



**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, 28th June 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.

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The Council met at 10.30 a.m.

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[MR PRESIDENT *in the Chair*]

Orders of the Day

Constitution (Legislative Council) Bill (Reprinted as Constitution Bill 2004) Consideration of clauses continued and adjourned

The President: Hon. Members, we are dealing with the Constitution Bill, and we had reached the stage, last time we were sitting, of clause 12 and schedules 3 and 4.

To clause 12 and schedules 3 and 4, we had an amendment moved by Mr Lowey on behalf of Mr Singer, as follows:

Page 13: in paragraph 1 –

(a) at the beginning insert –

‘(1) At the end of section 4 add –

“(3) The President of Tynwald, upon receipt of a request signed by a majority of the members of either branch of Tynwald, shall, in the usual manner, and with all reasonable speed, convene a meeting of Tynwald.

(4) The President of Tynwald, upon receipt of a request signed by a majority of the members of the Council, shall, in the usual manner, and with all reasonable speed, convene a meeting of the Council.

(5) The President of Tynwald, upon receipt of a request signed by a majority of the members of the House, shall, in the usual manner, and with all reasonable speed, convene a meeting of the House.”;

(b) at the beginning of the existing paragraph insert ‘(2)’;

(c) at the end add –

‘(3) In section 9, in the definition of “elected member”, for “Isle of Man Constitution Act 1919 substitute “Constitution Act 2005”.’

Page 13 : at the beginning of paragraph 2 add –

‘(1) For section 9(1)(a) substitute –

“(a) on their first assembling after the completion of the sitting of Tynwald referred to in section 6(2) of the Constitution Act 2005; and”.’

Pages 13 and 14: omit sub-paragraphs (2) to (7), (9) and (10) of paragraph 2.

We had an amendment which had been moved by Mr Downie, as follows:

Page 13 : in paragraph 2, at the beginning insert –

‘(1) In section 6, after subsection 6 insert –

“(6A) A sitting member of the Keys may stand for election as an elected member of the Council and neither subsection (6) nor any other enactment shall be construed as vacating the member’s seat by reason of standing for such election.”;

and re-number the subsequent sub-paragraphs.

And we have an amendment to be moved by Mrs Christian.

So, Hon. Members, I think that is where we have reached, with clause 12, schedules 3 and 4. We have Mrs Christian’s amendments to clause 12, schedule 3. Mrs Christian.

Mrs Christian: Thank you very much, Mr President.

The purpose of this amendment is to put Council Members and Keys Members on an equal footing, with regard to being able to stand for election for the other Branch:

Schedule 3, in paragraph 2, after paragraph (1) insert –

‘(2) In section 6, after subsection (6A) insert –

“(6B) A sitting member of the Council may stand for election as a member of the Keys and neither subsection (6) nor any other enactment shall be construed as vacating the member’s seat by reason of standing for such election.”;

and re-number the subsequent sub-paragraphs.

Currently, it allows Keys... as we have progressed through the Bill, we have introduced a provision for a Keys Member to stand for a Council election. The purpose of this amendment is to allow a Council Member to stand for a Keys election, on the same basis, i.e., that the Member’s seat would not be deemed to be vacated by reason of standing for such an election.

Mr President, whether or not this provision is used, I guess would be a matter for individual Members to determine and make a political and personal judgement on.

In any case, should such a person stand and be elected, there would be a requirement, then, for a following by-election. However, that is the case now, when Members of another place are elected to this branch of the legislature.

So, in introducing this, Mr President, it does bring about an element of equality.

I, therefore, beg to move that the amendment to schedule 3 standing in my name be approved.

Mr Downie: I would be pleased to second that, Mr President.

As the Hon. Member has said, it does allow for some parity and fairness in the situation, and, if we are going to have a totally democratically elected system, I think the opportunity that this affords should be available both to Keys Members and to Members of the Legislative Council.

The President: Mr Lowey.

Mr Lowey: I would support the principle that this amendment tries to unlock, if you like, because, again, when you are dealing with constitutional matters, when you move the goal posts ever so slightly, there are repercussions further down the line.

Some of these things can be dealt with under Standing Orders, others can be done under practical terms. In this one,

though, I think it is a principle that, if you can stand for another place up here, then it seems logical to me, in this equality of election, now, that you should be able to do it in reverse – as simple and as concise as that.

It should not be contentious, and I support the principle, sir.

The President: Mr Waft.

Mr Waft: I just want to clarify, Mr President, with regard to the position we find ourselves in now – going back, to a certain degree – with regard to vacating their seats within a certain period of time, which would normally be built into the accession from Keys to Legislative Council. Is that fully covered within the amendment?

