



**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, 10th May 2005**

**Present:****The President of the Council (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 M W Butt, Mrs C M Christian, Mrs P M Crowe, Hon. A F Downie, The Chief Minister (Hon. D J Gelling),  
 Mr E G Lowey, Mr L I Singer and Mr G H Waft,  
 with Mrs M Cullen, Clerk of the Council.

**Business transacted***Page***Orders of the Day**

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*The Council adjourned at 1.02 p.m.*

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## Legislative Council

*The Council met at 10.30 a.m.*

### PRAYERS

*The Lord Bishop*

[MR PRESIDENT *in the Chair*]

## Orders of the Day

### BILL FOR THIRD READING

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

1. Mr Waft to move:

*That this Bill be now read a third time and do pass.*

**The President:** Now, Hon. Members, dealing with our Order Paper, we have the Third Reading of the Mental Health Bill, and it is in the hands of the Hon. Member, Mr Waft. Mr Waft, sir.

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

The Mental Health Bill 2005 makes various amendments to the main legislation in the Mental Health Act 1998.

In the main, Mr President, as Hon. Members are aware, the Bill sets to re-enact, with some changes, part 6 of the 1998 Act, to allow patients, subject to detention in the Isle of Man, to be transferred to other relevant territories, and vice versa. This recognises recent law and ongoing changes to mental health law, in other parts of the United Kingdom.

It also makes it an offence to assist or harbour a mental patient who is absent without leave in another part of the British Isles. Clause 2 specifically re-creates the offence in the Island of knowingly assisting such a patient to leave the country, or assist them to remain absent without leave. Reciprocal provisions exist, or will exist, within the relevant territories.

Provision is also made to remove the procedure where a defendant is ordered to be detained under Her Majesty's pleasure, when found not guilty by reason of insanity, by jury or on appeal. Instead, this legislation allows the court to issue a hospital order that authorises the patient's detention in hospital, under the Mental Health Act 1998, the main legislation, as part of their custodial sentence.

The legislation also ensures compliance with article 8 of the European Convention on Human Rights, by allowing patients to apply to court for the appointment of an acting nearest relative.

Compliance with article 5 of the European Convention on Human Rights is also ensured, by reversing the burden of proof in proceedings before the Mental Health Review Tribunal, whereby the burden of proof is reversed, and

requirement made that the detaining authority has to prove, to the satisfaction of the Tribunal, that the patient continues to meet the criteria for detention.

The legislation also increases the number of medical and lay members of the Mental Health Review Tribunal.

Mr President, this is a very useful legislation, and it makes amendments to main mental health legislation, to take into account recent legislative changes elsewhere. It tidies up some anomalies, resulting in the bringing in of the Human Rights Convention.

It gives me pleasure, Mr President, to ask that the Mental Health (Amendment) Bill 2005 be read a third time and do pass.

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

**The President:** Hon. Members, the motion that I shall put to Council, then, is that the Mental Health (Amendment) Bill 2005 be read for a third time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Hon. Members, the Mental Health Bill has completed its passage, then, in this assembly.

### BILL FOR SECOND READING

#### **Constitution (Legislative Council) Bill** (Reprinted as Constitution Bill 2004)

Second Reading suspended to consider in committee

2. Mrs Crowe to move:

*That the Constitution (Legislative Council) Bill be read a second time*

*(The Constitution (Legislative Council) Bill was amended and reprinted by the House of Keys as the Constitution Bill 2004.)*

**The President:** Hon. Members, we turn to the Constitution (Legislative Council) Bill. It is in the hands of the Hon. Member, Mrs Crowe, and it is down this morning, Hon. Members, for Second Reading. Mrs Crowe.

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

We have before us the Constitution Bill 2004, sent to us by the Keys and today is the day for progressing the Second Reading.

Mr President, I beg to move the Second Reading of the Constitution Bill 2004, and move on to the details of the Bill.

The Constitution Bill, as we discussed, last week, in depth, is to require all Members of Tynwald to be subject to popular election and to make new provision for the constitution of the House of Keys and the Legislative Council, and for connected purposes. The Bill has been, as I say, sent to us by the House of Keys, in the form it is, at the present time.

There were a number of comments last week, I think, that were all dealt with and fully discussed. Mr President, as you know, we have fully discussed, in committee, many ways in which this Bill could be amended.

At the present time, I have no amendments before me. I have not had any indication of what amendments may, or may not, be moved by such Members.

So, at this time, Mr President, I beg to move that the Constitution Bill 2004 have its Second Reading.

**The President:** Mr Gelling.

**Mr Gelling:** Could I ask, Mr President, at this time, a point of, perhaps, clarification or direction from yourself?

With the Second Reading in Legislative Council, culminating in the clauses, would it mean that, by passing the Second Reading, we automatically, then, go into the clauses?

I find it rather difficult, because Mr Attorney, I am quite sure, appreciates that we have not been able to get amendments to the Bill, which we had indicated we would bring forward this week, due to the difficulties Mr Attorney has in his Chambers.

Therefore, I just wondered whether or not, or at what time would it be, that we would, perhaps, suspend further parts of the Second Reading, or can we take the Second Reading and then take the clauses as a separate entity altogether, at a later stage?

It was just direction from yourself, sir.

**The President:** Yes, I would take the Second Reading as a separate measure, and then move on to the clauses, individually. So, I mean to say, at that particular stage, in normal circumstances, we would move from Second Reading, in this Chamber, straight on to clauses.

If it is the wish of Council that, in fact, that position be altered, well, I am in Council's hands, but, at the present time, the position is that the Hon. Member in charge of the Bill, Mrs Crowe, has moved the Second Reading, and we should formally deal with the Second Reading of the Bill.

Now, Mr Gelling, was I taking it that you were happy to second that we continue with the Second Reading, or are you just making that as a comment?

**Mr Gelling:** No, I would second the Second Reading, Mr President, inasmuch as it would allow us to have a debate and discussion on the situation.

But, as I say, as long as I am clear in my mind that clauses can then be suspended until such time as we are equipped with the amendments required.

**The President:** I am happy with that, Hon. Members, but we must deal with it stage by stage, and the next stage which I want to put to you, formally, would be the passing of the Second Reading of the particular Bill.

Mr Singer.

**Mr Singer:** I am willing to support the Second Reading, as well, Mr President, on the grounds, as I said last time, that I believe there should be popular election.

But I do believe, as I said last time, and my view has not changed, that the main contents of this Bill are totally unworkable.

It was after the last Reading that I sent a three line letter to Michael Boyde, asking if he could draft me amendments, which, first of all, said that there should be eight constituencies, and, second, that the election takes place two and a half months after a general election, that is

halfway through the period of the life of the Keys.

The third point was that the referendum was to take place before the Bill is passed, because I, certainly, cannot see the point in passing a Bill, and then the public reject it.

All was well, until I got a reply back from Michael Boyde: in reply to my three line letter, I received amendments of nine pages, most of these being consequential – (*Interjection*) Yes, on the fact that we were taking out reference... there would be no reference to the Keys, any more. It would just purely be this Legislative Council.

Having received these, I did ring and make an appointment to see Michael Boyde, because I felt these were really complicated, and I wanted to talk with him, about these, before I presented them to the Legislative Council. Unfortunately, as you know, Michael Boyde was ill and had to cancel my appointment.

So, I would feel very loathe to present these to this Council, not having had a briefing.

**The President:** Hon. Members, if we could, I would like, at this stage, if Council would bear in mind... and I understand where both the last two Members are coming from in relation to clauses stage. I am perfectly aware, and can understand that.

But, I think, if we stick to the principle of the Bill, and deal with the Second Reading of the Bill, at this stage, it is fairly evident, Hon. Members, that Council wish to progress it, but, at the same time, I am very well aware that there are going to be a number of amendments coming forward.

**Mr Singer:** With your forbearance, could I just make one more point? I think I have to make it here, not to waste people's time.

If there was an indication from the Legislative Council, today, that they wish to see the Bill, as it is printed – 32 Members go forward – then there would be no point in me going any further with these amendments.

If they indicate that they would like to see a number of constituencies, whether it be one or four or eight, then I would have to go and have the briefing on this.

**The President:** Well, the opportunity to be putting all that forward now is at the Second Reading stage when, in fact, you are debating the principles of the Bill. I am quite happy for Council to take some time, as we are sitting here, in public, this morning, to discuss the principles and decide. You may, then, get a feel from Council, as to how we wish to play it.

Hon. Member, Mrs Christian.

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

I do think it is important that we go through the Bill, as it is printed, albeit not clause by clause, necessarily, but to explore the various changes which are set out in it.

In so doing, I want to speak to the Second Reading, because the first thing it does is dissolve the Legislative Council, and come up with this proposal that, in future, we have a 32-Member elected Tynwald.

Now, that is a very fundamental change to our constitution, an absolutely fundamental change. As a principle, that might be reasonable, and one would then accept that principle, go on to explore how, in future, a unicameral system of Government would operate, as opposed to the way in which we function now.

However, I believe that that is a step too far, when we look back at why this Constitution Bill, or any Constitution Bill, has come forward in the first place. The reason purported to be behind the necessity for such a Bill has been declared to be a wish to have an elected Legislative Council.

However, that particular provision goes beyond that. It does not deal with an elected Legislative Council; it deals with a single body in Tynwald, which is distributed in different ways, to deal with different aspects of Tynwald's work. So, therein, Mr President, we have the first fundamental change, and I really think that that is not what the public, who have expressed a view about the Legislative Council, had been anticipating. I am not sure that, in another place, they have thought through... and it is not that easy to foresee all the consequences of that, but there are consequences which, I believe, they have not thought through.

So, then we go on, having set out that principle, they talk about the way in which elections for Members of Tynwald shall be held. Now, they, indeed, will require changes in constituencies and boundaries – in itself, not an easy matter to resolve. I think, in my time in the Hon. Court, there has been one Boundary Commission, and Tynwald rejected its proposals.

So, we will be coming back, at the end of the day, for the existing Tynwald structure to vote on new boundary principles, which is not going to be easily achieved, in my view.

Then, in the Bill we have... Well, my comment by paragraph 3(4), which deals with Tynwald considering the recommendations on the boundaries, is 'Ha!', because it is a very easy statement, but it is not going to be a matter which is going to be easy to resolve, in terms of Tynwald Members accepting what the new boundaries are.

Then, Mr President, the Bill goes on to determine how, in future, this newly elected 32-Member body will function, and the proposal from another place is that we retain the name of one branch, the Keys. Now this, remember, is a single unified body. We retain the traditional name of the Keys, but we demote the Legislative Council to being a legislative committee.

Now, I, personally, object strongly to that. I do not have any objection to determining what the functions of these bodies will be, but why throw...? And I am not opposed... We know that the Legislative Council over decades – longer than that, of course, too – has been subject to change, from being the power house to being the revising chamber. So be it. That is the way it has evolved.

But to take away that element of our history and heritage, and change the name to a legislative committee seems to me simply petty.

How, then, are they going to resolve who shall be on this Legislative Committee? The Bill sets out who is going to be a part of Tynwald, and that there will be a legislative committee, which, broadly speaking, has the same number and constitution as the Legislative Council does now, in that we have our President presiding – although it does not say that the President will preside. (**Mr Lowey:** Silent.) It says that the President will be a Member of the Legislative Council.

Our Lord Bishop retains a membership of this committee, as does the Attorney General, and there will be members elected by Tynwald.

So, having all just been elected by the public, all with equal mandates, they are going to have an election to choose

eight of them to sit in this body, whose function will be very different, in terms of their Bill, from the function of the House of Keys.

Now, having just faced the electorate, which of those Members are going to say, 'I am now going to give up my function as a House of Keys Member, and go on to the Legislative Council, which will have a different function, in terms of its role in handling legislation'? Given the experience that we have all witnessed, over recent years, of the difficulty of Members of the House of Keys electing anybody simply to come to *this* body, one can imagine the difficulty they are going to have, in electing eight Members from the 32-Member body, to come to this particular Chamber or committee.

Do Members have to accept nomination? That is not covered in the Bill. (**Mrs Crowe:** No.) Are they obliged to do so? What happens if they refuse to be nominated, (*Interjection by Mrs Crowe*) and you have a dysfunctional committee, because it cannot be constituted? (*Interjection by Mrs Crowe*)

Are you then left with a small legislative revising committee here, and a larger body dealing with it in the first instance, which cannot be simply the Keys, because who are the Keys, in that case? Who are the Keys, in that case, when you have not determined which eight Members shall come to this committee?

Mr President, that is just one of the difficulties I see in pursuing, first of all, the 32 elect... If there was a determination that Tynwald be a unicameral system, with 32 elected Members, and it then evolved into two legislative branches, which deal purely with the scrutiny of legislation, that could have been, perhaps, more understandable, provided both of those committees had equal functions.

But this Bill specifically states that the legislative committee has different functions from the House of Keys. So, I think that is one of the first things that undermines this principle of a unicameral system.

Mr President, it goes on, further, to deal with elected Members, and, if there are vacancies, how they shall be dealt with. I think there are mistakes in the numbering, actually, of the schedules, in relation to some of these clauses, but that is a drafting issue.

There are issues in here, I think – if I can just find it – that where there are vacancies, replacements will be elected by the Keys – the total principle that they have been trying to get away from!

Now, which way do they want it? Do they want an elected Chamber, to meet their expressed will, and what they are purporting to claim is the view of the public, or do they not? I do not think that those two things can sit comfortably together.

