These questions are –

Mr Lowey: That happened last week!

Mrs Christian: Yes. So, the view of another place is certainly very much ambivalent to this particular body, and it is because of that ambivalence Mr President, that I am swinging towards the view – and I think we have said it before, when previous Bills have come forward – that we would not, as Members of this Council, oppose election. The question may arise whether or not it should be direct election to this Council, or as is proposed in this Bill, election to Tynwald.

My view currently is, and I am open to listen to debate about this, that election to Tynwald might be better, in the sense that we will be able to argue equality wherever we sit, whether it is in House of Keys or whether it is in the Legislative Council, and I take the view with the Hon. Member that there is no need to change the name; that we should have equality of status at the point when there is a division between the two branches.

But in reading the Bill, the whole tenor of it is that the Keys is still prevalent, (**Mrs Crowe and another Member:** Yes.) and the Council is secondary, and we have got, Mr President, to remove from that, to thinking as Members of Tynwald, if that is truly what they want. We have all got to think as Members of Tynwald, and there will be two committees dealing with legislation.

There is still a mind set in another place about what this Bill is going to do, which needs to be overturned in my view, and we do need to do a lot of work, if the First Reading is accepted, on: (a) the constitution of the two branches which are to deal with legislation, and get over that secondary status, as it still appears to me to be, of the Legislative Council, as set out in the Bill; and (b), we need to overcome the weaknesses in the drafting, where it does seem to me that there are many issues, which have not been addressed or simply forgotten about, or are, in fact, wrong, in terms of what the Bill says. They come up, wrong clauses referred to, wrong schedules are referred to, there are any number of errors in the actual drafting of this.

So, Mr President, whilst I believe that, in general terms, there is a mood out there that there should be some change, and I, for one, having gone through two very long and protracted elections to this particular body – and, maybe, that is for different reasons than most of you, because I have come from outside, and you have come from another place.

We really seriously need to make changes which improve the relationship between the two bodies, and make them

equal in standing and get back Mr President, in my view, to having two Chambers, other than Tynwald Court, which deal with legislation, and get away from this secondary issue of expanding into Questions ad infinitum, and other declaratory resolutions, and have as the principal body for policy and financial matters, Tynwald Court itself, because there has been a digression. That has been in the hands of the Members, and in the way in which Standing Orders have been applied or not applied, and so I suppose we are all guilty of allowing that to happen, but my personal view is that we should retract from the way in which the Chambers' works have developed, and go back to having legislative Chambers separate from Tynwald Court.

Mr President, there is, as other Members have said, a vast raft of stuff which will need to be done, both in terms of developing Standing Orders, if this principle is accepted, and, indeed, setting out clearly how Tynwald will function, if there will not be separate voting of the two branches, and I believe that that should be the case, if we are all equal in one body. But there will be consequences of the legislation if it is accepted, which need to be thought out, probably, I would suggest, quite clearly before the Act comes into effect, if it ever does, and to that extent I do believe the detail of how the practicalities of a new Constitution will work, should also be developed, before a new referendum is put to the people.

Mr President, I have been a bit long winded, but I do feel strongly that we need to give this the utmost consideration. What they have done in another place, and whether or not they have done it well, does not matter. We are here to put our imprint on it, and to express our view about it, and I think that we can do a job on, certainly, modifying this legislation, but I will support the First Reading, if only to introduce a mechanism by which Members of Tynwald are equal.

The President: Mr Lowey.

Mr Lowey: Yes, Mr President.

I have got to remind myself it is the season of goodwill, and looking at the Lord Bishop, I am sure he will remind me, if I stray a little. (*Interjection by the Lord Bishop*)

I sympathise with the Hon. Member who is moving the Bill. Normally, he could sell snow to Eskimos, or sand to the Arabs, he really could, but he has found it very difficult to sell this to the Council and he knows it, and for the reasons he has already explained.

It is a different Bill from the one that he thought he might have to introduce up here, and, crudely put – and it has been itemised by Hon. Members who have already spoken – this Bill is flawed. Aren't I being polite? It is flawed.

