



**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, 11th April 2006

Present:

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

The Lord Bishop of Sodor and Man (The Rt. Rev. Graeme Knowles), The Attorney General (Mr W J H Corlett QC),
Mr D Butt, Mrs. C M Christian, Mrs. P M Crowe, Hon. A F Downie, The Chief Minister (Hon. D J Gelling CBE),
Mr E G Lowey, Mr L I Singer and Mr G H Waft,
with Mr P Lo Bao, Acting Clerk of the Council.

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The Council adjourned at 3.15 p.m.

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Legislative Council

The Council met at 10.30 a.m.

[MR PRESIDENT *in the Chair*]

PRAYERS

The Lord Bishop

Questions for Oral Answer

H M ATTORNEY GENERAL

Houses on flood plains Government insurance cover

1.1. The Hon. Member (Mr Waft) to ask H M Attorney General:

What is the present Government Insurance Cover for, with regard to houses that have been built on a flood plain?

The President: Hon. Members, turning to our Order Paper, we have three Questions. I call on the Hon. Member, Mr Waft, for the first Question.

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

The President: Mr Attorney to reply.

The Attorney General: Thank you, Mr President.

I have no personal knowledge of insurance policies which Government may have taken out in relation to houses which have been built on a flood plain.

I have, however, made some enquiries of Treasury. I am advised that Treasury has no specific insurance policy which would provide contingency cover for residents of houses which have been built on a flood plain, if those residents have not taken out appropriate household policies or have been unable to obtain such policies.

The President: Mr Lowey.

Mr Lowey: Could the learned Attorney tell me, in relation to the flood plain, the advice that the Government has received in the Bullen Report about building on flood plains, which it strongly prohibits, although the appropriate Department has not accepted or published that Report?

The President: Mr Attorney.

The Attorney General: No, Mr President, I am afraid I cannot answer that. I have not reviewed the Bullen Report with a view to answering this Question in the name of the Hon. Member, Mr Waft.

Mr Lowey: Could I then, also, ask the learned Attorney: does he think it reasonable that a firm which wishes to build on a flood plain can apply 21 times to the planning authorities and get refused on all 21, and still comply with the law, apparently, on the 22nd attempt to build on flood plains?

Does he think that that is a reasonable performance of the balances and checks that most people would expect?

The President: Mr Attorney, I do not want to go down the planning route but nevertheless, have you got a reply, sir?

The Attorney General: Mr President, I really do not want to appear to be unco-operative but I had come today with a view to answering the specific point in relation to insurance.

I will be very pleased to research further any broader issues in relation to planning, but I have not come armed to answer planning matters today, sir.

The President: Mr Waft.

Mr Waft: Thank you, Mr President.

If the Isle of Man Government changes the course or boundaries of a watercourse, would those changes need to be advised to the Government insurance?

The President: Mr Attorney.

The Attorney General: Mr President, as I have indicated, Government does not have any insurance in relation to claims against Government in relation to houses that may have been built on a flood plain.

Therefore, I cannot see that, if the river course is diverted, that would have any bearing on Government at all, at the moment, unless and until, of course, Government alters its policy.

The President: Mr Lowey.

Mr Lowey: Sir, could I ask the learned Attorney: in the light of the floods that took place in Sulby, where the river flooded, we had an Inquiry, Government said they had learned lessons, could the learned Attorney tell me what lessons they have learned?

The President: Again, we are stretching it from insurance. Mr Attorney.

Mr Lowey: It is insurance.

The Attorney General: I am afraid I cannot answer that, sorry, Mr President.

Local authority Tenancy Agreement 'Overcrowding'

1.2. The Hon. Member (Mr Waft) to ask H M Attorney General:

With regard to the local authority housing tenants, what constitutes 'overcrowding' as outlined in the new Tenancy Agreement?

The President: In that case, Hon. Members, what we will do is move on to Question 2. Mr Waft.

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

The President: Again, Mr Attorney.

The Attorney General: Thank you, Mr President.

The Hon. Member refers to overcrowding as outlined in the new Tenancy Agreement. I take it that the Hon. Member is referring to the Common Tenancy Agreement, which I understand has been prepared recently by the Department of Local Government and the Environment.

That Agreement does not refer to overcrowding, although clause 1(b) of the Agreement does provide that the relevant commissioners reserve the right to require a tenant to transfer from a smaller dwelling to a larger dwelling where that is necessary, owing to an increase in the size of the tenant's family.

Overcrowding is, however, Mr President, defined in section 28 of the Housing Act 1955 and that Act has effect, notwithstanding the provisions of the Common Tenancy Agreement. A dwelling house is deemed, for the purposes of that Act, to be overcrowded at any time when the number of persons sleeping in the house either: (a) is such that any two of those persons, being persons 10 years old or more, of opposite sexes and not being persons living together as husband and wife, will sleep in the same room; or (b) is, in relation to the number and floor area of the rooms of which the house consists, in excess of the permitted number of persons as defined in the fourth schedule to the Act.

In determining, for the purposes of section 28, the number of persons sleeping in a house, no account is to be taken of a child under one year old, and a child who has attained one year and is under 10 years is to be reckoned as one half of a unit.

The fourth schedule of the Act defines the permitted number of persons in relation to a dwelling house by reference to an annexe which sets out two tables which list the permitted number of persons calculated by reference to the number of rooms or the floor area of a room.

Mr President, subject to the provisions of part 3 of the Housing Act 1955, an occupier or landlord of a dwelling house is guilty of an offence and is liable, on summary conviction, to a fine not exceeding £2,500, if he causes or permits a dwelling house to be overcrowded. A local authority does have a statutory duty to enforce the provisions of the Housing Act 1955 as respects dwelling houses in their district, and a local authority may serve upon the occupier of a dwelling house which is overcrowded, in such circumstances as to render him guilty of an offence, notice in writing requiring him to abate the overcrowding.

The President: Mr Waft.

Mr Waft: Thank you, Mr President.

I thank the Attorney General for his reply. It was a comprehensive reply.

I wondered if the tenants of such local authority houses are aware of the contents of that reply and how it would affect them.

The President: Mr Attorney.

The Attorney General: Mr President, my recollection is that there is a provision in the Housing Act 1955 which enables local authorities to publish the relevant details of the Housing Act 1955, and that, in fact, might be very helpful in relation to any overcrowding issues that arise.

The President: Mrs Crowe.

Mrs Crowe: Equally, Mr Attorney, I think it should be pointed out that, also, local authorities have the authority to actually rehouse families, if their families have decreased in size. I think that, too, is important, because I think people do not realise that that is the case when they have been living in a family home for some time and are just reduced, perhaps when the family have all left.

The President: Mr Attorney.

The Attorney General: Yes, Mr President.

I can confirm that there is a provision in the Common Tenancy Agreement which is the other side of the coin to that which I have endeavoured to describe. In other words, if there is a larger family which decreases, because children leave and so on, then the commissioners have the right to require the tenant to move from the larger dwelling to a smaller dwelling.

The President: Mr Lowey.

Mr Lowey: Is this a new requirement that has been added, or has it been an existing one? Most people, with the greatest respect to my former... speaker who just spoke... We talk about people as units. These are homes, not units, and I find it very distressing, when people who have lived in a particular house and have got memories and associations to it are then summarily told to move somewhere else.

Is it not better to have, by agreement, that they move and perhaps it is our job to provide single and smaller units, which the Department and local authorities are failing lamentably to do?

The President: Mr Attorney.

The Attorney General: Mr President, I do try to steer clear of matters of policy, which it is for Government to seek to achieve.

All I can say is that my understanding is that the Common Tenancy Agreement contains a provision, which I have endeavoured to describe. Whether or not that exists, or did exist, in relation to previous or older forms of tenancy agreement, I cannot say, but, again, I can research that, if necessary.

The President: Mrs Crowe.

Mrs Crowe: Thank you, Mr President.

I really wanted to respond, because of the comments made by my hon. colleague, Mr Lowey. I was, in fact, speaking for close neighbours of mine who, at the age of 80, have just been moved to a smaller dwelling and wanted to point out that, in fact, with all tenants they do tend to get attached to that particular home and it can be a very distressing time, when they are actually required to move to smaller premises.

I think it is right that people should be aware that commissioners have and, as far as I can see, have always had the right – yes, the right – to move people into dwellings more suitable for that particular size, freeing up houses for larger families.

Thank you, Mr President.

Rehousing growing families Local authorities' legal position

1.3. The Hon. Member (Mr Waft) to ask H M Attorney General:

What is the legal position with regard to the local authorities' responsibilities to rehouse families whose numbers have increased?

The President: Hon. Members, we will turn then to Question 3 and, again, I call on the Hon. Member, Mr Waft.

Mr Waft: Thank you, Mr President.

I think this has been partly answered in the previous Question, but I would like to ask the Question standing in my name.

The President: Mr Attorney.

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

In answering this Question, I take it that the Hon. Member is concerned as to the duties of a local authority in relation to a dwelling house which has become overcrowded, as mentioned in section 28 of the Housing Act 1955.

As mentioned in the context of the previous Question, the landlord of a dwelling house who causes, or permits it to be, overcrowded shall be guilty of an offence and I consider that it would be the duty of the local authority to use its best efforts to rehouse a family who were living in an overcrowded house.

It is relevant to point out that section 29(5) of the Housing Act provides that a landlord of an overcrowded house is deemed to cause or permit it to be overcrowded if, *inter alia*, the landlord fails to make enquiries of the occupier as to the number, age and sex of persons who would be allowed to sleep in the house.

The provisions of section 29(5), coupled with those of clause 1(b) of the Common Tenancy Agreement, to which I have referred in a previous Question, do, I think, impose an obligation on a local authority to keep under review the arrangements for accommodating all the persons who live in a dwelling which is rented from that authority.

The President: Mr Lowey.

Mr Lowey: Could I ask the learned Attorney the reverse of that Question, really? Would the Attorney not agree that the local authority and Government, as housing authorities, have a duty to provide housing?

We are talking in the main today about overcrowding. What about single people? While we have agreed that they can go on the list, while the local authorities and central Government are not building any houses for single people,

isn't that a breach of their statutory duties?

The President: Mr Attorney, if you have an answer, sir.

The Attorney General: Mr President, I can only answer in general terms that there is indeed a general duty under the Housing Act for local authorities to consider the requirement for housing within their area. Again, this must be a matter of policy.

My recollection is that Government has, indeed, made some real efforts to provide accommodation, albeit in limited numbers perhaps, to single occupants, but Mr President, that really is, I am afraid, outside the scope of my duties.

The President: Mr Waft.

Mr Waft: Just one final question from me, Mr President. Can I take it from the Answer of the learned Attorney that landlord and tenant are both legally responsible to rectify the situation that has occurred?

The President: Mr Attorney.

The Attorney General: Yes, Mr President.

I think it makes eminently good sense that the landlord and the tenant should, if at all possible, come together to agree a move from a smaller house to a larger house or vice versa. That, I think, is the policy behind the Common Tenancy Agreement and one would hope that that would be achieved, sir.

The President: Mrs Christian.

Mrs Christian: May I ask a supplementary?

Would the learned Attorney accept that the Department of Local Government and the Environment, in their housing developments, have developed units for single people, two-bedroomed units, because it is accepted that most people would want two bedrooms? They may not necessarily all be houses, they may be apartments, but there are properties for single people.

The President: Mr Attorney.

The Attorney General: I am sure that is right, Mr President.

Mr Lowey: If you can buy them. How many have moved into them?

The President: Hon. Members, we are in danger, Mr Lowey, with respect, of creating a debate on the housing and I am not down that road.

Mr Lowey: But it is right. In this setting, I think we have got to be factual and the reality is, if you are a single person living in a local government two-bedroomed house, you are asked to move out. There may be apartments getting built for people to buy and that may be an element of it, but not for social housing, sir, and I think the record ought to be put straight.

The President: That is a view put forward.

Orders of the Day

Sexual Offences (Amendment) Bill

For Third Reading Debate commenced

2. H M Attorney General to move:

That the Sexual Offences (Amendment) Bill be read for a third time and do pass.

The President: So, we turn then to Item 2 on our Agenda, which is the Sexual Offences (Amendment) Bill. It is in the hands of Mr Attorney and it is down for a Third Reading this morning. Mr Attorney.

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

This important Bill has been subjected to careful scrutiny by Hon. Members and, indeed, to an amendment in the name of the Hon. Member, Mr Singer, who wished to amend section 38 of the Sexual Offences Act 1992.

Hon. Members will recall that, as a result of an amendment in another place, section 38 had been repealed. The amendment moved by the Hon. Member, Mr Singer, sought, *inter alia*, to prohibit a public body from intentionally encouraging or recommending any person under the age of 16 years to engage in any sexual practice. This amendment was, therefore, considerably wider in scope than section 38 itself, which was confined to prohibiting the intentional promotion of homosexuality.

The amendment in the name of the Hon. Member did not carry. I would respectfully suggest that it would be wrong in principle to introduce the amendment to this Bill. The Bill, after all, seeks to amend the principal Act of 1992 and schedule 1 to the Criminal Justice Act 2001, which is concerned with those sexual offences, in respect of which the notification requirements apply.

The 1992 Act, as amended by this Bill, if passed, would contain a body of criminal offences which attract criminal penalties. The proposed amendment would have been incongruous, setting out, as it does, a provision which does not seek to create a criminal offence.

Mr President, I recognise that I must concede that section 38 itself does not lie comfortably within the existing framework of the 1992 Act, appearing as it does under the heading 'Miscellaneous and Supplemental', but that concession does not, I think, invalidate my argument.

As was pointed out by the Hon. Member, Mr Downie, the predecessor to section 38 was the notorious section 28 of the English statute, which was introduced at a time when public opinion had reacted to activism which many then regarded as excessively liberal.

I feel that the counterweight to an argument to retain section 38 was provided by the Hon. Member, Mr Butt, who was pleased to see the repeal of the section. He had seen, at first hand, the effects of homophobia which he felt could be engendered by section 38.

Mr President, as I mentioned at the Second Reading, I believe that most Hon. Members are broadly content with the Bill in the form in which it was received from another place and without more, therefore, I move that the Bill be read a third time and do pass.

The President: Mrs Christian.

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

Sexual Offences (Amendment) Bill

Suspension of Standing Order 22(2) to consider further amendment Motion lost

The President: Mr Singer.

Mr Singer: I wish to seek to suspend Standing Orders in order that we can discuss an amendment that I put before Members today.

At the clauses stage of the Bill, I moved a similar amendment dealing with the protection of young persons attending a public body from being encouraged or recommended by a person responsible for their education to engage in any form of sexual practice. I sought for the amendment to replace, at that time, the discredited section 38 in the 1992 Sexual Offences Act.

I felt that Hon. Members were sympathetic to the principle of protection of children from this action by a rogue teacher as it was non-discriminatory, and that was deliberate, but the Members felt it was the shadow of still being known as section 38 that was a concern.

Having had further thoughts and discussed the matter with the legislative draftsman, I am wishing to place this amendment in the Bill as section 9C. Hon. Members have approved sections 9A and 9B, which deal with the abuse of a position of trust and the meaning of position of trust by an individual. This new section 9C is the position of trust within a public body, and I believe it is complementary to section 9.

I hope Hon. Members will see it in this light as now presented. It gets us away from the bitter wrangling over those for and those against section 38. The section 38 will still disappear from this Bill. This proposal, Hon. Members, is to protect all young, impressionable children from the actions that may be employed by a small minority.

The President: Mr Singer, can I just hold you there for a moment, please. The first thing we need to do is make sure of the fact that the Council are prepared to accept this amendment at this Third Reading stage.

Mr Singer: I just had one sentence. If I could say –

The President: I thought you were going on to –

Mr Singer: No, basically, I am saying the proposal is to protect young children from the minority and, as I explained at the clauses stage, there is no phobia attached to it in any form.

I therefore move, Mr President, that Standing Orders be suspended so that this proposal can be debated fully.

The President: Mr Lowey.

Mr Lowey: I would go against that and on the principle

– why should we suspend Standing Orders? The principle was debated, and I regret I was not here when that debate took place, but I, too, would have been against the amendment.

The President: We have not had it seconded.

Mr Lowey: No, but the point I am making, sir, is why are we being asked to suspend Standing Orders to debate what has already been debated once before, at the clauses stages, as far as I am aware?

This is slightly different, but it in essence it is not different, sir, and that is the reason why I would not be supporting the suspension of Standing Orders.

The President: At the moment, we have not had anybody prepared to support the suspension of Standing Orders. If we do not get anybody supporting, and the Council does not approve the suspending of Standing Orders, then the amendment will not be before Council.