Mr President, there is also a provision in the Bill that a person can be elected Chief Minister or an elected Member of the Legislation Committee. Now, in my view, if all Members are elected equally by the population, as is proposed here, why should you be defining where the Chief Minister shall sit? Why should he not be in either branch, if those branches are dealing with legislation? (*Interjection by Mrs Crowe*)

Now, I can understand it, possibly, because they are seeking to define the role of the legislative committee in a slightly new way, considering that it has to have scrutiny of European legislation and so on, which it is not defined as its function now, and, therefore, they are trying to create a slightly different legislative function for the Council. Maybe,

that is the reason why they feel that the Chief Minister cannot sit in this Council.

But I go back to the principle of: having stood for election equally, out there, under the terms of this Bill: why do you then lose a part of your mandate, as it were, when you move to the legislative committee?

Mr President, I think that deals with, in a broad aspect, my concerns about the Bill, without me saying how it should be, but I think that, whilst many of us will support the Second Reading, it is simply to ensure that what has been passed to us, by another place, gets some consideration and amendment.

Now, we have heard that there are proposals coming forward to amend it, and I fear that we may have so many amendments, ourselves, we will get into the same sort of difficulties as they experienced in another place, where there was no general agreement about the way forward.

The Hon. Member of Council, Mr Singer, has indicated what his view is. I know there are other views as to whether or not the Council should be elected on a constituency basis, or on an all-Island basis, whether or not its function should be determined to be a purely legislative function.

I think the principle which we would all agree is that we will not oppose the election of Council Members by the public.

Now, I think this Bill needs amending to achieve that, but without this fundamental overthrowing of what the current constitutional position is. If we simply take one step at a time, and say that Council Members shall be elected by the public...

But I do think, even then, we have to explore what the knock-on effects of that are, in terms of the relationship between the Council and the Keys, because, if you have a public mandate, then you may argue that you have as much right, in terms of policy and finance, as any Keys Member has. Then, we would come to the issue of how voting would take place, actually, in Tynwald, and whether or not our function should be to vote as one body, or whether it should be as it is now, with Council and Keys voting separately.

The other issue, too, I think, is the timing issue of elections. Obviously, in the proposal before us there would be one election every five years, and, therefore, there would be potential for major change, at that time.

I accept that there is a potential for major change at the moment, in any House of Keys election, but at least, at the moment, we have an element of continuity with Council Members, because of their elections being staggered with House of Keys elections. The new proposal is for a single 'one-stop shop': you have your election, and then distribute Members as between those committees.

But I do think it is fundamentally flawed, in that it does not say that people are obliged, if nominated and voted for, to take up their function in the legislative committee.

Apart from that, I think it is a step too far, going to propose a unicameral system, when all the people, generally, want is to have an opportunity to elect Council Members.

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

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

We are first faced with the scenario of: the Member moving the Bill has, unfortunately, left us, and then we are faced with the situation where the legislative draftsman has gone off ill.

I can well understand the legislative draftsman, if he is going to be faced with amendments coming from all directions, without having an overall view of where we are coming from, as it were... If we put an amendment through in one area, as has been mentioned, it affects all different parts of the Bill, and if we are all putting in separate amendments, to try and cover our own idiosyncrasies, if you like, for how we approach the Bill, and then we approach the legislative draftsman, I wondered whether it is essential – perhaps the Attorney might tell us – for one particular legislative draftsman to do it all, and whether Michael Boyde is going to be off for some time, or is it just a temporary absence? (*Interjections*)

It is going to be a bit difficult, when he is going to be faced with different people who are going to go home, perhaps, and draw up these different amendments, because, with the best will in the world, we do not always know how they are going to affect other parts of the Bill or, indeed, other Bills, at the end of the day, and the legislative draftsman is going to have his work cut out.

I agree with most of what the last Member has said. We have to get some basic principles, as to what we are agreeing with to start with, so we give some guidance to ourselves, as to what our proposals will... how they will fall within the Members, as well, because, if he is going to draw up draft amendments, or amendments, where they are going to fall, at the end of the day, there are going to be so many amendments put in, we are going to rehash the whole of the Bill. I do not think, really, that is what we want to do.

We want to get a Bill that is workable, Mr President, and I think that talking through these things – this Second Reading is the obvious time to do it – is the way forward.

There have been pointed out the deficiencies in the Bill, with regard to the election to legislative committees, and whether we want a committee at all, or be it a Council, et cetera, et cetera – this has to be talked out. So, the mover will, perhaps, then have some idea as to what is in the mind of the Members.

So, I think that is all we can bring into mind, at this stage of the Readings of the Bill.

Thank you, Mr President.

**The President:** Hon. Members, if I may, I think Mrs Christian summed it up right, in relation to our committee work, and when we sat, last week, dealing with the First Reading, that there seems to be a general consensus amongst Council that there is no objection, in anybody's mind, with regard to the popular election of the Legislative Council. That appeared not to be a problem.

Now, I understand where Mr Waft comes from, when he says that an amendment has a consequential amendment, and I think Mr Singer found that out, very quickly, by proposing a simple amendment, and there were, ultimately, a number of consequential amendments to his amendment, which stretched up to nine pages, or whatever.

If we can stick to the principles of the Bill, and what we are prepared to accept, in relation to Mrs Christian's pointers, whether we will accept popularly elected... then, if we could talk through to some extent, to find out which is the move, for constituencies and/or all-Island position. Then, the other point, I think, which Mrs Christian made, which Council Members will, ultimately, have to take on board, is the voting strength – however it comes out in the future, if the body is to be popularly elected, the voting of the Keys

and the Council in Tynwald Court.

Mr Gelling.

**Mr Gelling:** Again, just testing your patience, Mr President: how do we achieve that, within this political forum?

In other words, we cannot put, 'I propose a motion that we all agree that they should be democratically elected,' and agree on it. Then – if we could do that – move on to: 'Can we agree that it should be  $x$  number of constituencies?' – how do we do that within the forum of the Second Reading?

**The President:** Well, I think it has come quite strongly to me, in fact, that there is no dissension amongst Members that the Council could be popularly elected. I have that as a strong feeling.

I do not yet have, from Members, a strong feeling as to whether they are giving an indication as to whether it should be an all-Island election or, in fact, a constituency-based election. If we could get that, maybe, out of our hair, then we could start to realise which way the amendments were going to be fed in.

Now, I have to go back, Hon. Members, when we were in committee, we already had prepared from Mr Attorney – with thanks to Mr Attorney and his legislative draftsman – amendments for the possibilities, with consequential amendments to it, of all-Island, a four-seat constituency or an eight-seat. We already have that basis. I do not know which of those we are, actually, looking at, formally, to start with.

It is not easy, but I think the best way that we can deal with it, at this particular stage, is to keep talking. Mr Downie.

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

I think, by and large, the debate thus far does indicate that we all accept the principle that Members of the Council should, from time to time, receive a mandate from the public. I have never had a problem with that, and I think it is very healthy to see that we are, actually, sitting down discussing that, today.

Where I think the Bill does provide more questions than answers is how this will fundamentally work, because you do need to have some separation, and I had some difficulty, in the Keys, accepting that you would have a group of people elected to Tynwald and then, straight away, you were going to say to certain people, 'You are going to be inferior to the rest of us. We will give you a job where you will be scrutinising secondary legislation, scrutinising European legislation,' and virtually that was it.

I think, when we get to a situation where Tynwald is elected as one body, there are some personalities which are going to be much stronger than others, and I think there will be great difficulty in filling seats in the Legislative Council, unless there is a fairness.

I have always held the view that we should try, if possible, to have a similar system to what we have at present, but go back to the principle where, from time to time – and not when everybody is out for a general election – we have a system where Members of the Legislative Council should have to stand for an election.

One of the amendments I have been working on is to try and find a way where a person could, actually, be elected by the Keys to go to the Legislative Council, do a term in here, and then they would have to go out and face the public, and get a fresh mandate, so that there is some continuity.

But, I think, what is uppermost in the minds of the public, at the present time, is that we seem to be going along this road, but we have had a system that has worked exceptionally well, for many years. When we talk to other parliamentarians, our system is very easy to understand. In fact, I would suggest, in some quarters, it is the envy of some parliaments, because our system has stood us in very good stead, over the years, and, like other Members have said, perhaps, the only thing that is wanting in the system is that, from time to time, we need to find a vehicle where the Legislative Council can take a mandate from the public.

But I think, if we go down the road that the mover of the Bill in the Keys was trying to push us towards, we will lose all that continuity and experience. Longevity and political awareness will be diluted to a certain extent, I think, and you will probably finish up, if the Bill went through in its present form... a lot of new Members who were elected, who were, perhaps, not as politically astute as some of their fellows who had done one or two terms in the old Keys, would finish up in here and we would not have the depth of knowledge and experience that is present in the present House.

Now, just to move on slightly, I think the Bill, in its present form, will totally undermine the present system that has stood us in good stead. Where we start to go into boundary changes and you look at the demographics of the Isle of Man, 65 per cent of the population living in the eastern sector: for years, there has been an argument that there should have been two more seats in the eastern sector, but I think people have settled their differences.

But this legislation, in its present form, will require a Boundaries Commission, major changes and upheavals, and some of the actual seats that we have had with us for many years will just disappear, as will the old traditional boundaries and areas that people have represented for some significant time.

My concern is that the way the Bill is drafted, at the present time, it does make this committee – what this Council would be, a committee – it does really make us second-class citizens. I think that is a major problem, and one of the main flaws in the Bill.

But I am prepared to sit down, and go through it, and try and find something that is acceptable, and something that will work, because, at the end of the day, I think we are really playing with the future parliamentary system of the Isle of Man, and if we do not get it right, we are going to store up some real major problems.

Thank you, Mr President.

**The President:** Hon. Members, one of the principles which comes from our discussion on this, which is an inevitability, taking up on Mr Downie's point, which I think Mrs Christian mentioned in her very first comments, it is the dissolution of the Legislative Council, and the election of the Legislative Council via the 32-Member elected Tynwald.

As I said before, Hon. Members, I get the feeling that the Legislative Council has no problem over being popularly elected as the Legislative Council. Maybe the problem is being elected by all 32, and then subdivided.

Lord Bishop.

**The Lord Bishop:** Speaking to the Second Reading, it has been very interesting to see Hon. Members misreading what the Constitution Bill actually says, talking about a 'legislative committee', and not what it actually says, which

is 'Legislation Committee'. I think that demotes the thing even more.

'Legislative' means you actually do something active; legislation means you sit down and look at what other people have done.

So, I think it is a double demotion. It is demotion to a committee, and then the second bit of the demotion is, 'Well, we are actually going to take away what you are doing at the moment, and give you something else to do, which is actually just going through the paperwork.'

So, I think, if you are, therefore... Are you going to be willing, having been popularly elected by a constituency, or all-Island, with that mandate, to say 'Right, now I am demoted to this particular thing'? So, I think it is a double whammy that comes in with that, and it is interesting that we have slipped into still calling it 'legislative', when, in fact, it says 'legislation'.

The other thing, following the Hon. Member, Mr Gelling, trying to get the business of what we are for and what we are against, what the ground rules are, Mr President, would it be possible for us to go into committee, but in public, to discuss that, so that we are actually able to say, 'Here are the points on which there is general agreement within the Council'? I can see us getting into such a muddle when we get to the amendments that we will pass down even more of a hash than this is.

**The President:** Mrs Christian.

**Mrs Christian:** Mr President, if that requires a seconding, in terms of suspension of Standing Orders to go into committee, which we, normally, automatically slide into, I am happy to second that, so that we can, perhaps, come back, time and again, on particular issues, because I think it is important that we try and get it right.

**The President:** Mr Lowey.

**Mr Lowey:** Mr President, the Bishop is absolutely right. Mrs Christian really encapsulates, very well, my views on the existing Bill.

Why did I vote against it in the first place? It is not workable, as printed, and how, therefore, can you support something that is not workable? Now, our aim, at clauses, is to try and make it workable.

But I come to the point that this particular bit of legislation... The Constitution is important. It is more than important: it is vital.

I do believe that... I heard today, on the radio, that this was a constitutional advancement, this Bill. Well, I thought I had better have a look at the Bill, because they could not have been reading the one that I have been reading about! (*Laughter and interjections*) That is number 1 – and most people say, 'Ah, well, he would say that, wouldn't he?'

Ask yourselves what would happen, if you turned this Bill down, if you rejected the Bill. It is an alternative. It could go back to the House of Keys. Can anyone sitting round this table tell me that they would rush to say this has got to be passed, exactly as it is,? Even they recognise that it is an unworkable piece of legislation that they have sent us. That is a fact.

But I do believe in the premise that, when you are in political quicksand... Mrs Christian put her finger on it. They have drifted into this in the Keys, because – and, again, I

want to remind the press, when they accuse us of holding this Bill up – it was with a Committee of the House of Keys for 15 months, and they could not even agree, and, in a minority report, I believe they said there would have been five individual reports.

That is the fact. This is where this Bill has come from. And so it was put to the House of Keys in a form of way that has finished up as a political zebra – and you know a zebra is the result of a committee. (*Laughter*) Well, this Bill is a result of this coming actually on the floor of the House, and everybody adding a bit.

Mrs Christian is right when she says we are going to be adding a bit, to try and get it right. I think it will need, if anything, radical surgery.

Mr President has asked for a lead, if you like, my views... I can give you 1,001 reasons why I should vote against it.

What I am saying to you, here and now, is that – I think Mr Downie said – there is a general feeling now that we would be popularly elected. That is nothing new, Mr Downie. It was in 1999-2000, we agreed that principle round this table, presented the House of Keys of the day with that – we would have all been elected in 2001. And who turned it down? Not the Legislative Council, but the other Chamber.

