



**HOUSE OF KEYS  
OFFICIAL REPORT**

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**PROCEEDINGS  
DAALTYN  
(HANSARD)**

**Douglas, Tuesday, 5th April 2005**

**Present:**

The Speaker (The Hon. J A Brown) (Castletown); Mr D M Anderson (Glenfaba);  
 Mrs A V Craine (Ramsey); Mr W E Teare (Ayre); Mr J D Q Cannan (Michael); Mrs H Hannan (Peel);  
 Hon. S C Rodan (Garff); Mr P Karran, Mr R K Corkill and Mr A J Earnshaw (Onchan); Mr G M Quayle (Middle);  
 Mr J R Houghton and Hon. R W Henderson (Douglas North); Hon. D C Cretney and Mr A C Duggan (Douglas South);  
 Hon. R P Braidwood and Mrs B J Cannell (Douglas East); Hon. A F Downie and Hon. J P Shimmin (Douglas West)  
 Capt. A C Douglas (Malew and Santon); Hon. J Rimington, Mr Q B Gill and Mr P A Gawne (Rushen);  
 with Mr M Cornwell-Kelly, Clerk of Tynwald.

**Business transacted***Page***1. Questions for Oral Answer**

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*The House adjourned at 10.40 a.m.*

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## House of Keys

*The House met at 10.00 a.m.*

[MR SPEAKER *in the Chair*]

### PRAYERS

*The Chaplain of the House of Keys*

## Questions for Oral Answer

### HOME AFFAIRS

#### Private investigators Interrogation and criminal charges

1.1. The Hon. Member for Douglas North (Mr Houghton) to ask the Minister for Home Affairs:

*Why are private investigators being permitted to interrogate and prefer criminal charges against persons who are in Police custody?*

**The Speaker:** Hon. Members, Item 1 on the Order Paper, Questions for Oral Answer. Question 1: I call on the Hon. Member for Douglas North, Mr Houghton.

**Mr Houghton:** Thank you, Mr Speaker. I beg leave to ask the Question standing in my name, sir.

**The Speaker:** I call on the Hon. Member for Douglas East, Mr Braidwood, Minister for Home Affairs, to reply.

**The Minister for Home Affairs (Mr Braidwood):** Thank you, Mr Speaker.

Private investigators are not being permitted to interrogate and prefer criminal charges against persons who are in police custody.

**The Speaker:** Hon. Member for Douglas North, Mr Houghton.

**Mr Houghton:** So, what does the Hon. Minister, Mr Speaker, have to say regarding when he said, at the Keys sitting of this Hon. House on 1st March, that, and I quote: 'they can work independently within the confines of a police station'?

What, Mr Speaker, is the Minister going to do about the issue that he is aware of, where such a person was interrogated by private officials in a police station? What statement is the Minister going to make with regard to that, sir?

**The Speaker:** Minister for Home Affairs to reply.

**The Minister:** Mr Speaker, the Hon. Member for

Douglas North is well aware of the codes of practice, as I gave him a copy of Code E of the Police Powers and Procedures Act.

In actual fact, also, in answer to a Written Question in another place, last month, I quoted that the Department has made codes of practice to cover matters, including the interviewing of suspects.

Such codes would, therefore, apply to anyone charged with investigating offences. This provision has been used by customs officers, inspectors from the DHSS and Post Office investigators when acting in their duty of investigating offences or charging offenders, and would not require the presence of a police officer when interviewing someone.

**The Speaker:** Hon. Member for Douglas North, Mr Houghton.

**Mr Houghton:** Thank you, Mr Speaker.

Can the Hon. Minister return to the point, sir, please? Will he apologise for misleading this House in the first place, and will he state how he will remedy the situation of persons unlawfully subject to private interrogation, whilst in police custody, sir?

**The Speaker:** Minister to reply.

**The Minister:** No, sir, to the first part of the Question. As I have already stated, on 1st March, in this Hon. House, and to the Written Question in another place, last March, the investigators from the Post Office are qualified to undertake interviews of suspects in a police station.