Mrs Crowe.

Mrs Crowe: I shall support the suspension of Standing Orders, or second the suspension, in order that there can be some discussion.

I do take the point that, when this amendment was brought forward before, it was not in any way a homophobic amendment. It was clearly pointed out to us that, perhaps, it would have fitted better in another part of the Bill.

So, I would certainly just support the suspension of Standing Orders, in order for there to be a degree of discussion about whether or not it is appropriate.

The President: Lord Bishop.

The Lord Bishop: I would certainly oppose the suspension of Standing Orders.

I think we should listen very carefully to what the Attorney General is saying about what this Bill is actually about, which is about sexual offences which carry with them penalties under the law. This particular sort of expression carries no penalty whatsoever, and has nothing to do, really, with the rest of the Bill.

So, I shall vote against the suspension of Standing Orders.

The President: Okay, Hon. Members, I will put to Council formally whether or not you will suspend Standing Orders. Those in favour of the suspension of Standing Orders to allow the amendment to be moved, please say aye; against, no. The noes have it, but a division is called.

A division was called for and voting resulted as follows:

FOR

Mr Singer
Mrs Crowe

AGAINST

The Lord Bishop
Mr Lowey
Mr Waft
Mr Butt
Mrs Christian
Mr Gelling
Mr Downie

The President: Hon. Members, there were 7 against and 2 for. Hon. Members, it, therefore, fails to carry.

Sexual Offences (Amendment) Bill

Debate continued

Third Reading approved

The President: So, we continue with the Third Reading. Does any Member wish to speak to the Third Reading of the Bill? Mr Attorney, do you wish to add anything?

The Attorney General: Mr President, I do not want in any way to underestimate the importance of the Bill, or the contributions which have been made by Hon. Members, but I really do not think I can add anything to what has already been said, sir.

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

Disability Discrimination Bill

Second Reading approved

3. Mr Waft to move:

That the Disability Discrimination Bill be now read a second time.

The President: We turn, now, Hon. Members, to Item 3 on our Order Paper, which is the Disability Discrimination Bill, for Second Reading. Mr Waft, please.

Mr Waft: Thank you, Mr President.

Traditionally, the avoidance of discrimination against people with a disability has relied upon a combination of voluntary and self-regulating measures. Research carried out in the Isle of Man into disability discrimination in the late 1990s found there was significant evidence of discrimination against people with a disability in many walks of life. The research concluded that, although the great majority of the discrimination found was not felt to be deliberate, the recommendation was made that legislation should be introduced to protect people with a disability from discrimination.

Indeed, since the early 1990s, many First World economies have taken steps to provide statutory rights to disabled people. The Bill before Hon. Members today is based on the principles contained in the Disability Discrimination Act 1995 of England and Wales. It does not, however, address the issue of discrimination in relation to employment, which will be dealt with by separate measures proposed by the Department of Trade and Industry.

The Disability Discrimination Bill 2006 will give people with a disability a coherent, legal framework, in keeping with the requirements of a modern and dynamic economy. The Bill will provide protection against discrimination for people with a disability, as they live their normal lives, by introducing measures to prohibit discrimination in connection with the provision of goods, facilities and services to the public. It will also seek to eliminate less favourable treatment in provision and disposal of premises.

The Economic Affairs Division does not consider that

the Bill will have any significant impact on the Island's competitiveness. There has been an extensive period of consultation carried out over a number of years with various Government Departments, voluntary organisations, disabled people and the Chamber of Commerce.

The Bill, as I have mentioned previously, is based on the Disability Discrimination Act 1995 in England and Wales. It does not, however, contain any specific requirements, as the 1995 Act does, concerning education and transport in the primary Bill. It does give the ability to make regulations in these areas, as well as several other areas.

Members will note that, in the explanatory memorandum, it was stated that protection for disabled people will be less regulated than in other jurisdictions. This comment refers to primary legislation only, and I wish to emphasise that it is the intention that further appropriate measures will be brought forward by regulation, allowing for further detailed consultation with the relevant Departments of Government and interest groups.

Part I and schedules 1 and 2 provide a definition of a disabled person for the purposes of this Bill. People with past disabilities are also afforded protection by the Bill. A disabled person is described as someone with a physical or mental impairment that has a substantial and long-term adverse effect on his or her ability to carry out day-to-day activities.

The Department will be permitted to issue guidance about matters to be taken into account in determining whether an impairment has a substantial adverse effect that is long term. This guidance will be used by the High Court, if it considers it relevant, when determining whether a person is or was disabled. It can also be used to describe effects that are to be regarded as substantial, whether they are to be considered long term. In developing such guidance, the Department shall consult with appropriate people and the approval of Tynwald is required before it comes into operation.

The main provisions of the Bill are contained in part II, which applies to a provider of goods, facilities and services and also to persons with power to dispose of premises. This part makes it unlawful for a service provider to discriminate against a disabled person by refusing or deliberately not providing any service it provides or is prepared to provide to the public. In the standard of service that is provided to the disabled person, the manner in which it provides it or in the terms on which it provides a service to the disabled person.

It will also be unlawful for a service provider to discriminate by failing to comply with a statutory duty to make reasonable adjustment if such a failure makes it impossible or unreasonably difficult for the disabled person to make use of any service.

This part also makes it unlawful for landlords and other persons to discriminate against a disabled person in the disposal or management of premises in certain circumstances. Any person seeking to remedy for unlawful discrimination may issue civil proceedings with the help of the Attorney General in the High Court.

The Department is required to make arrangements for the provision of advice and assistance to disabled people, service providers or those owning or renting properties. The Department is, also, required to make arrangements for providing assistance in conciliating in disputes arising from part II of the Bill, by appointing relevant persons to provide such a service.

Part III is supplemental to the Bill. It sets out circumstances in which a person is considered to be discriminating against a person by way of victimisation. It, also, shows how people will be considered to be liable for acts committed by others in the course of their employment.

Part IV of the Bill contains miscellaneous provisions, which include a clause on interpretation. It, also, permits the Department to prepare codes of practice on any matter with a view to providing guidance on matters concerning the Bill. Codes of practice will be used to inform the public, providers and practitioners etc, on what the Bill requires to ensure that discrimination does not occur.

The Bill, also, provides for the ability to make Appointed Day Orders on the whole Bill or part of the Bill.

It would be the intention of the Department to phase in the implementation of different parts of the Bill, particularly with the introduction of guidance and regulation. In the UK, similar legislation introduced in 1995 was phased in over a 10-year period of time. In the judgement of the Department, it was felt that to bring in all requirements of the Bill immediately would not work. Appointed Day Orders would need to look at the requirements of each individual area.

An example would be, say, of a taxi provider who has just bought a new taxi, which may not be disabled friendly. It is felt that it would be unfair and unworkable to make that taxi provider buy a new taxi immediately, but, rather, when they were purchasing a new vehicle, it would be reasonable to require that the vehicle be equipped to be suitable for disabled people.

Many Members will be aware of the lengthy time it has taken to consult on the contents of the Bill. Government Departments, voluntary organisations, professionals, individuals with a disability and the Chamber of Commerce have been consulted on the contents.

During this process, it became evident that more lengthy earlier drafts would give some difficulty to those who have to implement the Bill as it was. It was felt by the Department that these parts of the Bill should be: the definition of 'disability' at section 1; and the principles contained in sections 2 and 3. To make the legislation all-embracing would be both impractical and interminable.

The Department judged that it was best under the circumstances to introduce legislation, which enshrined those important principles and to enable the detail of what was necessary to avoid discrimination to be contained in the terms of regulations which will subsequently come forward to Tynwald for approval.

Members may, also, be aware that, recently, legislation has been introduced in England and Wales, the Disability Discrimination Act 2005, which builds on the 1995 Act. It introduces a duty on all public bodies to promote equality of opportunity for disabled people and extends the provisions of the Act to private clubs.

The Department feels that the introduction of such additional powers in the Isle of Man should only be considered after the present Bill has had the chance to be placed on the statute book and its provisions implemented. It is the case, I would suggest, that we have to do things incrementally and this would be more effective than attempting to achieve very significant status change all in one go.

I ask Members to support the Second Reading.

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

The President: Mr Singer.

Mr Singer: Could I ask Mr Waft: he talked about the Economic Affairs Division – have they at all got any figure on the cost to the economy of introducing this Bill, for the provision of changes necessary, improving equipment, facilities, building alterations and all the various adjustments? Is there any overall figure of the costs?

The President: Mr Waft to reply.

Mr Waft: I do not think there is an overall cost, Mr President. I think it would be very difficult to provide an overall cost. It depends to what extent the buildings and different areas that disabled people will have access to are to be altered and that would depend on the individual concerned.

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

Disability Discrimination Bill

Clauses considered

The President: We will turn to the clause stage, Hon. Members, and we will deal with clause 1 and schedule 1. Mr Waft, please.

Mr Waft: Thank you, Mr President.

Part I of the Bill and schedules 1 and 2 provide a definition of a ‘disabled person’ for the purposes of this Bill.

Clause 1 provides the meaning of ‘disability’ and a ‘disabled person’ and empowers the Department to amend the definition of disability for the purposes of the Bill.

Subclause (1) provides that a person has a disability, if he or she has a physical or mental impairment that has a substantial and long-term adverse effect on his or her ability to carry out day-to-day activities.

Provisions contained in schedule 1 supplement the definition.

Paragraph 1(1) of the schedule defines ‘mental impairment’ as including any impairment that results from a mental illness, only if such illness is a clinically well-recognised illness.

Paragraph 1(2) provides that regulations may be prescribed for certain conditions to be treated as an impairment for the purposes of the Bill, and for certain conditions not to be treated as an impairment.

Paragraph 1(3), also, provides that regulations may define the meaning of the condition.

Paragraph 2(1) explains the effect of an impairment is long-term if: (a) it has lasted for at least 12 months; (b) if it is likely to last for at least 12 months; or (c) it is likely to last the remainder of the person’s life.

Paragraph 2(2) provides that an impairment that ceases for a period to have an adverse effect on someone’s ability to carry out normal day-to-day activities is to be treated as continuous, if its effect is likely to recur.

Mr President, I beg to move clause 1 and schedule 1.

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

The President: Mrs Christian.

Mrs Christian: Mr President, yes, I am supportive of the clause and the schedule and, obviously, we know what we have in mind when we are talking about long-term disability, but one can imagine physical disability which might last less than 12 months, which might be someone in an accident that has to get themselves around on crutches or in a wheelchair for a period of time.

One would hope that the principles of the Bill would be applied to such people, irrespective of the fact that, under the definition, it does not seem to cover them. But I think we all know what we are talking about, and what we are trying to do is get the philosophy across that people who have a disability, whether it is long- or short-term, should be treated fairly.

The President: Do you wish to reply, Mr Waft?

Mr Waft: No, thank you, Mr President.

The President: In that case, Hon. Members, the motion that I put to Council is that clause 1 and schedule 1 do stand part of the Bill. Those in favour, please say aye; and against, no. The ayes have it. The ayes have it.

Clause 2 and schedule 2, Mr Waft.

Mr Waft: Clause 2, Mr President, extends the protection afforded under parts I and II to persons with current disabilities to those who have had a disability in the past.

Schedule 2 modifies provisions of the Bill to cover past disabilities. Future regulations may include provisions for people with past disabilities, provided that the disability was in existence at the time the act complained of was done. It does not matter that the provisions of the Bill were not in force at that time.

For clarity, this clause provides that the relevant time when the person had a disability may be before the Bill was enacted and came into force.

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

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

The President: The motion I put to Council is that clause 2 and schedule 2 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 3.

Mr Waft: Clause 3, Mr President, permits the Department to issue guidance about matters to be taken into account in determining whether an impairment has a substantial adverse effect that is long term. The High Court shall take any guidance into account, if considered relevant in determining questions of whether a person is or was a disabled person.

Examples in any guidance may include effects that are to be regarded or reasonably not to be regarded as substantial and adverse. Further examples of substantial adverse effects and whether they are to be considered as long term may be provided.

The Department shall consult appropriate people about any proposed guidance and the approval of Tynwald is required before it comes into operation. The Department may revise, re-issue or revoke any guidance.

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

Mr Lowey: I beg to second.

The President: On this occasion, seconded by Mr Lowey.

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

We turn then to 'Discrimination' in part II, and clause 4. Mr Waft.

Mr Waft: Thank you, Mr President.

Part II of the Bill applies to providers of goods, facilities and services and to persons with power to dispose of premises. This part makes it unlawful for a service provider to discriminate against a disabled person by refusing or deliberately not providing any service that it provides, or is prepared to provide, to the public and the standing of service that it provides to the disabled person, the manner in which it provides it or in terms on which it provides a service to the disabled person.

It is also unlawful for a service provider to discriminate by failing to comply with a statutory duty to make reasonable adjustments, if such a failure makes it impossible or unreasonably difficult for the disabled person to make use of any service.

This part makes it unlawful for landlords and other persons to discriminate against a disabled person in the disposal or management of premises in certain circumstances. Civil proceedings may be issued by any person in the High Court, seeking a remedy for unlawful discrimination and the Department may make arrangements for the provision of advice and assistance.

This clause, clause 4, Mr President, makes it unlawful for a provider of services to discriminate against a disabled person in relation to goods and services and facilities. The clause also applies to discrimination by way of victimisation against a person who is or is not disabled.

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

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

The President: Mr Downie.

Mr Downie: Yes, Mr President.

In supporting this particular clause, I think we should put on record that, for example, in 4(1)(a):

'in refusing to provide, or deliberately not providing, to the disabled person any service which that person provides, or is prepared to provide, to members of the public'

to use that as an example, and then to go over the page to subclause (3)(a):

'access and to use of any place which members of the public are permitted to enter'

I think we really have to bring in some common sense here and actually, as part of the debate, flag up that there will be areas which will not be readily available to some disabled people.

When we were having our First Reading, I indicated places like the top of Laxey Wheel and so on, where you would have to scaffold or reconstruct an additional stairway or a lift to provide access. I think, as this is being recorded in *Hansard*, it may be helpful, at some future time, when this issue is being revisited and regulations and so on are being worked up... there have to be provisions for the disabled, I have no doubt about that, but we have to be sensible about things.

Mr Singer: Common sense.

Mr Downie: In America, where they are very disabled orientated with all their legislation, they have quite clearly identified places like the Empire State Building and the Statue of Liberty, where you could not make a case to be given the same rights of access as able-bodied people.

I think there will be a number of these, and I am sure we all have our particular one that we can identify.

But I think the main thing to get over in the legislation is that where possible, we are trying to give the disabled as many opportunities as able-bodied people, to have access to all these areas and to all the services and public transport and everything else, but there will always be that difficulty, which in some cases is virtually impossible to overcome.

So, I just wanted to make that point, Mr President, because I know that there will be some disabled people who will feel very vehemently about this, and you could not blame them for that. But, at the end of the day, there has to be some common sense in the middle of all this.

The President: The Lord Bishop.

The Lord Bishop: Can I ask the hon. mover whether he considers that subclause (3)(a) in this particular clause covers places of worship?

The President: Mr Lowey.

Mr Lowey: Yes, I notice that in the notes that have been provided by the Department and by the mover, it says that this part makes it unlawful for landlords and other persons to discriminate against a disabled person in the disposal or management of premises in certain circumstances.

I find it strange that landlords can discriminate against me if I have children, if I apply for a flat, or pets, and yet my advice to those people would be limp a lot and become disabled, and you can protest under the Discrimination Act, but you cannot be discriminated against for having children. It does seem a funny sort of world that we are inhabiting.

I support this, because I think it is getting rid of what are real things, but it just goes to show that in this world we do discriminate in a variety of ways, and for the umpteenth time and the second time this morning, single people are discriminated against all the time.

The President: Mrs Christian.

Mrs Christian: Yes, thank you, Mr President.

I think that this is the nub of the matter that there are

in further clauses – in clause 6 – the arguments about unreasonable difficulty come into it.

However, I think we have to keep pressure on to bring about some change and if we do not, then it is going to be very slow. I think that we should accept the provisions of this clause as reasonable, when they are read in conjunction with the clauses which we will be dealing with later, and I will have something to say about those.

But there are horrible examples of the exclusion of people from... I can give an example of restaurants, who would not, although they could access readily with wheelchairs, the proprietors had policies where, 'No, you shall not come in in a wheelchair, you might make the place untidy' or, 'if you do come in, you go in that corner'. Those are the things that we really should be trying to get to grips with.

I think that in setting out what we have got in this clause, we are really saying that it is intended that, in this Island, we will make change.

The President: Mr Gelling.

