



**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, 8th March 2005

Present:

The President of Tynwald (The Hon. N Q Cringle)

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

Business transacted

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The Council sat in private at 12.11 p.m.

Legislative Council

The Council met at 10.00 a.m.

[MR PRESIDENT *in the Chair*]

Swearing-in of the newly elected Member of the Legislative Council, Mr Donald James Gelling, CBE

The Messenger: The Chief Registrar and Mr President.

The President: Please be seated, Hon. Members.

Now, Hon. Members, it is my very pleasant duty this morning to welcome His Honour, Deemster Kerruish to our premises this morning for a swearing-in ceremony.

It really is a pleasure to have you here, sir, although I appreciate that, in fact, it might be more auspicious if we were in our proper Chamber, rather than in this particular building.

It does give us pleasure that, in fact, you are here, and, particularly, as it becomes, this morning, somewhat, almost, like a family occasion. So, it is nice that, in fact, we have reached this particular stage, and that the Legislative Council will be almost back up to full strength.

So, Your Honour, with that, can we move on with the proceedings?

The First Deemster (His Honour M Kerruish): Right you are. It is Mr Gelling first.

Morning, Mr Gelling. (**Mr Gelling:** Morning.) Are you happy to take the Oath? (**Mr Gelling:** I am.)

The first is the Oath of Allegiance so, if you can repeat after me, please:

I, Donald James Gelling, do swear by Almighty God that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth II. So help me, God.

Mr Gelling took the first oath, phrase by phrase, as administered to him.

The First Deemster: Now, the second oath is an oath that is administered to elected Members of Legislative Council. So, I read the oath out, and after I say, 'So help you, God.', if you would say, 'I do', I would be grateful.

You shall well and truly serve as a Member of the Legislative Council of this Isle, according to the statute in that case made and provided. You shall use your best endeavours to maintain the laws and customs of this Isle, and shall justly and truly deliver your opinion and do right in all matters which shall be put unto you, without favour or affection, affinity or consanguinity, love or fear, reward or gain, or for any hope thereof, but in all things you shall deal uprightly and justly and do wrong to no man. So help you, God.

Mr Gelling: I will.

The First Deemster: Thank you. Now, if I may – the oaths have taken – it is required, now, that a Member do sign the *Liber Juramentorum*.

The *Liber Juramentorum* is kept by the Clerk of the Rolls and evidences the culture of the Isle. Every Lieutenant-Governor, every Bishop, every Archdeacon, beneficed clergy, every Member of the Keys and Legislative Council, every President of Tynwald, every Deemster, Attorney General and advocate has had their name put in the *Liber Juramentorum*. It reads:

'On this day the Oath of Allegiance and the foregoing oath was taken by and administered to Donald James Gelling, sworn into office as a Member of the Legislative Council by virtue of warrant of election dated 1st day of March 2005.'

If I could ask you, please, to sign there, Mr Gelling.

Mr Gelling signed the Liber Juramentorum.

The First Deemster: If I may, I will read Mr Gelling's warrant. I do not propose to read the other two warrants, Mr President, (**The President:** Right.) but it indicates they are all in the same form. It is a warrant of certification of election to the Legislative Council:

'At the sitting of the House of Keys held at Douglas on Tuesday, 1st March 2005, Donald James Gelling CBE was elected to serve as a Member of the Legislative Council until 28th February 2010. The said Donald James Gelling CBE, since his election, has signified to me in writing his willingness to accept the office and has given an address to which all communications may be sent. Therefore, I, James Anthony Brown, Speaker of the House of Keys, in exercise of the authority vested in me by the Isle of Man Constitution Acts 1919 to 1981, this day certify Donald James Gelling CBE to be an elected Member of the Legislative Council until 28th February 2010.'

It is signed 1st March 2005. That, Mr President, has been enrolled in the Rolls Office. Mr Gelling has taken the oaths and now can be admitted as a Member of the Legislative Council.

The President: Mr Gelling, congratulations.

Mr Gelling: Thank you, Mr President.

The President: I am very happy to pass on your warrant, sir. Thank you.

The Clerk conducted Mr Gelling to his seat.

Swearing-in of the newly elected Member of the Legislative Council Mr George Henry Waft

The President: Can we now have Mr George Waft to the front, ready for his swearing-in ceremony?

The First Deemster (His Honour M Kerruish): Morning, Mr Waft. (**Mr Waft:** Morning.) Are you happy to take the Testament? (**Mr Waft:** Yes.) Now, the first oath is the Oath of Allegiance, and you repeat after me:

I, George Henry Waft, do swear by Almighty God that I

will be faithful and bear true allegiance to Her Majesty Queen Elizabeth II. So help me, God.

Mr Waft took the first oath, phrase by phrase, as administered to him.

The First Deemster: Now, the second oath is actually administered, and it is the oath to elected Members of Legislative Council. So, I read the oath, and when I say, 'So help you, God', if you agree, say 'I do'.

You shall well and truly serve as a Member of the Legislative Council of this Isle, according to the statute in that case made and provided. You shall use your best endeavours to maintain the laws and customs of this Isle, and shall justly and truly deliver your opinion and do right in all matters which shall be put unto you, without favour or affection, affinity or consanguinity, love or fear, reward or gain, or for any hope thereof, but in all things you shall deal uprightly and justly and do wrong to no man. So help you, God.

Mr Waft: I do.

The First Deemster: Thank you very much, Mr Waft. You have taken the oaths.

Now, Mr Waft, you are required to sign the *Liber Juramentorum*. It is a single sheet at the moment, because the book is of great antiquity, and it just confirms that the oaths have been administered to you, George Henry Waft, and you are sworn into office as a Member of the Legislative Council by virtue of a warrant of election, dated 1st March 2005.

Could I ask you to sign there, Mr Waft, please.

Mr Waft signed the Liber Juramentorum.

The First Deemster: Now, the warrant, Mr President, is in the same form as Mr Gelling's. It has been signed by the Hon. James Anthony Brown, Speaker of the House of Keys. It is dated 1st March 2005.

It is given to George Henry Waft. It has been enrolled, sir, in the Rolls, and I hand it to you for issuing to Mr Waft.

The President: Yes, Mr Waft, again, I am very pleased to be able to hand you your warrant, sir. I am sure that you will enjoy your new term in the Legislative Council.

The Clerk conducted Mr Waft to his seat.

**Swearing-in of the newly elected Member of the
Legislative Council
Mr Dudley Michael William Butt**

The President: We then call Mr Dudley Butt for his swearing-in ceremony.

The First Deemster (His Honour M Kerruish): Morning, Mr Butt.

Mr Butt: Morning, sir.

The First Deemster: Are you willing to take the New Testament?

Mr Butt: I am, yes.

The First Deemster: Right. Now, the first oath is the Oath of Allegiance, so, can you repeat after me:

I, Dudley Michael William Butt, do swear by Almighty God that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth II. So help me, God.

Mr Butt took the first oath, phrase by phrase, as administered to him.

The First Deemster: Now, the second oath is actually administered, and so I read it out and after I say, 'So help you, God', if you agree, say 'I do'. It is the oath for elected Members of this Council.

You shall well and truly serve as a Member of the Legislative Council of this Isle, according to the statute in that case made and provided. You shall use your best endeavours to maintain the laws and customs of this Isle, and shall justly and truly deliver your opinion and do right in all matters which shall be put unto you, without favour or affection, affinity or consanguinity, love or fear, reward or gain, or for any hope thereof, but in all things you shall deal uprightly and justly and do wrong to no man. So help you, God.

Mr Butt: I do.

The First Deemster: Right, you are. Thanks, Mr Butt.

Mr Butt has taken the oaths, so, again, it is the *Liber Juramentorum* which witnesses today that Dudley Michael William Butt took the Oath of Allegiance and the oath of membership of this Council. It is by virtue of warrant of election dated 1st March 2005.

Could you sign there, please.

Mr Butt signed the Liber Juramentorum.

The First Deemster: Mr President, Mr Butt has taken the requisite oaths, he has signed the *Liber Juramentorum* and I have here the warrant of certification of his election to Legislative Council, which is duly signed by the Speaker of the House of Keys and has been enrolled in the Rolls Office.

The President: Now, Mr Butt, I am very pleased, indeed, to be able to welcome you to the Legislative Council, and to give you your warrant, sir, for your term of office whilst you are here.

Please take your seat, sir.

The Clerk conducted Mr Butt to his seat.

Statement of thanks and welcome by the President

The President: Now, Hon. Members, I wish to place on record our sincere thanks to His Honour for coming to our Council meeting this morning, to formally swear in three new Members of this Legislative Council.

Deemster Kerruish always continues to do this job with

considerable authority, and I think that is a word which the Members around this table are probably used to.

I welcome, particularly, for example, Donald Gelling this morning as a new Member – as a *new* Member – to the Legislative Council, having just taken his oath of office.

I welcome to our Council table, George Waft, again, as a new Member to the Council, and a new Member for another period of five years.

I welcome, particularly, Dudley Butt this morning, the ‘new boy on the block’, as it were, coming into the Legislative Council from completely outside of our process. On many occasions, over past years, it has been common practice that, in fact, people being elected to the Legislative Council have come from another place, come from our other Chamber, the House of Keys.

On this particular occasion, with 14 votes, Dudley Butt was elected on the first ballot to the Legislative Council. We certainly welcome you, sir, and hope that you will enjoy your period of time here.