### UK anti-terrorism legislation

#### Tynwald approval for extension to Isle of Man

1.2. The Hon. Member for Onchan (Mr Karran) to ask the Minister for Home Affairs:

*Will you undertake that no extension to the Isle of Man of the anti-terrorism legislation currently before the United Kingdom Parliament will be made without the approval of Tynwald first being obtained?*

**The Speaker:** Question 2. I call on the Hon. Member for Onchan, Mr Karran.

**Mr Karran:** Vainstyr Loayreyder, I beg to ask the Question standing in my name.

**The Speaker:** I call on the Hon. Member, Minister for Home Affairs, Mr Braidwood.

**The Minister for Home Affairs (Mr Braidwood):** Thank you, Mr Speaker.

I am happy to confirm that, at this time, my Department has no intention of extending the current legislation that appertains to terrorism, beyond that contained in the Isle of Man Anti-terrorism Act 2003, which came into force on 1st January 2005.

Mr Speaker, I can also confirm that any future amendments to primary legislation will follow the normal legislative procedure.

**The Speaker:** Hon. Members, that concludes Questions for Oral Answers.

We move to Item 2 on the Order Paper, Questions for Written Answer, of which there are two Questions, which will be circulated during the sitting.

## Questions for Written Answer

### LOCAL GOVERNMENT AND THE ENVIRONMENT

#### Government landfill sites Commercial waste and redirection to Energy from Waste Plant

2.1. The Hon. Member for Middle (Mr Quayle) to ask the Minister for Local Government and the Environment:

(1) *In relation to Government Landfill sites, will you provide details of the tonnage of commercial waste, deposited on a monthly basis from 1st January 2003 to date; and*

(2) *with regard to your Department's recent public notice, intending to turn away loads or part loads of material from landfill sites which should go to the Energy from Waste Plant, what is the estimated monthly tonnage which will be saved from landfill by this action?*

**Answer:** (1) The figures for all recorded commercial waste arisings deposited between 1st January 2003 to date are as follows:

**Table 2.1.A**

	2003	2004	2005
January	1993.82	1145.52	237.56
February	2167.17	1046.82	339.96
March	2086.48	936.66	317.18
April	2378.02	849.81	
May	2455.94	1106.02	
June	2438.28	1065.66	
July	1488.72	886.70	
August	1348.92	351.88	
September	1329.86	462.66	
October	1520.64	286.10	
November	1664.56	351.06	
December	1241.14	219.96	

It should be noted that the figures in late January, February and March 2005 have increased slightly due to emergency deliveries of storm damage materials.

(2) It is anticipated that, based on observations by the Department's operational staff, up to half of the waste still being deposited at the Government's landfill sites (between 100 and 150 tonnes per month) could be sorted

and segregated prior to delivery and the material recovered sent for incineration or recycling. The Department has previously not asked that this operation be carried out, as it was anticipated that there would be sufficient void space at Wright's Pit East until the end of 2005. However, following the recent void survey, the remaining void space will not be sufficient unless items that can be incinerated or recycled are removed. This rule must now be enforced to ensure that capacity remains for bottom ash disposal until the year end.

### Licensed landfill sites Details of existing and proposed

2.2. The Hon. Member for Middle (Mr Quayle) to ask the Minister for Local Government and the Environment:

(1) *In relation to licensed landfill sites, how many are there, where are they located and what are their capacities; and*

(2) *in relation to proposed landfill sites where licences have been applied for, how many are there, where are they proposed to be located and what are their anticipated capacities?*

**Answer:** (1) The number of licensed landfill sites and their location is shown in Table 2.2.A below. This shows details of the remaining capacity at Wright's Pit East and North. Unfortunately, however, there is no information available as regards the capacities of the other sites.

**Table 2.2.A**

Name	Location	Remaining Capacity
Ballacrickett Farm, Ballaharra Quarry Eairy Terrace	Ronague, Castletown St Johns. (Field adjacent to) Foxdale.	
Earystane Plantation	Earystane, Colby.	
Hilltop Nurseries	Mount Rule, Braddan	
Lhergydhoo Sandpit	Lhergydhoo, Nr. Peel.	
Sloggal Glen	Foxdale Road, Ballasalla.	
Turkeyland Old Quarry	Ballasalla.	
Wrights Pit East	Bride	9,233m <sup>3</sup> as at end of February 2005
Wrights Pit North	Bride	158,600m <sup>3</sup> (approx) to date
<b>TOTAL = 10</b>		

The cubic capacity of a landfill site can give an indication of the amount of waste that may be disposed of on site. However, this is very much dependent on waste type and operational detail, e.g. whether a specialist compactor vehicle is to be used on site.

