



**LEGISLATIVE COUNCIL  
OFFICIAL REPORT**

**RECORTYS OIKOIL  
Y CHOONCEIL SLATTYSSAGH**

**PROCEEDINGS**

**DAALTYN**

**(HANSARD)**

**Douglas, Tuesday, 6th November 2007**

## Present:

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

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## Legislative Council

*The Council met at 10.30 a.m.*

[MR LOWEY *in the Chair*]

**The Acting President (Mr Lowey):** Good morning, Hon. Members.

I will ask the Chaplain of the House of Keys, in the absence of the Bishop, to lead us in prayer.

### PRAYERS

*The Chaplain of the House of Keys*

### Leave of absence granted

**The Acting President:** Hon Members, the world takes on a different view when you take a different seat! I do not know whether I can get used to this comfort!

Anyway, we have a full Agenda. We do have apologies from the President, who is attending the State Opening of Parliament; and Mr President has given his permission for the Attorney General to be absent on Government business.

## Orders of the Day

### Income Tax (Amendment) Bill

#### Second Reading approved

1. Mr Downie to move:

*That the Income Tax (Amendment) Bill be now read a second time.*

**The Acting President:** We have no Questions this week, so we will go straight on to the Income Tax (Amendment) Bill, in the charge of Mr Downie for Second Reading, sir.

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

The Second Reading of the Income Tax (Amendment) Bill 2007: this Bill contains various amendments to existing income tax legislation and is necessary to confirm three Temporary Taxation Orders.

The Bill itself contains 10 clauses and confirms, as I said, three Temporary Taxation Orders.

The first clause inserts a new section 30 into the Income Tax Act which deals with crime-related payments. This clause expressly prohibits the deductions in computing a liability under the Income Tax Acts, where the making of the payment would constitute a criminal offence by the payer.

I would also bring to Members' attention that, in November 1997, the Organisation for Economic Co-

operation and Development (OECD) member countries and five non-member countries adopted a Convention on Combating Bribery of Foreign Officials in International Business Transactions. There is also a section 30 in the legislation which lays down standards agreed by the UN. That particular clause will bring us into line with that particular area.

The second clause includes a new section 80A into the 1997 Act and it introduces timescales for taxpayers to retain the records that are required to complete an income tax return form.

Currently, there is no requirement with the Income Tax Acts for a taxpayer to retain records used to make an income tax return. This has obviously caused difficulty in the past, where tax returns are not filed on time or where returns are found to have errors or omissions. The reconstruction of tax records, particularly by persons carrying on a trade, becomes very difficult.

Corporate taxpayers must keep their records for four years from the end of their relevant accounting period. Non-corporate taxpayers who trade or receive rents must retain their records for six years after the end of the relevant year of assessment. Finally, all other non-corporate taxpayers – that is ordinary individuals – must retain their records for two years after the end of the relevant year of assessment.

The Bill makes an amendment to the Assessor's information-gathering powers. Within the current legislation a taxpayer must be informed in cases where the Assessor requests information from a third party, under section 105D(4) of the Income Tax Act 1970. This amendment would allow the Assessor to seek the approval of two Income Tax Commissioners not to inform the taxpayer in question. This provision will only be used in cases where the Assessor suspects a taxpayer of fraud.

A further minor amendment maintains the long-established position that prevents the deduction for income tax purposes of VAT charges, civil penalties and interest. In addition, VAT repayment supplements are disregarded for income tax purposes.

Clause 5 repeals the legislation dealing with the corporate charge following the Budget announcement that the charge is to be administered and collected by the Companies Registry. This is a major simplification and has the full support of the Association of Corporate Service Providers.

Clause 6 restricts tax relief on interest paid when computing the amount of Isle of Man rent subject to income tax. Currently, relief is available when the lender is assessable to Manx income tax on the interest. However, as the standard corporate rate of income tax is now zero, interest payments made to a company are still assessable on the lender but at 0 per cent.

This change, brought about by the implementation of the Tax Strategy, could encourage non-Isle of Man lenders to enter our markets without providing any incentive to set up a place of business here in the Isle of Man. Local lenders may feel disadvantaged by distance selling and could potentially leave the Island themselves and continue to distance sell. This clause will ensure that relief continues to be granted against Isle of Man rental income for interest payments made in respect of a loan where the interest paid is assessable to income tax on the lender.

Where the lender is a corporate taxpayer, interest will only be allowed if the corporate taxpayer has a place of business on the Island and the loan is made in the course of that business.

Leave of absence granted

Income Tax (Amendment) Bill – Second Reading approved

This Bill also confirms three Temporary Taxation Orders. The first is in respect of corporate taxpayers. Following the introduction of the Companies Act 2006 – commonly referred to as the New Manx Vehicle – a number of adjustments have been made to income tax legislation, as the Companies Act 2006 relaxed certain elements of corporate law.

The first amendment makes all companies registered under the Companies Act 2006 resident for Manx income tax purposes. The new section allows the Assessor to request accounts in cases where it is felt appropriate.

A further amendment deals with the accounting periods of companies merging under the Companies Act 2006.

The final part of this clause deals with the way that income distributions from companies are taxed. They will remain chargeable, even if the distribution is not paid out in a monetary form.

The Income Tax (Netherlands) (Temporary Taxation) Order 2006 is also confirmed by the Bill. These Orders are commonly referred to as Tax Information Exchange Agreements (TIEAs). This Order is in respect of the Tax Information Exchange Agreement negotiated between the Governments of the Netherlands and the Isle of Man.

The final Temporary Taxation Order to be confirmed is an amendment to the Island's commitment to the European Union Savings Directive following the accession of Bulgaria and Romania. The Order also allows for any new Member States to be automatically included within the legislation.

Mr Acting President, I beg to move the Second Reading of the Income Tax (Amendment) Bill 2007.

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

**The Acting President:** Hon. Members, the Second Reading has been moved and seconded: debate.

**Mr Crowe:** Mr Acting President, I am happy to support this piece of legislation.

It is interesting that in clause 1 – the expenditure involving crime – this all comes about because of an OECD request for combating bribery of foreign public officials. So this is quite easy to support.

As to preserving tax records, I see that it will take effect from 6th April 2007. I am not sure how it will be interpreted going back six years for people who may not have kept their records before this date. I am sure that the Assessor and the staff will look on this in a transition way, so that people do not fall foul of the legislation which says that records have to be kept prior to that date. I think normal housekeeping rules would apply for people who are filling their income tax forms, that they do keep them for a number of years.

