



**LEGISLATIVE COUNCIL  
OFFICIAL REPORT**

**RECORTYS OIKOIL  
Y CHOONCEIL SLATTYSSAGH**

**P R O C E E D I N G S**

**D A A L T Y N**

**(HANSARD)**

**Douglas, Tuesday, 31st January 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 Mrs M Cullen, Clerk of the Council.

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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

### CHIEF MINISTER

#### **Rushen Abbey Hotel Concluding the 'saga'**

1.1. The Hon. Member (Mr Lowey) to ask the Chief Minister:

*What action (if any) has been taken since last March to bring the 10-year saga of the Rushen Abbey Hotel site to a satisfactory conclusion?*

**The President:** Now, Hon. Members, we have three Bills on our Order Paper to deal with this morning. But, first, we start with the Questions, and we call on the Hon. Member, Mr Lowey.

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

**The President:** I call on the Chief Minister to reply.

**The Chief Minister (Mr Gelling):** Thank you, Mr President.

I am, of course, aware of the Hon. Member's interest in this matter, through his two previous Questions to me on this subject, in March and November of last year.

In my Answer to his Question in March, I provided a full review of the actions which had been taken, and the difficulties which still remained, with regard to restoring the former Rushen Abbey Hotel and bringing it back into full public use. I, also, indicated the significant repair works which had, indeed, been undertaken.

Last November, Mr President, I, again, indicated the many discussions which had taken place with potential development partners for the restoration and operation of the site.

Specifically, since last March, three approaches have been made to the MNH by potential operators of the site, all of which have been followed up in detail, but all of which, ultimately, withdrew.

I am sure the Hon. Member appreciates the need to be open to such approaches from individuals and organisations from within our community, but, also, the considerable time it takes to follow these approaches through, thoroughly and professionally.

Mr President, two main obstacles remain to the satisfactory resolution to the difficulties of this site: firstly, the apparent lack of willing and suitable development and operating partners on the Island; and secondly, the lack of Government finance available to assist Manx National Heritage, as the owners of the property, to undertake the full range of necessary repairs and improvements to that property.

I would emphasise that Manx National Heritage has made, and is still making, very considerable efforts to resolve this position, in both these areas of difficulty. So far, Manx National Heritage has had detailed discussions with nine potential development partners, all of whom expressed serious interest but, ultimately, withdrew. The latest of these confirmed his withdrawal after several months of discussion and evaluation only last week.

Recognising that one of the main reasons for potential partners withdrawing their interest is the potential cost of necessary repairs and restoration of the building, the Manx National Heritage trustees made submissions in this year's financial estimates to Government for funds to undertake the repairs, and this submission was rejected.

In this situation, Mr President, without an obvious development partner and without Government agreement to the necessary required level of funding to repair the building, the Manx National Heritage trustees feel they now have no option but to put this opportunity of the building into the hands of a commercial agent.

Therefore, in brief, Mr President, this emphasises the policy outcome required from the exercise, in line with Manx National Heritage and Tynwald's original wishes, which is to bring this building back into viable public use in a way which complements this important national heritage site and also provides added value for visitors and the local community for the foreseeable future, sir.

**The President:** Mr Lowey.

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

Would the Hon. Member then agree that if we cannot get a use for the existing building, then the site is one of the most valuable sites within Ballasalla?

There is a load of what I would call useful community uses for that site, ranging... I will use one: sheltered accommodation, for example. Is it not time that the Government developed this site, even if it was to put it out to tender to the local Commissioners, to see if they can come up with the money to fulfil some of their requirements to the community of Ballasalla?

**The President:** Chief Minister.

**The Chief Minister:** Indeed, it is a worry, Mr President. In fact, when you go back and analyse those from the private sector who have come with a very serious interest in the site, of course, they will not take it on leasehold, because they see it as a situation that they would need to put, say, £½ million into that building, but, in fact, at the end of the day, if it all went wrong, they have got no asset to actually take out.

So, I think the hon. questioner is quite right. I think the time has come, now, for Government, through the Manx National Heritage, to actually decide what should be done with the building.

In other words, it could be put up for sale. We could

sell it – it is outwith the ancient monument part of that site – but, certainly, sitting there as it is, it is not something that we could be proud of, Mr President.

**The President:** Mr Lowey.

**Mr Lowey:** Does the Chief Minister recall what he said this morning about the bus station site? I hope people sitting round this table will not be talking about this site in another 11 years.

### **DHSS Newsletters Costs and value for money**

1.2. The Hon. Member (Mr Lowey) to ask the Chief Minister:

- (a) What is the total cost of all Newsletters produced by the Department of Health and Social Security including staff time, production and delivery costs for the past two years,
- (b) are these costs essential as opposed to desirable, and
- (c) would this money be better used for essential front-line services?

**The President:** Right, okay, and we turn, then, to the second Question of Mr Lowey.

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

**The President:** That was a statement, rather than a question.

**Mr Lowey:** I understand. Thank you for your tolerance, sir!

I beg leave to ask the Question standing in my name.

**The President:** Again, I call on the Chief Minister to reply.

**The Chief Minister (Mr Gelling):** Thank you, Mr President.

Again, given the present intense pressure on front-line services, a balance has to be struck between keeping staff and service users informed and the associated cost. The Department of Health and Social Security takes this matter very seriously and claims that cost-saving measures that have been introduced will strike that balance.

Mr President, taking each part of the Hon. Member's Question separately, if we go to part (a), the total cost of staff and patient communications, including newsletters, produced by the Department of Health and Social Security over the past 24 months has been, approximately, £33,000 per annum. The sum includes staff time, production and delivery costs.

If we go to part (b), with over 3,000 staff in the Department of Health and Social Security, widely spread throughout numerous locations in the Island, more than 50 per cent do not readily have access to computers and, therefore, using electronic means of communication is not always possible. Therefore, the most effective communication, in terms of

cost and reach, is by newsletter and the use of other printed media.

The Department considers that the purpose of newsletters is to be exceedingly important in the role of effective communication with staff and users of its services. It is, also, a mechanism which assists in promoting organisational efficiency, as part of their business strategy. This is supported across the world by extensive research literature into health services, which clearly demonstrates that poor communication, especially with less senior staff, is a major cause of poor morale and efficiency problems.

However, the Department does recognise the need to provide a more unified and cost-effective approach to communicating, whilst saving internal resource and printing costs. To achieve this, all locally-produced staff newsletters and similar media have been the subject of a recent review and are currently being suspended, in favour of one consolidated written communication and that is the staff newsletter, *In Touch*.

To further reduce costs, but without reducing the effectiveness of this communication medium, the Department has reviewed the production and cost of *In Touch* and has identified areas where further economies can be made. This will include widening, wherever possible, electronic access to the *In Touch* document, decreasing the number of printed copies by 25 per cent and decreasing the number of pages from 24 to a maximum of 20 pages per issue. It is believed that the impact of that approach includes a more effective and comprehensive one-stop communication medium for staff, media organisations and the public, whilst reducing costs.

Then, going to item (c) of the Question, Mr President, the Department does recognise that there is increasing demand for front-line services and funding of those services. However, if services are to be fully effective, the workforce needs to be motivated and involved in service planning and delivery, whilst service users need to be fully informed and consulted. The dissemination of information and the associated costs are an important element of service delivery and should not be seen in isolation from their purpose.

So, Mr President, I believe that the Department of Health and Social Security is demonstrating that every effort has been made to achieve economy, value for money and efficiency in communicating key messages to staff and service users. I am advised that the methods and costs of communicating continue to be kept under scrutiny, sir.

**The President:** Mr Lowey.

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

I am grateful to the Chief Minister.

Would he not agree with me that, if this Department is spending £33,000 per annum on disseminating their in-house information to their staff, there is a similar cost to all the other nine Departments of Government? Would he not agree that when you add the totals up they become meaningful?

While agreeing that the Department, if I heard him right, says they are now going to consolidate in one communication, my great objection to the communications that I receive from the DHSS is that I get one, virtually, three or four times a week, and usually after I have heard it on the radio, anyway. I just find that seems to me a wasteful use of resources, and I do think £33,000 is a little... It is almost like a cottage industry.

Sorry, Mr President, for being so long, but would he not

agree that it has become a cottage industry?

**The Chief Minister:** First of all, I do not think I could agree with the hon. questioner, inasmuch as the other Departments of Government will all be spending the same as that Department.

I think if I go back, there was great criticism, in fact, of the DHSS, at one period of time, that people were not aware of what was available for them, what services were available, what their entitlements were and so on. But, of course, the problem that we do have is that we cannot go electronic for it all, because there are an awful lot of the 3,000 staff who do not have access to a computer and, therefore, they cannot download it off line.

Now, I understand, by questions I have posed since the Hon. Member put down the Question, they are, actually, now looking to be able to give other members of staff who do not have a computer access to someone else's computer, so that they can actually download it, which would reduce the need for all the printing that is being done.

But, certainly, without doubt, these are the areas which the DHSS are looking at in their striving to actually save money, because it is alright saying it is only £33,000 in a huge overspend that we had in Tynwald. However, it is in the edges that, if you start looking at these edges and these areas, this is often where accumulation of their savings can be made.

So, I would say to the Hon. Member every effort is being made to reduce it, but not taking away the fact that the staff, the media and everybody does need this information. They are, obviously, looking at the best way they can get that information out to the members of the staff, plus, I must say, the media in general, because they often do, as the Hon. Member has suggested, actually have programmes where they read the *In Touch* magazine and make the statements out there.

So, I suppose it is a case of I would rather, personally, make sure that everybody did have the information than, in fact, there be holes where people did not, and then we could be criticised that they were not aware of the actual situation.

So, a growth industry, cottage industry: I certainly would hope that is *not* the case, and I would suggest that this is a Department that, probably, spends more than any other Department on information. Certainly, that is being looked at very closely.

**The President:** Mrs Crowe.

**Mrs Crowe:** Thank you.

I may have missed this actually, Mr President, but I wonder if the Chief Minister could tell me how many staff are engaged full time in producing not only the 24-page Health Division newsletter, but also the electronic newsletter for Social Security?

**The Chief Minister:** I am sorry, Mr President, I do not think I have got that particular information, but I will, certainly, get it.

**The President:** In which case, Mrs Christian.

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

In his Answer, the Chief Minister referred to newsletters and patient communications. I wonder if he could give us

any indication of the nature of the communications that he has included in assessing the costs that he has given us. Is there any breakdown in the figures, as between newsletters or circulating information to members of staff and patient communications of whatever kind, presumably informing them of necessary information in relation to services?

**The President:** Chief Minister.

**The Chief Minister:** Yes. In fact, Mr President, if you will bear with me, for argument's sake, we have got a publication called *Stop and Think*, which is for the staff. It goes out weekly and it costs 27p per copy.

We have got, from Noble's Hospital, *Nursing Matters*, which again is staff, which is under the aim of clinical governance, six times a year and that works out at 21p per copy.

Then there is *Transforming Care*, which, again, is a staff one on clinical governance, again six times a year, which works out at 30p per copy.

Health Services *Information Bulletin*, this is not circulated to the general public, but to external health professionals. That is a weekly one, electronic only and, therefore, I have not got a cost per copy, but I have got a cost of £100 per week for actually getting that and putting it out electronically.

You have got *Social Security News*, which goes out to staff, customers, clients or whatever, to communicate changes in social security and certain pension legislation. That is electronic only, monthly, and it goes out after each sitting of Tynwald.

Then, we have got all DHSS, which is the one I have mentioned several times in the Answer to the Hon. Member, which is the magazine or the publication called *In Touch*, and that goes to local organisations, the media, communicating to staff and media important corporate news, important health, social care, social security topics. That costs per issue £3,260 – so *In Touch* actually costs £1.63 per copy.

Then there are just three more: Social Services' *Learning Disability Briefing* and that goes to three issues per year. That is a paper one, and it goes out at 25p per copy; Social Services' *Learning Disability Staff Newsletter*, this is information and involves the staff, four issues a year and that is 25p per copy; and then the *Family Practitioner*, Health Service Division, this goes out to all GPs to update on IT technology in general medical practice. That goes out electronic only and that costs 5p to go out, sir.

So, there is the full list of those that were in that costing that I gave the Hon. Member.

**The President:** Mrs Christian.

**Mrs Christian:** Mr President, could I ask the Chief Minister: would he not agree that, in particular, clinical governance issues are important and staff should be kept updated and informed (**The Chief Minister:** Absolutely.) on those issues? I would certainly regard those as essential.

Could he also confirm that if any Member does not want to receive the documentation from a Department, they can simply ask to be removed from the circulation list?

**The Chief Minister:** Yes, I would agree with the Member on both the statements made, sir.

**The President:** Mr Lowey.

**Mr Lowey:** Can I say that I have asked on two occasions, and I still get snowed under with the information.

**Mrs Christian:** Get cross.

**Mr Lowey:** I am not getting cross, I just –

**Mrs Christian:** Well, you should get cross!

**The Chief Minister:** I will make sure that that, Mr President –

**Mr Lowey:** Could the Chief Minister assure me that, when he talks about 21p per copy for the printing, that is the printing costs, not the costs of the civil servants who have to put the editorial, the content together. That is the printing cost, not the cost of the civil servants who put the bits together.

**The Chief Minister:** Now, I understood that, for argument's sake, *Stop and Think*, the cost per issue was £1.40, so it works out at 0.01p per copy. So, I would have thought the figure I gave, which was £33,000, includes all the costs, that is, the printing and the people.

Taking the Hon. Member's question about personnel, I do not know how many there are, but that, certainly, is taken all into consideration in the costs that I gave to the Hon. Member in the original Question, sir.

