



**LEGISLATIVE COUNCIL
OFFICIAL REPORT**

**RECORTYS OIKOIL
Y CHOONCEIL SLATTYSSAGH**

PROCEEDINGS

DAALTYN

(HANSARD)

Douglas, Tuesday, 26th June 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), The Attorney General (Mr W J H Corlett QC),
Mr D Butt, Mrs C M Christian, Mr E A Crowe, Mrs P M Crowe, Mr A F Downie, Mr E G Lowey,
Mr J R Turner 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

Procedural

The President: Now, Hon. Members, with a full House this morning, we move on to our Order Paper but, before we do, can I just remind Hon. Members that, in fact, we will be returning here at 2.30, providing that the other House completes the passage of the Education Bill.

Questions for Oral Answer

CHIEF MINISTER

Class A drugs Combating problems on Island

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

(a) What practical steps have been taken to combat the increase in the misuse of class A drugs (cocaine in particular) on the Island;

(b) what practical steps have been undertaken to rehabilitate drug addicts; and

(c) when will the Drug and Alcohol Unit building be opened?

The President: Question 1, then, I call on Mr Lowey.

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

The President: Mr Waft, I understand you are replying, sir.

Mr Waft: Yes, indeed, thank you, Mr President.

There is anecdotal evidence that class A drugs, in particular cocaine, use is on the increase. However, we have no hard data to support this.

One of the aims of the Drug Strategy is to develop hard data to replace anecdotal information. There are a number of practical steps being taken across Government and by community agencies to combat the use of class A drugs, including cocaine, on the Island. These steps include law enforcement measures, education and prevention programmes in all our schools and in the community.

Training sessions for those working with drug and alcohol issues and treatment and support interventions.

Section (b): the Drug and Alcohol Team was formed in the year 2000, as a result of the Chief Minister's Drug Strategy. It is a Government-run service and works collaboratively with grant aided bodies, such as the Alcohol Advisory Service and the Drug Advice Service and Helpline and other community bodies.

The Team provides a full treatment and support service to all those with drug and alcohol problems, and in addition, provides a two-day service for young people under 16.

Where residential rehabilitation is required, a consultant psychiatrist arranges appropriate referrals to appropriate UK treatment facilities. DASH – the Drug Advice Service and Helpline – which is grant aided by the Department of Health and Social Services, provides confidential advice, support and information for those with drug problems.

Other interventions such as the Drug Arrest Referral Scheme, a partnership between treatment and law enforcement agencies, also offer assistance to those with drug problems. Other agencies such as the Prison Service, Probation Service, Social Services, David Gray House and Youth Services, provide awareness, advice and support also. The primary healthcare providers would also provide necessary advice and guidance.

With regard to section (c), I can advise the Hon. Member that the building and infrastructure for the new Drug and Alcohol Unit has been ready for some time. However, at present, revenue funding for the employment of the necessary staffing levels of 17.5 full-time equivalents has not yet been made available. Once the Department of Health and Social Security is satisfied that sufficient resources are available, the Unit should become operational.

Thank you, Mr President.

The President: Mr Lowey.

Mr Lowey: Thank you, Mr President.

Would my hon. friend not agree that, when he says there is no hard information that class A drugs are a growing problem – I would go stronger than that and say they are rife – the number of cases appearing before the courts is all the hard evidence that is required?

Secondly, would he not agree, while I agree that we are doing quite a lot in the preventative areas, we seem to be losing?

My Question repeatedly says 'what practical steps?' What happens when you have been hooked on these drugs? How do we take people off them?

Would he also agree that we do very little and if the final analysis is that we send these people away for treatment, is it not about time we got the Drug and Alcohol Unit building which is recognised as a place where we can actually deal with these problems ourselves on the Island in a more effective manner?

The President: Mr Waft.

Mr Waft: Thank you, Mr President.

As I said before, there is no hard information at the moment. There are appearances before the court, which we all know. The Drug and Alcohol Unit, which is referred to, is an eight-bedded unit in the old Ard Aalin building. The problem is that, at the moment, there is not enough finance

Procedural

Class A drugs – Combating problems on Island

available to get it up and running.

When I say 'get it up and running' – it is occupied during the week, five days a week, until we get the residential part of it up and running – that will be a full, probably a seven-day-a-week unit, which will be 24 hours supplied by staff, and that is how we reach the 17.5 full-time equivalents.

So, that is the situation with regard to progressing the new Drug and Alcohol Unit. It is in the hands of the DHSS, when it appears.

The President: Hon. Member, Mr Downie.

Mr Downie: Thank you, Mr President.

The Hon. Member will be aware there has been lots of coverage in the press recently about homelessness and people with drug and alcohol problems living rough in the Isle of Man. I wonder if the Hon. Member could explain to us whether a person who has been diagnosed with a drug or alcohol problem can actually be sectioned under the Mental Health Act.

Surely, one of the tools in the armoury would really be to take some of these unfortunate people out of society and give them the care and attention that they need, rather than having them coming in and going out again on a voluntary basis, which, to be quite honest, in my opinion, is just not working, at the present time.

The President: Mr Waft.

Mr Waft: The problem with sectioning anybody under the Mental Health Act is they have to be seen to be a danger to themselves or a danger to others. The Drug and Alcohol Team try to prevent this by giving them as much support as they can to keep them in the community.

However, that being said, there must be a wish on behalf of the person who has the problem to take advantage of the facilities that are available, but the difficulties of certification of anybody in that situation is to make sure that they conform to the Mental Health Act rules and regulations, which are mainly that they should be deemed to be a danger to themselves or a danger to others.

The President: Mrs Christian.

Mrs Christian: Would the Hon. Member confirm that an increase in court cases does not of itself prove an increase in misuse? Would he accept that, unless people want to engage with a programme of rehabilitation, they cannot be forced to do so?

The President: Mr Waft.

Mr Waft: I would agree wholeheartedly with the Hon. Member.

The President: Mr Lowey.

Mr Lowey: Yes, would the hon. mover not agree – I was trying to be polite, by using the word 'court cases' – a couple of hours on the street, moving about amongst young people at weekends will certainly dispel the myth that we do not have a major problem with serious hard drugs, and it is a worsening situation? It may not be comfortable to say it, but it is true.

Would the Member not agree that the emphasis would appear, from the Government's angle, to be putting all the emphasis on advisory services? We must have so many committees dealing with these problems, but again, I come back to the basis of my Question: what practical help? We are doing too much advising and not enough, in my view, of putting people at the sharp end to get people off the habit. They are already on the habit. We have got to get them off the habit.

The President: Mr Waft.

Mr Waft: I would agree, Mr President, there needs to be a proactive approach to the drug and alcohol problem, but it has been brought to light fairly recently about the problems of having no shelter for people who are in those situations. Drug problems or alcohol problems are becoming a problem.

As I understand it, the Chief Minister has organised a task force to try and find a solution to this and there is an amalgamation of the DHSS, Department of Home Affairs and others to try and relieve the situation. The Salvation Army has been providing a lot of help in this role and, hopefully, we will see the situation easing in the future.

The President: Mr Lowey?

Mr Lowey: No, no. I do not think we should leave it to charities.

The President: Sitting listening to the questions and the answers given, I just sometimes wonder if the balance between prevention and deterrent is correct.

Mr Downie: Mr President.

The President: Mr Downie.

Mr Downie: The other issue I wanted to raise with the Hon. Member today was that, in another place, there is a Question there regarding the Chief Constable's decision to withdraw a police presence at the ports. Now, I would ask the Hon. Member, if he would agree with me that perhaps there is an area where we could have even greater diligence.

Next month, Tynwald Court will be asked to approve the new Port Security Regulations, which are coming in under TRANSEC, which does provide a greater enhancement for security. Does he not agree that, even if we had periodic spot checks and a presence down there, particularly at weekends when people were coming back from Liverpool and known drug carriers were on the vessels or in the airports, a high level presence with dogs would act as a very strong deterrent and send out a good message?

The President: I understand where you are coming from, Mr Downie, and I understand the opinion, but I do not know whether Mr Waft wishes to pick that up as part of his answer to his question or not? Mr Waft.

Mr Waft: Thank you, Mr President.

I thank the Member for his question. With regard to the Police situation, they are going mainly on the intelligence led idea of when there are people bringing drugs into the Island. They do make appearances at the airport or the ports, as and when they have information leading, perhaps, to an arrest.

They have found that this is more effective than

somebody who is permanently there with a couple of dogs or a dog. The Chief Constable, I think, has decided that is the best way to go.

There has been a restructuring of the Isle of Man Constabulary into neighbourhood divisions, assisting with the intelligence based information.

The President: Mr Butt.

Mr Butt: Thank you, Mr President.

Would the Member of Council agree that it is a retrograde step to move the Police from the airport, in terms of security issues with the international terrorism situation?

But also, can he confirm that there is no power for the Police to do spot checks randomly looking for drug offenders? They have to have a reasonable suspicion that the person they are stopping is likely to be carrying drugs.

The President: Mr Waft.

Mr Waft: Thank you, Mr President.

With regard to the international terrorism situation, we do have police authorities both at the airport and the harbours who are constantly aware of their responsibilities. We also have the Acts which cover that situation, which we have been quick to adopt on the Island.

The situation with regard to reasonable cause, I think, has a worry: if we reduce that responsibility to arrest anyone at any time for whatever reason, there is a possibility we will extend the remit and go into areas of natural justice and Human Rights etc.

So I think, all in all, with regard to the intelligence led situation, we are constantly reviewing all the situations and if it is found to be a problem, then we will look at it again in the future.

The President: Mr Turner.

Mr Turner: Thank you, Mr President.

Would the Hon. Member of Council not agree that the problem... this is on the increase, is the fact that these substances seem as readily available as alcohol? (**Mr Lowey:** Absolutely.)

What steps are being taken to target the suppliers of these substances? Surely these suppliers must be well known to the Police.

The President: Mr Waft.

Mr Waft: Thank you, Mr President.

The main problem with cocaine is that it is no longer the preferred drug of use among certain social strata, but it has become widely available to a larger section of the population. The problem is that we have a situation which we find ourselves in.

The Police are doing exactly what they think gets the best results and the targeting of people who are known to be dealers certainly does take place and there have been some very successful resolutions to that, in the past, with long prison sentences.

So I think with regard to the deployment of the Constabulary, the Chief Constable, I think, would have it in hand.

The President: I think we have had a very wide-ranging

Question, so I thank Mr Waft for tackling the comments made.

OFFICE OF FAIR TRADING

Airlines and sea carriers Misleading advertising

2. The Hon. Member (Mr Lowey) to ask the Chairman of the Office of Fair Trading:

When will your department hold an enquiry into the blatant misleading advertising by airlines and sea carriers in the local media?

The President: Question 2, I think. The Hon. Member, Mr Lowey.

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

The President: On this occasion, I call the Hon. Member, Mrs Crowe, to respond.

Mrs Crowe: Thank you, Mr President.

The Island's consumer protection legislation deals with the issue in terms of misleading price indications and misleading advertising. The Consumer Protection Act 1991 includes provisions which make it an offence to give misleading price indications. It gives definitions of what constitutes a misleading price indication, but cannot, of course, cover all eventualities.

Section 22 of the Act gives the board of the Isle of Man Office of Fair Trading power to approve any code of practice, which gives guidance on price indication or promotes good practice. In 1992, the board made an Order under section 22, approving a code of practice, and this has been widely distributed and is of considerable benefit to local traders, as it covers a wide-ranging scenarios. Following the code's guidance is generally regarded as best practice and compliance with it can be used as a defence against a charge of giving misleading price indication.

The Isle of Man Office of Fair Trading monitors advertising on a weekly basis and has intervened when a number of advertisements did not meet the requirements of the code. Officers have also been tasked with monitoring certain types of advertising i.e. monitoring all travel advertising or monitoring all... whatever it might be advertising.

The Office is aware that certain fixed non-optional costs, for example fuel surcharges, are frequently excluded from the basic travel prices and when extra costs are added on, the price can be significantly higher than advertised. Officers have investigated and resolved a number of cases where an advertisement has contained a misleading price, but as a result of increasing concern about the standards, the board has considered a revised text of the code and this was considered only last week. The code better reflects local legislation and trading and gives an updating of all the standards.

Following consultation with local traders, the board intends to put the Order approving the code to Tynwald. If

approved, the Office of Fair Trading will run a promotional campaign to ensure that all local traders are aware of the standards and know how to comply with them.

Whilst the Office will always offer advice to those who need assistance, it will, after a suitable period, back up this advice with the appropriate enforcement based upon monitoring public advertising. The Island's consumer protection legislation allows the Office to prosecute a trader for giving misleading price, with a penalty provided being a fine. As most advertisements contain a price, this will often be the most relevant approach for the Office.

In addition, there are specific requirements for advertising that allow the Office to investigate any complaint about misleading advertising and to seek a court injunction under the Consumer Protection Act 1991. If a business has behaved in a manner which is detrimental to the interests of consumers on the Island and is unfair to consumers, the Office can ask Her Majesty's Attorney General to commence legal proceedings against any trader under the Fair Trading Act 1996.

The President: Mr Lowey.

Mr Lowey: It is all very comforting, but would the Hon. Member not agree... I notice she says in her Answer to us that the Department has consulted the providers. Could she tell me when they consulted the users? Are they not important?

Secondly, would she also not agree that the prices that are advertised on a weekly basis are nothing to do, at the end of the day, with oil surcharges hidden in them? You are nowhere near those prices that the vast majority of people that actually use them.

I thought that the Office of Fair Trading, the old Consumer Council, was there to protect, inform, and advise the consumer. Would they not think it would be prudent to then consult with the consumer, as well as the provider?

The President: Mrs Crowe.

Mrs Crowe: Thank you, Mr President.

Well, of course, the users or consumers are represented on, as you say, what was the old Board of Consumer Affairs by the lay members who represent the consumers and take into account how consumers are dealt with on the Island.

Now, as regards price advertising, as mentioned in my original Answer, the officers regularly check advertisements. It is a case that they do. These advertisements have to comply with the consumer legislation and they do regularly check.

I know even in my time, when I was Chairman of the Office of Fair Trading, we carried out a very detailed check, because at that time there was, once again, a great deal of concern about airline pricing structures. These are regularly checked.

It is very simple: if there is an advertisement for a particular fare in the newspaper, a number of telephone calls will be made trying to book that fare and the officers regularly check these fares.

The President: Mr Crowe.

Mr Crowe: Thank you, Mr President.

Can I ask, have there been any prosecutions over misleading advertisements for fares? I know that the officers

check the fares regularly.

