



**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, 8th May 2007

Present:

The Hon. President of the Council (The Hon. N Q Cringle)

The Lord Bishop of Sodor and Man (The Rt. Rev. Graeme Knowles),
Mr D Butt, Mrs. C M Christian, Mr E A Crowe, Mrs. P M Crowe, Mr. A F Downie, Mr E G Lowey and Mr G H Waft,
with Mrs M Cullen, Clerk of the Council.

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The Council adjourned at 11.55 a.m.

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Legislative Council

The Council met at 10.30 a.m.

[MR PRESIDENT *in the Chair*]

PRAYERS

The Lord Bishop

LEAVE OF ABSENCE GRANTED

The President: This morning, Hon. Members, I have granted leave of absence to the Attorney to be off the Island.

Orders of the Day

Personal Liability (Ministers, Members and Officers) Bill Second Reading approved

1. Mr Butt to move:

That the Personal Liability (Ministers, Members and Officers) Bill be now read a second time.

The President: We have but a short Order Paper in front of us. Our first Item is the Personal Liability (Ministers, Members and Officers) Bill. Second Reading, Mr Butt.

Mr Butt: Thank you, Mr President.

The Personal Liability (Ministers, Members and Officers) Bill 2007 is concerned with the personal liability and indemnification of members and officers of Departments and also of members of Statutory Boards when undertaking their official duties. It also covers the liability and indemnification of a group of officials and others who are not members of Departments or Statutory Boards, and these are known in the Bill as 'designated persons'.

The Bill has been drafted to implement the recommendations from the Tynwald Management Committee: that is that Members of Tynwald should have the same protection as officers are given in schedule 1 to the Government Departments Act 1987.

The explanatory memorandum to the Bill contains a statement of compatibility with the Convention rights within the meaning of the Human Rights Act 2001 and the Bill is considered to be compliant with the Human Rights Act 2001.

Where rights against Members, officers and designated persons are limited by the Bill, they are not limited retrospectively. The Bill specifically saves rights against the Departments and the Boards and the right to compensation for breaches of Convention rights.

The indemnification of a designated person or a member of a Department or Statutory Board can apply to an act done before the date of commencement. This is considered to be compliant with the Human Rights Act 2001, on the grounds that it confers a benefit that does not prejudice others.

The powers of the court to undertake judicial review of decisions under the clauses are not limited by the Bill.

Hon. Members will note that the Bill does not contain any specific provisions regarding commencement. In accordance with section 10 of the Interpretation Act, the Bill will come into operation on the date on which it is passed by Tynwald Court.

Mr President, going back to the First Reading, there were some queries from Hon. Members of Council which I would like to take the opportunity to answer, before moving on to the clauses.

Mrs Crowe requested clarification regarding the position of specifically members of the Isle of Man Post Office Pension Trustees and also mentioned such Committees as the Road Transport Licensing Committee and the Planning Committee. I can confirm that if the members or trustees of these bodies are Members of Tynwald or a Statutory Board, they will be covered by this Bill. If they are lay members of such bodies, they will be covered if they are specified as being designated persons for the purposes of the Bill by an Order made by the Council of Ministers under clause 3(2)(1).

Mrs Crowe, Mr President, also questioned the position of existing insurances held by Departments and Statutory Boards. The Bill would not prohibit a Department or Board from taking out private insurance. However, it should be borne in mind that if a petition of dolence is taken out in the High Court against a Department, this cannot be covered by any policy of insurance.

Mr Waft asked why the Governor is empowered to sign a certificate confirming that a person is a designated person. This power has been granted to the Governor because he is independent, whereas other officials, such as the Chief Minister, the Chief Secretary, the Attorney General, and the Chief Registrar, are themselves specified as designated persons, and therefore cannot be given this power.

A further query of Mr Waft concerned the use of the word 'may' in respect of the option to indemnify a person against liability. 'May' is used in clause 1, paragraph 7(2) and in clause 4(2).

In clause 1, paragraph 7(2), the Department, with the concurrence of the Treasury, and in clause 4(2), the Treasury, are given the discretion to indemnify members or officers, or a designated person. The word 'may' is used as this is conditional on the Treasury being satisfied that the person acted in good faith, and his functions required or empowered him to do the act, and that they were acting in execution of authority conferred on them. If these conditions were not met or are not met, the use of the word 'may' leaves an option not to indemnify.

Finally, in response to Mr President's question regarding the position of the estates of former Members of Tynwald, I can advise that as the Member would have enjoyed indemnity under this Bill, it follows that the Member's estate would likewise enjoy the same indemnity. The statute of limitations would not be applicable in this respect.

So, Mr President, having said all that, I move that this Bill be read a second time.

The President: Mr Downie.

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

The President: Hon. Members, the motion that I put to the Council is that the Personal Liability (Ministers, Members and Officers) Bill 2007 be read for a second time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Personal Liability (Ministers, Members and Officers) Bill Consideration of clauses commenced

The President: Mr Butt, do you wish to continue with the clauses, sir?

Mr Butt: If I may, sir, I can carry on with the clauses, yes.

The President: In that case, we will move on to the clause stage, Hon. Members, and we will take clause 1.

Mr Butt: Clause 1 replaces paragraph 6 of schedule 1 to the Government Departments Act 1987 and replaces it with three new paragraphs, numbered 6, 7 and 8 in this Bill.

The new paragraph 6 is similar to the existing paragraph 6(1), but extends the protection from personal liability to the political Members of Departments, as well as the officers.

Subparagraph (1) of that paragraph provides that a member or officer of a Department shall not be personally liable in respect of any act done or anything omitted to be done in the performance of their functions if they acted in good faith. In addition, they must also honestly believe: that their functions required or empowered the doing of the act; or that they were acting in the exercise or execution of any authority conferred on them as a member or officer.

Paragraph 6(2) makes it clear that the Department itself will not be relieved from liability in respect of the acts of its members and officers. The Department will be vicariously liable in respect of their employees' and officers' actions in the course of their employment or duties. In such cases, the employee or officer would be legally entitled to seek indemnity from their Department.

Subparagraph (3) ensures that the protection afforded to members and officers by subparagraph (1) does not prevent the award of damages where the act or omission is unlawful under section 6(1) of the Human Rights Act 2001.