**Mr Lowey:** I accept that, if the Chief Minister will agree that, if it is not the full costs, he will perhaps write to me and tell me what the costs are of this.

**The Chief Minister:** I will circulate it to Hon. Members.

**The President:** Okay, Hon. Members, I think that is, probably, as much information as we can get out of that particular Question, at this stage.

## Orders of the Day

### Noise Bill

For continuation of clauses

Standing Order 22(2) suspended

Clause 1 reconsidered and adjourned

2. Mr Singer to move.

**The President:** We, then, turn to our first Item of legislation at Item number 2, which is the Noise Bill, and that is for continuation of clauses.

Members will be aware that, the last time we were dealing with the clauses, we had completed up as far as number 11. However, we are, also, very well aware that, in fact, we have had subsequently correspondence from the Hon. Member for Douglas North, Mr Houghton, who was in charge of the Noise Bill in the other place, Hon. Members.

Mr Singer, I think, is of a mind to say that, perhaps, we

should consider the letter, or at least consider clause 1. So, Mr Singer.

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

I would appreciate it if Members would let us revert to clause 1, in view of the comments that have been made since, both by the mover of the Bill originally, in the Keys, and also the letter that has been circulated from the Minister for Home Affairs, Mr Shimmin, which gives an explanation of the reasons that this amendment was moved, initially, in the Keys.

I must apologise to Members. At the time, I had not been informed that this was actually a proposal of the Department of Home Affairs. I do not know if Members find it self-explanatory, after reading the letters.

If I can just revert to part (b), which was a local authorities' issue –

**The President:** Hon. Member, I appreciate what you are doing, but could we first agree from Council that we are prepared to reconsider clause 1? We had completed our deliberations on the clauses as far as clause 11. The request from Mr Singer is that we reconsider the amendments or the business that we carried forward on clause 1. Are we happy to continue to review clause 1, Hon. Members? (**Several Members:** Yes.) Yes?

In that case, Mr Singer, having had it plain, I am quite happy for you to continue, sir.

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

Items (4)(b), (c), (d) and (e) were removed at our last meeting. Those are the ones that I would like us to reconsider. So, (b), as far as the local authority discharging its functions within its district. I think the vote was split in here as to whether we would agree to that or not.

The general feeling is that a local authority would, certainly, be approached by the ratepayers, if there was too much disturbance early in the morning, for example with the refuse collectors. Therefore, I feel that that should be returned to the Bill, not removed from the Bill.

As far as the other parts are concerned, there is a feeling – and certainly the Department of Home Affairs feel – that there is adequate control by the various licensing Bills – the Licensing Act 1995 – to control noise coming from licensed premises and, of course, the ultimate sanction is... First of all, a policeman can stop them making a noise, but the ultimate sanction is the removal of that licence, if they do not comply with the licence, and the times on that licence.

Therefore, I would ask Members, having read the letter, having heard from the Minister and from the mover, that, in fact, we revert our decision, and we do not take out of the Bill these particular sections.

**The President:** Right, now, the proposal from the Hon. Member, on reconsidering clause 1, is that we reinstate subclauses (4)(b), (c), (d) and (e), Hon. Members.

It is a question of how you wish to play this. This is a Noise Bill, specific in its intent to deal with the question of noise, and you did decide, in fact, that as that Noise Bill, when you were dealing with clause 1, dealt with the level of noise, that it was easily seen and easily picked up and was not permissive, as it appears to be in relation to the reintroduction of these particular measures, but that seems to be the argument which is being made.

Hon. Member, Mrs Crowe.

**Mrs Crowe:** Yes, I am content with the Department of Home Affairs' explanation regarding the Licensing Act.

I have some slight concerns about local authorities discharging their functions. The statutory functions, at the present time, are... loosely interpreted, put it like that. But one of their statutory functions certainly is not the letting of halls for entertainment, which I think a number of authorities do do. I just wondered, in fact, as we were discussing last week with the Attorney General, the fact that, if there was a serious noise problem with the local authorities, that would mean ratepayers petitioning that particular authority to stop letting it to that particular person, club, whatever it might be, if this had been all thought through in the first...

When we were discussing it, we did seem to think that there could be concerns. I wondered if we should just think about that a little more.

**The President:** Can I just get this plain? Mr Singer is proposing, in fact, that we delete subclauses (4)(b), (c), (d) and (e) in our reconsideration of alterations that we made first time round.

Now, I thought, Mrs Crowe, when you started off, that you were actually agreeing with that proposal. Now, when you have finished, I am a bit unsure as to which –

**Mrs Crowe:** Well, I just wanted a little clarification about the local authority aspect of it, because –

**The President:** Okay. Mr Lowey.

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

Well, I was in the minority view the last time I was supporting the Bill as it was, but the letter from the Minister needs a little clarification for me, because on the last page, at the third paragraph:

'In addition, as the Bill's intention relates to the most part to private premises...'

Most of us round here know that it is not the intention that will be adjudicated by the courts because this will be adjudicated by the High Bailiff and the magistrates and whoever, and they will go for clarity of what is actually printed.

So, it is no use the Minister saying, 'Well, it is our intent to deal with private matters,' when the interpreters of the law that we pass could very well say, 'Well, that might be what they intended, but it is not as written.'

Now, we have been criticised in recent years by the judiciary for being less than concise with the law. I want an assurance that, if we amend the law to its original, it is not just the intent, but it is actually... And that is what the people who were actually... where the Council were coming from last time. We were saying we need to be clear.

While I appreciate the mover of the Bill's position, saying he was not aware there was a Home Affairs amendment that was being moved by the Hon. Member for North Douglas, Mr Henderson, are we content – and here I would have to look to the Attorney to say to me – that it is as printed, will actually do the job that we intend it to do?

**The President:** Mr Attorney, do you wish to respond to that particular point? Could I first, then, Mr Attorney, and

then you could even check whatever, but it appears to me, Hon. Members, that, in fact, on Mr Lowey's particular point the request which is being made of Council this morning is that we put it back to the way the Keys had amended the Green Bill. It actually says in (4):

'the provisions of this Part do not apply to –  
(b) a local authority discharging its functions [...];  
(c) a licensed place, within the meaning [...];  
(d) licensed premises in respect for which provision [...]; or  
(e) club premises[...].'

Now, it is quite specific that, in fact, if we agree with this amendment and we go back to what the House of Keys put in, in fact it will take out the provisions in relation to those, quite specifically.

Mr Attorney.

**The Attorney General:** Mr President, I think Hon. Members will recall that the Hon. Member, Mr Butt, made a very important amendment to subclause (4)(a) when this matter last came before Council. That amendment, which was agreed by all, was that, instead of having the lawful activities of the Police etc, it was amended to the lawful duties of the Police.

So, as I understand it, Mr President, what the Hon. Member, Mr Singer is suggesting now is that subclause (4) of clause 1 will read: 'The provisions of this part do not apply to the lawful duties of the Department of Transport, the police, fire brigade or ambulance services'.

I think, Mr President, it is probably just as well to agree that that is the text which Hon. Members are content should be considered in this context. (**The President:** Yes.) So, it is an important amendment, that: lawful activities and lawful duties; we are now concerned with lawful duties.

The difficulty, of course, Mr President, is this – again, this is something hinted at by the Hon. Member, Mrs Crowe – the local government legislation would have to be looked at very carefully to identify what duties a local authority has. Ordinarily, the duties are related to things such as public health and maintenance of services, and so on.

I presume that what is intended is that a local authority would not be caught by the provisions if, for example, it arranged for the refuse collector to come along at the dead of night and collect refuse outside somebody's house. Now, that might not be what Hon. Members intend or feel is appropriate, but that would – certainly, under the current law, which we are looking at now – be an exempted activity. (**The President:** Good.)

It is rather difficult for me to speak in general terms, (**The President:** Yes.) but that is a good example, I think, of the problem we have.

**The President:** Right, okay. May I just hold you there, because... Mrs Christian.

**Mrs Christian:** Mr President, I beg to move that we adjourn discussion on this until we come to the Third Reading.

I think it is inappropriate for us to be debating something which is not set before us in a proper form as an amendment, nor do we have before us the clause, as we amended it originally. I think it would help all Members to have the clause as it has been amended before us, so that we can then see what the consequences of the proposed further amendment that Mr Singer intends to put before us.

I think, at the moment, we are working off a letter. We are not working off a tabled amendment as such, and I think, for clarity, it would be helpful to do that.

I, also, think that, as there was considerable debate on that particular clause 1, at the time, and I am still not sure that we got it right, at the end of all that, it would be useful for us to look at *Hansard*, in relation to that debate, before we go any further, with further discussion.

**The President:** I am sorry, Mrs Christian, do you not have it immediately in your left hand there? 'The provisions of this part do not apply to...'

**Mrs Christian:** This is my document from the original debate, Mr President.

**The President:** Which we held.

**Mrs Christian:** Yes.

**The President:** And that was –

**Mrs Christian:** But I want to be satisfied –

**The President:** – the amendment, as moved by the Keys in another place –

**Mrs Christian:** Yes, and we amended that.

**The President:** – and we effectively deleted (b), (c), (d) and (e) of those –

**Mrs Christian:** And we altered 'duties', as has been pointed out by Mr Attorney. So, I –

**The President:** Yes, but those duties are specific to the police, fire brigade and ambulance services (**Mrs Christian:** Yes.) not to the local authority, which would be my reading of it, but I take the point that you are making.

**Mrs Christian:** I accept that, you have explained that, and I have this document here. I wanted to be sure that the notes that I had made on this (**The President:** Yes.) were actually what we had passed.

So, I move:

*that consideration of clause 1 be deferred to the Third Reading stage.*

**The President:** Fine, thank you. Perfectly in order to do so. Mr Downie.

**Mr Downie:** Mr President, I would second that, because, since we last discussed this matter, there are a number of operations which can take place subject to force majeure: unforeseen accidents; a pollution incident which may not involve a Government agency, it may have to be dealt with by another agency; a situation where a contractor may have to be brought in to deal with a problem.

Also, I think that we are boxing ourselves into a circle, really, because there are a number of activities that take place throughout the year where there have to be specialist staff brought in to deal with big cleaning up operations, and so on. I think this is an opportunity to revisit this area,

and make sure that what we enshrine into law is actually workable and not going to cause huge problems, if we are left in that situation.

The point, finally, I would just like to make, it is not only the agencies of Government who have to deal with some of these big problem areas, and we should be flexible enough in our approach to have a mechanism to deal with that. That is why I would support the adjournment.

**The President:** Mr Butt, I think earlier you were trying to get in, you were trying to catch my eye, sir.

**Mr Butt:** I was, sir. I was going to support Mr Singer's intention to reinstate those clauses. The Attorney covered part of the point I was going to make, in that we changed 'functions' for 'duties', in the clause relating to the police activities, but we also, before the amendment changed it, changed the functions of the local authorities to duties, as well.

I think that covered both those of those points, so that the incident in the church hall getting out of hand is not the duty of the local authority, so they would not be exempt in that situation.

I think then there was an amendment which actually took away (b), (c) and (e) which changed that. But I would support the reinstatement of them, with those provisos.

**The President:** I take the point, but, at the moment, we are considering the adjournment which has been proposed by Mrs Christian, adjourned until it has been reprinted for us – not necessarily in a Green Bill, but on a white paper, showing exactly where we are at.

Mr Waft.

**Mr Waft:** Yes, Mr President.

One of the things that did convince us, to a degree, at the last meeting we had on this was the concerns of the Attorney General with regard to the music and dancing and the Licensing Act. Obviously, it has not been adhered to, in certain circumstances and, perhaps, this was an opportunity to implement the gaps in that Act.

But the Home Affairs Minister seems to think it is adequately covered under the normal licensing, so we will have to think about that one and look at the Licensing Act, if necessary, in the future.

But I would agree with the letters to clarify it, in this instance, but I also think it is reasonable to adjourn it for now, to get some clarification on this. I am thinking of the local authorities that do employ other agents to do their work – for instance, Douglas employs agents for the simple thing of emptying their refuse vehicles – and those are the sorts of things you are getting in to, complications.

So, I think that an adjournment would not be amiss.

**The President:** In that case, Hon. Members... Mr Singer.

**Mr Singer:** I really think we are using a sledgehammer here to crack a nut and we are making problems for ourselves here.

If we are talking about local government responsibilities, I think I said originally, I think it would be the fact that if the local government were thought by the people in the area to be irresponsible, they would soon hear from the local

people. I think they would have to take action to prevent the disturbance, if it was early morning or late at night.

I would have thought that any agent acting on behalf of the local authority was, therefore, local authority, and that they would also be responsible under this Act to ensure... Well, they would be under the control of the local authority, to make sure that they did not cause disturbance.

I really think we are going way beyond the meaning of this Bill, which is a Private Member's Bill, which is stated. I believe that the Minister is true, is right, when he says that it was to deal with private premises, mainly, this Bill, and I would vote against the adjournment.

**The President:** Mrs Christian.

**Mrs Christian:** Mr President, I just feel that the Hon. Member has argued against his case. That is why I think that we need to have it set out quite clearly what the intention is.

**The President:** Right, Hon. Members, I put to you, it has been proposed that we adjourn this matter until we have it printed out. Those in favour of the adjournment, please say aye; against, no. The ayes have it. The ayes have it.

### Procedural

**The President:** Hon. Members, we will have the clause 1 reprinted out, Hon. Members, showing the amendments which we made and the alterations which are, possibly, proposed put back in at this particular stage now.

Now, having adjourned, I think we may continue then to the Employment Bill. We come to the Employment Bill for First Reading and the Hon. Member, Mr Downie, please.