Mrs Crowe: Mr President, as I said in the original Answer, it is an area of complaint. All complaints are acted upon by the Office of Fair Trading. Any person that complains about misleading advertising, that particular complaint will be investigated. That is the role of the officers, there to protect the consumers.

So they are investigating prices. They regularly check prices and, as I say, any particular complaint is regularly investigated.

I have not got the information as to whether anyone has been prosecuted regarding misleading prices, but if there was a case to be made by an officer that prices had been misleading, the officer would apply to Her Majesty's Attorney General for a prosecution to take place and that would normally follow.

The President: Mr Waft.

Mr Waft: Thank you, Mr President.

I would like to ask the Member what she feels about the situation where there were recommendations that there should be an off-Island travel committee, which deals with off-Island travel, including sea and air travel, who could look into the pricing and the dates at which they go; whether they are prompt enough; whether they comply with the UK situation; and also whether the Office of Fair Trading is actually keeping up with the UK legislation.

The President: I think this is Mr Waft getting his own back for a wide-ranging discussion on the drugs. *(Laughter)* Mrs Crowe.

Mrs Crowe: That is quite alright, I should know – it is very close to my heart, the Office of Fair Trading.

I would say in answer to that, of course, all user organisations are useful to consumers. What I would say is that it would be a duplication of effort, because Trading Standards' officers are checking the prices.

I know and I can see my two wise colleagues across the table shaking their heads and saying they are not.

Mr Lowey: You are right. They are not.

Mrs Crowe: I know, for a fact, they are, and I know that there has to be a certain amount of seats per plane offered at the advertised price and this is regularly checked. This is regularly checked. *(Interjection by Mr Lowey)*

I would suggest it is a primary role of the Office of Fair Trading to protect the consumers of the Isle of Man. The officers, whom I have the highest regard for, would have no doubt in taking a prosecution against any airline, or indeed any advertiser that was promoting a misleading price to a consumer. That is their role, and that is what they are highly skilled at doing.

Mr Lowey: Yesterday's *Examiner*.

The President: Mrs Christian.

Mrs Christian: Thank you, Mr President.

Would the Member confirm that the new code will look at those elements of cost which might not be defined as

the fare, in that there are increasing charges coming in for baggage, whether it be in the hold or whether it be hand baggage; and that that is not generally made widely known until you arrive at the check-in desk? Will the code deal with those sorts of issues?

The President: Mrs Crowe.

Mrs Crowe: It is unfortunate, I have not been provided with a copy of the code, but I am sure that it could be circulated to my colleagues.

I do believe, in the original Answer, it has made mention of all these added charges. As my hon. colleague quite mentions, there are now added charges for baggage, added charges for using your credit card, whatever, and it is one way... When people keep talking about low-cost airlines, I think you will find, perhaps sometimes, the more traditional type airline has these prices as inclusive within their ticket. It is something that has been part of the new genre into low-cost airlines.

Mr Lowey: Misleading.

The President: Mr Downie.

Mr Downie: Mr President, could I ask the Hon. Member if she would agree that, as well as the fare structures and how they are advertised causing concern, there is an even bigger concern in the failure of some of the airlines to actually deliver what they promise? Would she not agree that we are seeing cancellations by some airlines on an almost daily rate? In fact, Flybe is referred to as 'Flymaybe'. This is a clear failure to supply and deliver.

Is the Hon. Member aware that, in some European countries, they have already introduced legislation where compensation is available to passengers who are inconvenienced or their flights are significantly delayed or, in some cases, absolutely withdrawn?

Would she agree with me that this is not acceptable in the Isle of Man? The air links are vital and we must do whatever we can to make sure they are run efficiently and, as far as possible, to a good time schedule.

The President: Mrs Crowe.

Mrs Crowe: Yes, indeed I will, and I do believe that the Department of Transport keeps a very close eye on the service level agreements that they have in place. I do believe also that the Transport User Group that Mr Waft was referring to earlier has also demonstrated in the United Kingdom that they have been very successful in dealing with degrees of service level for transport users.

The President: Mr Turner.

Mr Turner: Thank you, Mr President.

I think some of what I am going to ask has been answered, but would the Hon. Member of Council not agree that, to the public, the total price is all that matters?

So for purchasing a ticket, when you get to the check-out, to suddenly find there are all these extra costs adding on, is that reasonable, and does the OFT have the ability to scrutinise the likes of the fuel surcharge and these extra costs which we have been referring to?

The President: Mrs Crowe.

Mrs Crowe: The Office of Fair Trading has extremely wide-ranging powers to investigate all sorts of matters, certainly in regard to consumer protection. So any complaints by any consumer about add-on charging, fuel surcharging, baggage charging – whatever it might be – can be investigated by the officers at the Office of Fair Trading. They do have to have a formal complaint made to them.

I do not know of any consumer that will have made a formal complaint (*Interjection*) to the Office of Fair Trading that will have not received a satisfactory answer. That answer might not be particularly satisfactory to that consumer, but it is the actual factual answer regarding airfares and, indeed, all the ancillary charges, which I know could cause concern.

Of course, dependant on the level of complaints received, the Council of Ministers can then order an investigation under section 19 of the Fair Trading Act. So there are... it is always dependant on the level of complaint and, of course, the Office itself can escalate that to the Council of Ministers, as, indeed, can questioning through Tynwald.

The President: Mr Lowey.

Mr Lowey: Three supplementaries to my hon. friend. Has she ever met anybody that has bought one of the advertised fares in the paper?

If she cares to look in the *Examiner* yesterday, they were talking of, I think, direct flights to London for £78. I flew to London over the weekend and came back last night – what an experience! It reminded me of the journey my friend made by the Steam Packet. I had it from the joys of Flybe. I had one of the cheaper flights that I have ever had to go to London in recent years – £178. That bears no comparison to the £38 that has been advertised in the paper, no matter how you dress that up.

By the way, I had to add £4 on top of that, for the one piece of luggage that I wanted to put in the hold.

So, what I am saying is: there is no comparison between the price charged... I have never yet met anybody that has got one of these prices, so the Member can say what she likes about 'we monitor them'. I have never met anybody yet that has had one of those advertised prices. Maybe she knows of them.

In her reply she did say that the Consumer Council were looking at it and would be actually delivering a report to Tynwald. When?

The President: A code.

Mr Lowey: A code, yes. When is that going to come in – at the end of the summer, October, July, when? That is cold comfort to the person out there who this Department is there to protect, advise, and inform.

The President: Mrs Crowe.

Mrs Crowe: Mr President, I quite often disagree with my hon. colleague in Council and, on this particular occasion, I have to stress that my hon. colleague may well not have met anyone who has had or been able to purchase a flight at the advertised price. But what I can guarantee is that the officers of the Office of Fair Trading, the Trading Standards officers, will most certainly have met them because they will most

certainly have done the research to make sure.

That is their role, Mr Lowey: they will have to make sure that a certain amount of seats are offered at that price and are obtainable, otherwise they will prosecute. That is the fact.

If you have a formal complaint to make, make it to the Office of Fair Trading. If it can be substantiated that there are no seats available at that price, a prosecution will be forthcoming.

Mr Lowey: You are replying on their behalf, ma'am. Could I ask you: when is it coming before Tynwald, a new code, which was brought forward by the Department as a comfort factor, I am sure, for the travelling public out there?

Mrs Crowe: No, I would have suggested that the code of practice is to update and enforce the code of practice that is in place at the present time –

Mr Lowey: But when?

Mrs Crowe: – on which the traders themselves, be they travel agents or anyone else, can base their advertising practice.

The code of practice has been agreed on June 22nd by the board of the Office of Fair Trading. There will be a short period of consultation, so I should imagine it will be coming to the October Tynwald.

The President: Okay, Hon. Members. I think we have given both those Questions a fair airing.

Orders of the Day

Presiding Officers Bill First Reading approved

2. Mr Lowey to move:

That the Presiding Officers Bill be now read a first time.

The President: We will move on to Item 2 on the Order Paper, which is the Presiding Officers Bill and it is down for First Reading. Mr Lowey.

Mr Lowey: Thank you, Mr President.

Mr President, the Presiding Officers Bill is really an internal matter that will not affect many of the general public, but it does obviously affect the manner in which we conduct our business on behalf of the public.

Mr President, the Presiding Officers Bill 2007 implements a recommendation contained in the Management and Members' Standards Committee Second Report for the session of 2006-07.

Hon. Members will recall that the election of the Deputy Speaker of the House of Keys was suspended in January this year, pending the reference to the Committee of the question of the eligibility of the Chief Minister, or a Minister, to be elected as Deputy Speaker. The Committee sought the views

of Hon. Members and reported in February.

The Committee Report made the following two recommendations and I quote both of them. Firstly:

'That the Government be requested urgently to introduce a Bill into the House to provide that any Member other than the Chief Minister or a Minister may be elected Deputy or Acting Speaker without thereby going out of office as a member of a Department or Chairman or member of a Statutory Board.'

Secondly:

'That the following addition be made to Standing Order 9.2:-
9.2A For the remainder of the Session 2006-07, or until the Royal Assent shall have been given to a Bill amending the law with regard to the incompatibility of the Member elected as Deputy or Acting Speaker holding office as a member of a Department, or as Chairman or member of a Statutory Board, whichever shall be the sooner, a Member shall be elected whenever necessary as Acting Speaker to assume the powers of the Speaker when the Speaker is absent from the Island or is not present at a sitting of the House.'

This Bill, therefore, has two main objectives. Firstly, it places the appointment of an Acting Speaker and the election of the Deputy Speaker of the House of Keys on a statutory footing. Secondly, it amends and clarifies the extent to which the President of Tynwald, the Deputy President of Tynwald, the Speaker and Deputy Speaker and an Acting Speaker are eligible for nomination or appointment as Chief Minister, or as a Minister, or as member of a Department or a Statutory Board.

In connection with the second objective, the Bill enables the Deputy President of Tynwald, the Deputy Speaker and an Acting Speaker to be nominated and appointed as members of Departments and Statutory Boards. As regards the Deputy Speaker and Acting Speaker, this reflects the recommendations set out in paragraph 13.1 of the Management and Members' Standards Committee's Report.

Mr President, I beg to move the First Reading of the Presiding Officers Bill 2007.

The President: Mrs Crowe.

Mrs Crowe: I beg to second, Mr President.

Mrs Christian: I support the First Reading, Mr President, in that it caused problems in another place, because it was not clear who might be eligible for these posts.

The President: Mr Crowe.

Mr Crowe: Yes, again, happy to support the First Reading of the Bill. I think, in another place, it was mentioned possible conflicts of interests that a Deputy Speaker might have of being a member of a Board or a Department. I do not know whether the Hon. Member, Mr Lowey, can just comment on that, please.

The President: Mr Waft.

Mr Waft: I would like to support the Bill, Mr President. This is obviously an anomaly which this Bill tries to sort out, so that everybody understands their situation of what they can be or cannot be.

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

Mr Lowey: Yes, I thank the Hon. Members for their support.

The Management and Members' Standards Committee in their Report spelled out the objections that certain Members felt that being a Minister or a member of a Department would impair their impartiality.

The illustration in the House of Keys was by the Hon. Member for Rushen, at the time, who mentioned housing. He could be elected Deputy Speaker to preside over a sitting of the House where housing was the subject matter before the House.

One would have thought that, maybe, when they were appointing a Deputy Speaker for that particular occasion, perhaps that might be one of the reasons why he would opt out and they could elect an Acting Speaker. But that is part of the reasons and the objections, that it is perceived that the impartiality of the Chair should not be jeopardised.

The President: Hon. Members, the motion that I put to Council is that the Presiding Officers Bill 2007 be read for a first time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Presiding Officers Bill
Standing Order 22(2) suspended
to take Second Reading

The President: Mr Lowey, do you wish to progress?

Mr Lowey: With your permission, sir –

The President: And also with the permission of Council.

Mr Lowey: – and, I was about to say, obviously with the permission of my colleagues, I would like... As this is the most non-controversial Bill I would have thought that we would be dealing with in this session, and it is an in-house matter, as I would like to call it, I would like to suspend Standing Orders to take the Second Reading and clauses, if that is permitted, sir. I move:

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

The President: Mr Downie.

Mr Downie: I would second that, Mr President.

The President: Hon. Members, are we happy that we should suspend Standing Orders? I am happy for us to take... Those in favour, please say aye; against, no. Fine.

Presiding Officers Bill
Second Reading approved

The President: In that case, Hon. Members, having approved the suspension of Standing Orders to go on to the

Second Reading, we will take the Second Reading and Mr Lowey, over to you, sir.

Mr Lowey: Thank you, Mr President.

I am not going to bore Members with a repetition of the First Reading speech, other than to say that the Second Reading... actually the principle has been established that it is clarifying the position of the election of the Deputy Speaker and Acting Speaker of the House of Keys and, to a secondary degree, the Deputy President in Tynwald.

I beg to move:

That the Presiding Officers Bill be now read a second time.

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

The President: Lord Bishop.

The Lord Bishop: Thank you, Mr President. I am happy to support the Bill.

I have a question that probably is wise to raise now, rather than under clauses, which is under 2.9A(3):

'The Deputy Speaker shall deputise in the absence of the Speaker and assume the powers of the Speaker...'

I would like to know, at some stage, whether that means that the person who deputises automatically becomes Deputy President of Tynwald, when the Speaker is not on Island, because it actually says so. It says he assumes the powers of the Speaker and one of the powers of the Speaker is to be Deputy President of Tynwald.

Mr Lowey: As I see it, the election of the Deputy Speaker of Tynwald is a matter for Tynwald.

The President: Deal with the Speaker and the President as two separate... I think the Lord Bishop is raising the question in 2(3). Mrs Cullen, I think, wishes to give you a response, Mr Lowey.

The Clerk: Mr Speaker need not necessarily be Deputy President of Tynwald...

Mr Lowey: Yes, it is as I have always suspected. Mr Speaker is not automatically the Deputy President of Tynwald. I come back to the House: it is the House that decides. So, the idea that the Deputy President is automatically taken by the Speaker is a myth.

The President: Mrs Christian.

Mrs Christian: Mr President, whilst supporting some of the Bill, I do think that there are areas of it that we need to consider as we go through the clauses.

Just to give the mover an indication, at this point: whilst procedure after a general election is straightforward, and the order in which Speakers or Deputy Speakers may be appointed and Department members are appointed, I do think that it is much too rigid during the course of a session – maybe two years on – to say that, for example, a Speaker or a Deputy Speaker should not be eligible to become a Chief Minister.