The other point I would just like to make at the Second Reading is the question of the distributable profits charge which we are putting into legislation, confirming a Tynwald Order which, it has now been found, falls foul of the OECD. A consultation document has been issued which will amend this to an attribution regime for individuals. It is interesting how legislation can take a process of time to implement and yet can be overtaken by events outside our control, like the OECD.

Thank you, Mr Acting President.

**The Acting President:** Does any other Member wish to speak? No, Mr Downie to reply.

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

Clause 1, the expenditure involving crime: as Hon. Members will be aware, the Isle of Man prides itself on having a top drawer jurisdiction which is fully OECD and Financial Action Task Force (FATF) compliant and is bound by the Conventions governing international business and the Anti-Terrorism and Crime Act which was extended to the Isle of Man in 2003.

As part of the consultation process with the industry – and, I understand, prior to the Bill being progressed in the other place – the Treasury did issue some very useful booklets and guidelines. A lot of the questions that have been raised today are actually covered in here. I have brought some of these with me today and I will distribute them at the end of the discussion. I am sure Hon. Members will find them useful when we get into the later stages.

So dealing with the next issue that my hon. colleague, Mr Crowe, brought up, keeping records: the records will only need to be kept from 6th April 2007. 2007-08 will be the first year that this will really apply to, but we would accept that most people in business do keep their tax records for a considerable number of years. It has always been good practice and even an individual should always keep their tax records for at least two years, because who knows, circumstances may change? A year or so down the line they may qualify for credits. So it is useful to have that documentation to present before the Assessor and deal with any queries accordingly.

The distributable profits charge: we know that there have to be some changes made there and my understanding is that is going to be addressed in a further piece of legislation.

**Mr Crowe:** Thank you.

**The Acting President:** Right, Hon. Members, the Income Tax (Amendment) Bill has been moved, seconded and debated for the Second Reading. Those in favour, say aye; those against, no. The ayes have it. The ayes have it.

### **Income Tax (Amendment) Bill** Clauses considered

**The Acting President:** We then move into clauses, Mr Downie. I am informed we do not have to suspend Standing Orders to take the clauses.

**Mr Downie:** Mr Acting President, the Income Tax (Amendment) Bill, turning to the clauses: clause 1 introduces a new section 30 into the Income Tax Act 1970 which deals with crime-related payments. This clause expressly prohibits the deduction in commuting a liability under the Income Tax Acts where the making of the payment would constitute a criminal offence by the payer.

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

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

**The Acting President:** Does any Member wish to comment on clause 1. No? I will put clause 1 of the Income Tax (Amendment) Bill to Council. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.  
Clause 2.

**Mr Downie:** Clause 2, Mr Acting President, inserts a new section 80A into the 1970 Act. Currently, there is no requirement within the Income Tax Acts for a taxpayer to retain records used to make an income tax return. This has caused difficulty in the past, where tax returns are not filed on time, or where returns are found to have errors or omissions. The reconstruction of tax records, particularly by persons carrying on trades, has been very difficult with some cases and estimates have been used, where no other information is available.

Consequently the Bill proposes that the following timescales are introduced for keeping tax records: for corporate taxpayers, four years from the end of the relevant accounting period or, if later, four years from the date of delivery of the return; for non-corporate taxpayers who have carried on a trade or who receive rents, six years from the end of the relevant year of assessment or, if later, six years from the date of delivery of the return; and for other non-corporate taxpayers, two years from the end of the relevant year of assessment or, if later, two years from the date of delivery of the return.

With the exception of the requirement for other non-corporate taxpayers to keep records for two years, these timescales are based on the Assessor's statutory limits for the raising of additional assessments. A person who fails to comply with these rules is guilty of an offence and is liable on summary conviction to a fine not exceeding £10,000.

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

**Mr Waft:** I second, Mr Acting President.

**The Acting President:** Mr Butt.

**Mr Butt:** Thank you, Mr Acting President.

It is not totally clear to me, without access to section 62, 62A, 63 etc, whether this applies to the private taxpayer, the ordinary individual. Do they have to keep these records for, I would guess, two years for part (c); or the private taxpayers – the ordinary person without a business, without a trade, not a company – do they have to keep the records as well, which relate to their form?

**The Acting President:** Mrs Christian.

**Mrs Christian:** Mr Acting President, I can understand the requirement of the Treasury for records to be kept. The mover has indicated that it is good practice. Therefore, although this Act comes into effect backdated to April this year, I think, and the two-, four- and six-year periods will be calculated from that date, as I read subsection (2), I have some concerns about making this known to the public. Unless there is a good deal of advertising, you will find that the vast majority of people who, as I read it – and this is the point raised by my hon. colleague, Mr Butt – are non-corporate taxpayers, who do not carry on trades, professions or businesses – i.e. everybody, the rest of us – will be expected to keep their tax records for two years.

The Hon. Member has said it is good practice, and probably most of us do. But I think there are a huge number of people out there who do not. In fact, probably their tax position is unsophisticated, uncomplicated and there probably will not be, in the vast majority of cases, any requirement for the Assessor to go back to them, in respect of those two years.

But should there be a requirement for the Assessor to go back and those people have not kept those records, there is a fairly substantial fine. I imagine that the courts would fit the fine according to the circumstances, and that it is pitched at a figure of a maximum of £10,000 in respect of perhaps people in business, or certainly corporate taxpayers; and I presume that, should an individual have offended in some way, the fine would be tapered according to the degree of the offence.

But I do think that it would be incumbent upon the Treasury to make sure that the public are advised of this new requirement, because otherwise people, I think, could fall foul of the law. We know that ignorance is no excuse, but there is a lot of law that we are all ignorant about, if we are honest about it! Who could be familiar with all the law?

So that is one point I would like the Hon. Member to comment upon, in relation to what the Treasury may or may not be going to do, with regard to raising public awareness of this provision.

The other one I want to ask about is that there is a reference in here to keeping documentation and so on, and there is mention of supporting documents, accounts, books, deeds, contracts, vouchers and receipts. There is no reference to electronic records. I wonder if the mover could indicate to what degree electronic records will be acceptable to the Assessor, and whether or not they are covered by what is described in subclause (5) as documentary evidence. Do electronic records have status in these matters?

Thank you, Mr Acting President.

