



**LEGISLATIVE COUNCIL
OFFICIAL REPORT**

**RECORTYS OIKOIL
Y CHOONCEIL SLATTYSSAGH**

P R O C E E D I N G S

D A A L T Y N

(HANSARD)

Douglas, Tuesday, 6th May 2008

Present:

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

Mr D Butt, Mr D A Callister, Mrs C M Christian, Mr E A Crowe, Mr A F Downie,
Mr E G Lowey, Mr J R Turner and Mr G H Waft,
with Mr J King, Clerk of the Council.

Business transacted

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The Council adjourned at 1.00 p.m.

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Legislative Council

The Council met at 10.15 a.m.

[MR PRESIDENT *in the Chair*]

PRAYERS

The Chaplain of the House of Keys

Leave of absence granted

The President: This morning, Hon. Members, we have apologies from Mr Attorney who is off the Island.

Questions for Oral Answer

HOME AFFAIRS

Prohibited areas on motorsport events Police brief

1.1. The Hon. Member (Mr Turner) to ask a Member of the Department of Home Affairs:

(1) Under what brief are the Police acting when becoming involved in the issue of 'prohibited areas' on motorsport events; and

(2) who has the brief come from and how does that brief fit in with the requirements of the Road Races Act, as currently in force?

The President: So with him being the only Member who is missing this morning, we turn to our Order Paper and dealing with the first Question, Mr Turner.

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

The President: I understand that Mr Crowe is –

Mr Crowe: No, I am doing the Tourism one, Mr President.

The President: Right, you are doing the Tourism one. Mr Waft.

Mr Waft: Thank you, Mr President.

I thank the Hon. Member for his Question and would like to clarify the situation he has found.

Mr President, the Isle of Man Constabulary were asked by the Ministers and Chief Executives of the Department of Home Affairs, the Department of Transport and the Department of Tourism and Leisure to play their part in a co-ordinated approach across Government in relation

to the extent of support for motorsport. They are working to objectives, one of the more serious being in relation to safety.

The Coroner's inquest focused quite rightly on prohibited and restricted areas. The co-ordinating group were tasked, via the Ministers and the Chief Minister, to outline a series of measures that was necessary to make the TT as safe as possible, especially in relation to the points raised by the Coroner.

The focus on prohibited and restricted areas is a very necessary one and much work has been undertaken, all of which has taken into account and comply with the Road Races Act.

The Department of Tourism and Leisure, the Department of Transport and the Constabulary have all had an input into the Coroner's recommendation as part of their duties in maintaining the law and ensuring that people are safe at the events.

The President: Mr Turner.

Mr Turner: Yes, thank you, Mr President.

I would like to thank the Member for the Answer.

Would the Member of the Department of Home Affairs not agree with me that the Question was how this fits in with the Act as it currently stands, which does state that the onus is on the Department of Transport to regulate this matter? Has the Department of Home Affairs been in discussions with the Department of Transport to take on this requirement and, if so, is that something that is going to be considered as a possible change to this Act?

The President: Mr Waft.

Mr Waft: Thank you, Mr President.

Any suggestion that the Police have not complied with section 2(1)(g) of the Road Races Act 1982 and, in particular, the requirement that prohibiting, restricting or regulating access to any place specified in an order is subject to the consent of the owner, I am unaware of any circumstances where the Police or any other agency have not complied with the provision to which the Hon. Member refers; but if he would be so kind as to provide the details, I will ensure the matter is investigated.

The President: Mr Lowey.

Mr Lowey: Would the hon. mover not agree that primary law states that the road authority is the responsible authority, takes precedence and, notwithstanding what the Police or the Council of Ministers or any other committee think, it is the primary law of the land that takes precedence?

The President: Mr Waft, Hon. Member.

Mr Waft: Thank you, Mr President.

I do not think in this instance any primary law has been changed or qualified to any great degree. If there is any possibility of that, if it could be referred to the Department, I am sure they will investigate the matter.

The President: Hon. Member, Mr Turner.

Mr Turner: Yes, I just wonder: has the Member for

Home Affairs considered reviewing the *Hansards* of the time, when this particular clause was debated in some length, where it was brought up about the Highway Board, as it was at that time, having this responsibility? Has any consideration been given to review the matter to find out what the actual intent of the legislators was, when putting this Bill through?

The President: Hon. Member, Mr Waft.

Mr Waft: Thank you, Mr President.

The Member refers to *Hansard* and the Highway Board, what went on at that time. What we have to enact is the law as it is at the present moment. As I have said, neither the Police nor the agency have not complied with the provision to which the Hon. Member refers.

The *Hansard* of the time, I have not had any chance to look at, sir.

The President: Mr Lowey, Hon. Member.

Mr Lowey: Would the Hon. Member again not agree it is not a question of what the intent was of Tynwald; it is what primary law says? If the Road Races Act 1982 says anything at all, it says that the promoting authority is not the DTI; it is actually the Highway Authority, which in today's terms is the Department of Transport. No matter what anybody says, that is the primary responsibility of the Highway Board.

The President: Mr Waft.

Mr Waft: Thank you, Mr President, and I thank the Member for the question.

I would just repeat the situation that we found with regard to last year and the committee that was formed to investigate the matter with regard to road safety in the Island. They have done their best, I am sure, to comply with the Road Races Act at the time, as currently in force, and if there have been any breaches of that, if any of the Members would refer it to my Department, I am sure they will get the answer.

The President: Hon. Member, Mr Turner.

Mr Turner: Yes, again my question... The Hon. Member is implying that I am implying the Police are not following the Act. My question was: would he acknowledge that, regardless of what advice the Department of Transport gets from any other body, it is the Department responsible for having the final say in accordance with the primary Act?

The President: Mr Waft.

Mr Waft: I would not argue with that situation. I think they have to comply with the Act as it is written. If there have been any breaches or neglect of duties in respect of that, I am sure, if that is brought to the attention of the Department, they will investigate it.

The President: Hon. Member, Mrs Christian.

Mrs Christian: Could the Hon. Member indicate whether there is a formal written instruction or delegation from the Department of Transport to the Police to carry out

a function in this connection?

The President: Mr Waft.

Mr Waft: Thank you, Mr President.

The committee was formed with regard to looking into this situation... Let me just pause for one second, Mr President.

The committee which looked into this situation, Mr President, to the effect of how we should proceed with this, was under the Gold Command Group consisting of: Mr Mike Langdon; Mr Will Greenhow, Chief Executive; Mr Ian Thompson, Chief Executive; and Mrs Carol Glover, Chief Executive. Both the Gold and Silver cross-Government multi-agency Command Groups had the option of co-opting any expert consultant or any other agency when necessary.

The Group worked to the objectives set out to the Constabulary's Gold Commander, Mr Langdon.

The President: Hon. Member –

Mrs Christian: The answer seems, Mr President, to be no!

The President: Yes, Mrs Christian, you are probably right.

Hon. Member, Mr Butt.

Mr Butt: Yes, perhaps I could ask a question that may help to clarify that.

Would Mr Waft agree that, although the Department is responsible for the prohibition of certain areas and restrictions and regulations, under the Act the Police are responsible for dealing with any contravention of those breaches?

I think that is under section 5: so the Police do have a function in dealing with the breaches of those prohibitions which are set up by the Department. The Department's responsibility is setting them up; the Police deal with contravention.

The President: Mr Waft, Hon. Member.

Mr Waft: I have no problem with that, Mr President. *(Laughter)*

The President: I would imagine that you would not! Finally, I think we are getting to the end. Mr Lowey.

Mr Lowey: How then can the Police not be on the course and deal with problems that are occurring on the course, if they are not on the course?

The President: Well, I think that probably requires no response at this stage, but final, final, Mr Turner.

Mr Turner: No.

The President: In that case, Mr Waft.

Mr Waft: The Chief Constable is responsible as to how the course is staffed during course of an event.

Mr Lowey: Oh, miracle!

TOURISM AND LEISURE

Department of Tourism and Leisure:

**TT Course prohibited/restricted areas
Auto Cycle Union Events Limited letter**

Does the Department have any concerns with the content of a letter issued by the Auto Cycle Union Events Limited informing landowners about TT Course prohibited/restricted areas.

1.2. The Hon. Member (Mr Turner) to ask a Member of the

Documents referred to in Question 2

| AUTO CYCLE UNION EVENTS LTD ACU House, Wood Street, RUGBY, Warwickshire, CV21 2YX |  | AUTO CYCLE UNION EVENTS LTD ACU House, Wood Street, RUGBY, Warwickshire, CV21 2YX |  |
|---|---|---|---|
| Telephone: 01788 566 431 | | Telephone: 01788 566 431 | |
| Dear Sir / Madam | | TITLE OF MAIN ROAD RACES ACT 1982 CONSENT OF OWNER OR OCCUPIER | |
| Isle of Man TT Course Prohibited/ Restricted Areas | | I _____ (Full name) | |
| The property you own or occupy has been identified as being potentially a high risk area to occupy or spectate from during racing or practising and it is the wish of the race organisers that it is included in the road closure order for the TT/MGP Course as a prohibited or restricted area. The race organisers would wish to obtain your consent for this inclusion. | | _____ (Address) | |
| The title of Main Road Races Act 1982 allows the Department of Transport by application from race organisers to restrict, prohibit or regulate access to and over certain sections of land and property adjacent to the course. For the purposes of the TT/MGP Order including the schedule of Restricted and Prohibited Areas the following definitions will apply: | | As owner / occupier* of the land or land forming part of the description, described below and as shown on the annexed plan I HEREBY CONSENT until further notice to the making of an Order under the Road Races Act 1982 prohibiting, restricting or regulating traffic on or access to the said land for the purpose of any practice, parade or races forming part of the Isle of Man Tourist Trophy (T.T.) and the Manx Grand Prix (MGP) motorcycle races. | |
| RESTRICTED AREA: this area is restricted to race officials and marshals, Police officers in the course of their duty and Great Britain Pass holders and vehicles displaying an official pass or approved by the Clerk of the Course. It is not deemed suitable for the general public which includes owners/occupiers of the land or their guests. | | Signed: _____ Date: _____ | |
| PROHIBITED AREA: this area is prohibited and access is not permitted to anyone, or any vehicle, except to go to the aid of a stricken competitor or to prevent further danger or risk to the competitors or public. | | CONSENT REFUSED - Signed: _____ | |
| Members of the public who remain in a restricted or prohibited area or leave their vehicle there once the road is closed are not only committing an offence punishable by a fine of up to £2,500 and possible imprisonment, but could also cause the race or practice to be stopped. | | Witnessed: _____ | |
| For your property to be included as a restricted/prohibited area in the schedule to the order please see the enclosed consent form and diagram of the area concerned. If you are content for the inclusion of this area in the order please sign and date both the consent form and the diagram and return it to the undersigned as soon as possible. If you are unsure and would like to speak to an official of ACU Events Ltd (for the TT) please contact the telephone number above. In relation to the Manx Grand Prix, please contact the Manx Motorcycle Club on 044648. | | If signed on behalf of a company state full name, address and official position | |
| By permitting your property to be included in the Order as a restricted/prohibited area it would then be illegal for anyone to remain in the area designated on the plan during practising and racing other than as defined above - this includes yourself. If you do not wish the restriction/prohibition to be in force then you should discuss with your insurers your responsibilities and potential liabilities in allowing people to remain on your property when it has been identified as a potentially higher risk area by the TT and Manx GP organisers. | | Description of Area: Kirk Michael | |
| Kind regards, | | the left hand side - Isle of Man Bank, car park and garden area enclosed on 3 sides by stone wall. | |
| Yours sincerely | | Explanatory Note: Insurance The Organisers request your support in respect of the area specified above and/or overlies which if agreed will place the onus of safeguarding the area upon the race organisers. If you do not wish to consent to this inclusion in the order you are urgently advised to discuss the matter with your Insurers as the Organisers and their Insurers will be unable to accept any liability for any accident or incident arising in any way on this designated area during the above races. | |
|  KIRK MICHAEL Director Operations | | Company No: 5781000 Registered Office: ACU House, Wood Street, Rugby, CV21 2YX | |

The President: Okay, we go on then, Hon. Members, to Question 2 and again it is Mr Turner.

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

The President: Now, with no Member of the Tourism Department with us, I understand that, this time, it is Mr Crowe who is going to respond.

Mr Crowe: Yes, thank you, Mr President.

As part of the work required to prepare the Road Closure Order for the TT 2008, ACU Events Limited, the race organiser needs to comply with the requirements of the Road Races Act 1982. This includes, amongst other matter, the identification of prohibited and restricted areas.

The process is the same as in previous years, with letters being sent to landowners which have been identified as prohibited or restricted areas. Landowners are requested by the race organiser, ACU Events Limited, to confirm their consent to the area of land being classed as such, under the

Road Closure Order, which is necessary for the TT to take place.

The President: Mr Turner.

Mr Turner: Thank you, Mr President.

Would the Member not agree with me that it is the responsibility of race organisers and promoters – promoters as they are defined in the actual Act – to ensure there is proper full insurance cover for their event to take place, which may affect residents, landowners who have no interest in the event that is taking place? The onus is on the promoters to ensure there is sufficient cover.