One can assume, if they were elected, they would stand down, but it says that they are not eligible for nomination, and I have concerns about that. I will be thinking about that before we come to clauses, to see whether we are not tightening down too much on the available talent in Tynwald, with regard to the election of Government. (**Mrs Crowe:** Yes.)

I do think that we need carefully to look at the wording of some of these clauses – not in the first instance, where elections are taking place, but where they may take place mid-session.

The President: Mr Downie.

Mr Downie: Yes, I share the same views as my hon. colleague, Mrs Christian. It is tying people down, it is being restrictive, and really, if you look at it, it actually is stymieing a person's political career by getting involved in either of these two positions. I think it would be worthy of us giving this area some consideration.

The thing I cannot understand is that we have all this procedure to go through, appointing a Speaker and a Deputy, and if for some unfortunate reason, as I understand it, the Deputy is away on business or out of the Court or at the CPA or something and anything happens to the Speaker, we can still put somebody in as an Acting Speaker. So, why do we not just do that in the first place and be done with it, and not have all this rigmarole to go through and tying people up unnecessarily?

The President: Mr Attorney.

The Attorney General: Thank you, Mr President.

Mr President, I wonder if I could just take up the point made by the Hon. Member, and indeed it was adverted to by the Hon. Member, Mr Lowey. I think it is suggested that the Acting Speaker has a role, where the Speaker and the Deputy Speaker are not able to act, or perhaps the Deputy Speaker might be regarded as having a conflict of interest.

As I read the new provision which is proposed, to add a new (1A) in section 9 of the Representation of the People Act, the Acting Speaker has a very limited role indeed. The Acting Speaker's role is to preside over an election for the office of Speaker. Once that has been done, as it seems to me, he or she is, as they say, *functus officio*. His or her duties are at an end, and I do not think – I stand to be corrected – that we can regard the Acting Speaker as being someone who can step in to cure a defect, in terms of either conflicts of interest or if the Deputy and the Speaker are absent.

Mr Lowey: There is no such thing as a permanent Acting Speaker.

The President: Let us just take it steady, because I think I was getting vibes from both sides of me here so, Mrs Christian, do you wish to come – ?

Mrs Christian: Yes, I just wonder whether it is worth debating the point whether or not there should be a permanent Deputy Speaker or a permanent Deputy President, and whether or not one should be nominated in another place or in the Court, where it is deemed necessary to have such a person acting.

Mr Downie: Just to follow on from that, the Court could

then decide whether or not there was any pecuniary interest. We would be compliant then with all these codes of conduct and all the rest of it, which we are constantly having to deal with, and it would give the House a lot more flexibility to get the right person into the job for the particular issue.

The President: Mr Lowey.

Mr Lowey: I take note of what my hon. friends say. The reality is that the House of Keys had problems appointing a Deputy Speaker. They then looked into it and, apparently, what had been practised for the last 20 years did not conform to the Standing Orders. So, it was referred to a Committee for consideration and the Committee decided this was the way.

There is a very strong case to have an unwritten constitution, to go by convention, which I think we have, in effect, done for the last 20 years. The election of a Deputy Speaker is not an everyday occurrence; it is a very rare occurrence. The Speakers have arranged their lifestyles to such a degree, and their workloads, that they are very seldom away. I know recently there has been the Anglo-Irish Agreement which necessitates occasionally for that to happen and they have to appoint a Deputy. So, we must not get on to the fact that this is an everyday occurrence or a weekly or a monthly occurrence. It is not; it is rare.

There is a point of view: should we have a statutory one? The House of Keys, in Standing Committee, decided that that was not the way forward; this was the way forward.

I think it is right that Council should express an opinion on this, but as the Member in charge of the Bill, I have to take the Bill as presented to me. I think it is right for Council, where it affects Tynwald, to have an active say. I am always conscious of the rights and privileges of this place, and I am sure the House of Keys is very conscious of their rights and privileges in their place.

So on the principle, I would share the principle that you can become too rigid – I think that was the phrase that was used by Mr Downie. It is a phrase that I have used myself to describe a written constitution, as opposed to one that is ruled by convention. But today, I would have to take the Bill on its Second Reading that way; but I am quite prepared to debate at clauses stages with my hon. colleagues.

The President: Hon. Members, the motion that I would put to Council is that the Presiding 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.

Procedural

The President: Hon. Members, that puts us into the position, having approved the suspension of Standing Orders to move onto this stage, as to a query now in regard to clauses. We have reached the position where, at Second Reading stage, we would normally go straight into clauses, but there appears, in fact, as if we have suspended Standing Orders to move to this step, and I am a little unsure now as to whether Members are confident to take the next step.

If you are, I am happy to progress. If you are not, I think if you wish to take time to consider, so be it. So, I am going to put to Council, in fact, whether or not Council wishes to

progress to the clauses stage or not.

Mr Lowey.

Mr Lowey: From my own point of view, Mr President, as Members have legitimately raised genuine concerns, I think we should not pursue the Second Reading.

The President: You are the Member in charge, sir.

Mr Lowey: So therefore, I would... I do not think there is an extreme rush on this particular piece of legislation. We have gone through what I would call 50 per cent of the Bill. I think in justice and fairness, I think we can afford to tread water and perhaps think about it.

I would urge Members to read the Report of the Management and Members' Standards Committee that was the foundation and the basis from which this legislation flows. You will see, from there and the debate in the House of Keys, there was very little debate in the House of Keys about it. However, I would urge Members to read that and they will see that this sort of thing is mentioned in the Report.

The President: Hon. Members, in that case, as Mr Lowey is happy, we will take it at the next stage. It could be that we do the clauses and the Third Reading together.

Onchan District (Amendment) Bill First Reading approved

3. Mr Butt to move:

That the Onchan District (Amendment) Bill be now read a first time.

The President: We will move on, Hon. Members, to Item 4 on our Order Paper, which is the Onchan District (Amendment) Bill. This Bill is in the hands of the Hon. Member, Mr Butt: again, starting its First Reading this morning.

Mr Butt: Thank you, Mr President.

The Onchan District (Amendment) Bill is a Private Member's Bill and is one of the final acts in the long process of amalgamating the Village and Urban Wards of the District of Onchan. The Bill has three clauses.

The Bill has two purposes: firstly, to amalgamate the urban and rural wards of Onchan District; secondly, to reduce the number of Commissioners from nine down to seven.

To achieve this, there are repeals of some sections of the Onchan District Act 1986 and some substitute clauses placed in that Act. The Bill will also facilitate that a uniform rate for the whole area will, in future, be able to be levied in accordance with the Local Government Act 2006.

Onchan Commissioners and the rural commissioners of Onchan have been in discussion for some time about the merits of amalgamating the wards and of reducing the number of Commissioners. I am now informed that all the Commissioners of the area agree to this way forward. I have seen a letter signed by all the Commissioners, giving unanimous support to this Bill and the effect it will have on their operation, their functions and their duties.

Mr President, I beg leave to move the First Reading of

the Onchan District (Amendment) Bill 2007.

The President: Lord Bishop.

The Lord Bishop: It gives me unbelievable pleasure to second this particular motion, (*Laughter*) because those of you with long enough memories will remember that my first appearance ever in Tynwald Court was to sit through three and a half hours of debate on the 1986 Onchan District Act. I wondered what I had come to. (*Laughter*)

Four years later, after a gestation period of four years, here is a piece of green paper making it actually come to pass. So, it is very good that at my very last sitting of this particular Legislative Council, I can second this. I hope Hon. Members will feel able to support it, as well.

The President: Mr Lowey.

Mr Lowey: I would agree with it. I want to pay tribute to Onchan. They were pioneers many years ago, in the way in which they constructed the two wards as what I would call a system of the parish and the village coming together. They were pioneers.

As far as I am concerned, this Bill is a consensual Bill: the parties are agreed. As far as I am concerned, this is the way that I think local government reform should be going. In other words, it should be by consent. If we can get it by consent, so much the better.

I agree with my Lord Bishop – I just wish we would be a little bit quicker! (*Laughter*)

However, having said that, I think the one word I have got is consensual, and I am happy to support the Bill.

The President: They were in the vanguard; I am unsure about whether they were the pioneers. I am not sure whether Michael beat them or not, Mr Lowey.

Mr Waft.

Mr Waft: Thank you, Mr President.

I was the first Chairman, bar Mr Wasley, who beat me by six months to take over the village and the parish. Surprisingly, it was headlines in the press at that time, with regard to such an action taking place in the Isle of Man. I think we can look forward to more amalgamations in the future.

The problem that has been with unsuccessful reforms of local authority is the fact that they are deemed to be told what to do; they would rather, I am sure, come to an agreement themselves and if they want to do that, they will do it. It has worked very well – the parish and the village have worked very well together – apart from the time of changing their rates. But they have overcome that now and this is another move in the right direction, by removing the nine to seven and the uniform rate, which is obviously the way to go, with regard to people living within the size of Onchan now. In the old days, it used to be considerably different, but nowadays, with transport etc, perhaps the rural area will achieve some better service from the Onchan Commissioners and, hopefully, we will have to see what the outcome is.

The President: Mr Downie.

Mr Downie: Thank you, Mr President.

I recall quite well the debate in Tynwald where the Lord

Bishop had his introduction into Manx politics, but I think all of us who were there and present, at that time, could not fail to be impressed by the argument that was put forward Mr Watterson, representing the rural ward. I think he made a very good case. For that reason, Tynwald was swayed and we were left in the situation that we were.

However, things have moved on. I understand from the mover of the Bill today that there has been a paper signed by all the parties involved in the Onchan District Commissioners, that they fully support this. I am just seeking confirmation of that, so that it can be duly recorded today for the purposes of *Hansard*.

I sincerely hope that, in wishing the Bill to progress and progress well, the Commissioners will take on board that the people who do live in the rural parts of Onchan do not share the same facilities and standards of those living in the main conurbation, and perhaps with a little bit of thought, a bit more can be done to give them a little more value for money into the future.

I am supportive of the Bill. Should I say, I concur with the views of my hon. friend and colleague, Mrs Crowe, that this may be the start of some movement amongst some of the other local authorities to get together and work together for the good of the ratepayers in the Isle of Man, and to make us more efficient and more effective.

The President: Mrs Christian.

Mrs Christian: Just a short comment, Mr President.

Whilst I concur with the Hon. Member's comments about ensuring that the rural communities get good support from their commissioners, I do hope it will not lead to urbanisation, as I would call it, of rural areas, with street lights everywhere. (**Mrs Crowe:** Yes.)

Certainly, improve refuse collection and those sorts of matters, (**Mrs Crowe:** Litter.) deal with litter, and generally present our beautiful countryside to its best advantage; but let us not urbanise anywhere.

Mrs Crowe: Mr President.

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

The Lord Bishop: I think Mrs Crowe might.

The President: Oh, sorry, Mrs Crowe.

Mrs Crowe: Yes, I think Mrs Crowe might, (*Laughter*) since it was I who moved the unsuccessful Bill in Tynwald, on the last occasion!

However, I am delighted to see it before us today – not before time, I might add. I was sorry on that occasion that it failed. Mr Watterson of the rural commissioners did, indeed, put up a robust case. I heard him on the radio recently in not quite such agreement with what was going on. Even today, he felt that there had been no consultation, despite the fact that consultation has actually gone on for years about this particular matter.

It is pleasing to see a local authority join as one. What would be more advantageous is to see Onchan, Laxey, Lonan and Braddan move as one and when we get four value-for-money local authorities that can really have an impact on how the local areas are managed for best value, I will be absolutely delighted.

But I am best pleased that we have now made a small move by joining two parts of Onchan together.

Mr Lowey: Good for you.

The President: Mr Crowe.

Mr Crowe: Thank you, Mr President.

I, too, support the Bill. It is interesting, reading the debate in the other place, how all the Members for the district were prepared to support it, and Members of Council here living in Onchan are happy. It is interesting, too, there was a public meeting that gave everybody in the area an opportunity to make their comments known.

So, it is nice that it is an agreed way forward that I am happy to support.

The President: Mr Turner.

Mr Turner: Mr President, I am also quite pleased that there seems to be a desire to do this and will support this.

The points made by the Hon. Member, Mrs Christian, about making sure that there is not going to be street lighting cropping up in the rural areas, where it would be an intrusion, is quite important.

I hope that the Commissioners will share resources, as was suggested by the Hon. Member, Mrs Crowe. I know it is happening in quite a few local authority areas that refuse collection is pooled, which undoubtedly has a benefit to the ratepayers.

Hopefully, the Commissioners will remember that the rural areas do get a slightly lesser service in areas such as refuse collection and, hopefully, that can be addressed, as well as other areas, such as cleaning, pavement maintenance and hedges and so forth. But I am supportive of this, Mr President.

The President: Mr Waft.

Mr Waft: Yes, if I can just come back, Mr President.

I did chair that public meeting we had with regard to the situation of reducing from nine to seven and the amalgamation of the rural and the village district, just recently. The general feeling was: 'Just get on with it and get it done – what have we been waiting for all these years?'

I would just like to remind Members that it was not all that long ago that Douglas were considering taking over Onchan, (**Mr Lowey:** Absolutely.) so I think this is a much better agreement, as far as that is concerned!

The President: Mr Butt, perhaps you would like to reply now, sir.

Mr Butt: Thank you, sir.

Firstly, thank you, everybody, for the support. Mr Lowey, in particular, makes the point that this Bill has arrived from consensus, which is obviously the case. I have no doubt there were struggles along the way, and I understand there were struggles. Mr Waft in his time as a member of the board perhaps took part in those.

But I am assured – for Mr Downie's benefit – that a letter has been signed. I have seen a copy of that, but I have not got that with me at the moment.

As for the comments of Mrs Christian, I totally agree. I

would hate to see the urbanisation of the rural parts of our Island – although it is very dark in Maughold in certain places! (*Laughter*)

Mrs Christian: That's not a parish street light kind of work!

Mrs Crowe: It's very dark in Rushen as well!

Mr Butt: One or two places in Maughold do need street lights only for about once a year! (*Laughter*)

Mrs Christian: Carry a torch! (*Laughter*)

The President: I will come to that later, Hon. Members; that is a bit of an in-joke today, which I am appreciative of. Mr Butt.

Mr Butt: Continuing to Mr Turner and Mrs Crowe's points about the gradual and perhaps natural amalgamation of local authorities, I hope that does happen, especially in my role as looking after refuse and waste. It is a constant thorn in the side trying to make things efficient and economic. Hopefully, this is a forerunner of, perhaps, other local authorities moving the same way.

Thank you, Mr President.