So, there is nothing new in that. I am up for that, no difficulty in accepting that.

The practicalities: it is long on detail, this Bill. You are quite right, Mr President, when you say, if you move an amendment in one end, there will be a whole series of consequential amendments. It is long on detail, short on specifics, and the constitutional... This is when you play around with the Constitution. It will have ramifications that are not seen.

We are sowing the seeds of our own downfall. I come back to what I said at the very start: the Constitution is too important to be playing around with, and if you are going to move and advance it in a realistic way, it should be done after careful consideration.

Now, I do not believe that this Bill, even if it has major surgery applied to it, is the answer to what I would call the constitutional progress of this Island.

I am going to oppose the Second Reading. I will work very hard with my colleagues, to try and make something of it, when we come to deal with the clauses, but I cannot vote for something which I know to be abjectly flawed, and will not produce...

The Bishop said we are falling into the trap of using the word 'legislation' and not 'legislative'. That was introduced not by accident; it was done by design and, thereby, I think you find the key to what this is about, and Mr Downie... I think it is a bit of personal pique and jealousy, on some parts, but that is not important. The thing that is really important is that we do not...

If our enemies outside this Island were trying to do a job of knocking us, they could not do a better job than see this Bill here, being debated by us, and who was it introduced by? Ourselves.

We are doing ourselves damage, I believe, and if we are dealing...

I am reminded: when I got up this morning, Mr President... I am not the best dresser in the world and that is obvious to the world, but I grab a tie, and I grabbed this tie. This tie is a Tynwald tie, and it was presented to me by the late Tom Faragher, our colleague in Rushen, on my first day in Tynwald. On it is the ship of Tynwald – it is on the flag

– and I have got a feeling we are on a ship at the moment, the ship of state, and I think the crew are below decks. I think the captain is on the bridge, with his spyglass to his blind eye, and I think there need to be a few mutineers on board that ship, otherwise that ship is going to head onto the rocks, and we are not going to be the beneficiaries.

I think the people of the Isle of Man and our standard of living are going to be affected. It is the heel of the hunt, that is what it is about. It is about creating a stable working relationship, so that business can get on and produce the goods that we politicians can then spend on all the various things that we want to.

And I know I am going a long way round it, Mr President, but the reality is: this legislation will do nothing – absolutely nothing – for the people of the Isle of Man, but court disaster and you should not be courting disaster.

**The President:** Now, Hon. Members, I think the Lord Bishop was proposing, in effect, the suspension of Standing Orders, supported by Mrs Christian, that, in fact, we go into public committee, to discuss principles of the Bill, to see, in fact, if that way round – if we suspend the Second Reading of the Bill, and we go into a public committee session – we can, by motion across the assembly, get some better feel of how Members, by majority, are going.

If that is the will of the Council, I am perfectly prepared so to do, and, maybe, the easiest way of doing that is to make a suggestion to you that, if that is your wish, well, then, we could deal with pieces, piece by piece, and see if there is an overall agreement.

So, Hon. Members, I would put to you that the Council suspend the Second Reading, at this particular stage, and sit, in public, as a committee, to discuss principles, as follows:

*that under Standing Order 22(5) Council do resolve into a committee of the whole Council.*

Those in favour, Hon. Members, please say aye; against, no. The ayes have it. The ayes have it, Hon. Members.

### **Constitution (Legislative Council) Bill (Reprinted as Constitution Bill 2004)**

#### **Various principles agreed in committee**

Motions made from the Chair:

- *that the principle of popular election of members of the Legislative Council be agreed.*
- *that the Legislative Council should be popularly elected to a tricameral parliamentary system.*
- *that Members of the Legislative Council be popularly elected on a constituency basis.*
- *that the functions of the Legislative Council remain unchanged.*
- *that the election of all Legislative Council members should take place at the same time.*
- *that the election of Legislative Council Members should take place halfway through the life of the Keys.*
- *that clause 8 of the Bill be deleted.*
- *that the reference to the referendum in Clause 13 requires amendment.*

**The President:** The suspension of the Second Reading takes place, as of now, and we will continue with our Constitution Bill, only we will continue, in public, to see, in fact, if, this way round, we can get any unanimity.

Now, Hon. Members, I am quite happy to allow discussion to flow backwards and forward across the table, but, perhaps, the first thing that we ought to decide on, if we are going right back to basics, is whether or not the Legislative Council should be popularly elected. Let us deal with that matter first.

Mr Gelling.

**Mr Gelling:** Yes, I agree with that, Mr President, and I think we are quite right, in that what you have now done is to enable us to take the principles. I think the only way we are going to go forward on this is take exactly what you have said, because it is obvious that everyone agrees we should be democratically elected.

But if I could just take it a little further, I think, also, to give the legislative draftsman a guidance as to what we are trying to achieve is going to be extremely important, because I do not think any of us will be able to follow on the adjustments to a Bill that could be affected by one move in an early clause.

But I would like to go a little further, Mr President, and say that, if we can accept the principle that the Legislative Council remains as it is, and that, in fact, we are democratically elected, on an all-Island basis, at the midpoint of the general elections, and if that could be achieved, I am quite sure that the public in the Isle of Man would be quite satisfied with that.

That is the simplest way, the easiest way, and, I think, if that Bill could be achieved, in that particular principle, that the Legislative Council remains the same, people know what the Legislative Council then does, we are democratically elected, on an all-Island basis – which is different from the way the Keys are elected, so it makes the Legislative Council different – and you get people, then, that will be elected to there, because of their experience, perhaps, having been in the Keys for many years – maybe even if they are retired, have stood down at the previous election – that they find that the Legislative Council is a place they would like to serve and have another input, and then we could achieve a Bill that would go back to the House, in a way that it will work.

I think we would have achieved something then, and would have achieved the very thing that the people only ever speak to me about, which is about being elected. I think, if we could achieve that, we would have done a great job, this morning.

**The President:** Mr Singer.

**Mr Singer:** Can I agree with Mr Gelling in what he has said, although I would strengthen it slightly.

Mr Gelling said we should agree that the Legislative Council remains as it is. I think we should be a bit more strong, and say that we propose that we remain a tricameral parliament. I think that makes it a little bit stronger, in retaining the present structure.

The other points, the election: yes, we agree it is popularly elected, when the election takes place, and, then, we have to decide how many constituencies, but we agree it should be election on a constituency basis. I think that is important.

If I could make just one point, Mr President, that

was mentioned before, about the argument about the two committees, one being inferior to the other. As I understand the argument of the supporters of this Bill, they would not be inferior. They would be happy for us to send back to them, 'Oh, we would like two 16-Member committees,' but the fact is, even so, we are then *destroying* – and I use that word deliberately – the Keys, we are destroying the Legislative Council, whatever you choose to call them.

As I said last time, calling one a 'Committee of the Keys' is like putting a plaque on the wall, and calling the chairman 'the Speaker' is like putting a plaque on the wall: there would not be the Speaker, because there would be no difference, then, between the Speaker and the President, as far as the committees are concerned.

They are saying that two committees are only going to deal with legislation. Therefore, I think both committees are being devalued, because they are saying all the work will be done in Tynwald. But I think that that is something we must reject, and I would agree with what was said, and I think, maybe, those four principles are the principles we should vote on, here, to know that we are all working in the same direction.

**The President:** The first one I was wanting to sort out was whether or not we were going to support popular election. Mrs Christian.

**Mrs Christian:** Yes, Mr President.

I think that, if we accept the principle of popular election, we then need to go on to explore properly the consequences of that, and the definition of what each Chamber will be doing, in our retained tricameral system.

The proposal in the Bill was, of course, to move to a unicameral system.

**The President:** Sorry, Mrs Christian. It is going to be difficult, and I appreciate it is going to be difficult, but once we get down the road of maintaining a tricameral system...

Let us deal with it step by step, if I can, to try to make it a little bit easier. If we have motions in front of us, as we are now in committee, it will actually, in my book, make it easier. What I have to decide, or what I think the Council has to decide, is: are we prepared to support popular election? That is, to my mind, a simple yes or no issue.

Now, you can go from there, if you support popular election – and I have got a feeling that you do, as I have already indicated – if you support it, well, then you are into the business of saying 'Do we support a tricameral system?' If you are supporting the popular election, do you want a 32-elected Tynwald or, in fact, do you just want to elect the Legislative Council, because that, again, is a major principle?

So, if I can put to you, are we in... Mr Waft, you are getting anxious. (*Laughter*)

**Mr Waft:** Thank you, Mr President. We are going to debate this forever if we do this. Can we just take, as you have indicated, one step at a time, and then we will sort it out from there? Otherwise, the legislative draftsman is going to have an awful headache.

**The President:** I would like that. Those in favour of supporting popular election of the Legislative Council, in

whatever form. (**Members:** Agreed.)

Right, so we have agreed it, in fact – (*Interjection*) I know, but we have suspended the Second Reading, so that we could do this publicly, in committee, Hon. Members, and, if we do it sensibly, we will work our way through it.

So, we have now reached the position where the Legislative Council are happy with popular election.

Now, I suppose the next question is: do we support a 32-elected assembly and division, or do we wish to have it just elected to the Legislative Council, popularly?

Mrs Christian.

**Mrs Christian:** Mr President, I think you could take either route, but not in the terms of the Bill as it is placed before us, because, if you go for 32 elected Members, I believe that they have to have equal rights and responsibilities, in the committees that they work on. I could see it being divided into two legislative committees.

However, I think that is a step too far, and, whilst, in the Bill which is before us, there is a defined function for the Legislative Council, which is slightly different from the current function, I have no problem with that even. I think you can determine what the function of this Council is, in whatever way Tynwald wants to determine it, but it has got to be clear to the electorate what they are electing people for.

Now, if you take the 32-Member elected body, as proposed in the Bill, they are being elected on an equal basis, and then they are being subdivided in a manner which their electorate have no input into, and their elected Member may well be put on the *Legislation Committee*, (*Laughter*) without any view from the public about whether that is how they want them to function.

I think it is much better that the public elect them for the role which is clearly defined. (**Mrs Crowe:** Yes.) (**The Lord Bishop:** Hear, hear.) So, in those terms, Mr President, I believe that the election should be directly to the Legislative Council.

The way in which the Legislative Council functions is, probably, something we should come to later. I do have a sympathy with the view, in this Bill, that the two bodies, the two chambers which deal with legislation, should get back to focusing on legislation.

They have strayed, in recent years, in another place, into extensive time spent on Questions, which came in, in the beginning, for emergency Questions only, and has drifted into this extensive Question Time that they have now. I do believe that there was merit in this Bill, in that it said that those issues should be dealt with in Tynwald, as they used to be.

So, to that extent, I could see some definition in a new Bill saying 'Well, both the House of Keys and the Legislative Council, as defined, will deal with legislation,' but I guess we cannot control what happens in another place, but, for our own part, I believe that the Council should be directly elected as a Council, with a defined function.

Now, whether that is an extended function, we can determine later, in terms of its role in scrutinising European legislation.

**The President:** Mrs Crowe.

**Mrs Crowe:** No, I was just going to say: as we are trying to do this little by little, could we then have the Council's agreement, or not, that we are voted upon as...? Can we

stop using the word ‘committee’ now, if that is the way we seem to see an amendment being brought forward, that we are looking for the election now directly to the Legislative Council? Is that...?

**The President:** I am trying to sort out, at the present time, Hon. Members, whether there is any unanimity for election just to the Legislative Council, or whether there is any feeling of unanimity towards the election of all 32 to Tynwald.

Mr Downie.

**Mr Downie:** I think what we have got to explore is an option to provide a workable framework. To get over this problem about having a 32-elected Tynwald, I think we should try to explore an option of having separate elections, possibly at the time when the Board of Education are elected, so that there is a differential, as it were, so that there is an option on the table, when discussions take place again, for either/or.

But, I think, where I have the most difficulty, with the 32-elected body, is this separation of inferiority and superiority. (**Mrs Crowe:** Yes.) If we are all democratically elected, we should have all the same job description, the same rights and privileges, as it were.

When you actually read what it does say in the Bill, as it is with us, at the present time, it is discriminatory and there are Members who are elected who will not want to serve in an area of the parliament which has too much of a different role and, perhaps, not a high enough profile for them.

You cannot take human nature away, and people come into politics to get things done. I cannot see that particular area working very well.

I do think it is worthy of us to look at a separate body, as it were, and a separate elected organisation, but I would also think, in my own view, it is very, very important to have the continuity. There needs to be, built into the framework, a way in which a person can either stand as a Member of the House of Keys, or election to the Legislative Council, where he does not have to resign his seat. If he wants to make the transition, and he does not get elected, he does not lose out in there, and also there is provision, from time to time, when there is a vacancy in the Legislative Council, to move over.

Now, if he does move over and he is elected by the Keys, I would have thought it be right and proper for that person to actually have a term in the Legislative Council, and then have to go and offer themselves up for election again, so that we are getting the continuity. We are getting people in who have experience, people (*Interjection by Mrs Crowe*) who have gained a wealth of knowledge.

Really, that is what the long-term viability of this body is all about. It is having that length of experience and knowledge, and being able to use it, and fully understand all of the issues that are debated in the other place, (**Mrs Crowe:** Yes.) so that when we look at issues we have got that depth of knowledge.

**The President:** Hon. Members, with respect, we keep widening out onto the next points (**The Lord Bishop:** Hear, hear.) and this is going to be the difficulty.