**The Acting President:** Mr Waft.

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

I just wonder with regard to the keeping of records – I take the point of the last speaker with regard to the average Joe Public – income tax record-keeping is not their first priority. Some people wait until the very last minute, when they actually are forced to do so. To actually fill the form in and then to find a photocopier which is going to photocopy that return, or copy them twice, is going to be a problem for them. With regard to the Income Tax Office, it must have the original copies of the return. I just wonder why there was the necessity to actually go down that road.

**The Acting President:** Mrs Crowe.

**Mrs Crowe:** I take on board all the things that my hon. colleague has mentioned about the keeping of all the records that go into making the information available for the tax return. My query was – and it is something that I have oft wondered – could the mover of the Bill inform me how long the Treasury actually keep tax returns for. Presumably they keep them for a number of years. Whilst of course the return will have been made and the purpose for a lot of what is in this clause is about keeping the documentation and information that goes towards that return – I understand that – I did just wonder how long these returns are actually kept for.

I think there is a very valid point, in this day and age: would it be acceptable – because people these days are quite mobile and, of course, moving from perhaps country to country, or even home to home – if, as my hon. colleague Mrs Christian mentioned, electronic records...? The keeping of I suppose what could be quite voluminous, if you changed a

number of jobs or had a number of little incomes or whatever coming in... could that be electronic records? Would they be acceptable or are all the original documents required?

**The Acting President:** First of all, I caught Mrs Christian's eye, who wants to come back again, and then my good friend at the end.

**Mrs Christian:** On the assumption, we are discussing it in committee, thank you, Mr Acting President –

**The Acting President:** We are indeed.

**Mrs Christian:** – I just want to follow up on the point made by my colleague, Mr Waft. That is to say, would you clarify that it is not the return that people have to keep a copy of, but all the documentation which lies behind the return.

**Mrs Crowe:** The bits and pieces.

**Mrs Christian:** The return itself is probably the matter which is under question by the Assessor, so it is all the documentation – payslips and expenses or whatever it may be – that is going to be required to be kept, as far as the ordinary individual is concerned. I wonder if you could just confirm or clarify that please.

**The Acting President:** Mr Turner.

**Mr Turner:** Thank you, Mr Acting President.

With regard to subsection (c) here, I am just wondering: are we placing an unnecessary burden on the individual here? Has it been a sufficient problem for Treasury, for the Income Tax Division, in the past, in order for them to include this particular part of the clause?

We have seen that it is a rather substantial fine, and if it has not been a particular problem, then why are we putting this in?

We heard in the press recently the colossal number of late income tax returns that went in: I think it generated something like a quarter of a million pounds, almost, in £50 fines. People generally going about their busy lives do not think about these things till the last minute. If you are then asking them to keep a file, it may not be one of their stronger points to deal with these things. Certainly, I know some people think it is a great issue filling out their tax return at the end of the financial year.

So I would like to know is this part really necessary, and could it function adequately without it, and relieve this burden on the general public, as opposed to the businesses?

**The Acting President:** There is only one thing, I am told, apart from death that we are certain of, and that is paying our taxes! However, Mr Crowe.

**Mr Crowe:** Thank you, Mr Acting President.

I would think it would *help* taxpayers. (**Mr Downie:** Absolutely.) I think what we are looking at here is a situation where a taxpayer fills the form in and may, by accidental omission, forget some bank interest or whatever it is, or needs a copy of bank interest paid to a bank, or forgets something and fills the form in, and does it accidentally. He has got a record that the Assessor can come back to.

So I think it is good housekeeping and as long as

the Assessor of Income Tax, the office, issues enough information to the taxpayer, I think it would be reasonable for ordinary taxpayers to keep records.

**Mrs Crowe:** I think Mr Acting President, thereby speaks an accountant (*Laughter*) and not the normal daily person that I think my hon. colleague, Mr Turner, was referring to, who is rooting round in the cupboard, looking for the last payslip they received in April, to verify what their annual earnings were!

So I do understand my hon. colleague's point of view, but not many people think like accountants.

**The Acting President:** Mr Butt.

**Mr Butt:** Thank you, Mr Acting President.

My colleagues, Mrs Christian and Mr Waft, make a good point, in that the average person will submit with their return their payslip, their mortgage relief certificate or their bank account certificate. If they do not have access to a photocopier, those originals go into the Income Tax Office. A lot of people do not keep originals and they will have nothing to refer back to, and it is a problem for a lot of people to have access to a photocopier. We are not all privileged to have that access.

**The Acting President:** I think that point is well made. Mr Downie.

**Mr Downie:** Right, if I can start with Mr Butt first, because he has just about summed up what I would see is one of the benefits of actually incorporating this clause, where non-corporate taxpayers should keep their relevant year of assessment or their filings for two years. There is nothing to stop anybody producing their own small set of accounts which is allied to their income tax form which provides a record of what has gone into the Assessor. To me, that is the easiest way of doing it.

I know when I file my tax form every year, I usually photocopy it and I have probably got about half a dozen other documents, interest from banks or building societies or whatever, life insurance paid, things that I want to claim, membership of societies or affiliations, pin all those together to go in. It is very quick to copy that. But there is another way of doing it, by actually writing it all out.

It is not an onerous task. At the end of the day, tax is very low on the Isle of Man and, in particular, personal tax is very low. We should be getting the message across that the Government does need income. That is why we do have income tax and their money, I hope, is being put to very good use. There should not be anybody in the Isle of Man who feels reluctant or hard done to, to pay the lower rates of income tax that we pay.

**Mrs Crowe:** I didn't say they do.

**Mr Downie:** Taking on the point that my hon. colleague of Council, Mrs Christian, raised, we do need to get our message across. These Members' guides were produced about six months ago, prior to the Bill coming through. There have been a number of them circulated. Then what will happen, when this Bill gets through the final stages, is there will be an opportunity to take to further educate the public in how the new tax system operates. There has

been a lot of work done with the companies and a lot of consultation done.

At the end of the day, this Bill I think has generally been widely supported by the industry. We are also seeing now, on the Island, a lot of smaller accountants and tax advisers and people who are able to give advice. In fact, I do not think there is a jurisdiction in the western world where a man can come in off the street who has a problem filling in his tax form, he can go into a booth upstairs and there will be somebody there to give him the proper advice.

That is one of the reasons I think we have got to have some quid pro quo. There has to be a message sent out that you do need to get your tax form in, you do need to keep a note of what you have put in your tax form, keep a record for a couple of years, in case there is any problem in the future or the tax man needs to come back, or in fact if your circumstances change, when you want to go and make a claim, to receive some form of benefit or credit or allowance. So it works both ways.