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

I think I am in the same position as I was with Mr Lowey. Mr Butt, do you wish to progress any further, sir?

Mr Butt: Well sir, knowing the close scrutiny that Council give to legislation, I would really like to make myself more... gain more knowledge of the Onchan District Act 1986, the Local Government Act 2006 and section 9(2) of the Local Government Act 1985. I would like to study that in more detail, before I proceed any further.

The President: You are not wishing to progress any further this morning. In that case, Hon. Members, we will just leave it, at the completion of the First Reading.

**Joint Committee of Tynwald
on the Emoluments of Certain Public Servants
First Report 2006-07 received
and recommendations approved**

4. Mr Lowey to move:

That the First Report of the Joint Committee on the Emoluments of Certain Public Servants 2006-2007 be received and the following recommendations be approved –

(1) That the Payment of Members' Expenses Act 1989 be amended to provide that when a Member of the Legislative Council goes out of office as a Member of the Council, he or she should continue in office as a Minister, Member of a Department or Chairman of a Statutory Board, until a successor is appointed and

thereby receive the remuneration due for that executive Government role.

(2) That the Payment of Members' Expenses Act 1989 be amended to provide that when a Member of the Keys or Council, who chairs a Statutory Board, goes out of office that individual should continue to receive the remuneration due for chairing the Board until a successor is appointed.

(3) That the Members of Tynwald (Annual Sums) Order and the Statutory Boards (Annual Sums) Order be amended to require that if the Chairman of the MEA is a Member of Tynwald he or she should receive the same remuneration as those chairing politicians who chair other Statutory Boards.

The President: We turn, then, to Item 4, the Joint Committee of Tynwald on the Emoluments of Certain Public Servants. This is a Report and Mr Lowey, I think it is in your hands, sir.

Mr Lowey: Thank you, Mr President.

Mr President, the Emoluments Committee has been considering a number of anomalies regarding the remuneration of Members of Tynwald in certain specific situations.

Firstly, we have examined the situation in which a Member of the Legislative Council undertakes an executive Government role as a Minister or departmental Member and goes out of office as a Council Member. In such circumstances, the former Council Member will continue to exercise his or her executive Government functions, until a successor is appointed by the Chief Minister to that post. However, the Payment of Members' Expenses Act 1989 does not provide for former Members of the Council to continue to be paid for their executive Government role until a successor is appointed.

In the case of a Member of the House of Keys who goes out of office under section 7(7) of the Payment of Members Expenses Act 1989, he or she is paid for continuing with their executive Government role, until a successor is appointed by the Chief Minister.

Your Committee finds and feels that there is an injustice, in that former Legislative Council Members are treated differently from former Keys Members. Furthermore, we feel that it is unfair to expect a former Council Member to continue with an executive Government role which he or she... It can be very demanding and time consuming, without receiving appropriate remuneration for doing so.

Therefore, we wish to recommend that the Payment of Members' Expenses Act 1989 is amended to include a new paragraph to provide that former Members of the Legislative Council are paid for executive Government functions, until their successor is appointed to that post.

Secondly, your Committee has examined the situation regarding Members of Tynwald who chair Statutory Boards. A Member who chairs a Board receives an additional remuneration for this work under section 2 of the Payment of Members' Expenses Act. If that Member goes out of office, either as a Member of the Keys or the Council, he or she continues to fulfil their role as Chairman of the Statutory Board until a successor is appointed, but there is no provision for their remuneration for this task to continue, once they have ceased to be Members of Tynwald. Again, your Committee feels this to be unjust and believes a former Member should be remunerated for such duties until a successor is appointed.

Therefore, Mr President, we recommend that when a Member of the Council who chairs a Statutory Board goes out of office as a Member of Council, that individual should continue to receive the remuneration due. Once again, this would require amendment to the Payment of Members' Expenses Act 1989.

Finally, your Committee has become aware of a further anomaly concerning the chairing of the particular Board, namely the MEA, the Manx Electricity Authority. Until recently, that position was not occupied by a Member of Tynwald. Currently, however, a Member does fulfil this role. The remuneration for chairing the Manx Electricity Authority is considerably higher than that paid to Members of Tynwald who chair other Boards.

Whilst we are aware that the current Chairman of the Manx Electricity Authority has chosen not to receive his additional remuneration, we would recommend for the future that, when the Chairman of the Manx Electricity Authority is a Member of Tynwald, the remuneration should be exactly the same as that paid to those Members who chair other Statutory Boards, Water for example.

This can be achieved reasonably easily, since section 2(2) of the Payment of Members Expenses Act 1989 allows different sums to be paid for members of Statutory Boards, according to whether they are Members of Tynwald or not. This change could, therefore, simply be achieved by amending the Members of Tynwald (Annual Sums) Order and the Statutory Boards (Annual Sums) Order, to indicate that when the Chairman of the Manx Electricity Authority is a Member of Tynwald, he or she should receive the same additional remuneration as Members of Tynwald who chair other Statutory Boards.

So the three items as set down on the Paper have been explained, I hope satisfactorily, to Members on behalf of your Committee. It is putting in fairness. It is right that people should be paid for what they do and, in this case, Members of the Legislative Council, in particular, have been unfairly treated, we believe, in the past; and we believe Members of the Keys have, when it comes to other things.

The President: Mr Waft.

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

The President: Mr Downie.

Mr Downie: Mr President, I wonder, while I am speaking, if the Hon. Attorney might refer to his copy of *Juta's*, because what I wanted to speak about...

I agree with the principle in all three areas here, but I am a little concerned that the Members of Tynwald (Annual Sums) Order and the Statutory Boards (Annual Sums) Order be amended to require that the Chairman of the MEA is a Member of Tynwald etc. The reason I raise this is because I think, under the Electricity Act, there is a provision there for appointing a chairman of that particular Board and that particular chairman is appointed on the grounds that he has specialist knowledge of the industry.

I know where we are coming from, but I just wonder if there is not a requirement to extinguish part of the old conditions of employment for the old chairman and that, in having a political chairman, he will have the same remuneration and salary as everybody else in Tynwald.

It is just to clarify that, because there has been a lot of

concern following the problems with the Manx Electricity Authority and the fact that certain moneys were used for other purposes, as well. I think this might be a way to – if you pardon the pun – kill two birds with one stone, and put this down exactly as it should be, that if there is a political Chairman of the MEA, he gets the same as anybody else –

Mrs Crowe: That is what it says.

Mr Downie: I know, but that is it –

Mrs Crowe: It says 'if'.

Mr Downie: – rather than the provision that is in the Act. The Act is available there, it is either in the Electricity Act or the –

The President: We will sort that out, but the point you are making is... and I think Mrs Christian and Mrs Crowe also wish to respond. Mrs Christian.

Mrs Christian: Thank you, Mr President.

I do not declare an interest in it now, but I have to say that I was a person who had an interest in it at the time. I did think it unjust that the provision for the Legislative Council was different from the provision in the House of Keys, and I welcome this Report.

In the current political climate, it is perhaps academic, because the current political climate does not appoint Members as Ministers from this particular Chamber. However, if there is constitutional change or even a change in political climate in the present constitution, the situation may arise when there is a Member here who is a Minister.

What I do not think comes over quite clearly from the Report is that this does not deal with the basic remuneration which you do not receive and should not receive if you are not currently a Member. It deals only with the supplementary payment as a Department Member or a Minister.

Department Members from the Council can be paid, currently – although I notice the wording here perhaps just reiterates that point. It does say that they would continue in office as a member of a Department.

However, having raised this issue, I am conscious that it then raised the question in other people's minds about the position of Chairmen of Statutory Boards.

Mrs Crowe: It did.

Mrs Crowe: So it has been a useful exercise (**Mrs Crowe:** Very.) in at least tidying up areas where there was no equality of treatment, and I think that that is right and proper.

I think, particularly given the length of time it has currently been taking another place to elect Members to this Council, a person could be serving for a very considerable period of time, (**Mr Lowey:** Absolutely.) quite willingly, no doubt, but not on a fair basis as with Members of the other place.

I do support the third element of the Report, as well. I do think that if the Chairman of the MEA happens to be a Member of Tynwald... And we will have to have it clarify whether or not there is any conflict in this recommendation with the Act, but it simply says if the chairman is a Member of Tynwald, they should receive the same remuneration as other politicians who chair other Statutory Boards, and I think that is right.

We know that the current Chairman is not accepting the remuneration, anyway, though perhaps he would be entitled. I am not sure, under the rules, whether he would be entitled to the Statutory Board payment because he is a Minister anyway, so he would not be receiving that.

But I think it is a welcome Report and I hope that all Council Members, in the interest of equality of treatment, if no other, will support it and the recommendations.

The President: Mr Waft.

Mr Waft: Thank you, Mr President.

It is just on the point about the Legislative Council now perhaps not being involved. The fact is that it does cover chairmen of Boards and we do have chairmen of Boards still with the Legislative Council.

Mrs Christian: Ministers are not covered.

Mr Waft: But I have fallen foul as well, for a time –

Mr Lowey: You do.

Mr Waft: – until somebody has been reappointed, or I have been reappointed, or whatever, and there is a time lapse then, which sometimes can be quite long.

So if there are going to be no more Ministers, the Legislative Council need to be covered because of Statutory Boards, if nothing else.

The President: Mr Attorney, do you wish to comment on Mr Downie's point? Are you ready to, sir?

The Attorney General: Thank you, Mr President.

I think the answer lies in schedule 1 of the Electricity Act 1996. The Hon. Member is quite right, special provision is made in relation to the MEA. It does say, in clause 2 of schedule 1, that section 2(2) of the 1989 Act, which we have looked at – so that is the limit on payments to members of Statutory Boards –

'does not apply to a member of the [MEA], other than a person who is a member of the Council or the Keys.'

So in other words, if you are a Member of Council or Keys, then section 2(2) applies.

Section 2(2) of the 1989 Act says that:

'Different sums shall be prescribed for the purposes of this section according to whether or not the member is –
(a) a member of the Statutory Board;
(b) a Member of Tynwald;
and different sums may be prescribed as respects different Statutory Boards.'

So I think the position is that this recommendation 2 – the Payment of Members' Expenses Act be amended to provide that when a Member of the Council or Keys who chairs a Statutory Board goes out of office, that individual should continue to receive the remuneration due for chairing the Board until a successor is appointed – I do not think that is engaged here.

Number 3, the Members of Tynwald (Annual Sums) Order and the Statutory Boards (Annual Sums) Order should be amended to require that if the Chairman of the MEA is a Member of Tynwald, he or she should receive the same

remuneration as those politicians who chair other Statutory Boards – that recommendation 3 is consistent with schedule 1.

So in other words, it has always been the intention that if you are the chairman of the MEA and you are a Member either of the Council or the Keys, you should get the same remuneration as everybody else.

Mr Downie: Yes, the reason I made that point is, it does not happen now, but if we go back to the days when the Chairman of the MEA was appointed by the Council of Ministers, he was appointed on the supposition that he had specialist knowledge of the industry, and I think the salary then was somewhere between £16,000 and £20,000 a year.

Mr Lowey: We had to bring people in from away.

The President: But not a Member of Tynwald, I think. The difference is –

Mr Downie: And what the AG has said actually clarifies that, (**The President:** Yes.) so we are wiping the slate clean now and if it is a Tynwald Member, the same level of pay and remuneration as everybody else. That is fine.

The President: Mr Lowey to reply, sir.

Mr Lowey: I have not got an awful lot to reply to, sir, other than to thank Members.

The Committee is dealing with certain other anomalies. It is not a finite list, but we thought we had better bring this Report in, because these are the primary ones that we thought were obviously unfair. I think we should be treated no better, but certainly no worse, than our colleagues. (**A Member:** Absolutely.)

To be fair to the Committee, which is a majority of the Keys Members, they too shared that, so it was unanimous. It was quite clear we have seen some real delays, where we have expected an awful lot of people to do very difficult jobs. I, too, have fallen foul, where you did not get paid, because the Keys did not meet for another month, and if some statutory things go through, it may be that we could all be six weeks, if we did not alter it.

Anyway, the view is quite clear that we should alter it, and I urge Members to support it. I thank them for their support.

Mr Waft: It is not retrospective.

Mr Lowey: It is not retrospective, no! (*Laughter*)

The President: In that case, Hon. Members, the motion that I put to Council is that we do accept the Joint Committee of Tynwald on the Emoluments of Certain Public Servants Report at Item 5 on the Order Paper.

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

Procedural

The President: Now, Hon. Members, on your Order Paper you will see that, in fact, we are complete up to 'at 2.30 p.m.' and it will depend on the Education (Amendment)

Bill as to whether or not we come back.

At this juncture, I am unsure as to where they are and can only tell you that we will have to hold ourselves available, to see how we go with that one.

Congratulations to Mr Butt on completion of Parish Walk

The President: However, Hon. Members, this morning we have time and I would like to briefly pay a little tribute here in our own Chamber. There was a little in-joke, a few moments ago, about darkness in Maughold, and there was a bit of darkness in Maughold. There was also a lot of rain in Maughold on Saturday night, and I want to pay a tribute to our colleague, Mr Dudley Butt, on yet again completing the Parish Walk. (**Members:** Hear, hear.)

A man of steel and of iron, no question about that, and regardless of the feet, he just keeps going. So it was a bit dark in Maughold, but yes, it was fine.

And well done to Mrs Christian and the folk of the Maughold Social Club for being there to supply the hot dogs and hamburgers and keep people's spirits up. It was a good social occasion on Maughold green, and I enjoyed it – just before you got there, Mr Butt!

Mrs Christian: Ah, but Mr President, after you left, we put the runway lights down from the church. (*Laughter*) So it was not quite so dark as might be implied!

The President: But anyway, it is a tribute (*Interjections*) and I am sure the other Members join in congratulating Mr Butt on his success.

Mr Lowey and other Members: Absolutely. Hear, hear.

Thanks and good wishes to the Lord Bishop and the Clerk on their final sitting of the Council

The President: Hon. Members, you will also have noticed that the Lord Bishop said that this was his last sitting of Legislative Council. It could very well be that this will be the last sitting that the Lord Bishop will attend here in the Legislative Council room with us. I want to say how much I have actually enjoyed the company of the Lord Bishop, Graeme Knowles, sitting alongside me both here and in Tynwald Court.

I think I have to say I will, on a personal level, miss him, leaving the Isle of Man. I think he is going about three or four years too soon for my liking, but accepting that, I know we, all Members, wish Graeme and Susan all the very best in their new venture down in London.