Mr Lowey: I think, if I may assist, is not that fully covered? If anybody assumes – if am I wrong, Mr President – if somebody assumes the seat, you fill that period of time and that is written into the original clause. It fills the time – if you have got three years to serve, if you stood for the election, you would fill the three-year term.

The President: Mrs Christian.

Mrs Christian: I am just trying to clarify the point that the Hon. Member, Mr Waft, is raising.

Is he trying to establish at what point you vacate your seat in one branch, in order to take up your seat in the other branch? It is nothing to do with subsequent elections and so on.

This amendment does not cover that.

Mr Waft: Just the ramifications of it, Mr President, for clarity, in previous... there was legislation which covered all those eventualities, and what procedures you would go through. I wondered whether all that is covered within this.

The Attorney General: Existing legislation.

Mrs Christian: It is not covered in this legislation. I do not know whether it is covered by a Standing Order or whether... I would take Mr Attorney's advice as to whether or not we need to introduce such a measure for Council Members going to the Keys.

The President: Mr Attorney.

The Attorney General: Mr President, I wonder if this is the provision: it is the Isle of Man Constitution Amendment Act 1919, which, of course, I am aware, is to be repealed by this Bill. But the current position is that:

'Within fourteen days from the date on which any members elected to the Council by the House go out of office pursuant to section 10' –

that is retirement of elected Members –

'the House shall elect, [...] to serve as members of the Council, such number of persons as are equivalent to the number of members who have so gone out of office'.

That deals with the provision where a Member of the House retires.

Mrs Crowe: Mr President, can I just ask the Attorney General which part of the Act that is in. Is it in part of one of the repeals?

The Attorney General: Section 8 of the... Dealing with the Isle of Man Constitution Amendment Act –

The President: Constitution Amendment Act – not this one.

Mrs Crowe: Well, in schedule 4, of course, that has been repealed.

The Attorney General: Yes.

The President: Then we have a procedure, don't we, which sets out the procedure which the Keys follows, thereafter, to elect a Member?

The Attorney General: I am just wondering: is this the provision that the Hon. Member is concerned about?

The President: It is raised by Mr Waft, so... Mr Waft.

Mr Waft: Yes, Mr President. I have no problem with the amendment as such, but it is, purely, that the tidying-up exercise, when we see that, under the Constitution Act 1919, they have repealed certain sections. I am concerned about throwing the baby out with the bath water, as such, and we have not got a catch for anything that might ensue or arise because of that.

The Lord Bishop: When the Hon. Member, Mr Downie, came up to this House, he was asked by the Clerk – was he not? – whether he wished to be elected, and then he signed the paper, at which point, then, the election could be called.

What we need to have for here, surely, is the same provision that, when one of us leaves here, then an election should be called for that vacancy which, clearly, will not be in any legislation, because it has not happened –

The President: It has not happened.

The Lord Bishop: It has not happened and cannot happen.

The President: Well, it has happened, and that will be a subsequent amendment to clause 3, which crops up later. (**The Lord Bishop:** Right.) I think we are getting a little bit bogged down here, and I am... Mrs Christian.

Mrs Christian: Mr President, there is still one other issue that I think the Hon. Member is quite right to raise, and I think this is the nub of the point.

At what point does a Member relinquish their seat in the other branch? Is it covered by a legislative provision or, simply, it has been relinquished by accepting appointment to the Council, and is that covered by a statutory provision?

For example, when the Hon. Member indicated that he was coming to the Council, he accepted his election. He, therefore, presumably, on signing, relinquished his Keys place.

Mr Singer: When you are elected to Council, you have two weeks, don't you, to make a decision? So, you are, obviously, still a Member of Keys. As soon as you accept it and sign, then your seat must be vacant.

Mrs Crowe: Yes, but those provisions are in the

Constitution Act, I think, that we have repealed by this Bill.

Mrs Christian: And what we are now moving to is somewhat different, in that a person is standing for an election by the public and, in so doing, they are, presumably, elected, immediately the returning officer has declared them elected.

Do we need a provision to say that, at that point, their seat is vacated in the other...? (*Interjections*)

The President: Hon. Members, in fairness to *Hansard* and in fairness to ourselves, with the windows open – there is more background noise – I would ask that you speak up and try not to speak across each other, please.

Mr Singer.

Mr Singer: It appears to me that, as in any election, when you are elected and you get your writ and you sign, then you are a Member of the... If you do not sign, then, even though you have been elected, then you are not a Member (*Interjection by Mr Gelling*) until you have been sworn in.

Once you have been sworn in, then the other seat must be vacated.

The President: Mr Gelling.

Mr Gelling: What I was saying, Mr President, you do not sign, having resigned from the Keys; you sign as a Member of Legislative Council which, automatically, debars you from being a Member of Keys, but there is not an actual reason for going – but there must be, because can you not resign from the Keys?

Mrs Crowe: No.