Perhaps it was myself who was wrong. I was trying to lead Council to take a view as to whether it should be 32 elected or just elected to the Legislative Council. Mrs Christian picked that up, quite well, when she said that the Legislative Council should be elected directly, but with a defined role, and perhaps I was wrong, in trying to reach that point too quickly.

Maybe, I should have picked up on Mr Singer’s point of whether there is an element of unanimity, within Council, that we should still maintain a tricameral system, and that would get you... if I have led you down that road, it may get us past the business of whether or not we should be elected on a 32-seat basis to Tynwald Court.

So, perhaps I could just see if anybody has got any particular views, now, on a tricameral systems, in favour or anti.

**Mr Lowey:** Yes, I think a tricameral position... You see there can be a very strong case made, Mr President, for one chamber. There can be. It has already been floated and did not get much... But there is a strong case for one chamber.

But if we are going to retain a bit of history, which we are all proud of, I would have thought, then I think it is worth saying the traditions and the history of the Isle of Man are worth having. I genuinely believe they are. July 5th does mean something – or it means nothing. It means something to me, anyway, as a Manxman.

Now, the point I want to come to is: I cannot disagree with anything that the Chief Minister said. Do we elect it? Yes. Do we want it elected to the Legislative Council? I would go along with direct election to the Legislative Council. I believe that is quite clear.

Mrs Christian made the point that the people should know exactly what they are electing them for. That would be in an ideal world, yes, but people in the Isle of Man still do not know the difference between the House of Keys and Tynwald Court. Mind you, there are Members of Tynwald that do not know the difference between the House of Keys and Tynwald Court – and I say that with due deference. That is true.

But the people outside do not know the difference. They do not know the difference between Keys... So, if we are going to start now and try and say, ‘But, before we get to this stage, we are going to have to make sure that the people know’... I think people, at the end of the day, know that, once we are elected, we will then need...

Mr Gelling says, we will stay the same. I am sorry, Chief Minister, we cannot stay precisely the same, because we are then elected with a mandate from the people to do jobs, and, from that, there will be other ramifications, but that is what we said before.

I am going to get off the quicksand one, but it is like wrestling with a jelly. Now, perhaps, some members of the press will be able to understand that, when we go into committee, we are not wasting our time. We are trying to tease these things out, but wrestling with a jelly, you squeeze here, it comes out there. You squeeze there, it comes out here, and that is what we are about, at this moment in time.

If you accept the principle, and I think we do, then all I am saying to you is that there will be ramifications further down the line. Inevitably, there will be ramifications down the line.

**The President:** Lord Bishop.

**The Lord Bishop:** I would want to support a tricameral system, because I think if we went for a single House system, as I said last time, within a year or two, there would be another measure before us to invent this Council again, in order to do the work which this Council does.

I think this Council actually does very important work, which a small numbered body can actually do, in a focused

sort of way. So, therefore, I am firmly in support of a tricameral system, and I am, also, firmly in support of direct elections to a body which is called the Legislative Council.

So, let us chuck another one into there: I do not like this thing called the Legislation Committee. I think we need to hang on to that, as part of the history, but also part of a clear definition of what it is that we are doing, which will then aid the discussion later on, which Mrs Christian is urging us to have, about what it is that we actually do.

**The President:** Mr Butt.

**Mr Butt:** Yes, Mr President.

As I said last week, I think, if you started with a clean sheet of paper, you would go for a single-chamber, 32-seat system. But we have not got a clean piece of paper

Having actually been on the Council, now, for a few weeks, and seen how it operates, it is fairly obvious to me that the independence and the lack of rivalry between the Members means that the job is done properly, and the scrutiny is done properly, whereas, if you were in a different situation, the Council would not work as well.

So, I would support a tricameral system continuing.

**The President:** Mr Attorney.

**The Attorney General:** Thank you, Mr President.

I hope you will not mind me suggesting that the debate, thus far, could, perhaps, be condensed into one point, which I think you, Mr President, have already touched upon.

The question really is: 'Do Hon. Members support the popular election of the Legislative Council in our existing tricameral system?' That, it seems to me, embraces the two points which have been debated thus far, and if that, as a broad principle, could be agreed, it would, indeed, give a very good guidance to the legislative draftsman.

As to that, Mr President, again, I hope you will not mind me saying that I am very sorry that Hon. Members have not had the services of a very valued draftsman within Chambers. It is very rare, indeed, that he is ill. I am pleased to say that, as far as I know, it is a very temporary illness, but I am sorry, and I apologise to Members that they have not had the benefit of the amendments they might otherwise have wished to progress.

**Mr Lowey:** I did go to see the draftsman last week, and spoke right the way through – perhaps that is why he is ill! (*Laughter and interjections*)

**The President:** Hon. Members, I do not particularly want to go down that road: in absolute fairness it happens to people, and that is the way life is.

Taking Mr Attorney's point, I have already accepted that the Legislative Council have agreed that they prefer popular election, and they are supporting popular election.

The question which I will be putting to Council is very much in line with what your suggestion is, on the tricameral basis, because, if there is support, then it will flow from there.

Mr Singer.

**Mr Singer:** From the very start of a decision for this reform, there was never any intention, I believe, of the radical reform that is before us today. The intention was that this

Legislative Council becomes popularly elected, and this is, really, a case of the medication overmedicating, curing the disease, but killing the patient.

**Mr Lowey:** Yes, absolutely.

**Mrs Crowe:** You should know!

**Mr Waft:** He is a pharmacist. (*Laughter*)

**The President:** Right, Hon. Members, perhaps I could take that next step and Council could give us some idea, then, as we are in committee, that the Council is popularly elected on a tricameral system, and the Legislative Council supports the current tricameral system. Those in favour, Hon. Members, please say aye. Anybody against? The ayes have it. The ayes have it.

Well, Hon. Members, I think we have moved, quite markedly, down the road, that there is support for a tricameral system: there is support for the election to the Legislative Council.

Now, how do we want to arrive at that position, bearing in mind that we have a Green Bill in front of us, and it will require to amend that Green Bill?

I suppose the next question – and, Mr Attorney, I am open to guidance and help – is in the line of constituencies – all-Island, or how?

So, Hon. Members, we have already before us, I think, practical methods of amendment, which could lead to four constituencies, eight constituencies or, in fact, all-Island. Perhaps we could get a view on that. It might even give some guidance to the legislative draftsman.

Mrs Crowe, you are the Member in charge of the Bill.

**Mrs Crowe:** Yes, but we are in committee and that is not my role, at the present time.

Mr Downie is leaving, just as I am about to say... I, actually, when he first mentioned the way in which he had been thinking about the election for Legislative Council, I thought, 'Well, gosh, we are down to a third, fourth or fifth option now of this business about...'

In actual fact, what he said when I was moving the Second Reading, but I just brought it to mind, was that Members of the Legislative Council should, from time to time, have a mandate from the public. He, I think, went on to express – and I hope he will be able to, when he comes back – that he thought it was quite a good idea that Members of Keys elected a Member of the Legislative Council, in the first instance, and then, at some stage – it would have to be an extended term, perhaps, from five to seven years, which we have spoken about before – there was an election by public mandate for Members of the Legislative Council.

I thought that his point about the fact that, otherwise, you would, perhaps, get around the Council many... of course, we were talking about the old system of electing from the 32, but you might get completely inexperienced Members as Members of this Council.

So, I thought there was some value in that, that I would like to explore a little further.

**The President:** Mr Gelling.

**Mr Gelling:** Mr President, I hear what Mrs Crowe says, but I think we are starting to build in, again, more

complications, and I go back: if we have agreed to popularly elected and the tricameral situation –

**Mrs Crowe:** I was thinking about your –

**Mr Gelling:** – I think, basically, then, so that the people do know that they are electing persons to a Legislative Council, which is a different body from the Keys, that to elect them slightly differently, but democratically, by an all-Island election, does show that distinction, that they are electing them to a different body from their representatives in the Keys.

I think, therefore, to keep it as simple as possible, to make something that will work, to achieve what we are trying to achieve, is to keep it as an all-Island election for the Legislative Council, which is defined as to what it is. You then get an all-Island representation on the Legislative Council, and not your constituency representations.

I go back to what Mr Lowey said before: an awful lot of people still go to their MLC for the area, because they do not, actually, know the difference – or they do not want to know the difference – and it would give another dimension to the work of this Council, inasmuch that you would be concentrating on the revision and what we do, in a different manner, having been elected differently. The people would know.

**The President:** Mr Lowey.

**Mr Lowey:** That would be fine, if that was the only role the Council was going to do. But it is going to do its major role in Tynwald Court, which is the policy and the finance of the Isle of Man, which is the bread and butter which affect people out there.

Most people are not interested in the niceties of legislation. It only affects them after the law has been... but the power is there. So, that would be fine on an all-Island basis, without any pressures.

The truth of the matter is, once you are elected, people will pressurise, directly – no ifs and buts, there is a change, and I am accepting that there is a change. But the reality is, if you have an all-Island representation, the idea that, somehow, you are going to have an all-Island mandate, when 65 per cent of the population lives within a two-and-a-half-mile radius of where we are sitting now, there is an imbalance.

You have got to try and get a balance into this thing, and, however imperfect the present system is, it has, over the years, been a bit of an emphasis... I can remember when I first came in we all used to say, ‘Oh, there is an overemphasis on the northern areas’. It just happened to be that those were the very vital people with experience, with a lot...

When I think of the Percy Radcliffes and Kerruishes and Norman Crowes – I can rattle them all off – they were the right people, at that particular time, to be in the position. It has, maybe, swung a bit now.

Having said all of that, you are electing them to do a job and the job is a tricameral position, which is a difficult one. It is a difficult one, but the power is... we are doing legislation here and now. Again, there is a public... Mrs Christian and other Members are absolutely right in saying that there has been a dilution of Questions and no legislation.

I will tell you what would happen, if the other one went ahead, Mr President: we would have the House of Keys reincarnated in Tynwald form, and Tynwald would be one day a month. It would be the reverse of the roles, and, again, that is the point I was trying to make before about building in the

seeds of our own disaster, because I really do think –

**The President:** Well, Mr Lowey, I think we are stretching the point.

**Mr Lowey:** I know, but I am trying to illustrate the difficulties that –

**The President:** I know, I appreciate that. Mr Waft.

**Mr Waft:** I think Mr Lowey’s point about the problem of an all-Island election, (**Mr Lowey:** Yes.) the principle, I think is great, but the ultimate ending is a ‘suck it and see’ sort of thing. Are you going to have all the Members coming from the Douglas area, the Douglas and Onchan area? I have no particular problem with that, (*Laughter*) but that is the way it might work out.

I think the problem has arisen because of the Bill’s lack of clarity, in how Legislative Council Members are elected – why, where and wherefore, how it is going to work out. That is the problem we find ourselves in.

**Mr Lowey:** That is right.

**Mr Waft:** I think we have got to address this situation of how they are going to be elected, whether it is eights or fours or at block intervals. That is the problem.

**The President:** That is where you are trying to get to now. Mr Singer.

**Mr Singer:** I think, Mr President, theoretically, I understand what Mr Gelling is saying, but, like the last two speakers, I think, practically, we would not get what we wanted to get.

As has been said, if we were just sitting here, we are doing legislation, okay, fine; but we are not, and I think it is very important that one of the major roles of Members here would be in Tynwald. There is no doubt that when a constituency matter came up, in an area where that person was living, they would, maybe, have more of an interest –

**Mrs Crowe:** A bit like the Cottage Hospital.

**Mr Singer:** Yes, and, therefore, there could be well over-representation, in these particular matters, in a particular area.

The other thing is you could well have 35 people or more on your voting slip: who are people going to vote for? A lot of people are going to vote for the names they recognise, and if 65 per cent of the people live in the Douglas area, then they are going to have a much greater chance of being elected.

So, you will get some kind of imbalance in Tynwald, if not in here.

Yes, you can tell the people the functions of MLCs, but they still, to a certain extent, will know who they voted for, and I do not think you can really cut yourself away from that.

The other thing is the practical running for the candidate, in an election. If you have got one constituency, how are they going to manage to canvas? Who is going to pay for the cost of the leaflets that are going to have to go throughout the whole of the Island?

I think we have got to think of this, as well, and, really, I think we do need a distribution in this Legislative Council of

people from around the Island, not, as I say, for this particular committee, but to make Tynwald a fairer distribution, as well.

**The President:** The Lord Bishop.

**The Lord Bishop:** On a practical point, Mr President, we are clearly divided on whether it should be whole Island, so, therefore, I would suggest the way forward is that we have got two sets of amendments before us already, and that when we get to the clause reading, both those amendments are put, debates are held, so that *Hansard* records the fact that we have debated, and we vote on those.

My feeling is, through you, that we are not going to get unanimity on that particular thing. What we have got is that it is from a constituency basis, and I think, therefore, the amendment should be put, when we are out of committee, again, and the vote be taken.

**The President:** I would just make the point, Lord Bishop, that, although we may be sitting in committee, we are being recorded at this very moment. (**Mr Lowey:** Absolutely.) (**The Lord Bishop:** Yes.)

Mr Butt.

**Mr Butt:** Yes, Mr President.

I was of the view, previously, that one constituency would be the best way forward, because the Members would have a certain amount of independence, we would not have constituency problems. They would not be fighting their particular corner, within the Council.

But thinking it through, and I may be a bit paranoid, I can see some major problems with that. I expect the turnout for a separate election for the Legislative Council would be quite a low turnout, possibly. I can, also, see that an individual pressure group, say, pro-euthanasia or anti-abortion, could get enough Members together, to do a block vote, to elect somebody who is coming here for a single issue only.