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

I am very pleased to be able to bring this important Bill before the Council today. The main purpose of the Bill is to modernise that part of the Island's Employment Law –

**Mrs Christian:** Sorry, Mr President, I only moved the adjournment of consideration of that Item, not of the –

**The President:** Sorry, do you wish to go back to start at 12.

**Mrs Christian:** Yes.

**The President:** I thought that we would be adjourning and coming back.

**Mrs Christian:** No, my move was only to adjourn that particular discussion to the Third Reading.

**The President:** In that case, apologies, Hon. Members. I will get out my Noise Bill again, and we will go back to where we were, without the correspondence which came from Mr Houghton and the Minister. We had reached clause 11. We had completed, in fact... We had started on part 2, on clause 11, and we had completed clause 11.

So, we have reached, in my order, we have come to clause 12, 'forced entry of vehicle'.

Now, then, Mr Singer. (*Interjections*) I just hope there are no alterations needed to be made to take us back again. Nevertheless, Mrs Christian's comment, I think it is right. I should clear that, because, now I am thinking about it, I do think we should come back at Third Reading stage, which you did.

### Noise Bill

#### Consideration of clauses concluded

**The President:** So, in that case, we are up to clause 12, Mr Singer.

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

Clause 12 sets out prescribed procedures in respect of any vehicle alarm which is operating audibly, for such a period of time –

*[A siren sounds outside] (Laughter)*

**Mr Lowey:** Timing is everything!

**Mr Singer:** For such a period of time as to interrupt the proceedings of the Legislative Council! (*Laughter*)

**The President:** Yes, carry on.

**Mr Singer:** This part of the Bill sets out arrangements to deal with any vehicle alarm which, by operating audibly, causes annoyance to persons in the vicinity. The Bill legislates for appropriate action which can be taken following a complaint of continuous noise from an alarm sounding from an unattended vehicle.

The Bill provides a suitable course of action for a constable or authorised officer to enter the vehicle, by reasonable force, if necessary, in order to turn the alarm off. Such a vehicle may be removed at the owner's expense, under the provisions of the Local Government (Miscellaneous Provisions) Act 1984, and its regulations.

Mr President, I move that clause 12 be part of the Bill.

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

**The President:** Mr Lowey.

**Mr Lowey:** Mr President, the opening:

'An officer of the Isle of Man Constabulary, not below the rank of sergeant, may give any other officer...'

Why, oh why, do we have to have...? This is an emergency position, and we have got to get a sergeant out to give the officer permission to go. We employ officers of the Constabulary because of their, what I would call, common-sense approach. Why on earth we need a sergeant or somebody above to give permission, it seems to me to be... Am I reading this right?

**Mr Singer:** I think, Mr President, if I may reply to that, it is a fact that, if they are actually going to be breaking into a vehicle, it would need –

**Mr Lowey:** But let us get the scenario right. This motor car, the alarm has gone off, it is making a noise and the object... It would not be instantaneous; it has been going for a little while. 'Hang on, boys, I will get a sergeant out to tell me I can break the window' – I just think that is cloud cuckoo land!

**Mr Singer:** For approval.

**Mr Lowey:** For approval – 'Oh, can I break the window, boss?'

**Mr Downie:** It has got to be written.

**Mr Lowey:** And it has got to be written. Well!

**The President:** Mrs Crowe.

**Mrs Crowe:** Yes, I, too, have got some concerns about reasonable force for a vehicle. Modern vehicles today are meant to be burglar proof, and smashing a window of any vehicle is going to cost someone, whoever it might be.

I just wonder who would have liability in the case of... And now these alarms are triggered by movement, so it could be, in a street, the scenario might be someone knocks against it as they are walking home, and it sets their alarm off. The owner of the vehicle then comes down to find that his window has been smashed, because they cannot switch the alarm off, in some way.

I do not know. Who would be liable for the repayment to the owner for the damage that would be caused?

**Mr Singer:** If it helps the Hon. Member in the next clause, clause 13 does talk that if an engineer cannot get into the car without causing reasonable damage the vehicle may be towed away.

**Mrs Crowe:** By whom?

**Mr Singer:** By whom? By somebody who is asked to tow it away by the constable, and it is taken to a place... This is recognising that some cars cannot just be easily entered.

**Mrs Crowe:** Just, as I am not into the mechanics of vehicles, I do not believe that, without getting into the car, you could actually tow it away, so we are talking about –

**Mr Singer:** Yes, you could.

**Mrs Crowe:** Oh, can you? You do not have to... Oh, right.

**Mr Gelling:** Mr President.

**The President:** Mr Gelling.

**Mr Gelling:** This certainly gives me a great deal of concern, because the modern-day car is so equipped with computerised engine management that, quite honestly, getting in the car does not switch off the audible alarm. You have to have the key, and the vehicle has to recognise the key, that you are the owner of the vehicle. Then, if somebody whips off the battery, you immediately have a problem where the engine management system gives up, and it is absolutely...

Well, as I say, my concern is that, first of all, if you get in the car, you still cannot switch it off. If you get in the car, the steering lock is locked, and without the key you cannot undo the lock.

By the time the vehicle-lifting people come out to pick the vehicle up, two hours later, I would suggest that the battery would be flat, and the thing would have stopped!

But I just wonder whether Mr Attorney could, perhaps, help in assisting us as to whether this type of thing is in legislation elsewhere, or is this something brand new for the Isle of Man, which, perhaps, in theory is quite laudable, but in practice is actually impossible.

**The President:** Mr Attorney.

**The Attorney General:** Mr President, I am afraid I do not know the answer to that question. I can certainly find out.

**The President:** Mr Butt.

**Mr Butt:** Yes, sir. I would like to actually go contrary to Mr Lowey's first thoughts about the rank, first of all.

It disturbed me slightly that a rank as low as sergeant was able to do these things because, in all legislation, or most legislation, it is inspector or above, to do these draconian things, get warrants out, etc.

But having said that, the situation in the middle of the night which needs to be dealt with has to be dealt with on the spot, and I can see no problem with a sergeant doing it.

My experience is not perhaps as great as Mr Gelling's, but little experience is that, when the alarm goes off in a car, it stops after about 30 seconds, so I do not think this is going to be a major problem, I can see this legislation being used very rarely in actual practical terms.

I may be wrong on that, but I do believe they stop after a few seconds, and the situation is resolved.

**Mrs Crowe:** Then they start again.

**Mr Gelling:** Yes!

**Mr Butt:** Do they?

**Mr Singer:** Sometimes.

**Mrs Crowe:** They keep going, *ad nauseam*.

**The President:** They keep going until they are switched off.

**Mr Singer:** Mr President, if we are talking about at night, and it depends where the vehicle is parked, if it is parked outside somebody's house, there is not going to be a major problem, because they can get to the person who owns the car.

This is on the occasion when they cannot get hold of the driver, and they are trying to get hold of the owner of the car. But, certainly, from what I understand, cars can be taken away. The point is if it is going to be making this noise, and they cannot get in to it without causing major damage, then they can tow it away to an area where it is not causing any problems.

Any damage is in the Bill, any minor damage – and,

again, clause 14, we will see the clause protects the vehicle from sustaining any damage more than necessary to enter and switch off the alarm – if that is the case, then the responsibility is on the owner. It is not an offence, but it is on the responsibility of the owner to pay for the repair.

**The President:** Lord Bishop.

**The Lord Bishop:** As always, I am slightly concerned: in 12(1), this wonderful word ‘reasonable’ creeps in again. Then in (3)(b) we have lost reasonable and have discovered ‘if need be by force’. So, reasonable force has disappeared, and force has appeared.

Then, as Mr Singer has pointed out, in clause 14, ‘more damage than is necessary’. Well, if my aim is to get into the car to stop the alarm, then that is my aim, and I do as much damage to the car, until I have got into it to turn it off.

I am just worried about this poor policeman, who has got his piece of paper from whoever is away at a police station somewhere, and then has to make his own decision about where ‘reasonable damage’ and where ‘force’ come in, and then ‘as much damage as is necessary’ to turn the thing off.

I am just worried about the clarity of it all.

**The President:** Mrs Christian.

**Mrs Christian:** Mr President, the mover of the Bill just stated that this applies to vehicles at night. When he replies, I would like him to indicate where the Bill says that.

I can appreciate that the nuisance will be at night more than, possibly, in the day time, but it does not actually, on my reading of it, say that this part applies to night time only.

Certainly, part 1 specifies that it is noise at night, but part 2 I do not think does. I can envisage that, in the daytime, if a parked vehicle, which may be miles away from its owner starts to emit these noise nuisances, you might have considerable difficulty in locating the owner, and you are reduced to a position of going through this process.

It will take quite a long time to do all this. First of all, the alarm has got to be going for a while before it creates a nuisance. That is not specified – it is just such time as to give a person working in the vicinity reasonable cause for annoyance. Then you have got to take all reasonable steps to locate and notify the owner, so this noise nuisance is going to continue for a while.

I suppose, then, that there are grounds, after a long period of time, for doing something about it. So, to that extent, I would support that something can be done about noise nuisance, particularly if it is at night, but I do want us to be clear that it is not just at night that this clause, if accepted, would be exercisable.

I do think that, if we are trying to break into vehicles or disarm them, or get mechanics along or whatever, it does need some sort of authorisation. If the mover would just confirm that the process is that, whilst this policeman who has been called to the scene has to go and get permission from the sergeant in written form, before that, he sticks a label on the vehicle saying that it is creating a nuisance, and that he is going to apply for a permission to turn it off, if need be by force, so that if the owner does come along, he knows what is happening – all of which is going to take a long time. So, by that time, I think, if it is still going, it is reasonable to do something about it.

**The President:** Mr Waft.

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

Just a thought: I would have thought that, if a police officer would find a very sophisticated, expensive vehicle, before breaking the window, he would probably locate the local agent for that vehicle, and say ‘Have you got somebody spare to gain entry without doing too much damage to it?’ I would have thought they would have gone down that route.

With regard to the fact that you cannot get into vehicles sometimes, if you go into any inner city areas, they can get into any vehicle (**Mr Lowey:** Absolutely.) and have it sold, by the time you have noticed it has gone! But I just thought that if a bit of common sense is used here – I know it does not say that, but I know if there is a vehicle accident anywhere on the Island, they usually bring someone in that they are an agent of that. They can move the cars, if necessary, or attend to them or take them away, and I am sure that facility is available to the Police.

**Mr Lowey:** Mr President.

**The President:** Mr Lowey.

**Mr Lowey:** I have to say it, I learn something new every day. I know now, today, that breaking a window in a motor car is a draconian step. Well, I still cannot get my head around the fact that we employ a policeman for his common sense and approach. We have an emergency, a noisy vehicle going off in the middle of the night and the policeman arrives on the scene, he cannot rouse or find the owner. Then, he has got to go off to get a sergeant.

It might as well be an inspector. If you are going to get a sergeant you might as well get an inspector, before he can have permission to break in. I think that is the height of idiocy, I really do. I really do, and property is not that sacrosanct that the noise level that this Bill is to get rid of is...

I think it will bring the Police into disrepute, when they turn round and say, in that sort of an incident... When people are irate in the middle of the night, or in the middle of the day with the baby crying, they will turn around and say, ‘What? You’ve got to get permission to go in and break the window! Well, give me the brick, I will break it, and you take over from there.’

I just find it quite incomprehensible to me – but, then, I am only a layman.

**The President:** Mr Butt.

**Mr Butt:** Mr President, just in response to Mr Lowey’s comments.

I think, in practical terms, how it will work is that the officer at the scene would radio through and say, ‘I have a problem’. The sergeant would do something in writing there and then, where he was, and then say, ‘Go ahead’. I think that is how it... As long as there is something in writing to say there is permission to do it, he could then do it immediately.

The other point I would make is that I think a lot of officers are trained in how to break into cars, especially the Traffic Division, and they can get in. Whether they can turn it off or not is another matter, but they can certainly get in.

So, in lots of less modern cars, it might not be a problem. I think the actual permission would take a very short time: a radio call and then the writing would be done by the sergeant, wherever he was. I think that should cover it under the Act, as long as there is written authority – unless Mr Attorney can say otherwise.

**The President:** Mr Attorney.

**The Attorney General:** Well, Mr President, I was not going to address that point so much as the point that was raised by the Lord Bishop, in relation to the wording of clause 12(1)(c) and clause 14.

I do, of course, recognise that the word ‘reasonable’ poses difficulties for those who are interpreting and enforcing the law, but I do entirely agree with the Lord Bishop that, if we are going to have ‘reasonable force’ in 12(1), we ought to repeat the concept of reasonable force in 12(1)(c.) because that would be entirely consistent.

Then, I also would, respectfully, agree that, in clause 14, it would be as well to say that ‘a person who gains entry to a vehicle by virtue of section 11, 12 or 13 shall not cause more damage than is reasonable in the circumstances’ – something along those lines. We need to have a common test to be applied throughout.

So, if we are going to adjourn consideration of this Bill, Mr President, it may be appropriate for Hon. Members to consider whether an amendment is appropriate to achieve those points.

Then, just going back, if I may, to the point made by the Hon. Member, Mr Butt, I must say I think that the intention of clause 12(1) is that the officer who is going to carry out these activities, in relation to the vehicle, should have the written authority with him.

**The President:** Should do.

**The Attorney General:** In the absence of that, perhaps an e-mail or a fax. I think, unfortunately, as it is drafted, the constable would be very adventurous, if he performed these activities without the authority in his hand.

**The President:** Now, Hon. Members, there have been a number of queries raised in relation to clause 12, but we are still dealing with clause 12, Hon. Members.