The new paragraph 7 refers to indemnification of members and officers. It is similar to the provisions of the existing paragraph 6(2), which is replaced, but extends the indemnity to political Members of Departments, as well as the officers. It provides that, with the concurrence of the Treasury, a Department will be able to indemnify a member or officer against the financial repercussions of any action, suit or proceedings brought or threatened in respect of any act done in the performance, or purported performance, of their functions. The Department must be satisfied that the member or officer acted in good faith.

Again, as before, the member or officer must also have acted in the honest belief that their functions required or empowered the doing of the act, or that they were acting in the exercise or execution of authority conferred upon them

as a member or officer.

The power to give this indemnification under paragraph 7 applies if the member or officer is not legally entitled to an indemnity from the Department. Normally, a Department will be vicariously liable in respect of the actions of an employee or member, and in such cases the Department would be required to pay the costs and damages. Where there is no obligation to provide indemnity, this provision will enable the Department to consider providing indemnity in appropriate cases.

Mr President, there are occasions where employees and officers may have incurred a liability in the purported course of their employment but, although believing they were acting in accordance with their duties and they may have even been instructed to do a certain act, it was not part of their legal duty. As a result, there may be no legal right to indemnify. In such a case, the Department is given a specific power to consider indemnifying the employee or officer.

Mr President, an amendment was moved in the House of Keys which inserts the words 'or the High Court' after the word 'Department' at line 22, on page 2. Following the word 'Department' are the words 'or the High Court'.

This amendment has the effect that a member or officer of a Department may be indemnified by that Department if either the Department or the High Court is satisfied he acted in good faith.

The new paragraph 8, Mr President, contains supplementary provisions and includes the following definitions for the purposes of the substituted paragraphs: 'act' also includes an omission; 'member and 'officer' includes a former member and officer and that includes that member or officer's estate.

The definition only applies in respect of acts done while he or she was a member or officer of a Department.

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

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

The President: Mr Crowe.

Mr Crowe: Yes, Mr President, it does seem a sensible move, this clause 1, to give legal protection to members as well as officers of Departments. So, I am happy to support clause 1.

The President: Mrs Christian.

Mrs Christian: Mr President, in 7(2) in the amendment to the schedule, it still leaves a degree of exposure to someone who does something in good faith, though I expect that any Department would seek to protect their members, unless they felt that they were really acting outside their legal delegation. The whole of the Bill, in fact, deals only with acts of members of Departments and is no cover at all in a parliamentary context. I accept that it is not meant to be, but it just raises the question how we are all sitting as parliamentarians.

However, this is not what it is about; it is about Members doing something in respect of their departmental responsibilities and it is an improvement certainly on the present position – though it is conceivable that someone could do something in good faith under clause 7(2) and still be exposed to personal liability.

The President: Lord Bishop.

The Lord Bishop: Just to pick up on that last point, the way in which 7(2) is worded is that the Department still has the discretion not to, because it does say 'may'. I can see why it says 'may', because it then goes on to say if the Treasury concurs and if you can prove (a) and (b). But the way it is worded, the Department could actually say no, even though (a) and (b) had been proved, because the Bill says 'may' – 'we may do it, but we choose not to'.

Is that why the amendment was put in in another place, which says 'or the High Court'? Can the person who is thus denied indemnity go to the High Court and the High Court grant them indemnity? If that is the case, then my question is answered.

The President: Mr Waft.

Mr Waft: Yes, I picked up on that one as well, Mr President.

The 'may' has always been a problem to me in these legislation proceedings, but particularly when we give the power to the Department, with concurrence of the Treasury, to indemnify someone. If in the member's view, he has acted in good faith, it does not state there is any appeal procedure if the Department said, 'No, you have not acted in good faith.' It can give him an awful lot of problems if he is denied access to immunity by the Department.

So there are no appeal proceedings there, unless the intention of the Bill is that he is able to apply to the High Court. It does not actually say that.

The President: Mrs Christian.

Mrs Christian: Mr President, there seem to be two situations here: one where the Department has to make a determination as to whether or not this act is an appropriate act, notwithstanding that it is not within their legal functions; and the other case seems to be where they have... It would seem to me rather strange that if you had gone to the High Court and the High Court had determined that it was appropriate, the Department could then still refuse.

I feel that the intention possibly in the amendment was to say, if the High Court has said it is okay, then they shall be paid. I can only imagine that, in terms of the drafting, the Department would take cognisance of such a decision, but it does not compel them in those circumstances, does it?

The President: Mr Lowey.

Mr Lowey: Is this not an addition of the Human Rights legislation, where there has to be an appeal procedure in place? In this, you cannot appeal in Government. The only independent appeal would then be to the High Court. If the High Court then is... I think maybe that is where the procedures for the High Court come in, because it is compatible with the Human Rights legislation. That is the only thing I can think of.

I think we are trying here to define a case which really only case law will actually define. When you write legislation, most people obey the law – 99 per cent of us obey the law – and the legislation is in being for the 1 per cent that does not. I suppose this is trying to wrestle with the imponderables, isn't it? Nothing is 100 per cent.

The President: Mrs Crowe.

Mrs Crowe: It shows you how differently, I suppose, we can all interpret legislation, when perhaps the wording does need to be more clearly defined. I suppose, with this, it came back to personal experiences. I know this Bill emanated from that time when a Member had been appointed by a previous Minister to act in a delegated function. That Member's decision was challenged in court, and that particular Member had no cover at all. As Minister, I had cover from the Department and I think it ended up with the deeds of my house in a safe somewhere, as far as I can remember! I think it was quite...

I presumed it meant if the court, at that petition of dolence, said that the Member should be indemnified... but that is, in fact, acting after the event. Where the liability was required was when that Member was being taken to court. So, I have a difficulty as well – and I am sorry, I do not have a solution as to how – but in purely practical terms, I supported that particular Member, because I felt what he had done... I supported him. But had there been a Minister that perhaps had not supported, that particular Member would have been in quite...

Mr Lowey: Cut adrift.

Mrs Crowe: Yes, exactly, and that is where this Bill actually emanated from, from that particular case, as I remember rightly.

So I do not think it is clear, but I would not know, whether if you made that into 'the Department shall'... Why should it need concurrence? I do not know.

Mr Waft: Through you, Mr President, the problem is that whether you supported him or you did not support him, it would be entirely down to the Member's responsibility for his own actions. Even in this, they could say, 'Well, I didn't support you, therefore you acted against the wishes of the Department –'

Mrs Crowe: That is right.