(2) There are no proposed landfill sites where licences have been applied for but where consideration is still ongoing.

## Orders of the Day

### Election of one Member of Legislative Council to serve until 28th February 2010 No Member elected

3. Election of one person to serve as a Member of the Legislative Council for a period expiring on 28th February 2010.

<i>Nominee</i>	<i>Proposer</i>
Mr Dominic Francis Kevin Delaney	Capt. Douglas

**The Speaker:** Hon. Members, we now move on to Item 3 on the Order Paper, election of one person to serve as a Member of the Legislative Council for a period expiring on 28th February 2010.

In accordance with the statutory requirements in section 2 of the Isle of Man Constitution (Elections to Council) Act 1971, I called for nominations on 22nd March 2005 to be made by 5.00 p.m. on 24th March, and the nomination on your Order Paper resulted. The nomination was accompanied by the required statement of qualifications and the reasons in support, and it was circulated to Hon. Members by the Secretary, as also required by the Act.

I confirm that the sitting of the House today takes place no sooner than 10 days after the close of nominations.

Now, before we proceed, I again remind Hon. Members of the advice I gave in the House on 4th March 2003, in relation to the text of Standing Order 209, which applies to this election, and I confirm that the same procedure is to apply today. I have, therefore, asked the Secretary to prepare ballot papers showing simply the name of the only candidate upon whom the House may now vote.

As Hon. Members are aware, the House is required under the Act to elect a person to the Legislative Council when there is a vacancy, and the successful candidate requires not less than 13 votes in his favour.

Hon. Members, I would advise that, today, if the candidate receives less than 13 votes, but receives 12 votes, being a majority of Members present and voting, then we will vote again on the candidate.

If the candidate is unsuccessful at the second ballot, then I will call for new nominations to be made by 5.00 p.m. on Friday, 8th April. There will then be a further ballot on Tuesday, 19th April 2005 at a special sitting of the House to be held at 9.30 a.m.

Hon. Members, that Item is because we are, at present, only 23 Members in the House, with no Member with a leave of absence.

Hon. Members, I would also inform you that, as is normal procedure, any spoilt ballot papers will be taken into account in relation to calculating the number of Members present and voting. Failing the candidate obtaining 13 votes, then I will call for fresh nominations to be made by 5.00 p.m., as I say, on Friday, 8th April. I would advise that the procedure for Hon. Members voting is covered under Standing Order 209 (g).

Finally, for the avoidance of doubt, I would advise that the Standing Order 209(1)(a) provides that only the proposer and the seconder shall speak to the nomination.

Hon. Members, I now call upon the Hon. Member for Malew and Santon, Capt. Douglas, to speak to his nomination of Mr Dominic Francis Delaney. Hon. Member.

**Capt. Douglas:** Gura mie eu, Vainstyr Loayreyder.

I wish to nominate Mr Dominic Francis Kevin Delaney for election to the Legislative Council.

In this ever-changing world, the need of this Hon. House is to ensure that experience is to the fore. It is our duty to ensure that our nominees for positions in the Legislative Council are filled by competent persons.

Mr Delaney has, for over 30 years, served the public of our Island as a Member of Douglas Town Council, the House of Keys and, in more recent times, the Legislative Council, as wide an experience as it is possible to get, I suggest, sir, in Manx politics.

Much has changed. More changes are still to come; steady hands on the helm are needed. My good friend may not be tall in stature, but he casts a long shadow over our Island's political life. With a career as varied as his, Mr Delaney has much still to offer in the service of our people.

Determination to uphold the rights of the people, the rule of law and order are by-words to this gentleman. Many challenges still remain, sir. I ask that he be given the opportunity to face up to them, by continuing to serve as a Member of the Legislative Council.

I beg to move.