The President: Mr Crowe.

Mr Crowe: Thank you, Mr President.

I think what we are looking at is a well worn route. If I quote from last year's request to landowners, it is almost identical to the one that was sent out by ACU Events. It talks about:

‘... the property owner/occupiers to be included in the road closure order as a prohibited area. For your property to continue to be included, please see the enclosed consent form and diagram of the area concerned’

– which is exactly the same as for this year.

‘If you are happy [etc] please sign the consent form.’

Then it says:

‘By permitting your property to be included in the Order, it would then be illegal for anyone to remain in the area designated on the plan during practising and racing. If you no longer wish this prohibition to continue, then you should discuss with your insurers your responsibility and potential liabilities.’

So ACU Events, the promoters, are taking a very responsible line here. They are saying, ‘Look, parts of the course should be prohibited. You as the landowner or the property owner, if you agree and sign the consent, then that is fine: there is no risk to you because you have taken necessary action.’

It is if you refuse to give consent – if you say, ‘Oh, I am going to ignore the ACU: I am going to let people in here,’ the ACU are taking the responsible line and saying, ‘Look, if you want to disagree with us, talk to your insurers as to what your risks are.’

That is the whole nub of this: that is what the ACU Events are saying.

The President: Mr Turner.

Mr Turner: Would the Member not agree that there should not be any risks to landowners at all; the cover should come from the event organisers, regardless of whether landowners or private gardens wish to have a proportion of their garden taped off, where they are being banned from entering their own garden; that if there is a risk there, it is up to promoters to cover that risk, no matter how high?

The President: Mr Crowe.

Mr Crowe: I think what we have to do is look at the tragic events in 2007, where restricted and prohibited areas were raised by the Coroner and it has focused people’s attention on this. As I said, for 100 years, there have been restricted and prohibited areas. All the ACU Events are doing, in taking over from the Manx Motor Cycle Club (MMCC), is to say, ‘Look, this is motorcycling: it is a dangerous sport. All motorcycling is a dangerous sport and we are taking as much insurance as we possibly can to cover the risks.’

But it is dangerous, as you mentioned before. All parts of the course are potentially a risk, so all we can do – the ACU, the DTL and DoT – is we have got to minimise those risks as far as we can. We have got to try and eliminate the areas of high risk. We cannot cover every bit of risk, but we have to act responsibly and reasonably and follow the guidelines of Mr Moyle.

The President: Mr Waft, Hon. Member.

Mr Waft: Thank you, Mr President.

Would the Member agree that the machinations of insurance culpability and liability is so diverse as to be outwith the consideration of this Question?

The President: Mr Crowe.

Mr Crowe: Well, thank you, Mr President. I probably have strayed off the Question, but I think all I am trying to say is that Government, represented through DTL, DoT, DHA, have to be responsible. What we are saying is, ‘Look, motorsport is dangerous and yet people like to enjoy it.’

It is a big industry for the Isle of Man, it attracts lots of visitors here, but we have to have a balance between encouraging people to watch the sport and yet saying, ‘Parts of the area have risk to your personal health and personal injury’, so what we have got to do is get a balance between promoting the events and making sure the risks are contained as low as possible.

The President: Mr Callister, Hon. Member.

Mr Callister: Yes, would the Member consider this, then: if a motorcycle in a race hurtled through the window of a house close to the course which was not a restricted or prohibited area as designated, who would then have the responsibility? Say that did considerable damage to the house, perhaps killed a child or other persons: who then would have a responsibility for restitution and insurance?

The President: Mr Crowe.

Mr Crowe: As it is a hypothetical question, in the Attorney General’s words, I could not respond to a hypothetical question.

The President: Mr Turner.

Mr Turner: Would the Member not agree then, that comes back to the fact that event promoters, no matter what the event, should have all the adequate insurance cover in place and it should not be for the owners of any land around the TT course, whether or not the promoters are identifying it as a high risk or not? It should not be up to any landowner or householder to have to go and seek advice from their insurance company because a third party wishes to hold an event outside their property. The onus should be on the promoter, the organiser and so forth – would he not agree?

Mr Crowe: But I have said, explained in the answer to a supplementary, that the insurance only applies... If you are an owner of a property and you do not want to be a restricted or prohibited area and you refuse to accept or sign the consent, then you have to look to your own insurance to cover your own risks, because you in fact have made yourself culpable.

The President: Mrs Christian.

Mrs Christian: Mr President, it may be straying slightly from the Question, but it is related and I think it is the area we want to try and clarify: the Hon. Member has made it quite clear about prohibited areas, but the issue of concern is where areas are *not* prohibited. (**Several Members:** Yes.) (**Mr Lowey:** Absolutely.) Would the ACU cover any spectator who might be injured in those circumstances or is it the responsibility of the landowner to be covered?

In the latter case, I suspect that many areas of the course would in future be barred to all spectators, particularly on

the mountain section, where people wander willy-nilly over land and sit in places over which the landowner or tenant has no control.

I think it would be useful, Mr President, would the Member write to the Members of Council outlining the position in relation to those areas, please?

The President: Hon. Member, Mr Crowe.

Mr Crowe: Yes, I do not have an answer, so I will find out the answer and circulate it.

TRADE AND INDUSTRY

Petrol/diesel price rise Monitoring

1.3. The Hon. Member (Mr Lowey) to ask a Member of the Department of Trade and Industry:

What monitoring, if any, is being done of the astronomical rise of petrol and diesel prices on the garage forecourts?

The President: Okay, in that case, Hon. Members, we will move on to Question 3. Hon. Member, Mr Lowey.

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

The President: Mr Waft, Hon. Member, are you replying to this? *(Interjections and laughter)* Mr Turner is replying to this. Mr Turner.

Mr Turner: Thank you, Mr President.

I too am certainly not happy about the astronomical rise of petrol and diesel prices. However, this appears to be the world we live in at the moment.

I can advise Hon. Members that I am informed by the Office of Fair Trading (OFT) that, following on from the investigation in 2007 into the price of road fuels under the Fair Trading Act, the OFT is committed to benchmarking Isle of Man and UK average retail fuel pump prices to ascertain whether the observed price differential is in the acceptable range identified by the report. The current differentials are all well within that range at the time of this being researched.

I would draw the attention of Hon. Members to a Statement made by the Chief Minister in another place and the presentation to Members which both took place in December 2007 regarding the investigation into the price of energy. The Chief Minister advised in his Statement that Council had asked the Office of Fair Trading to undertake monitoring of wholesale and retail prices of petrol and diesel on a monthly basis, to identify the changes and the levels of prices in the Isle of Man and to correlate these with the most relevant short-term price benchmark UK dealer-owned sites.

I can confirm that this monitoring has been taking place. In addition, the wholesale suppliers of petrol and diesel on the Island are now notifying the Office of price changes.

Record oil prices have been observed internationally over recent weeks and the rises since January have been

significant. On 28th April, US light sweet crude hit a fresh record of over \$119.93 a barrel. OPEC have warned that prices could reach \$200 a barrel. Commodity prices rose as traders have speculated over the disruption caused at Grangemouth and supply problems in Nigeria, following pipeline attacks.

Hon. Members will appreciate the Island is not insulated from what is happening in the wider markets for these commodity products. Rising fuel prices have been experienced across the UK over the same period. Last Tuesday, the BBC reported that lorry drivers were protesting against rocketing prices of diesel in central London.

I appreciate the concerns of Hon. Members and do share them regarding the recent increase at the fuel pumps, but can confirm that the Office of Fair Trading remains committed to ensuring the Isle of Man is not taken advantage of, by benchmarking against UK pump prices.

The President: Hon. Member, Mr Lowey.

Mr Lowey: I have heard of hand wringing in my time, but this is the best yet. It is not a question of daily, it is almost every four days the prices are rising. I understand we are in a world situation, but is it not a fact that the competition is supposed to keep prices down?

Would he not agree that in the Isle of Man, we do not have a monopoly situation but we have a duopoly? Is there such a word? **(The President: Yes.)** I think there is: a duopoly and they really are orchestrating.

Now, we do not know about the profits of the Isle of Man companies, because these are stand-alone companies, the Isle of Man companies. They are private companies so they do not have to issue their profits; but one suspects that the profits of their mother companies, their umbrella companies, are astronomical. Is it not a fair reason to expect that their smaller satellite companies are equally making profit at the expense of the motorists?

The President: Mr Turner.

Mr Turner: Thank you, Mr President.

I think it is fair to say that we do not have a situation now on the Island where we had a variety of suppliers of petrol and diesel. Indeed, a lot of the smaller garages sadly have gone out of business, some of which who were prepared to sell at a bit of a loss in order to get other business.

But if we take it into perspective of how the price that we pay at the pumps is broken up, if we give an example of 113.9 pence for a litre, 17 pence of that goes to the Treasury as VAT; 50.53 pence goes to the Treasury as duty, so that is almost 60 per cent of what you pay is actually going in taxes. The retailer's margin of that £1.14, as it almost is –

Mr Lowey: Fifteen – have you been to the pumps lately?

Mr Turner: It has gone up, but the example I am using to my hon. colleague is 113.9. The retailer's margin is approximately 2.8 pence and the wholesaler's margin is 6.3 pence with the remaining 43.8 pence representing the commodity price for fuel.

So you can see that a great deal – as I said, almost 60 per cent of the price you are paying – is actually going in taxes

and duty, of course. I think we have no control over that in our agreements.

The President: Mr Waft.

Mr Waft: Thank you, Mr President.

I think we are all in agreement with regard to the Office of Fair Trading and their monitoring of events. They continually monitor the increases. Could I ask what the situation is with regard to, if there have been excess charges, to the Isle of Man residents and, after their inquiries, what ability have they to change anything?

The President: Mr Turner.

Mr Turner: Well, thank you, Mr President.

Obviously, I am answering on behalf of the DTI who have gained this information from the Office of Fair Trading. I am not aware of any instances of excess charging, as you put it. I am aware that other Hon. Members have made representations over recent months to the OFT, having seen prices at the pumps in the UK and have claimed that we are being overcharged here on the Isle of Man. However, I believe that all of those charges have fallen within the limits which were set down and agreed in the scope.

The Office of Fair Trading, of course, are at liberty to... or the Council of Ministers I believe, can order a specific investigation by the Office of Fair Trading. I have to say quite what their powers are, I think are probably quite limited.

The President: Mr Lowey.

Mr Lowey: No, I think the figures speak for themselves. I know this Question was asked last week and the Office used figures of 113.9. It is 115 a gallon now: 114.9 is the cheapest petrol on the Isle of Man at the moment. So within the space of a week it has gone up another two pence and people really are resentful – very resentful.

And the fact that Government takes so much in duty and tax has always been a factor there. I asked in the Question, what could they do? Is there a recommendation from the Office of Fair Trading? Could they not lead and say to the Government, 'will you reduce your duty by two pence to do it'? If it is in their hands and they have got the... Their job is to protect, inform and advise consumers and I believe it is equally their duty to inform Government that times are hard out there, and they should get on with it.

The President: Mr Lowey, it is becoming a statement, rather than a question –

Mr Lowey: I know –

The President: Mr Turner.

Mr Turner: I am aware that the OFT did contact both the local road fuel suppliers and held follow-up meetings to seek a justification of local prices. Since then, according to the OFT, the differentials have been, in their words, acceptable.

Orders of the Day

Administration of Justice Bill Consideration of clauses commenced

2. Mr Downie to move.

The President: In that case, Hon. Members, I think we will move on from the Questions to the second Item on our turnover page, the Administration of Justice Bill. Hon. Members, we completed the First Reading and the Second Reading last week, so we go straight this week into the clauses stage of this particular measure.

As I understand it, Hon. Members, in the absence of Mr Attorney, we do have Lucy Marsh-Smith in the Gallery from his Department: if we need any assistance, it can be picked up at that stage.

So, Mr Downie then, if we turn to the Administration of Justice Bill, clause 1, sir.

Mr Downie: Clause 1, Mr President, deals with judges of the High Court. It replaces provisions of the High Court Act 1991 relating to the judiciary.

At present, the judges of the High Court, apart from the Judge of Appeal, comprise a full time Deemster and Second Deemster plus a full time Deputy Deemster supplemented as required by part-time Acting Deemsters. Any shortfall can only be filled by appointing Acting Deemsters, usually from England and Wales.

In future there will be two tiers of judges: a first tier of Deemsters – a permanent full-time Deemster and Second Deemster, the Judge of Appeal, additional Deemsters who may be either permanent or temporary, and either full-time or part-time; a second tier of Judicial Officers – a High Bailiff and Deputy High Bailiff who will be permanent Judicial Officers *ex officio*, and additional Judicial Officers, who may be either permanent or temporary, and either full-time or part-time.

This change is designed to enable the High Court to cope with the volume and increased complexity of civil litigation by introducing more flexibility and allowing the Deemsters to concentrate on the more demanding cases. Also, the change in law will make it possible for practising advocates to be appointed temporary Deemsters.