Unlike my hon. colleague, I have not been able to get the *Hansards* for the debate. From what I have gleaned from the Members of another place, I have yet to really find somebody who is quite prepared, apart from the proposer and seconder, who will put their hands up and admit to ownership of it. 'I agreed with this, but I didn't agree with that' and 'I don't think that's right, and I don't think this is right, but this is what we have got.' I agree with Mrs Christian, our job is to try and make some sense out of it.

There is a case, a very strong case for giving it the silver bullet, and saying, 'Back to the Keys, and present us with something that is workable'. So, to that degree, I am not opposed to not supporting the Bill, but I accept that this Council has, in recent years, exercised its mind on the

reform, with the principle, if that is the principle, that they are actually dealing with in the Keys, of democratically elected people to Tynwald.

But it does seem strange to me, as has been highlighted by the Hon. Member of Council, Mr Singer, if you look at the Bill carefully – not that carefully, but carefully – you will see that what they are actually doing is an exact replica of what we do now. Because, as Mrs Christian says, the people cannot pick the Members of Legislative Council, but the Members of Tynwald can. That is exactly what they are doing now, 24 of them, but there is going to be 32 of them, and there are going to be in primary legislation, the very points that have been raised by Mr Waft about whether the Keys would be quorate. They would not be quorate, so there is a hiatus.

As Mrs Christian has rightly pointed out, in recent years, politicians have played politics. I do not blame them for that, they did it when I was down there, but the reality is we could bring ourselves to a standstill. The idea that you are going to get consensus; the drift in Manx politics has always been consensus, since I have been in it. But if you are telling me that the recent experiment of consensus is a success story, then I am sorry, it is not, it is getting more and more difficult, and I suggest the future will be more and more difficult.

I will be seconding the proposal for this to go to a committee of the whole House.

The President: Mr Lowey, I appreciate that Mrs Crowe was, and Mr Singer earlier, I think, in making a strong case, and Mrs Crowe in making a proposal. I was similarly aware that I think Members wanted to talk about First Reading, that is why I did not put the proposal up immediately. So, I will take the motion for committee, but I am allowing Members to talk to First Reading, if they wish, sir.

Mr Lowey: I do not want to repeat many of the very valid points that have been made, but if we take the... And I can only think it is that about direct elections. This House actually produced a Bill a few years, not that long ago, which would have had it in operation by the last general election.

So the principle has already been accepted by this Council, and a formula that did not require a plebiscite and a formula that recognised historic sheading and village and town boundaries, to fit in with... If they are looking for perfection, I think some of the Members down in another place believe that they will get perfection, and they will get exact numbers and all the rest of it. They will never get that, because within two months of them drawing up boundaries, it will be out of date and migration and immigration and all the rest will have affected all the numbers.

We presented a workable alternative and a perfectly acceptable one accepting the principle, because they have abolished – they say it is a principle, but when you examine the legislation they have given us, it is anything but. It is almost an exact replica of what we have got already, but on top of that it is going to cost us at least £100,000, because that is what a referendum will cost. And the principle of having it after you have gone through all this, is nonsensical, absolutely – you could not write a script like it.

Mr Singer: Monty Python.

Mr Lowey: Much more important, and in the light of what has happened in recent days, I do think it is very

important, we have sold – I have sold, and I know many Members around this table have certainly been selling the Isle of Man, for the last however many years, decades, as a place of political stability – this Island in a troubled world. And remember we sell it in troubled areas, politically troubled. We have mentioned already, had word by Mr Waft of Hong Kong. We sell it in the Middle East, we sell the Isle of Man in the Caribbean, we sell it in America, as a place of political stability, and what we are doing.

We often talk about the external threats. We still today talk about external threats. It is not the external threats, we ought to be worrying about; it is the internal threats we ought to be worrying about, because we are beginning to destroy the reputation we have built up as a political, stable place where business – this is the word – business likes to do business, because of that very stability, and we are talking about spending £¾ million or £½ million on rebranding the Island. That will pale into insignificance, Mr Gelling, in the future, if this legislation goes through.