I was just having a look through here... Mr Turner asked are we placing a burden on the individual? I do not think we are placing a burden on the individual. If you look at the number of people on the Isle of Man who do not actually pay tax, who just have to submit a form, it is not really very onerous for them. All of this equipment, photocopiers and so on, are so readily available in this day and age. We really should be getting a mindset across that there needs to be a record of what goes in.

Mrs Christian mentioned the four- and six-year periods. The Treasury actually keeps returns for six years now. My understanding is that we are going to be accepting electronic records. The Assessor and the Division are already gearing up to take online filing, so that should help people. I would sincerely hope that in the not-too-distant future, you will be able to put your tax return in by e-mail, and those of us who are able can save that and have their own folder and file.

So the whole system is getting much simpler, really, but at the same time, there are the safeguards in there for the man in the street who does not have the access for the technology to get advice and assistance.

I am sure if somebody came into this office with a tax form and had difficulties, somebody would not be long in photocopying it and giving it to take away with him, so that he would know that he would have to save that for the future records.

I am just looking to see if there is anything here that I have missed. It is difficult when the questions are coming thick and fast.

I thank Mr Crowe for his remarks. I think he is thinking like a true former Treasury Member. *(Laughter)* It is a good thing.

It is not all bad. I think the more simplification we can introduce into the tax legislation, the better. It is obvious by the amount of fines that we have collected, a lot of people do not have a commitment to Government and to tax. At the end of the day, without tax, the functions and the wheels of Government cannot really turn effectively. I think people are very fortunate to live in the Isle of Man and with the sort of regime that we have.

Thank you.

**The Acting President:** Mrs Christian, one final query.

**Mrs Christian:** I am sorry to come back when the Hon.

Member has wound up, but he has just said something that raised a question in my mind. That was that he said there are a lot of people who do not pay tax.

I just want to clarify what is meant in subclause (2), when we talk about taxpayers. Are these people who are actually being assessed to pay a positive amount of tax or are we saying that people who submit a return and are not assessed as being taxable do not have to keep records? I am not clear about that, in terms of the wording.

**Mr Downie:** We will get it from the horse's mouth. *[Mr Downie awaits advice from Treasury officers]*

**The Acting President:** Indeed, I am sure the Treasury will note Council's concern about getting information to the general public, because I think that has been a theme going throughout this particular clause.

There is no rush at all for us until you get your... **(Mr Downie: Absolutely.)** I think the legitimate concern is: is it the taxpayer or the tax, putting the information, filling your form in?

**Mrs Christian:** Are we all taxpayers, some of whom pay none?

**The Acting President:** That is right, zero-rated.

**Mr Downie:** I think we have an answer coming, haven't we?

**Mr Crowe:** Oh, right.

**Mr Downie:** Have we an answer coming? Forthwith, yes.

**Mrs Crowe:** Yes, I think you are right, we are all taxpayers.

**Mr Downie:** Tax is never simple.

Right, I am advised it includes all individuals, whether or not they pay tax.

**The Acting President:** That is clarity.

**Mr Downie:** So everybody has to put a tax return in.

**The Acting President:** Should keep their records.

**Mrs Crowe:** Has to keep their records.

**Mr Downie:** And should keep their records.

**The Acting President:** Thank you very much indeed, Mr Downie. I think Council shows its true worth here when we are discussing matters dealing effectively with day-to-day affairs of ordinary people.

I am going to put now clause 2 to Council. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 3.

**Mr Downie:** Clause 3 adds new subsections from (8) to (16) in section 105E of the Income Tax Act 1970. This section deals with the Assessor's information-gathering powers.

Clause 3 also adds a consequential amendment to section 88 which deals with the Income Tax Commissioners. Currently, when the Assessor issues a notice under section 105D requiring the disclosure of information from a third party, the Assessor must send a copy of the notice to the taxpayer, together with a written summary or the reason for the request.

In cases involving suspected fraud, this may not be appropriate. The amendment to section 105E included in clause 3 of this Bill deals only with these situations where there is suspected fraud and it is not appropriate to send a copy of the notice to the taxpayer. The proposed new subsection 105E(8) allows the Assessor to make an application to two Income Tax Commissioners seeking their written consent that a copy of the notice and a written summary required under section 105D(4) should not be given to the taxpayer to whom it relates.

Written consent is required by both Commissioners and they must be satisfied that the Assessor has reasonable grounds for suspecting the taxpayer of fraud. The Commissioners who have given their consent shall not be liable for damages providing they have given consent in good faith.

Mr Acting President, the new subsection 105E(12) deals with a situation where both Income Tax Commissioners have agreed with the Assessor and they have provided written consent stopping the issue of a copy of the notice to the taxpayer. In those cases, the third party who is required to disclose the information shall not inform the taxpayer that the notice has been given nor disclose to any other person any information which is likely to prejudice the inquiry. A failure to comply will result in a fine not exceeding £5,000 or a custodial sentence of no more than six months on summary conviction.

The amendment to section 88 of the Income Tax Act 1970 disqualifies a Commissioner who has given his consent from hearing an appeal made by that taxpayer against any assessment to which that consent applies.

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

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

**The Acting President:** Does any Member wish to speak to the third clause? No? I put to Council that clause 3 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 4, sir.

**Mr Downie:** Clause 4, Mr Acting President, substitutes a new section 61A into the 1970 Act. Clause 4 is a minor amendment to attain the long-established position that prevents the deduction for income tax purposes of VAT surcharges, civil penalties and interest.

Section 61A also confirms a repayment supplement paid under the VAT Act shall be disregarded for all purposes of income tax in line with a repayment supplement paid by the Income Tax Division. Supplements paid by Customs and Excise Division will not be liable to income tax.

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

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

**The Acting President:** Does any Member wish to speak to clause 4? Mrs Christian.

**Mrs Christian:** I just wonder whether this principle is going to be... Is it extended to other fines or surcharges or penalties in other areas, or is this a new departure? I wonder if the mover could indicate whether or not this provision, which says that surcharges and penalties shall not be allowable for income tax purposes in respect of VAT and so on... what the current situation might be with regard to penalties or fines or other civil penalties? Is this a different treatment or is this a standard treatment?

**Mr Downie:** I may get some advice here, but my understanding is it is a rounding up. At the present time, tax and VAT and the gathering system at the present time are out of kilter. I think what this clause does is try to bring them all together. Customs and excise and tax in the UK are all as one, really, and at the present time, in the Isle of Man, we are slightly different. We are out of kilter and a lot of the penalties and time differences are out of kilter.

