



**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, 31st 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, Mr E G Lowey and Mr G H Waft,
with Mrs M Cullen, Clerk of the Council.

Business transacted

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The Council adjourned at 12.40 p.m.

Legislative Council

The Council met at 10.30 a.m.

PRAYERS *The Lord Bishop*

[MR PRESIDENT *in the Chair*]

LEAVE OF ABSENCE GRANTED

The President: Hon. Members, we have apologies this morning from Mr Gelling and, also, from Mr Singer.

Orders of the Day

CONTINUATION OF SECOND READING

Constitution (Legislative Council) Bill (Reprinted as Constitution Bill 2004) Second Reading resumed and approved

The President: We turn then to our Order Paper and the first Item on the Order Paper is the Constitution (Legislative Council) Bill. It is for the continuation, Hon. Members, of the Second Reading.

You will be aware that we did commence the Second Reading and then decided that, in fact, we would go into public committee, to discuss the position, at that stage. Now, what I propose to do this morning is to allow things to flow again, so that you can continue with the Second Reading.

I do not know whether the Hon. Member in charge, Mrs Crowe, wishes to make any comment at the outset of the continuation of the Second Reading, but you are perfectly entitled so to do, should you wish, Mrs Crowe.

Mrs Crowe: No, I do not think so, Mr President. I have got the notes here for the summing up.

The President: In that case, Hon. Members, does any Hon. Member wish to speak to the Second Reading of the Constitution (Legislative Council) Bill? Mr Lowey.

Mr Lowey: I think, Mr President, if I may, this Bill is a very difficult one, as written, and we all recognise that it is impractical and almost unworkable, as presented to us from another place. So, this is rather a unique occasion and time, for this Council, and it is to try to make some semblance of order out of it, to make the wishes of the lower House into a workable document.

I do not think we are going to be able to succeed totally, anyway, so what I think the Council should be doing is trying

to make a Bill that will, at least, represent some of the cardinal points that have been enunciated in another place, or as I see it, anyway. It is not going to be easy, and, perhaps, the finished result will not be as joined up, if I may say so, as normally we deal with our legislation.

But apart from totally rewriting the Bill on a blank piece of paper, I do not see how else we could do it, so, therefore, I am giving warning now that, perhaps, if any criticism is levelled at the Council, for the end result, it is because it has been a real pickle that has been handed to us.

The President: Right, Mrs Crowe, is there anything you wish to say in winding up the Second Reading, at this stage?

Mrs Crowe: If you think it is acceptable, I can reiterate the views of the Members of the Council so far.

The President: It is entirely up to you, as the Member in charge.

Mrs Crowe: As you know, I am moving this Private Member's Bill, which has been promoted by the Hon. Minister in the lower House, Mr Rodan, and I think the general agreement of the Legislative Council, after sitting on a number of occasions in committee, to try and sort this... at the Second Reading, there were a number of comments.

Mr Singer made quite clear his opposition to the Bill that we have before us today, and he made it quite clear that he had been very impressed, since he had been a Member of the Legislative Council, at the way in which detailed scrutiny of Bills took place and he had been, as I say, very impressed with the workings of the Legislative Council.

He was giving notice that he was going to put a number of amendments before the Council. He also mentioned that, after drafting the amendments, we came up with a very large extended number of amendments that were all consequential, of course, throughout the Bill.

The Hon. Member of the Council, Mr Gelling, favoured constituencies with an all-Island election basis, and he did say that, regarding this Bill that was before us now, he felt that it was unworkable to have 32 Members elected, without some way then of re-electing them to a Legislative Council.

Mr Butt made the comment that the option that he had read out from the Select Committee proceedings... that not every member of the Select Committee who sat for a number of, I think it was 15, months, deliberating on the new Bill that is before us today – no-one – had a consensus of opinion when that Select Committee Report came to Tynwald; and that, if you had a blank sheet of paper, he felt that it was quite acceptable that a new parliament could be structured in a different way, but that is not what we have before us today.

Mrs Christian, as usual, the Hon. Member's detailed eye for legislation noted that there were many errors in the Bill. Mrs Christian favoured a unicameral body, with two committees. She did say that there was no real clamour for change outside, that maybe it was something that was, perhaps, not as we perceived it to be, and that, with the change to the popular election of all Members of Tynwald, it would be then very difficult, as had been once mentioned before, for a person to be elected to the Legislative Council.

There was no mechanism within the Bill to say that a Member had to be elected to the Legislative Council, if nominated, and, in fact, nominations could go on for a great

Leave of absence granted

Constitution (Legislative Council) Bill (Reprinted as Constitution Bill 2004) – Second Reading resumed and approved

number of weeks and cause constitutional disruption. In being hasty in the wish for change, we have been presented with a Bill that is a compromise and is, in Mrs Christian's opinion, at the present time, as the Bill is presented, unworkable.

My Lord Bishop felt that there should be a whole-Island election and that the functions of the Legislative Council should be clearly laid down, in whatever Bill we sought to progress. He also stressed that he felt the unique system that is now in place in the Isle of Man, our historic Tynwald, does work. It is right that the Keys has constituents, and he felt that it is right that the Legislative Council does not.

However, I think he is eagerly awaiting what amendments are to be carried forward.

The Hon. Member of the Council, Mr Waft, commented that he felt that we should be taking these things in stages, and that this Bill, as presented, has just gone one stage too far.

He, again, commented about the continuity of Government, if we could not, in fact, elect the constituent Members of the Legislative Council from the popularly elected people, and that he felt it was essential that there should be separate elections for the Legislative Council. He also stressed that he would like to see a referendum, prior to the enactment of the Bill and not, as stated in the Bill, at the end of it.

My colleague in the Council, Mr Lowey: I think we all heard him voting against the First Reading. He, again, expressed his opinion that the Bill was an absolute shambles, that there had been a Bill approved by the Legislative Council in 2000 and if that Bill had been introduced, by now the Legislative Council would have been popularly elected.

He felt that the Bill that was before us was flawed. If there was an urgent matter for reform, he felt it should be a Government matter and not be a Private Member's Bill. The election of the Legislative Council – and I think I quote –

'will eventually build in the seeds of discontent over the size of the constituencies of Council Members.'

I think there was a general acceptance when Mr Lowey made those comments.

He felt that the Bill needed major surgery, it is almost impossible to make this Bill into a workable document and, with a blank piece of paper, we might be better able to achieve what the feeling in the other place was – that the Legislative Council should be popularly elected.

I hope I have summed up all the opinions that were presented at the Second Reading, Mr President, and I beg to move.

The President: Yes, Hon. Members, I think that is fair comment, that it is a summary of what has taken place so far, and then we were in committee stage in public, as well.

So, Hon. Members, what I put to the Council is that the Constitution (Legislative Council) Bill be read for a second time. Those in favour, please say aye; and against, no. The ayes have it. The ayes have it.

Constitution (Legislative Council) Bill (Reprinted as Constitution Bill 2004) Consideration of clauses commenced and deferred

The President: Hon. Members, having completed its Second Reading, then, formally, within our Chamber, we turn

to moving it piece by piece.

Now, I am aware, Hon. Members, that there is an amendment likely to be moved to the long title, so I think the first thing we ought to do is: Mrs Crowe, if you would move the long title, rather than starting with clause 1.

Mrs Crowe: Thank you, Mr President.

The Bill is to require Members of Tynwald to be subject to popular election and to make the new provision for the constitution of the House of Keys and the Legislative Council and for connected purposes.

I believe that the long title is due to have some amendment.

The President: It may have. You are just moving the...

Mrs Crowe: Okay, Mr President, I beg to move the long title of the Bill, as presented before us today.

The President: Mr Waft.

Mr Waft: I just want to seek clarification.

The President: That is fine. I am looking for a seconder to the long title.

Mrs Christian: Mr President, for the purposes of having it before us, I beg to second and reserve my remarks.

The President: Okay, Mr Waft.

Mr Waft: It is an amendment that is coming, is it, to the long title?

The President: Okay, and you want to speak to that. Right, let us get it formally on the floor first then. Mr Lowey.

Mr Lowey: Yes, could I say that I am moving this amendment on behalf of Mr Singer, but it will stand in my name, because we know Mr Singer is unfortunately, for medical reasons, not with us today. So, therefore, I formally move an amendment to the long title and, as stated by the mover of the Bill, I wanted to move:

*For the Long Title substitute –
'to make new provision for the constitution of the Legislative Council, to make new provision about Tynwald; to make provision with respect to the election of the Chief Minister and the President of Tynwald; and for connected purposes.'*

The introduction to the Bill and the long title is to more accurately reflect what I hope we will finish up with, if we move the amendments that have been spoken about round this Council.

So, it is a bit Irish to start to amend the long title in advance of proposals that have not yet got a majority in this Council, but I think it is right to recognise that what we are about to undertake is to improve the Bill.

I think the title, as written, is too prescriptive, and I think this new long title represents what I would call our aims and objectives. Therefore, I beg to move the long title

substitute that is on the list of amendments which you have before you.

The President: Lord Bishop.

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

The President: Mr Waft.

Mr Waft: I would just ask for a point of clarification, Mr President.

Here we have a Bill before us which refers to the provision of the Constitution of the House of Keys and Legislative Council. We have an amended long title, which is said to more accurately reflect the amendments, but we do not know what they are, in that they have not gone through yet, and here we have a long title that is, in effect, taking account of possible amendments that might come through.

So, there is, perhaps, a conflict there.

My point is that the original title reflected what was in the original Bill. Now, to put forward an amended substitute title, for something that is not yet in the Bill, seems to be predicting what is going to come out, which may not come out.

Now, if, perhaps, at the end of the debates, the long title needs to be changed, that is a possibility, but my question is whether the long title of the Bill fundamentally changes the spirit of the Bill, in the first place, to the effect that we are changing...?

My query is: how many changes can you have in the Bill, before it is completely different from the original spirit in the Bill from another place, or whether there is any legal liability to say, 'I'm afraid this fundamentally changes (a), (b), (c), (d), therefore you will have to bring in a new Bill', or can we change it out of existence of what the original Bill was?

Can you see my quandary there?

The President: Yes, I certainly do, and, as far as my understanding is, the Legislative Council can amend the legislation which comes from another place in such manner as they see fit, or, in fact, they can reject such legislation as they see fit.

The Council has decided, after considerable deliberation in relation to this particular measure, that it sees fit to continue it, but that there are possibly going to be a number of amendments coming forward.

Now, whilst I take your point, Mr Waft, my understanding is also that, in fact, the purpose of the long title is to spell out, in effect, what you can do within the Bill or what is in that particular piece of legislation. Whilst I can understand you saying that we should move the amendments first, and then come back to the long title, frankly, if the matter which you wish to amend is not governed by the long title, you have no provision to move those amendments.

Mrs Christian.

Mrs Christian: Mr President, I do see the dilemma that the Hon. Member finds himself in and there are, perhaps, two courses of action. I am not going to propose them just yet, but one might be to defer consideration of the long title, until such time as we have dealt with the clauses.