Mr Downie: You can now.

Mrs Crowe: Oh yes...

Mr Gelling: You can now.

Mrs Crowe: That is right. That is a new...

Mr Downie: Yes, yes.

Mr Gelling: But does not that come into play, if there is a position whereby you can resign from Keys, you resign from Keys because you have become a Member of Legislative Council, and you then sign as accepting that position.

The President: Mr Downie.

Mr Downie: Mr President, I think this situation may be referred to in the Keys Standing Orders. The writ I signed, on being elected to this Hon. Chamber, was drafted by the Clerk, at the request of Mr Speaker, and all I was asked to do was to sign a form, accepting the office and, on acceptance and being sworn in, then the legislation kicks in that there is to be an election for the House of Keys.

The President: A by-election is called.

Mr Downie: Yes, the by-election is called. I would think, in this situation, if a person is elected from the Legislative

Council to go into the Keys, following a House of Keys election, there needs to be a provision made, either in Standing Orders or in legislation, where you, Mr President, have authority to say that there is now a seat vacant in the Legislative Council and you, then, can order that process of election to take place. (*Interjections*)

Mr Lowey: That must be... because we have had two occasions where that has happened: Edgar Mann and Mr Victor Kneale and both stood. They were MLCs until they were elected as MHKs, and then they chose to become MHKs.

Mr Downie: Did they, Mr President, through you, not resign their seats to stand, no? (*Interjection*)

Mr Downie: Yes, but we are trying not to have that position.

The President: Yes, they resigned.

Mrs Crowe: Yes, well, that is the point, I think, that Mr Downie is making. So, we would have Keys Members who did not have to resign, and we would have to resign.

Mr Downie: That is only if you are elected.

The Attorney General: Mr President, again, I am sorry I am not able to, perhaps, put my finger precisely on the point, but there is another provision in the 1971 Act – that is the Isle of Man Constitution (Elections to Council) Act 1971 – which says that, notwithstanding anything contained in the Standing Orders of the House of Keys, every election under section 8 of the 1919 Act – which is the election of Members to the Council by the House of Keys – ‘shall be conducted in accordance with the following provisions’, and it then sets out the provisions:

‘Any proposal that a person be elected to be a member of the Council shall be made in writing and delivered to the Secretary of the House not less than 10 days before the sitting of the House at which the election falls to be made, and shall be accompanied by particulars in writing of –
(a) the qualifications and experience of the candidate,’

and so on. You have to have 13 votes recorded in your favour.

‘If a person shall have a majority of the votes of the members of the House present and voting recorded in his favour but such majority is less than thirteen votes then [...] the name of that person shall be forthwith voted upon separately’,

and so on. So, there is a provision there for the election of a Member who wishes to be elevated, as it were, to Legislative Council. That is under the 1971 Act.

Mrs Crowe: Which we have repealed.

The President: No, hold on.

The Attorney General: The 1971 Act – that, again, is to be repealed.

Mrs Crowe: Is there anything in the 1990 Act, Mr Attorney

General, because there are only two sections repealed in that Act and, if there is something in there...? I mean, sections 2 and 3 are the only two that we have repealed.

The Attorney General: That is primarily concerned, Mr President, with the election of the President of Tynwald and the powers of the Governor at Tynwald Day.

The President: Will it not be covered by part 3 of our Bill, which we still have an amendment to come from Mrs Christian?

Mrs Christian: No, Mr President.

Would it cover the matter, Mr President, if we had a statement in the Bill saying that, once a Member of one branch has accepted swearing in at the other branch, their original seat is deemed to be vacated?

Mrs Crowe: So, once they have signed the roll, their original seat is vacated.

The President: Well, it is, anyway, isn't it? So...

Mrs Christian: It is a question of whether it needs to be statutorily said or Standing Orders said.

Mrs Crowe: Because we have repealed the Act.

Mr Waft: That is my whole point, Mr President, that if you are standing for Legislative Council, you need to have a process by which it is laid down in statute as to what time, et cetera, that you have to...

My concern is that we have repealed the 1971 Act, and I am just checking that we have got enough within this document to cater for the situation that has arisen because of the amendment.

Mrs Christian: Maybe, either, Mr President, you are elected when you are declared by the returning officer to so be, or sworn in. (*Interjections*)

The President: Mr Attorney.

The Attorney General: I am sorry that it is not easy sometimes to find the answer to these questions, but the whole scheme of schedule 1 to the Bill, as proposed to be amended, is that the 1995 Representation of the People Act – which, of course, is concerned primarily with elections to the Keys – all those provisions apply, with the necessary amendments, to the Legislative Council.

So, the draftsman has not seen fit to replicate the existing legislation. What he has done is he has said, look at the Representation of the People Act. That gives you a broad and comprehensive scheme for elections to the House of Keys, and what you are being asked to do is to substitute, wherever House of Keys applies, references to Council.