I started, Hon. Members, by saying that, in fact, His Honour, Deemster Kerruish does this particular ceremony with authority, and I think that is important. I am absolutely certain that, no matter what anybody thinks – no matter what *anybody* thinks – when somebody stands before this table to accept their warrant, they accept with it the responsibilities that go with that office.

It is a moving ceremony, we are grateful that it takes place, and I am very sincere in my welcome to the three Members who joined Council this morning. Thank you, Your Honour.

The First Deemster: Thank you, Mr President.

Statement by His Honour, Deemster Kerruish

The First Deemster: Mr President, if I may say a few words. (**The President:** Yes.)

Mr President, I would like to thank you for your kind words. I would like to wish the re-elected Members, the new Member and all Members of the Council well in their deliberations in the future, and also to you, Mr President. Thank you for the courtesy.

Procedural

The President: Now, Hon. Members, before we leave, I am aware that, in fact, there is a photographer in the room, and I understand that, particularly, Mr Butt and his family would like to have a photograph. I do not know whether, in fact, we can organise that.

So, whilst the ceremony has now finished, perhaps it would be appropriate if Mr Butt would come forward, again, with his warrant, and we have a photograph whilst we hand him his warrant, and then, maybe, they could have a family photograph, if you are agreed to that, Hon. Members.

Photographs were taken of the new Members.

The President: We will now take our leave, and we will resume, Hon. Members, at 10.30, as is normal. Thank you.

*The Council adjourned at 10.15 a.m.
and resumed its sitting at 10.30 a.m.*

PRAYERS

The Lord Bishop

As we commend this meeting into God’s hands, so we pray for the newly returned Members of this Council and for ourselves.

Questions for Oral Answer

CHIEF MINISTER

‘Avian Virus H5N1’

Protection measures for Manx residents

1.1. The Hon Member (Mr Singer) to ask the Chief Minister:

*What action is the Government taking to –
(a) obtain adequate supplies of medication to protect Manx residents against the ‘Avian Virus H5N1’ should an outbreak become pandemic; and
(b) ensure hospitals and nursing homes are prepared to deal with such an outbreak?*

The President: Now, Hon. Members, we turn, again, to our Order Paper for today, and we have, as the first Item, Questions for Oral Answer. I call on the Hon. Member, Mr Singer.

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

The President: I call upon the Chief Minister to reply.

The Chief Minister (Mr Gelling): Yes, thank you, Mr President.

In responding to the Hon. Member, I should say, at the outset, that there is no indication that, if a pandemic does occur, it would be caused by H5N1 virus.

The difficulty with a pandemic is that it is not possible to identify the type of virus which is responsible for the infection. I can confirm that the Department of Health and Social Security, in conjunction with other Government agencies, will be putting in place a series of measures, to combat such an eventuality, if it ever arises.

It is the view of the Public Health Directorate of the DHSS that too much emphasis has been put on stocking antiviral drugs, given that the UK policy, which endorses that of the World Health Organisation, clearly spells out there is no evidence that these medicines are effective in a pandemic situation.

The DHSS will be liaising with the UK Department of Health, and will approach the manufacturers, to secure supplies of the drug. It should be also understood that a

pandemic, if it occurs, will be an evolving situation, and the most important aspect of being prepared to deal with such a situation is to maintain a high degree of vigilance and be flexible to respond.

The Public Health Directorate of the DHSS will take a lead in this, and will liaise with all the appropriate agencies, Mr President.

The President: Mr Singer.

Mr Singer: I thank the Chief Minister for his Answer, and, with the greatest respect to the Chief Minister, he, obviously, has not had time to research this matter by himself, and his Answer has been prepared by the Medical Officer of Health.

Does he not agree, though, that the attitude of the Medical Officer of Health is different from that of the United Kingdom, which is stocking 15 million courses of the anti-virals? They believe that it would be helpful. The Greater London Council has got enough anti-virals to treat 100,000 of its essential workers, and yet our people are saying there is no evidence that there will be a pandemic situation.

Surely, one has to listen to the World Health Organisation, which does say that the anti-virals would be helpful, in the fact that it can make the difference between life and death. Could the Chief Minister comment on the different attitudes between that of the World Health Organisation, the UK Government, and our Medical Officer of Health.

The President: Chief Minister.

The Chief Minister: Yes, Mr President.

I would not say that there was a difference in opinion. Only this morning, prior to just coming into the meeting, I spoke with the Health Minister, and they were, yesterday, in touch with the UK, and they have secured stocks of this viral drug. Without any doubt, the World Health Organisation and the UK is very much, I would suggest, in line... or should I say the other way, *we* are very much in line with them, and if anything did happen, I have been assured that, in fact, that will be available.

However, I think what we were saying was that there is an awful lot that can be done to prevent this happening, such as the hand washing and the surveillance and vigilance to identify cases, and to be able to respond very, very quickly. So, I can assure Hon. Members that, as of this morning, the Health Minister has been able to assure me that there will be available to us exactly the same as what is available in the UK.

The President: Hon. Mr Singer.

Mr Singer: Thank you, Mr President.

Britain is buying 15 million courses, probably to cover one in four people – essential workers. Can the Chief Minister tell me to what levels our Department are looking to cover people in the Isle of Man. Would it be in the same proportion, and for essential workers?

Whilst the Medical Officer of Health is talking about taking precautions such as washing hands, this virus, if it does come here, is going to be a lot worse than SARS – a lot worse, because human beings have no resistance at all. So, would the Chief Minister not think that, perhaps, the Medical Officer of Health is a bit laid back on this? The whole thing

can just be passed on by sneezing, and you cannot stop that by washing your hands.

Can the Chief Minister assure me – assure the people of the Island – that we will be taking every effort to keep to an absolute minimum any risk of any pandemic that does arise, devastating the Island?

And, in relation to the second part of the Question, could the Chief Minister, perhaps, answer about what is happening to make sure the hospitals and the nursing homes are prepared to deal with such an outbreak.

The President: Chief Minister.

The Chief Minister: Yes, Mr President.

I have many figures about how many people die contacting the virus in Thailand, Cambodia, China and so on, but, certainly, it is something that I can reassure – if that is the word – Members that we will be prepared in the same way as the United Kingdom, because we are discussing that with them, and we will have available to us the same as what is available to the United Kingdom people.

As to the proportion of how much we will have, and how many people can be treated, that is something I do not have the statistics as yet, because only yesterday is when they were actually discussing this. But I would like to suggest to the Hon Member who was asking the Question that it is not ‘laid back’; it is the case that they are working with the UK, as they always do, and I am quite sure that we will be as prepared with our hospitals and isolation.

That is all part of it: being able to respond, to be able to isolate a case, if we did have one. That is more important, it would suggest to me, by the information I have, than having a vaccine, because we do not know if the vaccine or the drugs, in fact, work, because the viruses are different. Until you ascertain which virus it is, you are at a bit of a loss as to how to treat it.

So, I was emphasising the point of the discipline – in hand washing and isolation, being able to respond very, very quickly to that – would be as important as having a drug available.

DHSS Health Promotion post Taking up by appointee

1.2. The Hon Member (Mr Singer) to ask the Chief Minister:

When will an appointee take up the DHSS Health Promotion Post with responsibility for the drugs and alcohol portfolio?

The President: We, then, turn to Question 2. Hon. Member, Mr Singer.

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

The President: Again, the Answer is in the hands of the Chief Minister.

The Chief Minister (Mr Gelling): Yes, thank you, Mr President.

Mr President, the post to which the Hon. Member refers has arisen as a result of a recent vacancy on the staff of the Health Promotion Unit of the DHSS. The post encompassed a wide range of duties, including drugs and alcohol.

The vacancy has provided the opportunity to review the content of the post, having a regard to health promotion, aspects of strategies relating to tobacco, sexual health, and, of course, drugs and alcohol.

Mr President, it is expected that, following necessary approvals, advertisements for the post will be placed in the very near future.

The President: Mr Singer.

Mr Singer: I thank the Chief Minister for his Answer.

The Chief Minister will be aware of the Question I asked in another place, about the success of his Drugs and Alcohol Strategy. Whilst we seem to be doing very well in our promotion to schools and young people, this particular post did involve promotion to people who are older, giving to them the dangers of drugs and alcohol, smoking in pregnancy and congenital abnormalities.

Can the Chief Minister, then, say that the portfolio of the person who will be in this post will be to continue to promote to people *other* than in the schools the importance of anti-drug, anti-alcohol and anti-smoking?

The President: Chief Minister.

The Chief Minister: Yes, Mr President, I think that every time a post becomes vacant, it is a time to review that particular post to make sure that the post is covering the range, in fact, and not exclusively drug and alcohol – but I would say that that will be an important part.

Of course, when you find the situation... The Hon. Member mentions education: well, the lady that was in the post actually has now moved to Education, which was a great loss to DHSS and a great gain for Education! I think the lady will do a wonderful job there.

However, the post, I am now informed, will be in the advertisement during either this month or next month, and, taking on board what the Hon. Member is saying, I still would say the importance of us keeping on top of the drugs and the alcohol problem, as well as the other areas... one does not want to be lost for the sake of spreading it too widely, across too many disciplines.

The President: Mr Waft.

Mr Waft: Thank you, Mr President.

Will the Chief Minister, in his role as Chief Minister, advise us as to whether, perhaps, there will be special promotion of the No Smoking Day tomorrow?

The President: Chief Minister.

The Chief Minister: Yes, well, of course, knowing the Hon. Member's thoughts on smoking, that is, in fact, now part of the Drugs and Alcohol Strategy. It is one of these areas, again, in which you have to be so careful that, in fact, your concentration does not get too wide that you lose the focus on one particular area.