I think, if I may make a comment, that in subclause (2), ‘Sections 18(5) to (8) and 19’, that actually should read, ‘1998 Act’, not ‘1988 Act’. If you remember, when we were dealing with clause 6, Mr Butt did move an amendment to subclause (4) which covered that point.

But I think that is actually a typographical error: that ‘1988’ should read ‘1998’.

Mrs Crowe.

**Mrs Crowe:** I am sorry. It is just whilst the Attorney General had his statutes out, I wonder, could he clarify that part 1 of the Local Government (Miscellaneous Provisions) Act 1984 requires that some notice is placed on the car, before it could be removed.

**A Member:** Twenty-one days.

**Mrs Crowe:** Well, I thought it was 21 days, but I was just going to ask for clarification.

As long as we are quite clear that we cannot have a vehicle removed instantaneously, because it is making a noise.

**The President:** Well, if you will just hold for a moment, I am sure Mr Attorney can get the relevant provision, and be able to clarify that question of the 28 days for us.

So, it is the Local Government (Miscellaneous Provisions) Act 1984. (*Interjections*)

**Mrs Crowe:** I am sorry, Mr Singer. I do understand your frustration and I have been addressing some of these matters myself, so one of the reasons for this is it is a matter of law, isn’t it?

**The President:** Hon. Member, I do not think any of us are really frustrated. I think the important thing is that we do try to get it right. (**Mrs Crowe:** Yes.)

Now then, Mr Attorney.

**The Attorney General:** Well, Mr President, as I understand it, the reference to the 1984 Act – that is the Local Government (Miscellaneous Provisions) Act 1984 – is important because that Act, as Hon. Members may recall, under part 1, provides a regime for the removal and disposal of vehicles.

So, what clause 12(5) is saying is that if, in fact, vehicles are to be removed, there has to be evidence that the vehicles have been abandoned. That is the theory under the 1984 Act. What clause 12(5) is saying is that if you have a vehicle that has been found and it is impossible to turn off the alarm and you have tried to notify the owner, then the vehicle is deemed to have been abandoned. Therefore, the powers under the 1984 Act may be applied. That is all that it means, Mr President.

**The President:** It is deeming the abandonment.

**The Attorney General:** Exactly and there is not, I think, any involvement of time limits and so on. (**The President:** Right.) It simply means that the vehicle can be removed, because it is deemed to be abandoned.

**The President:** Mrs Crowe.

**Mrs Crowe:** It was my understanding that there had to be a fixed notice for... It used to be 21 days, but I think that it was recently amended.

Having dealt with abandoned cars and not being able to have the capacity to have them removed... In fact, in Mr Lowey’s particular area, I think it was a nightmare, and I thought it had been amended, so that it was no longer 21 or 28 days.

**The President:** But Mr Attorney is pointing out, I think, that subclause (5) deems that vehicle to have been abandoned –

**The Attorney General:** And, therefore, the vehicle, Mr President, can be towed off and put into a pound and so on, and the charges for keeping it there will have to be paid by the owner of the car and so on. That is the only –

**The President:** Mrs Christian.

**Mrs Christian:** Mr President, could the learned Attorney confirm that having been deemed abandoned, there is then still no waiting period before it can be removed, in the 1984 Act?

**The President:** If it is deemed abandoned, this vehicle, which is making a noise, is deemed under section (5) to have been deemed to be abandoned, Mrs Christian wants to know does the waiting period for removal of the abandoned vehicle, under section 8, under the Act of 1984, still stand?

**Mrs Christian:** Or is there one? I don't know if there is one.

**Mr Gelling:** Mr President, while Mr Attorney is looking, I well recall, as was stated, in the area of the south, there was a difference which caused a lot of problems: if it was on a highway or on a local government park, there was actually a different notice procedure. It caused terrible confusion, and I think it was tried, then, to bring the two together –

**Mrs Crowe:** Oh, maybe that's –

**Mr Gelling:** – so that they were the same.

Some were getting them towed away immediately, and some were getting a 21-day notice, and I know that was tried to be brought together, so it was the same.

**The President:** Hon. Members, it strikes me that we are going around in circles here, and we are not clear on anything. Mr Attorney, have you got a response to that?

**The Attorney General:** Well, Mr President, I honestly do not think that we need to consider time limits, because what this provision is saying – clause 12(5) is saying – is that the vehicle in these circumstances is deemed to have been abandoned.

Now, the purposes of a time limit under the 1984 Act were to ensure that the vehicle had been abandoned, (**Mrs Crowe:** Right.) that the owner had given up all responsibility for the vehicle and, therefore, it was appropriate that it be towed away.

We can leapfrog all that –

**The President:** And say it *is* abandoned.

**The Attorney General:** – and say it *is* abandoned, because it is there and its vehicle alarm is going off.

**Mrs Crowe:** Really?

**The President:** Yes.

**Mr Lowey:** That is draconian. (*Laughter*)

**The President:** Now then, before we go any further and you consider that, perhaps we could...

**The Attorney General:** I do not see how else it could work, Mr President, to be perfectly frank.

**The President:** No. Lord Bishop.

**The Lord Bishop:** I would like to move an amendment

which adds the words, in page 8, line 30, in clause 12(1)(c), before the word 'use', insert the word 'reasonable'; page 9, line 6, in clause 12(3)(b), before the word 'force', insert the word 'reasonable'.

**Mr Gelling:** I second that.

**The President:** Seconded by the Chief Minister that we introduce 'reasonable' by way of an amendment.

Now, Hon. Members – (*Interjection by Mr Singer*) Yes, you have a right to reply to the whole lot, in a moment, if I think Members have finished queries on clause 12.

I think they have, so Mr Singer, reply to clause 12, please.

**Mr Singer:** Can I first take up Mrs Christian's point about putting a note on the car? But then, I think, Mrs Christian said, the owner might come along.

**Mrs Christian:** I was just trying to clarify the point.

**Mr Singer:** Fine, but if the owner comes along in the meantime, then the problem is solved, because it is not a criminal offence. The owner will get in and turn the alarm off, finished.

So, there is not much point in putting a note on the car, because if all the procedures are gone through, and the owner has not turned up, then either a policeman may try and get in the car – we have heard from Mr Butt that policemen are trained, to a certain extent, to get into some cars. If the policeman cannot get into the car, the policeman will call an engineer, and that has been mentioned here, to try and get into the car to turn the alarm off. If they cannot do that, only using reasonable force, then the car will be towed away.

People have been talking about breaking windows. There is nothing in here about breaking windows. If the policeman cannot –

**Mrs Crowe:** Its says, 'reasonable force'. (*Interjection by Mr Downie*)

**Mr Singer:** But that might not be considered to be reasonable force. The policeman will try and get in the car. If he cannot get in without causing damage, he calls an engineer. If the engineer cannot get in, then they will tow the car off.

They are not going to break windows for the sake of breaking windows. (*Interjection*)

**The President:** Now, Hon. Members, Mr Singer is replying to clause 12.

**Mr Singer:** The whole point of this is to remove the noise and disturbance at night, to remove it as soon as possible. That is the whole point of the Noise Bill.

I think the way that it is written, accepting the amendment of the word 'reasonable' in those cases, that they will try... If they cannot get into the car using reasonable force, then it will be towed away. That is it.

And the cause of the disturbance, the cause that is keeping the neighbours up, maybe, at night, although it will apply during the day as well, the problem will be removed, because the car will not be there any longer. Therefore, I think that we have really been trying to find problems which are not actually there, Mr President.

**The President:** Right, Hon. Members, with the Member in charge of the Bill having proposed clause 12, I will put to you clause 12 of the Bill and, to that, Hon. Members, you are just having circulated to you the amendment, accepted by Mr Singer, moved by the Lord Bishop, seconded by the Chief Minister, that we insert the word 'reasonable' in subclauses (1)(c) and (3)(b) of clause 12.

**Mr Lowey:** Could we be quite clear that it applies to day and night?

**Mr Singer:** Yes, I have said that.

**Mr Lowey:** You have? Right, okay.

**The President:** Mrs Christian.

**Mrs Christian:** Could we also be clear that it does require a label to be stuck to the vehicle, notwithstanding what the mover has just said, that there is no need?

**Mr Downie:** Mr President, the Member, in summing up, alluded to several costs related to this: call out an engineer, which would be a minimum of £100 at night; to have the vehicle towed away, a minimum of £200 at night.

Now, who is going to bear the cost of this, bearing in mind this alarm could be set off by some vandal trying to get into the car and some innocent person is left here with a huge bill and perhaps not the ability to pay it? All these areas need to be...

**The President:** Well, Hon. Members, we are going through it gradually and you will eventually come to Third Reading, and you can accept or reject.

Mrs Christian.

**Mrs Christian:** Mr President, it is in the Bill, but I do think that the mover again contradicted himself by saying that there is no point in them sticking a label on. The Bill says 'they shall stick a label on'. *(Interjection)* Yes.

**Mrs Crowe:** Is it for an hour, for two hours?

**Mrs Christian:** It does not matter. It stays on until it is... I just want the mover to confirm –

**The President:** Hon. Members, clause 12. I put to you the amendment which you have had circulated in the name of the Lord Bishop. Those in favour of the amendment, please say aye.

**The Lord Bishop:** I need to interrupt just for a second, Mr President. You will be cross –

**The President:** I will.

**The Lord Bishop:** – because I got it wrong. It ought to be: the 'reasonable' ought to be before 'force'. It is very minor, but people need to understand that that is the purport of my amendment. It is not before the word 'use'; it is before the word 'force':

*Page 8, line 30: In clause 12(1)(c) before the word 'force' insert 'reasonable'.*

*Page 9, line 6: In clause 12(3)(b) before the word 'force' insert 'reasonable'.*

**The President:** The use of reasonable force, instead of the reasonable use of force. **(The Lord Bishop: Yes, okay.)** Okay, right.

**Mr Singer:** Mr President, can I ask to apologise to Mrs Christian, she is right. Under subclause (3), the Bill does say that a note has to be applied, and I apologise for that. Mrs Christian is right.

**The President:** In relation to subclause 12(3):

'Before applying for an authority under subsection (1), the constable shall affix a notice to the vehicle'.

It is definitive. It is not permissive, with the word 'may'; it is 'shall'.

Right, Hon. Members, are we now content? I put to you the amendment moved by the Lord Bishop. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

I put to you then clause 12, as amended, Hon. Members. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 13, Mr Singer.

**Mr Singer:** Mr President, clause 13 makes provision for a constable to be assisted by other persons in the course of his duty. The clause caters for circumstances whereby an engineer may attend the vehicle to turn off the alarm or for a vehicle to be towed away.

Mr President, I move that clause 13 be part of the Bill.

**Mrs Christian:** I beg to second and reserve my remarks.

**The President:** Hon. Members, I put to you that clause 13 do stand –

**Mrs Crowe:** Mr President, sorry, but we do need to clarify the point Mr Downie was making before, about what could be quite substantial costs. Presumably, the – *(Interjection by Mrs Christian)* Yes, I know we are going to come on to the costs.

But I, also, do have to query whether anyone would get an engineer at two o'clock in the morning, if that is the time that...

I know the intention of the Bill is to enable people... when a car alarm goes off in the street and it is two o'clock in the morning, they want it switching off. I can well understand that.

But I really do think the practicalities of this Bill have not been that well thought through. I cannot, honestly, see anyone getting out (a) some engineer who would be able to disable a modern, computerised vehicle and (b) anyone to come and tow it away.

Thank you, Mr President.

**The President:** Hon. Members, I put to you that clause 13 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 Singer.

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

Clause 14 sets out that a person who gains entry into a vehicle shall not cause more damage than is necessary. This clause protects the vehicle from sustaining any damage more than is necessary to enter and switch off the alarm.

I move that clause 14 be part of the Bill.

**Mrs Christian:** I beg to second and reserve my remarks.

**The President:** Mrs Christian seconds. Lord Bishop.

**The Lord Bishop:** I wish to move an amendment that keeps in the reasonableness idea:

*Page 9, line 21: For 'necessary' substitute: 'reasonable, taking account of all the circumstances.'*

**Mr Gelling:** I second that.

**Mr Singer:** Can you read the amendment?

**The President:** Yes.

**The Lord Bishop:** Delete the word 'necessary'. Put in 'reasonable, taking account of all the circumstances.'

**The President:** And that is seconded by the Chief Minister. Do you wish to comment, Mr Singer? (**Mr Singer:** No.) Mr Lowey.

**Mr Lowey:** I got up this morning, Mr President, and I was in a very good mood. (*Laughter*) I am still in a very good mood, although it is trying – very trying.

I still cannot come to terms... You see:

*'A person who gains entry to a vehicle by virtue of [...] shall not cause more damage than is necessary.'*

Now, we know what the scenario is, what it is about: it is noise, and we are trying get rid of it. Here we are giving protection to the vehicle and not to the people who have been offended by the noise. That is not what the intent of the Bill was, surely.

Now, I can understand that we do not use more force than is... And the hon. mover says it is not about smashing windows. Well, it is either smashing windows or going through metal, and I know which is the easiest route!

**Mr Singer:** It isn't.

**Mr Lowey:** Well, you say it is not – however, that is a debatable point.

But on this one it is a bit like saying to a householder, if somebody breaks into your house, you are only allowed to use reasonable force – isn't it? That is exactly what you are saying, and we all know where we get to when it comes to that. What is your 'reasonable' and what is my 'reasonable' could be different, and it is an interpretation.

Well, I cannot, obviously, oppose it. I do think it is setting a minefield for the future.

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

**Mr Singer:** Only to say that I am sure the Attorney General would agree that, within the law generally, the word 'reasonable' is in many laws and the Police have to decide themselves what is reasonable, and we do not expect them to go beyond that.