We have got a motto going round the Three Legs: ‘whichever way you throw me I will stand’. I will not go into the Latin, but that is roughly what it means, but can I tell you, that if this legislation goes through, I cannot believe that no matter which way you throw me I will stand.

We will be sitting on our uppers and who is going to benefit from this? Our competitors! They must be laughing their socks off, at the self-imposed damage we are doing to our own reputation.

I can see the editor of the *Examiner* saying, ‘Well, Lowey would say that, wouldn’t he?’ Well, it is nothing to do with me. I am concerned about the future stability of this Island, and I do believe we have got a formula that has been successful. It is not because of the *Examiner* that we have succeeded in the last 20 years – and maybe it is a debate, whether it is because of the politicians or in spite of the politicians – but the reality is we are here, and we have made things happen.

I believe that regarding this particular legislation, Mr President: I do not want to frighten you, but I have, already, like other Members, been doing a bit of research on it, and I have a sheaf of amendments that will need dealing with.

Who would want to claim ownership of this particular piece of legislation? I do not know how many times they say in this legislation they are not allowing the Attorney General to have a vote. They do not say it once; I think they say it in every line of every clause, where once would have been quite enough – and, by the way, he has not had a vote in the whole time I have been here, and I have never heard him ask for a vote either.

Simple things, elementary things like that, which I am sure we are able to clean up, but on the principle of election, I think this Council has moved in past years, and has already flown a kite that it could be direct elections.

And I have to say – and I do not want to hide behind anything – the Bishop, if he is to remain in this Chamber, should have a vote (**Mrs Crowe:** Absolutely.), and I think I am pleased – and it is the only thing I am pleased with – that has been recognised downstairs, too. So, I believe that, and if that is an illogicality and does not fit in with the democratic process, I believe in historic terms and in other practical terms, I think his voice would and should be required to be here in this Chamber. So I make no bones about that.

I could go on, but I think it would be repetition. I believe that this particular piece of legislation is the result of what

I would call, making constitutional law on the hoof, and doesn’t it show? I believe when we are... Because we are not talking here of a... The Hon. Member, Mr Waft, again, mentions we are a committee now: we are almost on a par with the Hackney Licensing Committee – nothing wrong with that august body, by the way, (*Laughter*) and maybe they do not want to be associated with us!

But the reality is, as the Hon. Member around this table will recall, when we made Ministers of the Chairmen of Boards, that was not for internal use; that was for external use. That was to improve the image. We talk about branding, and the status in the outside world, and what do we do? We are trying to downgrade the image of the oldest parliament in the world. For what? What is the gain? I do not know. really I am very hard pressed.

I am going to vote for it to go to a committee before we take the First Reading, I hope, because I do not want to disabuse, to have a constitutional crisis.

I do not want a constitutional crisis over this, because I think, first of all their stomach is not in it; and, second, the mention of the Hon. Member – the only man in Tynwald, I believe who has an ‘ology’ in politics – who then, within 24 hours of making a decision, writes us all a letter and says, ‘I got it wrong. He does not say, ‘And by the way, correct that wrong’, but, ‘I made a wrong’, and if that is not a clear signal – ‘I expect you to correct my mistake which I made 24 hours earlier’ – what sort of signal is that?

However, he may be honest, but the reality is, if we are to make decisions, I think we ought to make them in the right, as we have done all the way through, in the interests of the people of the Isle of Man. As Mrs Christian said, this Council does have an overseeing position to uphold, and we have done it.

Now, I think I am in danger of repetition, Mr President, and I do not wish to do that. I will be supporting the move that this goes to a Committee of this whole Council, to try and rescue it from its authors, and present a Bill that is worthy of the name.

Mr President: Mr Kniveton.

Mr Kniveton: Thank you, Mr President.