The ability to appoint additional part-time Judicial Officers, as well as part-time additional Deemsters, as and when appropriate, will not affect the budget of the courts, as all appointments will be subject to budgetary constraints; but it is, of course, subject to Treasury's concurrence and additional financial management and the ongoing costs of the courts.

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

The President: Mrs Christian.

Mrs Christian: I beg to second, Mr President, and welcome the clause.

I think that it is a very sensible and practical measure, given that the Deemsters are now involved in some very complex cases. I think that they have managed the workload fairly well but, sometimes, one gets worried about the time it takes for judicial matters to be processed through the courts. I hope this will be a helpful measure, subject to support from the Treasury to fund it.

The President: Mr Waft.

Mr Waft: Thank you, Mr President.

I also support the clause. I just wondered if the additional staff has to be put before the Personnel Capping Committee to justify their increase in staffing, as every other Department does.

The President: Mr Turner.

Mr Turner: Thank you, Mr President.

I just wondered how the age in page 3, line 12 – that paragraph there, the age of 70 – was set. Why was that and is that a normal age to set for these particular posts?

Just a query on the Governor appointing extra Deemsters, obviously we are fully aware of the workload which they are under and some of the complex matters. I understand it says, ‘for such period’. Would that be then that they are appointed as Acting Deemsters and would only hold office for a particular case; or would that appointment go on for a period of time to deal with a number of cases or is there flexibility there?

The President: The flexibility is in section 3B(2).

If I may, before you reply, Mr Downie, I was interested, on page 2, subclause (6), that the judges of the High Court shall be addressed in such manner as the First Deemster may direct. It would be interesting to know what he is going to suggest that they be called.

Mr Turner raises the question of the age of 70, and if you turn to the next subsection, which is (4), it says:

‘Subject to subsection (2), the Judge of Appeal may be appointed for a period not exceeding 5 years’.

What would happen if somebody was appointed at the age of 68? Do they still have to go at 70, or is there an element of flexibility in that particular matter itself? I do not know whether there is or not.

Mr Downie to reply... Oh sorry, Mr Crowe.

Mr Crowe: May I just make a comment please, Mr President?

In our briefing a few weeks ago, it was mentioned that Acting Deemsters would be recruited, possibly from a local advocates’, and this would be a way of a training ground for local advocates to cut their teeth as an Acting Deemster. I am just wondering: is the mover able to say how this would work and has the Law Society expressed some interest in this way of training advocates into the profession of being a Deemster?

The President: Are you suggesting, Mr Crowe, that the Acting Deemster is the Judicial Officer?

Mr Crowe: No, I am just saying that they can appoint Acting Deemsters and they can recruit from, not permanent

staff, but they could go to a local advocates’ practice and say, ‘All our existing Deemsters are fully engaged in actions or cases and we need to –’

The President: Those Acting Deemsters would be Judicial Officers, would they not, who can only deal in civil cases?

Mr Crowe: Right, okay.

The President: I think. I may be wrong. I might have to ask for help on that.

Mr Crowe: If the mover could clarify...

The President: Mr Callister.

Mr Callister: Thank you, Mr President.

I just wondered about this name Judicial Officer and then the First Deemster directing as to how they should be addressed. As we have ‘Deemster’, has anyone thought, perhaps, of finding a Manx title for ‘Judicial Officer’ which could be used?

The President: Mr Downie to reply.

Mr Downie: In reverse order then, Mr Callister raised the issue of how officers would be addressed. That, quite rightly in my view, is not a matter for us. It would be up to the Deemsters and the courts to determine. Bearing in mind that we have a precedent really that all of the courts’ procedures are in English, even in countries such as India, the court proceedings are all in English. They have a standardisation and it might be difficult for somebody who is before the courts from a European country where the language is completely different to have officers referred to in an old Manx language. It could lead to confusion.

Now, that is only a theory but, at the end of the day, I think it is up to the Deemster to decide. It is not a matter to come before Tynwald. It is discretionary upon him.

Mr Callister: Is that the Deemster...? Sorry, you are replying, yes –

The President: Mr Callister, Mr Downie is replying.

Mr Downie: I understand that the rules of the court would be drafted after this legislation comes in and then the rules are to be laid before Tynwald. I would not like to have Tynwald getting embroiled in a debate on who or what we are going to call various roles or officers within the courts.

I think we need to be careful there. There is a very thin line between what goes on within the judiciary and what goes on in Tynwald. In my time in here, there are very few occasions when that line has been crossed. It is a political no-no, in my view.

Mr Crowe asked about how Deemsters will be trained or recruited. I think the local Law Society has prided itself over the years that there has been a very good interface with the courts and, from time to time, when it has been shown that Deemsters have had an interest with a particular case or an involvement of a certain Deemster might be prejudicial to a case, there has been the ability to bring someone in to hear it, who is local. Of course, a lot of them are complex issues

and a Deemster does come in from the UK.

Just to deal with the issue that was raised by Mr Turner, and amalgamated with that, there are rules governing the appointment of Deemsters and you are quite right. His Excellency, the Lieutenant-Governor does have a role to play in there and that is all part of the independence of the structure, so there is no political pressure put on. The whole system is seen to be independent. If we did have a very complex case, the Governor could be asked, on recommendations from the court, to appoint a certain person. At the end of the day, he is not an expert in legal matters and he would have to take advice.

The '70 rule', I understand, is common throughout the legal system in the United Kingdom. I suppose it is one of the few areas that does have a cut off and I would assume that if a judge is appointed and he is coming up to his 70th birthday and there is a very, very complex legal case where there is a requirement for him to sit and hear it all, I am sure there are provisions for him to make an application to stay on until he has heard that case. But, as I understand it, nobody is appointed after they are 70 years of age, unless there are very, very exceptional circumstances.

I thank Mr Waft for his support for the Bill. I have some information for Mr Waft on adoption that I will deal with when we get to that particular clause.

I thank Mrs Christian for her support in seconding the Bill. She said that it was welcome and I think it will introduce a much more flexible approach to the whole courts procedure on the Isle of Man and, hopefully, it will speed things along.

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

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

We move to clause 2, Mr Downie.

Mr Downie: Clause 2 deals with the distribution of business amongst judges of the High Court and clarifies the powers of the First Deemster to allocate cases amongst the judges of the High Court.

At present, he simply has power to allocate cases to judges, but this needs to be tightened up, to take account of the new Judicial Officers who may be restricted in their powers by the rules of the court. It also makes it clear that the Judge of Appeal is only to hear appeals.

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

The President: Mrs Christian.

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

The President: Mr Lowey, Hon. Member.

Mr Lowey: Thank you, sir.

I notice from the very helpful explanatory notes that came with this Bill that clause 2 amends section 12 of the High Court Act 1991. Has the Deemster not always had the authority to select what he does and what he does not do?

Really, if the Judge of Appeal, as written in the new section 2... It is right and proper that the First Deemster should be the man who decides what work is shared out – he knows his colleagues better than most and I think that is right, but if he does not apply in respect of the Judge of Appeal, who does appoint the Judge of Appeal?

And 'must exercise the matter consistent with the rules of court': I would have thought that was already in being, but are we just re-introducing or is that clause 2, new clauses? I would just be interested if it is not the role of the First Deemster to appoint the Judge of Appeal, who actually has that role?

The President: Mr Downie to reply.

Mr Downie: Thank you, Mr President.

As I said in the initial moving of clause 1, it is absolutely essential that this whole system is seen to be transparent. It would be contrary to natural justice if a Deemster had actually been involved with the case and then was involved in who is selecting the Judge of Appeal.

Mr Lowey: That is fine.

Mr Downie: The prerogative of providing the Judge of Appeal rests with the Governor and that is so it can be seen to be independent.

So, with that, Mr President, I would like to move that clause 2 stand part of the Bill.

The President: The motion that 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.

Clause 3, Mr Downie.

Mr Downie: Clause 3 deals with arbitration proceedings and replaces section 16 of the 1991 Act, which provides for small claims to be dealt with informally by small claims arbitrators. With the creation of the new Judicial Officers, there will no longer be any need for specially appointed arbitrators. One of the permanent or additional Judicial Officers will perform this function.

In addition, the clause replaces the term 'arbitration' with 'adjudication'. 'Arbitration' is really a misnomer and 'adjudication' is a better description of the small claims procedure. Also, the powers to make rules of court in respect of small claims are widened.

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

The President: Mrs Christian.

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

The President: Mr Turner.

Mr Turner: Yes, thank you, Mr President.

I am very happy to support this clause. Certainly, the small claims system is an invaluable system (**A Member:** Hear, hear.) to people to enable them to pursue debts without fear of huge costs. It is a system which has worked very well and anything which strengthens that system is a good thing.

The President: Mr Lowey.

Mr Lowey: I was just going to comment exactly the same. I think one of the success stories has been the small claims court and we have extended it steadily by experience, bit by bit. I welcome this improvement and, yes, no problems at all.

The President: Hon. Member, Mr Callister.

Mr Callister: Yes, I would agree with both of the comments from the Members. I just wonder: will it be able, in any way, to improve the small claims system that we now have? Is it going to speed it up or will there be more people dealing with small claims, perhaps, than we have had in the past?

The President: Mr Downie to reply.

Mr Downie: Yes, thank you, Mr President.

The questions are all related, about the changes that, we hope, are going to improve the lot of the small claims court. It does work very well at the moment. There will be some additional staff required but, at the end of the day, we are looking to provide a really informal court arrangement where people can sit around the table. There can be a proper adjudication process that takes place, much less daunting than going to court and much less costly. I think it is a really good commonsense approach to dealing with small claims and other matters. I am advised that, when the legislation comes in and the system is in place, it will speed things up.

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

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

Clause 4, appeals, Mr Downie.

Mr Downie: Clause 4 gives the court additional powers in relation to appeals.

Subsection (1) enables a court to re-open an appeal where it considers that real injustice would follow if the decision on appeal were allowed to stand, for example, if vital facts had previously been suppressed. It also enables the court to revise a case stated.

This, I should explain, is a procedure for an appeal on a point of law from a lower court, for example, from a magistrates' court. The lower court is required to stay the case for the binding opinion of the High Court. If the lower court asks the wrong question, the High Court can only send it back, which wastes time and costs. This clause enables the court to revise the case and ask itself the right question or to require the lower court to amend the case or hear further evidence.

Subsection (2) deals with the case where a jury has awarded an excessively small or excessively large amount of damages, in a libel case for example. At present, the Appeal Division can only order a new trial at vast expense. This clause enables rules of court to give the Appeal Division power to revise the jury's award instead.

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

Mrs Christian: I beg to second, Mr President, and say that this, again, is a useful measure, in that it is based on experience and seeks to improve the manner in which we handle these issues. There is, I imagine, a great deal of frustration in coming to the stage of an appeal, which was final in the past, without major involvement of cost and further court cases. So, a practical measure here is being incorporated to improve the ability to question appeals under certain circumstances, which I think is to be welcomed.

The President: Mr Crowe.

Mr Crowe: Thank you, Mr President.

Yes, I agree with Mrs Christian. It is a good move that there will be power to re-open a case where there has been insufficient evidence or some problem in the trial.

The question I would ask the mover is: is this power to reopen unlimited in time? I am thinking, for instance, if something like DNA evidence appeared two or three years after the event, would it still be able to reopen that particular judgement or is it restricted to six months or a year? Is there anything in your brief that would give some indication of this? It may come in the rules of court that are to be issued but, perhaps, the mover could comment.

The President: Hon. Member, Mr Butt.

Mr Butt: Thank you, sir.

I would also like to support this clause. It seems to be a very pragmatic solution to what are often injustices in the way the system works, and the system works often purely because of bureaucracy and rules of court, which this clause seems to change. I think it is a good way forward and should improve matters considerably.

The President: Mr Lowey.

Mr Lowey: This Bill deals primarily with civil litigation. There will be another Bill, I think it is said, which will be produced, will be coming, but it is mainly civil litigation, is it not?

I too think this is a practical way forward. Most people, the general public when they deal with the law are completely bamboozled and when they see it, they say, 'Well, why not?' When we and the judges or the Deemsters have to say, 'Well, that is the law', we will change it. We made it, we should change it.

I think this is a practical step which, I think, will improve things both for the person out there who it will affect, plus the administrators and I welcome the clause.

The President: Mr Downie to reply.

Mr Downie: Yes, I think, in replying, there are some very valuable comments made there.

I would ask Hon. Members... the section that we are dealing with does relate more to civil and family matters. We are not really getting involved in criminal issues here.

To deal with Mr Crowe's question about the amount of time to open up an appeal or to come back from an appeal, I think that will be provided in the rules. As some of us are aware, we have seen recent cases before the courts, particularly involving sexual offences and serious crimes like that, where cases have come back after nearly 15 or 20

years, back before the courts, but that is where a matter has come afresh and a person has been charged again. So, it is all dealt with within the rules.

The system is, at the moment, is quite inefficient and, as Mr Butt says, having had extensive experience in courts which is more than I have, he will have found the old system quite bureaucratic and time wasting. What this clause does, in actual fact, it moves things along and gives additional opportunities for a much smoother process.

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

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

Clause 5.

Mr Downie: Clause 5, Mr President, gives the Deemsters a statutory power to give temporary practice directions and to prescribe forms in connection with High Court proceedings.