However, if you look at the wording of the proposed new title, the amendment to the existing new title, it makes new provision for the Constitution of the Legislative Council,

which the original Green Bill does, to make new provision about Tynwald, which the new Green Bill does, and to make provision with respect to the election of Chief Minister and the President of Tynwald and for connected purposes.

Now, it seems to me that, with respect to that proposed amendment, it could apply to the Green Bill as it stands, even if we do not amend it, but it does make provision for potential to amend it, and, to that extent, I see possibly limited difficulty in supporting the amendment.

The Green Bill does talk about the election of the Chief Minister, and it also talks about the election of the President of Tynwald. Therefore, I feel we could support the amendment, which would underpin consequential amendments to the Green Bill, but would not do any harm if we do not amend it.

Having argued myself into that case, I will not propose any deferment! (*Laughter*) It does seem to me that it does fit.

My only query might be – and perhaps we will get to this later on, Mr President – is why we need to be discussing matters relating to the President of Tynwald and the Chief Minister, which are, presumably, already dealt with under existing legislation. (**The Lord Bishop:** Yes.) I do find it a little difficult to see how this legislation is amending other legislation, and to what extent it is amending it.

I know we have got a schedule in here of repeals, and all the rest of it, but I cannot help feeling, at the end of the day, a consolidation of all constitutional legislation might have been better. It might lead to it in the end.

But so far as the long title goes, Mr President, having seconded the original, I would not oppose the amendment.

The President: Mr Butt.

Mr Butt: Yes, sir. The long title to me is, in effect, a snapshot of what the Bill is about, for somebody to read. In the original Green Bill, it mentions the popular election of all Members of Tynwald, and in the amended version we are looking at now, there is no mention of popular election, and that, to my mind, is the fundamental and main change that the Bill will bring about.

So, in practice, it should really show that there is a popular election taking place of the Legislative Council, as well as the Members of the House of Keys, and that is the main purpose of the Bill, or one of the main purposes of the Bill.

The President: Mr Lowey.

Mr Lowey: Yes, like Hon. Members, I can quite understand, because, as I said in my opening comments to the Second Reading, I do find it rather strange.

However, can I come to Mr Waft and the need for it. I understand his difficulty in 'should it be first or last?', and that is what I said at the beginning, but this Bill, I would remind him, has already had the title changed since it started its course. It was the Constitution (Legislative Council) Bill and then it changed to the Constitution Bill, so I do not think there is anything unique in changing things as they go along.

And to Mrs Christian, I appreciate either you can do it and leave it alone... I would say the new one is much better, because it does highlight the Chief Minister's position, and the President's position. There is no doubt at all, in my view,

that these are important matters, and if we are to be elected popularly, I think it is right that people should know that, if everybody has an equal mandate, then they all have an equal right to become Chief Minister.

We all know, at the moment, that there is a convention that the Chief Minister... although in this instance, we have the Chief Minister sitting with us, at this moment in time – in spirit, if not physically, this morning!

But however, I will say that I do think we need to highlight that in the Bill, which actually coincides with what Mr Butt was saying – that it should actually reflect the Bill.

All I can say to him is that the Bill, quite clearly, says there are new provisions for Tynwald. Now, I appreciate what he says about a Bill should say instantly, when you read it, that is what the Bill contains and is provision for, but I think there are many in that, and I think new provisions would actually encapsulate... to meet the point that he has raised, although I think he has made a valid point there that it should actually reflect.

However, I beg to move the –

The President: No, we are not finished yet. Mr Downie.

Mr Lowey: Sorry, sir.

Mr Downie: I would just like to advise Hon. Members of the Council that I have brought with me today the Report of the Select Committee of the House of Keys on the Constitution (Legislative Council) Bill and, in fact, my hon. colleague, Mr Lowey, was quite correct. The explanatory memorandum, which saw the introduction of the Constitution (Legislative Council) Bill 2003:

‘The object of this Private Member’s Bill is to provide for the direct election of Members of the Legislative Council and to confer additional functions on the Council.’

So that is quite clear.

Now, as far as I am concerned, I think the issue that is before us today – and I have yet to hear anyone speak against this – is that the principle is to look at having a system in place where Members of the Council can be democratically elected by the public.

What has happened in the interim, with the progression of the Constitution Bill 2004, has been a change, because the mover, in his Private Member’s Bill, had the view that we should look at, really, changing our whole democratic process, looking at a total reform of the political system that we know on the Isle of Man and have used and is tried and trusted for hundreds of years and replace it with a single process where all Members of Tynwald are elected.

So, there has been a tremendous swing in the last 18 months to two years, within the House of Keys, and I am, really, content that we look at the situation and the amendment that has been moved by Mr Singer, because things have moved on again, and within the House of Keys itself there are Members who are not content. That is being reported to us on a daily basis, really.

So, that is all I have to say, Mr President.

The President: Right, Mrs Crowe to wind up.

Mrs Crowe: Yes, I note the amendment. I was actually

expecting to take the long title at the end of the Bill, Mr President, so you did take me a little bit by surprise then. But I note the amendment, and I am not averse to the amendment.

But I would make a comment on the drafting of the new long title. I would have thought that, perhaps, it would be better to have said: ‘To make provision for the constitution of Tynwald’ – being the primary body – ‘the Legislative Council and to make provision with respect to the election,’ et cetera. I think to have Legislative Council before Tynwald seems to be...

You may or may not agree with that. It would only be a matter of protocol, but, to me, I think it would have been better to say ‘To make new provision for the Constitution of Tynwald,’ which is precisely what the Bill is about, ‘the Legislative Council and to make provision with respect to the election of the Chief Minister,’ et cetera.

However, if the Members of the Council wish to vote on the amendment before us, at the present time, I have no problem in accepting that amendment, at all.

The President: Hon. Members, what I put to the Council is the long title of the Bill, and to that you have the amendment, as moved by Mr Lowey. Hon. Members, those in favour of the amendment to the long title, please say aye; against, no. The ayes have it. The ayes have it.

We turn, then, Hon. Members, to dealing with the clauses of the Bill, and we start off with clause 1.

Hon. Member, Mrs Crowe.

Mrs Crowe: Thank you, Mr President.
Clause 1(1):

‘The Legislative Council shall be dissolved from and after the appointed day.’

And subclause (2):

‘Notwithstanding any enactment to the contrary, the members of Legislative Council in office immediately before this subsection comes into operation shall remain in office until the dissolution of the Council unless a member resigns or the office is otherwise vacated (otherwise than by the passage of time).’

Mr President, I beg to move clause 1 to the Constitution Bill.

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

The President: Mr Lowey.

Mr Lowey: Thank you, Mr President.
On the list of amendments that are before Hon. Members:

Page 1; lines 2 and 3: for subsection (1) substitute – ‘(1) The composition, constitution, functions and proceedings of the Legislative Council are amended in accordance with this Act.’.
line 7: for ‘the dissolution of the Council’ substitute ‘the end of April 2009’.

What that really does, in a nutshell, Hon. Members, is to make sure that the things that we are about to pass, or

will pass, in this Act come into play and the timing of the dissolution of the House is to give us the halfway stage, between the elections of the House of Keys, so that they are not all elected at the one time, but there comes into play...

Now, April: the only answer I have to the April is that it fits in with the 30-month period after the general election for the House of Keys. So, that is the only evidence I have for that particular one, trying to accommodate it on a pattern that was, I think, generally accepted by the Council, in our informal discussions of the First and Second Readings.

I beg to move the amendment standing in my name.

The President: Mrs Christian.

Mrs Christian: Mr President, can I speak to the amendment, and I will seek to –

The President: No, it is not seconded yet.

Mrs Christian: Oh, sorry.

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

The President: That causes me some difficulty. I think you seconded the –

The Lord Bishop: Yes, alright, well, somebody else can.

Mr Downie: I am happy to.

The President: Seconded by Mr Downie. Now, Mrs Christian.

Mrs Christian: Yes, Mr President. Speaking to the amendment, which I may well seek to substitute with another amendment, I have no difficulty with the amendments to lines 2 and 3, which change subclause (1):

'The composition, constitution, functions and proceedings of the Legislative Council are amended in accordance with this Act.'

That is straightforward, but I do have some concerns about the second part of the amendment and, indeed, trying to get my head around what the Green Bill, as it stands, means.

The Green Bill says:

'Notwithstanding any enactment to the contrary, the members of the Legislative Council in office immediately before this subsection comes into operation shall remain in office until the dissolution of the Council unless a member resigns or the office is otherwise vacated (otherwise than by the passage of time).'

Now, clearly, in changing subclause (1) we have got rid of a dissolution reference, so we have got to take that out of subclause (2).

I am just trying to envisage whether this means, if this comes in before the next Council election, all of the existing Members will stay put until 2009 –

'unless a Member resigns or the office is otherwise vacated (otherwise than by the passage of time).'

It is this phrase, 'otherwise than by the passage of time',

which I am not clear about. Does it mean by the passage of time to 2009? Does it mean, 'otherwise by the passage of time', i.e. the normal end of –

The President: Their term.

Mrs Christian: – their term? If it means that, well, fair enough, then some Members may well be subject to re-election, if they choose to do so before 2009.

But my main concern is about this April date. What we have set before us, in these amendments, is a change to an election every five years, as I read it, for Council Members, in April.

The President: From 2009.

Mrs Christian: From 2009.

At the moment, we know what difficulty we get into at the end of a Keys session in dealing with legislation. There is always a backlog in the final year of the term, which means there is quite a lot of pressure on the legislative process, in the summer months in particular.

If we have an election in April every five years, midterm with the Keys, it means that there is going to be another disruption to the consideration of legislation, because, if, after the end of April, you then go out for an election, presumably there will be a reasonable amount of time allowed for canvassing. If the pattern which applies in another place applies to the Council, it would be six weeks, one presumes, which would take you to the middle of June, which is generally just after TT week, which is not a good time and which, in any case, means that there can be no practical consideration of legislation for, effectively, that summer part, I would suggest, of a legislative year, which means, effectively, another hold-up in the legislative process.

I would propose then, Mr President, that it would make more sense to have this change in Council membership at the end of August or September, whatever Members feel fit, but at a time when there can be an election held without there being disruption to the legislative process, as we currently manage it.

I, therefore, Mr President, would seek to submit another amendment, which is, in every respect, the same as Mr Singer's amendment, except for substituting 'the end of August 2009' for where he said 'the end of April 2009':

*Page 1; lines 2 and 3: for subsection (1) substitute –
'(1) The composition, constitution, functions and proceedings of the Legislative Council are amended in accordance with this Act.'
line 7: for 'the dissolution of the Council' substitute 'the end of August 2009'.*

I think that will allow Members who have been... I am not quite sure what it does in terms of Members who would go out of office in March... When are the Council elections due? One is 2006, is it, or 2007?

The President: Could we just clear the point? If we just get our Clerk to just clear the time, but there are certainly dates in before 2009.

I take Mrs Christian's point of 'otherwise than the passage of time', because, actually, when I read that I took it to mean – maybe just because the way my mind was working – that,

in fact, Members currently in the Council would *continue until 2009*. (**Several Members:** Yes.) That is the way I had read it –

Mrs Crowe: Yes.

The Lord Bishop: Yes, I read it...