We can say these things again, but I would just like to say a big thank you for the work which you have put into Legislative Council here in this Chamber, when we have been ploughing our way sometimes through legislation which has meant that it has had to be returned to that other place, and so it is good that that interest was there. I think you have actually enjoyed it, and I think that is one of the plus factors

which I have noticed. So a big thank you to the Bishop for his service here in his time.

There is also another little sadness which I want to comment on, in relation to Legislative Council, because in the same vein, sitting in the corner, I have got Mrs Cullen. Marilyn came as Deputy Clerk and Clerk of the Council, maybe at a difficult time, but nevertheless Marilyn has, I think, served the Legislative Council particularly well. This could very well be, in this formal setting, Marilyn's last sitting, equally, with us as Legislative Council, and I want to put on record my thanks and the thanks of Council Members for the work which she has done (**Members:** Hear, hear.) for Legislative Council.

So, Hon. Members, there is very little more that I can say, other than we will let you know as soon as is practical, whether or not the other place does complete the Education Bill this morning.

If they do not, we adjourn to the sitting of Tynwald on 5th July, and then further formal sitting of Tynwald, business sitting of Tynwald, on the 10th July, and 16th October.

Mr Lowey, you were about to –

Mr Lowey: I was just about to say, are we allowed to say some nice things about Graeme and Marilyn?

The President: I am very happy, Hon. Members. I just wanted to put it on record, but we have the time...

Mr Lowey: I am glad you did, because I have got it written down.

All I can say is, for the Bishop, I have been privileged, like you, sir, to have seen many people sit in the Bishop's chair. I have to say to the Bishop, certainly, he came, he saw, he conquered. I have to say to him, in the nicest possible way, he is 18 carat, as a Bishop.

I think he has been a great asset to this Council – and here speaks a pretty poor specimen of a non-conformist, as he well knows! But I have to say, it has been a delight to have him amongst us and the genuine interest that he takes in the well being of the people of the Isle of Man. That is how bishops should be, and I have to say, as far as I am concerned, he has done great credit to himself and to his Church and to his calling. I, like Mr President, will miss him, and that is the greatest... For me to miss somebody, well...

Now I come to Marilyn. How I am going to miss Marilyn! (**Mr Downie:** Hear, hear.) She grows the best veg in the west, anyway, without a doubt. She has been first class. I think she has carried herself with dignity. I do not want to remind people about when she was appointed to the post. We had a little local difficulty, but I can say that Marilyn rose above that little difficulty and she has excelled.

I have had the pleasure of working with her in committee. No-one works harder, more diligently and successfully than Marilyn. She is a class act and she is going to be ever so difficult to follow, she really is.

Quite apart from being our Clerk to this Chamber, she has also been a friend to each and every one of us. We could go to Marilyn if we had got a problem and talk it through, and – in my case, anyway – she took confidences and treated them as confidences, and she has been a great help. She is going to be sadly missed.

But that sounds as if we are going to lose her forever! (*Interjections*) I hope she is going to be digging the garden; I hope she is going to continue to play her recorder; and I

Procedural

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hope very much that we will still have the pleasure of her company in the months and years ahead.

While it is always sad when somebody retires, I think Marilyn – again, like the Bishop – has been an absolute asset to this Council. Again, we will miss her, like we will miss the Bishop.

The President: We will, Hon. Members, but at times like this, I always remind myself of my infamous bucket of water.

Mr Lowey: Yes, absolutely!

The President: There we are, Hon. Members. At 12 noon, I think it is time that we –

Mr Lowey: Go and fill the bucket.

The President: – wait now until such time as the other place has completed its passage of the Education Bill. If it has not, Hon. Members, our next sitting will be on the Fairfield. Thank you.

*The Council adjourned at 12.00 noon
and resumed its sitting at 2.30 p.m.*

Education (Amendment) Bill First Reading approved

5. Mr Lowey to move:

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

The President: Please be seated, Hon. Members.

Hon. Members, when we rose before lunch, we were unsure whether or not we would be back for 2.30 p.m. or whether the other place would complete their work on the Education (Amendment) Bill. However, the fact remains that they have completed the Bill.

Mr Downie has indicated that he may be a few minutes late back. I am unsure about Mr Attorney, but I am sure he will follow in.

So, dealing then with the one Item which remains for us to deal with at this sitting of Council is the Education (Amendment) Bill now, moved to us from the other place, Mr Lowey, it is in your charge, sir: First Reading.

Mr Lowey: Thank you, Mr President.

Mr President, first of all, may I say that the Department and Board of Education apologise to the Branches for bringing the Bill in a rushed form. I will explain later, perhaps, why that has happened. It is unfortunate and we do apologise and we would crave your indulgence.

Mr President, the Education (Amendment) Bill, I think, needs just a little history. Following the introduction of the ministerial system in the Isle of Man many years ago, the position of the Board of Education and its relationship to Tynwald has always been an anomalous one. At the time of the introduction of the ministerial system, the Board of Education was a 24-member popularly elected body which mirrored the House of Keys.

Prior to the ministerial system, the Board of Education was the final decision making body, when it met together with the five political Members of Tynwald. All policy changes and decisions had to be ratified by the full meeting of the Board and the Chairman of the Board, who was a Member of Tynwald, had no real executive power.

The establishment of the post of Minister for Education coincided with the reduction of the membership of the Board to 15. Again, this membership represented the constituencies of the House of Keys and the members were popularly elected every five years. At this point, however, the main role of the Board of Education was that of an advisory body, which would make suggestions to the Minister for Education, but the Minister was under no obligation to accept the advice given.

At the same time, secondary independent governing bodies were being established, consisting of four Board of Education members, a teacher governor, parent governor, and up to three co-opted governors, with one of the members of the Board of Education acting as their chairman.

Over a further period of time, governing bodies of primary schools were established. Membership consisted of one member of the Board of Education, parent governor, teacher governor, and two community or co-opted governors. The Board of Education member automatically took the chair of these meetings.

In addition to their role as governor, members sat on the Youth and Community Committee, Special Services Committee, Music Subcommittees, Governors of the Isle of Man College. They also formed the Student Awards Subcommittee.

Following the Education Act 2001 in September 2004, the role of the Board of Education again changed. This saw the Special Services Committee, Youth and Community and Music Subcommittees being replaced by divisional meetings within the Department, chaired by a departmental political member. Members of the Board made up the Student Awards Subcommittee and appeal panels in respect of admissions, suspensions of pupils, etc.

With the election of the Board of Education due in December 2007 – we are up to date now – the future of the Board of Education was initially considered in 2006. In January 2007, a meeting of the Board of Education was held at the centre at Santon School and the Board members were asked at this point to express their views, (a) on the future of the Board of Education and (b) its method of selection.

At this meeting, it was unanimously agreed that there was a function for the Board of Education, but that its current remit needed to be reviewed. In response to the question as to the method of selection, it was unanimously agreed that, considering the current role and possible future roles of the Board, the selection by public election had outlived its usefulness.

A further meeting of the Board was held to look at alternative ways of selection and a presentation was given by two representatives of the Board to the Department in March, outlining their vision of the Board's future. The suggestion was the establishment of an Advisory Council appointed by the Selection Committee. Hon. Members will know that we have a Selection Committee now for Tynwald, for appointments. These appointments would take into account regional representation without the need for a public election.

I would remind Hon. Members that the Board of Education

members themselves agreed that it was inappropriate for their current role to continue and that the time had come for a new method of assisting the Department of Education in the management of the schools of the Island.

This Bill is merely to extend the life of the current Board in order that the Department may continue to consider the options open to it. So, we have not come to a final decision on the numbers and the role yet, but we believe it is opportune now for us to grasp the nettle and decide what is best for education. This Bill extends the life up to 18 months and then it will obviously cease. But if we can get agreement after consultation, it could be earlier than that and we could bring it forward.

Mr President, I beg leave to move the First Reading of the Education (Amendment) Bill.

The President: Mrs Crowe, Hon. Member.

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

Mrs Christian: Mr President, I am happy to support the First Reading. As the hon. mover says, it simply extends the life of the current Board whilst further consultation takes place.

In moving the Bill, he has indicated that there is definitely a move afoot to change the structure of the Board. I do not know whether he has any information about how many uncontested seats there were at the last Board election. I think there were some, certainly, and that may be indicative of the fact that there are fewer people now who are willing to stand for election in the first instance and go through the not inconsiderable task of fighting an election for a seat on the Board.

I also think that there have been changes in the structures through which schools are governed and there may be a mechanism there for obtaining representation from the community, in any future structure which the Board and the Department agree, with Tynwald concurrence eventually, might be appropriate.

So, there is no harm, I would think, in extending the term of office of the existing Board. I doubt that there is anyone who is going to protest that they are going to have to wait two years to contest a seat on the Board of Education, but if there is, they have had their opportunity – albeit rather a limited opportunity, Mr President, because of the speed at which we are being asked to deal with this Bill.

The Hon. Member has not actually expanded on that point just yet. I think we would appreciate it if, in his reply, he could indicate why the Bill has come forward at this late stage. I do understand the reason why it has to be dealt with quickly, in order that an election is not called, but we have not heard why it did not come forward sooner.

The President: Hon. Member, Mr Crowe.

Mr Crowe: Thank you, Mr President.

I had the pleasure of serving with you, when you were Minister for Education and I was a Member of the Department of Education. I attended many meetings of the Board at Santon School and found it to be very interesting and very useful. The impression I always gained was the benefit of the regional representation.

I can understand now the reason why it may have,

should we say, outlived its usefulness in terms of numbers, and I think any body that replaces it should have regional representation, because I would not like to think that we are just saving money and eradicating or eroding the quality of service that the members of the Board of Education give.

So, any advisory body that is set up in future, I feel, should have this regional representation and, again, give a quality of service and the very many skills that people can contribute from other backgrounds, other than the political scene.

The President: The Lord Bishop.

The Lord Bishop: Thank you, Mr President.

I am happy to support the First Reading and the Bill as it stands. I think there are two things that I would want to talk about. The first is how appropriate it now is to popularly elect a body which has no power. It strikes me as being a rather bizarre way of proceeding, that you go through the whole business of a public election for a body which then turns out to be advisory.

I think one of the great challenges to the Minister and his Department is to work out precisely what a new body would be for, because to build in frustration into that body would be an extremely foolish thing to do. If what they are actually trying to do is to say we do not need the Board of Education any more, then for heaven's sake, be brave enough to say so, (**Mr Lowey:** Absolutely.) and see it off.

I am not saying that that is the case, but I think that a frustration that could arise by going all the way through an election, then to find you have no power whatsoever is a fairly bizarre way of proceeding.

The second thing that I would want to say is that I would hope, when it comes to looking at school governance, that there could, in fact, be a change to the way in which the governance of our schools has happened: that the stranglehold that the members of the Board have on chairmanship and how they collect chairmanships of boards can be broken, because I do not think that is a very good thing at all.

To govern a school is a very heavy responsibility and needs time and commitment. I say that, having chaired schools across, where the powers of governors are considerably more than they are here in the Isle of Man. If that is the way things are going, I think it will be very important, as was introduced in the UK, that really you can only chair one board of governors, if you are to give of your best and if you are to support the school in the way that that school might expect.

Once again, that is a difficult challenge to the Minister and the Department, because it is a radical change from the way things are happening.

The other thing that quite surprised me when I came to the Isle of Man was to discover that governors of schools were paid. I wish I had been paid for the amount of hours that I put in for school governance in England. I could have retired many, many, many years ago on the millions I would have made! (*Laughter*) I think it would be quite sensible for the Department to look at whether that is actually an appropriate way in which to proceed to school governance.

But I am supportive of this because it wins time. I think that the Department and the Minister are at a moment which is a seminal moment for education and the governance of our schools, and I think it needs time to get that right.

The President: Mr Turner.

Mr Turner: Thank you, Mr President.

Yes, I support this Bill as it stands and I agree wholeheartedly with the Lord Bishop's comments that for somebody to run through the whole election process, only to find that they have got no power is a pointless exercise and, indeed, it would be a good case to, as he said, scrap the Board as it is.

Obviously, this is to buy extra time. I have heard the various concerns raised in other places about this being rushed through, but I think it would be rather irresponsible to go through the expense of having an election which is generally poorly supported by voters. I am not sure what the administrative costs of an election must be, but I can imagine that they are not cheap. I think we have a duty there to sensibly spend the public funds.

I do not feel that by extending the life of the Board, we are holding up democracy, or any of those arguments. I think it is the right time to do it, rather than wait another five years, which is what would happen, if this did not go through.

Again, I have mentioned poor turnouts of elections for the Board of Education. I have to say that I am not sure now whether I have even voted at a Board of Education election, I am ashamed to say! But that is the common feeling out there by a great deal of people. They just do not seem to bother.

So, I am supportive of this and I echo many of the comments that we have already heard, sir.

The President: Mrs Crowe, do you wish to speak?

Mrs Crowe: Yes, I just would, in fact, reinforce what the Lord Bishop said about the need to appoint an advisory body. I do believe that we have advisory bodies in many areas in Government and, in some cases, as the Lord Bishop quite rightly says, they are fraught with frustration from beginning to end, because they do not have a proper remit. I really do think that, if an advisory body needs to be – *needs to be* – put in place, then it should, from the very beginning, have a very firm remit and its role and functions clearly determined.

If it is just a sop to say, 'We'll get rid of the Board of Education, but we will put in a regional body without any real functions', then I would agree with the Lord Bishop: make the stance now and make a firm stance.

The other thing that was commented on was about, of course, payment for people who take into their hearts the care of these schools and our children. I do think the situation was anomalous where you had members of the Board being paid to attend and expenses, and then you had the good men and true who had put themselves forward – in many cases, businessmen, accountants, whatever they might be – to be part of that governorship role, who did not receive the same recompense.

I do think that all of these things will be ironed out in the process of consultation, prior to whatever new body the Department endeavours to put in place. But I think, yes, I totally support the Bill before us.

The President: Mr Waft.

Mr Waft: Thank you, Mr President.

I just find it strange that we have a Selection Committee set up and there is no need for a public election. I think that is the principle. Thoughts are somewhere else about Legislative Council, that there *is* a need for a public election. It is just countermanding one another.

With regard to the Chairman of the Board, when Victor Kneale, I remember, was there, he was certainly a powerful man with the Department of Education.

I am interested in the... I was concerned about the time lapse but it does qualify it, that it is at such earlier date as the Department may by order appoint. I would hope that it would be earlier, rather than later. It is an extraordinary long time, 2009, before...

The President: Mr Butt, Hon. Member.

Mr Butt: Thank you, sir.

This Bill obviously makes eminent sense in the current situation.