Mr Waft: '– and we are going to wash our hands of it.' My problem is: has he got any appeal to the High Court? If he has, that is probably one of the answers to that.

Mrs Christian: There is the other side of this, Mr President. If a Member does act in an irresponsible way – [*Technical interference in audio-recording*] If you act in good faith – [*Technical interference*] You could have a 'may', when you could have a maverick.

Mr Lowey: I could think of one or two.

Mr Waft: Through you, Mr President, I think the problem is not the 'may' and 'shall'. The problem is... if it goes to court and the court decides he did act in good faith, that is fine, but if it is left to the Department –

[*Technical interference in audio-recording*]

The President: – '...power to give indemnification under paragraph 7 applies if the member or officer is *not* legally entitled to an indemnity from the Department. Normally

a Department will be vicariously liable' – [*Technical interference*]

Could we just hold on for one moment, folks? I understand that *Hansard* is struggling there this morning and we have had quite a conversation...

[*Discussion with the Hansard Clerk*]

The President: I am happy to take a five-minute break. The discussion is very interesting and I would be sorry to lose it, so my wish would be to take a five-minute break.

Due to technical difficulties in the Council Chamber, the Council adjourned at 10.55 a.m. and resumed its sitting in the Tynwald Chamber at 11.02 a.m.

Personal Liability (Ministers, Members and Officers) Bill Consideration of clauses concluded

The President: Hon. Members, having reassembled, we will continue now with our Personal Liability (Ministers, Members and Officers) Bill.

Now, we did have a very interesting discussion. I am sure we can pick it up again. Does anybody wish to continue on the same theme, or shall we ask Mr Butt to answer those queries which have already been raised? Then if Members wish to come back, I will allow you to do so, before I put it to the vote. Mr Butt.

Mr Butt: Thank you, sir.

First, I would like to thank Mr Crowe for his supportive comments.

Going back to other comments, Mrs Christian raised the issue about paragraph 7(2), as to the effect of that. Can I just perhaps point out that there are two particular sections to this clause: 6(1) is about the act done and there is indemnity there; and 7(2) is purely about the power to indemnify by the Department, in concurrence with the Treasury. So there is a separation there.

As regards how the judgment would be made, if you look at 7(2), parts (a) and (b) are very objective – they should be easily determined as to whether they are accurate or not. The only subjective part is the matter as to whether the person acted in good faith and in the honest belief. I can see that might be the only area where there would be a problem, in deciding if the person acted in good faith or not.

I am sure that the Department would have to have a rigorous inquiry into that aspect of the action done and would require the concurrence of Treasury in this particular case. So I would expect that each case would be judged on its merits. The objective matters in (a) and (b) are fairly clearly defined. The rigorous inquiry would have to be as to the matter of acting in good faith or not, and honest belief.

The Lord Bishop mentioned the matter of the High Court. I think, as has been pointed out, whether that amendment was in the Bill or not, there would still be a power to go to the High Court by any party to make a determination. The fact that it is in this Bill does not actually affect things materially, as far as I can see.

I thank Mr President for pointing out paragraph 9 in the explanatory memorandum, which I think clarifies things

slightly. I just reiterate: the fact that the word 'may' is used does actually give an option to the Department and the Treasury to not indemnify if, in fact, they find there has not been an act in good faith or the person has acted outside the powers of their functions.

Thank you, Mr President.

The President: Mr Lowey.

Mr Lowey: It still does not answer the question though, does it? Is the onus of proof on the individual who is asking for indemnity to prove that he acted in good faith; or is the onus of proof on the Department to prove that he or she did not act in good faith?

I would imagine if I have got to prove something, I always thought you were innocent until proven guilty and if I acted in good faith, where does the onus lie? Does the onus lie on me to prove I acted in good faith or does the onus lie on the Department to prove that I did not act in good faith?

Mr Butt: I think the way this Bill is worded, it does not actually require proof; it just requires the Department and the Treasury to make a determination, so the issue of proof does not come into it. The Department needs to make its own decision on the merits of what is before it.

Mr Lowey: Proof or merits – it does not really matter, does it? That is what is going to decide it at the end of the day.

The President: Does any other Member wish to pass any comment? No? Mr Butt are you happy with your...?

Mr Butt: Yes, it is just that the member or the officer in the Department would have a set of conditions under which he is working. He would have a delegation or he would have a job description which would define what he can and cannot do. That would be covered under (a) and (b): they are very specific, with separate rules.

The President: Mr Waft, you are looking unhappy.

Mr Waft: I look at it just like somebody applying to an insurance company to pay out on a claim. If that claim is denied by the insurance company – in this case, the insurance company being the Treasury and the Department in conjunction – if there is no appeal procedure, it is natural justice that they can appeal. You can appeal to an ombudsman from an insurance point of view, but the fact is that you should have the ability to appeal to the High Court – which, by the sound of things, you can. If that is the case, I do not see any problem with it.

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

Clause 2.

Mr Butt: Yes, Mr President, clause 2 moves on from Departments and deals with the liability of members and officers of Statutory Boards.

The clause replaces the present paragraph 11 of schedule 2 of the Statutory Boards Act 1987. It replaces it with three

new paragraphs, 11, 11A and 11B. These paragraphs insert provisions analogous to those I have just outlined in respect of the Departments in clause 1.

There is no difference in substance, except that provisions apply to members and officers of Statutory Boards instead of Departments.

Again an amendment has been moved in the House of Keys at page 3, line 34, which inserts the words, 'or the High Court' after the word 'Board'. This amendment has the same effect that I have mentioned in relation to clause 1.

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

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

The President: Mr Lowey.

Mr Lowey: Could the Member refresh...? I go through a senior moment once a morning, as Hon. Members know. Could he refresh my memory about the extra other Statutory Boards that Mrs Crowe referred to at the earlier session.

The President: It comes up in clause 3, I think.

Mr Butt: Yes, Mr President, clause 3(2)(1) provides that the Council of Ministers can designate other departments and official bodies.

Mr Lowey: Yes, okay.

The President: Hon. Members, the motion that I will put to Council is that clause 2 do stand part of the Bill. Again, we note in fact the 'High Court' words added by the other place. Those in favour of clause 2, please say aye; against, no. The ayes have it. The ayes have it.