The President: – that everybody either resigns or, by the passage of time, they would have gone, but, in this instance, they will continue until April 2009, and then, *thereafter*, it would be a five-year term. But I might have been wrong on that. When you raised the query, it flashed across my mind that I was wrong – maybe not. (**The Clerk:** 2008.) March 2008? (**The Clerk and several Members:** Yes.) March 2008 is the next election to the Council.

Mr Lowey: So, it is an extension of a year.

Mrs Christian: 2008, right. So, that puts my mind at rest, a little bit, Mr President. It seemed to me that, if it were March 2009, there might need to be an election then, to take it to August, which would be silly, but if this means that those Members who were currently in office would carry –

The President: No, it does not. You have raised a hare with me now. I had assumed that that is what it meant –

Mrs Christian: I have, really. What does it mean, ‘otherwise than by the passage of time’?

The President: – but assumptions are always wrong. Mr Attorney, what is your view on that?

The Attorney General: I must say, Mr President, when I read the Bill, my interpretation was the same as yours. Of course, there are –

Mrs Christian: What does it mean?

The President: You have questioned me now. (*Laughter*)

Mrs Christian: In practical terms, could we have a view on what that means?

The President: Well, Mr Attorney, certainly, that is the way in which I, initially, had read it. Mrs Christian has raised the question in my mind, now, as to whether my interpretation on that, when I first read it, was right or wrong. I think the Council needs to be clear on that point.

So, unless a Member resigns, which is plain, or the office is otherwise vacated –

The Lord Bishop: You drop dead.

The President: – or, and then it is put in brackets, ‘otherwise than by the passage of time’ –

The Lord Bishop: Which means that you have come to the end of your period of term.

The President: You come to the end of your period of term.

Mrs Christian: But then it contradicts itself, because it says ‘you shall remain in office’.

The President: But that is the point.

The Lord Bishop: That is the point.

The President: As I read it, that was actually the point. They remain in office –

The Lord Bishop: Even though they should not.

The President: – even though they should go in March 2008.

Mrs Christian: Why does it not simply say ‘unless a Member resigns or the office is otherwise vacated’?

Mrs Crowe: Well, it is your legislative...

The President: I think we are getting a little bit difficult now for *Hansard*. I am happy that we should continue. Mr Attorney.

The Attorney General: Mr President, I am just waiting for the Representation of the People Act, but a Member has to vacate his or her office, not only if he or she resigns, or if he or she becomes dead. (*Laughter*) There is also a situation, Mr President – is there not? – when someone is imprisoned, for example –

The President: That’s right.

The Attorney General: – or becomes incapable of attending to his or her office because of insanity or something like that.

So, if I look at the Green Bill, clause 1(2), it says:

‘Notwithstanding anything to the contrary’

– any enactment to the contrary –

‘the members of Legislative Council in office immediately before this subsection comes into operation shall remain in office until the dissolution of the Council unless a member resigns’

– that is fair enough –

‘or the office is otherwise vacated’.

That would mean, Mr President –

The President: Any other reason.

The Attorney General: – for any other reason. So, if a person is imprisoned or becomes incapable of managing his or her office, then that office is vacated.

Mrs Christian: So, are these words not superfluous, Mr President?

The Attorney General: ‘Otherwise than the passage of time’?

Mrs Christian: Yes.

Mr Butt: Might I ask, does that mean the election in 2008 does not go ahead?

The President: That was my interpretation. When I read the Bill the first time, I have to say that was my interpretation.

Mr Waft: Just for clarification, I think my understanding is, because of this, four Members are going to gain one year and five months, and the other four Members are going to lose seven months.

Mr Lowey: That is right.

Mr Waft: That is correct, is it?

Mr Lowey: That is under the new clause. Under the old Bill, under the Green Bill, everybody was going to be elected at the same time, so that meant the existing Members would have come into the general election at 2006, because:

'The Legislative Council shall be dissolved from and after the appointed day',

and the appointed day would have been in conjunction with the general election, which will be in November 2006.

So, the amendments actually do the reverse, and it will extend, because I think the general consensus is that we should not have the election all at one time, for continuity and all the other reasons which we have spelt out. It will be halfway through the term.

So, I think that the amendment is quite clear, and I have no difficulty, in practical terms. Mrs Christian is right, the reality will be that it will actually be impossible to fit into a timetable, in practical terms, and I think it will be better... It will make no difference, once it becomes a five-year cycle, whether it is April or September, except for the initial one.

Now, some people might turn round and say, 'Oh, well, you are extending your stay.' Well, alright, you can bring it forward, if you like, to February, and get over that, but I tend to agree that the September/October has an appeal.

Mrs Christian: Mr President, could I just ask for clarification on the 'otherwise that by the passage...'? Is that a belt-and-braces statement, just to back up the 'remain in office' statement?

The Attorney General: Yes.

The President: Mr Attorney.

The Attorney General: Mr President, the Clerk has very kindly provided me with the Representation of the People Act 1995, and this, of course, refers to vacancies in the Keys. As I indicated earlier, a seat is vacated: if a Member is punished with custody for an offence triable on information, so that is the criminal sanction; where he has been certified by the Clerk of the Rolls to the Speaker as incapable by reason of mental disorder of managing his affairs; if he is granted leave of absence, he is not treated as failing to attend any sitting; if he becomes the holder of an office of profit; and if he is adjudicated bankrupt; and so on.

So, there are a number of situations, Mr President, envisaged by the Representation of the People Act, which

force upon a Member a vacancy in his or her seat, otherwise than by the passage of time. So, there are things that happen to a person, or that he does, which disentitle him from holding his seat.

Otherwise, though, Members will go out of office due to the passage of time.

Mrs Christian: Thank you, Mr President.

I just wonder why we have got 'otherwise' in twice then – 'unless a member resigns or the office is vacated (otherwise than by the passage of time).'

The Lord Bishop: Because – sorry, Mr President – there are other options, other than resignation for vacating. So, therefore you have got to have the second 'otherwise' in.

The Attorney General: Yes, I think so, yes.

The Lord Bishop: Mr President, I have a question about the 2008 election, because I think there still could be a 2008 election, depending on when the date this Bill comes into effect.

I think we ought to be clear about that, because this Bill could actually come into effect later than 2008, which would still mean there would have to be an election in 2008, but those people would carry on in office until 2009.

The President: If the Bill is not enacted before 2008, the normal procedure will follow and Members will be elected to the Legislative Council, but I would anticipate that, if the Bill is to be enacted, it will be enacted before the election, in which case the Members due for re-election in 2008 will not be subject to election.

Mr Butt: So what happens, sir, when somebody does resign or leave, or even die, in the meantime? There is a casual vacancy? We revert back to the old system?

Mr Lowey: Absolutely.

The President: That vacancy continues to be filled.

Mr Butt: Even though this Act has been passed.

The President: Right, Hon. Members, I think we are now more or less clear. Does any other Member now wish to speak to the amendment? Mr Butt.

Mr Butt: Has the August been seconded?

The President: No, August has not been seconded.

Mr Butt: I will second it.

The President: Mr Butt seconds August. Right, Mrs Crowe.

Mrs Crowe: Thank you, Mr President.

Well, we have two amendments before us to the first clause in the Bill: the amendment from Mr Lowey, progressing an election in the April; and it has been further amended now by Mrs Christian, who is suggesting that, perhaps, the best time for lessening legislative disruption might be August.

I thank the Attorney General for his advice on the actual interpretation of the clause. It is quite difficult, when moving a Private Member's Bill. There are no explanatory notes with this Bill, at all, and I am reliant wholly on questions that were answered in the Keys, by the mover of this Private Member's Bill, but they, of course, were subject at later Readings to more discussion.

So, Mr President, I beg to move clause 1 of the Bill, and leave it in your hands.

The President: Now, Hon. Members, dealing with clause 1, I think the logical way of dealing with it is, first, to move the amendment in the name of Mr Lowey. Those in favour of the amendment in the name of Mr Lowey, please say aye; against, no. Well, that is going to give...

The Attorney General: We need to vote.

The President: We need the August one first, Hon. Members, otherwise we are not going to make any progress whatsoever.

Mrs Christian: Mr President, mine contains both, as well.

The Clerk: They both stand alone.

Mrs Christian: They both stand alone, so if Mr Lowey's is rejected, mine does amend subclause (1) in the same –

Mr Lowey: That's right.

Mr Waft: We are not amending an amendment; we are just amending the Bill.

Mrs Christian: No, amending the Bill, yes.

The President: That is right, so, in fact, Mr Lowey's amendment, therefore, fails, Hon. Members, and I put to you the amendment, as moved by the Hon. Member Mrs Christian. For clarity, again, as you have not got it in front of you, I will read what it says –

The Lord Bishop: We have.

The President: You have it in front of you, okay. If you all have a copy of it:

'Page 1; lines 2 and 3: for subsection (1) substitute –
“(1) The composition, constitution, functions and proceedings of the Legislative Council are amended in accordance with this Act.”.
line 7: for “the dissolution of the Council” substitute “the end of August 2009”.'

Those in favour of Mrs Christian's amendment, please say aye; and against, no. The ayes have it. The ayes have it.
Now, Hon. Members, we move on to clause 2.

Mrs Crowe: Thank you, Mr President.
Clause 2 states that:

'The members of Tynwald are – (a) the President of Tynwald; (b) the Bishop; (c) the Attorney General; and (d) 32 members elected pursuant to the Representation of the People Act 1995 (“the elected Members of Tynwald”).

'(2) Tynwald shall consist of the members of Tynwald meeting together pursuant to a lawful summons in that behalf or by adjournment.

'(3) Accordingly Her Majesty may assent to a Bill by and with the advice and consent of the members of Tynwald in Tynwald assembled, notwithstanding any law or custom to the contrary.'

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

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

The President: Mr Lowey.

Mr Lowey: Thank you, Mr President.
Can I just say that this one is:

Page 1: line 12: omit 'and'

Page 2: lines 1 to 3: for paragraph (d) substitute –

'(d) the 8 members of the Legislative Council elected pursuant to the Representation of the People Act 1995 as modified by this Act (in this Act referred to as “the elected members of the Council”); and

(e) the 24 members of the House of Keys elected pursuant to the Representation of the People Act 1995.'

This is spelling out the Members of Tynwald are the Attorney General... So, you remove the word 'and' at the end of it, and then remove (d), which is lines 1 to 3. For paragraph (d), substitute 'the 8 members of the Legislative Council elected pursuant to the Representation of the People Act 1995 as modified' – in the Act referred to as the 'elected members of Council' – and (e) 'the 24 members of the House of Keys elected pursuant to the Representation of the People Act 1995'.

I beg to move the amendment standing in my name.

The President: Mrs Christian.

Mrs Christian: I beg to second, Mr President.

As the Hon. Member, Mr Lowey, mentioned earlier this morning, it is going to be difficult to get anything that is generally acceptable out of all this, and even this proposal has its downsides.

However, this is a fundamental change to what has come to us. This proposed amendment represents a fundamental change to what has come to us from another place, in that the Green Bill proposal was an elected Tynwald.