So, you would not smash through a door, destroy the car, in order to turn the alarm off. You would take what steps you felt were reasonable, including, if necessary, probably towing the car away.

**The President:** Okay, Hon. Members, we are dealing with clause 14 and to that you have got the amendment: in page 9, line 21, for 'necessary' substitute 'reasonable, taking account of all the circumstances.' 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.

Clause 15, Mr Singer.

**Mr Singer:** Clause 15, Mr President, provides that when a vehicle has been entered to turn off an alarm, a notice must be left in a conspicuous position before leaving the vehicle, which must be effectually secured.

This clause protects the owner of the vehicle and provides for an explanatory notice left on the vehicle to inform him or her of the action taken to switch off the vehicle alarm.

I move that clause 15 become part of the Bill.

**Mrs Christian:** I beg to second and reserve my remarks.

**The President:** I put to Council, then, that clause 15 do stand part of the Bill.

**Mr Downie:** Mr President.

**The President:** Mr Downie.

**Mr Downie:** Just a question for the hon. mover.

If a constable enters a vehicle, he switches off the alarm, he leaves a notice, leaves the vehicle as far as reasonably practical, but if some other person comes along and then steals that vehicle, who is liable? Is it the constable? Is there any protection in there for the constable?

What is the situation regarding the person's insurance of this vehicle, if it is stolen and destroyed? This presents as many problems, I think, as it tries to resolve.

**The President:** Mr Attorney, do you – ?

**The Attorney General:** Mr President, I think when we come to clause 17 we will see there that nothing done by a constable, etc, if done in good faith, shall render that constable subject to liability.

So, if the constable does his best to secure the vehicle against trespassers, but, despite that, somebody comes and steals the vehicle and drives off in it, then the constable is not going to be personally responsible, nor would the Police. It will be, I agree, a difficult matter for the insurers.

**The President:** It would that! Right. Mr Singer.

**Mr Singer:** I thank the Attorney General for putting it

in a better way than I could have done.

**The President:** Hon. Members, I put to you 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 Singer.

**Mr Singer:** Mr President, clause 16 makes provision for any expenses incurred in connection with the entry into the vehicle in order to turn the alarm off to be recovered from its owner as a civil debt. The Bill makes no provision for an offence in respect of a continuous sounding vehicle alarm. Any costs incurred in silencing an alarm will have to be met by the owner.

I move, Mr President, that clause 16 be part of the Bill.

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

**The President:** Seconded by Mr Waft. Mrs Crowe.

**Mrs Crowe:** It will be recovered from the owner as a civil debt so, presumably, they cannot find the owner. The Department, whichever Department, is going to be charged with getting out an engineer, or someone, to disable a vehicle.

Now, I know, in the case of my vehicle, which does not even have a key – it has a little computerised card – when I did, actually, once lose that, the agent had to be telephoned at a central address and all the computerisation reconfigured, at an enormous expense. You would never lose your key again!

So, someone is going to have to pay for that. Someone is going to have to pay for the towing away. Now, Mr Downie is saying it costs £200 or something to tow it. That is if you could get someone to tow it at night, but okay, presumably it has been towed.

Some Department is going to bear the cost of all this, because if it is going to be recovered as a civil debt, then, presumably, the Department will charge the owner, if indeed they can find the owner or if, indeed, like many of our numerous unpaid fines...

I just wanted that clarified. Some Department is going to have to bear the cost for the removal, the towing, the reconfiguring of whatever the computerised mechanism is that makes a car go. So, I just wondered which Department would be likely to pay for all these costs.

**The President:** The Lord Bishop.

**The Lord Bishop:** Can Mr Singer tell us whether he means ‘may’ in this, or whether he means ‘shall’?

**The President:** Mr Butt.

**Mr Butt:** That was the point I was going to make. If, say, the alarm went off because of vandalism or because of an offence being committed by some third party, I would hope – although you cannot rely on legislation to interpret it properly – that the word ‘may’ would be used by the Police to say, ‘We shouldn’t charge these people for this because it wasn’t their fault. We’ve incurred the expense’. It does just say ‘may’.

The other point about the call-out for people: there used

to be two fully-trained police mechanics who serviced all the modern police vehicles and I think they are still there. They are called out on a regular basis. Now, I suspect they may be the first person the Police would go to at night, to tow vehicles away or to try to immobilise alarms.

**Mrs Crowe:** At a cost.

**Mr Butt:** At a cost, but it is a cost to the Police, rather than calling out the expensive engineer. It may not be possible, obviously, but that is an option they would have.

**The President:** Mrs Christian.

**Mrs Christian:** Mr President, I think that it is interesting and necessary that it be ‘may’. I think Mr Butt has illustrated – but it is going to be very hard to prove – that, in some circumstances, it may have been set off by a vandal.

Now, does it matter, so far as the complaint is concerned, who set it off? It is an alarm which is not being switched off. So, I hope to goodness that it is not going to be necessary to enforce it very often, because of the sheer complications that could potentially arise.

If it is a vehicle that is, maybe, an older vehicle and not hard to get into, the costs may be minimal – calling out one of the police experts in this, getting into the car, turning off the alarm, no need to remove the car and you can lock it again and leave it where it is, with a notice on it.

But I suppose the worst-case scenario is where nobody can turn it off, you have got to damage it to get into it, or decide not to damage it, call a tow vehicle, and take it off to somewhere where it can make a noise without disturbing anybody. I am not sure where that is going to be. (**Mr Gelling:** Ballabeg!) (*Laughter*)

But it does also beg the question that if this can be charged as a civil debt, I wonder if there will be any insurance cover in respect of the owner who seeks to have their damaged window or door replaced, because it has been broken as a result of a constable breaking in to switch the alarm off.

I do not suppose that has been tested yet, and whether or not they will have cover. It could lead to some very substantial costs for a car owner. Maybe it will encourage people not to use car alarms. Whether you can disarm them, I do not know – maybe, in the Isle of Man context, that is not too important, but I think, if you take your car to somewhere else, then you may want to have an alarm which works.

It makes the provision, but I am pleased to see that there may be some discretion applied, in relation to the recovery of the debt.

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

**Mr Singer:** Certainly, I think it is quite clear that the word ‘may’ is used in clause 16.

As far as, I think it was Mrs Crowe said, they might not be able to identify the owner, so the costs would fall on a Department. I think the problem here is that the owner will be identified, but they just cannot be got hold of. In most cases, they would be able to find out who they are from the registration.

**Mrs Crowe:** A matter of clarification, Mr President.

What I actually said was a Department of Government – be it Local Government or the Home Affairs Department –

will have costs in administering any of this legislation. They will then charge the person at fault, but Home Affairs will bear the brunt of the costs of removal and damage and whatever it might be.

**Mr Singer:** They may reclaim it.

**The President:** They may claim the costs. It is permissive. Hon. Members, it is permissive. 'May' is permissive.

May we then deal with clause 16? Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 17, Mr Singer.

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

Clause 17 makes provision for the protection from personal liability in respect of anyone connected with the entry and turning off the alarm.

I move that clause 17 be part of the Bill, Mr President.

**Mr Waft:** I beg to second, sir.

**The President:** Hon. Members, I put to you clause 17. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

We then turn to part 3, Hon. Members. Part 3 and clause 18, Mr Singer.

**Mr Singer:** Mr President, clause 18 sets out the interpretation of part 2 of the Bill. It was amended and then further amended within the House of Keys to make clear the definition of 'authorised officer'.

I move that clause 18 be part of the Bill.

**Mr Waft:** I beg to second, Mr President.

**The President:** Mrs Christian.

**Mrs Christian:** Mr President, could I just clarify a point.

With regard to the definition of a constable, I believe that the Department of Transport have people appointed with the powers and privileges of a constable. I am not sure whether that applies in the harbour areas and, indeed, in the airport areas. Is it intended that those officers will also have powers in relation to alarms: do they have sergeants to whom they can refer or would they refer to a police sergeant?

**Mrs Crowe:** And the same applies for local government.

**The President:** Mr Downie.

**Mr Downie:** Mr President, I would have thought that, in circumstances like these, an authorised officer would be in a position to summon the assistance of one of the major motoring organisations like the AA or the RAC, who have to deal with issues like this on a regular basis. My feeling, at this stage, is that this section is, perhaps, a little over-restrictive.

**The President:** Mr Attorney.

**The Attorney General:** Mr President, I am sorry, but I did not entirely catch what Mrs Christian said in relation to 'constable', but I think the gist of it was: does a constable

on duty at the harbour – does he fall within the definition of... ?

**Mrs Christian:** There are harbour police, Mr President, who are not in the regular Police Force but, I understand, have the powers and privileges of a constable.

**The Attorney General:** Well, that being so, Mr President, they would, indeed, fall within the definition of a constable.

**The President:** But they do not have sergeants.

**Mrs Christian:** But they do not, I think, have sergeants to refer to, so would they refer to a police sergeant? *(Interjections)*

**The President:** Right, Hon. Members. Mr Singer, do you wish to reply?

**Mr Singer:** The answer is that I cannot, really, give an answer to that particular matter – particularly, with a sergeant – whether there is a sergeant at the airport or the sea terminal. I, really, cannot answer that.

**The President:** It is one of those things. "Constable" includes any person having the powers and privileges... and Mrs Christian is making the point that, in fact, there are people who have the powers and privileges of a constable without being a police constable and, therefore, they may not have a sergeant to refer to.

I do not know whether that covers traffic wardens or the airport police or the harbour whatever – those are, nevertheless...

**Mr Singer:** TT marshals.

**The President:** A TT marshal has the power and privilege of a constable. Presumably, they would all have to refer to somebody in seniority of, at least, a sergeant. So, they would have to go to a police sergeant.

Mr Attorney.

**The Attorney General:** Mr President, I think Mrs Christian has spotted a very difficult point because, if we go back to clause 12(1) –

**The President:** Clause 12 is a nightmare.

**The Attorney General:** –

'An officer of the Isle of Man Constabulary, not below the rank of sergeant, may give any other officer or member of the constabulary written authority' –

I would have thought, Mr President, that the whole context of that clause would, actually, mean that you could not, if you were a constable at the airport or at the harbour, be authorised under clause 12(1) to do this.

So, if we are going to start dealing with cars parked at the airport or at a harbour, where the vehicle alarm has gone off, you are going to have to enlist the assistance of the Isle of Man Constabulary.

**Mr Singer:** Again, can I just... we are talking about

residential areas, really, in this particular Noise Bill.  
(*Interjections*)

**Several Members:** No, it doesn't say that.  
(*Interjections*)

**The President:** Now, Hon. Members. Mrs Christian.

**Mrs Christian:** Mr President, could I seek advice from the learned Attorney.

Would it be more consistent to alter the definition under this clause 18 to 'a constable of the Isle of Man Constabulary'?

I am not quite sure what the thinking of the mover of the Bill would be – or the originator of the Bill would be on this. Are special constables within that group? I think there is an inconsistency here which might be removed by saying... Well, do we need to define it, at all? If we have, in clause 12, talked about...

**The Lord Bishop:** Only the Constabulary.

**Mr Gelling:** Would it not, Mr President, be actually possible to put 'having the powers and duties of a constable of the Constabulary', but it does not mean that that constable has to be on the Constabulary, as long as they have got the powers and privileges of a constable of the Constabulary, does it?

So, surely, that would empower somebody who has been given those powers...

**The President:** Such as a TT marshal.

**Mr Gelling:** I do not think they are now, so...

**Mrs Crowe:** Mr President, it does say that an officer of the Isle of Man Constabulary, not below the rank of sergeant – this is the authorising authority – may give any other officer or a member of the Constabulary. So, he could give it to a trading standards officer, presumably.

**Mrs Christian:** No.

**Mrs Crowe:** No?

**The Lord Bishop:** No, any other officer of the Constabulary.

**Mrs Crowe:** It does not say that.

**The Lord Bishop:** That is why the...

**Mrs Crowe:** It says 'or a member of the Constabulary'.

**Mr Waft:** Well, 18(c) says a constable is any person having the powers and privileges of a constable. I think that says it all, really. If you are a constable, in whatever sort of format by which you are deemed to be a constable, whether it is harbours or the airport, if you need necessary authority by a sergeant, that sergeant can give it to you.

**The Lord Bishop:** Mr President, I think Mrs Crowe is wrong.

**Mrs Crowe:** Oh, right.

**The Lord Bishop:** Because it says 'an officer of the Isle of Man Constabulary may give any other officer' – so, within the Constabulary – 'or a member of the Constabulary'. So, I think it is just a double distinction. I do not think it refers –

**Mrs Crowe:** I do not think so. I think that is, specifically, for the airport and harbours. I do not know about that. But it does say 'any other officer', doesn't it?

**The Lord Bishop:** Or member.

**Mrs Crowe:** It does not say 'any other police officer or a member of the Constabulary'. Why would you add 'or a member of the Constabulary'?

**The President:** It does not add the 'a' in there either – 'member of'.

**Mrs Crowe:** Alright.

**Mrs Christian:** Mr President.

**The President:** Mrs Christian.

**Mrs Christian:** I am just trying to clarify to whom this applies. I would see no difficulty, particularly, if a constable of the airport police or the harbour police had the authority, provided they have to get a confirmation from a sergeant of the Isle of Man Constabulary.

**Mrs Crowe:** That's what it says. (*Interjections*)

**Mrs Christian:** But I just want to be clear that the intention is that it is not only police constables – as we understand them – who have a power to exercise this authority to break into vehicles, or whatever else.

But, again, I would take guidance from the learned Attorney as to whether that is wise or not.