That would be a big danger, if we have a lowish turnout. It would not need many hundred votes to get somebody in the Legislative Council who is representing a particular issue, which may not be what the public want, overall.

**The President:** Mrs Christian.

**Mrs Christian:** Thank you, I think, theoretically, and it happens in other places, an all-Island election has some appeal, because I do believe that, when Members are elected to Council, it is generally held – whether it is generally in practice – that they do try and take an all-Island view of issues, because they do not have, or should not have, the more constituency or sheading based or parochial approach to issues, and should be trying to take the stance of what is best for the Island, on any particular issue.

Of course, all-Island elections, theoretically, might achieve that. They would also have the advantage that you would not need a Boundary Commission.

But, against that, it would need a completely new approach to elections in the Isle of Man. Indeed, I think, even if it is on a constituency basis, these are going to be large constituencies, which, in some senses, in the traditional way of canvassing are going to pose problems, in terms of their size and the conventional expectation that everyone is visited. I think that, over time, the way in which people canvas would have

to change.

Additionally, I was minded to support all-Island elections, originally, but after looking through it further, if you had, for example, to have a by-election – and I reject the proposal in the Bill that by-elections can be dealt with by another place, (**The Lord Bishop:** Hear, hear.) because that fundamentally undermines the principles that they are seeking to change – if you need a by-election, an all-Island election is a very expensive business.

Now, okay, you might argue that, in a democratic matter, finance should not come into it, but I think we have to be practical about it.

So, although I have some fundamental concerns that the more you divide this down, the more there will be regionalised pressure on Members, I think, in practical terms, I, possibly, would swing towards the Island being divided up.

I am not sure that, although, if you went for the all-Island elections, it would result in the more densely populated areas having the greater representation, because I do not think that historically, elections have been as well supported, in those areas, as they are, perhaps, in the rural areas, where turnout has, generally, been higher.

But there may be the issue of the population having some difficulty, as has been said, in identifying who the candidates are, and candidates getting their message across.

Mr President, I am not sure whether, at this stage, we should be talking about when those elections take place –

**The President:** No, let us just try to deal with it –

**Mrs Christian:** – or you just want the principle whether it should be constituency based or all-Island?

**The President:** I am just trying to sort out or get some feel for the constituency or all-Island, at the moment.

Mr Downie.

**Mr Downie:** Yes, there are two ways of looking at this, Mr President, and we are looking at it from, I would think, the most difficult angle, and, indeed, we are looking at it, the way it has come through in this Bill.

But there is a dead simple solution to this, in that we continue to do what we are doing, at the present time, where people are elected by the House of Keys, they are in here for so many years – either five or seven years – and then their term in here finishes, and they must go out and seek re-election by the public, again.

If they want to come back in here, well, that is the route, you go out through that door, in through this one, and back through here.

You have no problems with that, because the people who are elected initially do have a mandate from the people, (**A Member:** Yes.) and all you are doing is giving them an extension, as it were, and, when that extension has expired, they have to go and offer themselves for election.

**The President:** Mr Downie, I can understand the route which you are considering, or proposing. Nevertheless, Council has, in committee, decided that it supports the popular election. It supports a tricameral system. Possibly, we will have to define the duties and, at the present time, all I am trying to decide, or get some lead for the legislative draftsman, is as to whether we will be all-Island or constituency.

I think, at the moment, it is coming down for constituency

based, (**Mrs Crowe and two other Members:** Yes.) I think, but I am not... Yes.

**Mr Downie:** I think, Mr President, that does bring, with it, another raft of problems: how you draw constituency lines up for the Legislative Council.

If we are in a situation where we, perhaps, had local government reform before us, and the Island was quite clearly defined into certain local government areas, that might be a route to take, at that particular time.

**The President:** Not a route I propose to take this morning! (*Laughter and interjections*) So, I am not going down... Mr Gelling.

**Mr Gelling:** Could I just have one more little go at this, Mr President, please?

What I was trying to suggest was simplicity. (**The Lord Bishop:** Yes.) We tried STV, which was the simplest way of voting that was ever created, but the people did not like it, and it was immediately reversed.

What I was trying to do was get away from constituency boundary changes. The simplest way to get the Legislative Council elected, democratically, by the people was that way.

That is why I was thinking the all-Island actually took away that problem of boundary changes, constituency changes, people then wondering which one they were in, and that was, basically, what I was trying to achieve: something that would work as simply as possible.

**Mr Lowey:** Take the 2000 Bill, and you have got it.

**Mr Gelling:** That is it. (*Interjection by Mr Waft*)

**The President:** Mrs Crowe.

**Mrs Crowe:** Mr President, I do really believe that Mr Butt had a very valid point to make, for all-Island elections. You could have a highly organised political group of whatever colour or persuasion, who could organise themselves to be elected – eight Members: not that many people. A highly organised group could wipe the Legislative... or, at least, could sit as the Legislative Council, with a great deal of power in Tynwald, and I think that is the danger of all-Island elections.

I do think, at least, in constituencies people would have some vague clue as to who you might be, but – (*Interjection by Mr Butt*) Exactly.

**The President:** Hon. Members, if we could just have some steer, then, in relation to those who support –

**Mrs Christian:** Mr President.

**The President:** Mrs Christian.

**Mrs Christian:** Mr President, before we do that, are we allowed to just clarify and explore the point Mr Downie has made, because, I do not know, he may well come forward with some amendments, and I would like to understand, if we could, please, what his suggestion is. Is it that you are elected from another place, you serve a term here, and you go out, back to another place's election?

**Mr Downie:** Absolutely, yes.

**Mrs Crowe:** Yes.

**Mrs Christian:** Right. Not that there is any election for –

**Mr Downie:** No.

**Mrs Christian:** Right, okay. Well, that is a completely –

**Mrs Crowe:** That is what I thought it was, when I –

**Mr Downie:** It is another way of achieving the aim, to have a review in here, and have people face an election, and if you go out through one door, and in through another, your peers in the Keys may decide that you are perfect to go back to the Legislative Council. At least you will face an electorate.

**Mr Singer:** The other alternative, Mr President, suggested to me, was that if you want to be popularly elected then you elect the Keys and the Keys elect people up here but do not bring anybody else from outside, so the person has been popularly elected to the Keys and then comes up here, but they have been popularly elected.

**Mr Lowey:** That's distracting.

**Mr Singer:** Yes, I know, but I said that was suggested to me, but I am not going back on that.

**The President:** That is the principle. Now, Mr Waft.

**Mr Waft:** I was just wondering, Mr President, it still does not get round the situation that many people have thought, previously, that if we are elected with one eighth of the vote, then the House is elected by one twenty-fourth of the vote, there will always be that problem in some people's minds, that, although you are properly elected, you, nevertheless, have got in with a greater quantity of the votes. We have not got round that one.

I just wonder, if we are going down the route of constituencies et cetera, is it the thought that we are all out together, or is it four and four, or what is the principle behind it?

**The President:** Well, we are stepping away to another step, because each one will throw up different ideas, won't it? I mean to say that that is an inevitability.

There is nothing to stop any Member using any of the suggestions which have been put up in relation to the all-Island, all-constituency, when we reach the clause stage. I was simply...

If, in fact, we are going to make material alterations, so that the draftsman knows the steer that the Council are likely to be taking, as it goes down this route, it is helpful to know whether or not there is support, at this stage, for constituencies or all-Island election.

So, can I say, those who would support constituency elections to the Legislative Council: those in favour, please say aye; against, no. Right, I think I have two noes, Hon. Members, so there is a majority for.

The majority of the steer, at this stage, would be for constituency elections, and I think, Hon. Members, it is

something which we will, certainly, need to go over, in the future.

**Mr Lowey:** Could I, Mr President – ?

**The President:** Just one moment, Mr Lowey, if I may. The other point which I think has cropped up, which is fundamental, is whether or not you wish to define the duties more firmly of the Legislative Council, or are you prepared to accept the duties as they are within this Bill? So, perhaps, we could discuss that.

Mr Butt.

**Mr Butt:** Yes, Mr President, there may be a public clamour for popular election, but I do not think there is any clamour by the public, at all, for any change in the duties of the Council. Speaking to Members of the other place, as well, there is no great desire that I can detect for that, either, in most Members.

It would seem to me that it is a simple matter that we retain our functions exactly as they are now, if that can be done.

**Mr Singer:** I would agree with that.

**The President:** Mr Lowey.

**Mr Lowey:** Yes, along those lines, I, too... I think there will be changes, later on, but I do think that this is the role that we wish to adopt.

There will be one fundamental change. If we have an election, then I think the ministerial bit – that does not affect me – the ministerial composition, whoever the Chief Minister may be, he or she, would have to consider that these people who have been elected here are equally up for offers. That would be a change, not for this place, but for another place, to come to terms with.

I do not wish to go back over old ground, but I do believe it is important to just touch on the last point we made, Mr President. I do think part of the strength of the Council is continuity, and I would have thought that we would all go out for election – and I am trying to get a steer here, particularly, for the draftsman – and that it would be not at the same time as the Keys, but mid-term, to give some sort of continuity. I do not think that would be a bad thing.

That is only a personal view, but I do think, in practical terms, if there are strengths of the Council and there are weaknesses of the Council – and there are – I think one of the strengths is continuity, in the acceptance that, when people come in...

And there can be big changes at a general election for another place. We have all... I am sure everybody around this table has seen nearly 50 per cent of the House go out at one time, and it is difficult.

Therefore, I do think a little bit of stability would not go amiss. I think, if we are building in strengths, we ought to retain the strengths, and squeeze out any of the alleged weaknesses.

**The President:** Mr Waft.

**Mr Waft:** There was a section in the Bill which related to scrutiny of European legislation, and that was to be included in the Legislative Council's role – committee or whatever.

Is it suggested that we go back to what we are doing now, or rather ignore this particular section?

**The President:** No, Hon. Members, what I am just trying to do, again, for the purposes of trying to give some direction, or some idea of where we will go, when amendments flow to the clause stages, it is handy... I think it was accepted that, if we had some direction, at this stage, as to how Members were thinking... It only has to be in broad terms, but...

**Mr Lowey:** Keep it simple.

**The President:** Mr Waft.

**Mr Waft:** No, it is purely that you were talking about the functions, and I just wondered, if we are all out for election, then, perhaps, the functions could substantially change in the future.

**The President:** Mr Singer.

**Mr Lowey:** I think things will change.

**Mr Singer:** I think the functions should, pretty well, remain as they are now.

The idea of European legislation review was put there by the other place, because this committee, the Legislation Committee, the small committee, was going to become a minor committee, and I think they were thinking, 'Well, what can we give them to do?'

I dread to think what the cost would be, to the Government, of bringing all that information to us here, us asking questions of matters which I do not think we would, particularly, be able to express a clear interest in, because, when you look at what comes through at the end of the month, a lot of it is above our heads.

There was an interesting remark in one of the papers, yesterday, that Germany had looked at their legislation, and 82 per cent of it had come, actually, from Europe. So, if we are going to be looking at all that, it is going to be an awful cost.

As far as Ministers in the Legislative Council are concerned, I do not know that I am particularly supportive of that, but all that would come within the definition of the responsibilities of this committee. I think that is a bit of a red herring, at the moment.

**The President:** Mrs Crowe.

**Mrs Crowe:** There is a solution in the Bill, which is:

'For the purposes of an election, the Island shall be divided into 8 constituencies, and each constituency shall return and be represented by the 4 members.'

So, three Members, presumably, could stand, representing the House of Keys and one Member could stand, representing the Legislative Council, at the general election.

I know the continuity argument is there, and I also take the point that Mr Lowey made about the change in power base, in the previous committee, because of that, but it is a simple method.

If we go for mid-term elections, we have to bear in mind, now, we have changed the local authority elections, so they

all come out as one, on a four-year term. We have got the Board of Education elections. We will be having a population that will be turning to elections every year.

**Mr Singer:** But, they were, anyway –

**The President:** Mrs Christian.

**Mrs Christian:** Mr President, two issues.

If I could just revert to the issue that there has been some comment upon about the role of the Council and scrutiny of European legislation, I think it is right that that was put in, partly because, I suppose, there is a feeling that, perhaps, that legislation does not receive sufficient scrutiny, at the moment.

Whether or not... In fact, the wording of the Bill before us says that, if the Council of Ministers think that there is something that the Legislation Committee should look at, they can refer it, and they *may* consider it. They do not have to.

So, to an extent – I do not know what would happen if they did not, if they had been invited by the Council of Ministers to look at it, but I am not quite...

There is, probably, a need for some body of Tynwald to take a look at that, but whether or not the Legislation Committee or the Legislative Council would have sufficient knowledge, in terms of this legislation being related to a particular Department, or a particular function, I do not know.

**Mrs Crowe:** All Departments should.

**Mrs Christian:** At the moment, Departments explore, or have referred to them, legislation which seems to whoever scrutinises it to be relevant to them.

**Mr Lowey:** This could be a Tynwald committee, anyway.

**The President:** Now, Eddie. Mrs Christian.

**Mrs Christian:** So, it does not seem to me to be entirely inappropriate that a body which scrutinises legislation should look at it, but the House of Keys is also a body which is there to scrutinise legislation –

**The Lord Bishop:** Hear, hear. Exactly.

**Mrs Christian:** – so I could see the Council of Ministers referring it to either body, (**Mrs Crowe:** Yes.) and maybe having a second pair of eyes from the second body, if they deem it to be appropriate. (*Interjections*)

So, I do not think it is important, at this stage, to include it in the legislation. I think, later on, it may be felt that there is some way in which the two chambers which look at legislation could have that specified.