Now clause 3, Mr Butt, please.

Mr Butt: Yes, Mr President.

Clause 3 introduces similar provisions for persons who are neither members of Departments or Statutory Boards. There are several Government Departments, persons and officers presently not covered and in this Bill they are named as 'designated persons'.

While the first two clauses will ensure that members and officers of Departments and Statutory Boards will be protected in respect of personal liability, clause 3 will close the gap where a considerable number of other public officers and officials are not. These officers and officials are referred to in the Bill as 'designated persons' and are listed in subsection (2).

This clause and clause 4 therefore plug this gap by providing equivalent protection to that afforded to officers of Departments and Boards.

Subclause (1) of clause 3 deals with the liability of designated persons who shall not be personally liable in respect of any act done or omitted to be done in the performance or purported performance of their functions, provided that the designated person acted in good faith. They must also have acted in the honest belief that their functions required or empowered the doing of the act, or they were acting in the exercise or execution of any authority conferred on them in their official capacity.

Subclause (2) lists those persons who are public officers

and officials who will be designated persons. For the purposes of the Bill they are: the Chief Minister; a Minister of a Department; the Attorney General; the Chief Secretary; the Clerk of Tynwald; and the Chief Registrar. While officers serving in Departments are already protected by the provisions in the Government Departments Act, this new designation now also includes permanent and temporary officers serving in the designated persons' office. So, therefore, officers working in the Attorney General's Chambers, in the Clerk of Tynwald's Office and the Chief Secretary's Office and at the Registry will now be given some protection from liability.

Additionally, as we have mentioned a short while ago, the Council of Ministers are empowered to add other designated persons to the list by means of an order which, under clause 5(3), must receive Tynwald approval.

Subclause (3) ensures that the protection afforded to designated persons by subclause (1) does not prevent the award of damages where the act or omission is unlawful under section 6(1) of the Human Rights Act 2001.

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

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

The President: Mr Crowe.

Mr Crowe: Mr President, I am happy to support this clause as well.

I would just like to ask the mover of the Bill if there are any other categories of official or officer or lay members of committees or Statutory Boards that are not yet covered by this legislation, who may be covered in the future?

The President: Mrs Christian.

Mrs Christian: Thank you, Mr President.

I note in the list in clause 3(2) we are dealing with parliamentary officers – the Clerk of Tynwald and Clerks in the Tynwald Office – and it brings me back to, perhaps, a gap in my own knowledge as to the protection of Members carrying out parliamentary functions, and where indemnity sits for them on select committees or standing committees.

This deals with Boards and Departments, except with the specific reference to parliamentary officers in clauses 3(2)(h) and 3(2)(i). I presume that if there is a gap, it could in future be covered by the order referred to in clause 3(2)(1) and Members could be mentioned in the order made by the Council of Ministers – which would seem perhaps to be an unusual function for Council of Ministers in dealing with the protection of parliamentary members.

However, as I say, Mr President, it is a gap in my knowledge and understanding of how we are covered as parliamentarians. There may well be cover, but I am not entirely clear what it is.

The President: Mr Waft.

Mr Waft: Thank you, Mr President.

I just want clarification, really. As Government *per se*, we are insured under a public indemnity insurance, named insurance company etc. If we delegate more responsibility for that insurance, is that insurance company, whoever they are, in agreement with what is in this Bill or will they be

another filter which the individual has to go through? He has been through a Department, he has been through Treasury, which has agreed that there should be allocation of so many millions of pounds or whatever. The actual insurer for the Government on the whole, as I say, is going to carry the can for this, I suppose, at the end of the day – unless it comes out of Government coffers under a different umbrella.

Where does that lie? Just some clarification there might help.

The President: Mr Butt.

Mr Butt: Yes, Mr President.

In response to Mr Crowe, there are several committees etc not covered by this legislation, and it will be for the Council of Ministers to designate them, under clause 3(2)(1). I think we mentioned last week, the Planning Committee, the Road Transport Licensing Committee etc. So that would be a matter for the Council of Ministers to designate, as required, with approval of Tynwald.

In response to Mrs Christian, this Bill has come about because of the recommendations of the Tynwald Management Committee, which did not include, obviously, parliamentary activity. Maybe that is a move for the future.

I understand that the Clerk of Tynwald's Office would only be covered in respect of their administration duties and not in respect of the management of select committees, or members of select committees will not be covered under this legislation. Maybe that is a matter for the future or maybe a subsequent Bill to be –

Mrs Christian: Or an amendment.

Mr Butt: As regards Mr Waft's comment about insurance, this actually is not insurance; it is just a matter of a way to indemnify members and officers for the actions they have taken, if it is the correct thing to do and they fit the criteria.

The President: Can we just pick up on Mrs Christian's point, so that we are all clear of where we are coming on this one. The fine definition between governmental and parliamentary is understandable. It first came, in my understanding, to the Management Committee because Ministers were covered (**Mrs Christian:** Yes.) but members of the Department were not covered.

Now my understanding is this Bill now covers the members of a Department when carrying out their duties. So the fine line is that, in fact, whereas previously Ministers had some cover and Members did not, now members of a Department will have cover.

Mrs Christian: For their departmental –

The President: For their departmental work.

Mr Butt: Yes, Mr President, and this Bill only refers to Statutory Boards and departmental work.

The President: Absolutely, it is governmental.

Mr Butt: Parliamentary work is not covered in the way this Bill is worded.

The President: Mrs Crowe.

Mrs Crowe: Could I just ask, perhaps, a query from you, Mr President; I am sure you will be able to help me. Would parliamentary privilege cover persons acting on select committees and standing... To what extent would there be any – ?

The President: To a very limited extent in committee; it certainly works in Tynwald, (**Mrs Crowe:** Yes.) but not outside. I think Members will need to be very careful on that one. I would not like to give a ruling on a parliamentary committee basis. (**Mrs Crowe:** No.) Marilyn is about to tell me.

The Clerk: According to Malachy, parliamentary privilege does extend to committees.

The President: Well, I think I would want him to show me in *Erskine May* exactly where it would give that cover, so I am not going to –

Mr Butt: Sorry, Mr President, what was the –

The President: I am not going to help you on this one, until I have looked at it.