But, certainly, that is now part of the Drugs and Alcohol Committee's remit, and I would say that, probably, the

post that we are now looking at, in the Health Service, will encompass those two – drugs and alcohol; and, in particular, smoking.

The President: Hon. Member, Mr Lowey.

Mr Lowey: Can I ask the Chief Minister...? He mentions that every vacancy that comes should be reviewed. Well, accepting that, in principle, can he assure me that the review does not preclude people who are already in posts, in junior positions, from applying – the progression ladder – and that we do not advertise a job which is outwith the merits of the people who have been in the – I will not use the word 'industry' – service, to promote and get promotion in the proper way?

I am alarmed that, many times, we tend to review the position, and then, suddenly, the criteria become an impossible hurdle for local candidates to get even on the shortlist.

The President: I will allow the Question, Hon. Member, but we are really stretching what is written on the Order Paper. *(Laughter)*

Mr Lowey: It is, but it is...

The President: Chief Minister, you may answer, if you wish, sir.

The Chief Minister: In reply to that, Mr President, yes, I have, also, that concern, because, of course, the job description and the personal specification of the post is under review. Then, of course, it will go the Civil Service for it to be pegged for a grading, and the approval, and then the advertisement goes out. We have to be very conscious of the fact that that post then could be too high a grade for some of the persons that the hon. questioner is asking about. They are, perhaps, just below that, but could have experience of the university of life, rather than perhaps the university of education.

But, certainly, that is something I will pass on to the DHSS, in their review of the specification of the post, that they do not exclude those who, perhaps, could apply.

The President: Perhaps we could return to the Question. Mr Singer.

Mr Singer: I will do my best, Mr President.

It is, really, just to ask the Chief Minister about the timescale, in that the former holder of post left in December, and, therefore, it was known before December that that post holder was leaving, and yet there has been no appointment, no advertising of the job as yet – the Chief Minister has explained why. Could the Chief Minister give me some idea of when an appointment is likely to be made?

The President: Chief Minister.

The Chief Minister: Again, the only assurance I can give the Hon. Member is that I have been told that it is either this month or next month that the advertisement will go in. Obviously, then, the person who will go into that post could very well be coming from somewhere else, where they have to give a notice period.

All I can do is assure the Hon. Member that I will bring this to the attention of the Minister, that there is concern as to the post – and I think everyone is concerned that that post is filled, as soon as possible.

The President: Right Hon. Members, that brings to a conclusion the Questions on our Order Paper.

Orders of the Day

BILL FOR FURTHER CONSIDERATION OF CLAUSES

Coastline Management Bill

Debate resumed

Consideration of clauses concluded

2. Mrs Christian to move.

The President: We turn to Item 2, then, on our Order Paper, which is the Coastline Management Bill. Now, this is for further consideration of clauses.

Members will be aware that we did take clause 1 at an earlier sitting, and so we have reached the position of dealing with clause 2, and schedules 1 and 2.

Now, as it is some time, Mrs Christian do you wish to re-open deliberations, or not, at this particular stage?

Mrs Christian: I can give you a brief summary, Mr President, simply to refresh Hon. Members' memories.

Clause 2 deals with the establishment of coastline management zones, and allows that the Department, through the mechanisms set out in schedule 1, can publicise the intention to create such a zone for the purposes of protecting land from coastal change, or preventing damage to buildings and so on, in such an area.

The clause, also, provides that anyone who interferes with any such works will be guilty of an offence, and liable to a fine, on summary conviction, not exceeding £5,000.

The same clause also introduces schedule 2, which specifically deals with the requirement to bring forward a draft coastline management zone for the Kirk Michael coastal land. Members will recall why that should be. It does set out the procedures that have to be gone through, in respect of that.

I am conscious, Mr President, that, at the last sitting of Council, some concern was expressed in respect of the provisions of schedule 1, with regard to the requirement to notify the public of the intention to bring forward a draft coastline management zone proposal, and I am also conscious that there is an amendment to that schedule to be brought forward, Mr President.

So, I will reserve my remarks at that point, so that we may, perhaps, consider the amendment.

The President: Yes, with that résumé of where we were up to on clause 2, schedules 1 and 2, Hon. Members, I turn to the Lord Bishop.

The Lord Bishop: Thank you. The Clerk is just bringing round an amended amendment.

The President: Oh, right. *(Laughter)*

The Lord Bishop: It simply deletes two words from the amendment that you have before you:

Clause 2 and schedule 1

Page 9: for paragraph 1 of schedule 1 substitute –

'1. (1) Where the Department proposes to make an order, it shall prepare a draft of the order and cause notice of the proposal to be published twice in accordance with this paragraph.

(2) The first publication of the notice may take place at any time after the draft has been prepared.

(3) The second publication of the notice shall take place between 21 days and 28 days after first publication.

(4) Each publication of the notice shall consist of –

(a) publication in two newspapers published and circulating in the Island; and

(b) publication by means of one or more radio broadcasts; and

(c) publication on the Government website for a minimum period of 2 weeks beginning with the date of such publication; and

(d) publication by such other means[; if any,] as appear to the Department to be reasonably necessary to bring the notice to the attention of those likely to be affected by the draft order.

(5) The notice shall –

(a) state the general effect of the proposal and specify the coastal land to which the proposal relates;

(b) name a place where a copy of the draft order and of any map referred to therein may be inspected by any person free of charge at all reasonable hours during a period specified in the notice, being a period expiring no sooner than 6 weeks after the first publication of the notice in accordance with paragraph (4)(a); and

(c) state that, not later than the end of that period, any person may by notice in writing to the Department object to the proposal.

(6) The Department shall consider any objections made with respect to the proposal and, subject to paragraph 2, shall prepare a final draft of the order.

(7) A document which purports to be a copy of a notice published under this paragraph and bears a certificate purporting to be signed on behalf of the Department and stating that the notice was published in accordance with this paragraph on a day specified in the certificate, shall be evidence in any proceedings of the terms of the notice and of the matters stated in the certificate.'

Following our meeting last time, I was in conversation with the drafters, as requested, and you will see, in my amendment, that we have picked up most of the things that were mentioned in our debate, as far as publication is concerned.

In the amendment under 1(4), you will notice the publication in two Island newspapers circulating, publication by means of one or more radio broadcast, publications on the Government website for a period of two weeks.

Then the amendment to the amendment comes in 1(4)(d), where 'if any' is deleted. So, 1(4)(d) reads:

'Publication by such other means as appear to the Department to be reasonably necessary.'

I felt the 'if any' was **(The President: Superfluous.)**

(*Laughter*) – a nice clause by which it meant that you need not do anything. (*Laughter*) So, I asked, as you will see, that is amended, so that ‘if any’ is removed.

There was a general discussion about whether we should actually write to every householder, freeholder, and occupier, and it was felt that this had just slipped over into what you could call colloquially ‘overkill’, (*Laughter*) and that, actually, things might grind to a halt at that stage. It was felt that the notification, as enlarged under 1(4), actually did answer most of the questions that were raised at our last meeting.

So, I beg to move the amendment standing in my name.

The President: Mr Singer.

Mr Singer: I would like to second, because it certainly covers, Mr President, what we talked about.

Just one or two questions, which I... one comment and one question. Under (4)(b) it says:

‘publication by means of one or more radio broadcasts’.

That appears to be... Does that mean they can just put it on the radio once, and that would be considered adequate, and it could be at a time – quarter to eleven at night, or very early in the morning – when nobody hears it. I think, perhaps, that, if this comes into effect, when the time is booked on the radio, it needs to be at a time when the people are likely to hear it.

Under (d), as I said to the Lord Bishop earlier, when it says, ‘publication by other such means’, I think it should be made clear to the Department that, if there is a public notice board in the area – and, if there is a local authority building in the area, they have usually got a notice board – these should be used freely, in order to ensure that people who are affected do see and can read and can comment.

But, other than those comments, I am happy to second the amendment, Mr President.

The President: Does any other Member wish to speak to the clause, either schedule or the amendment?

Mrs Christian: Mr President, can I just say –

The President: Mrs Christian.

Mrs Christian: – I am happy to accept the amendment. I do not think the Department could have any objection to the extended procedure that is set out in this.

The President: In that case, Hon. Members, what I will put to Council is that clause 2, and schedules 1 and 2, to which you have the amendment moved by the Lord Bishop, will become part of the Bill.

So, let us deal first with the amendment, Hon. Members. Those in favour of the amendment, please say aye; and against, no. The ayes have it. The ayes have it.

So, clause 2, schedule 1, as amended, and schedule 2, Hon. Members: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Hon. Members, we then turn to clause 3. Mrs Christian, please.

Mrs Christian: Thank you, Mr President.

Clause 3 considers the necessity to review a designation, if one is made. It requires that the Department of Transport shall review a designation made under clause 2, whenever it is directed by resolution of Tynwald to do so, or otherwise at such intervals as the Department thinks appropriate.

This is introduced into the Bill, Mr President, because we know that coastline changes, and that is the very reason for the Bill. It does seem, then, appropriate to, at least, look back at a designated zone from time to time, possibly, I would suggest at the moment, on the basis of a 10-year period, as has been the practice in the past, where the Department has commissioned reviews of the coastline at that sort of interval.

However, certainly, the Bill does not state that period. I am just indicating what might happen to be the case, or, indeed, it may happen more frequently, if there was a particular problem in any area.

Subclause (2) of the Bill, Mr President, requires that the Department will take into account any evidence of erosion, accretion or inundation, or any subsidence that has occurred since the original Order was made, and that it will take into account forecasts of the rate of movement on the coastline, and information that has become available, at the time the review is undertaken.