Mr Gelling: Yes, Mr President.

At the First Reading, I commented on the very point that the Hon. Member has just spoken on, this 'reasonableness'. If I just comment on the Lord Bishop's question on churches and chapels, well, they are open to the public.

However, unless reasonableness comes into the equation there are places where, for argument's sake, the balcony in Santon Church is just a total impossibility. The public are at the moment admitted.

All I would do is make a plea similar to Mr Downie's. If we get some really vigilant officer who takes this law to its conclusions, all you could do is put a notice up saying the public are not admitted. So, it deprives anybody from going there, because of this particular Bill.

So, I am rather concerned, because once it is in, it is law and it is the law of the land, but there has to be that, which we come to later, which is reasonableness, otherwise it deprives other persons from actually having access, because there is no other way of actually dealing with it, Mr President.

The President: Mr Singer.

Mr Singer: Mr President, could I, on that last point, but following on from that, ask the Attorney General whether any provision to apply for exemptions of buildings or any other kind of facility on an individual basis, because of the case that has been put forward here. Should that not be in the Bill?

The President: I think Mr Waft can probably respond to that.

The Attorney General: There is a provision, I think and regulations can be made.

The President: Mrs Christian.

Mrs Christian: Yes, Mr President, I am not sure that individual properties could apply, but there are regulations which make exemptions under a general heading in subclause (4):

'The Department may by regulations prescribe services which are, or

services which are not, to be regarded for the purposes of subsection (3)(j) as being –
(a) education; or
(b) an associated service.'

Then in (6):

'Except in such circumstances as may be prescribed, this section and sections 5 and 6 do not apply to such services as may be prescribed.'

There are lots of places in here where things can be prescribed as covered or prescribed as not covered.

Mr Singer: That is still, Mr President, a general point. If we are talking about Santon Church, for example, one may not be able to interpret that under a general point, but there is a genuine case there, from what the Chief Minister is saying, and I am sure the Lord Bishop could point out 10 times as many.

So, maybe there should be some exemptions. Somebody applies to the Department and says, 'I wish to be exempted, at this particular section, because it is absolutely impossible for anybody who is disabled to get to this', and for the reasons the Chief Minister has given, we do not wish to close that section of the church. Or it could be any building; it need not necessarily be a church. It could be the Laxey Wheel. Somebody could say, 'Well, if you cannot get a disabled person to the top of the Laxey Wheel, then nobody can go.'
(*Interjection*)

A Member: Yes, that is a danger.

The President: Yes, I know Mrs Christian wants to come back and, maybe, I will give her the opportunity to cover the point, but I was also trying to work out subsection (4), which she referred to, in response to the regulations. My understanding there is that subsection (4) applied only to (3)(j), and not to the other subsections (a) to (i). It only applies to (j), so I was a little concerned at how one was interpreting (3)(j), along with (4), which again is sub-divided into (a) and (b), but never mind.

Mrs Christian.

Mrs Christian: Mr President, the point that has been raised by the Hon. Member, is an interesting one. I do not think that the Bill gives a power to apply for an exemption, but the way to resolve it would be for a disabled person to challenge that they could not get into the balcony at Santon Church and for the church then to argue reasonableness. Surely, a disabled person, in making the case, would have to consider whether or not it was reasonable to expect the church... would you bring a case that you might lose on the grounds of reasonableness? Would you go through the whole rigmarole?

Mr Singer: Yes, you might get people backing them, giving them funding them to go for test cases.

The President: The Lord Bishop.

The Lord Bishop: If I could just respond to that, I think the answer is yes, because at the extreme end of the case we are all arguing a 'reasonableness'.

There are unreasonable people who would argue that
(**Mr Crowe:** Exactly.) 'if you can get into the gallery and

I cannot, then the gallery must be closed to everybody’.

I put before you, at our last sitting, the case of the one public room at Carlisle Cathedral, which is now closed for public use, because of that. I think we do face a difficulty, when we come on to clause 6. I know it says, ‘reasonableness’, but the first thing that you have to do is remove the feature which is an obstacle.

I think once we get to Manx Heritage and heritage buildings, the removing of that which is an obstacle to entry becomes a real nightmare. It does push back to the regulations and to those who apply the regulations. That is one of the great problems: that officers who apply the regulations will apply what appears on the paper and will not always apply reasonableness.

I am not arguing, as the Hon. Mrs Christian has said earlier, I want to support 110 per cent what is at the basis of this Bill, but I do have ongoing worries about that which is heritage.

I would, also, of course, be prepared to argue, probably with the Attorney General, that I would count the churches in under (4)(a) and associated service, and (j), in the sense that we can get in under education. So, that is really an underhand argument. (*Laughter*) I am willing to go and take him to court on that one!

The President: I would say, you could actually amend it, so that it was included. Mrs Christian.

Mrs Christian: Yes, I just wonder... it is difficult, Mr President, in that clause 4 introduces sections 5 and 6 as well, and we are going to be debating them later. But I do think that there are provisions there, whereby heritage, for example, could be included in the category by regulations, where providers do not have to be covered by subclause (2) of clause 6.

The President: Mr Singer.

Mr Singer: There may well be, though, the opposite that under ‘heritage’, we just say ‘heritage’, they may claim exemption, when it is perfectly feasible to provide facilities for disabled people.

So, that is why I come back to the point that I think we need to be able to have specific exemptions, for particular buildings, whatever, that are in a list and say this particular building, or this particular part of this building is exempt, and then that makes it quite clear.

Could I ask the Attorney General, in fact, if that was a feeling of the Hon. Members, how we could introduce that feature into the Bill?

The President: I am sure we will come back to Mr Attorney, but Mr Lowey is wanting –

Mr Lowey: Yes, I can quite understand where my colleagues come from, because I share their concerns.

All of us welcomed Health and Safety regulations being introduced and, again, it was for what I would call the basic bread and butter. We all know where we have gone astray with Health and Safety, if we are all honest with ourselves and we are. I think it is an open secret.

It is the interpretation now of the regulations which we brought in to keep people safe and healthy at work, which has now been applied to the nth degree and ‘By the way, you

cannot complain about it, because it is Health and Safety, and if you dare to question them you are in trouble.’

The same would be here, but I think the Bill... I am quite sure all of these matters were discussed, because this Bill has been going round for such a long, long, time that we have been trying to get it onto the statute. I believe myself, that in this case, with the stressing and the implementation of reasonableness and by regulation...

I will only hope that the Department, which will be left to actually introduce those regulations, has the power, in fact – that they exercise the authority and not the officers exercising the authority. I think under these, the Department may introduce regulations from time to time and the trouble becomes, as we have seen by experience on Health and Safety, where even the Minister cannot even speak to them at times. It is the roles that have reversed, because we have laid the law down.

The President: Right, now, Mr Attorney, in response to the question made by Mr Singer –

Mr Singer: How do we get a disabled person on the top deck of a bus? Do we have to close the bus down or the top deck of the bus down?

The Attorney General: Mr President, I was going to respond, if I may, to the point in relation to premises, which I think is the crucial issue here.

Whether it is an ancient monument or whether it is a church gallery or whatever, the position, I think, is complicated, as the Hon. Member, Mrs Christian has observed, insofar as clause 4 does introduce a number of issues and clause 5 tells us what discrimination means in relation to a provider of services.

But if we go, Mr President, to clause 6 – I know we have not really got there yet – but clause 6, if I can just read:

‘(1) Where a provider of services has a practice, policy or procedure which makes it impossible or unreasonably difficult for disabled persons to make use of a service which that person provides, or is prepared to provide, to other members of the public, it is that person’s duty to take such steps as it is reasonable, in all the circumstances of the case, to have to take in order to change that practice, policy or procedure so that it no longer has that effect.’

Then if I can go on to subclause (2):

‘Where a physical feature (for example, one arising from the design or construction of a building or the approach or access to premises) makes it impossible or unreasonably difficult for disabled persons to make use of such a service, it is the duty of the provider of that service to take such steps as it is reasonable, in all the circumstances of the case, for that person to have to take in order to –
(a) remove the feature...’

and so on.

So, Mr President, one can see that those subclauses are emphasising the notion of ‘reasonable’. Reasonableness, I suppose, undoubtedly, is going to be in the eye of the beholder, Mr President, and the courts are well used to deciding competing claims to reasonableness.

But what I think is important, if we go to clause 6(6), page 8:

‘Nothing in this section’

– that is clause 6 –

‘requires a provider of services to take any steps which would fundamentally alter the nature of the service in question or the nature of that person’s trade, profession or business.’

It seems to me, Mr President, if we put all those notions together, and trying to look at the Santon Church example, one could say that the particular physical features of the church would make it impossible, or unreasonably difficult, for disabled persons to gain access to the gallery.

The question, therefore, is: is it the duty of the trustees or the churchwardens to take steps to alter the whole fabric of the church? I think that one could put up a very strong argument, under clause 6(6), that the trustees or the wardens would *not* have to do that, because that would fundamentally alter the nature of the service in question. It all depends, Mr President, on the notion of reasonableness.

I do take on board the Lord Bishop’s concerns and, of course, the courts will take notice of precedence in other jurisdictions to guide them, but it would be nice, I have to say, if there were to be a general power for the Department to make regulations exempting the provisions of the Act in particular circumstances.

Then again, the promoters of the Bill would, probably, say that is driving a coach and horses through the whole notion. As ever, I am afraid, it is a question of balance and the courts are well able to deal with those points.

The President: Right, we have given it a good airing. Mrs Christian.

Mrs Christian: No, I was just, simply, going to respond to the point made there, by the learned Attorney, that such a clause would be transferring that responsibility to the Department to decide what was reasonable, and I think it is better that it is handled by the courts.

The Lord Bishop: Can I just say...

The President: The Lord Bishop.

The Lord Bishop: It is very short. I think it is just unfortunate that the thing is driven to the courts to make that decision; that the unfortunate churchwardens, if they happen to be the ones challenged, are the ones driven into the courts, in order that... It comes down to a very personal level often with that.

But, equally, I think I am unhappy about it going back to the Department. But I think we just ought to put that on record, that it is individuals that then get caught and taken to court over the things.

The President: Mr Waft to reply, sir. Clause 4.

Mr Waft: I would just briefly reply.

Mr Downie mentioned Laxey Wheel. I think it is covered in clause 6(6) and, as the Attorney General has pointed out, do what is reasonable in the circumstances.

The Lord Bishop mentioned places of worship and the problems that he foresees there.

Mr Lowey referred to the children or pets discrimination, single people’s discrimination. I think that is for another Bill.

The problems that are encompassed during the debate on disability discrimination are the problems that have ensued by the Department and the people they have had to deal with

and talk to, the Chamber of Commerce and all the different groups. They have all put these suggestions forward that there will be problems because of their premises or inaccessibility, or whatever – what happens here and what happens there?

This is what I term to be a generic Bill which is... Alright, it does not say that a disabled person can reach the top of a bus; all that the disabled person is wanting to do is to get on the bus in the first place, and that is the way I look at this. This is just a basic Bill here. We could not go into the detail of all the problems that we have talked about.

The regulations that will be brought to us, or to Tynwald, in the near future, will reflect on what is reasonable in the circumstances. Heritage and heritage sites, of course, are a problem, as was Carlisle Cathedral, but nevertheless, we are only asking what could be reasonable in the circumstances. It is surprising the extent to which people will go to provide wheelchair access to the most inaccessible places.

For instance, all the buses now – or most of them – are accessible for the disabled and that is all the disabled person wants is to get on the bus, in the first place. So, I think, with regulations and a bit of common sense all round, we can get over these difficulties.

I think the Attorney General referring to section 6 does encompass some of the concerns that have been raised, Mr President.

I beg to move.

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

We move, then, to clause 5, Mr Waft.

Mr Waft: Clause 5, Mr President, defines the meaning of unlawful discrimination for a reason relating to a person’s disability, and sets out conditions that provide justification for less favourable treatment of a disabled person.

I beg to move clause 5 stand part of the Bill, Mr President.

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

The President: Hon. Member, Mr Singer.

Mr Singer: Can I just briefly comment on this and, also, to come back on what was said, and the Attorney General said earlier on, of course, that when things go to court, we will probably look at UK case law.

Then, I take that into consideration with what the Lord Bishop said about Carlisle Cathedral and what Mr Waft said about a bus. There is not much difference actually. It is very parallel, because one could use the same argument that a person only wants to go in the church. They do not need to go to the part that the Bishop was talking about, which is not accessible, and because it was not accessible to the disabled people, it was closed off.

That is where I still find, despite all the explanations that we have had here today, there is going to be a great difficulty because of over-zealousness and possibly, over-zealousness in the United Kingdom, if we are going to follow their case law.

The President: Mrs Christian.

Mrs Christian: Yes, thank you, Mr President.

I think that the Hon. Member, again, in raising the point about Carlisle Cathedral, has ignored the comment of the Lord Bishop when we debated that, in that the wording of our Bill differs from the wording of the United Kingdom Bill. Despite precedent, I imagine that our courts will have to have cognisance of the wording of our own Act, when it becomes an Act.

Therefore, I think that argument really does not hold water, at this point.

Mr Singer: So, neither will a UK precedent.

Mrs Christian: I beg your pardon.

Mr Singer: Will a UK precedent?

The President: A UK precedent will apply to the UK, and the point that Mrs Christian is making is that they will have to decide a precedent on the basis of our Act. Mr Attorney.

The Attorney General: Yes, Mr President, just on that point.

I would like to make it clear that our courts will construe our legislation and it is only, really, in cases where our legislation is not clear, or the Deemsters need to have some guidance as to the meaning of a particular word or circumstances, that the Deemster may have regard to decided cases in England.

Could I also, I hope, in order to give some comfort to the Hon. Member, Mr Singer, just refer back to clause 4(6), which does enable circumstances to be prescribed when clauses 5 and 6 do *not* apply, except that there may be circumstances where you can never, as it were, opt out of clauses 5 and 6.

So, it will be for the Department, as a matter of policy, to decide, for example, whether or not access to the Laxey Wheel or such buildings – or access to churches – should be taken out of the effect of clauses 5 and 6. Those are going to be difficult issues for the Department to consider and, of course, the regulations will come before Tynwald.

The President: Mr Waft, do you wish to add to clause 5, sir?

Mr Waft: I would just like to move clause 5, Mr President.

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

We move on to clause 6.

Mr Waft: Clause 6, Mr President, sets out the circumstances where a service provider is under a duty to make adjustments, if it is impossible or unreasonably difficult for disabled people to make use of a service.

Mr President, I beg to move clause 6 stand part of the Bill.

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

The President: The motion, Hon. Members, is that... Lord Bishop.

The Lord Bishop: I am sorry to bat on about this. I do find that the physical feature bit very difficult when approaching the whole concept of heritage. I think, probably, as a matter of principle, I will vote against this particular clause, so that it will be noted in *Hansard*, because I think it really does need to be flagged up.

I am sure the clause will pass and that will be fine, but I think, to actually enshrine a measure that a feature should be removed, in order that somebody should get into a building, is a dangerous piece of legislation.

Not as a humorous example, but as an example, I would give you the front steps of St Paul's Cathedral.

Mrs Christian: Good Manx stone.

The Lord Bishop: There is a good run of steps up to the front of St Paul's Cathedral. The UK law, as established, says that people accessing a place of worship need all to go in by the same entrance. Everybody suffers from the same disadvantage. Does that, therefore, mean that the front steps of St Paul's Cathedral are never, ever to be used again?

The cathedral has, in fact, provided an entrance round the side on the flat whereby you can go in and then reach the main building by a lift. But that, actually, does not accord with the letter of the law, which requires people all to go in by the same entrance.

Another big bit of me would say, yes, I agree entirely with that, but I am just unhappy with the way in which, particularly, clause 6(2)(a) is phrased. I do not see any way round it and I am sure that, in one sense, it is right that it should be there, but I think it gives a lever into this particular bit of legislation which could be used in a way that none of us would actually wish to use it.

The President: That comes to the reasonableness again.

The Lord Bishop: Yes, we are. Yes.

The President: Mr Attorney.

The Attorney General: Mr President, could I suggest that that is a very good example of how this Act is going to be encountered in real life, as it were. I think, probably, the point that will have to be taken into account is whether it is possible to take advantage of clause 6(2)(d).

Can you provide, in those circumstances outlined by the Lord Bishop, a reasonable alternative method of making the service in question available to disabled persons? So, if you have got a wonderful ramp of steps leading up to the church, which able-bodied persons can use, the question will be, is it reasonable to provide, or to insist, that a slope be provided, so that there will be proper wheelchair access and so on?