Mrs Crowe: I only asked the question, Mr President, inasmuch as parliamentary committees now are getting far more involved in judicial affairs. We had the case recently that went through Tynwald, with a Tynwald Committee sitting on a case that had been determined in law, about a boat, and even more so now in legislation in matters that are really, I suppose, outwith parliamentary affairs – Public Accounts Committee hearings and select committee hearings on major matters.

The President: I am very content with privilege when we are within Tynwald. Once we move outside, I become less content. I think Members always need to be more aware of that one. If our Clerk does tell us, in fact, that privilege covers committees, well, so be it. But as I said, I think I would check on that one and confirm for you. Mrs Christian.

Mrs Christian: I think that we have to accept, Mr President, that this Bill is specifically about departmental matters. (**The President:** Departmental.)

The only thing that sways me in that is that it has got this reference to the Clerk of Tynwald and the Clerk of Tynwald's Office, which kind of overlaps a bit. I am content to leave it there and I think we probably all, outside of the consideration of this Bill, might make enquiries for a reassurance on the parliamentary position.

The President: Mr Waft.

Mr Waft: I would support the Clerk in her observations on select committees. I think I have read that.

The President: I need to be convinced.

Mr Butt, do you wish to add anything further to our discussion, before I put clause 3?

Mr Butt: No, Mr President, just to say that the parliamentary issues may be something that committees should look at on their own behalf to see how covered they

are, before they undertake their functions – each individual committee.

Mr Lowey: A Question.

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

Clause 4.

Mr Butt: Mr President, clause 4 deals with the indemnification of designated persons. It provides that the Treasury will, or more accurately 'may', be able to indemnify a designated person against the financial repercussions of any brought or threatened action, suit or proceedings in respect of any act done in the performance or purported performance of their functions.

The Treasury must be satisfied that the member or officer acted in good faith. They must also have acted in the honest belief that their functions required or empowered the doing of the act or that they were acting in the exercise or execution of authority conferred upon them in their official capacity.

The power to give indemnification under subclause (2) applies if a designated person would not otherwise be legally entitled to an indemnity out of the general revenue but only to a discretionary award.

An amendment again, Mr President, on page 5, line 32, was moved in the House of Keys which inserts the words, 'or the High Court', after 'Treasury' – that is at line 32 of page 5. This amendment has the same effect as that moved in relation to clauses 1 and 2 which I referred to previously.

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

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

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

Clause 5, Mr Butt, please.

Mr Butt: Yes, Mr President, clause 5 contains supplementary provisions.

In subclause (1), the word 'act' is defined as including an omission. A 'designated person' is defined as the person referred to as such in clause 3 and includes the estate of designated persons, but only in respect of actions done by that person when he or she was a designated person.

Subclause (2) provides that if evidence is needed that an individual is or was at any time a designated person for the purposes of clauses 3 and 4, this evidence will take the form of a certificate signed by the Governor.

Subclause (3) declares that an order made by the Council of Ministers under clause 3(2)(1) of the Bill amending a list of designated persons requires the approval of Tynwald before it can come into operation.

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

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

Mr Lowey: I think I must put my two-penn'orth in. I am rather perturbed that the Governor is getting involved again in the political scene, when the moves, over the last couple of decades, were to remove the Governor from political involvement.

I understand the argument put forward is an independent voice, but I am sure there are other independent voices, other than the Governor, that could have been used. I can think of retired Deemsters and all the rest of it who could actually have been nominated in some form.

I think it is wrong in principle to be involving the Governor. This is not a personal thing of the present Governor or any previous Governors, but we, as a political arm, have decided that the Governor should be removed from politics, and here we are enshrining him in primary legislation. I just hope this is a one-off and not a trend that is to be encouraged in the future.

The President: Mr Crowe.

Mr Crowe: Thank you Mr President.

Is it not because the Governor appoints the members of Departments? Is there not a situation where the Governor is actually appointing the Ministers and the members of Departments and this could be the reason for it?

Mr Lowey: The Governor does not appoint. The Governor in Council appoints and that is different – the members. He may appoint the Ministers.

The President: Mrs Christian.

Mrs Christian: I can see, maybe, some slight difficulty, in that if it were 'Governor in Council', they would be signing their own indemnity. I think that may be a reasonable justification –

Mr Lowey: Going to an independent –

Mrs Christian: – for appointing someone who is totally outside of the list of people who are indemnified.

Mr Lowey: I would agree with that, but I do challenge the belief that the Governor is the only person that could be an independent outside. Considering it has been a conscious decision of Tynwald to remove the office of Governor, in my view, which is the Queen's representative, really and truly...

All I am saying is I do not want it to be the tide swinging the other way, where the Governor will be getting involved. I am not going to oppose this one, but I think we should really underscore the point that it should not be a first port of call.

The President: Mrs Christian.

Mrs Christian: I wonder whether the President of Tynwald could be classed –

Mr Lowey: Yes, well, that had crossed my mind but...

The President: Mrs Crowe.

Mrs Crowe: It actually would not be difficult to amend this to 'an appropriate independent person'. I was surprised

to see the Governor, but I actually also thought, like my colleague, Mr Crowe, that it might have been because he actually hands the warrants out. But, as you say, that is more a function of the office.

I do believe it could have been the Lord Bishop; it could have been the President; there are numerous independent appropriate persons, without having to run to the Governor for a determination. However, it has been left in another place.

The President: Mr Downie.

Mr Downie: Mr President, I feel that this is appropriate, because at the end of the day, when a Minister is appointed and members of Departments are appointed, some of them do have powers which do not just end on these shores. For example, some Ministers have access to immigration issues; other issues like shipping, for example, where we are talking about primary legislation in the UK being extended to the Isle of Man.

At the end of the day, the Queen's representative in the Isle of Man is the Governor. Looking at this clause 5(2), I feel it is appropriate that this is actually strengthening what we do in the Isle of Man. It is giving recognition that we are a semi-independent nation, but it is putting a hand on our shoulder and saying that we are still part of the British Islands and the territories that are overseen by Her Majesty.

I do not have this particular problem. There are occasions when documents are signed by our Deputy Governor, who is a Manx person and First Deemster, so I do not really have a problem with this.

The President: Mrs Christian.

Mrs Christian: Could I just comment on another aspect of this clause, not for the mention of Governor, and that is the claim on the estate of a former designated person. I just wonder what the rules are about estates? When is an estate an estate and when has it been dispersed? I presume at the point at which an estate has been wound up, (**Mr Lowey:** Probate.) there would no longer be any claim against it.