Deemsters have traditionally issued High Court directives to supplement the rules of court, but the legal basis for them is dubious. Also, it is inconvenient for litigants and the legal profession to have two separate sources of procedural rules – the rules of court and the directives. The new section 27A gives the Deemsters a statutory power to issue practice directions, but limits their duration to between one and two years. It is intended that, in the second half of each year, the Deemsters will review court procedures with the Isle of Man Law Society.

If a practice direction should be made permanent, it will be embodied in amending rules of the court, otherwise it will have to be reissued or it will lapse. The present rules of court prescribe certain forms, but it is more convenient to keep them out of the rules and, instead, have them published by the court office, for example, on the internet and updated from time to time. The new section 27B gives the Deemsters power to prescribe forms and to make rules of court requiring them to be used when published in that way.

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

The President: Mrs Christian.

Mrs Christian: Mr President, I beg to second.

This clause, when I first read it, gave me a little bit of concern because we are introducing flexibility but then when I realised that the flexibility is already being exercised and this is putting it into a more statutory-backed form, I found it more acceptable.

The issues which might protect, I think, the public are that the practice directions must be consistent with the rules of court and the fact that they are only going to be applicable for a period of time, when they will be reconsidered.

Again, the word ‘pragmatic’ keeps creeping in, in respect of this legislation. I am sure that the Deemsters regard this as a helpful measure which gives them a proper authority for making practice directions and, indeed, gives them the opportunity to deal with situations which may not be currently covered in the rules. I, therefore, am happy to support this clause.

The President: Hon. Member, Mr Lowey.

Mr Lowey: Mr President, could the hon. mover tell me does anybody have to approve the rules of court? I think we must ask basic questions. If it is Tynwald, I thought, in my mind, it should be Tynwald because the Law Society will be consulted and the other half of the equation, the people who will be actually the recipients of this justice, needs a voice to make sure that those rules are fair to both sides.

Is it approved by Tynwald? That is the point I would just ask, because I do not see it anywhere where they have to be approved.

The President: Mr Waft.

Mr Waft: Mr Waft, whether the rules of court, etc, with regard to this section, are at variance at all with the UK similar or parallel situations, are there any particular changes here or is it purely an administrative change that they want to see for the sake of clarity and speed of judicial completion?

The President: Mr Downie and Hon. Members, before when I was reading through this clause, like Mrs Christian – and I appreciate her pragmatic comment – I actually had made a note alongside 27A(3) which says, ‘Can they be reissued?’ – this practice direction. Then, Mr Downie, in his opening to clause 5 actually answered that by saying that they can be reissued.

That still gives me an element of concern because it says at the start of 27A, ‘the Deemsters may give directions’ and those directions are practice directions. And then in (3), it says:

‘A practice direction shall cease to have effect on 31 December’.

If a practice direction shall cease to have effect, perhaps it should say something like, ‘A practice direction, unless reissued, shall cease to have effect’. I appreciate the point that every six months or whatever, it may come back as a new rule of court but if it does not, reading it, there could be a question of law if somebody follows a practice direction in court and the other side will argue that it shall cease. That practice direction has no jurisdiction because it is out of time.

Mr Downie to reply.

Mr Downie: Thank you for throwing that one in, Mr President! I am sure that, when drafting up the rules and regulations about how all this will apply to the courts, that will be referred to in *Hansard* and taken on board.

Mr Lowey will be pleased to know that the rules of the court will have to come to Tynwald, as indicated in clause 28. (*Interjection by Mr Lowey*)

I thank Mrs Christian for seconding. She is quite right. It will give flexibility. Some of the terminology is a little difficult to follow, because it is not the normal type of legislation that we deal with.

Mr Waft made a point about the UK. I can endeavour to find that out about whether the rules are largely similar or they replicate, or whatever. I know that the Manx legal system has always prided itself on certain differences, but we will try and get that answer for you as soon as we can.

So, with that, Mr President, I beg to move that clause 5 be read.

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

Perhaps we could take clauses 6 and 7, Mr Downie.

Mr Downie: Clauses 6 and 7: clause 6 deals with the powers of the High Court and extends the existing powers to require documents to be produced before an action is commenced or by a person who is not a party to an action. It covers all claims, not just those relating to personal injury or death.

The court normally orders each party in any case to give discovery, i.e. to disclose and produce any documents which may be evidence in the case. This power is extended by sections 34 and 35 of the 1991 Act.

Section 34 enables a person who intends to make a claim in respect of death or personal injuries to apply to the court before starting proceedings for discovery against an intended defendant.

Section 35 enables a person who has started a claim in respect of death or personal injuries to apply to the court for discovery against someone who is not a party to the claim. This clause removes restrictions to claims for death or personal injuries so that in future, such orders can be sought in any type of claim.

Clause 7 deals with costs and enables rules of court to permit the court to disallow costs incurred as a result of improper, unreasonable or negligent conduct by an advocate or to require the advocate to pay those costs. For example, a claimant's advocate carelessly fails to produce important documents on discovery, which causes the parties to incur additional costs: the court can order that the advocate personally pay those additional costs.

The clause also enables rules of court to make further provisions as to costs and in particular prescribing scales of costs and conferring functions of assessing costs on the court, court officers and other persons.

Mr President, I beg to move that clauses 6 and 7 stand part of the Bill.

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

The President: Mr Waft, Hon. Member.

Mr Waft: I am particularly glad of clause 7 with regard to costs. I think the average person is concerned mainly with costs of any legal action being taken against him or on his behalf. The costs are a large part of any legal practice and with the average person being faced with costs being awarded against him, the concern has to be the legal costs generally.

This section here does give the opportunity with regard to looking at wasted costs etc, and unreasonable and improper costs. So it does zero in on that and I understand that possibly there has been in the past and maybe this will help to streamline the wayward advocate or whatever who might be getting carried away with the costs. I think that is basically what it means.

With regard to the costing, I only hope that the situation is that they are able to find Judicial Officers more quickly than the average person in an eviction has to find Legal Aid. So I am sure they would be able to do that.

Thank you, Mr President.

The President: Perhaps Mr Downie you could tell me, in clause 7, what the bracketed words '(as the case may be)' are for. I just think they are superfluous. Mr Downie?

Mr Downie: To be honest with you, Mr President, I could not tell you. I did not draft the Bill, but I can find out if you wish. The lady with us from the Attorney General's Office might be able to throw some light on it, but I would think it is put in there so that those who are presiding at court have some discretion.

The last thing we want is a situation where proceedings have to be halted for people to get together and decide what certain things mean. This is a good example of the Deemster or the presiding officer putting an issue forward and if it is accepted to both sides in the court, they can proceed on that basis. I think the Americans call it 'calling time out'.

So with that explanation, I will get that confirmed –

The President: I think you are probably right, but it is belt and braces again because in fact it does say later on 'or such part of them as may be determined', but nevertheless, Hon. Members, perhaps we could take a little bit of advice.

Ms Marsh-Smith: Yes, I think I can answer that.

The President: Could you, for the purpose of the record please, first give your name, that is all that is necessary.

Ms Marsh-Smith: Mr President, I am Lucy Marsh-Smith, the Senior Legislative Drafter in the Attorney General's Chambers.

The reason why you have got there both the disallowance and the ordering of the advocates or representative to meet the costs is, at the end of the case there will be a costs order and it will be in favour of one party or against the other party. If they decide that they want to make an order against the advocate of one side or another, in one case it will be a disallowance and the other case it would be an ordering to pay, depending on whether ultimately the advocate was for the successful party or the unsuccessful party. I think that is the reason for the words 'as the case may be'.

The President: Thank you.

In that case, Hon. Members, I put to Council formally that clauses 6 and 7 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 8, Mr Downie, please.

Mr Downie: There is a new clause, Mr President.

The President: Oh, there is, you are right. It says here, new clause [A] to be agreed in principle, to go after clause 7.

Mr Downie: Do I need to move that, Mr President?

The President: Yes, move it, please.

Mr Downie: I wish to move:

that the new clause entitled 'Salaries of certain Crown Appointments' agreed by the Keys on 4th March 2008 to be inserted after clause 7 do stand part of the Bill.

The President: Hon. Members, in your Green Bill, in clause 1, subclauses (8) and (9) were taken out in another place and so this in fact puts in the bit of the salaries. Mr Downie has just formally moved it.

Mrs Christian?

Mrs Christian: I have a query, Mr President.

The President: Oh right. Mr Downie –

Mr Lowey: I will beg to second it.

The President: Mr Lowey will second it. Mrs Christian.

Mrs Christian: I just wanted to ask, Mr President, whilst I accept that it is not usual for salaries to be reduced – they may be pegged, not reduced – I wonder why we are putting it into this provision to say that the salaries may be increased but not reduced.

The President: Mr Downie to reply.

Mr Downie: I will need to take advice on that particular... The clause was moved by the Chief Minister, so I would think it was possibly something to do with the remuneration of emoluments or something that has cropped up there that has brought this clause in. But we will find out exactly what that is about.

The President: Hon. Members, I put to you formally that the new clause do stand part of the Bill. It will be placed after clause 7, Hon. Members. The new clause: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Hon. Members, presumably they will all be renumbered, but for our purposes we will work through on the Green Bill in exactly the same numbering as they are at the present time, accepting that they will be renumbered thereafter.

So, part 2, admissibility of hearsay evidence, clause 8, Mr Downie.

Mr Downie: Mr President, clauses 8 up to 22 and schedule 1 make new provisions allowing hearsay evidence in civil proceedings, subject to a number of safeguards. Hearsay is a statement made otherwise than by a party giving oral evidence in proceedings, for example, a statement made in a letter or other documents or something which someone is reported to have said. As a general rule, the common law does not allow hearsay evidence in either civil or criminal proceedings.

There is a well known quotation from *The Pickwick Papers* which summarises the rule against hearsay:

“You must not tell us what the soldier or any other man said, sir,” interposed the judge, “it’s not evidence.”

If I stand up in court and say what I saw – that I saw a road accident and it happened in a particular way – that is evidence. If I stand up in court and say that somebody told me that it had happened in a particular way, that is hearsay; or if I produce a letter from somebody saying that it happened in a particular way, that is hearsay.

There are many exceptions to the rule at common law,

for example: a statement in an official record, such as a register of births or deaths, or in a work of reference, such as a map. Statute law has introduced even more exceptions. For example, the Civil Evidence Act 1973, based on the UK Act 1968 relaxed the rule with particular regard to matters held on computer; but computer technologies have developed in ways which make it of limited use today.

There are now so many exceptions to the rule in relation to civil proceedings that it has become highly technical and difficult to apply. In 1993, the Law Commission in England and Wales considered the defects of the rule and recommended that, subject to safeguards, it should be abolished and, in civil proceedings, evidence should not be excluded on the grounds that it is hearsay. This recommendation was given effect in England and Wales by the Civil Evidence Act 1995 on which it is based.

Mr President, clause 8 lays down a general rule that hearsay evidence, any statement made otherwise than by a witness giving oral evidence is admissible in civil proceedings. This does not mean, of course, that hearsay evidence is to be given equal weight to oral evidence. It means that it is not to be excluded simply because it is hearsay, but the weight which the court is to give to it will depend on its reliability. The clause makes it clear that the various safeguards in clauses 9 to 20 do not apply where hearsay evidence is allowed by existing rules. For example, a register of births or deaths is admissible by the existing rule that an official record is evidence of its contents, and those safeguards do not apply to official records.

Mr President, I beg to move that clause 8 stand part of the Bill.

The President: Mrs Christian?

Mrs Christian: Mr President, I beg to second.

Again, I had some concern on reading this initially, because hearsay can be sound or otherwise. However, it is a practice that seems to have been exercised in other places and if it helps the court procedures then, provided that there are sufficient safeguards which maybe could be monitored as this legislation is used, then if it helps to come to the truth of the matter, so be it.

I just wonder if the mover could indicate whether, if a statement for example is attributed to another party by way of a statement of hearsay evidence, whether that party has an opportunity to say whether or not they are being quoted correctly or whether there is some other provision which allows them to respond to something that is being attributed to them in a court.

The President: I think they have, I think they have to have that right. Mr Waft.

Mr Waft: It is just there is a fine balance here between hearsay and gossip. What somebody heard on the street corner: should it be put forward in a court of law or is there a need to have that person who heard it relate the evidence, and that person would come to court if called upon? Otherwise, we are getting into muddy waters here.

The President: Mr Butt, Hon. Member.

Mr Butt: Thank you, sir.

I must agree with my colleague Mrs Christian: I did

have some reservations about this. Most of my working life I have been imbued with the rules of hearsay evidence and it does seem to go against the grain some way, to make it now acceptable. But as she stated, it seems to have been working in the UK for some time and there are some problems with civil proceedings in particular relating to documents which this will overcome.

I would just take one issue with the mover when he said that it is admissible with safeguards, providing there are safeguards. Actually it is admissible full stop. Clause 8(1) says it shall not be excluded, so it is not dependent on safeguards. Once it is then admitted, that is when the safeguards do kick in. I suspect there will be some quite lengthy debate when it is bedding in as to what those safeguards are and how they are being satisfied on that.