The argument against that is that St Paul's entrance is so architecturally significant that it would destroy the whole purpose of the entranceway, if the ramp was to be constructed. Again, it is reasonableness, Mr President, and I think that the Bill does contemplate those issues and guards against them.

The President: Mr Gelling.

Mr Gelling: Yes, I think, Mr President, again, the regulations are going to be absolutely so important because, if we go to clause 6(5):

'Regulations may make provision for the purposes of [...] (e) as to things which are to be treated as physical features; (f) as to things which are not to be treated as such features',

which could take in the very point that the Lord Bishop and the Attorney General has said. That could be something that will be made in the regulations which are not to be treated as such a feature.

So, I think it is very important that we take all of these areas and each clause – and it is very difficult, sometimes, because you are moving into a clause that we have not go to, as yet, but it actually answers the question. I think, again, the regulations that are to be made to make provision for the purposes of that section are going to be extremely important, sir.

The President: Mrs Crowe.

Mrs Crowe: Thank you, Mr President.

I do fully take on board the comments that have been made by the Lord Bishop about heritage and those kinds of features and, of course, the comments that have been made by the Attorney General about, of course, we will treat it reasonably.

But then, we have also got Mr Lowey, and we know, with Health and Safety, that, sometimes, what happens is that the officers say, 'We have no discretion. It is in the law.' We have all heard that, time and time again. 'We have no discretion. We have to remove a feature.' I fully understand.

That means that there is a nice restaurant. It has got a fountain at the entrance and what they are saying is, 'I am sorry but that is an impediment to wheelchair or disabled access. It has to be removed.'

So, we go into Castle Rushen and there is a well. We have to differentiate. Do we flatten the walls of the well to provide access, because, after all, it is only another water feature, I suppose, like the restaurant?

I think it is difficult and it would have been, perhaps, a little more sensible, if there had been some way of exempting some places, if only by way of saying, 'We will exempt you for the next five years' or whatever it might be. I do believe that the removal of a feature... You just know what is going to happen, don't you? Really.

I will take some comfort in the Attorney General's words 'unreasonableness', but it is a very small piece of comfort.

The President: Mr Singer.

Mr Singer: But, if subclause (2)(b), (c) and (d) are not able to be implemented, then it only leaves (a), doesn't it? If you look at subclause (3)(b), it says:

'Regulations may prescribe [...] categories of providers of services'

This, then, is a general one. So, if you say, in this particular case, this restaurant, for some reason, we are going to exempt you, then you are going to have to exempt all restaurants, as I read it.

All categories – churches – exempt one church, then, according to subclause (3)(b), you have got to exempt all churches. That is why, again, we are coming back to the

same argument and, if subclause (2)(b), (c), (d) are not possible to implement, does that only lead to a removal of the feature?

If you remove the feature... It may not be a ramp. It may be that you go into a church and the way it is built, you cannot get the wheelchair round that particular section. To me, this is all so vague that it is left open to interpretation by, perhaps, zealous people and I think we have got almost a stone hanging over us that is going to fall.

The President: Maybe, it is the vagueness of the reading of the courts in deciding...

Mr Singer: I am not sure.

The President: Mr Lowey.

Mr Lowey: Yes, it is again, and I am sure that I will be told that it is reflected elsewhere, but if I take clause 6(7):

'Nothing in this section requires a provider of services to take any steps which would cause that person to incur expenditure exceeding the prescribed maximum.'

What is the prescribed maximum? Until we get the regulation in, we do not know what it is. Is it £1,000? Is it £10,000? And it will vary, I would imagine, with monuments, heritage, or what have you.

So, we are, really, having to take an awful lot on trust. Having said that, I then am remembering that I took on trust, once before, in Tynwald Court, for example, the electricity undertaking of Douglas. Then, we promptly had to reintroduce, because we said it would be phased over a 10-year period, and then, of course, when we approved it, we discovered that it was not. That was what we said in Tynwald, but that was not what the law was. So, we had to introduce a Bill that actually spelt it out chapter and verse, very quickly, to correct the anomaly that we created.

I am still on the side of trust, notwithstanding that. I am supporting that.

Mr Singer: Very trusting.

Mr Lowey: I am a trusting soul.

The President: Mr Waft, do you wish to add to clause 6, sir?

Mr Waft: Thank you, Mr President.

I knew we would get back to St Paul's entrance again. Thankfully, we are not living in the United Kingdom, so we do not have that problem. We might have it to some degree, but I think reasonableness and unreasonableness is taking a prime importance, when we are thinking about this Bill.

Mrs Crowe mentions Health and Safety. Health and Safety is still with us and we need Health and Safety at times, but there can be problems with it.

With regard to Mr Singer in talking about letting people off, the restaurants or churches, and we could put a list of things... organisations that are not included in this Bill. In fact, you may as well not have the Bill at all, in the first place; just forget all about it, and we will just help the people up the steps with their wheelchairs and get four people down to help them in. We could stay at that stage, and I think we are talking ourselves into that situation.

Mr Singer: A quick explanation. I said exactly the opposite.

The President: Mr Waft has the floor.

Mr Waft: I am sorry, you mentioned the restaurants and about having to take the fountain away from the...

Mr Singer: But I said that it then exempts all restaurants.

The President: Hon. Members, do not talk over one other, please, because it makes it very difficult for *Hansard*. Mr Singer, do you wish to make a point?

Mr Singer: Just that when I mentioned restaurants, I said that under that subclause (3)(b), it then exempted all restaurants, when you read it:

'categories of providers of services to whom subsection (2) does not apply.'

The restaurant is a provider of services.

Mr Waft: Thank you, Mr Singer, for clarifying that point, but he mentioned all restaurants would come under that.

I think if we start exempting places, it is endless, and once you exempt one section, you exempt another, and then they call in. Then there is a precedent created and then you are in a black hole there.

Mr Singer: I agree.

Mr Waft: I am sorry that people think there are a lot of unreasonable people about and zealots. I think the whole of this Bill is conclusions, with reasonableness and what is reasonable, as against what is unreasonable. I think we have to take it as it is written to form a foundation to get the Disability Bill on the statute book. I do not think that, with everything that has been mentioned, that it is possible to address them with the regulations, and I think that is going to be the key thing.

As Mr Gelling pointed out, the regulations will have to be carefully drafted. I think I have covered most of the points. I am sorry that I cannot please everybody, but I tried my best.

The President: Hon. Members, the motion I will put to Council is that clause 6 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

That proves there is no discrimination in Council. So, we turn then to clause 7.

Mr Waft: Clause 7, Mr President, makes it unlawful for a person to discriminate against a disabled person when disposing of premises.

Mr President, I beg to move that clause 7 stand part of the Bill.

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

The President: The motion I put to Council is that clause 7 do stand part of the Bill. Those in favour, please say aye;

against, no. The ayes have it. The ayes have it. Clause 8, Mr Waft.

Mr Waft: Clause 8, Mr President, sets out that small dwellings are exempt from the provisions of clause 7 in respect of disposal, managing and letting without licence or consent. Small dwellings are defined.

I beg to move clause 8, Mr President.

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

The President: Mr Downie.

Mr Downie: Just on that, Mr President, I can see the logic in having this. My hon. colleague, Mr Lowey, when he was on about people living in flats and small dwellings: nobody in their right mind would put a disabled person on the top floor of a seven-storey Victorian building which did not adapt itself to have a lift and so on, or the cost of putting disabled facilities would be absolutely prohibitive.

So, I think what they are trying to do is to introduce this clause to deal with things like that.

The President: Mr Lowey.

Mr Lowey: As we are writing legislation, does 'partner' cover same sex marriages and all the rest of it, in this politically correct world? Do we have to have it in the legislation, as we have just made legislation to cover that point?

Mrs Christian: It is different.

The President: We read the interpretation of 'partner' on page 11.

The Attorney General: Yes.

Mr Lowey: So, we are building in, or are we...? I am just trying to... Are we politically correct in defining that sort of relationship?

Mrs Christian: Mr President, we do not yet have legislation in relation to that issue, except in the matter of social security, which is reciprocal. Until we do, I think that this complies with our existing legislation.

The President: Mr Lowey.

Mr Lowey: I raise it as a matter of principle, when we are actually drawing up legislation, to make sure that it is compatible with Human Rights. I presume this Bill has been cleared for Human Rights and, if that is the case, then I think it is incumbent upon us, as a law-making jurisdiction – this is our job – to put in what is compatible with Human Rights.

Mr Singer: Mr President, I am also looking for the definition of 'small dwellings' and I cannot find it.

The President: All within subclauses (4) and (5). If you read clause 8(3):

'For the purposes of this section, premises are "small premises" if they

fall within subsection (4) and (5)'.
Mr Lowey, are you sticking with your...?

Mr Lowey: I would like to give notice, and I do not want to rush these things, but I would, perhaps, reserve the right to try and amend that to be more compatible with Human Rights legislation, at the Third Reading, if that is alright with you, Mr President, and Council.

The President: It is entirely up to Council, whether they will permit it at Third Reading or not. That would be entirely up to Council. Presumably, what you are proposing to do is to take out the words 'consisting of a man and a woman' and then take out the words 'as husband and wife'.

Mr Lowey: Yes.

The President: So, in fact, it would just read, 'the other member of a couple who are not married to each other but are living together'.

Mr Lowey: Yes. Thank you, sir.

Mr Gelling: Is that being put forward at this time?

The President: No, it is not being put forward. I am just making... It is nothing to do with me, Hon. Members.

Mr Waft, do you wish to reply, sir?

Mr Waft: No, I just thank Members for their support and, if there is a Human Rights issue, I am sure that will be addressed in future.

The President: In that case, Hon. Members, the motion that I will put to Council is that printed at clause 8 in your Green Bill. Those in favour, Hon. Members, please say aye; against, no. The ayes have it. The ayes have it.

Clause 9, Mr Waft.

Mr Waft: Clause 9, Mr President, sets out the meaning of unlawful discrimination in contravention of clause 7 as treating a disabled person less favourably for a reason that relates to the disabled person's disability. Discriminatory treatment is justified, if certain conditions are satisfied.

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

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

The President: The motion, Hon. Members, I put to Council is that clause 9 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

We turn now, Hon. Members to the enforcement section and we will deal with clause 10 and schedule 3, Mr Waft.

Mr Waft: Thank you, Mr President.

Dealing with clause 10 and schedule 3, this clause permits a person who believes that a service provider, or a person selling, managing or letting premises, has unlawfully discriminated against him or her, to bring civil proceedings in the High Court.

In addition, a person who believes that someone has aided an unlawful act of discrimination, or who believes that an employer is liable for the discrimination by its employees under this part of the Bill, may likewise bring civil proceedings in the Court.

Schedule 3 provides that an act made unlawful by part II of the Bill does not, of itself, give rise to civil or criminal proceedings, other than under clause 10 and 11.

I beg to move clause 10 and schedule 3.

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

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

Clause 11, Mr Waft, please.

Mr Waft: Clause 11, Mr President, sets out the powers of the High Court to issue non-discrimination orders against a party of proceedings not to commit an unlawful act under part II of the Bill, and allows intervention by the Attorney General to refer any matter considered lawful under part II of the Bill to the High Court.

Before so doing, the Attorney General may require written or oral representations from a party, before making an application to the High Court for a non-discrimination order.

I beg to move clause 11, sir.

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

The President: Mr Butt.

Mr Butt: Yes, Mr President.

I wonder, could the mover clarify if people under this section or section 10, the enforcement, would have access to Legal Aid in respect of these issues? For either side, it could be very costly, if it has to go to the High Court. Is there any provision for that? Mr Attorney may, perhaps, assist.

The President: Mr Waft, reply, sir.

Mr Waft: I think, Mr President, it would depend on the status of the person applying for Legal Aid, whether it is susceptible to qualify. Civil proceedings are –

The President: Mr Attorney.

The Attorney General: Mr President, I think, probably, we would have to amend the Legal Aid Act, so that this legislation would fall within the sort of cases which they can deal with. But, perhaps, I could check this.

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

Clause 12, Mr Waft, please.

Mr Waft: Thank you, Mr President.

Clause 12 provides that any term in a contract for

the provision of goods, facilities or services or any other agreement is invalid, if that term has the effect of frustrating the Bill, with the exception of settlement of a dispute under clause 10.

It empowers the High Court, on an application, to modify in any way an agreement subject to the opportunity to make submissions being given to all persons affected.

Mr President, I beg to move clause 12 stand part of the Bill.

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

The President: The motion, Hon. Members, is that clause 12 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

We turn, now, to clause 13 and encompass schedule 4, please, Mr Waft.

Mr Waft: Thank you, Mr President.

Clause 13 and schedule 4: this clause deals with alterations to premises occupied under a lease and sets out applicable rights of an occupied provider of services in respect of proposals for the alteration of premises.

Schedule 4 deals with the failure of an occupier to obtain consent from a lessor to make alterations to premises, with reference to the High Court, joining lessors to proceedings, and the making of subsequent regulations.

I beg to move clause 13 and schedule 4.

Mr Gelling: I beg to second, Mr President.

The President: The motion, Hon. Members, is that clause 13 and schedule 4 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 14, Mr Waft.

Mr Waft: Clause 14, Mr President, permits the Department to make arrangements for providing assistance in reconciling disputes under part II of the Bill.

I beg to move clause 14, Mr President.

Mr Gelling: I beg to second, Mr President.

The President: The motion I put to Council is clause 14. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

We turn, Hon. Members, to part III of the Bill, 'Supplemental', and clause 15, please, Mr Waft.

Mr Waft: Thank you, Mr President.

This part is supplemental to the Bill. It sets out circumstances in which a person is considered to be discriminating against a person by way of victimisation. It, also, shows how people will be considered to be liable for acts committed by aiding others in the course of their employment.

Clause 15 describes how a person may be liable for an act of discrimination by way of victimisation.

I beg to move, Mr President, clause 15.

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

The President: The motion, Hon. Members, is that clause 15 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 16, Mr Waft.

Mr Waft: Clause 16 makes aiding an unlawful act by another actionable in civil proceedings under the Bill. It provides that a person who aids another to do an act made unlawful by this Bill is to be treated as doing the same act as the person doing the unlawful act.

I beg to move, Mr President.

Mr Gelling: I beg to second, Mr President.

The President: Mr Lowey.

Mr Lowey: Could I just pose a query here?

If I was employed by an airline to escort people to a plane, and I am in a wheelchair, and I cannot get them up the stairs because of my disability, am I then liable under this section to be prosecuted as not being able to succeed in getting that person up the steps, although I have tried to?

Mrs Crowe: Take them up in the lift.

Mr Lowey: Well, I just put it to the mover, is this is a case in point where I am employed to bring people there, to do a job, and I cannot succeed. Am I then able...?

I can understand a person A suing the person I bought the ticket off to transport me by air, the service provider, but I am an employee doing the job, which I cannot do because of physical things. Can I be then joined in the action against the thing, so if I fail on that, I will get you on B?

Is that what is set out here in this particular Bill, in this clause?

Mr Downie: You have got to be physically fit to do these things.

The President: Mrs Christian.

Mrs Christian: Mr President, aircraft are not covered, I think, by the legislation.

Mr Lowey: It is transport.

Mrs Christian: Well, aircraft, I think, are exempt, are they not?

Mr Lowey: They should not be; a bus is not, and I do not see how an aircraft can be.

Mr Downie: I think, Mr President, aircraft are covered by international conventions, and they are registered as a carrier. You might have this problem with a private aircraft to adopt a convention, but you have ease of access in some areas and that is catered for.

The President: Mr Attorney.

The Attorney General: Well, Mr President, the important thing in relation to clause 16 is that it is a criminal offence. I think the hon. mover may have referred to civil liability. It is a criminal offence to aid another person to do

an unlawful act, but there has to be the additional ingredient of knowingly aiding someone.

So, if you are the employee of an airline – I am just leaving aside whether an airline is covered by the Act – but if you are an employee, you are not deemed to be knowingly aiding someone, if you act in reliance on a statement made to you that your act would not be unlawful.

So, in other words, you could say, if you were prosecuted, ‘Well, I was always told by my employer that it was perfectly alright to exclude someone in a wheelchair, because we did not have sufficiently wide entrance doors to the aircraft’, and if you could honestly say that, then that would be a defence to the criminal charge, Mr President.

The President: Mr Waft, do you wish to reply further to clause 16, sir?

Mr Waft: No, I would just like to thank Mr Attorney for his clarification.

The President: In that case, Hon. Members, the motion that I will put to Council is that clause 16 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 17.

Mr Waft: Clause 17, Mr President, sets out circumstances in which an employer is held liable for the acts of his or her employees or agents acting on his or her behalf.