I have ambivalent views about that. It is a logical way in which to get all Members elected equally, but the Green Bill does not then go far enough, in terms of treating all Members equally thereafter. So, if we are to grasp what we believe is to be expected by the population at large, i.e. an elected Legislative Council, then this amendment gives us a way of doing that.

It does propose there be eight Members of the Legislative Council elected, and it then refers to the election of the Members of the House of Keys in the manner in which they are currently elected.

I might ask the mover, in respect of subclauses (2) and (3), why those need to be in. Do they add anything new in terms of what is currently in legislation? Or, perhaps the learned Attorney could advise: is it being put in because something else is being changed in another piece of legislation?

One imagines that somewhere it says that Tynwald shall

consist of the Members of Tynwald meeting together, which is what they do now.

The President: Well, subclauses (2) and (3) were probably put in because, in fact, the original Green Bill in subclause (2) makes a material difference, insofar as the –

Mrs Christian: Which is why, Mr President, although the wording may be still relevant, but Tynwald's composition is...

The President: It might now be superfluous.

Mrs Christian: Well, it may or may not be superfluous. It simply defines we are, in (1), defining Tynwald in a different way. I am not sure whether it is superfluous or not, to be frank, and whether it is already in some other piece of legislation.

The President: Okay, whilst that is being considered, Mr Downie.

Mr Downie: Yes, thank you, Mr President.

The amendment which I am moving, at the present time, is:

In subsection (1)(d) – after 'pursuant to' insert 'this Act and'.

The purpose of the amendment is to enable clause 2 to be amended in such a way that we still have a link between the Constitution Bill 2004 and the Representation of the People Act. The reason for doing this will become clearer as we get to the further amendments that have been tabled in my name.

I have held the view for –

Mrs Crowe: Mr President –

Mrs Christian: Mr President, we have not received any amendments.

Mr Downie: Yes, you have. You had them two weeks ago, and they are on the back of your papers. (*Interjections*) I will give you a spare.

Mrs Crowe: Mine are not on the back.

Mr Waft: On page 1, the back of the...

Mr Downie: Yes, the fact that my name is spelt wrong might have something to do with it!

Mrs Crowe: What is the matter with people spelling your name these days?

Mr Downie: I do not know.

Mrs Christian: Mr President, if this was on the back of the version circulated by Mr Singer, I binned those, because Mr Singer told me it was going to be replaced by an amended version.

Mr Waft: No, it was not on the amended version.

Mrs Crowe: I got an updated version and I have not

seen... I got this on 27th May, and I am afraid to say I have not got Mr Downie's amendments. I am so sorry.

Thank you very much. (*Interjections*)

The President: Now, Hon. Members, let us come back to (**Mrs Crowe:** Clause 2.) clause 2 and Mr Downie, and Mrs Christian was querying whether or not we had Mr Downie's amendment. I believe all Members should now have a copy of Mr Downie's amendment. Not yet? Well, we can wait a moment or two, until Mr Lowey, equally, has a copy of the amendments.

Mr Lowey: I am sure I did have Mr Downie's amendments prior, but I, too, like most Members, have brought the most up to date one, which was sent to us on the 27th, and I think that is the reason why.

The President: Okay? Right, now Mr Lowey equally has them in his hand, so we all have a copy of Mr Downie's amendment, which, in effect, is: in subsection (1)(d), after 'pursuant to' insert 'this Act and'. Now, Mr Downie, further explanation.

Mr Downie: Thank you, Mr President.

You will see from the number of amendments that I have tabled, or intend to table, that I am very keen to try and retain the continuity between the House of Keys and the Legislative Council.

Whilst I fully accept that the object of the exercise is to have Members of the Legislative Council democratically elected, I feel that to lose the continuity between the Keys and the Legislative Council... particularly when filling a casual vacancy into Members of the Council, this should be encouraged.

The other issues I want to be able to expand on further, when we get to them, are the fact that we have had this relationship for a long number of years. It is tried and tested and the recruitment in the past to the Legislative Council has, generally – although there are exceptions – been through the House of Keys route. There will be Members of the Keys who are coming, perhaps, towards the end of their political career when, for the last few years of their time in Tynwald Court, they would be willing to make the transition from the House of Keys to the Legislative Council.

What my amendments do is to enable us to have that facility, to enable us to retain the continuity and the links, and also, later on, you will see that a Member of the Keys would not have to resign his seat, in order to stand for the Legislative Council.

So, I think it is important to try and establish that continuity and that historical area that we have interfaced with the Keys in, for a number of years.

So, that is the reason for my first amendment, Mr President: in subsection (1)(d), after 'pursuant to' to insert 'this Act and to the Representation of the People Act 1995'.

Mr Lowey: I will second it to get it on the floor, but I will be voting against, Mr President!

The reason why I have to disagree with my hon. friend... I accept this is the... I said we were all political schizophrenics! But I do genuinely believe that everything Mr Downie said, in pursuing his case, is right – absolutely, 100 per cent right – but, I have to say, that is not the message that has come from the elected House, which has said that they wish to...

Otherwise, they would have carried on with what we have got.

They have said, in their collective wisdom, that they want a democratically elected upper House, end of story. I think Council has accepted that – if that is what they want, alright, they are going to get it.

What you cannot have, then, is a mix and match. Now, great emphasis was placed by the mover of the amendment to a casual vacancy. Well, it is not a casual vacancy; it is a vacancy. You cannot have an elected one and, ‘by the way, this gentleman has come in as an experienced politician’ – that is what really...

I know what Mr Downie is really driving at, but I do not think what has actually come in allows us to amend it, to fit in with the casual vacancy and to keep the continuity going.

Elections and democracy: I think it was George Brown who said democracy is an imperfect animal. In an election, people have the right to ‘democ’.

And the other thing that I have always trusted in is the common sense of people. I think that they will elect people... They do not often get it wrong, I think, and so, however imperfect democracy is, it has got to be... It is democracy or it is not.

In my case, now, I have accepted that the principle of election is to go ahead, and I do not think there is a place for this halfway house that I know the Hon. Member is doing – for the right reasons, I may add – but I will not be able to support it.

The President: Mr Waft.

Mr Waft: I am of a similar mind to the Member who has just spoken, with regard to the casual vacancy, that the problem arises where you have, maybe coming to the end of a term of the Keys, for instance, and, say, six months before there is a vacancy in the Legislative Council, and then somebody is put into the Legislative Council. They would be there for, alright, six months with a mandate, but after that time they would be in the same position as what they are trying to get rid of –

Mr Lowey: That is the point.

Mr Waft: – with the situation we find ourselves in now.

They would neither have a mandate, as the other Members of the Council will have and the other Members of the Keys will have. He will not have it and that will be the difficulty he will be under, fulfilling his position. He is getting back to the situation which they want to change completely.

The President: Mrs Christian.

Mrs Christian: Mr President, I find it a little difficult to understand quite what the Hon. Member, Mr Downie, is seeking to achieve, in clause 2. I am not quite sure what the words ‘this Act and’ actually add.

He, obviously, is favouring the 32 Members’ election, and has not yet tabled any further amendments, so presumably supports the principle that a 32-Member elected Tynwald then goes on to elect Members to Council and Keys.

If, then, there were a casual vacancy, and this would be dealt with further in clause 3, and the Keys had the power to elect to that casual vacancy, it would then leave a vacancy

in Tynwald, which would require you to go out to the public for an election, in any case.

So, I am not quite sure what you achieve there, except to have the Keys impose their will as to who goes to Council, rather than the public. If the Keys want to determine that people of experience go to Council, you stay with what we have got now. (**The Lord Bishop:** Quite!) So, I really wonder...

Again, perhaps the mover of the amendment could explain what those words add. Without them, it seems to me that a proposed amendment to clause 3 would do what he wants to do, without this amendment.

Again, I am not a draftsman, so I do not know why it is necessary to add ‘this Act and’.

The President: It makes it pursuant to both the Representation of the People Act 1995 and this Constitution Bill.

Mrs Christian: But, Mr President, if this Bill is accepted, the 32 Members elected pursuant to the Representation of the People Act will be the elected Members, if that is accepted, and the amendment in clause 3 will deal with those elected Members.

I am sorry, but I do not see the point in the amendment.

The President: Mrs Crowe.

Mrs Crowe: Could I just enquire of my hon. colleague who is moving this amendment: we all know, I think, that there are many Members of the House of the other place that would prefer, in fact, to remain with the status quo. We know that by the talk within... what we have heard, at the present time, and, indeed, the discussion in *Hansard*.

But if I could just enquire if Mr Downie has, in fact, had any discussions with the promoter of the Bill, Mr Rodan, regarding this amendment, which is, as Members have commented, of course, in effect, the status quo remain.

I would be interested to know if, actually, the promoter of the Bill – as I am promoting the Bill in this Chamber – is in favour of the amendment as proposed by the Hon. Member of the Council, Mr Downie.

The President: Mr Downie, do you wish to come back?

Mr Downie: Yes, Mr President.

I have had discussions with at least two of the legal draftsmen. I have not had any discussions with the mover of the Bill in the House of Keys, Mr Rodan, but he is aware of my view in this area, and I thought I had got the message across.

My view is that we should try and make the best out of the old system and, in moving this amendment to subsection (1), this laid the way clear to further amendments, which have not yet been alluded to, by myself, or given the opportunity yet to fully explain them.

But what I was trying to do: I was trying to create a vehicle where a person who had been elected to the House of Keys, if there was a casual vacancy which occurred in the Legislative Council, he may get another 18 months to two years out the system. Then he would have to go out and seek re-election, if he wanted.

The whole idea behind that was there is a wealth of talent

in the House of Keys, you cannot deny that. By having this route available, it would give Members of the House of Keys an opportunity to elect someone in the traditional manner to the Legislative Council, albeit for a short term, and then, if he wished to continue on, he would have to go and stand for election again to the Keys, and then come back in through the route, as it were.

I was trying to cover the 32 Members elected to Tynwald, and I was trying to be prepared, so that, if amendments came forward, that we would try and cover the two bases, as it were, so that there was a route within Keys, or within Tynwald, if that was the wish of the Keys, and this Bill actually went through in its present form, there would be an opportunity provided for someone to make that crossover, without having to go right through the system again to be elected.

You may find that, if the 32-Member situation moves forward, with the progression of the Constitution Bill in its present form, it may be difficult to get people to be attracted. I do not know.

It was something I thought about, something I discussed with the legislative draftsman, and when you do actually look at it, and you look at the continuity and the way Legislative Council has worked for many, many years, and worked successfully, it does make sense to provide a crossover – either that or we are just devoiding ourselves of any talent from the adjacent Chamber.

The President: Mrs Christian.

Mrs Christian: Mr President, I am having some difficulty in understanding what it is Mr Downie seeks to achieve in respect of (d), in this clause. Maybe I just have not grasped it, but he suggested that by the mechanism that he has talked about for amendment in clause 3 in the filling of casual vacancies, you can give somebody an extra 18 months.

Mr President, if he supports clause (d), you do not give anybody any extra time, because everybody comes in and goes out at the *same* time. So, if you put them in the Council, they still go out at the general election. They do not gain any time by being moved up to the Legislative Council to fill the casual vacancy.