I beg to move clause 3 do stand part of the Bill.

Mr Gelling: I beg to second, Mr President. I reserve my remarks.

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

Clause 4, Mrs Christian.

Mrs Christian: Clause 4, Mr President, deals with the regulation of development in a coastline management zone. Clearly, if there is a concern about such a zone, it is important that development is controlled in that area.

So, the clause requires that there be no building, engineering, mining or other operations in a coastline management zone, with some exceptions. These are set out in subparagraph (2): operations carried out pursuant to section 5 – that is, any operations undertaken by the Department of Transport in respect of working on a coastline management zone for the purpose of preventing erosion or inundation.

Secondly, operations carried out under the Town and Country Planning Act can take place. The requirement here is that, where a development plan is made in respect of a coastline management zone, it must have cognisance of the fact that that zone has been declared by Tynwald.

It also allows that any building or structure which was there before the zone was created can be repaired and maintained; and it does allow any other operations by the Department or anybody who has had written advance notice from the Department to carry out work.

It does permit that planning applications can go forward, but they must have cognisance of the fact that the zone has been identified as one which is subject to coast erosion problems.

Finally, it allows that work can go on for the installation of utilities, such as electricity, gas, water, telecommunications, and so on. Again, if anybody carries out works in a zone in contravention of this section, then they are guilty of an offence subject to a fine not exceeding £5,000.

Stop notices can be applied when someone is in breach, and these are applied in the same manner as is applicable under the Town and Country Planning Act, so that the Department of Transport can apply enforcement notices, stop notices and injunctions.

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

Mr Gelling: I beg to second, Mr President, and doing so, could I just, perhaps, ask the mover: does that mean that the zone is excluded from any planning, or is it that the planners take cognisance of the fact that it is a zone? Just that clarification.

The President: Mr Butt.

Mr Butt: May I clarify something, Mr President? Section 4(1) describes 'other operations'. I know it relates to development of the area, but supposing a farmer alongside is farming on the field above, is he excluded from farming there?

The President: Mr Lowey.

Mr Lowey: Yes. Can I just say that, in 4(2)(d)(i), 'other operations undertaken by the Department', it means that the Department can do things which other people are not permitted to do.

I recall, when I was on the Department many years ago, that there was a move – and I think it was approved by Tynwald – that the Department did not require planning permission in harbours. They had exclusion rights, and that was removed, because they thought it was unfair. Here we are giving the Department the right to build, engineer, mine, or other operations in a zone.

Now, I can understand why the Department may need to do certain things to protect, and to actually do the job they are there for, which is to protect the zone, but is the principle there being undertaken? Who oversees what the Department does, or is it just left to the Department to do what it wants, and anybody else who the Department thinks are able to do it, as it does in 2(d)?

Perhaps the mover could explain to me what the reason is why we put in an exclusive right for the Department to operate.

The President: Mr Waft.

Mr Waft: Thank you, Mr President.

I would like to congratulate the Hon. Member on his maiden speech! (*Laughter*)

It was just to clarify the situation with regard to the problems that may occur if there is a difference of opinion as to whether the work should be carried out or not, or whether they are being, perhaps, a little bit unkind to the person who is trying to protect his own property.

And the appeal procedure: is that in place?

The President: Mrs Christian.

Mrs Christian: Thank you, Mr President.

First of all, if I could deal with the issue of planning: if we look at subclause (2), this deals with what can be done within the area. First of all – and I think this is the question raised

by Mr Lowey – it says that operations that are coastal works under clause 5 of the Bill can be carried out. Now, these are the works which we will come to, which the Department of Transport is specifically given statutory power to undertake under this Bill, in relation to coastal works within a coastline management zone. It is specifically related to that, and it will allow the Department to get on with that work without reference to other legislation or powers.

Subclause (2)(b) deals with operations which can be carried out, following a planning approval. If a development plan has been made in respect of the coastline management zone, or the land within the zone, and the plan contains a statement that it has been formulated having regard to the existence of this zone, if you have got planning permission within that constraint, then you can go ahead.

It simply means that the planners have acknowledged that there is a problem with that area. It means that the developer understands that there is a problem, or potentially a problem, and they go ahead with their eyes open.

Now, let us suppose someone wanted to put in a planning application, and we had not got to the stage where a development plan has been produced. The situation there is dealt with under section 4(2)(d)(ii). I think Mr Lowey also referred to that.

Where such a development zone has not been declared, but a developer wants to develop, and a coastline management zone order has been approved by Tynwald, you can still put in a planning application, but the Department of Local Government will be required to notify the DoT. If it is not in a development zone which is a recognised coastline management zone, that applicant will have to write to the DoT to get clearance to go ahead with their development within the zone. That is covered in 4(2)(d)(ii).

So, that covers the interim, where we might be lagging behind in the development planning issues. It does not preclude development – you might be turned down on planning, but you might not. You might get an approval subject to the proviso that you know you are in a coastline management zone, and there are things of which you should be aware and concerned.

With regard to the issue raised by Mr Waft, I am not quite sure why a difference of opinion should arise here, and whether or not there is any power to stop anybody. His question seemed to me, Mr President, to relate to 4(2)(c), which is concerning the operations for the repair or maintenance of a building or structure erected before the building fell within a coastline management zone.

Now, that is a matter of fact. If the building was there before the zone was created, there is no power of the DoT to stop you going to carry out maintenance or repair work. I guess you might get a debate, if it went beyond the definition of repair and maintenance, but as the proposal stands in the Bill, there would not be a power to stop a person maintaining an existing property.

So, I do not quite understand why he feels there needs to be an appeal. If you cannot be stopped, then there is nothing that needs to be appealed against.

With regard to the issue of agricultural land and workings in that land, there are issues here which will be dealt with further on in the Bill. If the nature of the farming in a coastal management area changes from what it was previously – if, for example, it had been grassland and the farmer decided he wished to plough it – and that might affect drainage or erosion, then that is covered by the requirement for the

Department of Agriculture to notify the Department of Transport that a change has taken place. *(Interjection)*

So, I hope that answers all the questions that Members have put, Mr President.

The President: Hon. Members, the motion that I put to Council is that clause 4 do stand part of the Bill. Those in favour, please say aye. Those against, no. The ayes have it. The ayes have it.

Clause 5, Mrs Christian.

Mrs Christian: Clause 5, Mr President, deals with the powers of the Department of Transport. It allows them to undertake work to construct and maintain coastal works within a zone, or on any foreshore, if the Department is of the opinion that it is necessary for any of the purposes set out in section 2(2). That is the one which, fundamentally, states what the Bill is about: protection, prevention, preserving, improving coastal land areas.

So, we get to the situation where we can declare a coastline management zone, the Department does not have to do works, but if it feels it is appropriate to do works on the coastline management zone, this particular provision empowers it to do so.

If the Department needs to take private land into its – I will not say its ‘ownership’... If it has to deal with private land, in order to carry out this work, then compensation may be payable for any damage sustained by the owner of that land. This will be covered by the Acquisition of Land Act, if there is any dispute about the compensation payable. Additionally, when the calculation of the compensation is worked out, it shall take into account, not only the loss, potentially, of land, but the benefit which might accrue to land behind the land which is being worked upon.

In other words, if they are protecting the coastline to prevent erosion, there may be an added benefit in respect of land behind that area, for a particular period of time. That should be taken into account in calculating any compensation which may be payable.

Subclause (5) deals with the definition of ‘coastal works’ in a coastline management zone, and it includes the sowing or planting of vegetation.

I beg to move that clause 5 do stand part of the Bill.

The President: Mr Gelling.

Mr Gelling: I beg to second and reserve my remarks.

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

Clause 6.

Mrs Christian: Clause 6 deals with the notification of development or change of use of land. This clause requires the Department of Transport to give notice to the Department of Local Government and the Environment and to the Department of Agriculture, Fisheries and Forestry – an indication that they have declared a coastline management zone.

On receipt of such a notice, those Departments must notify the Department of Transport of planning applications in the case of the Department of Local Government, and change of use of agricultural or horticultural land within a zone, in

respect of the Department of Agriculture and Forestry. I think this has been happening in respect of Local Government and Planning on an informal non-statutory basis.

Mrs Crowe: A non-formal way, yes.

Mrs Christian: But this provision, Mr President, will require that planning applications which are approved by the Department of Local Government and Environment will statutorily have to be notified to the Department of Transport, if they are within a coastline management zone.

The Department of Agriculture’s responsibility is seen to be a little vague in respect of this. They have to notify the Department, if there is a change in the use of agricultural or horticultural land, if they become aware.

Now, I have asked about this, because the Department of Agriculture do not police the way in which every farmer uses his land. There is no obligation, either, for a farmer to notify such a change to the Department of Agriculture. However, I am told that the Department of Transport are satisfied that they are content to be notified, if the Department of Agriculture becomes aware. It may mean that, if they know of a coastal management zone – and they will know because DoT is obliged to tell them of it – then they will keep an eye on those areas, perhaps, for change of use.

I beg to move clause 6 do stand part of the Bill.

The President: Mr Gelling.

Mr Gelling: I beg to second, Mr President.

My only comment would be, I think, basically, the structure of the soil which the Hon. Member, in moving it, prior to that, has stated, from grass to barley... the erosion could be quite severe. But would that not come up on the June returns, which a farmer puts in, that he has gone from grass to barley, or whatever?

The President and Mrs Christian: Not field by field. *(Interjection by Mr Lowey)*

Mr Gelling: Right.