Now, as to whether the amendments, which are before Council now, cover the point raised by Mr Waft, the Hon. Member, I am afraid I really have not had an opportunity to check that, but I know that the draftsman is meticulous in that respect, and I cannot imagine that he would allow that to cause a problem.

Mrs Christian: Mr President, may I ask the learned

Attorney –

The President: Yes, Mrs Christian.

Mrs Christian: – on the point that he has just made: whilst he has referred to, I think, election of Members to the House of Keys, (**Mrs Crowe:** Substitute.) that is to do with the election of the Members of House of Keys. (**The Attorney General:** Yes.)

What it does not cover is the transition between one branch and another, because this is new.

So, I really do not feel that, although you can substitute 'Council' for Keys in that provision, that it covers this specific point. (*Interjections*)

The President: Would it help if we had the legal draftsman?

Mr Gelling: I was just saying, Mr President, if you take the Council of Douglas and the Commissioners, you see you do not have to resign as a Commissioner until such time as you are elected to the Keys.

Well, the same thing would apply. So, what we are looking for is something whereby you retain your Keys seat or your Legislative Council seat, unless otherwise elected to one or the other, isn't it? It is obviously in statute somewhere.

Mrs Crowe: It is only once.

Mr Downie: Through you, Mr President, the same situation applies with the Board of Education elections, where a person who is a member of the Board of Education can seek a seat in the Keys and not be required to give up their Board of Education seat, unless they have been successfully elected.

The President: Hon. Members, I know it is difficult, and I know we are getting a little bogged down on this.

It was my intent, Hon. Members, if at all practical, that Council should see through the Third Reading of the Constitution Bill this morning. I am minded, at the moment, to say that we should take a 10-minute adjournment and, if possible, have the legal draftsman attend upon us.

Now, if that is practical and would be satisfactory to Legislative Council, the answer may be quite simple. The answer may not be simple, in which case we might be in more difficulties.

But if the answer is simply put into words in the legislation, well then, I think, for my purposes, and I think for Council purposes, it would be wise for that to happen.

So, if you are in agreement, Hon. Members...

Mr Gelling: Mr President, could I perhaps put forward a suggestion that, maybe, now is the time to go into private to do the Summary of Proceedings and, during that time, it would give Mr Attorney the opportunity to look at that, and then come back.

Mrs Crowe: And talk with us.

The President: Yes, I am content to do it that way round, if Members are...

Mr Gelling: It is just that I am thinking of the time. (*Interjections*)

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

**Summaries of Proceedings in the Council of Ministers
(April and May 2005) considered**

The President: Right, Hon. Members, in that case, the position is that we will currently go into private, and we will deal with the Council of Ministers' minutes. It could very well be that we will notify the press, as soon as possible, as to when we will be re-sitting, but I would think 10 minutes or quarter of an hour.

*The Council sat in private at 10.58 a.m.
and resumed in public at 11.30 a.m.*

**Constitution (Legislative Council) Bill
(Reprinted as Constitution Bill 2004)
Consideration of clauses concluded**

The President: Now, Hon. Members, we revert again to our business of Legislative Council. I apologise for that break, but I think the break was necessary, in order that we could clear the query in relation to the amendments which are being suggested, and in relation to Mr Waft's query.

So, I think, Hon. Members, with that break, we have been able to come to a conclusion, with the help of the legal draftsman, for which I am grateful, that, in fact, in schedule 1, 'Modifications of the Representation of the People Act of 1995', albeit that the Constitution Bills previously will be repealed, as a result of this Bill, in part or in whole, the modifications to the Representation of the People Act of 1995 will, in fact, cover the query raised by Mr Waft, and that Council Members will be treated in the same manner as Keys Members are currently treated.

Now, with that explanation, Hon. Members, we continue with our discussion. Does any further Member wish to speak? We are dealing, Hon. Members, with clause 12 and the amendments made to schedules 3 and 4.

Mrs Christian: Mr President, if we are dealing with amendments to schedules 3 and 4, I wonder if we could have some advice, please, from the learned Attorney.

There was some discussion, at our last meeting, that it might not be appropriate to repeal all of the sections which are listed in schedule 4. I wonder, as I do not see any amendment before us on that issue, whether the learned Attorney had changed his view, and that he is now content, in respect of those repeals.

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

The concern which I had expressed, at the last sitting of Council, was in relation to section 25 of the Isle of Man Constitution Amendment Act 1919.

Hon. Members will recall that that is an important provision, under the heading 'Miscellaneous', which states that:

'All elected Members shall have and enjoy all the privileges, powers, authorities, and advantages, and be subject to all the jurisdiction, control, obligations, liabilities, and responsibilities pertaining generally to members of the Council, by reason of such membership.'