**The Speaker:** Hon. Member for Douglas East, Mrs Cannell.

**Mrs Cannell:** Thank you, Mr Speaker.

I rise to my feet in support of the nomination, and wish to second the nomination, and just merely to say to Hon. Members that Mr Delaney is in good health, he is fit, he is relatively young, in political terms, and I think it is time that we exercised our right to elect, today, Mr Delaney to the Legislative Council, so that Tynwald can continue its business with a full complement of membership.

I ask you, please, to cast your vote in Mr Delaney's favour.

**The Speaker:** Hon. Members, we will now circulate ballot papers, Secretary of the House.

Hon. Members, the name before you and the only name available for you to vote for is Mr Dominic Francis Kevin Delaney. All Members got ballot papers? Proceed to vote, Hon. Members.

Hon. Member for Rushen, Mr Gawne and the Hon. Member for Douglas North, Mr Henderson to act as tellers, please.

*A first ballot took place.*

**The Speaker:** Hon. Members, the result of the ballot is that Mr Delaney received 12 votes; there were 11 spoilt papers.

Therefore, Hon. Members, we vote again; as a majority of those present and voting was 12; which Mr Delaney obtained, but, as is required under the Act, he requires 13 votes to be elected to the Council.

Re-issue ballot papers, please, Hon. Secretary. Thank you. The only name on the paper is that of Mr Dominic Francis Kevin Delaney.

*A second ballot took place.*

**The Speaker:** Hon. Members, in that ballot Mr Delaney received 11 votes, there were 12 spoilt papers.

Hon. Members, the House has not elected a Member to the Legislative Council, and, in accordance with the statutory requirements in section 2 of the Isle of Man Constitution (Elections to Council) Act 1971 - Hon. Member, I think it is important that Members are clear on the procedures, please - I must, therefore, call for fresh nominations to be made, in the terms the Act requires, to the Secretary of the House, by 5.00 p.m. on Friday, 8th April 2005.

The nomination, or nominations, must be made by a Member of the House, be in writing and be supported by a statement of the candidate's qualifications and experience and the reasons why the proposer considers that the candidate would be a suitable person to be elected to the Legislative Council. A person nominated need not be a Member of the House.

The election following those nominations must take place not less than 10 days later. The election for the vacancy to the Legislative Council will, therefore, be held at a special sitting of the House on Tuesday, 19th April 2005, at 9.30 a.m.

Thank you, Hon. Members.

## BILL FOR FIRST READING

### Regulation of Surveillance Bill

**The Speaker:** We now move on to the next Item on our Order Paper, Bill for First Reading, and I call on the Secretary of the House.

**The Secretary:** Mr Speaker, the Bill for First Reading is the Regulation of Surveillance Bill, introduced by the Hon. Member for Douglas East, Mr Braidwood.

## BILL FOR THIRD READING

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

5.1. Mr Rodan to move:

*That the Mental Health (Amendment) Bill be now read the third time.*

**The Speaker:** Hon. Members, we now move on to the next Item on our Order Paper at Item 5, Bill for Third Reading, Mental Health (Amendment) Bill, and I call on the Hon. Member for Garff, Mr Rodan.

**Mr Rodan:** Thank you, Mr Speaker.

I rise to move the Third Reading of the Mental Health (Amendment) Bill 2004, which makes various amendments to the main legislation in the Mental Health Act 1998.

In the main, Mr Speaker, as Hon. Members are well aware, the Bill seeks to re-enact, with some changes, part 6 of the 1998 Act, to allow patients subject to detention in the

Isle of Man to be transferred to other relevant territories and vice versa. This recognises recent and ongoing changes to mental health law in other parts of the United Kingdom.

It also makes it an offence to assist or harbour a mental patient who is absent without leave in another part of the British Islands.

Clause 2 specifically creates the offences in the Island of knowingly assisting such a patient to leave the country, or to assist them to remain absent without leave. Reciprocal provisions exist or will exist within the other relevant territories.

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

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

Compliance with article 5 of the European Convention on Human Rights is also ensured by reversing the burden of proof in proceedings before the Mental Health Review Tribunal, whereby the burden of proof is reversed, and requirement made that the detaining authority has to prove to the satisfaction of the Tribunal that the patient continues to meet the criteria for detention.