Mr Lowey has a sheaf of amendments ready to produce, sir, which, in itself, then proves that I believe that this Bill should go to Committee, and I do support the amendment by Mrs Crowe.

Mr President, the fact that I am proposing to leave this Council, in just over two months’ time, does not mean that I am not interested in this Bill – or should I say, I do, or do not, have a personal interest. No, sir, that is not so. I have as much interest and concern as I believe that every Manx voter should have, in the future of this Government, the House of Keys, Legislative Council, Committee or whatever they want to call it, and Tynwald.

I believe that this Bill is, of course, how to get rid of the Legislative Council in its present form – the breaking with democratic tradition, by removing, albeit on a piece by piece basis, the checks and balances which are needed, and have always been needed, in a legislative process, and I hope and trust that, before these steps are taken, we realise what the implications are.

Mr President, I am not going to start repeating what all my colleagues have said. I think there have been some excellent presentations today, but, I would say, I am not all

negative in my attitude There are some valid and acceptable points, and I shall listen, intently, further in this debate.

Mr President there may well be considered shortcomings in this Council, at the present time, but there are imperfections and shortcomings in many, if not most, things in our lives, and that does not, necessarily, mean dramatic changes as proposed to put things right. So, I would suggest that perhaps some fine-tuning is what is now required.

As I say, Mr President, I am going to listen very closely to this debate, and I think I have already shown how I lie in the matter.

Thank you, sir.

The President: Mr Gelling.

Mr Gelling: I will not repeat, Mr President, because I agree with everything that has been said by Members. Certainly, when you think of the envy that the Island is held in by other jurisdictions, because we have a system that works and works well, and has worked well over many many years, therefore, constitution change, and the changing of that set-up, needs such careful consideration.

It is rather alarming and frightening when you see what we have been given, but I do not look upon on it any other way than, I think, Mrs Christian said and that is: we have been given a piece of legislation that has been passed by the Keys and we now have a job to do, and I think that job, we will do. But if we get back to, really, the crunch of the matter, I do not think I have ever heard any criticism about what we do in Legislative Council, what we perform – even with amendments to legislation that go back down, it is accepted.

The only thing that has ever been brought up, is this point about democratically elected. Of course, there was a very simple answer to that, but one which fell very quiet, when it was to go out for the Legislative Council to be elected by the people in areas. Of course, the dawn then broke, they would actually have a better mandate, than what the Keys had, because they would be representing a bigger area, and, of course, this is how the Bill has arrived with us now.

I have to say – no disrespect to the Bishop – the Bishop was out, then the Bishop was in, because that would get the Bill passed. So it goes on, and we have an amalgam here of ideas that, put together, as we have already said, just does not work.

I cannot say any more other than, Mr President, yes, I agree, we should look at it, we should do our best with it, as we do every time we get a piece of legislation, (**Mrs Crowe:** Yes.) and I would agree that we should look at it in a committee, to see if we can make something out of it, that will actually work on the ground.

But as for saying that the Legislative Council has been criticised for what it does, I have never heard that criticism, because I think we do an excellent job with what we are given – sometimes, very short in what we are given, but we do that job.

The President: Now, Hon. Members, I allowed the discussion to continue on the First Reading, albeit Mrs Crowe definitively asked for a committee to be formed, because I felt that Members would probably wish to have a say at this particular stage.

The indication has also been given, as it happens, in Mr Lowey's submission to Council, that, in fact, he wished the

First Reading to follow committee deliberation. I think that was effectively, the way he put it.

In which case, Hon. Members, I think it is best not to put to you the First Reading at all, but to take the view, put by Mrs Crowe, that in fact we should send this particular Bill to a committee. In order to tie that one down a little bit, I need to know exactly what our motion is: is it a three-person committee, is it five or is it a committee of the whole Council? That is the bit which I am left with difficulty, so if we could have some quick, quick, quick submissions in relation to that. Bearing in mind, we will not be taking the First Reading, at this stage, or completing the First Reading, at this stage. Mr Delaney?

Mr Delaney: Excuse me, I feel I must challenge you on that, sir.