All VAT penalties charged under any VAT legislation or any future legislation will not be allowed as a deduction for income tax purposes and the VAT repayment supplements will be disregarded for tax purposes.

It is not extended to any other fines etc, but this maintains the position for VAT following a recent amendment to the VAT legislation, so it makes it a much simpler issue.

**The Acting President:** Any other queries or questions? No? Then I put clause 4 of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 5, sir.

**Mr Downie:** Thank you, clause 5 repeals all reference to the corporate charge in income tax legislation. Administration and collection of the corporate charge was transferred to the Financial Supervision Commission with effect from 6th April 2007. This is seen as a major simplification for companies and their advisers.

This measure has the full support of the Association of Corporate Service Providers.

The corporate charge will now be collected in the form of increased filing fees. The standard filing fee of £70 will be increased by £250 to £320. In the future, companies will only have to make one payment each year rather than two.

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

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

**Mr Crowe:** Mr Acting President, just a comment: I think when the debate was held about changing this, that the FSC would receive the income, it was felt that it would not be a windfall income benefit to the FSC; it would find its way back into the Treasury coffers, I believe.

**Mrs Crowe:** Doesn't everything?

**The Acting President:** Carry on, Mr Crowe.

**Mr Crowe:** No, that was the point.

**The Acting President:** That was the point, okay. Mrs Christian.

**Mrs Christian:** I wonder if the mover could just help

me on this. Is this the clause that I understand is going to be changed in the future?

**Mr Downie:** Yes.

**Mr Crowe:** No, this is... Oh, sorry. I should not interrupt.

**Mrs Christian:** Am I right in understanding that this provision, which was largely trumpeted – our corporate charges were going to be abolished and we will have this annual fee – has led to such difficulty? Is this the one that has led to difficulty, which is going to require a change in the future?

**Mr Downie:** No, that is the distributable profits charge –

**Mrs Christian:** The distributable profits, okay.

**Mr Downie:** – which is different.

**Mr Crowe:** Clause 7, yes.

**Mr Waft:** I think it is in clause 7.

**Mrs Christian:** Thank you. I will have my comments to make then.

**The Acting President:** Any other Member? Mr Turner.

**Mr Turner:** I would just like to comment on that. I know when the charge of £250 was brought in, a lot of smaller businesses were very unhappy about it because it just appeared to be a charge for nothing. One minute they were not paying £250, the next minute the smaller businesses had to pay £250, and received nothing in return, so to speak. So I am very pleased it is going.

However, I can understand how it simplified the system where you do not have to administer two payments now: you pay your filing fee for your annual return and you were paying your £250 charge to the Treasury. So I understand that.

Effectively, of course, all businesses are still paying the money, albeit to a different direction. I did raise this issue in the past as to why it was brought in, in the first place, and whether the £250 was to plug a hole that had developed somewhere else in the income to the Treasury, and to why it was brought in the first place. I did not quite get the answer to that at the time.

Nevertheless, I am obviously not voting against this.

**The Acting President:** Mr Downie.

**Mr Downie:** On clause 5, both my hon. colleagues, Mr Crowe and Mr Turner, made reference to the corporate charge and the abolition of corporate charge. With effect from 6th April 2007, the collection and administration of the corporate charge was transferred to the Financial Supervision Commission. The corporate charge, which was a measure proposed in the 2002 modified Taxation Strategy, was introduced in 2006, with a standard zero rate of income tax for companies, and was designed to reduce the tax loss

to the Treasury resulting from the zero rate of tax. A post-implementation review of the system and a discussion with the private sector led to the conclusion that the charge would be more effectively administered as part of a company's annual filing requirement with the Companies Register.

This move provides administrative simplification, and it is supported largely by the private sector. Part of the unified payment will be retained by the Registry, with the balance being paid to Treasury. Of course, I would say that would then be available for distribution around the various Departments at Budget time.

I hope that clarifies the situation.

**The Acting President:** Just as a matter of interest for myself, could the Hon. Member confirm that the filing of returns of companies is a legal requirement?

**Mr Downie:** As I understand it, it is a legal requirement and, of course, this allows the Financial Supervision Commission to keep an eye on who is here and who is not keeping their records and things up to date for filings.

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

I therefore put clause 5 of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. Clause 6, sir.

**Mr Downie:** Clause 6 deals with the deductions in respect of interest payments, and substitutes subsection (9) of section 58 of the 1970 Act and adds two new subsections.

The clause restricts tax relief on interest paid when computing the amount of rent subject to income tax. Currently, relief is available when the lender is assessable to Manx income tax on the interest. However, as the standard corporate rate of income tax is now zero, interest payments made to a company are still assessable on the lender, but tax is charged at a zero rate.

This change, brought about by the implementation of the Tax Strategy, could encourage non-Isle of Man lenders to enter our markets without providing any incentive to set up a place of business here. Local lenders could feel disadvantaged by distance selling and could potentially leave the Island themselves but continue distance selling.

This clause will ensure that relief continues to be granted against Isle of Man rental income for interest payments made in respect of a loan, where the interest paid is assessable to income tax on the lender. Where the lender is a corporate taxpayer, interest will only be allowed if the corporate taxpayer has a place of business on the Island and the loan is made in the course of that business.

I beg to move that clause 6 stand part of the Bill.

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

**The Acting President:** Thank you. Just for clarity for all Members, this clause was amended in the House of Keys, and I take it all Council Members have got a copy of the amendment.

**Mr Downie:** If you want me to comment on the amendment, I will.

**The Acting President:** It is just that I wanted to make

sure that all Members had a copy of the other place's amendments. That is fine. Anybody wish to speak?

Mr Crowe.

**Mr Crowe:** Thank you, Mr Acting President.

I notice from the explanatory guide given to Members that deductions on loans that were already in place on 6th April 2000, and which will be caught by this provision, will be grandfathered and will continue to be allowed. So there is a transition provision to allow existing loans to continue, the interest to be deductible.

**The Acting President:** Mr Butt.

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

I note on the amendment about the fixed place of business on the Island, that it says the business must be carried out wholly or partly in the Island. I just wonder about the definition of 'partly', because I can see that could be a very wide loophole for people who just perhaps put a business plate up and no more than that. I think 'partly' needs to be defined perhaps more specifically, or if the mover can perhaps explain how that works.