I was anxious, Mr President, that we did not allow that important provision to be repealed, inadvertently.

I was quite sure that, again, that would not have been the case. I had the benefit of checking the position with the draftsman, Mr President, and I am content that, if the amendments go through, as Hon. Members are discussing today, the Members of Council will not be disadvantaged, that the position is preserved in the amendments which we are considering today.

Mrs Christian: Thank you.

The President: In that case, Hon. Members, the clauses 12, schedules 3 and 4, having been moved, along with the amendments, I revert to the mover of the Bill to see if she wishes to wind up our discussion on clause 12, schedule 3 and 4 – add anything further or not. Mrs Crowe.

Mrs Crowe: Just a second, Mr President, I think Mrs Christian wants to ask...

Mrs Christian: Yes, Mr President, I am not entirely clear whether or not we have amended, in paragraph 9 of schedule 1... We may have done it and I may have forgotten, and I do apologise if that was the case, but would the learned Attorney confirm that this is the section which, effectively, replaces that clause 25, which is to be repealed?

And have we changed the reference in that paragraph 9 from 'Legislation Committee' to 'Legislative Council', yet? Have we done that?

The President: I think we did.

Mrs Christian: Right.

Mrs Crowe: Yes, I think we have done that throughout the Bill.

The President: I think that was throughout the Bill.

Mr Lowey: Yes.

Mrs Christian: Thank you, Mr President.

The President: Right, Mrs Crowe.

Mrs Crowe: Thank you, Mr President.

I do not think we need to add or I need, certainly, to add any further to the discussion on clause 12! So, I just, formally, beg to move that clause 12 stands part of the Bill.

The President: Clause 12. Well, Hon. Members, what I have to put to Council then –

Mrs Crowe: And the schedules.

The President: Yes, what I have to put to Council, Hon. Members is that clause 12 and schedules 3 and 4 stand part of the Bill.

Now, Hon. Members, as you are aware, we had the amendment moved by Mr Lowey at our last sitting on behalf of Mr Singer. Then we had an amendment moved by Mr Downie. This morning we have had the amendment moved by Mrs Christian.

Now, Hon. Members, what I will do, we will put them in that chronological order, if you wish. So, I, first, put to Council the amendment in the name of Mr Singer, moved by Mr Lowey. Hon. Members, those in favour, please say aye, against, no. The ayes have it. The ayes have it.

Now, Hon. Members, similarly, I put to you the amendment in the name of the Hon. Member, Mr Downie. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Then the amendment to be moved by Mrs Christian, Hon. Members: those in favour, please say aye; and against, no. The ayes have it. The ayes have it.

Now, Hon. Members, I put to you, therefore, clause 12, schedules 3 and 4 as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

We turn, then, to clause 13.

Mrs Crowe: Thank you, Mr President.

Clause 13 is, of course, the short title and commencement. The Act will be cited as the Constitution Act 2005, and the Constitution Acts 1919 to 1994 and this Act may be cited together as the Constitution Acts, also, of 1919 to 2005.

The Act shall come into operation on such day or days as may be appointed by the Governor in Council, and the Order under subsection (2) may contain such transitional provisions as the Governor in Council may consider appropriate for the purpose of bringing this Act into operation.

Mr President, I beg to move that clause 13, the short title and commencement, stand part of the Bill.

The Lord Bishop: I beg to second and reserve my remarks.

The President: Mr Singer.

Mr Singer: I apologise for asking for this, because I was absent, but I have looked and I could not see the answer.

Could I ask Mrs Crowe: the Bill, as amended now, shows an election to this Chamber 34 months after the Keys election, which is in the September. I could not see it specifying when Members went out of office.

Now, it may be my omission, I could not see when they went out of office. So, could you possibly tell me when Members go out of office?

Mrs Crowe: I think that may well have been contained in, actually... restated in one of the amendments. It is five years from the date of commencement of the election to the Legislative Council.

Now, it may be part of the original Bill, the five years, but, certainly, it is in one of the amendments – and I have a feeling it was in an amendment brought forward by yourself, in one of the nine pages, but I am sure –

Mr Singer: It cannot have been, because I had going out in May, not in September.

Mrs Crowe: Yes, we altered it to September... we altered the timing, but we still held on to the number of years. It was just that the timing from the May –

Mr Singer: It is when this Council is dissolved, I am looking for.

Mrs Christian: In 2009.

Mrs Crowe: Ah, I am sorry.

Mr Singer: No, the month is dissolved, if the election is in September, when is the Council dissolved? Is that August or the beginning of September?

Mrs Crowe: The Council does not dissolve as in one, the Council... Members become eligible for election after the conclusion of their term of office. The Council will not, unlike the Keys, go out for a general election. That was one of the first proposals.