The President: Mrs Crowe.

Mrs Crowe: As you know, the bones of agriculture are within others in this Council, and not with me. But I was going to ask precisely that: how, indeed, would a change of use... Would a farmer consider it to be a change of use if one year it was fallow, the next year it was ploughed – or indeed, if he dug a great big pit in the middle of it? What can a farmer do, or not, with their land? I am really...

This is terribly vague about... and I would have thought quite fundamental, if you have got a farmer on the top of a headland that might be eroding, and he went out with his tractor, and dug a great big hole, it might exacerbate any kind of erosion. **(Mr Gelling:** Excavation.) *(Interjections)*

I am unsure, but I did feel that this was all... I picked up ‘change of use’; I would not know if a farmer would consider it change of use to go from one particular use of a field to another.

The President: Mrs Crowe, you should know that engineering works require planning permission. *(Laughter)*

Mrs Crowe: Well, I would not have thought –

Mr Gelling: Digging a hole is engineering.

Mrs Crowe: Oh, is it? Right, fine. Well, it is farming to me!

A Member: No, it is not.

The President: Mr Waft.

Mr Waft: Just, again, on my last theme about appealing against any decision by the Department of Transport. They seem to be able to do what they like, according to this – even down to the compensation area. The Department of Transport does that.

It is only the appeals against what is happening in the area, willy-nilly, by the Department of Transport: there seems to be no avenue, at all, for the person in that situation to say, ‘Hang on, can’t I appeal against this?’ It does not appear to be anywhere in here. Maybe I have missed it.

Mr Singer: There is compensation here.

The Lord Bishop: Thank you, Mr President.

I want to carry on, on the agricultural theme. Were there to be an unscrupulous farmer on the Isle of Man – and I know that there are none (*Laughter*) – it would be possible, would it not, to plough up your field on the top of a cliff, in a coastal area, and then claim compensation for the land which you have discovered is slipping away?

I am just slightly worried that we are setting up something whereby the unscrupulous, if they were around, could actually be seen to be coming back to be claiming; whereas, at the present moment, if their field falls into the sea, it falls into the sea. If it suddenly finds itself in the middle of a coastal management area, is there a mechanism within all that?

We might find that it has already been covered, but, if we open this up, in this sort of way, I am just frightened that it can come back on us.

The President: Mrs Christian.

Mrs Christian: Thank you, Mr President.

Can I emphasise that this does not provide for compensation for loss of land. So, if someone, foolhardily, did create erosion of their own land, (**The Lord Bishop:** Right.) in the assumption, then they are making a big mistake.

The only provision here, Mr President, is if the Department of Transport decide to do some works, and want to take in some of the land above the foreshore, in order to, maybe, grade the cliff face, or something of that nature, then they would have to pay compensation for the land that they were taking in; but they would not, even in a coastal management zone, have to pay anybody compensation for land which is eroded.

So, it really then is down to the owner of the land, the farmer or the tenant, to determine whether or not they feel their actions, in that zone, are going to speed up the erosion of the land that they are farming. They are not prevented, as I understand it – perhaps I could ask the learned Attorney General if he could advise – I do not think they are prevented

from changing use from, say, grassland to a crop, but they, certainly, will not get any compensation, if that, effectively, brings about some erosion. One would expect them to make their own judgement about the best management of that land.

The Hon. Member, Mr Waft, has, again, talked about there being no appeal. There is no appeal as such, if the Department chose to take in land for the purposes of protecting a coastline. The only appeal would be the arbitration procedure, under the Acquisition of Land Act, which sets up the procedures for ensuring a fair result.

The Hon. Member, Mr Gelling, talked about June returns and so on, but, as Mr President has, quite correctly, pointed out, they are not so detailed as to specify what crop is in each field from year to year. So, that would be of no benefit in respect of advising the Department of Agriculture or DoT of change of use.

I am happy to take any more questions, Mr President, if there are any, but I think I have answered those points which have been raised.

The President: Yes, I think I ought to make plain that, in fact, the June returns do not state which field gets ploughed, but if a farmer makes an application under the Cereal Scheme, that field which is put into cereal is marked on a plan submitted to the Department. So, they would have some access, if, in fact, an application is made under a Cereal Scheme. Mr Attorney.

The Attorney General: Yes, thank you, Mr President.

Mr President, it seems to me that the Lord Bishop does raise a very important point about the wilful farmer who, perhaps, suddenly decides to plough some land which hitherto has been kept in grassland, and has not caused a problem thus far, but the ploughing operations might cause a problem.

May I, wholeheartedly, support the interpretation applied by the mover of the Bill, Mr President, under clause 5. If that farmer was seeking to obtain compensation, as a result of something which he had voluntarily undertaken, then he would not obtain any compensation under clause 5, because that is reserved to works which are carried out by the Department, itself.

However, it might also be useful, Mr President, to look at clause 4, again. Clause 4(1) tells us what can, and cannot, be done within a coastline management zone, and it is:

‘... no building, engineering, mining or other operations may be carried out in, on, over or under, a coastline management zone.’

As the mover of the Bill has explained, there are various exemptions to that, but, Mr President, it seems to me that those words, ‘building, engineering, mining or other operations’, all have to be read within that context. Ordinary farming operations would not fall within that context. That is a tentative statutory interpretation, that you look to the context of the clause.

So, bona fide farming operations may be carried out in a coastline management zone, and I will, perhaps, volunteer the opinion, although I am, certainly, not an expert, Mr President, that, again, a bona fide change from the use of grassland to cropping would be farming operations, which do not fall within clause 4(1).

But if, inadvertently, that bona fide farming operation

caused erosion, or the slip of the cliff, and so on, the farmer himself could not obtain compensation, because that is reserved to works carried out by the Department.

Sorry, may I just say – sorry, I forgot one other point – in relation to appeals, again, as is so often the case, if Departments are given powers under statute, and they exercise those powers unreasonably, then, under the general law, of course, someone who is affected can apply to the court on a petition of dolence, even though there is no appeal mechanism in the Act.

The President: Mrs Christian, do you wish to add further?

Mrs Christian: Yes, thank you, Mr President.

I thank the learned Attorney for that further interpretation of 4(1), and I did not comment on the fact that it was my understanding, as he has said, that farming operations are not covered by other operations, as specified in that subclause.

Mr President, you have pointed out that if a farmer digs a hole, as some have found to their cost in the past, they have to have planning permission. (*Laughter*)

Mrs Crowe: I ought to know, after two and a half years, I am sorry! (*Laughter*)

Mrs Christian: That matter is answered, albeit to the annoyance of some of the agricultural community. (*Laughter*)

Mr Gelling: When is a hole not a hole?

Mrs Christian: Yes, when is a hole not a hole? If a farmer determined that he wanted to do some drainage work in such land, I think he would then have to, probably, contact the Department of Transport. That would not require planning, but it might be regarded as something of an engineering nature. Perhaps, I would look to the learned Attorney for some guidance on that particular issue.

Of course, erosion may be caused by inadequate drainage, as opposed to wind or sea pressures. There may be agricultural areas where it is felt that drainage could improve matters, rather than making them worse. I do think that drainage by an agricultural undertaking in the coastline management zone may well be covered by this clause.

The President: Mr Waft.

Mr Waft: Just a point of clarification for the Attorney General. He did mention a petition of dolence. It is my understanding – it might be incorrect – that a petition of dolence invariably signifies that perhaps an error has occurred in the decisions that were made, according to the law.

According to the law that has been made here, if they proceed down the route, with no appeal procedure inside there, then the Department will have acted within the law, because there is no appeal procedure there in the first place.

The President: It is a bit annoying, the drill there, at the moment, Hon. Members. So, maybe, we will have to speak up until we can get that under control.

Mr Attorney.

The Attorney General: Mr President, the essence of a petition of dolence is that, if a Department acts unreasonably in reaching the decision it does, then, even though there is not an appeal procedure within the Act, the court can direct that the matter be referred back to the Department, to reconsider, and to take into account, all things which a reasonable Department should take into account.

So, if the Department were to exercise its powers capriciously, in relation to, for example, the building operations, or operations which require planning approval, then, even though there is no appeal procedure, someone who is adversely affected could go to the court and ask them for an Order quashing that decision of the Department.

Mr Waft: Do they take into account there is no appeal procedure there?

The Attorney General: No, they do not take into account the absence of an appeal procedure. The court simply asks itself, has the Department acted reasonably?

The President: Mrs Christian, is there anything further you wish to add, before I put clause 6 to the Council?

Mrs Christian: No, I do not think so, Mr President, thank you.

The President: In that case, Hon. Members, the motion that I put to Council is that clause 6 do stand part of the Bill. Those in favour, please say aye. Against, no. The –

Mrs Christian: I think that was clause...

Several Members: Six.

The Lord Bishop: No, it was 6.

Mrs Christian: Oh, yes, I am sorry.

The President: Clause 6: (*Laughter*) the ayes have it. The ayes have it.

Just as a further comment, Hon. Members, there is, sometimes, the misconception, I think, in the general community that grassland is not a crop. I can assure you that a field of grass *is* a crop.

Clause 7.

Mrs Christian: Clause 7 deals with powers of entry, Mr President.

This clause allows that the Department can go onto any coastal land, in order to carry out, or commission, surveys. Officers or employees of the DoT can, at any reasonable time, go onto any coastal land for survey, for inspections, or for ascertaining whether action should be taken, or for works to be undertaken by the DoT. A person entering land may not demand a right to do so, unless notice has been served on the occupier at least 24 hours beforehand, and he, specifically, shall not enter any dwelling on the land which is occupied.