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

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

It gives me pleasure, Mr Speaker, to move that the Mental Health (Amendment) Bill 2005 be read for a third time.

**The Speaker:** Hon. Member for Peel, Mrs Hannan.

**Mrs Hannan:** Gura mie eu, Vainstyr Loayreyder.

Yes, I rise to second this legislation. This legislation was introduced because there was a lacuna in the legislation, as it exists for patients who are deemed to be needing specialist care and treatment which, because of our size, we cannot give to certain members of the public, who do have mental health problems and who, in some cases, have been involved in criminal activities and, therefore, need either treatment or protection.

Removing someone from here to another jurisdiction has been, in the past, problematic. This legislation actually sorts out that problem of removing patients to another jurisdiction.

Our officers within the Department of Health and Social Security identified this lacuna. The United Kingdom Government did not understand that there was this lacuna, so when it was pointed out by the Isle of Man, they needed also to bring in legislation, which allowed for this and this is what this legislation does.

So, it is a very important piece of legislation. It irons out the problems that we have had in the past and, therefore, it is very welcome legislation.

I must say that I continue to have my concerns in regard

to the amendment that was approved last week, which was supported by the House. I do not wish to enter into discussions on that, but it is the first part of the legislation which I consider to be excessive, in about six or seven words in this legislation, which, I feel, if we would have had time to consider it – because it was introduced as an amendment to the House at the last sitting – then I would have moved to actually remove those words.

I have no objection to the amendment per se, but I have to just some of the words that are included in this amendment. I would hope that, because we will have time, maybe, to give consideration to this, before it becomes an Act, then I think, maybe, further consideration could be given to these extra words, that I feel, maybe, are not as clear... I do not wish to take anything from the amendment; I just wish the legislation to be absolutely clear.

I realise that, in my position, I could have moved a further amendment, but I have had discussions with the mover. Obviously, the mover will say something in winding up this legislation at the Third Reading, on this debate, and make it quite clear, obviously, the satisfaction with regard to this; but what I do not want to see is this going before a court of law, and lawyers making the case that this legislation is now not clear.

I, really, just want to make sure that the legislation is clear, after all the work that the officers of the Department have gone to, identifying it in the first place, putting this legislation together, and I just want to ensure that, because an amendment has been moved on the floor of the House, that it is absolutely clear what it is saying and what it is meant to say.

But, as I say, Vainstyr Loayreyder, I have no problem in supporting the total of this legislation, because I think it is extremely important. I just want to make sure that an amendment moved on the floor of the House does not scupper the whole essence of this legislation.

Thank you, Vainstyr Loayreyder.

**The Speaker:** Hon. Member for Onchan, Mr Karran.

**Mr Karran:** Vainstyr Loayreyder, I am happy enough with the Bill. My concern with the Bill, as it stood before, was the fact that orders could be taken into this jurisdiction and make all the issue of this jurisdiction's rights and privileges to be impotent, as far as being able to do anything about it.

We are not part of federal Britain and we are not a county council of the United Kingdom, and all one was wanting to do with this amendment was make sure that the Department... in fact, Vainstyr Loayreyder, I was wanting to go a lot further, but time restraints did not allow for that, and I think that is the important thing that we must remember, that we are a legislative assembly, equal to the House of Commons, or the Dáil or wherever else. I think that is important.

The only issue that I would like to ask about: whilst this Bill, obviously, will be a step in the right direction – we are led to believe by the professionals – a lot more work needs to be done, I would say, between these and the very elderly and frail because, generally, children have parents who want to support them.

These two sections, the people with mental illness and the very elderly and frail, who often do not have anybody rooting for them, are in the most vulnerable section of the community. One of the things that I would like to see, in further legislation, is actually some way of producing

more rights, as far as people with mental health... to the responsibilities of a caring and prosperous society, as I feel, far too often, difficult cases are just left to roam the streets, and everybody hopes that nothing will be done or nothing will happen to the detriment of society.

As far as I am concerned, a lot more work needs to be done, as far as mental health is concerned. I think the movement is going in the right direction, but I do feel that this is about very vulnerable people in our society.