I have a technical query for the mover which, maybe, he can address at the clauses stage. It is that, in the extended membership, or the extended life of the members, to June 2009, if in that period somebody either retires or resigns or has to leave prematurely, will that position lie fallow or will there be some election or some process to replace the person in this interim 18 months?

The President: Mr Lowey, would you care to reply, sir

Mr Lowey: Yes, indeed, sir.

First of all, can I thank Hon. Members, firstly, for the interest shown and the general support for the Bill. They have raised some very good queries and I will do my best to address them.

Mrs Christian mentioned the turnout and how many people were returned unopposed at the last election, which has built up the climate to where we have got to. Fifty per cent of the seats were uncontested last time and the turnout was barely into double figures, when you averaged it out throughout the Isle of Man. So, there has not been a great public interest and that is sad because education is key.

That either illustrates people, 90 per cent, are satisfied or... which I do not think is a very good turnout, but you know what I mean; it is very sad. A lot of effort went in by both the candidates and by the media and the Government machine, saying there were elections on. That is the reality.

The reconstruction of the new advisory body: a title is a title and you will appreciate what the Department is trying to do is not get too hung up at this moment of time on a title. We are looking at a system and I have to be fair. Here, at the very outset, I would pay the warmest tribute to the Department members of the Board of Education. They were asked in December to look at this and, to be fair to them, they have looked at it in a very, very constructive way. They really have.

They were not pressurised. Part of the delay is that we were not imposing our views on the Board members. We wanted the Board members to say, 'Look, you are dealing with this. What do you think from your point of view?' And they worked very constructively. They came back with the unanimous view that election really is not now... They realised there needed to be change and they have come up with a formula.

We are deliberately not putting that into the frame today, because that may not be the finished formula. It may be an adaptation of it. It may be that we still have got other people to consider. We have still got to consider it with the Board members, their proposals, but it is there. I have to say that it is

a very constructive document and I want to pay public tribute to the way the Board have addressed this very important issue because it is, in effect, having major change.

Mr Crowe mentioned that he had a happy association. I have only been on the Department for six months and it is a happy association. It is constructive. We are very blessed in this Island today to have a good Minister for Education. I am not saying others in the past have not been good. I can only speak for the one that I serve at the moment, and I think she is an absolute first class Minister, doing a good job on behalf of the young people and education generally in the Island.

The Board members themselves... this has not been driven by the Department. We have said, 'Look, we believe you have got a problem. How do you think we can resolve it?' It was unanimously agreed by the Board that we should really do this.

Then it comes to what I would call the mechanics. Do we go through with an election today and then, five years down the line, alter it or do we need to alter it before then? The answer is we should alter it before then. It is practical and, by extending it – and this is covered in another Member's questions about the timing – the timing really, as I said in the opening address, was in December that the Department met to discuss it. They came back to the Department in March with their proposals and we agreed in March that we should actually get a Bill to extend the life.

I do not want to criticise any individual or anybody, but somewhere in the system, there was a three weeks' delay. I am going to say no more than that, because it does not help. It does not bring us forward one jot, but there was a three-week delay. That has put the pressure on, to where we are at this time. So, it is from six months since we started – some people would say that was long enough – but there was a three-week delay. I think if everything had gone according to plan, we would have been here, maybe three weeks earlier or a month, and the pressure would not have been quite as great. It was always going to be tight, but that is the reason why the delay and, as I said, I have already apologised to Members for that.

The Lord Bishop, I thought, was first class with his contribution. I agree with him. There must be frustration, if you have been elected and you have got no power. That has been the anomaly that I referred to. When we got to ministerial government, there was a cull of so many committees that it bred a lot of dissent. We hear it every month in Tynwald by my hon. friend for Onchan, who talks about the Hospital Management Committees and all the rest. We did a cull of all of them; but education was thought to be special and we did not want to get involved too much in politics, so it has always been an anomaly, where the Minister has to have an advisory body.

But I have to say that the selection that we have had of changes evolving over the years has really tried to fit the people we have got into meaningful jobs. That is really what the Bishop is saying. If you are going to give them no powers, you have got to give people a meaningful role. We are not going to put people there just for numbers' sake. We have got 15 members there. Is that too many? I would suggest that it maybe is. Even the Report, I have to tell you, thinks that maybe too many.

Is five too little? Maybe five is too little. Maybe, we could get it with ten. (*Interjection*) We still have got to tease that out, but it has got to be meaningful. The Minister,

in addressing this problem, has said, 'We really do need to make sure that we have meaningful roles for people to do meaningful jobs.' So, we are on that.

Of course, any decisions we take will be subject to discussion in Tynwald Court, so Members themselves will have a say – the final say – on what we propose.

On the paying bit, even to be fair to the Board of Education, the Board members themselves have touched on that in their paper to us about payment: whether it should be an honorarium, should it be at this level, that level? We have not decided that amount of detail yet.

But one thing is for sure, I agree absolutely with the Lord Bishop when some members of the Board have been chairmen of three schools, for example. That cannot be healthy. I believe that, as you rightly say, if you adopt a school and make it work, then it is a full-time job. To have three schools...

I can remember one case recently, where we had a chairman who was a chairman of three schools and never attended a meeting. You will be pleased to know that the Minister took action on that and he is now no longer the chairman of any of the committees. But, again, it is one of the things that had taken place under the present system. Hopefully, the new system will obliterate that.

Mr Turner talked about the election and how much it cost. I am reliably informed that it is in excess of £150,000 for a general election. So, it is not a cheap option to hold the election and, as I say, 50 per cent were returned unopposed and the others got about 11 per cent. So, it is not a cheap option.

But that is not the driving force. Cost has not been the driving force – but it is an element that should be... We should keep that in mind.

I would say to Mrs Crowe, titles are not the thing at the moment. Call them what you like, really, but the proposals, if you call them advisory, they are advice to the Minister because, at the end of the day, the Minister is the Department and we are trying to get a system of government.

It is an extremely difficult job, with the political representation that we have got at the moment, with the Minister and two political Members of Tynwald, to fit all the things... I do not think we do it as effectively as we can.

Here again, I come back to the Board members. Many of them are long serving, vitally, keenly interested in education and I believe that we have been very lucky with the vast number of people who have served on that Board. So, again, I pay public tribute to their efforts.

But we want them in working effectively for education and that is the main thing that is here. We want to have the right machine to deal with education.

Mr Waft talks about the anomaly of elections. We would hope very much to have it in long before 2009. We really do but, again, I think it is important to have... I mentioned about the Board not wanting to pressurise people. What we have tried to do is to say, 'Look, we are not pressurising you. We want the right result.' But you have to have a timeframe, because if you do not have a timeframe, you do not... We hope very much that it will come in before and that is the way that the Department and the Board are working, I have no doubt at all that that can be achieved in a far shorter space of time.

To Mr Butt's question, we would appoint a person to complete the term under the current regulations, so if there was somebody fall out of the election, what they intend to do

now is they can appoint – the Minister can appoint somebody from the area to represent that particular seat. That is not a new power. That is an existing power that has been exercised in the past. So, that would still be in play, while this interim period would play.

With those, Mr President, I hope I have touched on everything that everybody has raised and I would thank Hon. Members for their support.

I beg to move the First Reading of the Bill.

The President: Hon. Members, the motion that I put to Council then is that the Education (Amendment) Bill 2007 be read for a first time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Education (Amendment) Bill

Standing Order 22(2) suspended to take further stages

The President: If we are to progress this matter, Mr Lowey...

Mr Lowey: Yes, Mr President, I have told Members and I think they recognise the need for speed on this particular piece of legislation to get Royal Assent before the term expires. So it is rather important that we get this finished today.

Therefore, I would like to suspend Standing Orders, with your and the Council's approval, to take the Second Reading and further clauses, and Third Reading of this Bill today, sir. I move:

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

The President: Mr Turner.

Mr Turner: I beg to second, sir.

The President: Are we agreed, Hon. Members, to suspend? (**Several Members:** Agreed.) I think Mr Lowey is indicating that, if we do get through the clauses, we will also suspend the Standing Orders for the Third Reading. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Education (Amendment) Bill

Second Reading approved

The President: Second Reading then, Mr Lowey.

Mr Lowey: Thank you, Mr President.

It will be shorter than the first, I can assure you.

May I thank the Members for their contributions and support so far for this Bill. I just remind Members the Bill is merely to extend the life of the Board of Education for a period of up to 18 months in order to allow the Department to carry out further consultation with the current members of the Board of Education and full consultation with other

interested parties on the Island in respect of the proposal to abolish the popularly elected Board of Education.

This Bill does not dissolve the Board of Education, nor does it commit this Council to the abolition of the Board of Education. It merely provides us with the time required to carry out the consultation, as previously mentioned, and along the lines which we have said.

Mr President, I beg to move:

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

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

The President: Mrs Christian, Hon. Member.

Mrs Christian: Very briefly, Mr President, we have covered it, to a great extent, in the First Reading, but whilst in another place, I understand there was comment on the thought of how the Board might be reconstituted or replaced. Has there, from any source, been any objection to the actual extension of the period for which the current Board is to remain in place?

Mr Lowey: Not to the best of my knowledge.

The President: In that case, Hon. Members, I will put to Council that the Education (Amendment) Bill 2007 be read for a second time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Education (Amendment) Bill

Clauses considered

The President: We will go straight through to clauses. Mr Lowey, take clause 1, please.

Mr Lowey: Thank you, Mr President.

Clause 1 refers to the term of office of the Board of Education members.

Clause 1(1)(a) confirms that any member in office immediately before the passing of the Act and clause 1(1)(b) any member elected to fill a casual vacancy existing immediately before the passing of this Act or arising before the appointed day, shall hold office until the appointed day of the Act.

Clause 1(2) deals with the amendment to schedule 7 of the Education Act 2001.

Clause 1(3) defines the appointed day as being such a day not later than 1st June 2009 as the Department of Education may by order appoint, or if no such order is made, this Bill lapses on 1st June 2009.

Clause 1(4) requires any order, as described in the previous section, to be laid before Tynwald. This clause therefore allows for an adequate consultation period to be carried out, with the constitutional roles and responsibilities for the new body being established, and the necessary public awareness campaign being undertaken and the recruitment of members to be representatives of the newly established body.

Also, the wording of the clause deliberately allows for

the Appointed Day Order to be flexible and to be brought forward, if the consultation process in the passage of the Education Bill which establishes the new body has been completed earlier.

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

The President: Mrs Crowe, Hon. Member, please.

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

The President: Lord Bishop.

The Lord Bishop: From Mr Butt's point raised earlier in the debate, it is quite clear that, in fact, an election could be held, because clause 1(1)(b) reads 'or arising before the appointed day', so that if it was felt necessary for an election to take place it could do. That person would then run to whenever... so it allows for appointment or election, which I think is perfectly equitable.

The President: Mr Waft.

Mr Waft: It is just interesting, Mr President, to see a Bill that confirms the date on which it should be appointed. In a lot of the Bills that we see going through the legislature, often the appointed day is only done in part and only the part of the Bill is executed by the legislation, and there are other parts just not enacted because of the Appointed Day Order only being restricted to certain clauses. So, at least that is now down here.

Thank you, Mr President.

The President: Mr Butt.

Mr Butt: Can I just raise a query with the mover about his comment at, I think it is, clause 1(3)(b) that if no such Order is made by 1st June 2009, this Bill would actually fail, it would cease. Does that mean if there was a radical rethink in terms of should there be a Board of Education in the future or not, you could revert back to the status quo as it is now?

Mr Lowey: Yes.

The President: Just following that point, if in fact no order is made and this Bill ceases to be in existence, picking up from Mr Butt's point, when would the next election to the Board of Education take place?

Mrs Christian.

Mrs Christian: That is the point I was going to make, Mr President. I wonder if the mover could also just clarify this issue of appointing members. I presume that it is a timing issue. Occasionally, if a vacancy occurs close to when an election is due, is it under those circumstances that appointments can be made and only in those circumstances?

The President: Mr Crowe.

Mr Crowe: Mr President, I think although two years sounds like a long time off, I think it will take some little time to get the constitution of this new body formulated.

Then you have got the selection process and applying for the new appointments on this, so I think it will be a fairly tight timescale, especially if you need primary legislation, as well. I am not sure if that is needed in this particular case.

The President: In that case, Hon. Members, Mr Lowey to reply to clause 1, sir.

Mr Lowey: Can I just say the way that I look at it, if I can take the appointment of a member of the Board of Education: if we look at modern history, it is not just the closeness of an election that is a deciding factor. I can remember a member being appointed almost immediately after the general election because it was advertised and nobody applied for the job. So, there is flexibility in the appointment system already existing and that will not alter.

The Lord Bishop is right, as the wording of the legislation goes, but I want it made quite clear that there is that flexibility in the appointment system already and it has been exercised. That is number one.

Mrs Christian said, when will we have the election after that? Well, quite candidly, I would have thought that, with the status quo, it would be as soon as practicable. Although it is not written in, I believe it would be incumbent upon...

We are talking here about a hypothetical, aren't we? 'If there is not one, when would it be?' I would say as soon as practicable to organise a general election and that would be in a few years.

I see the Hon. Member is not happy, and I am quite happy to debate the point.

The President: Mrs Christian, I will allow flexibility.

Mrs Christian: Perhaps we need some guidance from the learned Attorney. Is subclause (3)... that seems to be the relevant bit:

"the relevant date" means the anniversary of the appointed day (within the meaning of the Education (Amendment) Act 2007)."

(3) In this Act, "the appointed day" means –

(a) such day, not later than 1st June...

I am talking about the appointed day. I am trying to clarify: the appointed day for this Amendment Bill to come into effect must have to be before the next election is due to be called. That *must* be ages before 1st June 2009. Or am I mixing that up with some other appointed day which defines when an election should take place?

Mr Lowey: Well, we are not going to have an election, because that is why we are not going to have that election. This Bill is designed purely not to have the election.

Mrs Christian: Right, but I am asking when this Bill is going to come into force.

The President: Right, Hon. Members, Mr Butt raised the question and it was followed up by probably myself and Mrs Christian also, that in fact, in the event of an order not being made, presumably, if there is no order made and 1st June 2009 arises, this Bill then ceases to be in existence. There has to be a procedure, presumably, to revert to the election procedure which we currently have, otherwise there will be a need to come forward again with primary legislation to extend this Bill.

Mrs Christian is now working on the question, in trying to find out – forgive me, Mrs Christian, if I am wrong – in clause 2(3):

‘In sub-paragraph (2)(a), “the relevant date” means the anniversary of the appointed day (within the meaning of [this Act])...’

or does it refer to a relevant date in schedule 7 to the Education Act 2001 which gives an appointed day? Am I getting anywhere close?