But I think my caution on this was that it is admissible regardless, and then the safeguards have to be properly enforced. That was my only concern.

Also, if we come on to clause 10 later, it says that the leave of the court can decide whether or not certain things can happen, so again the courts have a power which is well beyond what used to occur.

Thank you sir.

The President: Mrs Christian.

Mrs Christian: Mr President, the concern here again is that when something is said, whether or not the court decide that it is admissible, it has been said, and it is in the public arena. I do hope that the mover will be able to explain to us, when he responds, what redress any person who has been quoted may have.

The President: Mr Crowe, Hon. Member.

Mr Crowe: Thank you, Mr President.

I think it is quite a departure from current practice but as other Members have mentioned if it is working in the UK since 1995 I think it would allow our courts to widen the admittance of evidence as long as there are adequate safeguards, as Mr Butt says. So I think it is a step that we are taking which should, we hope, help the administration of justice.

The President: Mr Callister.

Mr Callister: Thank you, Mr President.

It seems to me that it would be very difficult to introduce safeguards into something of this kind. I cannot quite see what the safeguards would be and it seems – the Hon. Member Mr Waft said, ‘muddy waters’ – that is exactly... It is a grey area and I wonder if it is possible to have an explanation as to why this is being brought in. Are we just following the UK and saying, ‘Oh, well, you’d better do it here’? Presumably, we will not have any advocates, judges here and so on who have any first hand experience of taking hearsay evidence.

The President: Mr Butt.

Mr Butt: Sir, I think when we come to later clauses in the Bill we will find out that the safeguards depend on the value to be given to the evidence and the court can take that into account. I think that is always the case with the court:

they can tell the jury or themselves assess what value do we give this evidence.

So I think the safeguards are built into that clause 11, I think it is, sir.

The President: Mr Lowey.

Mr Lowey: I think the question we have to ask ourselves is why is hearsay not admissible in the courts in the first place? Why? I think it is because of the very point I think that was answered by my good friend when he quoted Dickens, if he was anything at all he was pretty good at putting his finger on the pulse of what was right and what was wrong.

I accept that we now have a position where our law primarily is based on what I would call... most of our law is based on existing case law, which is based not on the Isle of Man, but elsewhere, i.e. England. Therefore it would seem strange for us not, to some degree, mirror what that has done. I am quite sure these concerns were being expressed, when it was brought up in another parliament in another place.

I think, if we are dealing with clause 8 and it says, ‘generally it shall be’ and yet I note in clause 12, it provides that hearsay evidence may not be admitted if the person... and it goes on then. We will deal with that when we get to it. So it seems to be saying yes on one thing and no on another.

I know it is safeguards. I think the practice – 10 years in practice in the UK – has proved that it is not insurmountable and, on balance – and I have to say it is on balance, because when I read it, I highlighted where I had got concerns – I am supporting this clause.

The President: Mr Downie to reply then.

Mr Downie: I always knew this would bring a few questions. I think that when looking at the work that the courts currently undertake, let us just simplify it in the first instance: lots of the information from registries about death, birth, medical reports, items that are sent electronically, there has to be a provision for those to be accepted. Whether you classify those as hearsay, you are not getting the messages from the horse’s mouth as it were. So there is a whole raft of things that you have got to accept that, in the day to day running of the court, that has to be acceptable.

Like if a top consultant physician makes a report on somebody, his report should be accepted without him coming to appear in the court. That should be accepted in evidence.

I can see both sides – pardon?

The President: That could be an affidavit, couldn’t it?

Mr Downie: Well, I do not know, Mr President, I am not a regular frequenter of the courts!

My understanding is that there is a requirement to be more flexible. There has been a system introduced in the UK which has been relatively successful. We hear very little about it and I think that with proper guidelines and rules there is no reason in my view why we should not be doing a lot more of this in our courts here in the Isle of Man.

Just to quickly go through some of the areas. I think everybody said they had concern, but I think that at the end of the day, none of us are sitting in the law courts, day after day. Although we have a lot of skills in some areas, I think

when the judiciary brought this piece of legislation forward, they did it with the knowledge that these are the areas that are causing problems. We need to streamline our legal system so that, subject to the rules, certain types of evidence will be allowed by them to come in.

Mr Waft made the analogy about gossip or tittle-tattle on the street. Well, I am sure that would never be allowed by the judiciary. It needs to be fairly substantial if they are going to accept it by evidence and as Mr Butt said, further on in the legislation it makes reference to properly enforced safeguards that we are going to need.

Mr Callister asked: are we following the UK? Well, at the present time, I do not know whether we are following the UK or not, because I do not know what the rules are in the UK, but I will try and find out. I would think there will be some similarities, because traditionally, although we have had our own legal system in the Isle of Man, we do tend to adopt UK case law and with a lot of similarity between the two jurisdictions, it makes sense to do that.

Mr Lowey actually was contrary to the rule: he said that he welcomed the admission of this type of evidence before the law, but subject to the discretion of the presiding officers, so everybody knew what the rules were going to be to the game.

So with that, Mr President, I just want to go back one if I may, the new clause after clause 7. This clause has an additional provision regarding the Attorney General's salary but the wording of subsection (2) is as in the 1991 Act now applying to judges. I think the reason why the salaries is that it is preserving the independence of the office and they are acting without fear of their salaries being reduced. That is the answer I have been given, so we have sorted that one out.

So with that, Mr President, I beg to move that clause 8 stand part of the Bill.

The President: In that case, Hon. Members, I formally put the motion that clause 8 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Now we move on to the safeguards in relation to hearsay. Perhaps we could take 9, 10 and 11, Mr Downie.

Mr Downie: Thank you, Mr President.

Clause 9 deals with a notice of proposal to adduce hearsay evidence. Clause 9 provides the first safeguard. A party who intends to adduce hearsay evidence must notify the other party in advance, unless otherwise provided by rules of court. Failure to do so may affect the weight to be given to the evidence or be penalised in costs.

Clause 10 deals with the power to call witnesses for cross-examination on hearsay statements and provides another safeguard. The rules of court can provide that if the maker of a hearsay statement is not called as a witness by the party tendering the statement, any other party may call him as a witness and cross-examine him. For example, a claimant produces a letter from a third party which includes a statement which supports his case, but does not call the writer of the letter as a witness; the defendant disputes what was said in the letter. He is entitled himself to call the writer as a witness and cross-examine him about the statement, just as if the claimant had called him.

Clause 11, considerations relevant to weighing of hearsay evidence, makes a further qualification of the general rule that hearsay evidence is admissible. Special provision is

made to the weight, if any, which the court is to give to if the truth of a statement in a letter or an account book, for example, is disputed. The court must consider all the circumstances in deciding how reliable the statement is, in particular: where the person who has made it could have been called as a witness; when the statement was made – for example, a letter recalling events which happened 20 years before would be less reliable than one written at the time; whether the statement was at first hand, at second hand, etc; whether the maker of the statement had a motive not to tell the truth; what kind of statement it was – for example, whether it was supposed to be a full or an edited account of the facts and why it was made in the first place; and whether the fact that hearsay evidence is adduced at all leads one to think that it is unreliable.

Mr President, I beg to move that clauses 9, 10 and 11 stand part of the Bill.

The President: Mrs Christian.

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

The President: Mr Crowe.

Mr Crowe: Thank you, Mr President.

We are looking at a wide spectrum of hearsay evidence and just going back carefully reading clause 8, the definition of hearsay says:

“hearsay” means a statement made otherwise than by a person while giving oral evidence in the proceedings which is tendered...’.

So obviously, if for instance a doctor's report or a psychiatric report needed to be submitted to the court, instead of having that doctor or psychiatrist present at court to be cross-examined, a written report could be accepted as evidence subject to the other parties or the defence or the prosecuting attorney being made aware of the facts and giving them suitable notice to call that witness.

So I think the safeguards are inbuilt. Again, it talks about if evidence was given 20 years ago and a letter was written at the time or if it was written at the current time with the benefit of 20 years' memory or lack of memory, all these sorts of things are taken and given due weight and given due proportion in the hearing. So I think it tends to cover most things in those clauses, Mr President.

The President: Hon. Member, Mr Butt.

Mr Butt: Thank you, sir.

I would like to support both these clauses, particularly clause 11 which does give the main safeguards, in particular the value of the weight to be put on the evidence that has been given. That is very important in court cases.

But I do have a question on clause 10, where I do have some slight problems. The mover says it gives the person the right to call the person who would have given hearsay evidence. In fact it does not. We have this clause in here which says, ‘with the leave of the court’. Now I would like to know perhaps why that is in there. You would think it may be should be an automatic right that if you feel aggrieved or you need to call a person, you can do it automatically. But again, the court will have the decision as to whether that can happen.

Is that to do with people making mendacious claims or trying to do time delaying tactics etc? Is that perhaps why it is in there? Perhaps we could have some guidance on that, Mr President.

The President: Hon. Member, Mr Turner.

Mr Turner: Yes, Mr President.

Just with regard to this, I think this is an important safeguard and also it may deter... We heard Mr Waft say about the difference between hearsay and gossip. Of course, the weight of gossip: if you were to call a person to give evidence on something which they were told, then of course, if their response was, 'Somebody in the street told me', then obviously the weight of that is a lot less, because that is going to appear to be more the gossip.

But I think it is important, as we have found, that documents are also classed as hearsay. The public perception of hearsay is, obviously, going to focus in more on the gossip element, because that is purely what people think. I think it is important that, when considering these, we recognise that hearsay is a very wide area here. Obviously, it is crucial that a lot of these documents can be admitted as they can be quite pivotal to certain cases.

I am very happy to support these clauses.

The President: Mr Downie to reply.

Mr Downie: Yes, thank you, Mr President.

Most of the contributors have been supportive. As far as clause 10 is concerned, I will just read out my notes again. Clause 10 provides another safeguard. Rules of the court can provide that if the maker of a hearsay statement is not called as a witness by the party tendering the statement, any other party may call him as a witness and cross-examine him.

For example, a claimant produces a letter from a third party, which includes a statement which supports his case, but does not call the writer of the letter as a witness. If the defendant disputes what was said in the letter, he is entitled himself to call the writer as a witness and cross-examine him about the statement, just as the claimant had called him. Now I think the way this happens is that when the two parties get together I think the Deemster or whoever is conducting the court does put to them what has come forward as this particular type of hearsay evidence, the statements are put forward and I think that is dealt with quite early on in the proceedings.

So if a person needed to be called, if there was an objection, I am sure that when the rules governing this come in there will be provisions made for that, but it actually gives either party an option of bringing that person to court and cross-examining them in –

Mr Butt: The court could say no, though.

Mr Downie: – the traditional way. I know it says 'with the leave of the court', but at the end of the day, if that evidence was so important, does that not give the person an ideal opportunity then to go on to appeal and that is the grounds for the appeal that their evidence was not allowed to be properly submitted? I am not a lawyer, but I can understand where things are coming from.

So thanking again everyone who has spoken on these three clauses. With that, Mr President, I beg to move that clauses 9, 10 and 11 now stand part of the Bill.

The President: I formally put to Council clauses 9, 10 and 11 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. Clauses 12, 13 and 14, Mr Downie, please.

Mr Downie: Clauses 12, 13 and 14: clause 12 provides further safeguards. Hearsay evidence may not be admitted if the person making the statement relied on would not have been a competent witness and evidence of the credibility of the statement can be adduced, even though he is not called as a witness.

For example, a person suffering from mental illness or a child who is too young to understand the difference between fact and fiction could not be called as a witness. He or she would not be competent and a statement made by such a person, therefore, cannot be tendered as hearsay evidence.

Also, a person who disputes the truth of a statement which is put in as hearsay evidence will be allowed to question the credibility, that is the reliability, of the maker of the statement just as if he or she had been called as a witness.

Clause 13 deals with previous statements of witness and the situation where a witness who is called to give oral evidence has previously made a statement which is inconsistent with his evidence. As a general rule, a party can put that statement in as hearsay evidence as tending to disprove what the witness has said, but subject to additional safeguards.

One such safeguard is that the party who has called the witness cannot himself put such a statement in evidence, except with the leave of the court or in other special circumstances. For example, if the witness has unexpectedly given the wrong evidence, the court may allow the party who called him to treat him as a hostile witness.

This does not apply where a party puts in a witness statement made by the witness. This can save time, as it is then unnecessary to take the witness through his evidence in chief, and the other party can go straight on to cross-examination. Witness statements are dealt with by clause 25.

There are also some other technical rules which apply to previous statements made by witnesses contained in the Evidence Act 1871 and these will continue to apply.

Clause 14 deals with evidence formerly admissible at common law and preserves certain existing rules allowing hearsay evidence, but abolishes another which is superseded by clauses 8 to 12.

Subsection (1) abolishes a rule in the Civil Evidence Act 1973 that an admission made in any statement by a party which is adverse to him can be put in evidence against that party. This is made redundant by the new hearsay rules in clauses 8 to 12.