**The President:** Mr Attorney.

**The Attorney General:** Mr President, it is difficult to predict these points which, I think, are very well made by Hon. Members in the course of this debate.

It seems to me that, perhaps, what Hon. Members might consider is going back again to clause 12, so that we, perhaps, could say 'an officer of the Isle of Man Constabulary, not below the rank of sergeant, may give any other officer or constable written authority to gain access to a vehicle'.

That would then mean that the constable, as defined at the moment, includes any person having the powers and privileges of a constable – and that would include the airport police, the harbour police and so on.

**The President:** We pick the constable up in the interpretation clause.

**The Attorney General:** If we were to bring that to clause 12(1), that would, actually, do the trick, I think.

**Mrs Crowe:** Could I clarify one other point, Mr Attorney.

Do the byelaw officers of local authorities – now becoming more numerous, of course – have the powers of a constable?

**The Attorney General:** Not that I am aware of.

**Mrs Crowe:** Right, okay.

**Mr Butt:** Could I just raise a point.

The word ‘member’ – it is ‘officer or member’ – there must be a reason why that word was used. It could mean a civilian working for the Constabulary. It could mean that they are garage mechanics, for example.

**The Attorney General:** I think, Mr President, if I may, it is important that not any person has these extensive powers, it should be someone who truly has the powers of a constable. So, I would suggest, as I say...

**The President:** Right, Hon. Members, we have passed clause 12. As you are aware, Hon. Members, we may very well revisit clause 1 prior to the Third Reading stage. Can I suggest that you consider the position on clause 12 at that time, as well.

But, at the moment, I am going to deal strictly with clause 18. Mr Singer, do you wish to reply to clause 18 in any way?

**Mr Singer:** Only one comment that somebody said – one Member said – about special constables: they are, of course, constables of the Isle of Man Constabulary, and are included.

**The President:** In that case, Hon. Members, I put to you clause 18 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 19, Mr Singer.

**Mr Singer:** Clause 19 makes provision for the discharge of expenses and receipts. This clause gives general directions regarding the provision of moneys by Tynwald, upon the administration of the Bill, and for any sums received to be paid into Treasury.

I move that clause 19 be part of the Bill.

**The President:** Mr Gelling.

**Mr Gelling and Mr Waft:** I second.

**The President:** Hon. Members, I put to you 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 Singer:** Mr President, clause 20 provides for the destination of fines and penalties. This clause directs that all fines be paid to the Treasury.

I move that clause 20 be part of the Bill.

**Mr Waft:** I beg to second.

**The President:** Seconded by Mr Waft. Mr Lowey.

**Mr Lowey:** May I ask something. Is that not covered in

clause 19? Why are we reciting something which we have already approved? Expenses – receipts.

**Mr Butt:** Clause 19 could relate to the civil recovery, whereas 20 covers the fines.

**Mr Singer:** It is a £100 fine, isn't it?

**Mr Gelling:** One is recovering damage; the other is recovering fines.

**Mr Singer:** This one is the £100 incident – the fine.

**The President:** Hon. Members, I put to you that clause 20 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 21.

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

Clause 21 permits the Department to make orders and regulations under the Bill. This clause gives powers to the Department of Local Government and the Environment to make orders and regulations with regard to the amount of fixed penalty notices dealing with costs connected with seized equipment, and any other such order as deemed necessary in connection with the Bill.

Mr President, I move clause 21 be part of the Bill.

**Mr Waft:** I beg to second, sir.

**Mr Lowey:** They have got to be approved by Tynwald, do they not? Therefore, the safeguard is in the orders.

**The President:** The motion I put to Council is that clause 21 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

We are on to clause 22. Mr Singer.

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

Clause 22 makes provision that this Act shall not prejudice the rights of the Department regarding the abatement of noise under part 1 of the Public Health Act 1990.

I move that clause 22 be part of the Bill.

**Mr Waft:** I beg to second, sir.

**The President:** I put to Council clause 22. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

And, finally, the short title and commencement. Mr Singer.

**Mr Singer:** Mr President, clause 23 sets out the short title and commencement of the Bill by Appointed Day Order.

I move clause 23 be part of the Bill.

**Mr Waft:** I beg to second, sir.

**The President:** I put to Council clause 23 – and we will note that it will become 2006, anyway. Clause 23: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Now, Hon. Members, that will come forward again, for further consideration.

## Employment Bill

### First Reading approved

3. Mr Downie to move:

*That this Bill be now read a first time.*

**The President:** So, we return to Item 3 on our Order Paper, which is the Employment Bill for First Reading, Mr Downie.

**Mr Downie:** I am very pleased to be able to bring this important Bill before the Council today. The main purpose of the Bill is to modernise that part of the Island's employment law which is concerned with individual employment rights.

Current individual employment rights are obsolescent, do not meet international standards, and are increasingly out of keeping with the requirements of our economy. The Bill, and the associated regulations that will follow it, will provide the Isle of Man with a modern and coherent employment law framework, which will balance the interests of employers and working people more fairly and will lead to the Island being in compliance with its international obligations.

The origins of the Bill go back to proposals published in two separate consultation documents towards the end of 2002, entitled 'Employment Bill – Review of Legislative Changes' and 'Review of Maternity and Related Rights'. Each of these documents put forward proposals for reforming the Island's employment law and sought comments from interested parties.

Following the expiry of the consultation process, the Department carried out additional research in relation to the original proposals, produced comprehensive reviews of consultees' comments and agreed the proposed contents of the Bill.

Because the proposed amendments and additions to existing legislation were very extensive, the Attorney General's Chambers has produced a consolidated Employment Bill. Thus, the Bill contains the contents of the Employment Act 1991 and the Employment (Amendment) Act 1996, both of which will be repealed, together with the new provisions.

For these reasons, whilst the Bill is long, I would hope that Members will feel that they can move relatively swiftly through those older provisions that are merely being consolidated.

Mr President, I would like to turn, now, to the contents of the Bill. The Bill makes many changes to existing statutes on individual employment rights. In some cases, the new or modified rights are contained within the Bill itself.

In other cases, particularly where the new rights contain a lot of detail, the Bill contains appropriate enabling powers for the making of regulations by the Department. All substantive regulations will require the approval of Tynwald.

The main changes are as follows. Firstly, some existing and new rights will have been applied to workers and not just employees. 'Workers' is a wider legal term which, as well as including employees – that is, persons who work under the contract of employment – includes persons performing, personally, any work or services for another.

Examples of workers include some casual workers or freelance workers but the term does not, however, extend to those who are genuinely in business on their own account.

This is not an entirely new development and recent employment statutes, such as the Sex Discrimination Act 2000 and the Minimum Wage Act 2001 have applied to the wider group.

Whilst the looser working relationship means that it would be inappropriate to extend all rights to workers, the Bill does extend certain basic core rights to them. At the same time, a number of groups of working people, who were previously excluded from some form of employment rights, such as fixed term contract employees, part-timers and employers' spouses, have now been brought within the employment law framework.

Moving on, the Bill contains enabling powers to make regulations providing all workers with a right to paid annual leave. This will be one of the most important new rights. The Department intends to bring forward regulations providing all workers with an initial entitlement to four weeks' paid leave. This is the same entitlement as workers in the United Kingdom presently enjoy.

Maternity and family rights are completely overhauled. All pregnant employees are given new rights: up to 26 weeks unpaid ordinary maternity leave, regardless of the length of service.

Pregnant employees with six months' service with their employer are entitled to not only ordinary maternity leave, but also up to 26 weeks' unpaid additional maternity leave, so that, in total, their entitlement is up to 52 weeks.

Fathers have a new right to two weeks' unpaid paternity leave. Employers are also given new rights in relation to suspension on maternity grounds.

There is a provision for unpaid parental leave for employees looking after a child with a disability. Parents of young children and carers are given a right to request flexible working. That is an alteration in their working hours.

This right has worked particularly well in the United Kingdom, and a majority of employers indicated they had seen some direct benefits from this legislation.

Workers are provided with protection against unfair dismissal and detrimental treatment for asserting any statutory employment right, such as, for example, requesting written particulars. They are also provided with protection against unfair dismissal and detrimental treatment for a Health and Safety related reason, such as bringing a Health and Safety concern to their employers' attention or for making a protected disclosure, otherwise more commonly known as whistleblowing.

This latter provision is particularly important and will, for the first time, provide protection for workers in the Isle of Man who discover malpractice at work, but who might, otherwise, be too afraid of the consequences to speak out.

The Act will enable workers to be able to voice their concerns, knowing that, provided what they do is in the public interest, they will have legal protection from being dismissed or disciplined.

Employees will be protected against detriment and unfair dismissal for taking lawfully organised official industrial action which does not last longer than four weeks.

The Bill also makes changes to the unfair dismissal regime. Most importantly, the Employment Tribunal is given new powers to order re-employment. Whilst it is understood that the issue of re-employment is an emotive issue for both employers and employees, the Department's view is that providing the Employment Tribunal with powers to order re-employment is in the broad interest of social justice.

In addition, implementation of this measure will lead to the Island being in conformity with key International Labour Organisation standards.

It is not expected that the Employment Tribunal would order re-employment in other than very rare cases. Experience in the United Kingdom has shown that cases of re-employment are few and far between – less than 20 a year – so that the proposals should, in fact, hold few concerns.

Secondly, the Employment Tribunal is given powers to make a discretionary award in respect of injury to feelings, not to exceed £5,000, in unfair dismissal cases. Whilst this is wider than the corresponding United Kingdom provisions, availability or non-availability of any award in respect of injury to feelings is presently both illogical and inconsistent across tribunal jurisdictions in both the Isle of Man and the United Kingdom, and such an award may be potentially appropriate in an unfair dismissal case.

That said, the Department estimates that such an award may be made on only one or two occasions a year.

Other changes to the unfair dismissal regime include an increased number of grounds for dismissal which are treated as automatically unfair, and the abolition of existing qualifying periods for some grounds that are already automatically unfair, namely dismissal on the grounds of racial or religious discrimination. None of the automatically unfair grounds will now require a qualifying period.

Finally, we have extended protection on a number of protected grounds to cover not just dismissal, but detriment – that is, action short of dismissal, such as demotion. So, if an employer downgrades a worker on a protected ground, such as his raising a Health and Safety concern, that person will have a remedy at the Employment Tribunal.

The Bill makes a number of other changes to existing legislation. The Employment Tribunal is given powers to award up to four weeks' pay to employees who have not been issued with written particulars or who have suffered unlawful deductions. These are two problem areas and the new measures are intended to add teeth to the existing law and to reduce the volume of Tribunal cases.

Workers are given a new right to be accompanied by a colleague or trade union official at disciplinary and grievance hearings. Again, it is hoped that this measure will lead to a reduced number of cases proceeding to the Tribunal. If workers feel that they have received justice from their employer, they will be less likely to seek redress in an external forum.

The offering of bribes, referred to in the Bill as 'inducements', relating to the relinquishment of trade union memberships is also made unlawful.

Employees are given a new right to paid time off if they are pension trustees, part-time employees, and fixed term contract employees – who are now termed 'limited term contract employees' in the Bill – are also provided with the same statutory employment protection as other employees.

The Bill, also, contains powers obliging the Department to make regulations providing for part-time workers to be no less favourably treated by employers than other workers and enabling the making of regulations for non-permanent employees, though not including agency workers, to be no less favourably treated than other employees.

In the Department's view, less favourable treatment of these groups of workers is rarely justified, and there is a developing consensus that most persons doing the same or

similar work for the same employer, over an extended period, should enjoy broadly comparable terms and conditions.

Finally, the Bill contains some enabling powers which the Department does not intend to use for the time being. These include powers to regulate aspects of working time, other than annual leave and to confer rights on so-called atypical workers, such as casual workers.

These powers are necessary in order to future proof the Bill and give the Department flexibility to deal with a range of issues that may arise in the years to come, without the need for further primary legislation on individual employment rights.

As has already been pointed out, any new secondary legislation would, of course, require the approval of Tynwald. Mr President, the present Bill was introduced into the other place in October last year. With the exception of the addition of a new clause which protects employees from being dismissed on the grounds of their sexual orientation and some corrections, the Bill before you is largely the same as the Bill which was initially introduced into the Branches.

I would like to give notice that the Department does intend to move some amendments in the Council. Subject to receiving Treasury concurrence, the Department will seek to increase the maximum amount of a week's pay used for certain purposes, such as calculating redundancy payments and the basic award for unfair dismissal cases to the level of median earnings.

In addition, the Department of Health and Social Security has asked the Department to make some amendments of a technical nature regarding the provision on insolvency and related matters in part 10 of the Bill.

Finally, there are one or two further corrections to be made.

Mr President, I believe that this Bill represents a major advance in the Island's employment law. When people look back, it will, also, be seen as one of the significant legislative achievements of the present Government. Once employers and workers have got used to the new provisions, I am sure that both sides will see the benefits of having a modern framework of employment rights which reflects present social realities and expectations.

Further, I am sure the Bill will, in time, lead to a fuller utilisation of the talents and resources of all of the people of the Isle of Man.

Mr President, I wish to move that the Employment Bill be read for the first time.

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

**The President:** Mr Lowey.

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

Well, we have certainly come a long way from, I think it was, 1991 when I think I introduced one of the first Employment Bills. I am very grateful to the Minister to hear that he is going to move some amendments to the maximum payments, because I think that was one bone of contention that I would have had. I think the Department has shown a willingness to listen to representations, and I hope that they will be matched by a generous increase, going for the middle line.

Social legislation, in my view, seems to be the 'Cinderella' – all we seem to be ever discussing... and the

new legislation that is going to come through from another place is primarily tax and Treasury orientated.