Mrs Crowe: It does not say that.

The President: Right, Mr Lowey.

Mr Lowey: Yes, on that very issue, it was raised earlier that the High Court was inserted, whereas everybody does have the right, anyway, to go to the High Court. That struck me as odd because we have had lots of bits of legislation in the past, but I have never seen that.

It is almost Old Testament: the sins of the father will... Even when you are dead, they are going to go after you! That surprised me when I saw it put in the original Bill.

But then you have answered it, as far as I am concerned. I am happy, but it was a strange one, which jars.

Mr Waft: Through you, Mr President.

I think the suggestion that the President should take the place of the Governor in this clause is a possibility, because the President is totally independent. He has got nothing to do with the election of the Ministers or the members or anything to do with that at all, whereas the Governor has.

Mr Lowey: I think it is a slow way of growing up. I do

not think you run back for the comfort factor of the Governor, which we relied on to a large degree. I think that has been taken away. We have grown up a bit politically, and I still think that we should not...

I am prepared to accept it today; we are a bit late in dealing with this one. But I am just putting it on the record that I do not think it should be assumed, when we talk about an independent arbiter, that we should look to Government House. There are other institutions and individuals in the Isle of Man that can do that role equally well, and without demeaning the position of the Governor.

The President: Mr Butt to reply.

Mr Butt: Thank you, sir.

I think Mrs Christian has hit the nail on the head when she says that there is no independence, really, in the Council of Ministers or the Chief Minister, in respect of making the decisions on their own position, in effect. Most of these people are actually civil servants, designated persons – the majority will be. Whether it is appropriate for the President to actually sign indemnities on behalf of civil servants, I am not sure. Maybe that is...

Mr Lowey: Civil servants are under the Crown, and that is another of the rows we have had.

The President: There is no amendment to that end, so it does not matter. Mr Butt, you can continue.

Mr Butt: Yes, sir. I was going to suggest that if an amendment was required, by all means... But the Governor is independent and it was just the main reason for this being in here.

Can I respond to Mrs Christian talking about the 'estate': I am not an expert on this, I must admit, but I suspect she is correct when she says that when the estate has been dispersed, then the action would cease, because the estate has gone and is no longer the estate, in effect. So, the action would stop at that point.

Mrs Christian: It couldn't start, presumably.

Mr Butt: Yes. As regards the suggestion that maybe – again, it is not an amendment – the Deemsters could take over the role, they may well be involved in the court proceedings that may be part of this action. So, they may not be appropriate, either.

But I would suggest, as Mr Downie says, that for this particular purpose – a fairly small function – the Governor is the appropriate person, unless anyone wishes to make an amendment.

Mr Lowey: No. I am not prepared to, but I do not think it is.

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

Clause 6, Mr Butt.

Mr Butt: Thank you.

Clause 6 makes the following transitional arrangements.

Firstly, to avoid retrospective prejudice to any claimant, subsections (1), (3) and (5) make it clear that the new waiver of liability for members and designated persons applies only to acts done on or after the date of commencement.

Subsections (2), (4) and (6) in relation to indemnity – that is, the power for the Treasury, Departments and Boards to indemnify – apply to acts done before, on or after the date of commencement.

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

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

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

Clause 7, the short title, Mr Butt, please.

Mr Butt: Yes, Mr President.

Clause 7 provides the short title for the Bill. I beg to move that clause 7 stand as part of this Bill.

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

The President: Mr Lowey.

Mr Lowey: Could I just say, Mr President, that it does not say when it is coming into action. The Act may be cited, but it does not say when it is going to get the Appointed Day Order.

Normally, it says it will come in on such and such a date. There is an omission on this one, which seems strange.

The President: I think Mr Butt gave the answer earlier but, nevertheless, Mr Butt, you can reply, sir.

Mr Butt: Yes, sir. I did say, in my initial Second Reading that... if I can just find that. It comes in under this section, I think it is section 10, of the Interpretation Act.

Yes, it will come into operation on the date on which it is passed by Tynwald Court.

Mr Lowey: Yes, that is fine – my second senior moment of the morning.

Mr Butt: And it is section 10 of the Interpretation Act.

The President: Hon. Members, the motion that I put to Council is that clause 7 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Hon. Members, I think that is as far as we go on this particular measure this morning.

Procedural

The President: I think there is an interesting bit I can put on to the record now, and using Mr Lowey's term, 'which causes me some concern' – not really, but it is just one of

these interesting things. I get rather tired of reading 'his or her', 'he or she' during this particular bit. I am sure when we are dealing with members and officials, it is not necessary at all times to specify gender.

Mrs Christian.

Mrs Christian: Well, really, Mr President, as a member of the Commonwealth Parliamentary Association –

Mr Lowey: You would.

Mrs Christian: – we are very anxious about gender and we have asked all branches – except not Parliament, but branches – to support gender-neutral language, and I would have to disagree.

The President: And 'a member' can be either, in my book – and would be either. Anyway, never mind.

Mrs Christian: But it is not just members; it is officers.

European Communities (Amendment) Bill First Reading approved

2. Mr Downie to move:

That the European Communities (Amendment) Bill be now read a first time.

The President: We will turn, then, to the European Communities (Amendment) Bill. Mr Downie.

Mr Downie: Thank you, Mr President.

The European Communities (Amendment) Bill 2007 relates to the Treaty concerning the accession of the Republic of Bulgaria and Romania to the European Union, signed in Luxembourg on 25th April 2005 and known as 'the Accession Treaty'.

The Accession Treaty provided for the accession of Bulgaria and Romania to the EU on 1st January 2007, or on 1st January 2008, if it was not believed that the countries had made sufficient progress towards bringing their legislation and policies into line with the standards of the Union. Following a report by the European Commission in September 2006, which found the countries had made adequate progress, they became the 26th and 27th member states of the European Union on 1st January 2007.

The Accession Treaty sets out the conditions and arrangements for admission of the new countries, sets out the adjustments to the existing Treaties necessary as a result of those countries, and describes any transitional arrangements which must be limited in scope and duration.