Mrs Christian: I think so.

The President: I think so, right. Perhaps we need to look at then, schedule 7 of the Education Act 2001. Mrs Cullen, thank you. Mr Attorney.

Is there a confusion between those two?

Mrs Christian: I think, Mr President, maybe I should apologise. There is not, in effect, an appointed day mentioned for the invocation or the effectiveness of this Act. (*Interjections*) Right, okay.

The Attorney General: Mr President, this Act will come into force when it is passed. We do not have an appointed day procedure at all under this Act.

Mrs Christian: Right, that is fine.

Mr Lowey: It is a long stop. It cannot continue after that date.

Mrs Christian: Right, okay.

The Lord Bishop: My understanding, Mr President, would be that if this Act fails, which stops a general election, if we get to 2nd June 2009 without anything happening, the old rules kick in and immediately the Department organises an election.

Mr Lowey: To an election, yes, that is exactly what I said. The wheels go into motion to however long it takes to call a general election.

The President: We know that is the intent; is that right?

Mrs Christian: I just hope, Mr President, that if it should not work out that some new structure is created, there would not be a hiatus between the end of their term of office and a subsequent election.

The Lord Bishop: Might I suggest, Mr President –

Mrs Christian: I presume that an election can be called in sufficient time or as soon as is necessary after 1st June, if this has not been done.

The President: Hon. Members, it would be helpful to *Hansard*, if we do not try to talk over each other, whilst I am quite happy to have flexibility. Lord Bishop.

The Lord Bishop: I was just going to say, Mr President, that I would think there would be enough members of the present Board who, if they saw May running out, would make

enough noise to ensure that the Department was aware that it had to organise an election.

Mr Lowey: I try very hard to look at the situation in a positive light. I am convinced we have two willing partners at the moment. We have got other people to consult, but we have a willingness to do something for the general good.

We have tried to put a long stop in, to say it should not continue after that, but we should have an alternative to go forward. As far as I am concerned... and I may be missing Mrs Christian’s main thrust here, but I thought it was that we want to prevent a hiatus: if, at the end of June, there is not agreement, then we should be able to say we have got in place the machinery that will allow that to happen.

I am quite prepared to take that away and make sure that when we come back to Tynwald – because Tynwald will have to discuss the new regime, the new system, the new advisory body, call it what you will – Tynwald will have a say in that. As far as I am concerned, I think we will then be able to explain if that should happen. If it should not happen and does not meet with approval, then it will be that a general election will be called under the old system.

The President: I think Mr Attorney has been working on the... I think actually, re-reading it myself – I am sorry, Mr Lowey, it is in your charge – but it appears to me that, in fact, we do have an appointed day in this Act. The appointed day means such day not later than 1st June or, if no such order is made, it becomes the appointed day, 1st June.

So the appointed day, 1st June 2009, then becomes... in clause 1(2), ‘With effect from the appointed day of schedule 7 of the Education Act’ comes into play at that stage and then we go on to an election.

Is that right, Mr Attorney? No?

The Attorney General: Mr President, I think that the important thing is that this Act itself comes into force when it is passed. This Act does not need an Appointed Day Order to come into force.

I do not know... if it might be helpful, if I just try... This is not an easy piece of legislation, at all.

Mrs Christian: I am concerned now, Mr President, that this second appointed day is a different appointed day from the first one!

The President: Well, I thought that originally, and then the second time around I have decided that maybe it is not. So, I think if we just allow Mr Attorney to try to take us through this particular bit, if it is practical, because, Hon. Members, in fairness, I think there is a willingness to complete this, but I would rather complete it correct.

Mr Attorney.

The Attorney General: I am very tentative about this, Mr President. I am sorry that I perhaps have not looked at this as carefully as I might have done before this sitting.

If we go to clause 1 of the Bill, we have got a provision there that certain members of the Board of Education hold office until the appointed day.

Now if we just pause there, Mr President. The appointed day for the purposes of clause 1(1) of the Bill must be defined by reference to clause 1(3) of this Bill. In other words, it is 1st June 2009 or earlier, if the Department of Education appoints.

So, going back to that then, the members of the Board of Education who are in office before this Act is passed and any member who is elected to fill a casual vacancy immediately before the passing of this Act stay in office until 1st June 2009 or earlier, if the Department of Education specifically makes an order to that effect.

So, I think thus far, so good.

Mr Waft: With respect, Mr President, I think when I mentioned earlier about Appointed Day Orders and Bills, they just do not sign them; they have got the Appointed Day Order actually written into the Bill. (*Interjections*)

Mrs Christian: This is a different kind of appointed day.

The Lord Bishop: This is not that sort of appointed day.

Mr Waft: But it does enable the Act. It brings the Act into being –

The Lord Bishop: No, it does not.

Several Members: No.

Mr Waft: Well, it does away with the Act on that basis. If it does not do away with the Act, what is the use of it?

The President: Well, continue, Mr Attorney. I will come back to your point, Mr Waft.

The Attorney General: If I can possibly just try to respond to that briefly, Mr President. Most pieces of legislation simply come into force when they are passed, when Royal Assent is given and so on. When Royal Assent is given, then they become effective.

There are, of course, certain pieces of legislation which do not come into force until some other order is made, often by, say, the Council of Ministers or by a Department. That is when you have the appointed day mechanism. That does not apply to this legislation at all.

Contained within this legislation is a formula for bringing the term of office of certain members of the Board of Education to an end and that is done by an Appointed Day Order made by the Department; but that is a completely different thing from bringing this Act into force. So, that I think is clause 1(1) of the Bill and also clause 1(3) of this Bill.

What we have got left there now is clause 1(2) of the Bill. So what does that mean?

With effect from the appointed day – and again, we have got 1st June 2009 or earlier – it says that paragraph 1 of schedule 7 to the Education Act is amended. The reason for that, Mr President, is that the paragraph 1 of schedule 7 of the existing 2001 Act tells us what the constitution of the Board is. At present, it consists of 15 persons, not being Members of Tynwald, who are elected in accordance with the Representation of the People Act. Then it goes on to say that:

'A member of the Board shall hold office –

(a) for a term of 5 years from the 1st December in the year in which he was elected, or

(b) in the case of a member elected to fill a casual vacancy, until the date on which the member in whose place he was elected would ordinarily have gone out of office.'

So, what we are saying there is that that formula in schedule 7 of the 2001 Act is being replaced by a new provision so that, with effect from 1st June 2009, members of the Board hold office for a term of five years from the relevant date in the year in which he or she was elected or again, in the case of a casual vacancy, when the member whose place he has taken would ordinarily have gone out of office.

So, instead of serving for five years from 1st December in the year in which you were elected, you are now going to serve office for a term of five years from the relevant date in the year in which you were elected.

In this case, you then have to look to see what 'relevant date' means, and that is shown here in subclause (3): it means the anniversary of the appointed day within the meaning of this Act. So it is one year then – is it not? – after 1st June 2009 or the earlier date if the Department has made an Appointed Day Order. So you actually hold office for five years from 1st June 2010 or five years from the earlier date, if the Department of Education appoints.

Mrs Christian: Mr President, thank you. May I comment on that point.

The President: Mrs Christian.

The Attorney General: I hope that is right.

Mrs Christian: Having gone through this slowly now – we have not had it for long and I think it has been very useful to do that – it does seem to me, then, to read that if I am in office in the Board now, I have been there for five years and an election is coming up and my term of office is being extended for another two years and after that I can have another five years without an election. Am I right, Mr Attorney, that that is what it says?

The President: No.

Mr Lowey: That is if the structure is the same.

Mrs Christian: Well, does it? Can I just clarify this, please?

The President: We will work our way through that one, but my understanding was that, after 1st June 2009, in effect the Department has a year to start the election, and the five years serve from that date on, is that right?

The Attorney General: That I think is right, Mr President.

Mrs Christian: Where does it say they have a year to call an election?

Mrs Crowe: In schedule 7.

Mrs Christian: Right.

The President: We are very close, I think. Mrs Christian: you are still not happy.

Mrs Christian: No, I am just trying to see which bit of the schedule I have missed. With effect from the appointed day, i.e. at latest 1st June, the schedule is amended by substitution of subparagraph (2) – I presume it means with the following – oh no, substitution of the following: a member of the Board shall hold office for a term of five years from the relevant date, i.e. five years from 1st June –

The President: The anniversary of the appointed... It says in (3), it is the anniversary of the appointed day, so that is where it takes a year. (*Interjections*) That, therefore, gives the Department a year in which they can organise or hold an election and from thereon it becomes five years.

Mrs Christian: Right.

The President: Mr Waft.

Mr Waft: Therefore it comes in after the Selection Committee has decided on who is going to be appointed. Where do they fill in then? There is no election after –

Mrs Crowe: No, this is if this Act does not come in, then an election –

The President: If it does not come into force, there is an election. If the Act comes into force, people will be appointed. Mrs Christian.

Mrs Christian: Where it says they shall hold office until the appointed day, one takes it that they have gone out of office on that day. (**The Lord Bishop:** Yes.) Right, so with effect from the appointed day, i.e. they have all gone out of office, there has to be an election then called. With effect from the appointed day, paragraph 1 is amended by substituting a member of the Board shall hold office for five years from the relevant date in the year in which he or she was elected. ‘The relevant date’ means the anniversary of the appointed day.

Well, if the appointed day is 1st June – (**The Lord Bishop:** 2009.) 2009, right, the relevant date means the anniversary of that, which would be 1st June 2010. So a member of the Board shall hold office for a term of five years from 1st June 2010, in the year in which he or she was elected.

The President: Well, that is the year they would be elected, isn’t it? It would be in that year 2009-10, when the election would be held.

Mrs Christian: Right, I am not entirely clear why that is necessary.

Mrs Crowe: Neither is Mr Attorney. He does not like the drafting either, so...

The Attorney General: It is very difficult, Mr President, I have to say.

Mr Lowey: If it is difficult for the... This is the problem we get into when we – and it is our role to unravel the law (*Interjection by Mrs Crowe*) and to make it... It is simple –

Mrs Crowe: We know what you mean.

Mr Lowey: I know exactly... and I am sure the Hon. Members know exactly what we mean, but I think Members are right, when we are reconstructing something as important as this, that we get it right.

My view is quite clear that the principle is that we have been given an extension of time to the present members to come up with a solution. Let us assume that it has gone right; but let us equally assume it has gone wrong and that is really where we are coming from. If it is a gone wrong and we are not doing it, how do we then interpret that?

I think that the information or the tip-toeing through what I would call the minefields of legal jargon by the Attorney General, it is clear in my mind where we would then go from there.

Mrs Christian: Mr President, may I come back on this, please? At the moment, we have cleared the principle and everybody accepts that we are extending the period of office of the present Board to 1st June at the latest. If indeed there is no change, either before... If there is a change before 1st June, there is not an election under the current structure. If we proceed to 1st June and nothing has changed, the current Board members go out of office. Why is there any need at all to change the process under which new Board members would be elected under the present legislation? Is there something in the schedule which makes it difficult for the Board to say on 1st June, or before that, ‘We are going to have an election on such and such a date, and your term of office will be five years from that date’?

Mrs Crowe: That is what it says.

Mrs Christian: It does not.

The President: I think there has been a date. Mr Attorney.

Mrs Christian: That is, yes, alright, the schedule.

The Attorney General: Mr President, I think that it is important just to remind ourselves of the provision in the Education Act 2001, which is section 49 of the Act, which is in force. First of all, it says:

‘There shall continue to be a body corporate called the Isle of Man Board of Education.’

So the Board is there, it is a body corporate. It goes on to say in subsection (2):

‘Schedule 7 shall have effect with respect to the Board.’

Schedule 7 only deals with a few matters but, apart from anything else, it deals with the constitution of the Board. It deals with the functions of the Board and proceedings of the Board, but the important thing for this purpose is the constitution of the Board. In paragraph 1 of schedule 7, it tells us that:

‘The Board consists of 15 persons, not being members of Tynwald, elected in accordance with the Representation of the People Act 1995.’

So, we know that there has to be an election in accordance with the 1995 Act.

As I understand it, the purpose of this Bill – which I had

not seen before today, I must admit – as the mover of the Bill has explained, was to allow an extension of the term of office of the existing members, so that stock could be taken of the functions and future of the Board. So this can be regarded then as a transitional provision. (**Mrs Crowe:** Yes.) It is a Bill which holds the fort –

Mr Lowey: That is right.

The Attorney General: – until new provisions have been agreed for the future of the Board.

I think if we approach it with that in mind, Mr President, it probably helps us to understand what the draftsman is seeking to achieve, and again...

I am so sorry to have to go through it, because I am finding it difficult myself, but clause 1(1) of the Bill preserves the people who are in office at the moment. They hold office until 1st June 2009, or earlier if the Department appoint by order. So we know that they are not going to be caught by the provisions of schedule 7, which said that you had to be elected in accordance with the Representation of the People Act.

So, the Bill then goes on to say that, with effect from the appointed day – so with effect from 1st June 2009 – the provisions in schedule 7 are to be amended, and we have got some new provisions, namely that members of the Board hold office for five years – not from the date of a general election, but for five years from the relevant date.

The relevant date is one year after this Act has been passed, because it says the appointed day means... I do beg your pardon. I am confusing myself.

The President: The relevant date means the anniversary of the appointed day within the meaning of the Education (Amendment) Act, which is this Act, (**The Attorney General:** Yes.) and the appointed day is 1st June 2009.

The Attorney General: That is right.

The President: So it becomes 1st June 2010.

Mrs Crowe: So they have a year to organise it.

Mrs Christian: There would then be a hiatus, Mr President, when there is a year without a Board.

Mrs Crowe: It could be three months, it could be... They have just got to..

Mrs Christian: You mean they are elected, but they are not appointed?

The President: Wait, Hon. Members. You are talking across again. Mrs Christian. (**Mrs Christian:** Right.) You say there would be a hiatus.

Mrs Christian: Members are going out of office on 1st June. Then it says that with effect from the appointed day, which is, shall we say, 1st June, because we presume that if it is... There may be a decision to continue the Board before 1st June, I do not know. But let us suppose, whatever the appointed day is, members are going out of office.

We then go on to subclause (2), which alters the schedule by substituting the date from which the member of the Board – presumably the next Board – shall hold office, and

it says that the member of the Board shall hold office for a term of five years from the relevant date, and that relevant date is one year after 1st June, which means that for one year there will be no Board.