I beg to move, Mr President.

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

The President: Mrs Christian.

Mrs Christian: Mr President, just to say that I think this may require some training on the part of employers, to ensure that their staff know what their obligations are under the Disability Discrimination Bill.

The President: Mr Singer.

Mr Singer: Could I ask the Attorney General, would it be a defence, if it happened for the first time? Despite training, something happened for the first time, would the employer still be liable, or would that be a defence, if it was the first time it had happened?

The President: Mitigation, rather than a defence, I would have thought.

Mr Singer: Yes, mitigation.

The President: Mr Attorney.

The Attorney General: Well, Mr President, yes, clause 17 is a very draconian provision to be made, because, as Hon. Members will see, an employer is deemed to have done something wrong, merely because his or her employee has done something wrong. That is a very severe example of vicarious liability.

But it does say in clause 17(5), in proceedings against any person, it is a defence for that person to prove that such

steps were taken as were reasonably practical to prevent the employee from doing the act or doing acts of a particular description.

So, again, it will be for the employer to say, ‘Well, I know I’m strictly liable under this provision, but I did do everything anybody could possibly have done to prevent my employee discriminating’. If the court believes that, then there will be a defence.

The President: Proof or mitigation.

The Attorney General: It is a defence, Mr President, under 17(5).

The President: Mrs Crowe.

Mrs Crowe: I do think though that – and the opportunity for *Hansard* to highlight – it is rather like selling financial services or, indeed, selling tobacco to underage persons. Employers should be aware, they should have a training manual or training provided, that the employees have signed that they have received that training, because otherwise the employee could say, ‘No-one told me.’

So, we do need to make sure that these provisions are in place and that employers are covered, and, indeed, employees, by training and the awareness that both have received the same.

The President: Mr Waft, do you wish to add further to clause 17, sir.

Mr Waft: Yes, just, perhaps, to clarify clause 17.

It provides that an employer is to be treated under the Bill as having done any act committed by an employee in the course of employment, whether or not the employer knew or had approved the act, and provides that anything done by person B acting as an agent for person A, with A’s authority to do the act in question, shall be treated as done by A. It provides that the authority set out in subclause (2) may be explicit or implicit given, before or after the particular act was done by B; and excludes subclauses (1) and (2) as not applicable to an offence under clause 16(4). It provides that an employer who is potentially liable for an act committed by his or her employee can defend any claim, if he or she can prove he or she had taken such steps as were reasonably practical to stop the employee either doing the act or doing an act of that description, in the course of his or her employment.

I hope that clarifies somewhat, Mr President.

Mr Singer: Not really.

The President: Effectively, what Mr Attorney was saying, is the employer is to make sure that the employee does not do anything, because he has to prove the defence otherwise.

Right, Hon. Members, those in favour of clause 17, please say aye; against, no. The ayes have it. The ayes have it.
Clause 18, Mr Waft.

Mr Waft: Clause 18, Mr President, creates exemptions to the provisions of the Bill that have statutory authority or are in the interests of safeguarding national security.

I beg to move clause 18, Mr President.

Mr Gelling: I beg to second, Mr President.

The President: The motion I put to Council is that clause 18 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Now we deal, Hon. Members, with clause 19, which was amended in another place. Clause 19, Mr Waft.

Mr Waft: Yes, Mr President, this clause permits the Department to prepare codes of practice on any matter with a view to providing guidance on matters concerned with the Bill.

I beg to move.

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

The President: For the purpose of clarity, Hon. Members, I think you have had the amendment – right, okay. In that case, ‘Chronically Sick and Disabled Persons’ Committee’ has been replaced with the words, ‘Tynwald Advisory Council for Disabilities’.

Hon. Members, the motion I put to Council is that clause 19 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 20.

Mr Waft: Clause 20, Mr President, enables the Department to appoint advisers to provide advice and assistance on any matters relating to persons who have had a disability and enables the Department to pay any appointed advisers, allowances, or to recompense them for any loss of earnings and requires approval by the Treasury for any such payments.

I beg to move clause 20 stand part of the Bill, Mr President.

Mr Gelling: I beg to second, Mr President.

The President: Mr Lowey.

Mr Lowey: Could I just ask: where is ‘advisers’ defined?

‘The Department shall appoint such persons as it thinks fit to advise and assist it in connection with matters relating to persons who have had a disability.’

Well, who, what, why? I am an adviser... am I?

Mr Downie: Mr President, I think, already, we do have a disabled access officer.

Mr Lowey: We do.

Mr Downie: There is a team of people who work in this field on a regular basis and give advice to Government in a number of areas. I think, to date, the situation has worked extremely well, and I would hope that, when this legislation comes through, we will have people who have some track record in this area, and people who are capable of giving the advice that is required.

Mr Lowey: We can hope that, but we are making legislation, and it says the Department may pick anybody it thinks fit. You and I may think the people we have got... I

know, I have dealt with them, and the Chief Minister has and did when I was in the same position as my learned colleague in Trade and Industry. I have no difficulty with those people, but this is legislation which is saying the Department may pick anybody it thinks fit to advise it on... or do I have to take that on trust, too?

The President: Mrs Christian.

Mrs Christian: Mr President, perhaps the mover could indicate why this has to be a statutory provision; I am not entirely sure about that. The Department is already, as has been said, in conjunction... Well, cross-departmentally, we have a joint appointment in relation to a disability advisory officer, so I am not quite sure why it needs to be a statutory provision.

Secondly, all Departments appoint people that they think fit to do various jobs, and I do not quite understand why the Hon. Member, Mr Lowey, should have such an objection to the DHSS appointing such people as it thinks fit to advise in this matter.

The President: Mr Lowey.

Mr Lowey: Can I answer that point.

It has been answered really by Mrs Christian herself, why is there a necessity for this, when a Department can pick people to advise it on anything and pay. The payment bit is the thing here that I am suspicious about; it has got to be approved by Treasury; the Department *may* make payments.

The President: Sorry, Mr Lowey, but I think the point which Mrs Christian was making, which does lead to an element of confusion, is that the Department *shall*, which is mandatory, appoint such a person but that they *may* pay the person, they do not have to pay the person. Maybe we should consider two things equal.

Mr Lowey: That is the point why I am raising it, because it does look a little bit ambiguous to me. As I said before, there are things when I read them – I suppose I have been too long at it really – but when I read it and things that jump out of the page and say, ‘What is unusual about that?’

It is a bit like trying to get the Attorney to define ‘thing’ which I have never yet been able to get a satisfactory answer to.

Having said that, I am not making a big issue out of it. But I am saying, where is it defined, and if it is, which it is not, why do we have to have it in here in a statutory form?

The President: Perhaps, Mr Lowey, the easy way is not to make a big issue of it, but simply to move the deletion of ‘shall’ and the replacement with the word ‘may’.

Mr Lowey: I might do that on the Third Reading too, sir, with your advice.

The President: I would rather, if you are going to do it, you do it now, sir.

Mr Lowey: Okay. May I then, can I have the indulgence of Council then, to move an amendment to replace ‘shall’ with ‘may’... ‘may’ with ‘shall’.

The President: Well, which you are doing, sir? In subclause (1), the Department 'shall' appoint such person, are you replacing that to make it 'may' and then – ?

Mr Lowey: 'May' and the Department 'shall' pay.

The President: Oh, right, you are replacing them both.

Mr Butt: Mr President, I have a small point in the same sentence, in effect, that I wonder if it could be clarified. It may require amendment I am not sure.

It refers to matters relating to persons who have *had* a disability, inferring in effect it is in the past. It does not quite to my reading say, people who have currently got a disability. Perhaps it should say, 'have had or have a disability'.

There may be an answer to that, but it seems to infer it is a disability that is no longer with them.

The President: Mr Gelling.

Mr Gelling: Mr President, it has not been seconded, but it has been entered into the debate, so if I could just –

The President: Not seconded.

Mr Gelling: No, well, I will not, therefore, speak to the amendment that has not been seconded. I will speak to clause 20(1), and it says:

'The Department shall appoint such persons as it thinks fit'.

I think, if we change 'shall' to 'may' it actually takes the onus away from the Department, because what we are saying is they *may* actually put people in there that they think are fit, but then on the other hand they might not. In my opinion, it puts the onus absolutely bang on the Department: they *shall* appoint persons that they think fit to advise, so if the advice is not right, the Department has the onus upon them.

I just feel a little concerned that if we change that, it just leaves it that the Department could wriggle out of it and say, 'Well, it said that we *may* appoint people that we think fit, but on the other hand, on this occasion, we didn't'.

I just –

Mr Lowey: What has happened to reasonableness? (*Laughter*)

The President: Mrs Crowe.

Mrs Crowe: I think, also, Mr President, the point that was made by my colleague, Mr Butt, was that the persons to be appointed are not the persons who have had a disability but the persons appointed, whom the Department think fit to advise them, are to assist them in matters connected or related to persons who have had a disability. It is not the person that is being appointed.

Mrs Christian: It is not what it says.

Mr Butt: No, no, no, I did not mean that.

Mrs Crowe: Ah, right – either 'had' or 'have'.

Mr Downie: The person might have died!

The President: Hon. Members. Mr Downie.

Mr Downie: I am alright, I am content, Mr President.

The President: You are content now. Lord Bishop.

The Lord Bishop: I think this is an admirable clause. It says quite clearly that somebody should be appointed to advise and then it says that, if that person needs payment, they can get it. If the person will do it free of charge, because they actually happen to have the skills and they are quite happy to do it free of charge, they do it free of charge, and the Treasury needs to check if... I do not see what all the fuss is about.

The President: Mrs Christian.

Mrs Christian: Mr President, could I just clarify if the Hon. Member, Mr Butt, is intending to move an amendment to delete 'had' from clause 20(1), because I would be inclined to agree with him that it should be dealing with people who *have* a disability, not people who have recovered from one.

Is the Hon. Member moving an amendment?

Mr Butt: Yes, I would like to, sir. Perhaps we could keep in 'had' – 'had a disability or have a disability', because they may still need advice as a result of their previous disability:

Page 19, line 30, in clause 20, line 3, after the word 'have' add 'or have'.

Mr Singer: 'Have or have had'.

Mr Lowey: 'Who have or had a disability'.

Mr Butt: They may still need advice, perhaps.

The President: So, it would read, what you are suggesting, Mr Butt, if I am correct and get this matter right, is that 'or assist it in connection with matters relating to persons who have or have had a disability.'

Mr Butt: Yes, Mr President.

The President: So it is persons who have, or have had, inserting 'or have' in between the current 'have' and 'had'.

Mr Butt: I think that would cover it, sir.

The President: Now, Mr Butt has proposed that as an amendment, seconded by Mrs Christian, I think – no hold on.

Mr Downie: I will second that, Mr President, because I think Mr Butt's amendment does cover all occasions. Where we are saying here a person who may have had a disability, that person may have died because of a disability, and brought strain on themselves trying to deal with matters. I think by having the 'who have' and amending it in the way Mr Butt is suggesting, it is a catch-all and it will deal with all the issues.

Finally, about 'The Department may pay to a person

appointed under this section as it considers appropriate', there are a number of charitable organisations, people like the RNIB for instance, who give their time and expertise at no cost and are willing to do that, so that is covered I think.

The President: Mrs Christian.

Mrs Christian: Mr President, may I speak to the amendment.

I probably will support the amendment, but I hope, in winding up, that the hon. mover can indicate whether he feels that that wording was deliberate on the part of the Department or whether it was a mistake. If he can convince me that it was deliberate, fair enough.

I do find it difficult to know why you would have an adviser to deal with matters relating to people who have had a disability and recovered from it. They are no longer disabled, so why do you need to have advice in relation to their position?

I accept that the amendment will cover all, even if it does not make sense completely. Perhaps, to that extent, I would be inclined to amend it, but I think –

The President: Unless it is to do with the 12-month period, as you dealt with in the previous clauses. Mr Waft.

Mr Waft: Yes, Mr President, if I could just perhaps... Schedule 2 might help Members with regard to past disability. There is a particular section there which reads:

- '2. References in Part II to a disabled person are to be read as references to a person who has had a disability.
3. Schedule 1 is modified for the purposes of this Schedule to the following extent –
For paragraph 2(1) to (3) of Schedule 1, substitute –
“(1) The effect of an impairment is a long-term effect if it has lasted for at least 12 months.
(2) Where an impairment ceases to have substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect recurs.
(3) For the purposes of sub-paragraph (2), the recurrence of an effect shall be disregarded in prescribed circumstances.”'

With regard to the other – mention was made of 'advisers' – with regard to the 'adviser', the Chronically Sick and Disabled Persons' Committee do have people on that Committee who certainly give advice, but there are particular circumstances where there are a multitude of health reasons why people cannot do whatever they intend to do, some wide-ranging inabilities from motor neurone disease to autism to learning difficulties and mental illnesses. There is a variety of illnesses, for which there are people who know, chapter and verse, all about that particular illness, and they might be able to advise on certain circumstances.

If they are given that specific piece of work to do, then they will probably charge for that, I would think, or be entitled to a charge for that.

I hope that has clarified for Members.

The President: Mrs Christian.

Mrs Christian: Mr President, I wonder if the mover could answer the question, why it needs to be statutory.

The President: I think the indication was that it was reference to schedule 2, paragraph 2:

'References in part II to a disabled person are to be read as references to a person who has had a disability.'

But, in actual fact, Mr Waft, that in schedule 2 only refers to part II, and we are now dealing with part IV of the Bill. So, in fact, I do not think that actually applies to clause 20. I think that is the point which Mr Attorney is making as well, so I am fairly confident.

Mrs Christian, have we got your query solved?

Mrs Christian: I have not got an answer; I do not think it matters too much, Mr President, but I do not know why –

The Lord Bishop: I would like to say that it is actually rather important to have it in there, because what we are actually saying that this is such an important field of work that they *shall* appoint advisers, not *may* appoint advisers – that this group of people actually do need quite specific advice, as the Hon. Member, Mr Waft, has just laid out. There are very specific bits of advice that are needed.

The President: We are in danger of going over old ground again. Mr Waft, is there anything further you wish to add or not?

Mr Waft: Well, I think I have tried to –

The President: Right, okay. In that case, Hon. Members, what I put to Council is that clause 20 do stand part of the Bill and to that, Hon. Members, we now will have the amendment moved by Mr Butt and seconded by Mr Downie. Now, that amendment, in effect, at line 30, introduces matters relating to persons who 'have or have had' a disability. So, it is, I think somebody used the word previously, a bit of a catch-all. There we are.

Hon. Members, those in favour of the amendment as moved by the Hon. Member, Mr Butt, please say aye; against, no. The ayes have it. The ayes have it.

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

Now, Mr Waft, clause 21.

Mr Waft: Clause 21... Shall I take the next three together, Mr President?

The President: No, take clause 21.

Mr Waft: Clause 21 extends the jurisdiction of the Bill to the Crown and to the Department. The clause provides that the Bill applies equally to any private person, as it does (a) to acts done by the Department or Statutory Board, and (b) to acts done by the Department or Statutory Board or any other officer or body carrying out functions on behalf of the Crown.

I beg to move clause 21, Mr President.

Mr Gelling: I beg to second, Mr President.

The President: Now, Mrs Christian.

Mrs Christian: Yes, thank you, Mr President.

I have an amendment which is sponsored by the Department, simply to add the words:

Page 20; line 1, in clause 21 before 'This Act applies' insert 'For the avoidance of doubt'.

The reason for this was brought about in another place, Mr President. There was some concern expressed that the wording in clause 21 when referring to the Crown and Departments, differed from that in clause 22 with regard to Tynwald, where the Clerk of Tynwald was named as the individual responsible for Tynwald premises and any access issues, but no individual was named in respect of the Crown or Departments.

That has been discussed with the legislative draftsman and the response there was that the Crown and Departments are entities that have legal accountability, but that the same does not apply to Tynwald, so that a responsible individual has to be named for Tynwald.

On reflection, the legal draftsman felt that the addition of the words, 'For the avoidance of doubt' would draw attention to the position, in case Members believed that other Acts of Tynwald do not extend.

I beg to move.

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

The President: Mr Waft, do you wish to add anything?

Mr Waft: No, thank you, Mr President.

The President: In which case, Hon. Members, the motion that I put to Council is that clause 21 do stand part of the Bill and to that, Hon. Members, you have had circulated to you the amendment in the name of the Hon. Member, Mrs Christian, which on page 20, line 1, in clause 21, before 'This Act applies –', we are inserting 'For the avoidance of doubt'. So, at the start of clause 21, it says, 'For the avoidance of doubt this Act applies –'. Those in favour of the amendment, please say aye; against, no. The ayes have it. The ayes have it.