**The Acting President:** Any other Member?

**Mrs Christian:** Can I just clarify, Mr Acting President, with regard to the point that Mr Crowe has made, that if a loan is renewed, or it is a rolling one which is renewed on an annual basis, presumably at the renewal the new provision will be effective – that you cannot have a loan that started before and which has been renewed annually, or whatever; that would be regarded as a new loan.

**The Acting President:** Perhaps our friends...

**Mr Downie:** Yes, we will get the answers.

**The Acting President:** If no other Members have anything, I will call on Mr Downie, when he is ready, to reply.

**Mr Crowe:** Mr Acting President, I think as far as Mr Butt's comments are concerned, the Income Tax Division must issue a practice note on this and define what 'partly carried on' is defined as. There will have to be a definition as to not just being a brass plate in the Isle of Man. It must obviously, in their view, have an office, staff working there. There must be some (**Mrs Crowe:** Definition.) definition that they can introduce.

**Mr Butt:** Yes, Mr Acting President, my point was that –

**The Acting President:** Your point being it is in primary legislation.

**Mr Butt:** The amendment came through from the Keys, who may not have looked into what 'partly' actually meant. There may not be a definition with the Treasury, but we will find out.

**Mr Downie:** I think you will find it was a Treasury amendment.

**Mr Butt:** Was it?

**Mr Downie:** Yes.

**Mr Butt:** Fair enough.

**Mr Downie:** There will be a practice note to cover it somewhere.

**Mr Butt:** In that case, I am satisfied.

**The Acting President:** Mr Downie.

**Mr Downie:** Right, clause 6: an interesting clause, but I think those of you who go into it will see what we are trying to do. We are trying to actually do something to protect the local lending market. The last thing we want is people coming in and using the structure to bring money from elsewhere and carry on a lending business here, with no benefit to the Isle of Man at all – the benefit moving away.

The corporate taxpayer will have to have a fixed place of business in the Isle of Man. So, as was stated earlier on, when all these tax issues are rounded up and the legislation is put into a more understandable form of words, there will be documents like this issued to the public. There will be a lot of awareness about what is happening on tax matters, and the practice notes will be issued to all the people in the accounting profession, Members of Tynwald, and they will be readily available from all the various Government outlets and online.

I think, as the amendment to clause 6 came from Treasury itself and was accepted by the Keys, I think they are fairly content. I must say, we have a good team in the Tax Office and there are some very clever people working in that particular area.

I beg to move that clause 6 stand part of the Bill.

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

Clause 7, sir.

**Mr Downie:** Clause 7 deals with corporate taxpayers and confirms the Income Tax (Corporate Taxpayers) (Temporary Taxation) Order and inserts a new section into the Income Tax Act 1970. The amendments included in the Temporary Taxation Order were approved by Tynwald in October 2006 and were principally consequential amendments resulting from the enactment of the Companies Act 2006.

Clause 7(2) amends section 2N of the Income Tax 1970 Act and ensures a 2006 Act company is resident on the Island for Manx income tax purposes.

Under the Companies Act 2006, a company is no longer required to produce accounts. Clause 7(3) inserts a new section 62C to the Income Tax Act 1970 that will allow the Assessor to request accounts from a company where required.

Clause 7(4) inserts a new subsection 119E(8) into the Income Tax Act 1970, and this insertion deals with the accounting period implications following a merger of companies under part X of the Companies Act 2006.

Clause 7(5) inserts a new section 2PA into the Income Tax Act 1970, which deals with a definition of income distribution. Provisions contained in the Companies Act

2006 make it easier for companies to distribute profits in a non-monetary form.

The definition contained in section 2PA will ensure that an income distribution will be liable to income tax, whether or not the distribution is made in a monetary form. It will also ensure that where a company purchases its own shares, resulting in a distribution of income reserves, the distribution will be subject to income tax in the hands of the recipient.

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

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

**The Acting President:** Thank you. Any – ?

**Mr Crowe:** Mr Acting President, I think this is the clause where the distributable profits charge has been found to be unworkable by the EU Code Group, so I think this is the issue Mrs Christian was looking for.

**Mrs Christian:** Mr Acting President, two points, really. I would just like clarification from the mover that I really understand what is happening here. Are we introducing the Temporary Taxation Order 2006 effectively on a permanent basis?

If we look on page 9, line 16 – it is section 120 of the Income Tax Act: ‘Insert at the beginning “2006 company.”’ Maybe I am reading this wrongly, but if I read line 16:

‘commencing on that date and ending on 5 April 2007 and in respect of every subsequent year or, as the case may be, period.’

What I am really trying to get at is: are we making something which was originally temporary a permanent part of the legislation?

Secondly, if I could just follow up on the point made by my colleague, Mr Crowe, he said that we have got to change this now because of determinations in other places. I cannot help feeling that when these changes to the corporate tax structure were brought in, it was done with some haste –

**Mr Downie:** Haste, agreed.

**Mrs Christian:** – probably undue haste – and I am just concerned that where we have got legislation which has now been put in place but is going to be changed in the future, we could lead to a great deal of confusion.

I can understand why the Treasury wanted to get their new corporate tax policy in place, but can the mover indicate whether or not, when we then go on to change things again, we are fully satisfying all the people who might have concerns about what we are doing here?

**The Acting President:** Any other Member? Mr Waft.

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

The distributable profits charge: as my colleague, Mr Crowe, has said, with regard to the European Union, it will have to change. I think this legislation does appear to be referring to that, but until that Act which covers that is changed, it will hold back this Bill until the Act comes through.

So this may need an amendment in the future, but nevertheless, it is at the moment in being, so that is why it is in this Bill.

**Mr Crowe:** Mr Acting President, yes, I am happy to support this, because we are in this phase of it going through the House of Keys, that we have to pass it into primary legislation, and the consultation documents that have been issued will allow consultation on a new system of charging tax to the individual. But there are other parts of the clause which are essential to the Act and to the Bill.

**The Acting President:** We are in committee, so this is why it is right that we should tease these things out. (**Mr Crowe:** Yes.) Any other Member wish to comment? No? Then, if Mr Downie is ready to reply...

**Mr Downie:** Yes, dealing firstly with the distributable profits charges, I agree with all of the speakers. There is an amendment to the legislation coming. I understand it is in another Bill which is following on closely behind this.

I would agree with Mrs Christian: it was perhaps done with the best of intent with undue haste and now, sadly, we have got to change it into something else that is more acceptable.