Subsections (2) to (5) preserve certain common law rules which are restated in the 1973 Act, allowing certain documents to be put in evidence without their contents having to be proved by oral evidence. These include: published works dealing with matters of a public nature, such as histories and dictionaries; public documents, such as public registers; official records, such as court records; evidence of a person's reputation; and evidence of family or local tradition, for example relating to a person's descent or pedigree or the existence of rights of way.

Mr President, I beg to move that clause 12, 13 and 14 stand part of the Bill.

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

The President: Seconded by Mr Crowe. Mr Turner.

Mr Turner: Yes, I just wonder if the mover could explain the scope in clause 12(2):

'In subsection (1), "not competent as a witness" means suffering from such mental or physical infirmity...'

In terms of physical infirmity, how wide does that go? A physical infirmity should not necessarily render somebody as incompetent.

The President: Mr Lowey, Hon. Member.

Mr Lowey: Could the Member in charge confirm that the person who will decide whether these are competent to take will be the presiding officer, the Deemster?

I am fascinated:

'for the purpose of proving or disproving pedigree or the existence of a marriage...'

What pedigree are we talking about here? Is he a man of standing in the community or a woman who comes from a respectable family? How do you adjudicate pedigree in law? I am fascinated, Mr President, as you are, I know, over words that appear in law. I have not seen the word pedigree for a long, long time and I am just interested in who is going to decide what is pedigree.

I will no doubt be referred to clause 96, where it will be... but it is fascinating for me!

The President: Mrs Christian.

Mrs Christian: Mr President, can I just ask about clause 14(2)(a)? It is about rules which will continue to have effect. I wonder if the mover can expand on the rules in relation to (2)(a):

'published works dealing with matters of a public nature (for example, histories, scientific works, dictionaries and maps) are admissible as evidence of facts of a public nature stated in them'.

I presume somewhere the rules say whether or not these documents are acceptable and admissible as evidence, because I would have some concerns about some published works which purport to be histories or scientific. I presume that 'published' means on the internet as well as everywhere else, where one would hardly rely on them as being evidence or facts. Take a look at Wikipedia –

Mr Callister: Wikipedia, yes!

Mrs Christian: – to see what it says!

So I may be reading this in the wrong context, it may refer to something in the Civil Evidence Act which covers this issue. But I wonder if he could just clarify to what extent any published works which purport to be facts are to be considered suitable for submission as hearsay evidence?

The President: Mr Callister, Hon. Member.

Mr Callister: Yes, Mr President, just following on from that, it says:

'published works dealing with matters of a public nature',

and gives us various examples. I do not know how you begin to define from one end to another what 'public nature' means.

The President: It is very wide and that is presumably up to the court to justify.

Mr Downie to reply, sir.

Mr Downie: Taking those last two contributors together, Mrs Christian and Mr Callister, I would suggest that what we are looking at here are historical road maps, ancient rights of way, historical documents which are well accepted in courts. In fact, I would suggest that one of the common things dealt with in the courts in the Isle of Man are documents like Woods' Atlas, where we are defining boundaries going back hundreds of years. I would think that the courts would be taking into account the regularity of these documents being presented, there will be a case history involved in some of these documents, they will be well used, they will be the ones that are the popular terms of reference before the courts.

I would agree with Hon. Members that Wikipedia and all these other things that appear on the market would not be reliable, in my view, but at the end of the day, there is a procedure in place and each side in the court will have to determine whether or not they are going to accept as part of the evidence, so there can be an objection.

But what we are trying to do here is come up with a system that will allow for certain things to be admitted. I would think that most of the documents that are approved and endorsed by Government or perhaps the UK Government to a certain extent, tried and tested, they are the ones that will be approved. I hope that clarifies that.

Mr Lowey had a very interesting point about a person's pedigree, a person's descent. I think we are all responsible in some way, I do not think there is a Member sitting round this table who has not given a letter of endorsement or a reference for a person. We have all made reference to their good standing in the community, their family has lived for generations in Arbory or Ballabeg or wherever it is, or in West Douglas, and we have all tried to get across in that letter that that person has a pedigree or is of good standing or whatever. We always say we knew his father, his grandfather, whatever.

I agree a lot of these pieces of terminology are coming in now about pedigree and so on, but I suppose this is a way of putting it into law what I would say most people would understand and accept.

So with that, Mr President, I beg to move that clauses 12, 13 and 14 stand part of the Bill.

The President: Hon. Members, I put to Council formally that clauses 12, 13 and 14 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Administration of Justice Bill Second Reading approved

The President: Now, Hon. Members, it is with some reluctance, but nevertheless it is necessary at this particular stage, keeping half an eye on the clock, as I am today, I did

tell Council that I needed to be at the airport. Hon. Members, I think that time is coming upon me.

Having said, that the Clerk points out to me and it appears as if, Hon. Members, I and he together have omitted to formally put to Council a Second Reading of this particular Bill. I had thought – and it is on our Order Paper – that we had dealt with the Second Reading at our last session. Apparently, formally, we did not, Hon. Members, which puts me into a little bit of a quandary.

I think we are working our way neatly through the clauses anyway and I think I am faced with either continuing working our way through the clauses and then putting to Council formally the Second Reading at the end of the clauses, Hon. Members, or in fact, reverting it and putting to you now that we have on our record that Council accepts that the Administration of Justice Bill 2008 be read for a second time.

I am reluctant to do it in the middle of the clause stage, Hon. Members, but I need to point out to Council the position, as in fact it is an error which has been made and it needs to be correct for purposes of our *Hansard* and of the business before Council. If you are to continue this morning with someone else in the Chair, I would much prefer to have it correct under my hand, Hon. Members, because I would feel more comfortable!

If Members accept that it is an error that I did not put to you that the Administration of Justice Bill 2008 be formally read for a second time, I find it unnecessary, I think, for Mr Downie to formally put it to us as a Second Reading providing you accept that proviso, Hon. Members, and that I will again at Third Reading stage make sure that the matter is cleared, so that in fact there can be no element of doubt.

So what I would like to do, Hon. Members, is formally put to Council at this stage, before I leave the Chair:

that Council acknowledges that the Administration of Justice Bill 2008 has been read a second time.

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

Procedural

Mr Lowey elected Acting President

The President: Hon. Members, having cleared that particular point as I said I do find it necessary to leave the Chair. Can I suggest, Hon. Members, I understand that previously on the other occasions that this has happened before I took over as President that Mr Lowey has taken the Chair. As the longest serving Member of Council, I am quite happy... I am in your hands, Hon. Members, but if you are content that Mr Lowey takes the Chair, you can continue to work your way through the Administration of Justice Bill. (Members: Agreed.)

That is agreed, I will hand over to Mr Lowey, Hon. Members and we have reached clause 15. I am quite happy to leave my papers here before Mr Lowey if they are of any help to him: you can work off that or not as you see fit, sir.

Mr Lowey: Thank you, Mr President.

The President: Thank you, Hon. Members.

*The President left the Council at 12.05 p.m.
and Mr Lowey took the Chair.*

Administration of Justice Bill Consideration of clauses concluded

The Acting President: Firstly, Hon. Members, thank you for your confidence in me. My pedigree does not (*Laughter*) permit me an automatic right to sit in this Chair in the absence of the President! Anyway, thank you very much indeed.

As Mr President said, we are actually on to clause 15. We have taken the other two clauses, so it is over to the mover of the Bill.

Mr Downie: Thank you, Mr Acting President.

Clause 15 deals with the proof of statements contained in documents and it enables a copy of the documents containing hearsay evidence to be produced instead of the original.

At present, as a general rule, where a document is put in evidence the original must be produced. This clause makes an exception in the case of documents containing statements which are put in evidence as hearsay under clause 8 that a copy can be produced as long as the court is satisfied that is an authentic copy.

I beg to move that clause 15 stand part of the Bill.

Mrs Christian: I beg to second.

The Acting President: Mr Turner.

Mr Turner: Just one point: I think it is important, as more and more documents these days are filed electronically, that this is able to go in. We already, of course, have the huge task of electronically storing all the documents in the Company Registry and there is no doubt that more documents, as time goes on, will be stored in this form and paper will become less and less.

So I am very happy to support this clause.

The Acting President: Mr Downie to reply.

Mr Downie: Yes, I thank Mr Turner for his comment. Obviously, with the introduction of e-technology, the courts, like every other organisation, are having to evolve to take on board these improvements. I thank him for his support.

I beg to move that clause 15 now stand part of the Bill.

The Acting President: Hon. Members, all those in favour of clause 15 standing part of the Bill, please say aye; against, no. The ayes have it. The ayes have it.

Clause 16, sir.

Mr Downie: Clause 16 deals with the proof of records of business or public authority.

Clause 16 relaxes the rule enabling a document forming part of the records of a business or public authority to be used in evidence. As a general rule, at present, such a record, such as an account book or a minute book, can be put in evidence, but an officer of the firm or authority has to produce it and swear that it is genuine.

In future, such a record can be produced without the need

of oral evidence to prove its authenticity. A certificate by an officer will be enough.

Conversely, if a party seeks to prove that no such record exists, for example, to show that a person has never been an employee, he will no longer have to call an officer of the firm or authority to give oral evidence, but can instead file an affidavit by such an officer to that effect.

The court is given an overriding power to disapply these rules in a particular case, with reference to particular records, for example, if it thinks what purports to be a certified copy is suspicious.

Mr Acting President, I beg to move that clause 16 stand part of the Bill.

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

Mr Waft: Yes, Mr Acting President.

I think that this clause sums up with regard to the whole Bill: it is a streamlining of legislation and it is long overdue. This is only one part which highlights the need here. I fully support this clause.

The Acting President: No other Member. Mr Downie.

Mr Downie: Thank you.

I would just like to thank Mr Waft for his comment. It is all about moving things forward and trying to deal with things in a much more sensible way.

With that, I beg to move that clause 16 stand part of the Bill.

The Acting President: Right, Hon. Members, I formally move that clause 16 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 17.

Mr Downie: Mr Acting President, perhaps with your leave, I can take 17, 18 and 19 – they are all relatively short.

The Acting President: Yes, sir.

Mr Downie: Clause 17 deals with the admissibility and proof of actuarial tables and it enables actuarial tables issued from time to time by the UK Government Actuary admissible in evidence. The Ogden tables, named after the late Sir Michael Ogden QC, are actuarial tables which provide multipliers for calculating the present capital values of future annual losses or expenses, for example, loss of earnings or nursing expenses. They are used to calculate damages for compensating victims in a personal injury and fatal accident cases. They were first issued in 1984 and the sixth edition appeared in 2007.

Clause 18 gives power to make procedural rules to carry this part of the Bill into effect and provides for such rules to apply by arbitration proceedings. The general power to make rules of procedure, known as rules of court, in the High Court is in section 25 of the High Court Act 1991 and there are similar powers for other courts and tribunals, such as the High Bailiff's court, magistrates' court and the Employment Tribunal. These powers will include power to make rules relating to the admission of hearsay evidence.

Finally, clause 19 which deals with the meaning of civil proceedings. This clause makes it clear that this part applies to civil proceedings in any court or tribunal. Subsection (1) provides that the rules in this part apply to civil proceedings but not criminal proceedings in any court or tribunal where the rules of evidence apply – not just to the High Court; they apply to the High Bailiff or magistrates when exercising civil jurisdiction.

Subsection (2) provides for reference to the court and rules of court be read accordingly.

Mr Acting President, I beg to move that clauses 17, 18 and 19 stand part of the Bill.

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

The Acting President: Any queries by Hon. Members? Mr Crowe.

Mr Crowe: Mr Acting President, can you just clarify when you mention tribunals, how does this sit with the Tribunals Act?

The Acting President: Hon. mover to reply.

Mr Downie: The Tribunal Acts is something that is overseen by the courts and what this provision will do will make available hearsay and other types of evidence to be introduced at that court – but there again, subject to the conditions and rules and both parties being in agreement.

The Acting President: Right then, Hon. Members, can I put to you then that clauses 17, 18 and 19 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 20.

Mr Downie: Can we take 20, 21 and 22, Mr Acting President?

The Acting President: That is agreeable to Members and to the Chair.

Mr Downie: They are quite short. Clause 20, in part 2, defines terms used in this part. It should be noted that document covers any record of information, including a record held on a computer.

Clause 21 deals with the savings and contains the savings for other rules of evidence, in particular those making evidence inadmissible on grounds other than that it is hearsay and those relating to documentary evidence. For example, if evidence is inadmissible, because it was obtained illegally, it is still inadmissible despite the new rules as to hearsay.

On the other hand, if documentary evidence is admissible by reasons of some other rule that will not be affected by the new rules, for example there are rules in Acts of Parliament and Acts of Tynwald going back to the 19th century saying how official documents such as Acts of Parliament and Acts of Tynwald themselves can be put in evidence and these are not affected.

Clause 22, consequential amendments and repeal: clause 22 introduces schedule 1 which makes amendments and repeals consequential on this part.

Part 1 of schedule 1 mostly amends various provisions

which are defined by reference to the Civil Evidence Act 1973, part 1, which is superseded by part 2 of this Bill. The definitions are replaced with provisions either referring to part 2 or corresponding to clause 20.

Part 2 of schedule 1 repeals provisions superseded by this part, in particular part 1 of the Civil Evidence Act 1973.