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

Now, Hon. Member, perhaps you could take clauses 22, 23 and 24, and move them separately.

Mr Waft: Thank you, Mr President.

Clause 22 extends the jurisdiction of the Bill to Tynwald.

Clause 23 sets out the Department's powers under the Bill to make regulations.

Clause 24 is the interpretation clause and provides definitions of key words in the Bill.

I beg to move clauses 22, 23 and 24, Mr President.

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

The President: Mr Lowey.

Mr Lowey: Just one comment, as it applies, this Act will apply to Tynwald. Could I ask if the mover has got any plans for how we are going to get disabled access on the Hill? *On the Hill.*

The President: Mr Waft, do you wish to reply, sir?

Mr Waft: Could I just say that the UK Act took 10 years to be brought in, so I think we have got a while yet to sort out Tynwald Hill, but I am sure we will. *(Laughter)*

The President: Alright, Hon. Members? Mrs Crowe.

Mrs Crowe: I would just like to say, Mr President, that I do not believe that the general public realise that one of the reasons for the refurbishment of the Tynwald Chambers was to allow disabled access to all parts, so that people who are disabled will no longer have to stagger up the stairs here or, indeed, the appalling stairs to the public gallery, and that we will, very shortly, be able to welcome anyone into the precincts to listen to our public debate.

The President: Now, Hon. Members, the motion I put to Council is that clause 22, do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 23, Hon. Members, those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 24, those in favour, please say aye. The ayes have it. The ayes have it.

Right then, Hon. Members, we move to 25.

Mr Waft: Clause 25, Mr President, provides that Tynwald should bear the cost of any financial provisions. It provides that Tynwald should pay for: (a) expenditure incurred by a Department under this Bill; and (b) any increase in other moneys caused by this Bill, in moneys to be paid out under any other enactment.

I beg to move clause 25, Mr President.

Mr Gelling: I beg to second, Mr President.

The President: Mrs Crowe.

Mrs Crowe: Well, it is just 25(a), 'any expenditure incurred by a Department under this Act': the Department currently has over 480, I think, public sector dwellings. I am sure many of them would be suitably adapted for the disabled.

At the present time, they have a budget that allows for as many as possible, practicable, to be refurbished. But 'any expenditure incurred'... really, I do not know, I just do not think that that is the normal wording in statute and it does cause me some difficulty.

Unless, indeed, Mr Waft can assure me that this is just in regard to, perhaps, enforcement of the Act or that type of thing, but the Department itself, presumably could spend a great deal of money on disabled access facilities to a great many areas and other Departments may not be similarly endowed with the finance to do so.

The President: It is relevant to expenditure only in relation to this Act, isn't it then?

Mrs Crowe: Or disabled entrances.

The President: Chief Minister.

Mr Gelling: I think my certain interpretation of that

would be that no other moneys other than those provided by Tynwald in whatever shape, whether it be by budget or by separate motion, can be spent for that purpose. I would have thought that that is how it would have been allocated within the Department, as the Hon. Member has said.

There are certain headings of moneys that are provided for different areas of that Department's responsibility, and I think this is just more or less confirming that the moneys will be paid out of the Department's budget or for a motion that is put before Tynwald. In other words, it will become a Tynwald debate or a Tynwald decision, rather than being transferred from some other heads.

That is how I read it. I do not know, Mr Attorney General might see it differently.

The President: Mr Attorney.

The Attorney General: Well, Mr President, I can certainly see the counter argument. I think that the interpretation put forward by the Hon. Chief Minister is that which would be (**Mrs Crowe:** Normal.) the comfortable interpretation, (**Mrs Crowe:** Yes.) because otherwise one could see that whatever the Department incurs –

Mr Lowey: That is right.

Mrs Crowe: Yes.

The Attorney General: – that has to be provided for by Tynwald. (**Mrs Crowe:** Yes.) That is a very dangerous formula, and I would have thought, Mr President, that the interpretation urged by the Chief Minister needs to be perhaps a little clearer.

Mrs Crowe: I think an amendment.

Mr Lowey: Yes, again, I think –

Mrs Crowe: I am sorry, Mr President,

The President: That is fine –

Mrs Crowe: – but I think an amendment to suggest that, 'any expenditure incurred by the Department under this Act and approved by Tynwald' is all that is required, but at the present time it says, 'Money shall be provided by Tynwald' without any approval. So, I do not know, but I am glad that perhaps the Attorney felt that it was not an unreasonable point.

The Attorney General: Oh, no.

The President: Mrs Crowe, are you moving that formally as an amendment to add the words 'and approved by Tynwald'?

Mrs Crowe: I think that if that is what the Attorney General would ... that is my suggestion. I presume that that...

The President: Mr Attorney.

The Attorney General: The difficulty is, of course, that the Department would then be clearly restricted, because

every time the Department wishes to incur expenditure for the purposes of this legislation, it has to bring a resolution to Tynwald or has to get approval.

Mrs Crowe: Presumably, Mr President, it could get approval for a lump sum of moneys to be spent, for the purposes of this Act?

The President: Well, I think we are getting into waters... if that was to be the case, we would need to write that in. Chief Minister.

Mr Gelling: Yes, I think again, coming back, we were talking before, Mr President, about trust and knowing that this Bill will have been in front of Treasury and the eagle eyes of the Treasury Members and their accountants will have studied that, in particular, where it says 'Financial provisions'.

I feel comfortable that the hon. mover is a Member of Treasury and I am sure, in his comments, he will be able to give us assurances that that is how the Treasury would certainly see it, that the moneys would have to come, having provided and approved by Tynwald, to be spent.

I know it perhaps would be difficult to amend this on the hoof, without causing further problems that would restrict moneys to be spent, and I would be concerned about that, sir.

The President: Mrs Christian.

Mrs Christian: Mr President, I am not sure that this is not standard wording, is it, in relation to... It is standard wording, isn't it, in relation to moneys provided by Tynwald for any enactment. Does it not mean, they shall be paid out of money provided by Tynwald, i.e. our budget for each Department, any expenditure incurred by a Department under this Act? In other words, you will spend the money you have been allocated, (**Mr Gelling:** Correct.) to deal with some of whatever provisions you are able to make under this Act. The Departments are already doing that, in many cases. (**Mrs Crowe:** Yes.)

The only difficulty I can see in it would be where a Department is perhaps forced by a case to do something more than it had budgeted for in a particular year, in which case, one would assume that they would have to resort to Tynwald for further budgetary provision. Bbut I do not think that it means anything other than that you pay for this out of your budget.

Mr Gelling: That is right. I agree.

The President: Okay. Mr Waft.

Mr Waft: Thank you, Mr President.

I thank the Members for their support. As with all the other clauses, reasonableness comes under this, I would have thought, and funds are approved by Tynwald.

Treasury, certainly, would have to look at the situation, but all the funding does come through Treasury and Tynwald, eventually, and it would restrict the Department, if they had to come back for every little thing, because we are continually upgrading schools and hospitals and the tourism premises, all the time, especially with regard to this legislation, which it is envisaged coming in in the not-too-distant future.

So, I think the wording is understandable as it is in the clause, Mr President.

The President: In that case, Hon. Members, the motion I put to Council is that clause 25 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 26 and schedules 5 and 6.

Mr Waft: Yes, clause 26 and schedules 5 and 6, Mr President: this clause specifies which enactments are amended under schedule 5 or repealed under schedule 6 and states that those enactments specified in schedule 5 are consequentially amended.

Those enactments are repealed as specified in column 3 of schedule 6.

Schedule 5 sets out amendments to sections of enactments consequent upon this Bill – acknowledgement, I understand, for the change of name to the Advisory Council for Disabilities.

Schedule 6 sets out sections of enactments and extent of repeal consequent upon this Bill.

Mr President, I beg to move clause 26 and schedule 5 and 6.

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

The President: The motion I put to Council is that clause 26 and the schedules 5 and 6 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

And, finally, short title and commencement, clause 27, Mr Waft, please.

Mr Waft: Mr President, this clause provides the title to the Bill and the process for its coming into force. It determines that the Bill will be entitled the Disability Discrimination Act 2006.

It provides that the Act shall come into operation on such day or days as the Department may order, and that different days may be appointed for different provisions and purposes. It provides that the Department's consultations required by the Act may be held before the provision in question comes into force.

I beg to move, Mr President.

Mr Gelling: I beg to second, Mr President.

The President: Finally, Hon. Members, I put to Council that clause 27 do stand part of the Bill.

Mr Attorney.

Mr Attorney: Mr President, I am very sorry. Can I just –

The President: We will deal with 27, and then I will come back.

The Attorney General: Yes, I am sorry.

The President: Those in favour of clause 27, please say aye; against, no. The ayes have it. The ayes have it.

Now then, Mr Attorney.

The Attorney General: I am sorry, sir.

The President: In relation to clause 25?

The Attorney General: In relation to clause 25, I just wondered whether there is a typographical error in 25(a) should it not be 'any expenditure incurred by *the* Department'?

The President: It depends how many more Departments are referred to within the Bill.

Mr Butt: It could be Transport; it could be anything.

Mrs Christian: Mr President –

The Attorney General: I see.

The President: No, it only refers to Departments within the Bill and I –

The Attorney General: Throughout it refers to –

Mrs Crowe: A Department.

Mrs Christian: Mr President.

The Attorney General: – the Department.

Mrs Christian: It cannot be *the* Department in this context, because every Department – well, most Departments – are likely to incur expenditure under the Bill; but earlier on, where it is talking about *the* Department, it is talking specifically about DHSS responsibilities under the Bill –

Mr Lowey: That is correct.

Mrs Christian: So I think that 'a' is correct in this context.

The President: Okay, Hon. Members, we have completed the clauses stage of the Disability Discrimination Bill 2006. It will now come forward for Third Reading in another week.

Merchant Shipping (Amendment) Bill

Clauses considered

4. Mr Downie to move.

The President: So, we turn then to the Merchant Shipping (Amendment) Bill, Mr Downie. We have completed the second stage, and we will turn now to the clause stage of the Bill. Mr Downie, clause 1, sir.

Mr Downie: Thank you, Mr President.

Clause 1 inserts a new section 2B into the Merchant Shipping Act 1985. This enables regulations to be made giving effect to International Labour Organisation Conventions relating to seafarers' employment and working conditions.

The International Labour Organisation is the UN agency which promotes internationally recognised labour rights. The ILO's fairly unique ILO Conventions are negotiated not just by governments, but by governments, employers, and trade unions who participate as equal partners in the process.

Sections 2B(1) and (2) provide that regulations may be made to give effect to all or any part of an ILO Maritime Labour Convention. That is extended to the Island. This includes the implementation of any Convention amendments, codes of practice or associated guidelines.

Section 2B(3) provides that such regulations may give effect to an ILO Maritime Labour Convention, even though it is not yet in force or been extended to the Island. The purpose of this provision is to allow regulations to be made in preparation for the international implementation date. This is because the ILO Maritime Conventions usually come into effect just 12 months after they are ratified.

Section 2B(4) places a duty on the Department to consult with anyone who may be affected by the regulations and applies sections of the Merchant Shipping Act 1985. The effect of the application is to provide that regulations made under this section may include provisions which relate to the issues of certificates; approvals or exemptions; the making and keeping of records, documents or registers; the provision of information and the detention of ships.

Section 2B(5) provides that no part of subsection (4) shall prejudice the general enabling power to give effect to ILO Maritime Labour Conventions.

Section 2B(6) requires Tynwald approval of regulations made under this section.

Section 2B(7) defines 'maritime labour'.

Mr President, I beg to move that clause 1 stand part of the Bill.

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

The President: Seconded by Mr Singer, Hon. Members and the motion I put to Council –

Mrs Christian: Mr President –

The President: Mrs Christian.

Mrs Christian: Can I just ask why we are applying this legislation, instead of introducing our own. Is it complicated, is it extensive, is it frequently amended?

Mr Downie: Currently, it consists of about 55 to 60 Conventions. It is a hugely complicated piece of legislation.

The particular section that we are dealing with now: in fact, what they are trying to do, within the ILO, is introduce what is called a Super Convention, to try to bring all the bits and pieces together, put them into one particular piece of legislation, as it were, and that then is going to deal with a lot of the employment rights issues, crew accommodation, living standards, how people are generally looked after.

What we want to be able to do is to bring parts of this regulation to Tynwald on a regular basis and as this is like an ongoing operation within the industry, there will be times when the Convention will bring out new parts. What clause 1 does is it effectively gives the Department power to make regulations for the purpose and bring them to Tynwald, as

and when they are needed.

The President: In that case, Hon. Members, the motion that I put to Council is that clause 1 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 2.

Mr Downie: Clause 2 inserts a new section 60A into the Merchant Shipping Registration Act 1991. This is for the purpose of enabling the creation of a new part of the Ships Register for ships under construction. This is a facility that the super yacht market, in particular, requires in order to enhance the owners' security and title while the vessels are under construction.

Section 60A(1) enables the Department, by regulation, to establish and maintain a new part of the Ship Register for the purpose of registering ships under construction and recording their mortgages.

Section 60A(2) inserts a new schedule 4A into the Merchant Shipping Registration Act. This supplements section 60A by setting out the scope of regulations, which may be made under that section.

Section 1 of schedule 4A contains the definitions.

Section 2 of schedule 4A enables regulations to include provisions on the administration and maintenance of a register for ships under construction and this includes the circumstances in which a ship is eligible to be registered as a ship under construction; the information and evidence required in order to register the ship under construction; the detail of applications and for the refusal of applications; the issue of certificates of registration and the length of time a registration may be valid; the inspection and identification of a ship under construction; and the exclusion of certain types of ships from the register.

Section 2 also provides that regulations may include provisions relating to the closure, transfer or termination of a registration and for any other statutory provision to have effect in relation to ships under construction.

Section 3 of schedule 4A enables regulations to include offences and penalties subject to the defence of all reasonable precaution. Offences specified in the Act are punishable by a fine not exceeding £1,000 or a fine not exceeding £2,500 depending on the offence.

Section 4 of schedule 4A provides for regulations to include supplemental and incidental provisions.

Section 5 of schedule 4A enables regulations on ships under construction to apply to both ships constructed in the Isle of Man or elsewhere.

Finally, section 6 of schedule 4A provides the schedule shall not prejudice the generality of the enabling power to make regulations.

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

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

The President: The motion, Hon. Members, is that clause 2 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 3.

Mr Downie: Clause 3, Mr President, inserts new sections

60B to 60E in the Merchant Shipping Registration Act 1991 to provide for the authorisation of representative persons. A representative person is someone, usually a limited company or corporate service provider, who is appointed by the owner of a ship registered in the Island.

The Merchant Shipping Registration Act 1991 requires that this must be done when the owner of the ship is not resident in the Isle of Man. The representative person undertakes some of the functions of management of the ship from the Island and forms an important link between the ship and the Island. It also provides a practical link between the Department's Marine Administration and the ship. The representative person is often the first point of contact for owners and others seeking to do shipping business in the Isle of Man. Therefore, it is important that this person is professional and capable.

Section 60B defines a representative person and requires that any application to act as a representative person shall be made to the Departments. The Department may only approve such an application if it is satisfied that the applicant can undertake the prescribed functions and is otherwise a fit and proper person. The Department may grant the authorisation, refuse the authorisation or grant the authorisation, subject to conditions.

Section 60C provides that notice in writing may be given to revoke or suspend any authorisation. It also sets out the procedures that shall have effect in those circumstances.

Section 60D(1) enables regulations to be made to give effect to sections 60B and 60C for the authorisation of representative persons.

Section 60D(2) provides that such regulations may specify the qualifications, functions, standards and duties of a representative person. It also provides for the regulations to include a requirement for the payment of fees in respect of any service provided by the Department.

Section 60D(3) requires the Department to consult with such persons and bodies as it considers appropriate before making any regulations under this section.

Section 60D(4) provides that regulations shall not come into operation unless they are approved by Tynwald.

Section 60E(1) establishes a right of appeal to a Representative Persons Review Tribunal for persons aggrieved by a decision of the Department. An appeal may be made upon the Department's decision to refuse, revoke, suspend or add conditions to an authorisation.

Sections 60E(2) and 60E(3) provide that a Representative Persons Review Tribunal shall be made up of a chair and two members. The panel should be drawn from persons who have appropriate experience and are independent of both the Department and the applicant.

Section 60E(4) sets out that in respect of an appeal the Tribunal shall either confirm, vary or revoke the decision of the Department.