Mrs Crowe: It could be any time.

Mr Lowey: But Members only spoke this morning of when we go out of office from being Members of this body or another place, the House of Keys, that they carry on with their work until their successors are appointed, i.e. elected. So therefore there would not be a hiatus, I would not have thought, in the sense... I understand where the Member is coming from, painting a doomsday scenario, but I would say that practice and custom is that there is no hiatus, there is no vacuum.

The President: Mr Lowey makes the point that the existing members would continue until the election date.

Mr Lowey: That is right.

The Lord Bishop: But it actually says, Mr President, ‘shall hold office until the appointed day’ –

Mrs Christian: And then they do not hold, presumably, after that.

The Lord Bishop: And then they do not hold office.

Mr Lowey: Members of this Council go out on an appointed day, but they still carry on in their jobs.

Mrs Christian: It says they shall go out on an appointed day, but they shall hold office in their jobs until they are reappointed. That is not what this says. I just wonder, Mr President –

The Attorney General: It is a good point, Mr President. We cannot avoid it, that is a good point.

The Lord Bishop: It is.

Mrs Christian: I am sorry, Mr President.

Mr Lowey: I am trying to be defensive of the Act as it is before me.

Mrs Christian: I understand that and we are all trying to do what we thought was a simple Bill.

Mr Lowey: Yes, two clauses.

Mrs Christian: I just do not understand why this element of it has to be in there at all.

The President: At all, yes, that is the point.

The Lord Bishop: Might I suggest that it might have to be in there, because by extending it we have... (**Mrs Christian:** Altered.) Altered – thank you. I was trying to think of a polite way of saying what I have got in my mind! We have altered the general process which links it to a general election, or the year after a general election –

Mrs Christian: Is that the issue?

The Lord Bishop: – which means that if you have broken the cycle, then you have to reinvent the cycle, so that the cycle begins at a given moment, so that in the future, the thing can roll on.

Mr Lowey: Back on to a five-year lead.

Mr Waft: With respect there, Mr President, it is just like the local authority members who were there for three years for an indeterminable time and they decided to make it four.

Mr Lowey: That is right.

Mr Waft: So they have to alter the ones who were out just before, so that they carry on until that cut-off date, and then they started again from there.

Mr Lowey: It is not a new phenomenon. It has actually worked before.

The President: Right, Hon. Members, in all fairness, we have gone round the houses a bit and I have no intention of keeping it going forever. In the end, Members will have to make their minds up how they wish to deal with it, but currently, if I may, Mr Lowey, we are still dealing with clause 1, believe it or not, and perhaps I could ask you to wind up, sir.

Mr Lowey: Yes, sir. As I said, this clause therefore allows an adequate consultation period to be carried out with the constitutional roles and responsibility of the new body being established and the necessary public awareness campaign being undertaken and the recruitment of members of the representative newly established body.

Also, the wording of the clause deliberately allows for the Appointed Day Order to be brought forward, if the consultation process, in the passage of the Education Bill which establishes the new body, has been completed earlier. Again, I am reciting what I would call the obvious, which we are all agreed on.

I think we are getting down to the detailed ‘what if’. I think that is part of what we do in this Council, teasing out what I would call the law and ‘what if’, and to have clear definitions of roles when they are going.

I can do no better than support the Attorney’s manful description of us unteasing and then putting it back together in a meaningful way. I believe that the goodwill of everybody... I think what we would see as icebergs in the sea ahead of us will not be icebergs at all. I think it will be plain sailing.

I beg to move clause 1 stand part of the Bill.

I do not know whether I am reassuring Members or not, talking about icebergs, but I do believe this Bill will get the desired result of extending the life of the Department and bringing the new system in, in adequate time. *(Interjection)*

The President: Okay, Hon. Members. I simply put to Council the motion 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.

We will deal with clause 2 – a very simple straightforward measure, Mr Lowey. *(Laughter)*

Mr Lowey: That is what I thought of a two-clause Bill,

Mr President, too!

Clause 2 gives the Bill its short title and provides that the present Acts and the Bill may be cited together.

Hon. Members, could I close my remarks by reminding you that this Bill is purely to extend the life of the current Board of Education. Whoever wrote that knew it well! *(Laughter)* If I shouted ‘Author!’ I am sure I know somebody who would stand up.

We are trying to consult widely on the matter. We wanted to say to people that we are not dictating the pace of this. We want to jointly work together to get the right results. This Bill is a first step, as an instrument towards that end, and I would beg to move clause 2 stand part of the Bill.

The President: Mrs Crowe.

Mrs Crowe: I beg to second, Mr President.

I do support the mover of the Bill, and I know that we all know what the intention of the Bill is, but then, of course, I think it has been a clear demonstration of the role of Legislative Council, in saying that someone else is going to interpret this law. It will not be us and we need to make law that is clearly defined in law, so that there can be no ifs or buts when someone comes to read it and say, ‘Well, no, this is what it says.’

I think even when we have the Attorney General, who is obviously not as happy as he normally is with legislation that we pass in this Chamber, I think it is a shame that we did not have time to perhaps look at it a little further and put in place an amendment that might have made it more clearly defined.

So with that, I hope anyone in future who needs to query the Bill will read *Hansard*, so everyone is clear upon the intention of the Bill!

Thank you, Mr President.

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

Education (Amendment) Bill

Standing Order 22(2) suspended to take Third Reading

The President: Hon. Members, earlier I did say to you that in fact the indication given by Mr Lowey that we would suspend Standing Orders for both the Second and Third Readings. However, in light of the comments made, I put to you, Hon. Members, that we suspend Standing Orders to take the Third Reading of this particular measure. For clarity, Hon. Members, on *Hansard*, those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Education (Amendment) Bill

Third Reading approved

The President: Third Reading, Mr Lowey.

Mr Lowey: Thank you, Mr President.

Firstly, I offer my thanks to the Members for agreeing to

the Third Reading being taken of the Education (Amendment) Bill. I would thank those Members who have given me support during the previous stages of the Bill moving through this Hon. Council, and particularly on the clauses stage. I think it is right to deconstruct and reconstruct, so that we are clear in our minds.

It is one of those occasions where we have deconstructed and tried to put the jigsaw back together again, and law is a pretty difficult animal at times. When you put Humpty Dumpty... he never quite fits back together again, does he? But I think what we have attempted to do today is to show that what we are about is making sure that legislation is workable, and I am very grateful for the Attorney General's efforts on my behalf.

In moving the Bill for Third Reading, I would once again remind Members that the Education (Amendment) Bill is to enable the life of the current Board of Education to be extended beyond its five-year term, which is currently due to end on 30th November this year. The purpose of this extension, as I said, is to allow the current members of the Board to continue in their roles and at the same time assist the Department in formulating a new policy, which will produce a replacement of the currently popularly elected body.

The Board members themselves have seen the need for change and have already come forward with some suggestions as to how a new body may function and also the manner of its election. Members will, at a future date, be fully briefed of the Department's proposals and will have adequate opportunity, I hope, to debate it in Tynwald Court and in this Council. I would, therefore, urge Members to support the Third Reading of the Bill, to enable us to have time to adequately finish the consultation period with all those who have shown an interest and wish to help in the establishment of a body able to provide the necessary advice to the Minister and the schools will be to the benefit of the young people of this Island.

The one thing we do have, we have a proud record in the Isle of Man of education and we have always managed to keep it above what I would call political pique and the fashions and fads. What we have concentrated on is making sure we have got the best education that is available for our young people and we have not been afraid to be pioneers. I would hope that any new system will allow that to continue into the future.

With that, sir, I would just say that I would like to move:

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

Mrs Crowe: I beg to second, Mr President.

The President: Mrs Christian.

Mrs Christian: Mr President, I think this has illustrated the difficulties of dealing with legislation in a hurry. I will support the Third Reading, on the basis that the main element of the Bill, which is extension of the current life of the Board, is clear, and there is no doubt about that.

I have some concerns about the other bit. I do not feel that the mover had been adequately briefed to explain why that was necessary. However, hopefully, if all goes well in terms of the reconstruction, or deconstruction or whatever it may be, of the current Board, that element of it will not

in fact be needed, and so for that reason I will support the Third Reading.

Perhaps, Members, knowing we might be doing three Readings today... I have to confess I might have got to grips better with the provisions of the schedule and so on, but I do think that we have had very little time in which to look at this.

I will support it, Mr President, and hope that we do not get any difficulties with the third part of clause 1 and take the view that if we do, we can run through another Bill in three Readings on one day. (*Laughter*)

The President: Lord Bishop.

The Lord Bishop: I shall be supporting this. I want to pick up one thing that Mr Waft talked about earlier, and that is that we have, I think, been talking about two different sorts of appointed day, and I really would hope that, in the future, when the drafters come to draft, they do not use 'appointed day' in quite the same way as an Appointed Day Order. My reading of 'shall hold office until the appointed day' is actually not to do with an Appointed Day Order and that has actually been one of the confusions of our debate today, which has been a use of particular terminology which has triggered things in our minds and has set us off in, I think, a wrong direction.

But other than that, I will be happy to support the Third Reading – and I look forward to looking from a distance in 2009 (*Laughter*) to see what happens.

The President: Mr Crowe, Hon. Member.

Mr Crowe: Yes, again, I will support the Bill and I note the comments that have been made, but really we are only on the first step of a marathon, shall we say – that we have to go through a briefing by the Department and it will go before Tynwald and we still have primary legislation.

So, I wait with interest and expectation as to what the future holds for the new Board or advisory council, or whatever it might end up as.

The President: Mr Turner.

Mr Turner: Yes, Mr President.

My only comments would be questions, I suppose. If, before the appointed day, the Department comes back with a new model, would there be a requirement for a complete new Bill? Obviously, this one is going to cease on the appointed day or sooner, but then there are still the parts of the original Act which say there should be an election. So am I right in assuming there would need to be some new legislation to enact the new body, or would that just be under an Order of the Department?

The President: Perhaps Mr Attorney could pick that up. I think I am not convinced myself that it needs primary legislation thereafter.

The Attorney General: Well, Mr President, if I understand the question from the Hon. Member correctly, and actually just taking up the point made by the Lord Bishop, I think we could actually make very easy sense of the first part of this Bill by saying that the existing members of the Isle of Man Board of Education hold office until 1st June 2009, or

earlier, if the Department makes an Order to that effect.

If that is so, and the Department does make an Order that the members of the Board hold office until, shall we say, 1st June 2008, that is perfectly alright. That is consistent with this legislation.

This legislation amends the Education Act 2001 to that effect, so that the members of the Board of Education will go out of office on 1st June 2008. You do not need to have any new primary legislation to achieve that. That is what this Bill does.

Mr Turner: Mr President, and that new body will in effect replace the existing Board off the back of that Order? That was what I was trying to get to grips with.

The Attorney General: Do you want...?

The President: Yes, Mr Attorney.

The Attorney General: Mr President, I think that the Department of Education will only make such an Appointed Day Order – in other words, bringing the existing regime to an end – if they are replacing that with another regime which will be in place and...

The President: And I think Mr Turner is going to say, 'And does that require primary legislation?'

Mr Turner: That is what I was going to say.

The Attorney General: Yes, I am so sorry then. Maybe I am being slow. That, in my respectful view, would require...

Mr Lowey: It would, and I –

Mr Turner: My next question would be, on that, the timescale of getting that legislation through the branches: what would happen if that did not proceed through by the cut-off?

The Attorney General: I think, Mr President, if I may, that is clearly something that the Department will have to be very careful about. They will have to be careful that the legislative timetable is consistent with their plans.

The President: They need to start quite quickly.

Mr Turner: That is what I was trying to establish.

The President: Mr Waft.

Mr Waft: Thank you, Mr President.

First of all, I wish to apologise for making any mention of the Appointed Day Order or the appointed day, but I am just horrified that, perhaps, taking the last point, if we do not get it right, we could end up with 30 members in the Department of Education! I think, if the Minister does read through *Hansard*, she will get this sorted pretty quickly, so it will come into being a lot sooner than what is written.

The President: Mr Lowey.

Mr Lowey: I have got to apologise for obviously

being the conductor of this debate. Perhaps I have not been adequate in my presentation. I thought I had made it quite clear, in my opening remarks, that we were looking for a new formula. I did say that that new formula, when we decided it, would be after consultation with various bodies, including the Department, and that we would then present that to Tynwald for approval, and if that needed primary legislation, then it would have to be altered.

Of course, we may have to amend the 2001... I do not know. I cannot answer that question today fully, because I do not know what the finished result is. If I was saying here, 'Yes, we are going to alter it,' you would be saying, 'Well, I have already, or the Department has already got a finished system.' We have not, so it is premature. What we have started today is, as I say, the ability to give us breathing space to get it right, to fit it in. That is really the essence of this particular Bill: not the finished product, but the ability to get a finished product presented to you. So if I have confused Members, I readily... Not for the first time have I been able to confuse Members of this Hon. Council.

I always thought when I take a Bill through, I always put myself in the role of the opposition. I analyse: what are the questions I am going to be asked? I confess I did not pick that up at all, so to that extent, I take responsibility for that when deconstructing. I do tend to be critical of where are the pressure points, the faults. I had not picked that up.

But I do think the Department is not attempting anything unique. We are attempting to extend the life of the present Board because of the timescale of the election. If the election was two years ago, we could have got on with it. It unfortunately has not coincided. There is an election due. Do we want to? I think it is general consensus that we do not want to.

So, with that, I hope I have tried to be as apologetic as I can and to apologise to Members for the shortness of the... I told you – I read that out – we started last year, in December. The Board members came back in March, with a proposal which meets general consent and approval and moving in the right direction. We want to build on that. To that extent, we need a little bit of extra time. That is what we are asking for, and I am very grateful to Council for giving overall that support for that time. It will be well used and I am sure we will get it right.

I beg to move the Third Reading of the Bill and that it do pass.

The President: Yes, Hon. Members, it may be of comfort to Members that, in fact, I have been handed a brief for the legislative draftsman of the Education (Miscellaneous Provisions) Bill, which is timetabled to come in within the next legislative year. So providing that all goes well with the Department of Education plans and the drafting of the piece of legislation, it should be well on the way well before June 2009.

Hon. Members, the motion that I will put to Council is that the Education (Amendment) Bill 2007 be read for a third time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Hon. Members, that concludes totally the Order Paper in front of Council for today. As I indicated this morning, our adjournment is to the sitting of Tynwald at St John's on the 5th and thereafter to the business sitting on 10th July.

Thank you, Hon. Members.

The Council adjourned at 3.58 p.m.