Mr Acting President, I beg to move that clauses 20, 21, 22 and schedule 1 stand part of the Bill.

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

The Acting President: Any Hon. Member? No? Right then, I will put to Council that clauses 20, 21, 22 and schedule 1 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 23, sir.

Mr Downie: Clause 23 deals with the issue of preservation of evidence and oaths.

Clause 23 places on a statutory basis the power of the High Court to make a search order, formerly called an ‘Anton Piller order’, enabling a litigant to act to preserve evidence or property and to search premises, vessels, etc, for that purpose.

An Anton Piller order was first invented by the English Court of Appeal in a case of that name in 1976 and has been adopted by other common law jurisdictions, including Canada, Australia, and New Zealand, as well as the Isle of Man. It is mainly used when a claimant intends to start proceedings but, in order to prove his claim, needs access to evidence in the possession of the proposed defendant and fears that the evidence may be destroyed unless the court lends its assistance.

For example, a partner in a joint venture believes that he has been swindled out of his share of the profits, but cannot prove it without access to the accounts and records in the possession of another partner. The court is able to make an order allowing him, subject to very careful safeguards, to enter the defendant’s premises and search for, inspect, and copy the accounts and records needed to substantiate his claim.

This kind of order is also available where the owner of intellectual property rights, such as copyrights, patents and trademarks, wishes to search for and seize pirated or counterfeited articles, such as counterfeit Rolex watches or pirate videos. Many lawyers and others concerned with civil rights have been uneasy that there was no statutory basis for the Anton Piller order and this was put right in England and Wales by the Civil Procedure Act 1997, section 7 of which gave the courts power to make a search order for these purposes.

This clause gives the Manx High Courts similar express powers.

Mr Acting President, I beg to move that clause 23 stand part of the Bill.

The Acting President: A seconder?

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

The Acting President: Mr Butt.

Mr Butt: Yes, I welcome this development, because Anton Piller orders are used several times a year in the Isle of Man. It is good to see that it is now on a statutory basis whereas, before, it was done by precedent based on the UK case law, I understand, so this is a good move forward, which will be to our benefit when we come to be inspected by the OECD and other jurisdictions looking at our financial regulations.

The Acting President: Mr Crowe.

Mr Crowe: Thank you, Mr Acting President. The question I would just like to ask is, in subclause (3) it says:

‘Such an order may direct any person to permit any person described in the order...’

Now, would the court...? I am seeking, really, clarity as to who would actually go into the premises. Would it generally be a police officer or a coroner or other person appointed by the court? Who actually would perform the duties of the Anton Piller order?

Mr Butt: I can perhaps assist in that, Mr Acting President. I understand the court appoints usually another advocate to go to the premises and be there present, to act as a neutral observer of what actually goes on, often with the Police in attendance.

Mr Callister: Would you excuse me, Mr Acting President: I just get a picture of Hollywood films where they are smashing doors and doing anything they like to get information and you see it on television now! To what extent, if there is an obstruction for obtaining this information, does some violent action need to be used and how far can they go, in fact, to find this kind of information?

The Acting President: Your question will be answered. Mr Turner.

Mr Turner: Two points, following on from that: would this order have the same effect then as if they have to, as my hon. colleague, Mr Callister, says, gain access to a place, it would have the same effect as a warrant? And the other point is presumably the territorial seas is to the 12-mile limit and/or to the mid-line as we have in the north?

The Acting President: You are talking about where the jurisdiction ends.

Mr Waft: In mention of the Anton Piller order, I see it was before or during the days of the shredder and the need for speed when you are implementing the Anton Piller order would need to be progressed very quickly to be of any benefit.

The Acting President: There are a whole series of queries for you to deal with.

Mr Downie: There are!
To start with Mr Butt, I thank Mr Butt who, in his former life, spent an awful lot of time in courts, and I think his knowledge has been useful today. He has given us a description of how the Anton Piller order works in actual

fact, and he welcomes this particular clause in the Bill.

The other Members... Mr Crowe's question was answered by Mr Butt, (**Mr Crowe:** Yes.) where he said that an advocate would be given responsibility. We need to remember that we are dealing with civil law here and we are not dealing with drugs busts (**Mr Callister:** No.) and dangerous criminals and all the rest of it. But I would assume that, if there is not any co-operation, the courts would be very annoyed and, in fact, there would be an order served which would allow things to progress a little further.

I think the important thing to remember is that, before these cases actually start, a lot of this evidence is submitted up front. If there is anything then missing, one side has the opportunity to explain to the presiding officer that they think there is an important link that is not available and it is probably at that time that they start saying, 'Well, I am going to need this piece of evidence or this document', or, in fact, copies of the annual returns or the accounts or whatever.

Mr Turner raised the issue about out to the 12-mile limit. Well, in a lot of these civil cases, we have summary jurisdiction agreements with other areas and, in fact, when you start to get into money laundering and areas of international finance, which are civil matters as well, that could apply to all of the OECD countries or FATF countries who are signed up to specific agreements. So, it is not just law relating to the Isle of Man. Certain offences will know no boundaries really and I think that is the way that a lot of these civil issues have to be dealt with in the future, so that we can have transparency.

Mr Turner: May I come back, Mr Acting President?

The Acting President: For further clarification.

Mr Turner: For further clarity on that then, if we are looking at a vessel which may have, at the time, been in Manx territorial waters but is no longer in territorial waters, are you saying that there are agreements in place where searches could be carried out if they were in a UK port, for example, or an Irish port, if that vessel is no longer in the Manx territorial waters?

Mr Downie: I think the important thing to remember is the gravity of the offence. If it is just some civil issue about ownership or non-payment of bills or accounts, that probably is at the lower end of the scale. But if that vessel has been involved in, say, money laundering or a serious international issue, which is before the civil courts here in the Isle of Man for investigation and it is important, I would assume that either Customs or some other agencies in the UK with whom we have reciprocal agreements could possibly get involved and deal with that.

But it is difficult to say without knowing what the particular offence is but, there again, we are asking you to look at this under civil procedure and under the Civil Procedure Act 1997, which is not quite as severe and onerous as criminal law.

The Acting President: And as has been the practice for a few years, the hypothetical cases are very difficult because no two cases are identical.

Mr Downie: Quite right.

The Acting President: Mrs Christian.

Mrs Christian: Mr Acting President, I wonder if we could just clarify in subclause (7) the purpose of the words 'seaward'. It says:

'within the Island or within the seaward limits of the territorial sea of the Island.'

What other limit has it got? (**The Acting President:** Skywards!) I wonder what the purpose of that word is in there.

Mr Downie: I can get that cleared, in fact.

One of the things I am determined to do today, if we get through the clauses stage, it is not my intention to go any further because there have been a lot of very good questions asked during the clauses stage. What I hope to do when we come back for the Third Reading, if we get that far, is to get all these little points that have been raised out and in my response before the Third Reading.

That one about 'seaward', I will make sure that that is included.

The Acting President: Hon. Members, can I ask, if you are content with the reply, that clause 23 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 24.

Mr Downie: With your leave, Mr Acting President, could I take clauses 24, 25 and 26?

The Acting President: You may, sir.

Mr Downie: Clause 24 deals with oaths and affirmations and relaxes the strict requirements of the law which, in practice, are no longer followed regarding the taking of oaths and affirmations in legal proceedings, criminal as well as civil.

At present, the Oaths Act 1922 prescribes a standard form of oath with exception only for persons who are either Christians, Jews, and the Evidence Act 1871 allows a witness to affirm only if he or she has religious objections in taking an oath, for example, if they are Quakers, or if the court is satisfied that he or she would not treat an oath as binding.

The clause allows a person taking an oath to do so in the Scottish form – that is, with the hand raised – or in any other way which he declares to be binding on him. For example, a Muslim may swear on the Qur'an or a Sikh on the Adi Granth. Also, it allows a witness to affirm, if he wishes, for any reason or none.

Clause 25 deals with witness statements and enables rules of the court to make provision for the service of witness statements. A witness statement is written as a written statement setting out what a witness for one party intends to say in his evidence in chief. The court can, at present, require the parties to exchange witness statements before the trial and can refuse to allow a party to call a witness if his witness statement has not been given.

If each party knows what the other witnesses will say, this reduces costs and the length of the trial, since that party can go straight to cross-examination and, in many cases, it may be unnecessary to call the witness at all. Where the parties have to put all their cards on the table, it may even avoid the need for a trial at all.

We note that a witness statement can be put in evidence

under section 4 of clause 13. At present, the parties can only be required to file witness statements if the court so orders, but this clause enables rules of court to make this a standard requirement.

The clause also prevents a party refusing to serve a witness statement on the grounds that it is privileged – for example, it refers to legal advice that he has received – then ambushing the other party at the trial by calling the witness to give the same evidence orally. He can still be prevented from calling the witness where he refuses to serve the witness statement.

Clause 26 enables rules of court to make provision about interest on judgment debts. At the present, the rate of interest is specified by Treasury order but, under this clause, it is to be prescribed by rules of court. Also, interest runs from the date execution is granted. Under this clause, it will normally run from the date of judgment which may be earlier. Also, the court will have power to disallow interest in whole or in part in certain cases.

Mr Acting President, I beg to move that clauses 24, 25 and 26 stand part of the Bill.

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

The Acting President: Thank you, Mrs Christian. Any Hon. Member? Mr Butt.

Mr Butt: Mr Acting President, just to welcome clause 25, paragraph (c), which I think the mover mentioned was the ambush. It does happen in courts where, suddenly, one party is ambushed with evidence which is sometimes hard to refute. This makes sure that there is proper notice given and should make matters a lot simpler for both sides.

Mr Downie: Yes, thank you.

I would just like to thank Mr Butt for his support and comment on clause 25, paragraph (c) and the area that deals with the ambush in court. It is not a pleasant position for anybody to be in, I am sure, and does clarify things a little.

I beg to move clauses 24, 25 and 26 stand part of the Bill.

The Acting President: Thank you. Hon. Members will note that there was an amendment moved in another place. It has been circulated to you. Okay, as amended, can I then put to you that we vote on clauses 24, 25 and 26. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Mr Downie.

Mr Downie: With your leave, could I move clauses 27, 28 and 29?

The Acting President: Yes, sir.

Mr Downie: Thank you.

Mrs Christian: Isn't there a new clause?

Mr Downie: Pardon.

Mrs Christian: A new clause.

Mr Downie: Yes, clause 27 and the new clause. This clause makes provision for an appeal against a pre-trial ruling by a Court of General Gaol Delivery, enabling the trial to proceed even if leave to appeal is granted and precluding a further appeal to the Privy Council, except by way of appeal against conviction or following a reference by the Attorney General – that is, after the trial is concluded.

At present, if the judge before a criminal trial starts gives a rule on legal submissions made by the advocates, an appeal can be brought from his ruling, perhaps as far as the Privy Council. The trial then has to be delayed, perhaps for a year or more and may even have to be called off entirely as a witness's memories fade. This clause enables the trial to proceed even if an appeal is brought against the ruling.

Now that is amended, I understand.

Mrs Christian: Point of order and clarification, please, Mr Acting President. Is there not a new clause 27 to go in before?

The Clerk: Yes, Mr Acting President.

Mrs Christian: Or the one that the Hon. Member has just moved?

The Acting President: There is to be an insert – a new clause.

Mr Downie: 'After section 5(3) of the Legal Aid Act 1986, add the following subsection', it is just a one line.

Mrs Christian: No, that is a new clause and that will become clause 28.

Mr Downie: Clause 28, right.

Mrs Christian: So, that is a separate clause.

The Acting President: As the President said before he left the Chair, we are dealing with it as is, and they will be renumbered afterwards, because we have already numbered them. But I take Mrs Christian's point (**Mr Downie:** Absolutely.) that there is a new clause which, as she so rightly pointed out, is to be inserted into the Bill. Am I right?

Mrs Christian: I just wonder, yes, whether the mover is going to move that, before the clause he has just moved, because that is where it comes!

The Acting President: That is where it should be.

Mrs Christian: He has just moved clause 27 as printed, I understood, from his wording. (**Mr Downie:** Yes.) But he has not moved clause 27 as it came from the Keys. For clarity, Mr Acting President.

Mr Downie: Just to clarify that, I will formally move that the new clause 27 which came to us from the Keys be incorporated into the Bill and the renumbering.

I move:

that the new clause entitled 'Provision with respect to costs in civil legal aid cases' agreed by the Keys on 4th March 2008 to be inserted after clause 26 do stand part of the Bill.

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

Mr Waft: Just through you, Mr Acting President, on the information we have, it does not actually say that clause 27 is a new clause. It says, '27. After section 5(3)'.

Mrs Christian: Sorry, it does say, 'new clause after clause 26', doesn't it?

The Clerk: Mr Acting President, I think I should clarify slightly.

I think there was a distinction in the way it is presented in the Order Paper. The one about the salaries was headed 'new clause' and the one we are talking about now is headed 'clause 26', so they are headed in different ways, but the effect is the same.