The corporate taxpayers: I think it is a fairly complex area. I have got with me the Income Tax Act 1995, which deals with the Income Tax (Corporate Taxpayers) (Temporary Taxation) Order 2006. If I can read it:

“distributable profits charge” has the meaning given by section 13 of the 1970 Act;

“distribution” means –

(a) the direct or indirect transfer of any assets of a corporate taxpayer, other than a corporate taxpayer’s own shares, to or for the benefit of a member of the corporate taxpayer,

(b) the incurring of a debt by a corporate taxpayer to or for the benefit of a member of the corporate taxpayer’.

I will leave this available here for anyone who wants to see it, and then I do not intend to go for a further Reading today.

I think it is useful to get all these matters teased out today. I am not a tax expert, by any chance of the emotion, but we have got people here who can give us all the answers and, ideally, I want the Council to be entirely satisfied that the legislation is workable and we are content with it.

With that, Mr Acting President, can I move that clause 7 now stand part of the Bill.

**The Acting President:** I will put the question to the Council that clause 7 stand part of the Income Tax (Amendment) Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 8, sir.

**Mr Downie:** Clause 8 confirms the Income Tax (Netherlands) (Temporary Taxation) Order 2006.

This Order was approved by Tynwald in May 2006 and brought into operation the agreement reached between the Governments of the Isle of Man and the Kingdom of the Netherlands. This agreement is, in effect, a transfer pricing agreement, which means that the Isle of Man and the Netherlands will work together to ensure certainty of treatment for companies having operations in both territories where goods and services are moved between them.

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

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

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

Does any Member wish to comment on clause 8? No? Then I will put that clause 8 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 9, sir.

**Mr Downie:** Clause 9 confirms a Temporary Taxation Order in respect of tax retention and exchange of information. This Order was approved by Tynwald in January 2007 and was required to meet the Island's continued commitment to the European Union Savings Directive following the accession of Bulgaria and Romania to the European Union.

I beg to move that clause 9 stand part of the Bill.

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

**The Acting President:** Any comments? No? I will then put that clause 9 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. Clause 10, short title and commencement date.

**Mr Downie:** Just a point of clarification: do you wish me to move the amendment with clause 10, or am I taking that as being the amendment from –

**The Acting President:** Another place.

**Mr Downie:** – the other place?

**The Acting President:** Yes, just take it as... I am in your hands, sir. If you wish to comment, you can comment.

**Mr Downie:** I will move clause 10 and the amendment, then.

**Mr Crowe:** I am not aware of any amendment.

**The Acting President:** I was looking very hard to see if it was on my paper. I see no amendment.

**Mr Downie:** No, on the clause that has come up for...

**Mr Crowe:** Clause 6.

**Mr Downie:** It is clause 6, but I do not recall formally moving that, have I?

**The Acting President:** Yes.

**Mr Waft:** Yes, clause 6. I would put it to the Legislative Council that it includes the amendment, as we have been issued with it.

**The Acting President:** That is alright.

**Mr Downie:** That is fine, as long as we know.

Clause 10 then, finally, Mr Acting President, deals with the short title and the commencement provisions.

Clauses 1 to 6 are effective from 6th April 2007.

The Temporary Taxation Orders confirmed by clauses 7, 8 and 9 are already in operation, having been brought into effect on the date the Orders were approved by Tynwald.

Mr Acting President, I beg to move that clause 10 stand part of the Bill.

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

**The Acting President:** Just for clarity, I did actually raise the matter of the amendment, and everybody had a copy. We do not need to suspend Standing Orders over it as a special item.

Anybody on the short... Mrs Christian.

**Mrs Christian:** Can I just ask when it is intended that sections 8 and 9 will have effect? Looking back at them, it says:

'The Order shall, from the date on which this section comes into operation, continue in operation as a permanent order.'

Is it intended to have an Appointed Day Order in respect of those sections? It does not say that there is an Appointed Day Order for those sections.

**The Acting President:** Mr Downie, do you have a comment?

**Mr Downie:** I have some information here which may be of assistance.

The confirmation of the Order in respect of the Netherlands: clause 8 confirms the Income Tax (Netherlands) (Temporary Taxation) Order 2006, which was approved by Tynwald on 17th May 2006. This was introduced to implement the arrangements negotiated between the Governments of the Isle of Man and the Netherlands in connection with the adjustment of profits of associated enterprises and the application of the Netherlands Participation Exemption Scheme.

Clause 9 confirms the Income Tax (Retention of Tax and Exchange of Information) (Temporary Taxation) (Amendment) Order 2007, which was approved by Tynwald on 16th January 2007. This Order was introduced to include Bulgaria and Romania within the scope of the Island's commitment to the European Union Savings Directive, following their accession to the European Union on 1st January. This Order also extends to the accession of any possible future new member states to the European Union.

So it is something that has been brought in to...

**The Acting President:** I do not think that is the point.

**Mrs Christian:** Mr Acting President, I do not think that answers the question. Maybe I am being silly about this, but it says... You have indicated when the Orders were accepted by Tynwald. Clause 8, for example, says:

'The Order shall, from the date on which this section comes into operation'

– i.e. section 8 –

'continue in operation as a permanent order.'

If we look at clause 10, it says:

'Except in respect of sections 8 and 9 [...] this Act shall have effect in respect of the year of assessment commencing on 6 April 2007'.

But it does not say when sections 8 and 9 shall be activated, does it?

**The Acting President:** No, it does not.

**Mrs Christian:** Will there be an Appointed Day Order?

**Mr Downie:** I am working on that.

**The Acting President:** Indeed. It is one of these questions, in a technical manner, which – the Hon. Member has already indicated he is not going to take a Third Reading – needs some time. So if there is not clarity today, I am sure we will have clarity for the Third Reading. (**Mr Downie:** Absolutely.)

Again, this is a technical matter, but I think it is very important, if we are doing primary legislation, that we get it right, and Mrs Christian is quite right to raise the matter.

**Mr Crowe:** Mr Acting President, I think subclause (2) of 8 and 9, to my mind, makes it clear that the Order shall, from the date on which the section comes into operation, continue in operation as a permanent order. To my mind, it reads as though the Temporary Order –

**The Acting President:** It may very well satisfy what I would call... I look at Mr Crowe as a very technical and very long-term member of the accounting profession, but if legislation is to cover everybody, I think we need to make quite clear... There may very well be a simple answer to this, but –

**Mrs Christian:** Can I perhaps answer my own question, or seek to find out if this is the answer?

**The Acting President:** We are in committee. You are entitled, Hon. Member, to speak your mind.

**Mrs Christian:** Would these two clauses come into effect when the Act is signed, and therefore do not need an Appointed Day?