As far as the amendment is concerned, the amendment was a compromise to what I wanted, but it is important that people realise that it would be wrong for us, when putting in primary legislation, to have no sort of structure, if there are any concerns about an order that is placed in another jurisdiction.

**The Speaker:** Hon. Member for Garff, Mr Rodan, to reply to the debate.

**Mr Rodan:** Yes, thank you, Mr Speaker, and I would like to thank the two speakers who have risen to speak, during this Third Reading.

I, first of all, thank the Hon. Member for Peel, Mrs Hannan, for her comments and for setting out, fairly fully, the background to the need for legislation and highlighting the fact that it was some of the practical difficulties, because of the emerging differences in legislation across other British Islands, that prompted us to bring forward the necessary amendments in this Bill, to have mutual recognition and reciprocal arrangements for the transfer between England and Isle of Man, or Scotland and the Isle of Man, and vice versa.

I do understand the Hon. Member's remaining anxiety about the amendment that the House accepted, but for the benefit of Members, if I could remind the House what the amendment, in fact, does.

The section 95 of the schedule which is the part that has been amended is the schedule to clause 1, on page 12 of the Green Bill. What that says, in section 95 – it is to do with powers of detention – is that any person who, under any provision corresponding or similar to sections 18 or 134, may be taken into custody, in a relevant territory, may be taken into custody in and returned to the territory in question from the Island, by an approved social worker or a constable.

What that means, Mr Speaker: sections 18 and 134 in the main Act are to do with persons either who are absent without leave, people who are liable to be detained in a hospital, but are absent without leave, or patients escaping from custody – actually from legal custody. Sections 18 and 134 are the main provisions in the legislation for the return and re-admission of and retaking of such patients.

What this Bill says is that anybody who may be detained or retaken somewhere else, under equivalent legislation – if they fall into that category – may be retaken in the Isle of Man and returned. What the amendment did, Mr Speaker, is to add to that the following:

'A person shall not be taken into custody in the Island and returned to a relevant territory under [that section] unless the Department is satisfied that the return is appropriate in the circumstances and has authorised it.'

I think the Hon. Member for Peel sees that amendment introducing an ambiguity, to the effect that a person shall not be taken into custody, unless the Department is satisfied

that the return is appropriate, whereas what is meant by the amendment is that a person, having been taken into custody, shall not be returned unless the Department is satisfied.

Mr Speaker, I have taken some legal advice on this, and I am satisfied that there is not an ambiguity. It is a question of the English and what part of the sentence the word 'shall' refers to. It refers to 'shall not be': it means that the person shall not be returned unless the Department is satisfied, and the Hon. Member for Peel, I think, is reading it that the person shall not be taken into custody unless the Department is satisfied that there is cause for a return.

The very fact, Mr Speaker, that the Hon. Member recognises an ambiguity implies that others might also, and I think, therefore, it would be reasonable that the Attorney, in the other place, might well be able to confirm my legal advice that there is no ambiguity, but if there is, appropriate steps can taken.

I, as mover of the Bill, am satisfied that the House has done the right thing. I just wanted to go into a little bit of detail to reassure the House that the legislation, as it leaves here, is correct, but I do acknowledge, in fairness to the Hon. Member, her anxiety on this particular point.

I thank the Hon. Member for Onchan for his contribution.

He welcomes the legislation and sees it as 'moving in the right direction', and has broadened out the consideration to taking another group of vulnerable people, other than the mentally ill, the elderly and the frail.

Of course, they are not covered in this particular legislation, but the Hon. Member expresses the hope that equal attention will be given to their continuing rights, and I am pleased to give that particular assurance.

Mr Speaker, I thank those who have spoken and I thank the House for their support of this legislation. I beg to move, sir.

**The Speaker:** Hon. Members, the motion before the House is that the Mental Health (Amendment) Bill be now read a third time. All those in favour, say aye; against, no. The ayes have it. The ayes have it.

Hon. Members, that concludes the business before the House this morning. The House will now stand adjourned, until 12th April, in the House, at 10.00 a.m.

Thank you, Hon. Members.

*The House adjourned at 10.40 a.m.*