It is unfortunate that you have been missing for the extensive discussions that we have had, and I am sure it will require an awful lot of... when the whole Bill is rewritten, it will appear clearer.

But there was a decision made that, because there was a requirement for some continuity that Members of the Council would come due for election five years after they had been elected.

So, it would, once again, be by rotation, as it is at the present time, so it would not be the whole Council going out at one time. (*Interjection by Mr Singer*) That is right, yes.

The President: Hon. Members, I put the – (*Interjection by Mrs Christian*) Oh, sorry, Mrs Christian.

Mrs Christian: Mr President, can I have clarification again, please. We have had rather convoluted procedures here, but have we amended subparagraph (2) –

Mr Lowey: Not yet.

Mrs Christian: – of clause 13 yet? No. So the Hon. Member is going to...

Mrs Crowe: Yes.

Mr Lowey: Yes.

Mrs Christian: Right, thank you.

Mr Lowey: Thank you, Mr President.

The President: Mr Lowey.

Mr Lowey: Could I move the amendment –

Mrs Crowe: It's Mr Singer's amendment. (*Interjections by Mr Singer*)

Mr Lowey: – as in:

Page 7; lines 1 to 3: For subsection (1) substitute – '(1) This Act may be cited as the Constitution Act 2005, and the extant provisions of the Constitution Acts 1919 to 1994 and this Act may be cited together as the Constitution Acts.'

Page 7; lines 5 to 8: Omit the words from 'but,' to the end of the subsection.

It actually moves every word after 'but,':

'such an order shall not be made unless the commencement of this

Act is supported by a majority of persons voting in a referendum held under the Referendum Act 1979.’

It is quite clear what we are doing, in this one, is getting rid of the need for a –

Mrs Crowe: A referendum.

Mr Lowey: – a referendum, and I beg to move. It is as simple and as bold as that, and I beg to move, sir.

Mr Gelling: I beg to second, Mr President.

The President: Any other Member wish to speak to clause 13 or the amendment, Hon. Members? Mrs Crowe?

Mrs Crowe: No, Mr President, I think that has been discussed at length, whether there should be a referendum, whether there should not. Quite patently obvious to the Council was that the referendum should not be held after the Bill had been enacted, and, certainly, if there was going to be a referendum, it should be held beforehand. I think it was the consensus that it should be as the amendment.

The President: Hon. Members, I, therefore, put to you, Hon. Members, clause 13 and the amendment moved by Mr Lowey, on behalf of Mr Singer. Hon. Members, first the amendment. Those in favour of the amendment, please say aye; against, no. The ayes have it. The ayes have it.

The clause, as amended, Hon. Members, those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Mr Singer: Mr President, I am sorry to come back to you, again. What appears to have just been said is that four Members come out after their five years and the other four Members come out after the other five years.

Mrs Crowe: No.

Mr Waft: That was what was said.

Mr Singer: That was what was just said now. (*Interjection by Mr Waft*) Yes, that was said.

The President: After 2009.

The Lord Bishop: Yes.

Mr Singer: So, all Members... after 2009, but all Members come out now in 2009.

Mr Lowey: That is right.

Mrs Christian: Yes. September.

Mr Singer: Right, okay, that is...

The President: From 2009 onwards, it is exactly the same. It rolls on a five-year period.

Mr Singer: That is right, but that was not what was said.

The President: Right.

Mrs Crowe: I am sorry.

The President: Now, Hon. Members –

Mrs Crowe: I thought you meant ongoing...

Standing Orders suspended to allow amendment to schedule 1

The President: Now, Hon. Members, also, last time we were discussing this particular matter, we noted that there was a possibility of an amendment coming forward in relation to clause 3.

Now, Hon. Members, so that we are technically correct, what I would like to do is clear all the Second Reading and the amendments et cetera, before we start to deal with the Third Reading. In order to do that, probably, it is best for us to suspend Standing Orders, to enable us to go back and take the amendment to clause 3 and schedule 1, which Mrs Christian wishes to table.

We did discuss it, Hon. Members. Are we content to suspend Standing Orders? (**Members:** Agreed.)

I think with that, Hon. Members, I am prepared to say that we should go back, then, to clause 3 and schedule 1, and call on the Hon. Member, Mrs Christian.

Mrs Christian: Thank you very much, Mr President.

The amendment which is tabled is an amendment to schedule 1, which deals with election rules:

In paragraph 11, for sub-paragraph (1) substitute –
‘(1) In Schedule 2, in the Election Rules, in the table in rule 1, for item (1) substitute –
“(1) Issue of writ
(a) Within one month after the expiry of the term of office of an elected member of the Council.
(b) In the case of a casual vacancy –
(i) if the term of office of the member whose place is to be filled would ordinarily have expired within 4 months of receiving the report of the casual vacancy, the writ shall not be issued;
(ii) otherwise, within 2 months of receiving the report of the vacancy.
(c) Where the senior returning officer has made a special return of a writ to the effect that the number of candidates elected is less than there are vacancies to be filled up or that no candidate has been elected, within one month of the receipt of the special return.”’.