It falls into four parts: (a) a Treaty between the 25 existing member states and Bulgaria and Romania; (b) a Protocol concerning the conditions and arrangements for admission of the Republic of Bulgaria and Romania to the European Union and adjustments to the Constitutional Treaty if it were to be in force at the time of accession, or from the time it came into force – this Protocol is now unlikely to be used; (c) the Act concerning the conditions of accession of the Republic of Bulgaria and Romania and the adjustments to

the Treaties on which the European Union is founded if the Constitutional Treaty is not in force – the ‘Act of Accession’; and (d) the final act of the parties to the Treaty.

The Bill contains two clauses, Mr President.

Clause 1 amends section 1 of the European Communities (Isle of Man) Act 1973, so as to include that Treaty within the list of treaties implemented by the 1973 Act in Isle of Man law.

Clause 2 provides a short title for the Bill.

Mr President, I beg to move the First Reading of the European Communities (Amendment) Bill 2007.

The President: Mr Waft.

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

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

European Communities (Amendment) Bill Standing Order 22(2) suspended to take Second Reading

Mr Downie: Mr President, with your leave, I would seek:

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

You will be aware that, on the sitting of 22nd May, I have absence –

The President: You do, sir.

Mr Downie: – and it would be my intention then to come back with the clauses and the Third Reading at that stage, the following week.

The President: Take the Second Reading now?

Mr Downie: Yes, sir.

The President: Hon. Members, are you agreed that we should take the Second Reading?

Members: Agreed.

European Communities (Amendment) Bill Second Reading approved

The President: In that case, Mr Downie, continue, sir.

Mr Downie: Mr President, the European Communities (Amendment) Bill is the latest of a number of Bills over the years to amend our European Communities (Isle of Man) Act 1973 to take account of new countries joining the EU.

As Hon. Members know, Bulgaria and Romania became members of the European Union on 1st January this year. Due to the Isle of Man’s Protocol 3 relationship with the European Community, the Island not only has an obligation to deal with new member countries in the same way as existing member states, but also to incorporate their Accession Treaties in Manx law.

I hope that my letter, which Members received at the weekend, and the explanatory notes which accompanied the Bill, will provide Members with some useful background information on this matter.

The Bill contains a single substantive clause which adds the Accession Treaty for Bulgaria and Romania to the list of Treaties defined as ‘Community Treaties’ in section 1(1) of the 1973 Act. The Bill does nothing more than that. It does not change our relationship with Europe. The EU has changed a little, although much less than when 10 new countries joined at once in 2004, but our Protocol 3 relationship with it remains the same.

Some Members may, of course, wish to use the Second Reading of the Bill today as an opportunity to have a wider debate about the European Union, the Island’s relationship with it and our 1973 Act. That is why I provided Members with a letter covering issues that are not directly related to the Bill, but which I felt may be of interest. I hope that this will be provided and used usefully.

Mr President, as someone who has had to promote the Isle of Man internationally, I know, as well as anyone, the influence that the EU has in our Island. It sometimes seems that life would be easier if we could remove ourselves from the European influence or, perhaps, just ignore it and hope it goes away.

Attractive as these options may appear on a superficial assessment, we have to accept the practicalities of our position and, whether we like it or not, the EU exists and will continue to exist for the foreseeable future.

Our neighbours are all EU members and we engage in a significant amount of trade with them and the other EU countries. Even if Protocol 3 did not exist and the Island had no formal relationship with the European Union whatsoever, the EU would still be there and we would still have to work within a framework of both EU and wider international standards and pressure.

The European Communities (Amendment) Bill that is before the Council today is simply about the Isle of Man fulfilling an international obligation. Whatever views Members may hold about the EU, I would hope that we can all agree that the Island should meet its obligations.

Mr President, I beg to move that the Bill be read for a second time.

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

The President: Mr Crowe.

Mr Crowe: Thank you, Mr President.

Can I, first of all, thank Mr Downie for the very helpful information he has circulated to Members. I am happy to support the Bill because we are just, as he says, complying with our obligations under the European Communities (Isle of Man) Act 1973.

It seems to me as straightforward as that. I know there are wider issues, but these are not part of the Bill.

The President: Mr Lowey.

Mr Lowey: I agree absolutely with the mover of the Bill. This is simply adding two countries, who have joined the EU, and the same rules that apply to the other members of the EU will now apply to Bulgaria and Romania.

Of course, I would say to those who knock the EU that we do not have to do anything at all, if we do not want to trade with them; but we do want to trade with them and they are a very important trading bloc. Yes, some of the things they do irritate from time to time, but I think the irritations and the 1973 special arrangement that the Island got at that particular time – and it is slightly amended, from time to time – have proved their worth to the Isle of Man.

I do not think we bring the temple down at this stage, just because two new countries... and there will be other countries joining in the future, where we will have to have primary legislation like this again to cover that, which seems a shame, really.

But I would agree. This Bill is necessary at this time, and it has got my full support.

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

Mr Downie: Yes, Mr President.

I would like to thank Mr Crowe for his remarks and his support. I did feel it was important to give Members as much background as possible. We are often accused of not knowing what these things are about, from time to time, and it was a good opportunity to update Members who, I am sure, are fully aware of how the system operates. But it is handy to have a little bit of a reminder now and again.

I would like to thank Mr Lowey for his remarks and his further stressing of the importance of doing business and trade within the EU and, in fact, reinforcing the fact that the Isle of Man's arrangement through Protocol 3 has stood the Isle of Man in very good stead. We need to be in there with them and not doing our own thing.

So, with that, Mr President, I wish to move:

That the European Communities (Amendment) Bill be now read a second time.

The President: The motion, Hon. Members, is that the European Communities (Amendment) Bill be read for a second time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

European Communities (Amendment) Bill **Standing Order 22(2) suspended** **to take all further stages**

Mr Downie: I can be as flexible as anyone, Mr President, if you think it is helpful.

The Lord Bishop: Mr President, might I suggest that we carry on. Why do we not do clauses?

The President: I think he is just about to suggest it.

Mr Lowey: Absolutely.

The Lord Bishop: I would not want to embarrass the

Hon. Member, (**Mr Downie:** No.) but if he is ready –

Mr Downie: I have always been open to divine intervention. (*Laughter*)

The Lord Bishop: I am only the Lord Bishop. If you want divine intervention, you have got to earn it! (*Laughter*)

The President: Hon. Members, we really cannot take the clauses unless we suspend Standing Orders. (**The Clerk:** You can.) I am happy, in fact, that, if the Hon. Member is ready to go and we propose that we do accept that we suspend our Standing Orders to take clauses, I am happy to go all the way through the whole lot.