If, Mr President, we are then... And I am not sure. I take your guidance. Are we now talking about the timing of elections? I have some comment to make on that.

**The President:** I am not talking about timing, at the present time. I was just trying to have some steer on the definition or the function of the duties of the Council, and I think, in reality, there was not much... I do not think there

is much view around the table for change.

Mr Butt.

**Mr Butt:** Just one further thing on the functions.

The fact that you have a bigger mandate than, maybe, the MHK alongside you I do not think should, actually, give you any more power. Once you are here, you should actually maintain exactly what you do now.

Keep things as simple as possible, maintain the functions as they are, and the fact that you have a bigger mandate should not really be a factor. (*Interjection by Mr Singer*) When you stand for election, you stand for that election, knowing that this is the role you will have.

**The President:** Would I be right, Hon. Members, in saying that, in fact, the Council is largely now of a view that, in the definition of the duties of the Legislative Council, our preference is to remain largely as they are now? (**Several Members:** Yes.) Those in favour, Hon. Members, please say aye; against, no. The ayes have it. The ayes have it.

And I know that there are going to be alterations there.

**Mrs Crowe:** No, I was just going to say, perhaps, we could, rather than discount that clause altogether, say that, if we are in the position where no legislation is coming forward from the Keys, we may choose to review certain aspects of European legislation.

**Mr Singer:** I think it is difficult to say that, because there is the preparation of the material for us, and all the background material. If it is on an ad hoc basis, I think it has to be on a Tynwald committee.

**The President:** If we can move on, Hon. Members, I think the next thing that we really want to clear is this business of continuity, or not, within the Legislative Council, and when you wish to hold the elections.

I think those are the next two: the continuity within the Council, and at what time you would wish to hold the elections – at the same time as the House of Keys would be elected, bearing in mind that you are going for the tricameral system and popular election, or at a separate time.

Mr Gelling.

**Mr Gelling:** I would certainly go for the mid-term, Mr President, for the simple reason that it does give you continuity, but also, when you think that legislation has been changed for a mid-term situation, where board, chairman and all now can be looked...

Whereas it used to be a five-year term, I think it would be a natural time, that, if you had the legislature elections at that time, whoever then was looking at membership of whatever would have the reality of knowing who was in the chamber, then, for the next two and a half years.

I think it would fit in well, inasmuch as trying to keep it simple, that people know who they are electing – or, should I say, why they are electing them – to the Legislative Council.

**The President:** Now, just one further thing, Mr Gelling, is the continuity. Do you want an all election at one time or...? (**Mr Gelling:** Yes.) Right.

Mrs Christian.

**Mrs Christian:** Mr President, I think that, in terms of this

election, we need to have it staggered with the Keys election, to give some continuity of membership of Tynwald. But if we are going out to a public election, I think all Council Members will have to be elected, at the one time, for the reason that, if you are going to split it into two, we will have, as Mrs Crowe said, election fatigue, because you will have elections going on, year on year.

The only difficulty I see with this is the timing of Council elections. They cannot be, as they are now, in February, in my view – or in March, or whenever it is – because it is bang in the middle of a legislative year. You would have a gap of at least six weeks, when no business could be done, and we have enough difficulty getting legislation through now.

It needs to be in the recess, or at a similar time of year to the Keys election.

**The President:** Another practical point.

**Mrs Christian:** If it was November, again, then, perhaps, that would be alright. We would get into gear (*Interjection by Mrs Crowe*) a month or two after the Keys had started. So, that would be my feeling about it.

In terms of it being staggered, I think, whilst our current system allows the Legislative Council to have Members in it who have had some experience in another place, and, by and large, have been participants in Tynwald for a number of years, before they come to do this job, in moving to popular elections there is quite a strong possibility, I believe, of reducing the experience that Council Members have.

People who are not elected... Well, people will choose whether to go to Council or Keys. If they go to the Keys, why would they want to stand down, mid-term, to stand for the Council, unless it is a question of, maybe, not wanting to serve two full terms, and wanting to jump out, at the halfway stage, but would you – ?

**Mrs Crowe:** No, you would not get Members of the Keys.

**Mrs Christian:** That is a possibility, but I think that the membership in future, on this principle, will be separate memberships and there is not going to be that interchange. You will get new Members into the Council, new Members into Government via the Council, whereas before, whilst it happens from time to time, it has been a rarity.

So, there, in itself, undermines, I think... To some extent, it could have potential, in the longer term, for undermining the experience base of Tynwald. But I do think that we have got to go for one election every five years.

**The President:** Mrs Crowe.

**Mrs Crowe:** No, it has just highlighted another problem, hasn't it?

Whereas Mr Lowey was speaking about continuity, and Mr Butt, just before, about the fact that someone with a powerful political base... and we cannot ignore those things, in this day and age, whatever party they might be.

Now we have the fact, of course, that, in reality, no-one from the House of Keys is going to stand for legislative election.

**Mr Singer:** They can do.

**Mrs Crowe:** Well, they can do, but why would they?

**Mr Singer:** Because, if they wish to come up here... In the UK, you can stand for the one Parliament, or you can stand for the European Parliament. If the Member does not have to resign his seat until he is elected to the upper chamber, then he still retains his seat in the lower chamber.

So, you may well get somebody who said, 'Well, I am willing to go up.' But once he has cut the tie, then... Nobody is going to cut the tie, but it is one way of doing it.

**Mrs Crowe:** Oh, so not stand down from the Keys, which would –

**Mr Singer:** No, until they are elected to the chamber, and then they resign the seat. (**Mrs Crowe:** No.) (*Interjections*) Why not?

**The President:** Mrs Christian.

**Mrs Christian:** Mr President, I would argue against that, because it immediately then triggers another by-election. People should have to decide what it is they want to do, because if they are going to sit there and hold on to their Keys seat, while they stand for the Council and, then, maybe, are successful, you have got to have a by-election.

**Mr Singer:** It is no different now, really, in practice, is it? That is what happens in the Keys now. They only give the Keys –

**Mrs Christian:** Well, it is different, because we are going to have two elections. We are going to have Legislative Council... We have got more elections going on. That is the point I am trying to make.

**Mrs Crowe:** Yes, that will then throw up, after the Legislative Council election, there will be another by-election automatically, if anyone from the Keys stood.

**Mr Singer:** But if somebody chooses to come up from the Keys and resign their seat, there is still going to be that by-election anyway, even if they do not get into here. So, it does not make a lot of difference. (*Interjections*)

**The President:** We are beginning to go round in circles again, Hon. Members. What I am trying to do –

**Mr Singer:** Mr President.

**The President:** Mr Singer.

**Mr Singer:** When the Keys turn out, legislation falls. What happens when the Legislative Council finish, and they go for election? Does everything before them fall?

**The President:** At the moment, it does not, because the Legislative Council has continuity, and if we come back to the point I was trying to get sorted at the present time, is whether we wish continuity and the period when you wish the election to take place.

Mrs Christian has made the point – rightly made the point, I think – which is easily overlooked, that, in fact, if the popularly elected Council goes out of office to be elected at a given time – February or March – midway through a legislative session, it could lead to difficulties in getting that

legislation through, in a given period of time.

**Mr Waft:**

**Mr Waft:** It could lead to difficulties, Mr President: if we all go out at the same time, there will be absolutely nobody in here, and we could have eight new Members sitting in here, to discuss the legislation coming through. I do not call that continuity.

What I call continuity is, perhaps, four going out, and then another four, later on. There is no continuity, if you all go out together.

**Mr Lowey:** But the continuity... What I think is the Greek – and the Bishop will tell me this, because he is a good Greek scholar – ‘election’ means choice, I believe, and if the people choose – and that is what we have accepted – then you have got to abide by what they have decided.

But my idea of continuity is to try and get us over that period of general election, where you have got some experience there, that may be of assistance.

But this is the point. Again, I think the Chief Minister was very wise. He did have his spyglass down from his blind eye, in his good eye, then, when he said ‘Keep it simple.’

It is like the splash. You put your hand in a bucket of water. There is a splash, but there are the ripples that go out from it. Now, there will be ripples, and I have no doubt at all that, if we accept the principles that we have been enunciating here this morning, there will be repercussions, and the press will pick up on those repercussions.

But I think, at this moment in time, we are keeping to the principles, and I believe that that is right, to try and get a skeleton to build on.

**The President:** Mr Downie.

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

There are two easy ways to deal with this, in my view. Following the July Tynwald, there could be the dissolving of the Legislative Council, with elections taking place in September. That would not have any interference at all with the legislative programme, and if you wanted to be doubly careful, you could devise a system where you had half out in two and a half years, and half out at the other time, so that there was a continuity.

You would not have the same situation as, I would suggest, that you do have in the House of Keys, because, if the mandate was slightly different, you would not need to go electioneering, banging on doors and kissing babies, and all the rest of it.

**The Lord Bishop:** You get arrested for that, Mr Downie. *(Laughter)*

**Mr Downie:** You would produce whatever it was that you wanted, and go in that sort of a manner, and I would suggest that a quite simple system could be devised, to enable that to happen, but it is absolutely essential that we do not interfere with the running of Tynwald.

It has got to be done at a time and, to my mind, that is the best time of the year to do it! *(Laughter)*

**The Lord Bishop:** Speaking as one who grew up in another country and, therefore, was used to another programme of election timing, what does actually work across is regular

elections, but at the same time of year, so that the electorate knows that, come May, it will be electing to something.

I think that one of the problems we might be facing, here, is the fact that we... I have not quite got my mind round it, but the various elections happen at various different times of year, for the various bodies.

I think one of the knock-on effects of this might have to be whether we can, actually, look to a time when elections to all these boards, committees and everything else happen at the same time of year. Then, at least, in the public psyche, we know that we are heading for election time.

Now, I know that Mr Lowey might say that the tradition has been always to do it at this time of year, and I think that might, necessarily, be something that we could think about further down the line. At least I knew that, come May, I was either going to be voting for the county council, the borough council, the whatever, and they came out in rotation as well.

So it was a regular thing, that I knew, come Maytime, somebody would be knocking on my door for something.

**Mr Lowey:** We have been there, done that. It was always October/November and then we changed it, because the weather would be better. So, we have got this change, haven't we?

**The President:** Mrs Christian.

**Mrs Christian:** Mr President, I think that, again, we are still to-ing and fro-ing on our thinking about this. The point that Mr Waft has made, there are two issues: you can have continuity in Tynwald by having one branch there, whilst the other is being elected; or, as he pointed out, we could have continuity within the Council by having half the members elected at one time and half at another.

I think that, in terms of whether I could support, that would depend on how the Island was divided up.

If it was electing certain of the constituencies at one point, and the other at another point, that would be reasonable, because they are only having one election every five years, as it were. But if it was across all the constituencies it gets too frequent.

So, there is a way of doing that, but you would have different elections in different parts of the Island at different times.

The other point that Mr Downie has raised, and I think it is important, in some ways, that these constituencies are going to be large – perhaps not in the terms of the Members for Rushen, who have large geographical constituencies now – but they are going to be large, they are going to be quite expensive to fight in a conventional way, and that is going to be, perhaps, a disincentive to some people to stand.

And which will you do, then? You will go for the smaller Keys election.

**A Member:** Of course you will.

**Mrs Christian:** So, who is going to fight –

**Mrs Crowe:** I have an idea.

**Mrs Christian:** Well, there will be some people who will fight these elections, but I would imagine that they may be less popular than Keys elections.

**The President:** Mrs Crowe has an idea.

**Mrs Crowe:** Well, the seeds of the idea were planted by Mr President, so he most probably will not scowl at me, as he normally does. (*Laughter*)

What if we stuck to the Bill:

*'For the purposes of the election, [...] divided into 8 constituencies, and each constituency [should be] represented by the 4 Members.'*

Fine, and we have the four Members: three Members of the House of Keys, standing as Members of the House of Keys for their five-year election, and the Member of the Legislative Council standing for the seven-and-a-half-year term, which will mean your continuity rolling through. So, there will be the half year –

**Mr Gelling:** Mr President, I am going for simplicity, but just to complicate it a little... (*Laughter*)

Okay, so the constituencies, which now are agreed, could be large. There could be eight, there could be whatever. But is it not beyond the possibilities that, in fact, the election could be held as a totally postal ballot?

That again has... We have had a trial over yonder. Some question the way of it, but however, I am just again trying to... I think Mrs Christian raised it. It will be different. It will be a different thing altogether, but when you consider that the larger constituencies, that we would be, perhaps, standing for, pale into insignificance compared with the constituencies across the water that people represent, which are the total Isle of Man. (**Mrs Crowe:** Absolutely.)

So, I do not think we should put too much emphasis on the inability of people to be able to get over to the people through advertising, radio broadcasting or whatever, to get themselves known as experienced, sufficiently to come into this chamber.

**The President:** Mr Waft.

**Mr Waft:** I have my faith in the Chairman of the Post Office to be able to conduct this. (*Laughter*)

**The President:** Mrs Christian.

**Mrs Christian:** I take the point that Mr Gelling is making. You cannot make the comparison with the United Kingdom, where it is largely a party political structure, where they have financial assistance from the party, and there is not that sort of financial support here. It is down to individuals.

**The President:** Mr Lowey.

**Mr Lowey:** Mrs Christian is right, of course. Who would go for the bigger constituency, as opposed to the single one? It is a matter of choice, and people have that choice. Candidates have the choice and...