There is provision in the election rules for the manner in which vacancies shall be treated, but now that Council Members are to be elected as well, there is a need for a similar provision to be made in respect of vacancies in the Council.

Therefore, the wording of this amendment is the equivalent wording to the provision for the other place. It provides that where there is the expiry of a term of office of an elected Member of Council, i.e. one that we all know about and it is clear when that will be, the issue of the writ shall take place within one month of the expiry of that term of office.

In the case of a casual vacancy, if the vacancy is within four months of another election, then the timetable will be different. There will not be a writ issued, so that we are not having two elections within a space of four months.

But, in any other case, the writ will be issued within two months of any report of a casual vacancy.

Paragraph (c) deals with a situation where there are fewer candidates than there are vacancies and there has to be another call for an election. In those circumstances, the special writ will be issued within one month of that special return being issued by the senior returning officer.

I beg to move the amendment standing in my name.

Mr Singer: I beg to second.

The President: Seconded by Mr Singer. Any Hon. Member wish to speak to the amendment? Mrs Crowe, as mover of the Bill, do you wish to comment?

Mrs Crowe: No, thank you, Mr President. I think, if –

The President: I think in that case, Hon. Members, what I will put to the Council is that clause 3 and schedule 1, the amendment in the name of Mrs Christian. Hon. Members, those in favour of the amendment, please say aye; and against, no. The ayes have it. The ayes have it.

And for clarity, perfection, if you like, Hon. Members, schedule 1, as amended. Those in favour, please say aye; against, no. The ayes have it.

Constitution (Legislative Council) Bill (Reprinted as Constitution Bill 2004) Third Reading approved

The President: Hon. Members, that concludes our passage of the Constitution (Legislative Council) Bill up to the ending of our clause stage.

We have now completed that, with all our amendments, and we move to the Third Reading, as was indicated on our Order Paper. I call on the Hon. Member, Mrs Crowe.

Mrs Crowe: Thank you, Mr President.

I am sure you could imagine that I could speak for some length, at Third Reading, on the enormous amount of work that we have put in, to this Bill. We have all the work that the legal draftsman has done, on two sets of amendments, and what I would say is, I think it was recognised, when the Bill came from another place, and recognised by many Members of that other place, that this Bill was not in a workable form.

In fact, at the First Reading, we had comments from Members of Council saying just what a shambles the Bill was, and that it was totally unworkable. I think that Members of the Legislative Council have worked very hard, with the help of the Attorney General's Department, to make this into a workable Bill, and I do hope that this will not be rejected out of hand, as us trying to protect ourselves.

I think we have all recognised that we would work for public election, but we had to make a Bill that was workable, and that is what we have done.

So, with that, Mr President, I would just like to formally

move the Third Reading of the Constitution Bill 2004, as presently written, but to be amended.

The Lord Bishop: I beg to second and reserve my remarks.

The President: Mr Singer.

Mr Singer: Can I just briefly say... the first thing I would like to say is that I am sure the Council would say to Mrs Crowe that we appreciate the fact that she took the Bill, and congratulate her on doing that. (**Mr Lowey:** Hear, hear.)

Secondly, the principle of public election to this Council has been talked about for many years, both in the Keys and also in this Council. I think that is exactly what was wanted and that is exactly what we have done, in that we have now put into place a workable Bill, as Mrs Crowe said, that will allow Members of this Council to be elected.

But what we have not done is accepted the Bill that came to us, which, actually, in my view, demolished this parliament and all its history. I do not think that is what the public want, and I do not think the original idea of public election meant to do that.

So, I believe that we have done a job that I hope will be accepted by the other place, because public election is now possible, and, hopefully, that is what will come to pass.

So, again, I would say thank you, again, to Mrs Crowe for having taken the Bill.

The President: Mrs Christian.

Mrs Christian: Yes, Mr President, we have fundamentally changed around, from the principle which came from another place, and whether or not they will be content with that remains to be seen.

I do think that, although their step was a step further than we now have proposed, what we have proposed is quite a significant step, and the consequences of that will take some time to roll out, I believe, if this legislation is accepted.

I think the view of Members around this Chamber is that the function of Council should continue as it has functioned in the past, but there is a potential there for Members, in the future, to have a slightly different view, given that they will be going to the electorate for their support.

It will, I think, alter the way in which Council Members will be expected, by the electorate, to function, in relation to constituency issues. What we have done is try to produce something with a geographical distribution across the Island, and I know there may have been different views about whether that was the best way to deal with it, but that is what we have decided upon.