I do not know why but the first one has been given a clause number in square brackets, [A]. The other one has been given a number, which is 27 – which is actually wrong on both numbering systems, because if you add in the clause at [A], then it becomes 'after clause 27 insert', so it will, as Mrs Christian says, ultimately be clause 28 as things stand.

So, it might be...

The Acting President: Even I am confused now. (*Laughter*) Perhaps our legal friend from the drafting office can help us.

Ms Marsh-Smith: Mr Acting President, it is, indeed, intended to be a new clause. I am not sure why it does not appear as such, but it is certainly a separate clause to be inserted before the one that the Hon. Member was about to tell us about.

The Acting President: So, can I now be absolutely clear that the correct position for this new clause, which is yet to be moved, should be before or after...

Mrs Christian: Mr Acting President, he has moved it and I have seconded it.

The Acting President: You have? Fine. Are Hon. Members quite clear that we are dealing with the new clause as moved and seconded?

Mr Butt: It is between the printed clause 26 and clause 27 in the Green Paper?

Mrs Christian: Yes, it will be renumbered eventually.

The Acting President: It will be renumbered eventually.

Hon. Members, for clarity, I therefore put the new clause to you to be inserted after clause 26, before clause 27 as we have got it now. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Now, can we deal with clause 27 as printed?

Mr Downie: Clause 27 then, criminal appeals in respect of pre-trial rulings: this clause makes provision for an appeal against a pre-trial ruling by a Court of General Gaol Delivery, enabling the trial to proceed even if leave

to appeal is granted and precluding a further appeal to the Privy Council, except by way of appeal against conviction or following a reference by the Attorney General – that is, after the trial is concluded.

At present, if the judge before a criminal trial starts gives a ruling on legal submissions made by the advocates, an appeal can be brought from his ruling perhaps as far as the Privy Council. The trial has to be delayed, perhaps for a year or more, and may even be called off entirely as a witness's memories fade. This clause enables a trial to proceed even if an appeal is brought against the ruling.

Under the old numbering, clause 28, 'Rules of court: Tynwald procedure': the old clause 28 standardises the procedure for the consideration by Tynwald of rules of court made by the Deemsters under the various statutory powers.

Section 25 of the High Court Act 1991 gives the Deemsters general powers to make procedural rules for the High Court and originally required the rules to be approved by Tynwald, but the Civil Jurisdiction Act 2001 substituted the annulment or negative resolution procedure. However, there are powers to make procedural rules in other Acts, which still require Tynwald approval, which makes it impossible to produce a single code of rules for all civil litigation. This clause, therefore, applies the annulment procedure to all rules relating to the High Court and also those relating to inquests and courts of survey.

Clause 29 deals with jury lists and amends the procedure for revising and issue of new jury lists, consequent on the new regime for preparing registers of electors under the Registration of Electors Act 2006. The jury lists are derived from the registers of electors and the procedure for preparing the jury list has to fit in with the timetable for preparing the registers. That timetable can now be changed by order and it is, therefore, necessary that the timetable for the jury list can be altered in line with any such change. The need for this was overlooked when the 2006 Act was drafted.

Mr Acting President, I beg to move that, under the old numbering system, clauses 27, the new clause from the Keys, clause 28 and 29 now stand part of the Bill.

The Acting President: Hon. Members are quite clear?

Mrs Christian: Mr Acting President, we have already passed the new clause.

The Acting President: We have already done that. I was just about to say that. So, we are dealing with clauses 27 – as printed in the Green Bill – 28 and 29. The new clause has already been approved.

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

The Acting President: Mr Turner.

Mr Turner: Mr Acting President, I just wonder, with regard to jury lists, this is something I have had a bit of a concern about for quite some time: that it is linked to the electoral roll. There is nothing here about people who are not on the electoral roll yet should be eligible for jury service.

I just wondered why it had to be linked to the electoral roll and was there not some other way of generating a list of persons who are capable of being jurors? And also, it

says further on that the coroners, when selecting potential participants of juries, just work down the list. Well, surely, in that case, you end up with multiple people from the same address and so forth. I just wondered whether that system could be considered to be looked at, as it has got quite a few deficiencies in it.

Mr Butt: You can get a jury comprised totally of Quirks or Quayles. It does happen occasionally.

The Acting President: I would hate to be tried by a full jury of Quirks! *(Laughter)*

Mr Turner: Or Loweys! *(Laughter)*

The Acting President: More likely. More likely. Enough of that!

Mrs Christian: Mr Acting President, again, it is slightly diverging from the issue of the clause, but we have, earlier in this Bill, agreed that Deemsters can act until they are 70 years. A matter which has been raised with me by members of the public is that jurors have to stop at a younger age than that and there are some very competent and capable people over the age of 65 years, who could well provide good service on a jury. I do not know whether or not the mover could let us know if he knows whether any consideration has been given to changing that.

Mr Callister: Mr Acting President, just on jury lists, as far as the electoral roll is concerned, we have heard for donkey's years that numbers of people are missing from the electoral roll. Numbers have gone away, people have died and so on. So, it is not a very reliable catch-all as far as this Bill is concerned. Probably it is the only thing we have.

What I am interested in is if you have a family of Quirks, you might have one or two females in that: should we now be thinking of a balance of male/female juries, perhaps more in criminal cases, of course, but more female participation? And working through a list in order, alphabetically, does not necessarily give you that.

The Acting President: Very interesting. Mr Crowe.

Mr Crowe: Mr Acting President, I think when a jury is empanelled, they have to give a list of names. I think either the defence advocate or the prosecuting advocate can turn down... so they can have the choice to weight it either in favour or not; but I think there is power in the court rules to allow that to happen.

The Acting President: I am not surprised the Hon. Member is being queried on the voters' lists. It is historic: it goes back donkey's years – that is a good expression! Maybe not parliamentary but it is still a good expression and people know what it means!

But the system is a bit likes rates, isn't it? The alternative is that there is no better alternative, however imperfect it may be. That perhaps is my suggestion.

But, anyway, Hon. Member to reply.

Mr Downie: Yes, thank you. I will just deal with the comments generally, really, because they are quite pertinent. Those of you who understand that the responsibility for

the maintaining the electoral roll and those eligible to do jury service is held by the Economic Affairs department of Treasury. It is very much based on the system where people either send the return in on an annual basis or they do not.

My own personal view is I do not think that if a person does not bother to send their return in to say that they are on the voters' lists or eligible for jury service, then there is a problem there. There should be much more pressure put on those people to make a return. When you actually look at the electors' register, there are hundreds and hundreds of people missing and the reason they are not on there is because they just do not want to be bothered.

The same rule applies with the list of jurors and the coroner was telling me, on occasion, it is very difficult for them to find a jury, particularly when there is a contentious trial coming up that is going to last several weeks or more and it is too easy for people to say, 'Well, I have got such or such an appointment', or 'We have got a holiday booked' or whatever, to get out of it.

One of the messages I am going to be delivering to the Deemster in conjunction with the Bill is that is an area really that needs to be looked at for the future, so we might not be in the position where we are faced with having eight or nine Qualtrooughs or Quirks or whatever, because they have gone to that particular letter in the alphabet.

But you must realise, Hon. Members, some days the advocates may turn 100 or 150 people away, because if they feel that person may be prejudiced to the trial, either side can question them and not have them sitting. So it can be quite difficult on occasion.

But the lists as they are at the moment – the jurors' list and the voters' list – really it wants some sort of revision there and it really needs looking at.

On the issue about jurors over 70, when you actually look at who is exempt from jury duty you wonder how they ever get sufficient people to provide the service. My own particular view is that if a person over 70 wants to offer themselves to be a juror and they are in sound mind and good health, there should not be an impediment there. That is something else that I think we should be putting to the Deemsters to have a look at, because there are a lot of very bright, sprightly people who do form very useful roles in the community and, in my view, they would be just the type of responsible person you need to sit on a jury.

And with that...

Mr Turner: Sorry, can I just come back on that. As the Hon. Member has said he is going to be investigating the business of jury lists, would it not be an idea to see if it could marry up, possibly, with the Income Tax Division's database? Surely that is a more accurate database and everybody has to submit a form every year. **(Several Members: No.)** But it has to be better than what you have got at the moment.

Mr Downie: There are a number of lines. If you look at what happens in European countries, they ally their service to all these things on the basis of the national identity card. Although it is maybe not a route that we are looking to go down in the Isle of Man, in Australia, for instance, you can be arrested and put into jail, if you do not vote. It is compulsory there to actually vote, so there are a lot of variations round about.

The problem we have in the Isle of Man is that our system, I think, is much too loose.

Mr Turner: The NI number.

Mr Downie: Those who do not want to bother are not doing their duty, either as voters or as being available to serve as jurors, and it is the same few people that are getting called for the service all the time.

The Acting President: Civic duty with responsibility as well.

Mr Downie: I will raise it with the Deemster when we have the wash-up, and say it has been alluded to. But at the end of the day, we do not have that power, unfortunately, with this legislation.

The Acting President: Okay. Hon. Members, I put to you then that clauses 27, 28 and 29 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 30 – do you want to take all three next ones, because they are all related? (**Mr Downie:** Yes.) Clauses 30, 31, 32 and schedule 2.

Mr Downie: Clause 30 deals with the power of court of summary jurisdiction to remit the payment of certain arrears. Courts of summary jurisdiction have the same power to remit arrears of periodical payments due under orders made by the High Court, as they have in relation to orders made by law courts. Where a maintenance order is made by the High Court or a court of summary jurisdiction, the High Bailiff or a magistrate's court, the payments are to be made through the court office and not directly to the claimant. If payments are not made the Chief Registrar or the claimant can apply to a court of summary jurisdiction to enforce the order and this applies even if the order was made by the High Court.

There is an anomaly in that the law court cannot write off unpaid arrears if the order was made by the High Court, as it can if the order was made by a court of summary jurisdiction. This clause removes the anomaly and allows the enforcing court to cancel, in other words remit arrears, where the maintenance order was made by either the High Court or a court of summary jurisdiction.

Clause 31 introduces schedule 2, which makes minor statutory amendments. Various provisions are amended, consequentially, on the changes in the judiciary in part 1. The procedure for selecting civil juries and trespass juries is brought into line with that for criminal juries; judicial officers are made ineligible for jury service; the requirement for parental consent to adoption is removed where a UK court has made a placement order in respect of a child; the First Deemster is given the power to give directions about the holding of courts of summary jurisdiction and the Court of General Gaol Delivery and the allocation and transfer of proceedings in the law courts; provision is made for a judgment to be sealed instead of signed; minor corrections of enactments are made.

Clause 32 deals with the short title and commencement of the Bill. It is expected that so far as it relates to the High Court, the Bill will be brought into force on 1st January 2009, to enable to new rules of the court to be finalised and made.

Mr Acting President, I beg to move that clauses 30, 31, 32 and schedule 2 stand part of the Bill.

The Acting President: Seconder?

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

Mr Waft: Mr Acting President, I did raise at, I think it was, the First Reading with regard to schedule 2 and the requirement for parental consent to adoption. It is removed where a UK court has made a placement order in respect of the child. Has that been problematic in the past, in order for them to do so?

Mr Downie: I have the answer to that. Adoption: under section 5 of the Adoption Act, an adoption order shall not be made unless each parent or guardian agrees or his agreement should be dispensed with.

Grounds for dispensing are: (a) cannot be found acceptable of giving agreement; (b) withholding agreement unnecessarily; (c) failure to discharge parental duties; (d) an abandoned or neglected child; (e) consistently ill-treated child; (f) seriously ill or unhealthy child. There is no need to get parental/guardian consent if there is an order under certain legislation providing for adoption.

This is being extended to cover where the UK has made a placement order. This is an order authorising a local authority to place a child for adoption with prospective adopters chosen so by the authority.

Placement orders are new under the UK's Adoption and Children Act 2002. The Adoption Act is being altered to reflect the change, but as we are aware, Hon. Members, local authorities do not have that power in the Isle of Man. So I would assume that would come under the auspices of the Department of Social Services, Social Security. I hope that answers that.

Mr Waft: Yes, thank you, Mr Acting President,

The Acting President: Any other queries? Right then, I will put to Council that clauses 30... You will note that there have been amendments made in another place to schedule 2. They are included in the propositions that are before you.

So I put it to you that clauses 30, 31, schedule 2 and clause 32 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses read. I know Mr Downie has already indicated that there will not be a Third Reading.

I would just like to place on record, first of all, my thanks to you for your tolerance, but this legislation has been in operation for over 50 years. I think the Deemsters are to be commended for the work that they have put in on drawing up this legislation. Considering the workload that they already face in the courts, this is not an undertaking that has been taken lightly and therefore great credit should go to them, that legislation that is over 50 years old has been brought up and made more meaningful for the modern day.

This particular piece of legislation, I suggest, will be more relevant to ordinary, day-to-day people's lives than perhaps lots of the legislation that we pass. So, therefore, I do think the Deemsters are to be commended for the work they have done on this Bill.

With that, and having no more business, we will adjourn until next Tuesday. (*Interjection by the Clerk*) In Tynwald Court? (*Interjections*) Right, I thought so. We will adjourn until next Tuesday, here in the Council Chamber.

The Council adjourned at 1.00 p.m.