We are, really, in danger of sowing some seeds into this debate. I go back to Donald's first request earlier this morning: we should keep it simple. Again, I am back to keeping it on a skeletal basis, and then we can build on it later, as long as we have got the basis.

I believe that there can be a constituency, even with the amount of... We will never get it perfect, but if you are

looking for perfection... This is what I think we are trying to do in this Bill. We are looking for perfection. If you try for perfection, you will never achieve it, but you have got to have it within reasonable bounds.

I believe the constituencies, without even incorporating a Boundaries Commission, if needs be, if the need is to get the speed on, *as of now*, are what I would call acceptable.

**Mr Gelling:** Mr Victor Kneale's principles.

**The President:** Lord Bishop.

**The Lord Bishop:** Just to bring some experience from another method of electing: the General Synod elects, not by allowing every member to send out, individually, lots of pieces of paper, but by producing a booklet for those who are standing. Each person is allowed two pages in which they put forward what they would normally produce by everybody sending out a flyer.

So, to a certain extent, you deal with the larger constituency by altering the way in which you do your canvassing. I do not think we should go for one thing because this is the way we have always done it and this is the way we canvass.

There are different mechanisms of letting the electorate know what your views are which do not cost an arm and a leg, which could function within the system, as we have it. I just do not want us to choose that because that is the way we have always done it.

**Mr Singer:** The only problem with that is: a certain number of people will do it that way – a certain number of candidates. Other candidates, who, maybe, have got more money, will still send out the leaflets and they will continue to be independent.

**The Lord Bishop:** You just make sure that the law covers that.

**Mr Singer:** Because this has just happened in the Pharmaceutical Society, where they used to have a booklet with candidates, and then they had a pressure group who decided to send out... canvas individually, and the whole of the pressure group now, basically, has taken over the Pharmaceutical Society.

**Mrs Crowe:** Exactly what Mr Butt said.

**The President:** We are going round in circles again. What I was trying... where we came in, on this particular level of discussion, was on the continuity and the election time.

On continuity, we have had a diverse view that, in fact, continuity means more than (**Mr Lowey:** Tynwald.) just Legislative Council continuing; it also means, possibly, dividing Legislative Council, so that there are four Members sitting, four Members being elected – in that form.

So, could we have some idea of whether or not you want all elected, in this popular election, at the one time? Those would support the election of all eight at once, please say aye; against, no.

**Mrs Crowe:** It's equal.

**Mrs Christian:** We'll have to deal with that at the amendment stage.

**The President:** Right, I am much closer on that one than I have been on any other, Hon. Members. Could we have another call on it, just so I have got some better steer? Those in favour of electing all eight at the one time, please say aye; against, no. Right. I see it is definitely split. (*Interjection by Mrs Crowe*)

What I am just trying to do at this particular juncture is so that we have... I am envisaging amendments coming forward to the Bill. We all are. I am trying to make it easier for Mr Attorney, when we are talking to the legislative draftsman, to say, 'Well, okay, that is the way they are going on these lines', so that, if they are looking at the Bill in whole – as we have already agreed – one amendment has a knock-on effect and creates further amendments down the road.

If it is going to create a further amendment down the road, to give the legislative draftsman some steer, I am trying to get the principles. On that one – as to whether they should all be elected at the one time, or not – it is evident that, at this stage, anyway, Council is split.

So, could I just have a little steer on the election time? Are Members in favour of an election time at the same time – in other words, a five-year period equating to the Keys', at the same time – or, in fact, halfway through the life of the Keys? Those who would support election to the Council halfway through the Keys' term of office, please say aye; against, no. Well, you see, on that one, we have got quite a firm steer that, in fact, there is a preference for an election to the Council halfway through the Keys' period.

Mrs Crowe.

**Mrs Crowe:** Are we all, then, saying that, rather than providing some continuity by an extension in the term, that the five-year term... everyone out, at the five-year term...?

**The President:** Well, I do not know, because there was division on that. But, in fact, if you are logical about it, what that actually does is throw up a continuity within Tynwald, insofar as there is a carry over – one branch is there.

Mr Gelling.

**Mr Gelling:** Could I, then, suggest that, if we did not go all out/all in, perhaps we would then be considering the Keys having a separate vote – only half of them going out and half of them in. I think we are starting to get this continuity a little bit –

**The Lord Bishop:** Yes, it's stepping over...

**Mr Gelling:** – in a complication. I thought the continuity was that there would be experience in Tynwald –

**A Member:** That's right.

**The President:** That is basically what we have dealt with.

**Mr Gelling:** – which I think would be better. Sorry, Mr President.

**The President:** No, but that is, basically, what has, I think, come from our discussion.

The other point, which I made a note of when we started this, Members, was, in fact, the voting procedure within

Tynwald Court but, in fact, I think, the way that we have shaken it out so far, the procedure which is set out, I think, in clause 8 of this particular measure, will now be overtaken by events, because, in fact, we have gone along the line of having a tricameral system, anyway. If we have Legislative Council carrying out its functions and duties largely as it is, that will be overtaken by events.

**Mr Lowey:** I genuinely do not believe that, in the voting of the legislation, which can be overturned by the Keys, a month later – the majority of the Keys – it seems to me that I would not have thought that the Keys would want to go the stake on that one.

I think there should be a few checks and balances there, and it just says, 'Well, think about it.' We have got one this month with the licensing of the boats. I do not think that has, really, made that much difference, but it has highlighted the problem – it has highlighted the situation to all parties, I think, and, overall, no matter which way it goes, I think that is no bad thing at all. I use that illustration.

**The President:** Mr Attorney, is there anything else that you...?

**The Attorney General:** Sorry, Mr President, I wondered if you could just clarify clause 8 – your interpretation of how that fits in with what we have just discussed this morning.

**The President:** It says:

'Notwithstanding anything from time to time contained in the standing orders of Tynwald, the Keys and the Legislation Committee shall not vote separately on any question...'

My understanding, Hon. Members, is that, as we are keeping Legislative Council largely as is and keeping the duties and functions of the Legislative Council largely as is, that, in fact, we would be not supporting the system of changing to Tynwald voting as one rather than voting as we do at the present time.

I think what is not understood, sometimes, by the split vote which currently takes place in Tynwald, is that the Legislative Council currently have a brake on proceedings, but that the Keys, should they wish, could override that brake through procedure. I think the wish would be that we would wish to –

**The Attorney General:** To retain that.

**The President:** – retain the brake.

**Mr Singer:** No, but, as we are all elected, then should they be able to come back, as we are all elected now, by the public?

**Mr Lowey:** Those are details, though, that I think you can –

**Mr Singer:** There is a concession, because they are the elected body and this committee is not; but now it has changed.

**Mr Lowey:** But in primary legislation, we could do that under, what I would call, the Standing Orders. We could,

for example, change the Standing Orders to turn round and say, if either branch has a majority, then it can come back next month. But that is a recipe, I think, for slowing things down, and I do not think we need to do that. I think we have a brake at the moment, and this is one of the consequences of direct elections.

Leonard is right. It is then – what do you do? But that is detail...

**Mrs Crowe:** And not a bigger change in the future –

**The President:** Hon. Members, I appreciate that we are in committee but, as I indicated before, you are being recorded, and it will be a useful record. Try not to speak over the top of the Member who is speaking, because it makes it difficult for the *Hansard*. Mr Gelling.

**Mr Gelling:** Taking Mr Singer's point, I can understand that, if all 32 were elected at the same time, because it is different being elected to the Legislative Council – you are elected to this Council – and I can, therefore, accept what is being said. It is a brake but, nevertheless, (*Interjection*) the Keys have been constituency elected – to represent their people – and, ultimately, in Tynwald, they could take it back the following month. (*Interjections*)

**The President:** Lord Bishop.

**The Lord Bishop:** I would, actually, say that, following Mr Lowey's lead, I have decided to change my mind after each Council meeting. So, I have, actually, changed my mind on this one.

I would have voted for us voting as 32 Members, but I now feel that the brake is a good one. All we do, when we go back to vote on it the next time, is to vote in the way that you are suggesting that we do in the first place.

**Mr Lowey:** In the first place, yes.

**The Lord Bishop:** In other words, all elected people do vote the second time around, after the brake has been applied, and I think that the good thing about the brake is that it does, occasionally, give people time to think and reflect and change their votes. (*Interjections*)

I would say that, rather than going for the, 'Let's all go out and vote quickly and get it all over and done with', with 32, it is quite a good idea having the brake mechanism there.

**The President:** Mrs Christian.

**Mrs Christian:** Mr President, I would agree with that and I think that Council, in future, having been voted in, will do that with a little more authority than it does now – you can feel the resentment from another place when Council disagrees with the decision that they have made!

**The Lord Bishop:** Especially if you are the first one to vote. (*Laughter*)

**Mrs Christian:** I think, whilst we could argue equality, we should retain the structures. After all, we are trying to seek to retain things, fundamentally, as they are now.

**Mrs Crowe:** Mr President, that, actually, could just be

deleted. We do not need the clause at all.

**The President:** It may very well be. As I was trying to point out, whilst I had made a note of voting, it is one thing that we would need to discuss, I think the flow of the discussion means that, in effect, that is what would happen.

Mr Butt.

**Mr Butt:** Just on that point, it could be a major problem for the Government trying to get some of the legislation through, because an extra eight people who might be voting against them regularly, instead of just delaying things, they could be defeating things on a regular basis.

**The President:** I don't think it works quite like that, Mr Butt –

**Mr Singer:** Because when you vote together, later –

**The President:** – because if that was the case, when you vote, you've got to get 17, in the other assembly, but –

**Mr Butt:** Yes, but there are more that can vote against, potentially.

**Mr Waft:** Members of a Department usually vote with the Department, anyway.

I think I would agree with the Lord Bishop about the brake being on, it gives everybody a chance to follow and say, 'We don't want this.' It does give them that little extra chance to think about it.

**Mrs Crowe:** I would say, picking up on that point, that if Members of Legislative Council are voted by popular election – and there are many experienced Members of this Chamber – maybe that is where the Chief Minister will be selecting his Ministers from. There may well be problems in another place, rather than in the Legislative Council. Those are all the sort of things that will be picked up – the ripples.

**The President:** Mr Singer.

**Mr Singer:** I wish to discuss clause 13 – the referendum. Do we believe there should be one? Do we believe there should not be one?

If we are going to have a referendum, Mr President, I believe that you have a referendum before you introduce anything, not after you have introduced it.

**The President:** Just before we get an open discussion on a referendum, Hon. Members, just out of interest and for my guidance and for the guidance of the draftsman: those who would be in favour of deleting clause 8, which is the business of all voting in Tynwald as one – those not in favour of that –

**Mrs Crowe:** Not in favour?

**The President:** Not in favour. In other words, you would delete clause 8. Those in favour of deleting clause 8... (**Members:** Agreed.) Right.

Referendum: Mr Singer is raising the point on the referendum that, in fact, the referendum in the Bill – it is

suggested that it should be held after it becomes an Act. Mr Singer.

**Mr Singer:** It has to be said, Mr President, that I believe, if you are going to have a referendum... we have got to decide: do we believe there should be one? I know this was pushed in at the last minute, in the Keys. I do not think many people realised what was happening at the time. In fact, was that the item we got a letter around from one of the Ministers, saying that he had made a mistake and should have voted against it?

**Mrs Crowe:** He proposed it!

**Mr Singer:** Or he should not have proposed it? It was something like that. (*Interjection by Mrs Christian*)

So, are we going to have a referendum? But, I do believe that, if we are going to have it, it must be before the Bill goes for Royal Assent.

**Mr Lowey:** I would agree with that, but can I just say that I remember voting for the Referendum Bill and I, actually, said – *Hansard* will prove whether I said it or not, but I am certain I said it – that, if you are going to use the referendum, it can only be used on a constitutional matter – something that is going to affect the Constitution.

So, if you are going to have it, this is the sort of item you should have it on.

But Leonard is absolutely right when he says that, if you are going to have it, you have got to ask the people before it becomes a fait accompli, as opposed to, ‘Well, we made the decision, boys – have a referendum’. That is a bit Irish – forgive me, I might be accused of being racist.

**Mr Gelling:** I think we really should do the simple thing again. Maybe there should have been a referendum with the Bill that we had, but, after it is amended, I would suggest that we just delete the referendum, because I do not think it is necessary, because the change is not so dramatic as would warrant it.

**A Member:** No.

**The President:** Mr Singer.

**Mr Singer:** The principle is the same. Should we have a popularly elected Legislative Council? We do not know.

**Mr Lowey:** Yes, I agree.

**The President:** Mrs Crowe.

**Mrs Crowe:** I take the point that it is on matters of constitutional change that the Referendum Bill... I think that was the point that the Minister made when he was moving the amendment in another place that, because it was a major or, you may say, a minor constitutional change...

But we have already said that what appears to be a minor constitutional change has a number of ripples, and I do feel that the public of the Isle of Man feel that a public election for a Legislative Council is fine. That is wonderful, but we have got to explain that there could well be difficulties in the future.

Whatever way we get that message across, I really do

not feel that the public of the Isle of Man are fully informed about the purpose of Legislative Council and, maybe, why they should or should not be publicly elected.

I would say that a referendum would be a very sensible thing, and it needs to be done prior to the moving of this amended... when we have a Bill that comes in a shape that we can look at.

**The President:** Lord Bishop.

**The Lord Bishop:** I think it is fascinating discussing a referendum when we do not know what the questions are. (**Mr Gelling:** Exactly.) I think that is the most worrying bit of this.