I have moved the First Reading. I have been seconded, and I demand my right to move my Bill now. If it is a vote for or against, I cannot see how you can change that resolution, Mr President.

The President: Because, in fact, the motion has also been made and seconded, so...

Mr Delaney: It goes to a committee, but I have not withdrawn my motion on the First Reading.

The President: No, no, no. The First Reading would still continue. The First Reading would still continue, but at the present time, it would go to Committee and, presumably, come back from Committee for First Reading.

Mrs Christian: Mrs Crowe's submission superseded the First Reading.

The President: Yes, absolutely. Mrs Crowe's submission to move to committee superseded that...

Mr Delaney: Adjourn the First Reading then, that is the motion.

The President: Well, effectively, you can say that. Now, then, Mrs Crowe...

Mr Delaney: I am saying that. That is what she is asking, then.

The President: No, it is going to Committee.

Mrs Crowe: I wish to clarify what my thoughts were, perhaps, Mr President.

I do think a Committee of the whole Council; I do believe that we should all have input into the workings of this Bill, as you have seen. It is not one error or two errors; there are errors in schedules that others have picked up. I do believe that a whole Committee of Council might be able to dispatch it more quickly, and sort the errors out.

The President: Lord Bishop.

The Lord Bishop: I would urge the Council to sit as a whole Council at Committee. I stayed silent in the first part of this debate, I am not so naïve, as I had not realised that I had become a political football, as far as getting the thing

as far it is at the moment, but I really, actually, would like to take part in the Committee stage where I could be part of an ongoing and whole debate on the matter.

The President: Mr Singer.

Mr Singer: I require some clarification, in that the hon. mover has moved, and have I seconded, and I have, certainly, said it is the principle that I have agreed with, and I do not agree with the detail. I would have thought that the First Reading should be voted on; it then goes to Committee, before it ever comes back to Second Reading.

The President: No, I think, Hon. Members, I was allowing the First Reading discussion to take place. Had I been strict on that interpretation – and, maybe, I will regret not being strict – but when Mrs Crowe moved that it go to Committee, and it had a seconder, I could very well have closed the discussion down at that stage and it would have gone to committee at that stage. Because I did not, because I felt that Members at this stage would still wish to have an input, bearing in mind the whole of the picture which has evolved around this particular legislation, I allowed the discussion to continue.

I still think we are in the business, Hon. Members, of discussing whether or not Mrs Crowe is making a point that she, supported by the Lord Bishop, is going for a committee of the whole of Council. Has anybody got an opposing view to that in any regard? Mr Delaney?

Mr Delaney: I would just like to know exactly where... maybe I am wrong under Standing Orders, but it has been moved and seconded. She did not move an adjournment, she moved it goes to a committee. I have always understood from my short time here that that was done after the Reading, that it went to a committee. But you have ruled otherwise, sir. When do I get a chance...?

The President: In the Keys, sir, that is certainly true. In Council, it can go to a committee at any stage.

Mr Delaney: Yes, fine. We have not experienced that, in my short time here, eight or nine years: therefore, that is why I asked for the point on the Standing Orders. Am I to understand, I do not get a chance to answer those Members...?

The President: Oh, no. You will, certainly, get a chance to answer, sir. You certainly get a chance to answer. I would not permit otherwise.

In that case, Hon. Members, it would appear as if it is the wish... but I would test the Council in that regard. The motion is that the Constitution Bill 2004 go to a Committee of the whole Council. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Hon. Members, that is the way in which we will progress the Constitution Bill at this stage. And that draws to a conclusion our Order...

Mr Delaney: I am sorry, Mr President. It does not look like I have a right to reply?

Mrs Christian: When it comes back.

The President: Yes, you will, sir – when it comes back. When it comes back, we will be continuing with the First Reading.

Mr Delaney: I understand that part of it. I was hoping that... Right, okay, fine.

IN COMMITTEE OF THE WHOLE COUNCIL

The President: The Committee will sit in private now, Hon. Members.