I do not say that as a criticism; that is the reality. I have asked questions: where is the social legislation? Well, here it is and it is positive. It is anti-discrimination and I think that is to be welcomed, as the Minister said – unfair dismissal and giving rights to people who can see some wrongdoing, commonly known as whistleblowing, and that has been addressed.

There is a weakness – one which I will highlight – about agency workers, and I do worry about pensions and sick pay for agency workers, because that is just storing up trouble in the... and Government employ a lot of these agency workers, now. I think that we are storing up problems for the future.

But I generally welcome this Bill and it is a big Bill, but I think there has been an awful lot of consultation taken place and, while we have not got a hundred per cent agreement, I think the Department are to be congratulated in pursuing this bit of legislation in the manner in which they have.

I will be supporting the Bill.

**The President:** Mr Waft.

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

I support the Bill, sincerely. I would like to congratulate Sue Strang and Jonathan Clague in bringing this Bill forward at this time. They have certainly done a lot of work to try and get it within this legislative programme.

With regard to the consultation, I think there has been extensive consultation on this Bill and, obviously, we will find something in it to make comment on, during its progress through the drafting.

With regard to the situation that I find myself in, time and time again, when I am seeking access for the disabled into employment, I am given assurances that a Bill regarding the workplace for disabled... this Bill that we are talking about now needs to be in place before that can occur.

I hope that is the situation, and it will be resolved in the near future when we are looking into further legislation. Perhaps the Minister might be able to elaborate on that one.

Could I, also, ask the Minister: sometimes we do get Bills that go through and you get Royal Assent, etc, but then there are piecemeal Appointed Day Orders – in other words, they only allow for part of the Bill to become law, but not others and they are regulated to a certain extent. Would the Minister be inclined to see the whole of this Bill come into legislation straightaway, as soon as it gets approval?

Thank you, Mr President.

**The President:** Mr Downie to reply.

**The Minister:** Thank you, Mr President.

First of all, could I say that I concur with the views of the Hon. Member of the Council, Mr Lowey, who, I think, took the original Employment Bill in 1991. We have come a long way.

I take on board his remarks about the maximum payments that can be awarded by the Tribunal and, in fact, he will be pleased to know that the Department, in one of its own amendments, has actually identified and taken on board the comments that were made in the other place, and we will be putting an amendment forward, which links us to the median amount of payment.

In the other place, it was suggested that the figure be £500 a week and we have come in just below that. We are not on the £500, but we have reviewed the situation and we are prepared to make a move in that particular area.

Mr Lowey said he welcomed the progress that has been made in the Bill with areas like unfair dismissal, whistleblowing and, in fact, in the adjacent isles, in the UK, the Whistleblowers' Charter came about, following the Piper Alpha disaster, when there were certain practices taking place, involving the safety of the engineering equipment, that actually led them to introduce that particular part of legislation into the framework.

I thank Mr Lowey for his support. I know that, during his time in the Department, employment issues and the progression of social legislation was one of utmost importance to him. I do not think, in this Bill, he will find our Department wanting in any of those areas.

The Hon. Member of Council, Mr Waft, quite rightly, congratulated the officers who have been spearheading this Bill. They have done a tremendous amount of work in the Department. There has been a lot of consultation.

He made reference to the Disability Bill, which is coming along behind this, and I understand that is in the hands of the Health Minister. We are being more and more focused to take on board problems which exist for these type of people who we have to make a proper legal framework for and, where possible, integrate them into the workforce, whenever we can –

**Mr Waft:** Just to clarify, Mr President.

**The President:** Mr Waft.

**Mr Waft:** It is not covered in the DHSS Bill which is following this through. I understand it will be coming forward after that Bill, but it will not be in this session.

**The President:** Mr Downie.

**The Minister:** But I think, as you said quite rightly, we have to get the basic framework in place in the Employment Bill to allow other things to happen further on down the line. I am sure, during the summer recess, there will be a lot of work done, trying to deal with the issues that you have actually raised.

In a similar vein, a question was asked about agency workers. I can give an assurance, now, that, in clause 1(6)(i), we can look at that, and if we can see a way to include agency workers, we will be drafting a suitable amendment to deal with that.

The problem that we have is that there would be the requirement to carry out some further consultation. I would be happy to set that in motion, but we may not be able to come back with exactly what the Hon. Members want, as far as dealing with agency workers at the present time. As I say, we will revisit that over the next few weeks and see what we can do.

From the Hon. Member, Mr Waft's comments about piecemeal legislation and Appointed Day Orders and so on, we would like to include as much as we possibly can within the Employment Bill. I did make reference to us trying to look ahead and look to the future. I think that it is a good time to do this, because it is about every 15 years we get an opportunity to bring a meaningful piece of legislation

forward. When we finally finish with it and it has Royal Assent, this will be what the employers, the employees and the unions, everybody else, will use as a basis for conducting their business on the Island.

So, I welcome the support I have had today. I hope that during the debate that we have over the next few weeks, through the progression of the Bill, if there are any technical issues that need to be raised, you can either raise them with me before the sitting, or I am hoping to have my colleagues here from the Department who have a much broader knowledge of this very difficult area in some parts.

So, Mr President, I beg to move the First Reading of the Bill.

Mr Gelling: I beg to second

**The President:** Right, Hon. Members, then I put to you that the Employment Bill 2005/2006 be read for a first time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

### **Employment Bill** **Standing Order 22(2) suspended** **to take Second Reading**

**The President:** Mr Downie.

**The Minister:** Yes, with your leave, Mr President, I am aware of the huge amount of legislation that is about to come through us. I would crave your indulgence to see if it would be acceptable for me to seek to suspend Standing Orders, so that we could have the Second Reading of the Employment Bill today. Then we could get into the meat of it, possibly, the next time that we meet.

I move:

*That Standing Order 22(2) be suspended to enable the Second Reading of this Bill to be taken.*

**The President:** You may move to suspend Standing Orders. It is not for me, it is up to the Hon. Members of the Council to decide whether or not they will give you permission, sir.

You are seeking permission to suspend Standing Orders to take the Second Reading?

**Mr Singer and Mrs Christian:** I second.

**The President:** It has been seconded by Mrs Christian and Mr Singer. Are we content, Hon. Members, that we should take the Second Reading of this particular Bill this morning?

**Members:** Agreed.

### **Employment Bill** **Second Reading approved**

**The President:** In that case, Hon. Member, Mr Downie, I will allow you to continue.

Can I just make a little comment, before you take the Second Reading. You did say in your brief, going through for the First Reading, that all substantive regulations need the approval of Tynwald. Perhaps, when you are going through the Second Reading you would give us some examples of those that do not require the approval of Tynwald.

Mr Downie.

**Mr Downie:** I will do my best, Mr President.

Mr President, as I indicated to you at the First Reading, the purpose of the Employment Bill 2005 is to modernise individual employment rights on the Island.

The Bill consolidates the Employment Act 1991 and the Employment (Amendment) Act 1996 and introduces many new provisions.

The parts of the Bill are structured in a way designed to be helpful to employers, beginning, as they do, with rights at recruitment, proceeding to rights during employment and then moving on to rights at termination, such as the right to notice and the right not to be unfairly dismissed.

If I could move swiftly through the 13 parts of the Bill: part I re-enacts sections 1 to 7 of the Employment (Amendment) Act 1996, which prevents an employer or employment agency, in offering employment, from discriminating against a person because he either is, or is not, or will not, become or cease to be a trade union member or involved in union activities.

The only change is that discrimination on the ground of the applicant's past union membership, or non-membership, is expressly outlawed, as is discrimination in respect of past or present union activities.

Part II re-enacts, with amendments, the provisions of the Employment Act 1991, relating to the employee's rights to receive: (a) written particulars of the terms of his employment; and (b) itemised pay statements.

The main changes are as follows: (a) some additional particulars are to be included in the statement of terms of employment; (b) the Tribunal is to make an award of two to four weeks' pay in case of failure to provide a statement of terms of employment in any proceedings, not just those for non-compliance with this part.

Part III of the Bill partly re-enacts the existing provisions of the Employment Act 1991, and partly makes new provision relating to workers' rights while in employment, with respect to: (a) deductions from wages by and payments to workers, to employers; (b) inducements by employers, to workers to be or not to be trade union members or involved in union activities, nor to have their pay or conditions negotiated by collective bargaining; (c) time off for trade union duties or activities, public duties, to look for work, ante-natal care, and the duties of pension scheme trustees.

The main changes to the existing legislation are as follows: (a) the existing protection against unlawful deduction from pay is extended from employees to all workers; (b) the deduction of payment of an employment agency's fee from a worker's pay is made illegal; (c) the Tribunal is given power to award a worker up to four weeks' pay if it finds that the employer has made or received an unauthorised deduction or payment; (d) there is a new provision whereby inducements by employers to workers to be, or not to be, trade union members or involved in union activities, or not to have their pay or conditions negotiated by collective bargaining are made unlawful; (e) there is a new right to take time off, with pay, to carry out the duties

of a pension fund trustee, and the existing right to take off for jury service is strengthened.

Part IV of the Bill contains new provisions for protecting workers who blow the whistle on illegal activities or other misbehaviour by their employers.

Part V contains mainly new provisions to protect workers being subjected to any detriment by their employers for exercising their employment rights. It extends the existing protection against action short of dismissal taken by an employer for exercising the right to be or not to be a member of a trade union, or to take part in union activities to cover nine new grounds: (a) actions in the interest of Health and Safety; (b) exercising rights related to annual leave; (c) performing the duties of a pension scheme trustee; (d) whistleblowing; (e) taking family leave; (f) asking for flexible working; (g) exercising the new right to accompany or to be accompanied at a disciplinary or grievance hearing; (h) taking protected industrial action that is lawfully organised, official industrial action, which does not last longer than four weeks; (i) asserting any statutory right.

Part VI gives an employee who is suspended on health grounds, because she is pregnant, has recently given birth, or is breastfeeding, a new right to be offered suitable alternative work at the same rate of pay, or, if none is available, to be paid at the same rate as before.

Part VII gives employees new rights to family leave without pay for the following purposes: (a) maternity – this replaces the existing right to return to work contained in the Employment Act 1991; (b) to look after children – initially this will apply only to children with a disability, but may be extended to other children; (c) paternity, for the father of a child or the mother's partner, in certain cases; (d) adoption, including adoption leave for one adopter and paternity leave for the adopter's partner or the other adopter, where the couple are adopting jointly. This part also gives an employee the right to flexible working in certain circumstances.

Part VIII gives a worker a new right to be accompanied by a trade union official or colleague at a disciplinary or grievance hearing.

Part IX largely re-enacts existing provisions relating to the minimum periods of notice to be given by an employer or employee to terminate employment and the employee's right to a written statement for the reasons for dismissal. In relation to the right to a written statement, the requirement that the employee has four weeks' continuous employment is removed and an employee who is dismissed while pregnant or on family leave is entitled to receive a written statement without making a request.

Part X re-enacts the existing provisions of the Employment Act 1991 relating to unfair dismissal with a number of amendments, the most important of which are as follows. The cases where dismissal is automatically unfair are currently limited to: (a) the exercise of the right to be or not to be a trade union member or involved in union activities; (b) demanding the minimum wage; (c) pregnancy; and (d) racial or religious discrimination.

These are widened to include a dismissal for any of the following additional reasons: (a) it was because the employee took maternity or family leave under part VII; (b) the employee took action in the interest of Health and Safety; (c) the employee exercised rights in respect of annual leave; (d) the employee exercised duties of his being a pension scheme trustee; (e) the employee blew the whistle; (f) the employee exercised a statutory right, for example,

requesting written particulars; (g) the employee requested flexible working; (h) the employee exercised the right to be accompanied at a disciplinary or grievance hearing; (i) the employee took part in protected industrial action; (j) the dismissal was due to discrimination on the ground of the employee's sexual orientation; (k) the dismissal was due to religious discrimination; (l) the employee was selected for redundancy on unfair grounds, including any of the above grounds.

The general requirements to have a year's service to be able to bring an unfair dismissal claim and to be under retirement age are disregarded in all of these cases. At present, in the case of either racial or religious discrimination, one year's service is required.

The Tribunal is given new powers, to order the employer to reinstate or re-engage the employee and to award compensation for failure to comply. It is also given power to include compensation for injured feelings up to £5,000, in an award for unfair dismissal.

Part XI of the Bill largely re-enacts existing provisions under which an employee whose employer is insolvent or ceases trading can claim certain arrears of pay and other debts from the Department of Health and Social Security, with certain changes, the most notable of which is that the right is limited to cases where the employer made, or was liable to make, National Insurance contributions in respect of the employee.

Part XII enacts existing provisions relating to the Employment Tribunal, with certain changes. Notably, provisions relating to the Employment Tribunal are harmonised with the new Tribunal regime, which will be established under the Tribunals Act, so that the chairman and members of the Tribunal will be appointed by the new Appointments Commission.

Part XIII contains miscellaneous provisions, mostly re-enacting existing provisions. The most important changes are as follows: (a) firstly, the categories of worker excluded from protection are altered. A number of special cases who are presently excluded from employment rights or who have more limited employment rights are removed. These are: part-time employees working under 16 hours a week; workers not holding a required work permit; employees on fixed-term contracts lasting for one year or more; employer's spouse; persons employed for a specific task not expected to last over 12 weeks.

(b) Persons whose employment is tainted with illegality are excluded from protection through the Employment Tribunal, which will have discretion to consider such a case if it considers this to be just and equitable.