Subclause (4) provides for offences and penalties, if anyone obstructs a person exercising the powers conferred by subclause (2).

I beg to move that clause 7 do stand part of the Bill.

The President: Mr Gelling.

Mr Gelling: I beg to second, Mr President, and reserve my remarks.

The President: The motion I put to Council is that clause 7 do stand part of the Bill. Those for, please say aye. Against, no. The ayes have it. The ayes have it. Clause 8.

The President: Mrs Christian, please.

Mrs Christian: Clause 8 deals with offences by bodies corporate. Where it is proved that an offence is committed with the consent or connivance of an officer of a body corporate, or is attributable to neglect on the part of an officer of a body, the officer, as well as the body, shall be guilty of an offence, and they may be subject to a fine of up to £5,000.

I beg to move that clause 8 do stand part of the Bill.

Mr Gelling: I beg to second and reserve my remarks, Mr President.

The President: Mrs Crowe.

Mrs Crowe: So, presumably, this applies to a local authority as a body corporate – ‘Was attributable to the neglect on the part of the body corporate’: there are many areas of land which are in the ownership of local authorities, which may or may not be considered to have sufficient maintenance, in order to either preserve them or... We know, in the case of the fire that took place at Bradda, for instance, that the gorse was 10 to 12 feet high, had not been cut or dealt with in any way.

This could be a quite onerous clause for a local authority. No? I am not sure what amount of coastal land is in local authority ownership, but, certainly, there is a large proportion of land on the Island, in such ownership. Just for clarification.

The President: Mr Butt.

Mr Butt: A separate issue, Mr President.

The use of the word ‘connivance’ is a term I have not come across before in legislation. Perhaps the learned Attorney could address that, because I can see how you could have an offence committed with consent, or with knowledge, or by assistance, or aiding and abetting, but I think the word ‘connivance’ might be quite a hard one to prove in court. I do not know.

The President: Mr Waft do you wish to...? (**Mr Waft:** No.) Mr Lowey.

Mr Lowey: Does a body corporate include the National Trust? I can imagine there is an awful lot of land... maybe not in local authority ownership, but there is a lot of coastal land owned by the National Trust. It would be interesting to know whether they are covered by this particular legislation of the corporate body.

Just as an aside, I cannot recall any corporate entity being sued for anything, in the Isle of Man, in the last 50 years.

The President: Mr Gelling.

Mr Gelling: Mr President, I was just looking at the ‘connivance’ bit, and the way I would read that would be that

they were tricked into doing it, by somebody masquerading as somebody that they were not. I can understand the Hon. Member’s concern as to how you prove that, but...

Mrs Crowe: Connivance.

Mr Butt: Just a phrase I’ve never heard before. I didn’t know...

The President: Mr Attorney, with the dictionary in hand, I do not know whether you wish to add to that or not.

The Attorney General: Well, thank you very much, Mr President. I do rely on *Chambers 21st Century Dictionary*. I would have volunteered a definition of ‘connivance’, but I think that there are two aspects of connivance, as appears from the dictionary. First of all, if you connive with someone, you conspire or plot with them.

On the other hand, there is an alternative meaning, from the Latin *connivere*, which means to blink or shut the eyes. It seems to me, Mr President, that probably that is what is intended here: (**The Lord Bishop:** Yes.) that if you agree that something should be done which proves to be an offence, then you, as an officer, are equally liable with the company.

But, also, Mr President, if you shut your eyes to the obvious, so you are reckless about it, then, clearly, also, you are going to be guilty of an offence, under that section. So, I think that is what it means.

Mr Lowey: ‘Connive’ is better than ‘the Nelson touch’, I suppose, in legal terms.

The President: Mrs Christian.

Mrs Christian: Thank you, Mr President.

I thank the learned Attorney for his assistance in defining ‘connivance’. (*Laughter*)

I am afraid I do not know whether or not the National Trust would be defined as a body corporate. Again, I would look to the learned Attorney for some guidance on that. (*Interjections*)

I would emphasise, though, in respect of the remarks of the Hon. Member, Mrs Crowe, that this deals with offences under the Act, and there are not many offences defined under the Act. (**A Member:** No.) I think the first one is in subclause (2), and that is: if someone interferes with coastal works that are planned, or in the course of construction, or carry out some unapproved action in relation to work which has been done by the Department of Transport, then they may be in breach. If, for example, a body corporate owned land designated in a corporate zone and did not comply with the provisions of the Act, then they may be in breach.

But it does not imply – I think, as the Hon. Member was thinking – that, if a local authority, for example, owned land in that area, it somehow obliged them to maintain it. This Act does not require that they do that. It simply says that the local authority, for example, should not interfere with any works which the Department of Transport may be doing under the provisions of the Coastline Management Act, if it comes to be an Act.

So, I think we need to emphasise that this clause deals only with offences under this Act.

I beg to move, Mr President.

The President: The motion, therefore, Hon. Members, that I put to Council is that clause 8 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 9, Mrs Christian.

Mrs Christian: Clause 9, Mr President, is the interpretation. It deals with words such as 'coast', 'coastal land', 'coastal subsidence', 'coastline management zone' and 'the Department'.

I beg to move clause 9 stand part of the Bill.

Mr Gelling: I beg to second, Mr President.

The President: Lord Bishop.

The Lord Bishop: Can the mover tell us whether the fact that the title of the Bill is 'Coastline Management', and the 'coastline' itself is not actually defined in this, will cause any problems as the Bill goes forward.

The President: Mrs Christian.

Mrs Christian: The Lord Bishop did indicate that he might have some concern about this, and I have referred to the draftsman within the Department, who advised me that, if a word is not defined, it is the normal dictionary definition which applies. (*Interjection by Mrs Crowe*)

I think we would all presume that 'coastline' is that area where coast and land adjoin, and, to that extent, I am satisfied. Whether the Council is satisfied that we do not need a definition, I do not know! But I would just confirm that 'coastline' in this context is what we all think it means and, therefore, I would ask Members to accept that, and not require a definition of 'coastline' in the interpretation.

'Coast' may be a little different, and I do think that that needs definition, in terms of foreshore, cliffs and banks of an estuary. However, that is in the hands of Members, if they are not satisfied with the definitions in the interpretation clause.

The President: I suppose 'coastline' would actually be the high water mark, would it not?

Mrs Christian: No.

The Lord Bishop: It depends what the dictionary says, Mr President. (*Interjections*)

The President: Okay. Well, there we are, Hon. Members. The motion that I put to you is that the interpretation clause, that printed at 9 in your Bill, do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

We turn then to clause 10 and schedule 3.

Mrs Christian: Mr President, this deals with the amendments of other legislation. Clause 10, through the mechanism of schedule 3, provides for amendment of the Town and Country Planning Act, requiring the Department of Local Government and the Environment to take account of the designation of any relevant land as a coastline management zone, under the Town and Country Planning Act.

Schedule 3, accordingly, inserts a new subsection (2A) into section 2 and in section 3 of that Act of 1999.

These amendments to the Town and Country Planning Act give effect to the relevant provisions of clause 4. That is the clause which deals with the regulation of development in the coastline management zone.

I beg to move clause 10, with schedule 3, do stand part of the Bill.

Mr Gelling: I beg to second, Mr President.

The President: The motion is, Hon. Members, that clause 10 and schedule 3 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

We take clause 11.

Mrs Christian: This deals with statutory indemnity, Mr President.

Subclause (1) gives an indemnity to the Department, any member, officer, employee or agent of the Department, in respect of damages for, or in respect of, any act or matter done or omitted to be done, in good faith, in the exercise, or purported exercise, of any function conferred by the Act, or any Order made under the Act.

However, subclause (2) gives a proviso that it does not apply to prevent the award of damages made in respect of any act or omission, on the ground that the act or omission was unlawful as a result of section 6(1) of the Human Rights Act – that is, the part which deals with the acts of public authorities.

I beg to move clause 11 stand part of the Bill.

Mr Gelling: I beg to second, Mr President.

The President: Mr Lowey.

Mr Lowey: As my good friend, the new Member, Mr Butt said, this is a new one on us. I have not seen this 'statutory indemnity' put into legislation before. I wonder why we are now putting it in.

And I notice that there is reference to section 6(1) of the Human Rights Act 2001. Am I right that we have not got the Human Rights Act yet in being?

The President: Mrs Christian.

Mrs Christian: My understanding is that the Isle of Man does not have its own Human Rights Act, but we are covered by the Human Rights Act, by virtue of being a signatory to the European Convention.

I have looked, again, for guidance from Mr Attorney on this, but citizens of the Isle of Man can already appeal to the European Court about Human Rights matters. What we are in the process of doing is enacting them in our own statute book, and that has not all been completed yet.

Nevertheless, we do recognise the provisions of the Human Rights Act, in terms of being signatories to the Convention.

The President: Can we just clarify that, Mrs Christian. I am happy for you to continue, but the reference in clause 11(2) to the Human Rights Act 2001, section 6(1), is reference to our own legislation.

Mr Lowey: Yes, it doesn't say 'UK'.

The President: That is the point that I would wish to make plain, so that there is no confusion there. That reference will be to our own Act.

Mrs Christian: Mr President, there have been some Appointed Day Orders in respect of our own Act –

The President: That's right.

Mrs Christian: – bringing into effect some aspects of the Human Rights Act in the Island.

The one, which, I think, is relevant, is that laid before Tynwald on 20th February 2001, which brought certain provisions of the Human Rights Act 2001 into effect on 1st March 2001, and I think it is because of that, Mr President, that we need to have cognisance of section 6(1) of that Act, which deals with the acts of public authorities, and that has been brought into effect by the Appointed Day Order in 2001.