Now, if he supported the amendment, as proposed by the Hon. Member, Mr Lowey, which staggers the Keys and Council elections, then, maybe, there would be an opportunity for giving somebody an extra period of time, by moving them to Council, but not if you leave (d) in, in its entirety, with the amendment, as he proposes it. It simply would not make any difference to anybody's term of office.

So –

Mr Downie: Yes, I think, Mr President, until we get to clause 2 –

Mrs Christian: We are on clause 2.

A Member: Clause 3.

Mr Downie: – well, clause 3 – it is not possible to build on this, but the advice I have been given by the legislative draftsmen is that it is important that clause 2 is amended to give us the flexibility of including the two relevant Acts, the Representation of the People Act and the Constitution Bill 2004.

The President: If, when we come to clause 3, shall we say, Mr Downie's proposed amendment was to be accepted at clause 3, well then, we would need to have this Act in (d), where it deals with the Representation of the People Act 1995 and this Act.

That is what it amounts to, I think, but that would only be if Mr Downie's subsequent amendments are successful. **(The Lord Bishop: Yes.)**

Now, we are in this difficulty of 'chicken and egg' again. That seems to be the problem, and it is rather the same as the long title. If we accept this, we may have to come back later and take it out, if the amendments to clause 3 are unsuccessful. I do not know.

Mrs Christian.

Mrs Christian: I am still not clear, Mr President. Is Mr Downie seeking to amend the amendment? No? **(Several Members and the President: No.)** So, he is supporting the 32 elected Members proposal? **(Mrs Crowe: No.)** Yes, he is.

Mr Downie: I am trying to provide, as I say, a vehicle which covers both pieces of legislation – the proposed Constitutional (Amendment) Bill and, also, the Representation of the People Act.

Now, when we get to the further amendment, the eight Members of the Legislative Council, I think that can be a little bit clearer.

The President: Yes, but if we elect the eight Members to the Legislative Council, which is the amendment moved by Mr Lowey, now, frankly, your amendment then becomes superfluous, doesn't it? Isn't that right, Mr Attorney?

The Attorney General: Well, Mr President, I really am anxious about contributing to this, but it seems to me that the draftsman is suggesting – is he not? – that you have to make reference to the Representation of the People Act 1995 and this Bill, **(Mr Downie: Yes.)** to cover not only Members of Keys, but also Members of the Council.

If we go back to what clause 2 is all about, it is telling us who the Members of Tynwald are. **(Several Members: Yes.)** It is no more complicated than that at this stage, as I see it: that we just have to accommodate both Keys Members and Legislative Council Members, who are going to be elected pursuant to this Act, and the Keys Members being elected pursuant to the Representation of the People Act.

Mrs Christian: Right, Mr President, can I just clarify, then.

The amendment proposed by Mr Lowey refers to this Act and the Representation of the People Act, in respect of Council and Keys elections. What Mr Downie is proposing is that we retain the 32 Members elected to Tynwald and is amending it, so it refers to this Act and the Representation of the People Act.

So, we are left with the alternatives: to go for the 32-elected Tynwald and make the necessary amendment to clarify that, or to go for Mr Lowey's amendment and support the separate election of the Legislative Council. **(A Member: Yes.)**

Right, well, I will come to Mr Downie's thoughts on vacancies later on, **(Mrs Crowe: Yes.)** because that will not make a jot of difference. Right, okay. Thank you.

The President: It will not make any difference. Right, Mrs Crowe. Do you wish to wind up that –

Mrs Crowe: I was really quite worried that you were actually going to come and ask me to sum up the discussions that we have just had!

The President: You're entitled so to do – you are moving clause 2!

Mrs Crowe: I, perhaps, thought that Mr Downie was waiting for the amendment of Mr Singer, being moved by Mr Lowey now, to come into play before he amended again. So, I thought I had actually got it sorted, until Mrs Christian pointed out that maybe I had not.

However, I am ambivalent about both amendments. I was interested to hear that Mr Downie had spoken to Members of another place, but had not spoken with the promoter of the Bill directly about this amendment.

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

The President: Right, Hon. Members, we are dealing with clause 2. It has been proposed and seconded. To that, you have the amendment in the name of Mr Lowey and the amendment in the name of Mr Downie.

I will put to you, first, Hon. Members, the amendment, as moved by Mr Downie. Those in favour of Mr Downie's amendment, please say aye; against, no. The noes have it. The noes have it.

I will now put to you the amendment in the name of Mr Lowey. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Now we turn to clause 3 and the schedules 1 and 2. Mrs Crowe.

Mrs Crowe: Clause 3, thank you, Mr President.

For part 1 of the Representation of the People Act 1995, there are the substituted provisions as set out in schedule 1.

For section 2 of this Act, there are substituted the following... Would you prefer me to deal with schedule 1 first, Mr President, to read through it?

The President: Exactly how you wish –

Mrs Crowe: Well, if we deal with schedule 1 first and then move on to section 2 of the Act.

So, if we deal with schedule 1. Schedule 1 is substituting part 1 of the Representation of the People Act 1995:

'Part 1, Tynwald. Qualifications for membership of Tynwald' –

The Lord Bishop: Mr President, in order to spare Mrs Crowe the lengthy business of reading all this, might we assure her that we have read the schedule and to allow her not to have to read it all, which is a hefty task lying before her?

Mrs Crowe: I am well known for that! *(Laughter)*

The President: Hon. Member, Mrs Crowe may move it as you like, but it is entirely up to Mrs Crowe whether she wants to record every word which is here, but I think your

point is taken that we have read it. Mrs Crowe.

Mrs Crowe: That is absolutely fine with me. It is a case, I think sometimes, of people's attention being drawn to these things that may or may not be... We should all know the Representation of the People Act.

Perhaps I will just mention the parts of the Act to be affected: the qualification for membership of Tynwald, which is all before you in the schedule; then, the term of Tynwald; the vacancies in Tynwald; and then the oaths that are to be sworn; and the privileges of Members of Tynwald.

Those are the parts in clause 3 of the Representation of the People Act and they are substituting the provisions set out in schedule 1.

'For section 11 of that Act there is substituted the following –

"Constituencies. 11. (1) 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.

(2) The areas of those constituencies shall be the areas specified in the resolution of Tynwald under subsection (4).

(3) The Governor in Council shall, as soon as practicable after the appointed day, appoint a committee of such persons as the Governor in Council thinks appropriate to recommend boundaries for the said constituencies and to report thereon to Tynwald.

(4) On receipt of a report under subsection (3) Tynwald shall consider the recommendations of the Committee and by resolution specify the boundaries of the constituencies.

(5) The Treasury shall prepare a map of the Island upon which shall be delineated the boundaries of each constituency, and shall cause the map to be deposited in the General Registry.

(6) The Chief Registrar shall make the map prepared under subsection (5), or a copy of it, available for inspection by any person at the General Registry at all reasonable times, and shall supply a copy thereof to any person on payment of such reasonable charge as the Treasury may determine.

(7) If Tynwald so resolves, the Governor in Council shall appoint a committee of such persons as he thinks appropriate, to review the number and boundaries of the said constituencies and to report thereon to Tynwald."

(3) Schedule 1 to that Act shall cease to have effect.'

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

The President: Lord Bishop.

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

The President: Mr Lowey.

Mr Lowey: Thank you, Mr President.

Again, can I just say that this particular one is:

Page 2; lines 11 to 39 and page 3; lines 1 to 6: for clause 3 substitute –

'Election and term of office of elected members of Council

3. (1) Elections of the elected members of Council shall be held in accordance with the Representation of the People Act 1995 as follows –

(a) the elected members of Council shall be elected as soon as practicable after the end of April in 2009; and

(b) thereafter, as soon as practicable after the end of the period of 30 months following each general election of the Keys.

(2) In its application to the Council and elections under

subsection (1), the said Act of 1995 shall have effect subject to the modifications specified in Schedule 1.

(3) Every elected member of Council shall, unless that member sooner vacates office, go out of office at the end of the period of 30 months following the first general election of the Keys after the date on which the member was elected.”.

Constituencies

4. (1) For the purposes of an election of elected members of the Council, the Island shall be divided into the 8 constituencies specified in column 1 of Schedule 2, and each constituency shall return and be represented by one member.

(2) Each constituency shall comprise the constituencies for the purposes of elections of members of the Keys specified in relation thereto in column 2 of Schedule 2.’,

and re-number the subsequent clauses.

Pages 8 to 11: for Schedule 1 substitute –

‘Section 3(2)

SCHEDULE 1

MODIFICATIONS OF THE REPRESENTATION OF THE PEOPLE ACT 1995

General modifications

1. Subject to any particular modifications made by this Schedule, the following general modifications shall have effect –

(a) for references to the Keys substitute references to the Legislative Council (in this Schedule referred to as “the Council”);

(b) for references to members of the Keys substitute references to elected members of the Council;

(c) for references to the Speaker substitute references to the President of Tynwald;

(d) for references to voting in a constituency substitute references to voting in the electoral district comprising that constituency;

(e) for references to the register of electors for a constituency substitute references to that part of the register of electors which relates to the electoral district comprising that constituency.

Qualifications etc.

2. In section 1(1) (qualifications), for “Any person may stand as a candidate for and be elected a member of the Keys for a constituency” substitute “Any person may stand as a candidate for and be elected an elected member of the Council”.

Term of Keys

3. Omit sections 2 and 3.

4. In section 4 –

(a) for subsection (1)(a) substitute –

“(a) extend the term of office of the elected members of the Council by a period of one year from the date when otherwise the members would cease to hold office; and”;

(b) in subsection (2), for “members of the Keys, or to elected members of the Council” substitute “elected members of the Council”.

Vacancies

5. In section 6(6)(b), for “Council” substitute “Keys”.

Further provisions as to Keys

6. Omit sections 8 and 9.

Constituencies and polling districts

7. (1) Omit section 11(1) and (2).

(2) For section 12 substitute –

“12. Electoral districts and polling districts

(1) Each constituency for the purposes of elections of members of the Keys shall constitute an electoral district for the purposes of elections of elected members of the Council.

(2) Subject to subsection (3), each electoral district shall constitute a single polling district.

(3) Where a constituency for the purposes of elections of members of the Keys is divided into 2 or more polling districts, those districts shall, for the purposes of elections of elected members of the Council, constitute the polling districts within the electoral district comprising that constituency.”.

(3) Omit Schedule 1.

Returning officer

8. For section 13 substitute –

“13. Returning officers

(1) The Governor shall in writing appoint to be senior returning officer in respect of each constituency one of the returning officers appointed for the Keys constituencies comprised in that constituency.

(2) Subject to the election rules and to regulations under subsection (3), the returning officer appointed for each constituency for the purpose of elections of members of the Keys shall act as returning officer within the electoral district comprising that constituency in relation to elections of elected members of the Council.

(3) Regulations may make provision as to the exercise of functions by returning officers in relation to elections of elected members of the Council; and subject to any such provision, a returning officer shall perform the functions of returning officer in accordance with any directions given by the senior returning officer.

(4) It is the duty of the senior returning officer and returning officers to do everything at an election which is necessary for effectually conducting the election in accordance with the election rules.