That, in itself, will introduce, I suspect, some degree of parochialism in this place, which has not... well, perhaps it has happened in some instances, but it was generally my understanding that this Council should take an all-Island view. I fear that that aspect of Council work will be diluted to some extent, because of the pressures of having a regional electorate, but so be it.

Election is the principle that we have been pursuing and there is, perhaps, no easy way of doing that, without introducing that element of territorialism, if I can put it that way.

I think that, in some ways, it is meeting a view that democracy has to be served in this way, and that the way in

which democracy was served, before, was not adequate. I do believe there was a democratic system before, in the sense that we were elected by an electoral college.

However, there has been pressure to suggest that that was not enough. Whether or not, in meeting this wish to go out to the public, it will, in the end, deliver what it is they think they were after remains to be seen.

The President: Mr Lowey.

Mr Lowey: Yes, Mr President.

As we come up to 5th July, and it is only a week away, I think history is worth looking at. I am sure the mover of this Bill, in another place, wants to improve the system. I think what this Council has done has taken a set of proposals, it has changed along the way in another place to become an almost – in my view anyway, and it is only my view – unworkable solution.

What we have tried to do is focus in, as Mrs Christian has said, on that democratic election, although I tend to agree with her that there is... but remember – and this is very important to remember – their proposals were to retain that element of election to this place, after the public had elected. That was retaining the very thing that they were objecting to, in the new legislation.

We have removed that from them. I believe it is a practical solution, if they wish to take it up. Failing that, I do think, as this Bill has illustrated, when you mess around with the Constitution, it is like when you put a stone in the water, the ripples go out and out.

I think, if you want to change the Constitution, you ought to be very careful, because I do think that one thing is like Humpty-Dumpty: once you break it, you will not put it back together again, without the cracks showing.

I believe we have attempted to put together a piece of legislation that is practical. I congratulate Council on doing it. I hope the other place will accept it, in the spirit which we have adopted – not to be obstructive, not to reject their chosen path, but to make it practical and workable.

The President: Mr Butt.

Mr Butt: Mr President, I speak as a comparative newcomer, and I have, actually, been amazed by the process, how it has worked, over these last few weeks.

At the outset, we probably had, maybe, 20 different paths we could have gone down with this, and somehow, naturally like a river, we have come down to one final course – and with little disagreement, in fact.

Maybe because it has happened that way, that is the right way to go. Hopefully, this will be accepted by the other House.

But I do think, as Mrs Christian says, the next Council that sits after this comes into effect will be totally different in nature. Maybe, when that Council sits, they could not achieve what has been achieved these last few weeks, because the consensus here was remarkable, in lots of ways.

The natural courses followed to the conclusion we have today. Maybe, in the future, it will be a lot harder, when every Member has a constituent to look up to.

The President: Mrs Crowe to wind up, please.

Mrs Crowe: Thank you, Mr President.

I think all has been said. I think everyone has worked with a will. Everyone has worked to achieve the position that we are in today.

As I say, I hope that this will be accepted, and I think that it will be workable in this form. The Bill that we received, as I said before, I think was recognised by all, not even only this Council, but Members of another place, as an unworkable piece of legislation.

So, with that, I formally move the Third Reading of the Constitution Bill 2004.

The Lord Bishop: I beg to second. I have already done that, haven't I?

The President: Hon. Members, the motion I put to Council is that the Constitution Bill be read for a third time. Those in favour, Hon. Members, please say aye; against, no. The ayes have it. The ayes have it.

Thanks to Attorney General and legislative draftsman Statement by the President

The President: Hon. Members, can I say on your behalf, equally, our thanks to Mr Attorney for helping, at times when it was needed, and also to Mr Boyde for being prepared to disrupt his morning and come in this morning, to give us some clarification, when it could very easily have meant that we were bogged down, yet again, and not have been able to have moved forward with this particular measure, to clear the Third Reading, as we have done. (**The Lord Bishop:** Hear, hear.)

Now, I think it was important, Hon. Members, and I am grateful to Members for the manner in which they have been prepared to move, to go from one stage to the...

Lord Bishop.

The Lord Bishop: May I beg for a clean copy of this, without any underlinings, with all the amendments in.

The President: I think when it goes back to another place, it will have to be reprinted, but, at that stage, it will be reprinted.

The Lord Bishop: Thank you.

The President: So, Hon. Members, having said that, I think we have now reached a position of adjournment. We will adjourn to the sittings of Tynwald in July – that is a week today, Hon. Members – and October 2005, and, thereafter, to the Tuesday, 25th October, which will be the next sitting of the Legislative Council.

Thank you, Hon. Members.

The Council adjourned at 11.58 a.m.