The President: Mr Lowey.

Mr Lowey: Could I ask the Member in charge of the Bill, on the first part, if we have a statutory Act, which says 'Human Rights', you can appeal on the Human Rights side, but we are putting in an indemnity clause, perhaps she would like to... Is this now going to be standard practice in most of the law?

If it is, then I think we ought to highlight it, here and now, that:

'The Department shall not, nor shall any member, officer, employee or agent of the Department, be liable in damages for...'

Here we are, opting out of our responsibilities, I would have thought. If we have illegally or improperly... then I think that the Department should be liable, just like any other body or agency that operates under the law. Why should the Department be granted an indemnity for illegal activities or wrong...? Well, that is what it says.

Mrs Christian: Mr President, I do not think it... It, certainly, would not cover illegal activities. (**The President:** No.) What it does say is that members are indemnified in respect of exercising functions under the Bill, in good faith. Now, if you prove that something was done, not in good faith, then there is no protection, as I understand it.

I am not honestly sure whether, or not, statutory indemnity exists for other Departments. I believe that it does in certain areas, and I do not think that this is unique. However, again, I look to the learned Attorney for some guidance on that.

What it does do is, quite specifically, say that this indemnity does not apply in respect of this provision in the Human Rights Act, i.e. the Human Rights Act will override this indemnity, if the Human Rights Act, in that specific area, is breached.

So, I think it is a reasonably balanced measure of protection, both for the officers and for the individuals who may be affected by the Act.

The President: It may be helpful to Council if Mr Attorney could, at this stage, tell us, in fact, what section 6(1)

of the Human Rights Act... what that reference is actually to. I think you have the book, sir.

The Attorney General: Yes, thank you, Mr President. Mr President, section 6, (1) of the Human Rights Act 2001, which is our Act, provides, under the heading 'act of public authorities':

'It is unlawful for a public authority to act in a way which is incompatible with a Convention right'.

Mr President, that section makes it perfectly clear that public authorities may not act in a way which offends a human right which is set out in the Convention.

It is, I think, Mr President, important just to realise or to remind ourselves of the relationship between our Act and the European Convention. As Hon. Members will know, the European Convention has applied, as part of Manx law for many, many years, to the extent that individuals on the Island have always been able to go to the Court in Strasbourg to complain that their human rights have been offended. Of course, the well known case of that was in relation to birching, several years ago.

When our Human Rights Act 2001 was passed, the whole purpose of that Act, if I can adopt Mr Blair's words for one moment, was 'to bring human rights home'. In other words, it was not necessary, any more, for individuals to trail to Strasbourg, but they could actually pursue their human rights and breaches of their human rights in our own Courts. That is the policy.

Now, of course, again, as Hon. Members will know, our Act is not in force fully. In fact, it has only been brought into effect in a very limited way. I very much regret I have not got chapter and verse as to the Appointed Day Orders which have been made, but it is my understanding – and, again, I stand to be corrected here, Mr President – that, actually, section 6 is not in force – I could be wrong – but, so far as I am aware, section 6 – which is a very important section, as I read out – is not in force.

But what clause 11 of the Bill is saying is that, if this Bill goes through and becomes part of our law, as, hopefully, it will, the indemnity which is provided in clause 11(1) is subject to section 6(1), which will become effective very soon, as I understand it – it is the Government's policy that our Human Rights Act will become fully enforced, with the passing of some other legislation very soon.

So, the net result of this will be, Mr President, that there is a statutory indemnity, but, to the extent that it prevents an award of damages being made for breach of a human right, then the indemnity will not have any effect whatsoever.

Perhaps, again, if I can give an example, if the operation of the indemnity would prevent someone claiming damages because his right to the use of his property, and the freedom to enjoy his property, had been offended, then the indemnity would not have effect.

Mr President, the Hon. Member, Mr Lowey, has raised an important point. Are we going to see this sort of indemnity appearing frequently in our legislation? The fact is, Mr President, we do have indemnities of this kind, already, in relation to, for example, the Banking Act, I think, and the Financial Supervision Act, where regulators have to carry out their work of regulation. Provided that they act in good faith, they will not be liable, nor will the FSC be liable, for their acts and omissions.

It is not uncommon to have that sort of indemnity but, again, with a saving clause that people's human rights should not be deprived as a result of the indemnity.

Mr Lowey: I have not seen it, maybe, in there, but it is not written in this clause fashion before. This is the first time I can recall – there may be something up with my recall – but I cannot recall a clause actually written in, indemnifying, spelt out in this language.

The President: Mrs Christian, is there anything you wish to add to this?

Mrs Christian: No, thank you, Mr President.

The President: In that case, Hon. Members, the motion which goes to Council is that clause 11 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 12, Mrs Christian.

Mrs Christian: Clause 12, Mr President, deals with financial aspects in relation to the Bill.

It provides that Government shall provide sums, in the normal way, through monies provided by Tynwald, if money is needed to be spent on a coastline management zone. In effect, this clause means that the Department of Transport, if they wished to carry out work in either creating or managing coastline areas, will have to budget for it in the normal way. They will have to indicate what the costs and the extent and nature of the work is, and come forward, through Tynwald, have monies voted, either capital or revenue monies, from time to time, in respect of the works which they want to undertake.

I beg to move clause 12 do stand part of the Bill.

Mr Gelling: I beg to second, Mr President, and reserve my remarks.

The President: Mrs Crowe.

Mrs Crowe: It was, perhaps, once again, just in the drafting, that there *shall* be monies paid out, provided by Tynwald, for any expenses of Government under this Act. It is not: 'The Department will petition Tynwald for monies in furtherance of this Act.'

It is just the way... It is not a case of there being any doubt about it: there *shall* be monies paid out, provided by Tynwald.

I do not know, maybe, that seems to me, also... Mr Lowey is picking up on little drafting terms, but that seems to me it would normally, I would have thought, have been something like, 'the Department will petition Tynwald to provide funds in furtherance of this Act'.

Mr Gelling: Again, Mr President, it is just the way I noted the Hon. Member, in reading it, put money in at an earlier stage than, actually, it appeared in the line. 'There shall be paid out of money provided by Treasury' is the point made by the mover, and that is that it has got to go before Tynwald, Treasury – the normal manner. You cannot do it without money having been sanctioned by Tynwald.

The President: Do you wish to add to that, Mrs Christian, or are you happy?

Mrs Christian: If I can just respond to it, Mr President, Yes, I can see, perhaps, that the emphasis laid by the Hon. Member, Mrs Crowe, is a little different from the way in which I had read it, but I can understand her point. (**Mr Gelling:** Yes.)

However, I think that it, simply, means that we would not seek to get monies from any other source in the Department of Transport. It would not be raised by rates or any other mechanism, but Tynwald monies will be used for this work.

Again, I would emphasise that it is my understanding that this will be done in the normal way, in that the Department would plan for its expenditure, and come forward for revenue or capital in relation to the work it wants to carry out.

I have nothing further to add, Mr President.

The President: It is all in the emphasis of the words: 'There *shall* be paid out of money provided by Tynwald' or 'There shall be paid out of money *provided* by Tynwald'. (**A Member:** Yes.)

Hon. Members, the motion which I put to Council is that printed at 12. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 13, Mrs Christian, please.

Mrs Christian: Thank you, Mr President.

This deals with the relationships between this legislation and other legislation and activities, and provides for savings for other legislation.

Subclauses (1) and (2) ensure that the Bill adds to the existing powers of the Department of Transport and does not detract from them, and it preserves the power of the Department to acquire land by compulsion. The Bill is not circumventable by existing legislation, but special regard is given to certain legislation which is set out in subclauses (3) to (5).

Those subclauses require the Department of Transport to comply with section 36(2) of the Wildlife Act, as regards having a duty to have regard to the conservation, enhancement of the natural beauty and amenity of the countryside, protection of the wildlife habitat and the conservation of flora and fauna and geographical or physiological features of interest. That is also covered by the Manx Museum and National Trust Act 1959.

Similar attention shall be paid to the specific responsibilities of the Manx Museum and National Trust, under the 1959 Act, by keeping a balance between the DoT functions under the Bill and conservation and protection of archaeological objects and national monuments, as well as the flora and fauna provisions. The DoT shall, as far as is consistent with its functions under the Bill, exercise those functions in a manner that is least likely to prejudice fishing grounds in the territorial waters.

I beg to move clause 13 do stand part of the Bill.

Mr Gelling: I beg to second, Mr President, and reserve my remarks.

The President: The Lord Bishop.

The Lord Bishop: I understand subsection (4) 'shall endeavour to secure a reasonable balance'.

I think it is something that I would wish on nobody, when it came to the business of trying to secure an eroding

coastline that was digging into one of the major features of the Island's history. I wonder if the mover would like to comment on how she feels that the Department might cope with that tension.

The President: Mrs Christian. (*Laughter*)

Mrs Christian: Mr President, with some difficulty, perhaps. (*Laughter*) However, in creating its conservation zone, one would assume that it may have knowledge of flora and fauna and ancient monuments within that area.

However, it may not. Coastal erosion may reveal certain archaeological remains, and should there be difficulty in relation to its functions being exercised, vis-à-vis Manx Museum and National Trust, and if no agreement were secured, I guess its recourse would be to Tynwald.

The Lord Bishop: Good, that is fine. Thank you.

The President: The motion I put to Council is that clause 13 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

And, finally, short title and commencement clause 14, Mrs Christian.