(c) Persons working wholly or mainly outside the Isle of Man are excluded from all rights, except in respect of insolvency. Here the right to claim from the DHSS becomes limited to cases where the employer made, or was liable to make, National Insurance contributions in respect of the employee.

Part XIII also makes other changes: (a) there is an expanded provision empowering the Department to make regulations conferring employment rights on individuals who may not be technically employees; (b) the prohibition on contracting out of employment rights is excluded in the case of a consolidated settlement of a claim – that is, a settlement reached with the assistance of the Industrial Relations Service; (c) the Department is required to make regulations affording part-time workers the right to be not less favourably

treated than full-time workers and empowered to make regulations affording limited-term employees the right to be not less favourably treated than permanent employees; (d) the Department is required to make regulations giving a right to annual leave and empowered to make regulations as to other aspects of working time.

The Department plans to bring forward regulations providing workers with a right four-week paid annual leave.

The Bill amends other Acts, the main changes being as follows: the Trade Disputes Act 1985 is amended, so that the function of appointing a court of inquiry is transferred from the Council of Ministers to the Appointments Commission, and that is the body to be set up under the Tribunals Bill.

The Redundancy Payments Act 1990 is amended, so that entitlement to a redundancy rebate from the DHSS is removed, where the employer was a director or beneficial owner of or controlled the employer, and fixed-term contract employees are no longer able to waive their entitlement to a redundancy payment.

The Trade Unions Act 1991 is amended, so that the procedural requirements for taking lawful industrial action are improved and strike ballots are to be conducted by post.

The Minimum Wage Act 2001 is amended, so that the provision is made for an enforcement notice to be issued in respect of a former worker, as well as an existing worker, thus closing an existing loophole.

Finally, to deal with a question that was put to me earlier, secondary legislation that does not need Tynwald approval only applies to Appointed Day Orders.

So, Mr President, I beg to move:

*That the Employment Bill be now read a second time.*

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

**The President:** Mr Lowey.

**Mr Lowey:** Yes, Mr President.

Very, very briefly, nothing to add, except: the terms of employment legislation – have there been any prosecutions brought under this Act?

That brings me to: how do you enforce the Act? I notice, by the Bill, it says it will have no significant costs on the personnel and finance, and yet we are extending what I would call the positive side.

I do know, in this form of legislation, the Minister, I am sure, will agree, when he says that both – and I almost used the old-fashioned term ‘both sides’; I hope they have got out of that term, we are all on the same side – employers and employees will use this bit of legislation as their bible, if you like, and refer to it.

Is there enough enforcement already here? If there has been no enforcement of the terms of employment legislation, then there has to be an ability, as a last resort.

The only other thing I want to comment on is that I would like to place on record what I would call the unsung heroes of industrial relations, and that is the Tribunal who work unsung, in the background, in the shadows, and achieve an immense amount. I did notice that they had come under attack, recently, regarding... they were the ‘lackeys’ of the board or the Department. I would just like to say that my view is that they are not lackeys, but they have been instrumental

in keeping labour relations going in a fair and equitable way over the years.

**The President:** Mr Waft.

**Mr Waft:** Could I ask: I am given to understand that all Bills that now go through are scrutinised as regards the Human Rights Act, when it eventually will be brought into place. If that is the case, or not, I would like that clarified.

Have all the areas within this Bill been perused to see that they do comply, should that Act ever come on the statute books? Perhaps the Minister might have some clarification.

It is just that, in some areas within here, they separate employees for one reason or another, and I just wondered whether that was scrutinised by someone.

**The President:** Does any other Member wish to contribute to the Second Reading? In that case, Mr Downie, would you care to reply, sir?

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

I would like to thank Mr Lowey, again, for his comments. Terms of employment: I am advised that individuals enforce their rights of employment at the Employment Tribunal, and, contrary to what may have been stated in other areas, the Tribunal has worked very, very well. It does provide a meaningful vehicle for exactly what we want it to provide for.

There was some discussion about having a further appeal body, in a recent debate in another place, but we have all the figures relating to the issues that are dealt with by the Employment Tribunal on the Isle of Man and, really, you just would not be justified, in the additional expense. It would be used on so few occasions; in fact, I can advise the Hon. Member that, in the whole of Northern Ireland, they deal with less than 20 cases a year.

So, we think there is adequate enforcement and, in fact, the Department, on a number of occasions, does advertise in the local media about a person’s employment rights. We try and indicate to people how important it is to make sure that they are given the minimum wage and are receiving the minimum wage, and that there is a procedure for dealing with any complaints that come along.

Turning to my hon. colleague, Mr Waft, I can assure him that all of the Bills that leave our Department, particularly those relating to employment and other issues, are very, very carefully scrutinised, to make sure that they are Human Rights compliant. However, I cannot speak for any amendments that might come forward; but when they are printed, they are compliant.

I have just got one or two other things to add here regarding the Human Rights Act. The Attorney General’s Chambers are well aware of the Human Rights Act, and several provisions have been drafted recently, specifically with the Human Rights Act in mind. For example, we have been involved in some issues relating to the Trades Dispute Acts, which had to be researched.

With that, Mr President, I think I have answered all of the questions that have been put to me. I beg to move that the Bill be read a second time.

**The President:** Hon. Members, the motion I put to Council, therefore, is that the Employment Bill be read for

the second time. Hon. Members, those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Hon. Members, I am grateful for Mr Downie's comment in relation to the regulations, as well, which cropped up. I raise the point, there are a huge amount of regulations and rules which will flow from this particular legislation. You have only got to read the maternity section, to realise what is coming forward in the rules and regulations. I thought it was particularly interesting, when you read clauses 173 and 174, sir – 173, in particular, is unusual in legislation.

I think it is an appropriate time at which we retire for lunch, Hon. Members. We will resume our deliberation on dogs, I think, at 2.30 p.m.

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

### **Dogs (Amendment) Bill** **First Reading approved**

4. Mrs Christian to move:

*That the Dogs (Amendment) Bill be now read a first time.*

**The President:** Please be seated, Hon. Members.

Right, Hon. Members, having completed First and Second Reading of the Employment Bill, we will turn to the Dogs (Amendment) Bill for the First Reading. I call on the Hon. Member, Mrs Christian.

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

The Dogs Act 1990, which this Bill seeks to amend, has, obviously, been in force for some years now. The Department, over recent years, has been evaluating the effectiveness of the 1990 Act, by going through a period of consultation with a wide variety of consultees. As a result of that process, a number of amendments are being put forward.

To just summarise what the Bill seeks to do, it does introduce an alternative means of identification for dogs, allowing modernisation in that respect, with regard to the introduction of micro-chipping as a means of identification.

It, also, amends the provisions in relation to controls of dogs on a road.

The Byelaws in relation to dogs are, currently, made by the Department, and the proposal is, in the Bill, to give this power to local authorities, albeit that there would be an overview by the Department. They would approve the proposals from the local authorities.

If the Department was not supportive of their changes, then they would have recourse to Tynwald. The changes in these provisions also extend the 'clean it up' provisions, so that there will be more powers for local authorities, in that regard, and it is hoped that they would appoint authorised officers and would assume greater responsibility, with regard to enforcing the Act.

Fixed penalties will be introduced through this provision. They will be able to be applied by particular officers, and this would take effect, rather than take people to court.

There are a variety of minor amendments and repeals dealt with, under the Act, but those, Mr President, are the main changes embodied within the Dogs (Amendment) Bill.

I beg to move the First Reading.

**Mrs Crowe:** I beg to second and reserve my remarks.

**The President:** Mr Lowey.

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

Two things that the Bill gives me concern about: where a dog has got to be under 'effective control', who decides whether it is under effective control or not?

I might say my dog is walking alongside me, and it is under my control, and yet somebody will say, well, that dog did not have a lead on it and it is not under control. Who is the deciding body on whether a dog is under effective control or not?

The second: I am less than happy with the Byelaws being made by the local authorities and enforcement, because these things will not be enforced. How many of the local authorities on the Island have enforcement officers?

In other words, already, at the moment, they should be enforcing certain Byelaws, but they are not doing so. This seems to me, if we are effectively saying the dogs are going to be controlled by, in effect, local authorities, which the Bill seems to me to be implying, I do not think that they are up to speed yet, on being able to enforce it.

So, a law will be enforced, not universally, but *ad hoc*. Is that the right way to be dealing with the dog presence in the community?

**The President:** Mr Singer.

**Mr Singer:** It is interesting that the dog needs no collar, if it has got this electronic transponder, which, I suppose... does that mean it identifies that the dog is licensed and whatever? But how does a policeman know, immediately, without having to take the dog all the way to a police station, to check if it is licensed or not?

Secondly, this 'dog under control': I assume this means a person can have their dog under control, even if it is not on a lead. I am a bit concerned, if a dog is walking down a main road – it may be a perfectly well behaved dog – and something frightens it, and it runs off into the road and causes an accident, then who is responsible for that?

I, personally, believe that any dog being walked on a main road should have a lead. Then it, surely, is in control.

**The President:** Mr Downie.

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

Since the introduction of this Bill, I have had one or two comments raised, particularly about dogs under control.

There are leads available which are up to 25 metres in length. One could hardly make a case that an animal is properly under control, when it is a distance of some 25 metres away from its particular owner.

I think the other section in the Bill which would need some explaining: for years, we have accepted that, when a dog is owned by someone, it has a collar attached to it. There are only a limited number of micro-chip readers on the Island, at the present time. The animal welfare organisations have them, and the vets have them.

I am not aware that the Police have been supplied with these particular devices, and, to date, the chips only reveal the name of the owner. If it is a pedigree animal, it also includes the pedigree number, as well, which can be included.

But if that animal were at large, unfortunately, until it was actually caught, there would be no way of telling, without one of these machines, what the situation was regarding that dog. Although I do not have any problems with the main part of the Bill, I think that is an area that we might need to look at in more detail, Mr President.

**The President:** Okay, Mrs Christian to reply.

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

I am sure we will come to some of these issues in much more detail, when we get to the clauses stage, but if I may respond just to the issues that have been raised.

With regard to the question of effective control, yes, it does mean that the dog does not have to be on a lead. It is for the owner or the controller of the dog, in the event that there is some incident, to prove that they were in effective control.

I do not think that, if a dog is walking quietly along a carriageway with its owner and not on a lead, not doing anything harmful, no-one is going to question whether that dog is under effective control. The only issue arises is when something happens, in my view, and then it would be down to that person to prove that they were in effective control.

There has been a lot of consultation about this, and whether or not dogs should be on leads. Certainly, the question of whether or not these new 25 metre long leashes allow that a dog can be considered to be under effective control, I do not think it follows that, at 25 metres away, it necessarily would be under effective control, simply because it was on a lead.

So, it is according to the circumstance and up to the controller, the keeper, of the dog, to argue and display that it was, or was not, under effective control.

With regard to the Byelaws issue, the Department will have an overview on this and will be producing some model Byelaws, with a view to trying to encourage local authorities to standardise Byelaws in relation to dogs.

But the further provision in this allows local authorities to retain some of the moneys from fines, and it is hoped that, by that means, they will be encouraged to extend the powers of some of the officers that they employ, to have more rigorous control over dogs in their areas, because they will get a financial reward.

**Mr Lowey:** And if they do not?

**Mrs Christian:** Well, if they do not, there is no difference now between the Department making the Byelaws and them not enforcing them, and *them* making the Byelaws and not enforcing them. It is really, to some extent, down to the people who live in the area putting pressure on their local authority to do the job.

With regard to the transponders, many animals now are being identified by means of a micro-chip. Collars can be lost, but it is true to say that you do need a reader, to know if there is anything in there and what is in there.

So, if a dog is loose without a collar, in any case, it clearly has first to be caught to try and identify it. It might be caught under the existing dogs legislation, as a stray. It would be then for either a constable or the dog warden, who I feel quite sure would have a micro-chip reader, if this is enacted, to identify whether, in fact, it is chipped and, after that, take the necessary steps to... If it is chipped, it is identifiable and they can find the owner; if it is not chipped, then it falls into the same category as any other dog without a collar on. If you

can find the owner, then you can take some action. But if you cannot identify it, then the various steps to be followed are set out in the existing legislation.

I hope that responds to Hon. Members' questions, Mr President.

**The President:** Mr Singer.

**Mr Singer:** Mr President, could I just ask for information?

If the transponder... does that show that the dog is licensed each year? What happens to ensure the transponder shows the dog has been relicensed each year?

**Mrs Christian:** This does not cover the licensing issue; it covers the identification issue, but I will check before –

**Mr Singer:** Does the dog not now, at present, on its collar, have to wear the disc that shows it is licensed for that year? So, this seems to be a weakness.

**Mrs Christian:** Well, I will check before the next Reading, Mr President, whether there is a distinction between the licensing issue, and paying of the licence fee, and the identification issue.

I accept that, if a dog is micro-chipped, it no longer has to wear a tag. That is not to say that it does not have to have paid a licensing fee. It just does not have to –

**Mr Singer:** When the Police pick a dog, they can tell that it is licensed or not –

**Mrs Christian:** Well, I will check on that issue.

**Mr Singer:** – because it is illegal for the dog not to have that on, (**Mrs Christian:** Yes.) at the present, I believe.

**Mrs Christian:** Well, I will check that the dog with a chip would still have to pay an annual licence fee.

**The President:** Okay, Hon. Members, in that case, we will put to Council that the Dogs (Amendment) Bill be read for the first time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

That draws us to a conclusion of our Order Paper, Hon. Members.

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

### Consideration of Summaries of Proceedings in the Council of Ministers (September, October and November 2005)

**The President:** Council will now sit in committee to consider the Summaries of the Proceedings of the Council of Ministers (September, October and November). Thank you.

*The Council sat in private.*