Mr Downie: I would like to move, Mr President, as this appears to be a non-contentious Bill – we have been here before, we know what this is all about –

That Standing Order 22(2) be suspended to enable all stages of this Bill to be taken at this sitting.

Mrs Crowe: I am pleased to second that, Mr President.

The President: Okay, Hon. Members, I think we are all agreed, so let us see if we can deal with the clauses.

European Communities (Amendment) Bill **Clauses considered**

The President: Clauses 1 and 2 together, Mr Downie.

Mr Downie: Thank you, Mr President.

In moving the clauses stage of the European Communities (Amendment) Bill, clause 1: as this Bill contains only one substantive clause, moving the Bill as a whole and moving the first clause is very nearly the same thing. I will spare Hon. Members a full repeat today of what I said at the Second Reading.

I think all I need to say is that clause 1 adds the Treaty of Accession to the European Union of Bulgaria and Romania to the list of Community Treaties in section 1(1) of the European Communities (Isle of Man) Act 1973. This is necessary because of the Island's Protocol 3 relationship within the EU, under which we have an obligation to treat new Member countries the same as existing member states and to incorporate the Accession Treaties of the new members in Manx law.

Clause 2 gives the Bill its short title.

I beg to move that clauses 1 and 2 stand part of the Bill.

The President: Mr Waft.

Mr Waft: I beg to second, Mr President.

I do not think this is the time for anybody to be putting up shutters, when all of the European Community is opening its doors to other countries to join in. I think we should reiterate the fact that Bulgarians and Romanians will be no longer subject to immigration control and, with the work permit system, they should have the same rights as any Isle

of Man worker in future.

The President: Mr Lowey.

Mr Lowey: Can I just have one comment. We cannot say that we rushed our fences on this one. If it was signed in April 2005, it has taken us two years to get primary legislation. So I think it is incumbent upon us, if we are part of the international scene.

Perhaps two years is a short time, but it does seem to me that if these people have been signed up members of the European Union since April 2005, here we are in May 2007, two years later, getting them on to our statute. It does seem rather a long period of time to wait.

The President: I think it was on 1st January this year. Mr Downie. Although the Treaty was signed –

Mr Downie: Yes, if I can take Mr Lowey's query first. What has been happening is that they have been indicating their willingness to join. They took a number of options because they wanted to make sure that they were ready to come in. In fact, they had one option to gain accession in 2008. They have been able to meet the 2007 target and actually came in on 1st January 2007.

We are actually the last of the Crown dependencies to recognise this piece of legislation. I understand Jersey and Guernsey have done this already and they have a slightly different route for doing theirs. It does not require primary legislation, I think, there.

If I can move to Mr Waft, the Hon. Member of Council made reference to work permits. I understand that, within the UK, they are looking at doing what we have done in the Isle of Man. Because of a perceived problem with labour coming in from parts of Europe and Eastern Europe and places such as Bulgaria and Romania, they are looking to bring in a work permit system which is based on a points system.

So, rather than take people at the bottom end of the scale, they are looking for highly skilled and technical people, and people who they think will fit better into the job shortages in the UK. So, that is busily being progressed at the moment.

But, just to reinforce that, should anybody from any of these countries come to work in the Isle of Man, they would be subject to our Isle of Man work permit legislation.

Thank you, Mr President.

The President: Now, Hon. Members, the motion that I put to Council is that clauses 1 and 2 of the European Communities (Amendment) Bill be approved. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

European Communities (Amendment) Bill Third Reading approved

The President: Now, Mr Downie, I think, where there is good will, we should move to Third Reading.

Mr Downie: Yes, thank you, Mr President.

I would just like to formally record my thanks to the Members for their support this morning in moving this Bill.

It has not been a contentious Bill by any means. It is part of our international obligations.

I would just reiterate, for the sake of *Hansard*, that the European Communities (Amendment) Bill contains just one main clause which adds the Accession Treaty for Bulgaria and Romania to the list of Treaties defined as Community Treaties in section 1(1) of the European Communities (Isle of Man) Act 1973. This is necessary because of the Island's Protocol 3 relationship within the EU, under which we have an obligation to treat new member countries the same as existing member states and to incorporate the Accession Treaties of the new members in Manx law.

Mr President, I beg to move:

That the European Communities (Amendment) Bill be now read a third time and do pass.

The President: Mr Waft.

Mr Waft: I beg to second, Mr President.

The President: Mr Crowe.

Mr Crowe: Mr President, could I just ask a question of the mover – again, in support of the Bill. As it says this will enter into force when the Bill gets Royal Assent, but what is the position from 1st January this year till it gets Royal Assent? What is the legal status, or is it considered to be effective from 1st January 2007?

The President: Mr Downie.

Mr Downie: Yes, I am not entirely sure, but I understand that because of the way this has progressed, there could actually be Royal Assent given to this on Friday of this week. It is part of the new way of doing things.

As I said, other jurisdictions do not need to bring in primary legislation. They have devised a way where they can deal with it under secondary legislation now.

But what I will do, I will find out exactly what the situation is and I will get back to Members of Council.

The President: I think we may have the answer about to be brought forward.

Mr Downie: Could she not say what it is?

The President: It is coming round.

Whilst we wait for that answer, Hon. Members, I will just also put on the record that, in fact, I did accept, Hon. Members, with acknowledgement around the room, that we had, in fact, suspended the Standing Orders to take this Third Reading.

Mr Lowey: Agreed.

The President: Mr Downie, do you wish to go further, sir?

Mr Downie: Just to say that, from 1st January, the Isle of Man had an international obligation but that had not been incorporated in Manx law. Once this is signed off, it incorporates everything into Manx law.

The President: The obligation was there, but it was not legally ratified.

In that case, Hon. Members, the motion that I put to Council is that the European Communities (Amendment) Bill be read for a third time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Procedural

The President: That draws to a conclusion, Hon. Members, the business before Council this morning. Our

adjournment is to the sitting of Tynwald next Tuesday, 15th May, and thereafter to 22nd May, depending on the legislation which will be before us.

Thank you, Hon. Members, particularly for the difficulties which we had – we had to make a move this morning, but I am sure it is important that we do get our discussions properly recorded on *Hansard*.

Thank you, Hon. Members.

The Council adjourned at 11.55 a.m.