Mrs Christian: Thank you, Mr President.

This cites that the Act will be the Coastline Management Act 2005, and that the Act shall come into operation on such day as the Department of Transport may order. Different days may be appointed for different provisions and for different purposes.

I beg to move clause 14, Mr President.

Mr Gelling: I beg to second, Mr President.

The President: The motion, Hon. Members, is that clause 14 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

That concludes the clauses stage of the Bill.

BILL FOR FIRST READING

Tribunals Bill

First Reading approved

3. Mr Singer to move:

That the Tribunals Bill be now read a first time.

The President: We now turn to the Tribunals Bill, which is down for First Reading, Hon. Members, and is in the hands of the Hon. Member, Mr Singer.

Mr Singer: Thank you, Mr President.

The purpose of the Tribunals Bill is to ensure that administrative tribunals in the Isle of Man are constituted in compliance with the European Convention on Human Rights and, in particular, article 6(1) of the Convention, which gives all individuals the right to a fair trial.

The enactment of this legislation will facilitate the eventual bringing into force of the Human Rights Act 2001.

Any proceedings before a court or tribunal in which the civil rights and obligations of a person are an issue must fulfil two conditions, if the Human Rights Convention is to be complied with.

The first condition is that the court or tribunal must be independent of the parties in dispute and impartial. The Bill seeks to achieve this in three ways: firstly, by creating a new body independent of the executive to be called the 'Appointments Commission', and which will appoint members to the various tribunals.

Secondly, in addition to a tribunal being appointed by the Commission, any person serving on a tribunal must be independent of the parties and matters being considered by the tribunal, otherwise there is a significant danger that the tribunal could be accused of bias.

Therefore, the Bill specifies that Members of Tynwald and of the Statutory Boards are excluded from being tribunal members and, further, that where a tribunal member has a material conflict of interest or duty, he must declare it and, if appropriate, withdraw from the proceedings.

Members of tribunals must also have security of tenure during their period of office, to ensure that they are not summarily removed or sidelined. The Bill, therefore, provides that tribunal members will be appointed for a minimum period of three years.

The second criterion is that, as a general rule, the hearing and judgement must be held in public and within a reasonable time. Once the Human Rights Act 2001 is brought into force, if these conditions are not fulfilled, the proceedings may be held to be unlawful under section 6 of the Act.

It is recognised that adequate training is necessary, to ensure that tribunals exercise their discretion during the proceedings in a manner compliant with article 6 of the Convention, so that situations giving rise to concerns regarding impartiality can be avoided. Also, the chairman of the tribunal must be an experienced legal practitioner of at least seven years' standing.

Thus, the Bill provides for the Treasury to pay for training for tribunal members, including attendance allowances.

The Bill makes a number of consequential amendments to other legislation, under which existing tribunals are appointed. The number of Income Tax Commissioners has been increased to eight, to facilitate the scheduling of meetings of the Commissioners. The opportunity has also been taken to adopt recommendations in the Hutton Report, into the death into Dr Kelly, so that principles of fairness are applied to people called as witnesses before commissions of inquiry.

Mr President, I beg to move the First Reading of the Tribunals Bill.

Mr Gelling: I beg to second, Mr President, and reserve my remarks.

The President: Mrs Christian.

Mrs Christian: Thank you, Mr President.

One can understand the reasons for the introduction of this Bill and the Island's wish to comply with the Convention on Human Rights.

However, I do feel that it is difficult, in a small community such as this, to get complete independence, and we are moving, I suppose, to a stage where we feel we are getting one degree more independent than, perhaps, we are

in certain areas at the moment.

In practical terms, though, it does concern me that we are imposing a requirement for legal experience, in the case of a chairman, of a number of years. Certainly, I think we do have to have some concern that the functioning of tribunals can, from time to time, be so slow as to almost be detrimental to those who are appearing before them!

I am pleased to see a provision in there that... Whilst the hon. mover expressed, as a security for tribunal members, that their period of tenure should be specified at three years, I think that it is a good thing that it is specified at a particular term and then that change may be made, if it is seen not to be working very efficiently. There are two faces to that particular issue.

I do have concern, too, that we are going to have to have more tribunals than we have had in the past, and I do have concern as to where we are going to find all these legally qualified people who are prepared to sit as tribunal chairmen. (**Mrs Crowe:** Absolutely.) We have had difficulty in the past, in this particular area, and I am not quite sure whether or not we are going to have similar difficulties going forward – increased difficulties going forward.

I do have some scepticism, if you like, about the costs which are enclosed in the Bill. Certainly, it outlines that there will be a need to have expenditure on the Appointments Commission, and training of tribunal members will involve additional costs which have not been ascertained. I suspect that that might be not insignificant.

Not only that, it does not specify that tribunal members will be, no doubt, paid for their services, apart from the training, when they are sitting on those tribunals. Now, that may not be attributable directly to the Bill; it may be attributable to other measures which require tribunals to hear cases. But I do not think that these figures truly reflect the additional costs which are going to be incurred.

The President: Mr Waft.

Mr Waft: Just on page 14, Mr President, with regard to the Mental Health Act, and the tribunal set up to progress that: it does state exactly the people who should be on the tribunal, and they do have the possibility to discharge a patient held under the Act.

I just wondered, in the specifications as set out – the three medical practitioners – I would have thought there would need to be at least one who has experience in the psychiatric field of medicine. I think that would cover that end somewhat, because we have heard of some disasters happening in another place, with regard to the discharge of psychiatric patients into the community, perhaps too early.

It is just a cover that they might be able to comply with. I wonder if the Hon. Member had any comments on that.

Mr Lowey: My only comment is along the lines, really, of Mrs Christian's, and also to note that, whilst this Bill has been introduced by the Council of Ministers, the Bill is dated 2003 – unless I am mistaken, we are in 2005 – so, that means it has had a long gestation period, and I just wonder why it has taken so long to get from the Readings in the Keys to this Council.

It is part of the price, I think, that we have to pay – and we have to recognise – when we were dealing with Human Rights legislation: we knew there was a cost element to it. I regret... I say 'regret' – that is life. If you want it to be

independent, we have got to keep these divisions in place, and that comes at a cost.

But, as far as I am concerned, it seems a rather long gestation period, and I wonder if there is any particular reason for it. So, therefore, I am posing the question to the mover: maybe he could tell me why it has taken so long to get to us.

The President: Mr Attorney.

The Attorney General: Thank you, Mr President.

Mr President, I would just like to make a brief comment, possibly in defence of the members of the legal profession on the Isle of Man. I think that the record will show, as they say, that members of the Isle of Man Law Society and, in particular, the senior members, have been very willing to come forward, Mr President, to act as chairmen of tribunals, and often not for profit.

They, I think, much appreciate that they do have a role to play, in relation to the working of tribunals, and I have every expectation that this will continue – whilst acknowledging, of course, that there is a point about delay and expense, but, generally speaking, I would like to think that members of the Law Society do play their role, in respect of this important function within society.

Could I also make the point, Mr President, that this Bill does not create any new tribunals, as far as I am aware, and I think we will find, on analysis, that most of these tribunals will have legally qualified chairmen, anyway. It is just really emphasising the point, but I think it is a point I would like to make in defence of advocates.

The President: Mr Singer to reply.

Mr Singer: Thank you, Mr President.

I thank all Members for their comments. As far as Mrs Christian's comments were concerned, I understand them. I think some of them were echoed by Mr Lowey, and their personal comments as to what is in the Bill and whether it is workable, et cetera. I think Mrs Christian will, obviously, have to take into account the way she votes on the Bill: if she believes it is not going to be workable, then she will have, perhaps, a different decision to make.

The Keys – the other place – obviously think it is workable. The Council of Ministers thinks it is workable. All the expenses – all have been approved by Treasury. I have not got any figures for costs. I am not sure that they know what the costs will be for training. It depends on how many people are appointed to tribunals. So, I cannot really answer that.

I take Mr Waft's point about the Mental Health Bill. That is, certainly, something I have not looked into. I will try and find out some information. I understand what he says about the need for a psychiatrist, and why he is saying that, and I will try and find out some information on that. It may be necessary for him to move an amendment, if he can do that, to the effect that one of the doctors is, in fact, a psychiatrist. But I will take some advice on that.

Mr Lowey asks about the length of adjournment. The reason for the length of adjournment is that it went to the other place, and it was then – I think the term would be – withdrawn, because the Bill has been subject to lengthy consultation between the Departments of Government, the Attorney General's Chambers, the Isle of Man Trades'

Council, and further legal opinion was also sought from Mr David Anderson, QC – not our David Anderson! – in consideration of the ability of public sector employees being appointed to tribunals.

The original Bill was that no public sector employees on the Isle of Man could be appointed. After the consultation, it has been agreed that they *can* be appointed, subject to them having no direct interest in the case. That has been the reason for the delay, and there is a new clause inserted in the Bill which now covers that point.

I think, Mr President, at this stage, that covers everything that has been asked. So, I move the First Reading of the Bill.

The President: Hon. Members, the motion I put is that the Tribunals Bill 2003 – it will be 2005 – be read for a first time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Hon. Members, that brings to a conclusion our formal Order Paper this morning. We will adjourn to the sitting of Tynwald commencing on 15th March, thereafter to 22nd March.

**IN COMMITTEE OF THE WHOLE COUNCIL
(IN PRIVATE)**

**Summaries of Proceedings in the Council of Ministers
(January 2005) considered**

The President: Council will now sit in private.

The Council sat in private at 12.11 p.m.