(5) Subject to subsection (6), the appointment of a senior returning officer shall be for such term (not exceeding 4 years) as is specified in the instrument by which it is made.

(6) A senior returning officer shall retire on the Governor declaring the office to be vacant –

(a) if the officer has given to the Governor notice of the officer’s desire to do so; or

(b) if it appears to the Governor expedient to do so.”.

9. After section 23 insert –

“23A Registers of electors

The register of electors for all the constituencies for the purposes of elections of members of the Keys shall together constitute the register of electors for the Island for the purposes of elections of elected members of the Council.”.

Board of Education and local elections

10. Omit sections 78 and 79 and Schedules 4 and 5.

Election rules

11. (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 6 months of receiving the report of the casual vacancy, within one month after such expiry;

(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.

(2) For rule 3 substitute –

“3. Issue of writ

(1) Each writ of election shall be directed to the senior returning officer and all returning officers and conveyed to the senior returning officer by hand, and a copy of the writ shall be conveyed by hand to each returning officer.

(2) On receipt of the writ or copy the senior returning officer and each returning officer shall forthwith endorse on it the date on which it was received.”.

(3) In rule 4, for “writ” substitute “copy writ”.

(4) In rule 5, in paragraph (3)(b), for “the constituency” substitute “each electoral district”.

(5) In rule 9, for “constituency” (in each place) substitute “electoral district”.

(6) After rule 45 insert –

“45A. Calculation of total number of votes

(1) The returning officers shall draw up statements certified under their hands and specifying the number of votes given for each candidate, and any counting agent may copy the statement.

(2) Each returning officer, other than the senior returning officer, shall forthwith –

(a) deliver to the senior returning officer, or

(b) transmit to the senior returning officer by such electronic means as the senior returning officer may direct,

the statement referred to in paragraph (1).

(3) When the senior returning officer has drawn up such a statement for that officer’s own electoral district and received such statements from the returning officers for the other electoral districts, the senior returning officer shall calculate the total number of votes for each candidate.”

(7) In rules 46, 47 and 48, for “returning officer” substitute “senior returning officer”.

(8) In rule 50 –

(a) for “declaring the result of the poll” substitute “drawing up the statement of votes under rule 45A(1)”;

and

(b) at the end add –

“(2) The senior returning officer shall within 24 hours of declaring the result of the poll forward to the Clerk of the Rolls the statements of votes under rule 45A(1).”.

(9) The power under section 22(3) to amend the election rules includes power to amend those rules as modified by this paragraph.

Page 12: for Schedule 2 substitute –

‘Section 4(2)

SCHEDULE 2

CONSTITUENCIES

	Name of constituency	Keys constituencies comprised in area
1	?	?
2	?	?
3	?	?
4	?	?
5	?	?
6	?	?
7	?	?
8	?	?

Page 2, lines 11 to 39 – that is for the actual clause, as written in the Green Paper, to the end of the clause, to remove it all, and substitute:

‘Election and term of office of elected Members of Council.

3. (1) Elections of the members of Council shall be held in accordance with the Representation of the People Act 1995 as follows –

(a) the elected members of Council shall be elected as soon as practicable after the end of’ –

and then it says, ‘April’. As we have amended it in another clause, it will be ‘August’, and wherever it says ‘30 months’, it should really be 34 months. So, the ‘30’ should be amended to accommodate the four months extra, which has been placed on it.

Is that correct?

The President: It is.

Mr Lowey: Over the page, on (3):

‘Every elected member [...] shall, unless that member [...] of the period of 30 months’.

Well, it will not be 30 months; it will be 34 months, won’t it? So, that will need to be amended, I would have thought. So, I would take them as what I would call (**The President:** Consequential.) consequential, Mr President.

Again, I do not want to go through the schedule word for word. I think it is the mechanics, if you like. It is the principle there, that it should be an election and it should be an eight constituency... so along the original Bill, but as spelt out in the schedule and in the new opening sentences.

So, I beg to move the clause 3 and schedules 1 and 2, as printed in the amendment list before you, stand part of the Bill.

I have not spelt out, Mr President, because most of them are exact copies of the original, anyway – such as the calculation of the total numbers of votes, et cetera – they are standard.

Mrs Christian: Has anybody seconded them, Mr President?

The President: Right. No, it is not seconded as yet. Mr Waft.

Mr Waft: Just to, Mr President, get it on the...

The President: Mr Waft is seconding. Mrs Christian.

Mrs Christian: Mr President, I do have some concerns that we get this drafted correctly, in the light of the change of date. Whilst the Hon. Member has suggested that, in his amendment... We need an amendment before us, which actually says, I think, 'August 2009', because we have already agreed that.

However, I do not think that subclause (b) meets the need. (**The President:** August.) It would need to be 34 months in the first instance, (**Several Members:** Yes.) but, after that, in subclause (3), it will not work, I believe, if we leave that at the period of 30 months following the first general election of the Keys, because that will take us, if the Keys election continues to be in November, to an April.

That needs to be amended to say 'five years after they were first elected', or some similar wording to that which applies to the Keys now. (**Several Members:** Yes.) I am anxious, Mr President, that, perhaps, we would defer consideration of this until we have some drafting advice, (*Interjection by Mr Lowey*) (**The President:** Mrs Christian.) to get it right.

Now, is it satisfactory that we simply say 'consequential'? Maybe that is satisfactory. I would feel more comfortable if we had an accurately drafted version before us, so that we can see what the consequences of considerations are.

The President: I think, Hon. Members, I am happy to stand on 'consequential' amendments when it comes to renumbering and in the case of altering 'April' to 'August'. I am happy for that, but when it comes to having to spell out the period of when Members are actually vacating the office or going out of office, I think we need to be more definitive. I think Mrs Christian has a very valid point in relation to that. So –

Mrs Christian: Mr President, I also would like some advice about the amendments, which are proposed... Now, in the papers we have got before us, schedule 1, which relates to clause 3, is set out in this paper as part of clause 4. So, I take it that, at this point, we are not talking about the schedule, in terms of the amendments.

Now, if we are to talk about the schedule now, because it is part of the Green Bill clause 3, I would like to understand the way in which the changes in respect of Council are going to affect the Representation of the People Act.

In the current schedule 1, we have fundamental changes, because the Green Bill proposes a fundamental change to the way in which Tynwald is to be elected. However, the amendments do not propose such a fundamental change, but they deal with the election of Council Members, and they propose modification of the Representation of the People Act, set out on page 2 of our list of amendments, in the following wording:

'Subject to any particular modifications made by this Schedule, the following general modifications shall have effect –
(a) for references to the Keys substitute references to the Legislative Council'.

Now, maybe that, somewhere, says, 'in respect only of elections to the Legislative Council', I am not sure. But should we not simply be modifying the Representation of the People Act to *add* references to the Legislative Council, instead of substituting references to the Keys? Are we taking out Keys and putting in Council, or are we adding – ?

The President: Mrs Christian, trying to be helpful, if you turn to page 7 on your... backwards, if you turn over, is that the...?

The Lord Bishop: This one.

The President: Keep going until you get to where it says:

'Constitution Bill, Unofficial copy showing Bill as amended by Mr Singer's proposed amendments'.

Mrs Christian: Yes, right.

The President: If you get to page 7 of that, where it says, 'Section 3(2), schedule 1', those are the modifications and underlined in that section, then, is the way schedule 1 in the Green Bill is altered.

Mrs Christian: Yes, that I understand. (**Mrs Crowe:** Yes.) What I am trying to understand is how that alters the Representation of the People Act.

Now, what it says is, in the Representation of the People Act, which deals with elections to the House of Keys:

'for references to the Keys substitute references to the Legislative Council'.

The President: In other words, the Legislative Council, subsequently, would be elected in the same manner as the Keys are now, (**Mrs Christian:** Right.) relative to the Representation –

Mrs Christian: So, it is a substitution, not an amendment.

The Lord Bishop: Yes, that is right.

Mrs Christian: That is what I am trying to get clear in my mind. Are we saying, in respect of a Legislative Council election, (**The Lord Bishop:** Election.) that Representation of the People Act is amended by substituting... (**The Lord Bishop:** Yes.) (**Mr Lowey:** Council.) But where is there a clause which says, 'In respect of Council elections, substitute "Council" for "Keys"?'

The Attorney General: Mr President –

Mrs Christian: Could the Attorney help, please?

The Attorney General: Mr President, the clause 3, as proposed to be amended by Mr Lowey's amendment... (**Mrs Christian:** Yes.) Again, Mr President very helpfully referred the Hon. Member to the unofficial copy showing the Bill, as amended by Mr Singer's proposed amendments.

Mrs Christian: Right. So, is it in 3(1)?

The Attorney General: If you see that, under the heading, 'Election and term of office of elected members of Council', you see there clause 3(2):

'In its application to the Council and elections under subsection (1), the said Act of 1995 shall have effect subject to the modifications specified in Schedule 1.'

The modifications, as we have seen, simply say that, when you are looking at the Representation of the People Act, it is not repealed by this, it is simply modified in its application to the elected Members of Council.

So, it is really a shorthand way, Mr President, and, I think, for the convenience, hopefully, of Hon. Members, to be able to see that provisions in relation to elections apply equally to Legislative Council Members as they do to Keys.

The President: Keys and Council.

Mrs Christian: This, Mr President, is why I would have preferred a Consolidation Bill, which sets out both, and you have not got to read one and refer to the other!

However, thank you for that clarification. Accepting that, then, the schedule deals with that –

The Attorney General: Mr President –

Mrs Christian: I am sorry, I am confused, because on this updated version of Mr Singer's amendment... Oh, no, I am not. He has got clause 3 and schedules 1 and 2, and then clause 4 pops up in the middle of all of that, so... Then clause 4 introduces schedules 1 and 2. So, although the heading is clause 3 and schedules 1 and 2 –

The President: Well, there is a new schedule 2, Mrs Christian, and again –

Mrs Christian: But clause 3 does not actually deal with the schedule in... does it? Yes it does, and clause 4 deals with –

The Lord Bishop: Yes, schedule 2.

Mrs Christian: – schedule 2, right.

I think I am content, Mr President, except that, as I said before, I would prefer to see the amendment to and consideration of clause 3 deferred, until we have a drafted version of that, incorporating consequential amendments of the change from April 2009 to August, and a five-year interval between elections.

The President: I think that, other than that particular point, Hon. Members, I think you actually do have a draft of... in the back of your papers. That is actually what it shows you. (**Mrs Christian:** Yes.) Other than that particular point about the five-year period, from August being a five-year period, rather than the April, which is... yes. (**The Attorney General:** Yes.)

Any other Member with to comment? Mr Attorney?

The Attorney General: I was just going to comment, Mr President, and forgive me, it is just a general observation.

I think that the Hon. Member, Mrs Christian, has rightly identified a concern that I am sure all Hon. Members have, including myself, about the difficulty in finding our way through this. In many ways, I think that it might have been easier to do a consolidated Bill, but it was really out of, I suppose, respect to the other House – in other words, not to throw out the Bill – that we felt it was appropriate to indicate amendments to the Bill.