Are you actually going to send out to all the electorate of the Isle of Man a copy of the Bill, as proposed, and say, ‘Would you vote yes or no on this, please?’ or are you going to go out to them with a set of questions, arising out of the Bill, that you will then make a decision on whether you will go forward with the Bill or not?

I, certainly, agree with the Hon. Member, Mr Singer, that if we are going to have one, it has to be before the thing is passed. I, actually, question whether we should have one and, if we do have one, what the questions are that we will be asking in the referendum.

**The President:** Mrs Christian.

**Mrs Christian:** Mr President, I think that, in terms of the Bill, as it appears before us, it would have been necessary to have a referendum before the Bill was passed, because it proposes a fundamental change to a 32-Member elected Tynwald.

However, my own view is that we are intent on modifying that, to provide for an elected Legislative Council. I think the question to the electorate would be, ‘Are you in favour of an elected...?’ – whatever the repercussions, as Mrs Crowe has illustrated – and there will be repercussions, some of which we, perhaps, cannot envisage just yet.

I do not think that you are going to get that message across to the public before they respond to the referendum. I am not sure that, in respect of this, there is a need for a referendum. I am not sure that it would produce anything useful. I think that it is within the competence of Tynwald to determine whether or not it wants to pass a law in respect of electing Members to the Legislative Council.

**The President:** Mr Downie.

**Mr Downie:** On the issue of the referendum, I understand that, when referenda are being taken, they are normally promoted by a government and on issues like whether we should be full members of the European Union or adopt the monetary system or what.

But we are asking the members of the public of the Isle of Man to take part in a referendum on a Bill which is promoted by a private Member. At the present time, with all of the work that we are currently doing, in modifying this Bill, or reviewing this Bill, and going back to them, I think it is irrelevant.

**Mr Singer:** That was the wish of the Keys. I think we have had a long discussion here, today, as to what the consequences could be of going out to a public election.

Like the fact that there could be no continuity in here. That is an important matter. I have had members of the public, whilst I have supported this, saying to me, 'What is it all about? It only seems to be a few people who want it.'

Somebody said here before that most people do not want it. That would certainly show, if they did not vote in the referendum.

But there is a point that there still are major changes going to take place, as far as the membership of this is concerned. There could well be major changes.

**Mr Downie:** Perhaps I could, at this point then, ask for some guidance from the Attorney General, because my view is that, if this Bill leaves this place, and goes back to the House of Keys and is accepted, and that particular clause remains... what is the mechanism then for progressing this referendum? Does the Bill go for Royal Assent and become law, or do we go for a referendum, before the Bill goes for Royal Assent?

**Mr Singer:** Well, we amend it to say –

**The President:** It is actually written in (2), but... Mr Attorney.

**The Attorney General:** I think the important thing, Mr President, taking up the point from the Hon. Member, Mr Downie, my recollection of the Referendum Act is that the question or questions are actually settled by the Deemsters. (**Several Members:** Yes.) It would be a nice issue as to, actually, who briefs them. (**Several Members:** Yes.)

I agree that a referendum would normally be reserved for a major constitutional issue, such as this. Just going back in my notes, when we were originally instructing the draftsman, there was a fairly firm view here that we did not need to have a referendum. (**Several Members:** Yes.) I think Members were against a referendum; but, now, it appears that that has changed.

**The President:** I would not guarantee that. I have not put it to them yet!

**The Attorney General:** Sorry!

**Mr Lowey:** Could I just say, on the referendum, this is what the Keys wanted and they say that the people of the Isle of Man should be consulted and, alright, fair dos. If that is what they want, that is what they should get.

In my view, it should be before the thing is applied. That is the definite. The Referendum Act is the law of the land and, as I have said, I think it should only be used for single issue things, but for a constitutional change. This a constitutional change and it could, therefore, be justified.

**The President:** In advance, or after the Bill?

**Mr Lowey:** In advance of this Bill, it should be. The mechanics: I was about to say, my recollection of the Bill was that it was the Deemsters that, actually, do the drafting.

And it comes back to the point that I did make earlier that constitutional changes should be driven from Government (**Mr Downie:** Yes.) – it should be from the top – and we have constitutional committees, and that is where it should have been referred to, in my view, in the first place.

But that is history now. We have got what we have got and, therefore, I think that this clause should remain – amended.

**The President:** That is the point I was going to make: the drafting of the clause is, in fact, that, after it is an Act, the referendum then takes place – not in advance.

**Mr Lowey:** We amend that clause.

**The President:** So, you would be in favour of maintaining it, but amending that particular...

**Mr Lowey:** Yes.

**The President:** Mrs Christian.

**Mrs Christian:** I would agree, Mr President. We take out this part of the Bill – to take out the reference to the referendum in the Bill – but, if we felt as a body that there should be a referendum, there must be a mechanism for going to Tynwald, or whatever, to say we have amended the Bill. We go to Tynwald to suggest that, on this proposal, there be a referendum.

**The President:** Mrs Crowe.

**Mrs Crowe:** I was picking up – it seems a long time coming round, really – on the Lord Bishop's queries about the questions being asked, which, I think we have already had the answer, previously, from the Attorney General, about the Deemster laying down the questions, which I think would be far preferable to what will happen.

What we will get, for anyone logging into manx.net, will be: 'Do you want a popularly elected Legislative Council?' – 'Tick the box' or 'Press the button'. Manx Online does exactly the same with straw polls. We will get the newspapers doing exactly the same.

So, you will have all these straw polls, which will not be asking the appropriate questions. I do believe, if we had questions detailed by the Deemsters, hopefully, I am sure, fully briefed, then I think that is preferable to just having what would be these straw polls – 'Do you want an elected Legislative Council?' – without any of the other detail.

**Mr Singer:** If you had them before it became an Act, when would you have it? When it is passed through and approved by both branches? When would you have it, then?

**The President:** Mr Attorney.

**The Attorney General:** Mr President, the Clerk has very kindly given me the Referendum Act 1979. Section 1 of that says that:

'This Act shall apply in any case where Tynwald has resolved that a referendum be held in the Island on any matter specified in the resolution.'

So, I suppose the point could be made that, in fact, it is not necessary to have such a provision in the Bill, (**The President:** No.) because, in any event, Tynwald can resolve that a referendum be held.

**The President:** It would require a motion before Tynwald.

**The Attorney General:** It would, sir.

And, also, I have to say that I am rather horrified to note that, in relation to the preparation of the questions:

‘Where Tynwald has resolved that a referendum be held in the Island on a specified matter, the Deemsters shall, after consultation with the Attorney General, by order – (a) state the questions to be asked...’

(*Laughter*) So, there we are.

**The President:** Hon. Members, could I just, so that we can get this... Those who would favour maintaining clause 13, which is the referendum section, within the Bill, those in favour of some form of referendum, please say aye; against, no.

**The Lord Bishop:** No, sorry, Mr President, that was a bit muddling, (**Mrs Christian:** Yes.) if I might say – with due deference.

**The President:** Alright, let us try again.

**The Lord Bishop:** Could we vote on deleting from the Bill, and then leave it to Tynwald whether they want to have a referendum or not?

**The President:** Mr Waft.

**Mr Waft:** Just a point of clarification.

Taking my colleague’s view that a lot of people are not interested in this, if we had a referendum and 2 per cent of the Island voted for it, would that be taken as we should vote for it? That is what seems to be a populist view.

You go through on a populist view, and that was my whole point about a populist group of people suddenly appearing on one position.

**The President:** Mrs Crowe.

**Mrs Crowe:** What are the rules in the Referendum Bill about the returns for a referendum? (*Interjections*) Simple majority.

**The President:** Right. Hon. Member, accepting that it was a bit confusing about reference to clause 13, perhaps all we need to know is the feeling of Council whether or not, bearing in mind that Mr Attorney tells us that it requires to go before Tynwald anyway, those in favour of a referendum...I do not even know, if I need it, do I? (*Interjections*) It should be just simply deleted.

**The Lord Bishop:** Can we not just delete clause 13?

**Mrs Crowe:** But we can do that at the clauses, can’t we? We do not need to make that decision now. I would like to think about that, Mr President.

**The Clerk:** It’s not the whole of clause 13; just the second one.

**The President:** No, it’s the section (2), isn’t it?

**The Lord Bishop:** Clause 13(2).

**Mrs Christian:** No, not all of section (2).

**The Clerk:** Just part of section (2). It’s just the reference to a referendum.

**The President:** Let us start again, Hon. Members. Those who prefer section 13 to remain within the Bill, but to be amended. (**Members:** Agreed.)

Right, again, Hon. Members, what we are agreeing is, largely, that we go along with the Bill but amendments are required. Okay.

**Mr Gelling:** Amended to take out the –

**The Attorney General:** Second part of 13(2).

**Mr Gelling:** – primary legislation for a referendum, because Tynwald could...

**Mrs Crowe:** Or not – however the argument goes at clauses stage.

**The President:** Hon. Members, at this juncture, I really require a decision out of Council as to whether, having worked our way through the Bill largely in committee, this morning, whether you wish to continue this afternoon, to go back on to the Second Reading, or whatever.

At the moment, I would suggest to you that what we have agreed, if it is any help –

**Mrs Crowe:** Oh, yes.

**The President:** – on my little listing here, is that we are agreeing to popular election. We are agreeing to the maintenance of a tricameral system. We are agreeing to the election to the Legislative Council separately – not to the 32-Tynwald-seat constituencies. We are agreeing that the elections to the Legislative Council shall be by constituency. We are agreeing that the duties and functions of the Legislative Council remain largely as they are now. We are agreeing that the election time, for the popular election to the Legislative Council, should be halfway through the Keys’ term of office. We are agreeing to continuity within Tynwald, not necessarily within Council. We are agreeing that the voting to be as now, and not as one body within Tynwald, and we have agreed that the referendum section should remain, possibly to be amended.

Now, does that cover everything that we have discussed in committee? I am in your hands, Hon. Members, as to whether you think fit that we should continue to discuss this matter this afternoon, or whether you wish, at this stage, to say, ‘Well, perhaps we should await...’

Mr Attorney, what would be your position on amendments, now, in relation to the suggested amendments, which I know Mr Singer has had in front of the legislative draftsmen, that I know Mrs Christian, I think, has spoken for the legislative...?

**Mrs Christian:** No, I have not.

**The President:** No, right.

**Mr Singer:** Would it be useful, Mr President, because the points I made were eight constituencies, which could be altered, the elections take place 13 months after an election and the referendum to take place before the Bill is passed, but all this work has already been done by Mr Boyde. Would this

be helpful if this was circulated to all Members, so Michael Boyde would not have to do it again, and Members could then look at any further amendments, using this as a base? Would that be helpful?

**The President:** Alright.

**Mr Gelling:** If it fits in with the decisions made.

**Mrs Christian:** Well, there is one decision, Mr President, which we have not discussed, and that is whether it is four or eight constituencies.

**Mr Gelling:** Well, that can be altered. This says eight, but it could be amended further.

**Mrs Christian:** So, are we are looking at those amendments, with a view to further amendment?

**The President:** We had those, originally, when we sat in Committee in private. We had the four, the eight and the all-Island drafts in front of us, at that particular stage. We have not made a decision as to which we prefer. I do not know whether you wish to, at this stage or not.

**Mrs Christian:** Mr President, if we could have the proposals as –

**Mr Lowey:** As a skeleton there.

**The President:** As a skeleton and take it... Right, well, Hon. Members, if that is your view, I am happy that, in fact, we should leave it over.

### Procedural

**The President:** Now, next week we sit in Tynwald Court, Hon. Members. I have a difficulty, insofar as, on 24th May, and this is an inevitability, Hon. Members, Mr Gelling will be absent from Council, and so will Mrs Crowe.

So, in fact, as the Member in charge, I am left with a difficulty there, which means that this Bill will not come back to Council until 31st May.

**The Lord Bishop:** So will I. I gave you notice of that.

**The President:** Yes, on 24th.

**The Lord Bishop:** On 24th.

**The President:** So, it does not come back to Council until 31st. Mr Gelling.

**Mr Gelling:** On a little point, you are looking at the clock, Mr President. You have got the summary of proceedings. Do you want to leave that over, now, until...? Otherwise you are going to come back this afternoon just for the summary?

**The President:** I am in Members' hands, really –

**Mr Lowey:** I do not think we... there is nothing much we can do about it really, is there, in practicalities?

**The President:** In reality, I think we have made –

**Mr Lowey:** I think it –

**The President:** Hon. Members, no matter what, it was always going to be a difficult measure for Council to handle, no matter whether we were handling it publicly, privately, but there are so many alternatives which are there, and so many difficulties which the Attorney's Department will face on this one, that we can only take it step by step. Mr Attorney.

**The Attorney General:** Mr President, I was just going to ask if Members would be content that we have, as it were, another working draft, and not a Green Bill?

**The President:** Yes.

**Mrs Crowe:** Yes.

**Mr Gelling:** Oh, yes.

**The President:** Perfectly happy to have... We will have to stick to white paper. (*Interjection by Mrs Crowe*)

**The Lord Bishop:** Yes, Mrs Crowe will see to that.

### Consideration of Summaries of Proceedings in the Council of Ministers (March 2005) deferred

**The President:** Okay. Now, Hon. Members, are Members happy that, in fact, we adjourn to Tynwald, next Tuesday, and we delete the Proceedings of Council of Ministers, and deal with them at the next sitting?

**Several Members:** Agreed.

**The President:** In that case, Hon. Members, it is an appropriate time in which we adjourned. Thank you for your attendance and attention.

*The Council adjourned at 1.02 p.m.*