Section 60E(5) provides that this shall not have the effect of backdating the Department's decision.

Section 60E(6) provides that the decision of the Tribunal shall be binding upon the Department and the applicant and for any appeal on a point of law shall lie to the High Court.

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

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

The President: Just about made it, yes. Mrs Christian.

Mrs Christian: Yes, thank you, Mr President.

I wonder what the transitional arrangements would be. I think the mover indicated at the earlier Reading that there were already representative persons acting in the industry. Is it intended that they be allowed to continue, whilst they make application for approval or will there be an appointed day which says you have got to be approved by a particular time? I wonder if the mover can just explain how that will work.

Mr Downie: There are representative persons who are working with the Department, at the present time. I would suggest that most of those have worked very well and have a good relationship with the Department. I would, therefore, expect that those who have a good proven track record and are accepted will continue in the present vein.

I think when we put the regulations together for the appointed persons, we will actually be setting out criteria, and I would think it is highly unlikely that any of the present representative persons would have any difficulty whatsoever in taking up their new role which is dealt with under this particular clause, under the legislation.

It is a protection measure for the Department and for the industry and it is one which we see has evolved with corporate service providers and other groups of people operating in business in the Isle of Man who have gone down a similar route.

The President: Mr Attorney.

The Attorney General: Mr President, could I just bring to the attention of the Hon. Members that in page 9 of the Bill on line 15, there is a typographical error. It should read, 'may apply to the Representative Persons Review Tribunal'.

The President: It does not actually make sense, if you do not put the 'to' in because it says, 'may apply the Representative Persons Review Tribunal'. Hon. Members, I am happy to accept that, I think the mover would be happy to accept that.

My difficulty... well, we will actually have to formally move it, anyway, will we not, because in fact the Bill will have to go back to another place? There are no other amendments which we have made to this particular piece of legislation.

Mr Lowey: Let us get it right.

The President: We had better get it right, so yes, Hon. Members, so we will insert there –

Mr Gelling: Are you looking for a seconder?

The President: I am looking for a seconder.

Mr Gelling: Yes, I will second that, Mr President.

The President: Right. Are we content, Mrs Christian, with the explanation given?

Mrs Christian: I am not sure I got an answer to the transitional provisions, but maybe there will be a day by

which they will all have to have –

The President: Well, I am sure that Mr Downie will pick that up and bring it back at the Third Reading, in respect of the transitional arrangements with a fuller explanation.

But, Hon. Members, if I put to you then, clause 3. Now, we acknowledge, as has been circulated to you, that it was amended in another place, so that section refers to section 8 of the Tribunals Act 2006. That was amended by the Keys. We are now going to insert, on line 15, on page 9, where it reads ‘may apply the Representative Persons Review Tribunal’, we will insert in there, ‘to’ – so, ‘may apply to the Representative Persons Review Tribunal’.

I put to you clause 3. I put to you, first, the amendment, to insert ‘to’. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

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

Finally, Mr Downie, clause 4.

Mr Downie: Clause 4, Mr President, sets out the short title and commencement of the Bill by Appointed Day Order.

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

The President: Mr Singer.

Mr Singer: I beg to second, Mr President.

The President: Hon. Members, the short title and commencement is that at clause 4. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Now, Hon. Members, having concluded the clause stage of the Merchant Shipping (Amendment) Bill and being aware of the clock, I think it is an appropriate time in which we broke for lunch. Council will resume its deliberations at 2.30 p.m., starting with the Audit Bill.

Thank you, Hon. Members.

*The Council adjourned at 1.05 p.m.
and resumed its sitting at 2.30 p.m.*

Merchant Shipping (Amendment) Bill Procedural

The President: Please be seated, Hon. Members.

When we broke off for lunch, the position was that we had just completed the Merchant Shipping (Amendment) Bill clause stage, and I had indicated, in fact, that we would go on to the Audit Bill.

Following discussions with the Clerk to the Keys and with Mr Speaker, I think there is a decision that, in relation to the Merchant Shipping (Amendment) Bill, the inclusion of the word ‘to’, which we did formally as an amendment, they are happy that that should be treated as a typographical error, rather than a formal amendment.

Bearing that in mind, we will make sure that is the way it is treated amongst our Votes and Proceedings procedure.

Merchant Shipping (Amendment) Bill Standing Order 22(2) suspended to take Third Reading

The President: Equally, as I understand it then, Mr Downie is anxious that we should proceed. So, I will leave the floor open to Mr Downie.

Mr Downie: Thank you, Mr President.

As you have said, the reason I want to pursue the Third Reading, if Members are agreeable, is that I have leave of absence for the meeting scheduled for 2nd May. I think, having made good progress with the Bill thus far, and being able to deal with most of the questions, I would like leave to suspend Standing Orders that we take the Third Reading.

Mr Singer: I second that, Mr President.

The President: Seconded by Mr Singer. Mrs Christian, you had a query, this morning, on transition.

Mrs Christian: Yes, I did, Mr President, but the hon. mover has provided me with a paper about transition, so I am happy to support the suspension of Standing Orders.

The President: In that case, Hon. Members, those in favour of the suspension of Standing Orders, please say aye; against, no. The ayes have it. The ayes have it.

Merchant Shipping (Amendment) Bill Third Reading approved

The President: We, having suspended Standing Orders, then, Hon. Members, invite Mr Downie to take the Third Reading.

Mr Downie: Right, Mr President, I should like to begin by thanking the Hon. Members for their support, which has taken the Bill to this stage, and, also, like to take the opportunity to thank Melissa Warrilow of the Attorney General’s Chambers for her assistance in the development and drafting of this Bill.

The Hon. Member, Mrs Christian, raised a point at the clauses stage in relation to clause 3 on representative persons, which I would like to address. The Hon. Member asked what transitional provisions will be put in place in respect of existing representative persons. For example, will there be a cut-off date for which all representative persons will need to have applied for and approval? It is likely that there will need to be a cut-off date specified in regulations, as all existing representative persons will need to have made an application to the Department to act as a representative person.

However, I would like to stress that the procedures for implementing the new system of authorisation have not yet been finally discussed with existing representative persons. The Department will need to discuss the best method of implementing the new system of authorisation with existing representative persons, before committing to a certain type of procedure.

As I have stated previously, in drafting and promoting this Bill, the Department of Trade and Industry has sought to modernise shipping legislation. It will enable regulations

to be made to meet our international obligations and, at the same time, to create a business opportunity in the registration of ships under construction, while properly regulating a critical part of the Island's shipping sector.

I trust these points, together with those raised at previous sittings, have been addressed, and I have nothing further to add, at this stage. I, therefore, would like to move that this Bill be read a third time.

The President: Mr Singer.

Mr Singer: I beg to second, Mr President.

The President: Hon. Members, in that case I will simply formally put to Council that the Merchant Shipping (Amendment) Bill be read for a third time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Audit Bill **First Reading approved**

5. Mr Waft to move:

That the Audit Bill be read for a first time.

The President: Now, Hon. Members, having cleared the Merchant Shipping (Amendment) Bill, we then turn to, as indicated prior to our break at lunch time, the Audit Bill for First Reading. I call on the Hon. Member, Mr Waft.

Mr Waft: Thank you, Mr President.

I am pleased to be able to present the Audit Bill 2006 which is promoted by the Treasury for its First Reading.

The purpose of the Bill is to make new provision, replacing the Audit Act 1983, for the audit of accounts of public bodies, to amend the law relating to the audit of charities and for connected purposes.

Notwithstanding the call for earlier amendments to this legislation, over recent years, there have been several issues which required careful consideration and input into the debate, which included the publication, in the United Kingdom, of the Accounts and Audit Regulations 2003, which presented a range of options for potential adoption in the local context.

Attention drawn to the high-profile incidents within local authorities, especially at Port St Mary and, more recently, the circumstances at the Manx Electricity Authority and the Corporate Governance Principles and Code of Conduct, as approved by Tynwald on 15th November 2005, will also be enhanced and complemented by the Bill.

Treasury engaged with the community of all relevant public bodies, professional groups and practitioners to seek opinion and comment. Contributions from respondents have been carefully considered in the drafting of this Bill.

Referring to the contents of the Bill, the most significant changes proposed are summarised as follows.

The Bill promotes publication of new accounts and audit regulations to suit the Isle of Man situation, based upon accounting and governance arrangements and practices in the adjacent isle, in terms of their application to our specific Isle of Man context.

It provides a clearer definition of the auditor's role and the statutory timescale for the audit process, with the intention of expediting the public scrutiny process and timely reporting to Tynwald. It makes provision for the establishment of a consultative body, such as the Audit Committee, which is an established international best practice in both the public and private sectors. It gives a clearer definition of the Treasury role and responsibility for ensuring local authorities' audit reports are laid before Tynwald.

It provides for the introduction of the concept of warning notices, special reports and extension of the provisions for extraordinary audit. It further provides for less onerous audit requirements in respect of the Island's smaller charities, whereby a charity whose gross income exceeds £5,000, but is less than £50,000, may opt to have its accounts examined by an independent person whom it reasonably believes to have the requisite ability and practical experience to carry out a competent examination. Any charity with a gross income up to £5,000 is, in effect, exempt.

To conclude, the Audit Bill 2006 seeks to bring our legislation up to date, by adopting the highest international codes of accounting, auditing and governance practices, whilst retaining our ability and acknowledge, to accommodate the breadth of public sector activity within the Isle of Man. The Bill represents the first legislative changes to public bodies' accounting and audit requirements, since the Accounts and Audit Regulations 1984 were approved by Tynwald, on 15th January 1985.

Mr President, I beg to move that the Audit Bill 2006 be read for the first time.

Mrs Crowe: I beg to second, Mr President, and, in so doing, welcome a Bill that will, hopefully, enable much clearer accountability of some of the public bodies that we deal with – that, in fact, the public of the Isle of Man should be fully entitled to.

So, I am delighted to see that this Bill has finally arrived here, despite the fact that it was meant to await the reformation of local authorities.

The President: Mr Lowey.

Mr Lowey: Yes, Mr President.

Well, I think I am in support of the Bill, and I will tell you why I think I am in support of the Bill.

The mover of the Bill said, in his opening address, that they had consulted widely. You can imagine my surprise when I read in the paper that the Treasury Minister says that there is a problem with smaller firms, and it is not set in stone, and £1 million maximum...! If that is the case, then what happened to the consultation?

The only other thing, and it was mentioned by the mover of the Bill, was about the smaller charities, and it should make it simpler. I have already been told by some small accountants – when I say 'small', small in that they are one-man bands that deal with a lot of charity work – that there could be changes and difficulties.

For example, the Arts Council, when we give grants, we want to see audited accounts. Under this, now, it will be more difficult to get fully-audited accounts. So, it may be that we will have to change our rules, but there are queries and question marks there.

On the assumption that the industry, the chartered accountants as a body, are happy with this, I am very happy

to go along and support it, because I do think it is a step to try and streamline and bring a bit more order.

So, I will be supportive.

The President: Lord Bishop.

The Lord Bishop: Thank you, Mr President.

Obviously, I welcome the Audit Bill. I have a slight question about whether the maximum for the charity at £50,000 is high enough, in the sense that an audit costs a great deal of money, whereas examination, which is exactly or almost exactly the same as audit, does not.

I give notice that I shall be moving an amendment to the Church Act 1992, allowing the diocesan accounts to be examined and not audited on those very grounds.

The President: Mr Singer.

Mr Singer: I want to speak on the very same point, because the mover talked about consultation, gave a list of consultees, but I am not sure which charities were consulted. I speak with my hat on as Chairman of the Ramsey Cottage Hospital League of Friends, and we were not consulted. The person who does our accounts brought it to our attention, the fact that this change was going to take place.

It is a matter of concern because, whilst I am told that 90 per cent of the charities on the Island come within the £5,000 to £50,000 band, there are other charities, like ours, which may, occasionally, get a bequest of more than £50,000 in a year. This then means that you have got to go to this full audit, which can cost up to, I believe, £2,500. I do not think that this was the way that people contributed their money to the charities.

I can understand charities who have big turnovers who employ people, who run businesses, run business shops etc; but for the smaller charities who do not employ anybody, who work on bequests and it is quite open, with the books, it is going to hit them quite hard, as far as the costs of the audit is concerned.

I would like to hear what the mover has got to say about why the figure of £50,000 is there.

Also, I am thinking of moving an amendment which will say – I do not quite know where yet, I will speak to the Attorney General's Chambers – that all this is subject to any exemption the Treasury may wish to grant, as far as the naming of charities is concerned. I do think that, for example, the charity that I am chairman of will be unfairly hit, and I am sure that was not the intention of the Bill.

The President: Mrs Christian.

Mrs Christian: Thank you, Mr President.

I welcome the Bill. I am conscious that the Public Accounts Committee, for many years, has been pressing for a new Audit Bill, so they will be pleased to see this coming before the branches, at this stage.

The issue of charities is a difficult one, we all have some involvement with charities and whilst the point has been made that perhaps those that exceed the £50,000 figure that is quoted in the Bill should have a difficulty, I would have suggested that those charities who get large sums will not have a lot of items to be audited, whereas smaller charities have a lot of small sums to be audited. So, I should have thought that the charge for auditing a charity which has large

sums coming through should be proportionate to the actual amount of work involved and, to that extent, if a charity benefits, perhaps extraordinarily, by a large sum, then the proportionate amount of work should not be so much greater than the figure that kept it under the £50,000 limit.

But charities, I do feel, will welcome this clarification. At the moment, I think there is some doubt about who has to audit. It has to be an audited account, properly audited and that does pose a problem for certain small charities, so I think that at the same time, charitable giving should be subject to proper scrutiny and, to that extent, I do think that we should have proper audit of and availability of charity accounts, along with their constitution and purposes, which I think are equally important.

The President: Mr Waft, do you wish to reply, sir?

Mr Waft: I would just like to comment, in reply, that I have been working with local charities all my life. The problem there has always been, to me, is to actually get an auditor who is prepared to do it. You can travel the length, up and down, of Athol Street, to try and find somebody who has got the time and the inclination to do it. At least this sets some sort of legislation in place, and everybody will know where they are.

No matter when there is a change taking place, there is always someone, somewhere, who will not agree with one particular... where it affects them particularly, and they will want exemption, but we will have to deal with that as it comes, Mr President.

The President: In that case, Hon. Members, the motion that I put to Council is that the Audit Bill 2006 be read for a first time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Income Tax (Corporate Taxpayers) Bill

First Reading approved

6. Mr Waft to move:

That the Income Tax (Corporate Taxpayers) Bill be read for a first time.

The President: We turn then, Hon. Members, to the Income Tax (Corporate Taxpayers) Bill. Again, it is for First Reading and in the hands of the Hon. Member, Mr Waft.

Mr Waft: Thank you, Mr President.

This Bill introduces a pay and file regime for corporate taxpayers, and brings into law one of the commitments made in the 2000 Income Tax Strategy, which was restated in the modified Tax Strategy of 2002.

The Income Tax Division has carried out extensive consultation with interested parties over a number of years. This has concluded three periods of consultation and two working parties.

The Bill is divided into 20 clauses and one schedule. It contains a significant number of consequential amendments to the Income Tax Acts that are necessary to support the move to an accounting period basis of assessment. In most cases,

the consequential amendments do not materially affect the application or the existing statute.

The aim of this Bill is to change the basis of assessment and introduce a pay and file regime for corporate taxpayers, commencing April 2007. The income tax payment date will no longer be 1st January for all companies, but will be spread throughout the year, depending on the period that the company's accounts are drawn up for. Adoption of this basis of assessment will allow for the spread of work for both tax advisers and the Income Tax Division throughout the year and is internationally accepted.

This will be a major simplification in the way that corporate taxpayers are treated. It is proposed that the filing date of returns and payment dates will be changed, and will now be 12 months from the date on which the company's accounting period ends.

There will also be a fixed penalty regime introduced for corporate taxpayers that have failed to deliver a return form to the Assessor. This works in a similar way to the regime now in place for non-corporate taxpayers. Amendments to the assessment process are proposed which will allow the Assessor to make enquiries on a corporate taxpayer's return, at any time during the 12 months immediately following the filing of the return. A corporate taxpayer will also be allowed to request an amendment to the return during the same period.

Within the Bill, there is also a general move to reduce the period during which the Assessor can raise additional assessments from six to four years for corporate taxpayers. Specific comment was received during consultation that supported this reduction.

Finally, the schedule repeals the measures deemed to be harmful by the OECD and the European Union code of conduct for business taxation, the repeal of which is part of the Island's commitment to each organisation.

Mr President, I beg to move the First Reading of the Income Tax (Corporate Taxpayers) Bill.