But it may very well be, at the end of the day, that the correct course is to produce a consolidated Bill, or, at least,

a new Bill which can go back to the other place, rather than a series of amendments. It really is extraordinarily difficult to follow all this.

Mr Waft: That was my concern, Mr President –

Mr Lowey: At the start. Absolutely! (*Laughter*)

Mr Waft: – at the start. We are amending –

The Attorney General: Yes, oh, yes.

Mr Waft: – getting into deep water from time to time. That was my concern.

The President: We are, Hon. Members, and I appreciate it is not easy, but last time we discussed it when we were dealing with the Second Reading. We did then go into public committee, and the object of that public committee session, as I understood it, was try to establish a limited number of principles, which would be seen, or deemed, to be acceptable to a majority of Council.

Having done that, what we are considering, now, are amendments in line with those principles and, as far as is practical, if we can make it work, my understanding was that that was the wish of Council so to do.

I appreciate it is heavy weather, and I am very well aware, but, nevertheless, I think it is helpful, when referring to the amendments on the updated version of 27th May, if you also follow, at the same time, the unofficial drafting of the Bill, which has been done at the back. (**Several Members:** Yes.) Now, Mrs Christian.

Mrs Christian: Sorry, yes, I do have another... If we are to vote... Well, we are not, I take it, Mr President, actually going to vote today on clause 3 amendments or clause 3.

The President: Well, I have not come to a conclusion on that. (**Mrs Christian:** Right.) I appreciate that you were making the comment that it might be better to have it deferred, until such time as we had a reprinted draft of how it works in the five-year terminology, from April to August, and if that is the wish of Council... But, at this stage, I have not put that formally to Council.

Mrs Christian: Right, if it were to go forward, and we were then, also, voting on the amendments to schedule 1, within those amendments is a proposal that, on page 12, for schedule 2, we substitute section 4(2), and then a schedule with a lot of question marks in it. Is that appropriate drafting or do we need to make a decision as to the constituencies (**The President:** No...) before we pass schedule 1?

The President: Right, now, I appreciate that you are now dealing with section 4(2), schedule 2, underlining –

Mrs Christian: But it is an amendment to schedule 1.

The President: Yes, it is, and it has 'Name of constituency' and 'Keys constituencies comprised in area', and nothing has been put in there.

Now, the question is whether we put something in there, or whether that would be left to a Boundary Commission. I do not know, but when I read through originally, my view,

my initial thought, was that maybe that is something which would be completed by the Boundary Commission.

But, again, you raise a point, Mrs Christian, which leaves me a little in the air again – reverses my original thoughts maybe. Mr Attorney?

The Attorney General: My understanding was yours, Mr President, that it is a job for the Boundary Commission.

The President: Right.

Mrs Christian: Right.

Mr Lowey: Room put in there for eight constituencies.

Mrs Christian: So, it is in order, then, that we substitute a schedule of that type, right. Okay.

The President: It might be difficult and it might... I mean to say, it is entirely up to Members. If Members wish to fill them in, that is fine. I would be happy, if they were filled in. I have actually tried to do it myself, not very successfully!

But, nevertheless, my initial view was that, when I read through it, that can remain in this Bill the way it is, but the Boundary Commission would pick it up, at a later date.

Mr Lowey: It is still subject to the approval of Tynwald, isn't it? At the end of the day, the constituencies.

Mrs Christian: Would that schedule, Mr President, fit in with any reference anywhere to the Boundary Commission?

Mrs Crowe: With appointment to the committee, in clause 3:

'If Tynwald so resolves [...] shall appoint a committee of such persons [...] to review the number and boundaries of the said constituencies...'

There, on (7), top of the page.

Mrs Christian: Clause 11 – is that still in, then? (**Mrs Crowe and another Member:** Yes.) Well, we would have to amend that, wouldn't we, if we leave it blank? Clause 11... 18 to 26, clause... What page? Page 11? No.

Mrs Crowe: Clause 3 – number (7) on clause 3.

Mrs Christian: Right, clause 3.

Mrs Crowe: Actually, it is in (3), as well:

'The Governor in Council shall, as soon as practicable [...] appoint [...] persons [...] to recommend boundaries for the said constituencies and report to Tynwald.'

It is here, as well.

The President: I appreciate, Hon. Members, this is called 'thinking time', where you are all working your way through these papers, in deciding, but the points need to be fair. Mrs Christian has made the comment that, if the interpretation regarding the Boundary Commission is initially correct, well then, we may need to look at (7) of clause 3, on the top of page 3, so that that is picked up and moved on a step, in line

with the proposed amendments.

Mrs Christian: Well, the proposed amendment, Mr President, takes out all of that –

The President: It does.

Mrs Christian: – and that leaves us with a bit of a hiatus, in regard to the schedule.

The Lord Bishop: Yes.

The President: Right, Hon. Members, I wish to progress, because I know it was the desire of Council that we should try to move the Bill along, in the manner which we are doing. I am also aware that there is a requirement for us to get this measure as correct as is practical.

There has been a suggestion, Hon. Members, that we defer clause 3 and schedule, until we have a further look and a further draft, now on two points. So, I think it may be sensible if we were to defer it, because we have got the two points now, which are: the April moving to August, and the consequential move, possibly, on to a five-year rotation of business; and we now, also, have the query over the new schedule 2, filled in with the question marks, and as to whether or not paragraph (7), at the top of page 3 in the Constitution Bill, the Green Bill, needs to be brought back in some amended form.

Hon. Members, I will put to you, then, that we defer further consideration of the Constitution Bill, until we can come back with possible further amendments. Those in favour, please say aye; against, no.

Okay, Hon. Members, we will attempt to get back with that ASAP, if not today.

No wish of Council to delay Bill Statement by the President

The President: That moves me on, Hon. Members, to Item 2 on our Order Paper, which is the Joint Committee on the Emoluments of Certain Public Servants. But before we get on to that, Hon. Members, I make the point that, on this Constitution Bill, I think we are moving in the right direction, and it is correct that we should be trying to produce a Bill which is satisfactory.

Can I make the point, again, Hon. Members that we really want to progress it on, as far as we can, at each stage, otherwise there will be questions asked, as to the delay. I would make the point that I am satisfied that, at the present time, there is no wish of the Council to delay in any manner. The object of the exercise is to try to get a Bill in a workable form.

Joint Committee on the Emoluments of Certain Public Servants First Report 2004-2005 to be received Motion lost

2. Mr Lowey to move:

That the Joint Committee on the Emoluments of Certain Public Servants First Report for the Session 2004-2005

be received and its recommendations be approved.

The President: So, Joint Committee on the Emoluments of Certain Public Servants, then, which is Item 2 on our Order Paper. Mr Lowey to move, please.

Mr Lowey: Thank you, Mr President.

Hon. colleagues, your Committee has been giving consideration to this matter, for a considerable time, on the payment of income tax by the Lieutenant-Governor, who does not, at present, pay on his remuneration or on the benefits in kind he receives in connection with his duties.

I want to point out that the present Governor and former Governors *have* paid income tax on their private income – their other pensions – so it is only on the salary that they receive for this particular job.

The principle has been accepted, for quite a while now, that the head of... the Lord of Mann, Her Majesty, pays income tax and, therefore, it was inappropriate that this particular anomaly should remain.

Now, we have also taken into account the timing of the Governor. The last Governor was appointed on a fixed term, as we all know, with terms and conditions, and we thought it was wrong to alter those in the interim. But there is a new Governor taking up position, and we feel it is appropriate that the new Governor should know of his terms and conditions prior.

We have also accepted the point of view that this is not, in any way, to diminish from the salary paid, therefore, we recommend strongly that Treasury, with Government Office, should work out, with the Income Tax people, the appropriate amount of income tax that his salary would generate, and to remunerate it accordingly. In other words, it is a quid pro quo. It is a negative.

We do not believe it is right that the... can I use a crude term and say 'the perks' of the job – they are not perks. In my view, they are what I would call standard requirements we would expect the holder of the office to enjoy, which should be taxed. We feel that the car and the house should enhance the standing of that office, which is held by the incumbent and that should not be taxed.

The Report is quite clear, and our recommendations are that the Lieutenant-Governor should not be subject to payment of income tax on the benefits in kind. He should pay tax on his salary, and the Lieutenant-Governor's remuneration should be uplifted by an amount to be determined to reflect the effect of having to pay income tax on his salary.

It is a simple three-line request, and thus the strong recommendation of your Committee was the unanimous view of your Committee.

I beg to move.

The President: Mr Waft.

Mr Waft: I beg to second, Mr President.

The President: Mrs Christian.

Mrs Christian: Mr President, this seems like a bureaucratic exercise, which is simply to meet a principle. To that extent, I suppose I do not have a difficulty with the principle, and you have already indicated that the Governor pays tax on his existing private income.

One cannot imagine that a Governor comes here... most

of them come with, presumably, a pension from their previous occupation, or whatever it may be. So, we are setting out here the point of meeting a principle – an exercise to increase both sides of the budgetary equation: one to provide the income to meet the tax, which presumably...

Can I ask, is this to be established as a separate entity from the Governor's private remuneration, or would the Governor be taxed as an ordinary citizen, with the total remuneration taken as one? In other words, is the Governor going to have an allowance, as a taxpayer, in respect of his governmental pay, as well as an allowance on his private pay, or is the whole of his income being lumped together for taxation purposes, giving him one allowance?

One would expect that any individual would only have one allowance, whether it is the Governor or anybody else, so, perhaps, the Hon. Member could just assure us on that, and that we could presume that his taxation will be as any other citizen's. It might not be unreasonable to assume what his tax figure is likely to be, i.e. in the higher tax band for this purpose.

So, is there any value in going through this bureaucratic exercise? I do not know. I do not feel strongly either way, but I just wondered whether it would be more acceptable to the wider population that it was deemed to be taxable.

The President: The Lord Bishop.

The Lord Bishop: I think there is a very strange beginning point, which is that the Queen, as Lord of Mann, pays income tax. I think you have to understand that the Queen pays income tax, surely, on her private income, (**The President and another Member:** Yes.) which the Governor already does.

I think that there is a muddle at the beginning of the thing, that, somehow, we are deciding that the Governor should pay income tax because the Queen pays income tax. Both of them are already paying income tax on that which is their private income.

I would agree with Mrs Christian. I am not quite sure why we are jumping through all the hoops. It would be much more sensible just to leave it as it was. If it is a matter of principle, then fine, but I can see us getting ourselves into a real muddle, if the points put by Mrs Christian have not been sorted out in advance: that the office holder and the private individual are two different people.

I speak from experience, in the sense of being in the same position myself, and dealing with the benefits in kind. I live in a house that I am required to live in. The Governor is required to live in the house that the Governor is required to live in. I have a car, which comes with the job, and I think it could be a muddle.

The President: Mr Downie.

Mr Downie: Could I say, Mr President, I fully support the principle that is referred to in the Report.

His Excellency, the Lieutenant-Governor, is a Crown appointment, but it is, like many other Crown appointments, advertised. There are a number of people who express an interest in becoming Lieutenant-Governor, and I do not think his situation should be different from anyone else. Anyone who comes to work in the Isle of Man and receives remuneration should, in my view, be a taxpayer, and I think that should be supported.

The intricacies on whether his, or our next Governor's, navy pension is taxed at source, and he pays UK tax or Isle of Man tax, I would think is a matter for himself and the tax people to deal with. As I understand, other people's tax issues are a matter of privacy.

But, as far as I am concerned, I am happy that we have established the principle that everyone here who is receiving remuneration from a Government or a Crown appointment is actually paying tax. I support that.

The President: Mrs Crowe.

Mrs Crowe: Yes, I take the point that the Bishop made. From the premise, at the very beginning, it was as if 'the Queen pays tax, so why shouldn't the Governor?' That was the kind of statement that was referred to, and it is the case that the Governor does pay tax on all his private remunerations.

So, what we are actually saying is: is the position, the remuneration, of the Governor, in future, to be a taxable office? What we are going to say is: we will increase the amount of remuneration you get to pay your tax, because it sounds as if it is popular to have the office holder as taxable.

Well, it makes no difference either way, does it? It is not as if you are taking away funds from the remunerated post. It was just, perhaps, one would consider it may be an anomaly – maybe not, because I think there are other office holders who do not pay tax on a remunerated post.

So, what we are saying, presumably, is that that post, in future, will be remunerated, but we will make allowances for the taxable part of that income to be reimbursed. So, it is a paper exercise really, in my opinion, to sound popular.

Mrs Christian: Mr President.

The President: Mrs Christian.

Mrs Christian: Could I just refer to paragraph 5, to understand what will happen here?

It states that the remuneration of the Lieutenant-Governor is, in principle, analogued to the Civil Service pay spine and was at point 49 two years ago. Changes to the spine points have changed this analogue by four spine points to point 53, in order to maintain the link.

Could the mover confirm that that has already happened? (**A Member:** No.) No.

Those spine points are people's remuneration before tax. If the Lieutenant-Governor's financial remuneration, in actual take-home terms, as it were, is to remain the same – it seems to be the implication of paragraph 2 – what will that do, in relation to the spine point analogue? Something, if we are going to compare them on the same basis as a spine point before tax. Or, is the Lieutenant-Governor's position going to be –

Mrs Crowe: It is an add-on.

Mrs Christian: – still different, (**Mrs Crowe:** Yes.) in that you have a spine point, and then add on for his tax, to take away again?

Mrs Crowe: You'd have to.

Mrs Christian: Can we have a –

Mr Lowey: Yes, if tax goes up, it obviously, under the... Anyway...

Mrs Christian: So, the analogue is a slightly fudged thing, in that you analogue taxable remuneration of a civil servant with a non-taxable remuneration to His Excellency. It is still going to be a mish-mash, but if it is going to satisfy people that it is taxed...

Mrs Crowe: It is a bit like this Bill, isn't it? (*Laughter*)

The President: Mr Waft.

Mr Waft: I would just like to say, Mr President, it is not an academic exercise at all.

Mr Lowey: No, it is not.

Mr Waft: It is a fundamental principle. If you are a civil servant or a Crown appointment, if you receive a salary, you, therefore, should be paying tax on it. This is just to concede the situation that we have found ourselves in, with regard to this situation, and it is a necessary implementation of this, to put it in place on a par with other members in the same situation.

The President: Mrs Crowe, yes.

Mrs Crowe: Could I just ask, are there any other...? I have just heard the statement by my hon. colleague, so are there any other office holders in post who do not pay tax? Is this a unique position, or is it not?

The President: Mr Lowey, wind up, sir.

Mr Lowey: I thought we would keep it simple, because I find it embarrassing to speak about. If you look at your Committee, I do not think you will see that they are a nest of vast republicans, waiting to overthrow the Crown. It is not. We are talking of the Queen's representative here.

So, I have tried to keep it simple. Three simple things: pay the tax. We agree that it should not be on... I used the work 'perks', I think it is a crude word, but most people would recognise that as the house. As the Bishop has said, he does not have a freedom to do that, he has to live in that. How can you divorce the car usage from private to public? We agreed that that is quite nonsensical, and we have accepted that that goes with the job.

Under normal taxation that is a taxable perk. I am sorry to say it, but it is. We have said we are not prepared to accept that, that is going to be so.

Can I come to Mrs Christian's point regarding clause 5, and the principle of getting the link. We did not want to encumber... to take away the salary scale, take away money from the person coming in.

By the way, our Lieutenant-Governor gets paid less than other Lieutenant-Governors in adjacent isles. So he is not at the top of the list, but that is immaterial. That is the rate that we pay for the job that he does.

Now, I come to the tax. It will be, as I am told, obviously, if income tax goes up, the rates of income tax go up, the analogue will vary. So, there is a variation there.

I am told that the tax is payable on the income derived here in the Isle of Man. His private affairs, his private income

is taxed, too. There will be one allowance. So, I give that as the best information that I have.

As for trying to make it bureaucratic, I can assure you it is not the Committee's wish, it has been drawn to our attention by others, in Tynwald Court, that this anomaly should be addressed. We have tried to address it in as fair and a reasonable way, and a one-off, to coincide with the retirement of the present incumbent, and before the arrival of the new man.

I can do no more than that. I put it forward as a solution to a problem and, yes, when it comes to 'is it cosmetic?', the answer is an unresounding 'yes'. But, I think, it is accepting the principle, as George, my hon. colleague, has said, that income tax should be paid, and it is a job or an office that has a salary attached to it.

Mrs Christian: I am sorry, Mr President.

The President: Alright, Mrs Christian, I will allow you to come back, although Mr Lowey has wound up.

Mrs Christian: Mr Lowey has raised a further concern with me in his winding up, in the sense that he says that the tax is to be added on to this figure –

The President: That's right, yes.

Mrs Christian: – but if the tax in the Isle of Man goes up in the future, that person suffers no detriment.

If we are trying to treat him equally with other people, other people whose salary is taxable will suffer when tax goes up. Why should that not apply to the Lieutenant-Governor?

Now, I can understand you saying that this job has been advertised for the next incumbent and, therefore, that person should suffer no detriment. It seems to me that it would be fairest – and, again, this leaves me in some difficulty about how I would vote on this – that if we are going to make it taxable, then taxable it ought to be for the future, and that you have a figure, which may be an add-on to what has been advertised now, at this time, to compensate for the tax, but that, in future, that gross figure is the salary, which is taxable. Otherwise you are not making them the same as everybody else, you are fudging a job for one person –

The President: Right –

Mrs Christian: – and it is not working.

The President: Mr Attorney.

The Attorney General: Yes, I am very sorry to chip in, at such a late stage, Mr President, but it seems to me that what is really the nub of this is that, during His Excellency's term of office in the Isle of Man, he is deemed to be resident in the Isle of Man for tax purposes, and, as such, is liable, like anybody else, to pay Manx income tax on his world-wide income, and that should be the basic premise.

But insofar as the special aspect of His Excellency's position is concerned, surely all that is being said here is that he will not have to pay tax on his special perquisites, which go with the job and which are incidental to the job. So, it is that aspect of it, which I anticipate will be dealt with in the primary legislation.

There is no need to say anything special about His Excellency, other than that he will be entitled to certain non-taxable perquisites. In all other respects, he is going to be deemed to be a Manx resident taxpayer. That is what it boils down to, and, once the income has been grossed up, to take account of this one-off situation, then he will be deemed to be a Manx resident taxpayer. (*Interjections*)

Mr Lowey: Mr Attorney, exactly, and that is not quite what I said and Mrs Christian was right to pick that particular point up.

Mrs Christian: But that will not work, if you retain a link to point 53, in respect of his non-taxable income, because he will not be an ordinary taxpayer in that sense, because he will have his tax... If tax goes up, he will have an extra amount paid on top of that, whereas anybody else on point 53 would have a lesser net remuneration.

The President: Because they would pay more tax on the same amount.

Mrs Crowe: If the tax rate varies... That is, I think, the point Mrs Christian is making.

Mrs Christian: The point I am making is: if the tax rate varies, the Governor should be subject to a change in his net remuneration. (*Interjection by the President*)

The Attorney General: Mr President, I must say, I do not read paragraph 5 of the Report as suggesting anything other than that he will pay tax, in the normal way, whenever the spine points are amended. (*Interjections by the Lord Bishop and Mrs Christian*) Paragraph 5 is simply historic, it is saying it has happened in the past.

Mr Lowey: And to be fair, Mrs Christian did ask, 'have they been approved?' They have all been approved and approved by Tynwald. They were actually placed before Tynwald for approval.

The President: We are getting confusing again, by too much cross-conversation. Mr Butt.

Mr Butt: Thank you, sir.

I was just going to say that, as it is a paper exercise it is really a waste of time. I think when the public hear that the Governor will be taxed, but compensated for his pay (**Mrs Crowe:** Precisely.) to take account of that, it will be treated with scorn by the public, and, really, we are, perhaps, causing more harm than good by even going through the exercise.

The President: I understand that particular point, and I think Mrs Christian's point is valid, if that was to be true. But if, in fact, in the future, as tax moves up or down, so the Governor's tax rate would move up and down, well then, I do not think... That problem is overcome.

The Lord Bishop: No, because Mrs Christian's point, surely, is that as tax goes up and down, so will the Governor's extra bit of remuneration go up and down, in order to cope with it. (*Interjections*)

The President: No. No, I don't think so.

Mr Lowey: No, no.

Mrs Christian and the Lord Bishop: That is what it says.

Mr Lowey: It doesn't.

The President: Well, Mr Lowey, finally wind up, then, and my understanding is that you are saying that does not happen.

Mr Lowey: No. I think the interpretation by my hon. friends is wrong, and I think that what the Attorney has said is correct.

Look, I did try to say that it is a simple one of the occupier of the office should pay tax. That is what we addressed. We believe it has been addressed. We do not wish the present salary scale to be deviated from. I have already said it is the lowest of the offshore islands that get paid and, as far as I am aware, the other islands pay tax.

Perhaps, George, you can help me out on that one? We did do an exercise to find out what the position was in other jurisdictions, and we believe we have come up a sensible solution, to a position that has been drawn to our attention.

I beg to move the resolution standing in my name.

The President: Hon. Members, the motion that I put to Council is that the Joint Committee on the Emoluments of

Certain Public Servants' First Report for the Session 2004-2005 be received, and its recommendations be approved. Those in favour, please say aye; against, no. The ayes have it.

A division was called for and voting resulted as follows:

FOR
Mr Lowey
Mr Waft
Mr Downie

AGAINST
The Lord Bishop
Mr Butt
Mrs Christian
Mrs Crowe

Mr Lowey: Revolutionaries! (*Laughter*)

Mrs Crowe: No, it's nonsense!

The President: It fails to carry, Hon. Members, 4 against and 3 for. (*Interjection by Mrs Crowe*)

Hon. Members, we will continue on another day. In the Constitution Bill, I will, certainly, make sure that the suggested amendments to clause 3 and schedule 1, as have been talked of this morning, are before you before that.

In the interim, can I say that we adjourn now until 14th June. Thank you, Hon. Members.

The Council adjourned at 12.40 p.m.