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

The President: Mrs Christian.

Mrs Christian: Mr President, just a comment.

One assumes that this is going to make it easier for the businesses and the accountants to deliver work throughout the whole period of the year. I think, if that is the case, it is to be welcomed.

At the moment, there are provisions where you have to get in by a date and all the work is compressed into six months and people are having to make application for exception or permission to go over date or whatever. If this has that effect, then I think it will be useful, from that perspective.

I have no comment on the rest of it, Mr President.

The President: Mr Lowey.

Mr Lowey: Just following on, really, from the last speaker.

In clause 15, there will be no material reduction in the revenue and, as the change is a major simplification, no increase in staff. Do I take it there will be a decrease in staff, to compensate for the simplification, because there has to be a win-win situation, or am I just a dreamer?

The President: Mr Waft to reply.

Mr Waft: Thank you, Mr President.

With regard to Mrs Christian, the earlier ability of accountants to look at the situation over a period, it will make it easier for them I think. They have been fully consulted over this, and they are quite happy with the situation.

With regard to Mr Lowey, yes, I think he is a dreamer! *(Laughter)* No, I do not think there has been any recognition there will be a decrease, sir.

The President: Simplicity was the thing, and working out all the algebraic equations which might not make it so simple.

Nevertheless, Hon. Members, the motion which goes to Council is that the Income Tax (Corporate Taxpayers) Bill 2006 be read for a first time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Small Claims Arbitration (Personal Representation) Bill First Reading approved

7. Mr Waft to move:

That the Small Claims Arbitration (Personal Representation) Bill be read for a first time.

The President: We then reach Item 7, the Small Claims Arbitration (Personal Representation) Bill – keeping Mr Waft busy: another First Reading.

Mr Waft: Thank you, Mr President.

This small Bill is to amend an important anomaly which has recently come to light, in respect of applications to the Small Claims Court by limited companies.

Up until recently, limited companies, as well as private individuals, could make application to the High Court in respect of a default action which would be heard at small claims arbitration.

Hon. Members will be aware that small claims arbitration is limited on a monetary basis to default claims not exceeding £5,000. The procedure to make such an application is directly to the High Court in the first instance. If the default claim is for £5,000 or less, then action is usually remitted for small claims arbitration.

The whole purpose for small claims arbitration in respect of small sums of money is that matters may be judged without the liability to large amounts in respect of costs by either the plaintiff or respondent, win or lose.

Mr President, the judgment in the High Court was delivered in May 2001 which involved a large sum of money, way above the limit set for small claims arbitration. This particular case failed, because a limited company had not engaged the services of an advocate to prepare and sign a statement of case.

The matter rested at that until a judgment was delivered in the Small Claims Court in November last year, where the arbitrator had no option but to strike out proceedings against the defendant because the plaintiff, a limited company, had not used an advocate to file the initial proceedings. The

defendant was represented by an advocate who argued that, due to the proceedings not being filed by an advocate in the first instance, the proceedings should, in the circumstances, be struck out.

This judgment made in November last year has caused such a severe effect, in that applications for default hearing in the Small Claims Court by limited companies will not be accepted, unless the claim has been filed by an advocate. This means that in the place of those small limited companies who are chasing debtors for small numbers of hundreds of pounds will be faced with costs of preparation of the small claims case, which, in itself, is likely to run to over £250. It would not be economically viable, therefore, to pursue these debtors through the Small Claims Court

Mr President, the present position is small companies especially are regarded as the backbone of the Island's generators of income. Up until November last year, there was no problem in companies processing a case to the Small Claims Court. This Bill will amend the High Court Act and 1952 Rules of Court to restore the right of limited companies to prepare, file and represent its interests, without the requirement of an advocate. This small Bill will achieve the status quo as soon as possible.

Mr President, I beg to move the First Reading of the Small Claims Arbitration (Personal Representation) Bill.

Mr Downie: I beg to second, Mr President.

In doing so, I am very pleased at the progress that has been made regarding this Bill. It did put a lot of small companies in difficulties, where they were faced with a situation where they wanted to take a small company to court, they were having to go to extra expense to engage an advocate and, quite often, some of the amounts of money that they were pursuing in the Small Claims Court were actually below the cost of hiring the advocate.

I think this does redress the balance, to some extent, following the court judgment. I can tell you that small groups of individuals, like the Employers' Federation, where this is a common occurrence, are really waiting to get this legislation through, so that they can, again, conduct their business in the Small Claims Court, and not involve themselves with excessive expenditure which is not recoverable.

The President: Mrs Christian.

Mrs Christian: Mr President, this sounds, theoretically, sensible. Could the mover indicate how the previous facility was removed and why?

The President: Mr Lowey.

Mr Lowey: I was just going to say that the Small Claims Court has been a success. It really has been a success. It has got rid of the irritation – and it is not an irritation, if you are owed £200 or £300. It is the difference... It is the profit margin on the job.

I think the idea that lay behind the Small Claims is right. I think it is working successfully. I am surprised to hear that a judgment came in like that, which was struck out because of a technical thing that had not been submitted by a legal... a trained advocate. I would have thought that this was one of those instances where we ought to go back to where we were before.

I will be supporting the Bill on those grounds.

Mr Singer: It is a great...

The President: Mr Singer.

Mr Singer: It is wrong that people or small companies should not be able to pursue their rights, because of the excesses of a closed shop, which is basically what this is. Therefore, I think the sooner we can pass this, the better.

The President: Mr Waft to reply. *(Laughter)*

Mr Waft: Thank you, Mr President.

The President: Mr Attorney, do you wish to...? Mr Waft to reply.

Mr Waft: Thank you, Mr President.

I thank the Members for their support and the sympathy they have shown with the situation that these people find themselves in.

The question of how was it removed originally and why, I am afraid I am not able to supply that information. The Attorney General might be able to supply it, at a later date, perhaps.

I beg to move, Mr President.

The President: In that case, Hon. Members, we will simply take the First Reading of the Small Claims Arbitration (Personal Representation) Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

**Small Claims Arbitration
(Personal Representation) Bill
Standing Order 22(2) suspended
to take Second Reading**

Mr Waft: Mr President, could I indulge the Council's time? We have got a bit of time left. Could I ask if I could take the Second Reading and, perhaps, clauses stage, as it is only a two-clause Bill?

The President: Chief Minister.

Mr Gelling: I second, Mr President.

The President: We could certainly progress as far as Second Reading, anyway. So, the Second Reading stage of the... Are we in favour, Hon. Members?

Several Members: Agreed.

**Small Claims Arbitration
(Personal Representation) Bill
Second Reading approved**

The President: In that case, Mr Waft will take the Second Reading of the Small Claims Arbitration (Personal Representation) Bill.

Mr Waft: Thank you, Mr President.

The purpose of this small Bill is to amend an important anomaly which has recently come to light in respect of applications to the Small Claims Court by limited companies. Until recently, limited companies, as well as private individuals, could make application to the High Court in respect of default action, which could be heard at small claims arbitration.

Hon. Members will be aware that small claims arbitration is limited on a monetary basis to default claims not exceeding £5,000. The procedure to make such an application is directly to the High Court in the first instance.

If the default claim is for £5,000 or less, then action is usually remitted for small claims arbitration. The whole purpose for small claims arbitration in respect of small sums of money is that matters may be judged without liability to larger amounts, in respect of costs by either the plaintiff or respondent, win or lose.

Mr President, the judgment made in November last year has caused such a severe effect, that applications for a default hearing in the small claims court by limited companies will not be accepted unless the claim has been filed by an advocate. When this Bill is enacted, it will restore the status quo, which means that individuals and businesses will be able to petition the small claims court, without having to resort to legal counsel.

Mr President, I beg to move the Second Reading.

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

The President: Mr Attorney.

The Attorney General: Mr President, yes, could I just endeavour to answer the points raised by the Hon. Member, Mrs Christian, and perhaps to give some background to this apparent anomaly.

Mr President, for years and years, it was a rule of the High Court that, when companies were involved in litigation, they had to appeal by an advocate. This, really, was in the days when there was no small claims arbitration at all. All claims, whether they were for £1 million or £150, were dealt with by a Deemster and this, of course, was a costly procedure.

I think, probably, the rationale for that, Mr President, was that, of course, a company has certain protections and – how can I put it? – immunities which are not enjoyed by an individual. So, in other words, you could have a claim against a company, which succeeds, for many thousands of pounds. The shareholders and the directors would be protected by limited liability.

The rationale, I think, was that, if companies are going to become involved in proceedings, an advocate must ensure that the shareholders and the directors act properly and ensure that the first duty is to the court, to make sure that the facts are stated correctly and so on. As I say, all claims involving companies had to be dealt with by an advocate for that reason.

Now, when the small claims arbitration system came into play, as the hon. mover has said, the theory behind that was that there should be an inexpensive way of dealing with litigation, and there was a rule that advocates could not be involved at all in small claims arbitration. So, for years, again, there was no problem about this. Companies were involved in small claims arbitration without the involvement

of advocates and costs were kept down.

In this particular case that was involved, it is true that an advocate took the point that the existing rules of court still required an advocate to appear for the company. I think it is a bit harsh to say that that was a surprising point to take. It is the duty of an advocate to take any point which can properly be taken on behalf of his client. As it happens, that point succeeded in the appeal court. That, really, is the reason why, until the change of the law brought about by this Bill, the Small Claims Arbitrator said, 'Well, notwithstanding we have got to keep costs down, I cannot, actually, allow companies to appear without the services of an advocate.'

Mr President, I hope that that gives some background to the Bill. I think that everybody, including the Deemsters and, certainly, for myself on behalf of the Bar, we certainly would welcome this change.

The President: Mrs Crowe.

Mrs Crowe: Thank you, Mr President.

I am delighted to hear the Attorney General welcoming the change. I think it goes along with the word 'reasonableness' that we heard so much of this morning and just how easily it can be misinterpreted on some occasions.

I think the whole point of the Bill, originally, was the fact that 70 per cent of businesses on this Island are small businesses which employ five persons or less. That was entirely proper – the reasoning for being able to represent oneself in a small claims court without the expense, justifiably. I am not complaining when you pay an advocate because you pay an advocate to professionally represent you; but there are cases which may be just involving a sum that has not been paid, a straight debtor case, that one could adequately take oneself.

I am delighted to hear that the Attorney General supports this particular Bill, as I do myself.

The President: Mrs Christian.

Mrs Christian: Thank you, Mr President.

I think it has been helpful to have the explanation from the learned Attorney because, prior to that, we did not know whether it was a change in drafting that should not have happened or... What I understand him to say was that, strictly speaking, there should always have been an application with an advocate, but the practice was that they did not have one. So, it is not a restoration of a legal position. It is a restoration of a facility which had evolved, which seems now to be a perfectly reasonable stance to take and should be supported by change in the legislation.

The President: Mr Downie.

Mr Downie: Yes, Mr President.

I think what has actually happened regarding this Bill is common sense has prevailed. I am very, very pleased to see how quickly the legislature has been to react to this particular issue. I know the Deemster himself was made aware of this particular issue and then this started the ball rolling, and we finished up with Mr Houghton's Private Member's Bill.

One of the keys to this is that, as well as dealing with small claims, this court is also an arbitration service. There are people appearing in front of it on a fairly regular basis who cannot always afford to pay in one go and part of the

uniqueness of this piece of legislation is that, if someone is found wanting in some way or a case is proven, they can make special arrangements to pay the debt off over a period of time.

I think, given how soon the problem was identified, it is great credit to the system that we have in the Isle of Man that we can see a problem, identify it, and move quite quickly to rectify it.

So, I wish the mover all speed in his clauses and his Third Reading, because there is no doubt about it, there are a lot of people waiting for this piece of legislation to be enacted.

The President: Mr Waft to reply.

Mr Waft: Thank you, Mr President.

I thank the Attorney for the clarification. That answers Mrs Christian's query. I concur with his view that the Attorney's first duty is to his client in respect of the case quoted.

I would support all the words that have been said, with regard to the legislation being enacted rapidly, to bring about what could be seen as a restoration of, for want of another word, custom and practice that it has been in the past, rather than a legal entity.

So, I would formally move Second Reading, Mr President.

The President: Hon. Members, the motion that I put to Council is that the Small Claims Arbitration (Personal Representation) Bill be read for a second time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Small Claims Arbitration (Personal Representation) Bill Clauses considered

The President: Now, Hon. Members, I am in your hands whether or not we continue to clause stage. Are you content to continue to clause stage?

Several Members: Agreed.

The President: In that case, Hon. Members, we will deal with the clauses and Mr Waft, could you move clause 1.

Mr Waft: Thank you, Mr President.

Clause 1 requires Rules of Court to be made to enable bodies corporate to do all things that are necessary to represent themselves without legal counsel before the High Court, in small claims arbitration proceedings.

Clause 2, if you will allow me, Mr President, provides the short title, that this Act may be cited as the Small Claims Arbitration (Personal Representation) Act 2006.

Mr President, I beg to move, clauses 1 and 2.

Mr Singer: I beg to second, Mr President.

Mrs Crowe: I beg to second...

The President: Seconded by Mr Singer.

The motion I put to Council, Hon. Members, is that clause 1 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

And now, Hon. Members, clause 2. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Small Claims Arbitration (Personal Representation) Bill

Standing Order 22(2) suspended to take Third Reading

Mr Singer: Mr President, I heard what you said before, but this is so unanimous in this particular Bill, and it is in interest to get it through as quickly as possible. As we have some time – we have still got lots of business before us in the next few weeks – could I test the water of the Members, Mr President, as they say, to see whether they would allow the lifting of Standing Orders, to take what must be a very short Third Reading of this Bill?

The President: I take the point that the Hon. Member is making that the next sitting of Council would be 2nd May.

Mrs Christian: I beg to second, Mr President. I think the water is quite warm.

The President: In that case, Hon. Members, with your agreement, I take it that you are agreed that we take the Third Reading.

Several Members: Agreed.

Small Claims Arbitration (Personal Representation) Bill Third Reading approved

The President: In that case, Hon. Members, Mr Waft it is up to you, sir.

Mr Waft: Thank you, Mr President.

The purpose of the Bill is to restore the facility previously enjoyed by limited companies, which, with effect from November 2005, were no longer able to prepare and submit an application for default action against a respondent without the professional assistance of an advocate.

All applications in respect of civil claims have to be submitted through the General Registry to the High Court. Any applications to the High Court have to be prepared and submitted with the assistance of legal counsel.

The High Court remits claims up to £5,000 to small claims arbitration. Therefore, in the matter of applicants for claims in respect of relatively small amounts, the cost of professional services currently required outweighs the economic value of the claim. An individual person may prepare and submit a default action or represent himself at a hearing of a small claims court.

The purpose of this Bill, therefore, is to permit persons representing limited companies to prepare, submit and give oral representation in respect of the claim, in the same way

as an individual does.

Mr President, I beg to move that the Third Reading of the Bill do pass.

Mr Singer: I beg to second, Mr President.

Mrs Crowe: I beg to second...

The President: Seconded in about three different places, I think. Mrs Crowe has seconded that particular measure. Mr Lowey.

Mr Lowey: Yes, it is unusual to take three Readings in one day, but in this instance, I believe it is proper and right and in the public interest so to do, because I think it is going to affect the general public.

As I said, the Small Claims Court has been a great success. I think it ought to be left to get on with its duty, and I am delighted to hear that they do come to agreements between the different parties in settlements of these claims.

That is the whole aim: to try and arbitrate and try and get the small person satisfaction. Nothing irritates more than small people being denied the right of their just dues and I think this Court does work that way. This certainly helps them. That is a start.

I think it is in the public interest to pass it today.

The President: It strikes me that the £5,000 figure... I sometimes wonder, when we write figures into either rules or into the Act, whether or not they should be regularly updated –

Mrs Crowe: Of course they should.

The President: – because devaluation will not be long overtaking this measure. That is what is seen as a small figure. At some stage, very quickly, it turns into –

Mr Lowey: It was £1,500 when it came in, wasn't it?

The President: Absolutely. Statute Law Revision Bills are sometimes useful.

Mr Lowey: They are that. Are you listening, Chief Minister?

The President: Mr Waft.

Mr Waft: I agree with you wholeheartedly. We could do with a new Statute Law Revision Bill. But for this Bill, I would thank Members for their support.

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

Hon. Members, that does draw to a conclusion our Order Paper and Agenda for today. Adjournment will be to Tynwald commencing a week on Tuesday, 25th April, and thereafter to 2nd May, Hon. Members.

Thank you, Hon. Members.

The Council adjourned at 3.15 p.m.