**Mr Downie:** It is really between two jurisdictions.

**Mrs Christian:** It is not; it is a clause in an Act, with respect, Mr Acting President.

**Mr Downie:** It is the Netherlands Temporary Taxation Order that we are talking about.

**Mrs Christian:** This Bill seeks to make –

**The Acting President:** But this Bill is an Income Tax Bill and it is an Act that will actually on the statute.

It is unfortunate that our learned Attorney is not with us today. Perhaps he could have thrown a little bit of light on it. In the meantime, I am sure the hon. mover will be able to clarify it, if not today, then at the Third Reading next week, and I think perhaps we should leave it at that.

**Mrs Christian:** On that basis, Mr Acting President, I will be content to support it with the view to, if necessary, amending it at the Third Reading.

**The Acting President:** Indeed, if needs be.

I think, Hon. Members, I am going to put that clause 10 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

The Bill is read and the clauses taken for this stage.

**Mr Downie:** All of the points that have been raised, if they need any further elaboration at the next Reading, and particularly the technical issues, we will have those fully clarified and the proper answers.

**The Acting President:** I am sure Council is very grateful to the hon. mover. Thank you very much indeed.

## **Fertilisers and Feeding Stuffs (Amendment) Bill Second Reading approved**

2. Mr Butt to move:

*That the Fertilisers and Feeding Stuffs (Amendment) Bill be now read a second time.*

**The Acting President:** That brings us then on to Item 2 on our Agenda, which is the Fertilisers and Feeding Stuffs (Amendment) Bill. That is in the hands of Mr Butt. Mr Butt, please.

**Mr Butt:** Thank you, Mr Acting President.

In 1975, Tynwald passed the Fertilisers and Feeding Stuffs Act, which looks at the constituents of fertilisers and feeding stuffs through sampling and analysis. Subsidiary legislation deals with permitted materials in chemical terms and gives technical descriptions of how analysis is to be carried out.

After this Bill had its first Reading in the Keys in February 2005, DAFF was content to pause while there were some more detailed discussions with the Office of Fair Trading about the implications of bringing the legislation up to date and providing a suitable regime under the modern requirements. Inspection and sampling has been carried out under this Act in past years by Inspectors of the OFT, who have been appointed by DAFF for the purpose because of their expertise in inspection and sampling techniques. Analysis has been carried out by the Government Analyst's Laboratory wherever possible.

Suitable refresher training and an inspection and analysis regime was agreed between OFT and DAFF, and the OFT has also been liaising with the Government Analyst's Laboratory with regard to analysis.

The OFT was able to build the new regime into its commitments with effect from 1st April 2006 and DAFF has included provision in its budget from 2006 onwards. This Bill was subsequently removed from the legislative programme in order that other more pressing items of legislation could be progressed, and DAFF was not able to progress this Bill through its relevant stages.

Members will appreciate this is a scientific and technical field and the Island has generally followed the advice and the lead of the United Kingdom authorities. Commercial fertilisers and feeding stuffs used in the Island are, in almost

every case, proprietary brands imported from, or at least through, the UK. There is no commercial production of feeding stuffs in the Island and the only exception in respect of fertilisers is the use of lime quarried in the Island.

The main point of this Bill, Mr Acting President, is that section 20 of the current Act enables DAFF to apply UK regulations to the Island. This is done by making an Order, subject to any relevant modifications or adaptations. However, the Act specifies that UK regulations have to be made under any like enactments to our Fertilisers and Feeding Stuffs Act, and this used to be the case.

However, for some years, the UK has adopted European legislation concerning fertilisers and feeding stuffs into UK law, by applying it under the European Communities Act. This is quite clearly not a like enactment to our Fertilisers and Feeding Stuffs Act. The changes happening in the UK could not be applied by order to the Island, and the result is that the Island's subsidiary legislation on fertilisers and feeding stuffs has fallen behind modern practices in the UK and throughout Europe.

Such matters are now set out by international scientific and technical committees of the European Union. It is, however, an area where we have got behind in our international obligations.

In regard to some comments made at the First Reading, Mr Acting President, I can comment that the legislation does not affect the Meary Veg pellets which were referred to last week, because most of this legislation refers to imported products only. The intention behind the legislation is to ensure the Isle of Man does not become a dumping ground for uncertified fertilisers and feeding stuffs.

There is, in reply to another comment made last week, nothing to stop imports from non-EU countries, but it does give enabling powers to the OFT to sample those products when they arrive, to make sure that they do comply with the standards of the UK in Europe.

Mr Acting President, the Island and its responsibilities make up part of a complex jigsaw. Though this is not something on which the Island can be a leader, I believe it is important that we are seen to be responsible and capable of fulfilling our international commitments, because every part of the jigsaw, however small, contributes to the overall picture. In order to take the first step towards rectifying this situation, I beg leave to move that the Bill be read for a second time.

**The Acting President:** Mr Waft.

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

**The Acting President:** Any comments? Mrs Christian.

**Mrs Christian:** Yes, Mr Acting President.

I think this is one area where we are sitting in a cleft stick. We like to have our own legislation, but there are circumstances where, sometimes, enabling provisions facilitate the application of appropriate legislation.

We have done it for many years in respect of Social Security measures. We have seen it done in respect of Environmental Health and food standards and so on. So, it is not new. It just seems to me to be yet another area where we are not producing our own legislation, although this will enable us, I suppose, to pass legislation which will be

modified from the UK version according to our needs. I hope that will be the case.

**The Acting President:** Any other comments? Mr Downie.

**Mr Downie:** Yes. I will be supporting the Bill. I can understand the reasons for bringing all these issues together and, as was discussed at the last Reading, the Bill arrives in the wake of bovine specified material getting back into the food chain and much more rigorous controls on the manufacture of fertilisers and feeding stuffs, and a need, really, for greater care in that area.

The hon. mover may not be able to answer the question for me today, but would this legislation actually prevent the manufacture of fertilisers or feeding stuffs on the Isle of Man? It is not too long ago we used to have a plant in Peel that manufactured fish meal. I would have thought, with technology and sterilisation, it might be possible in the future for us to make bone meal here in the Isle of Man, in great demand and very expensive now for horticulturalists to buy.

Just, if it is possible to clarify that, I would be grateful. Otherwise, I am supportive of the Bill.

**The Acting President:** Any other comments? Mr Waft

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

I fully support the Bill. Whilst we are exporting, and we need to export, meats to the UK – we had to change our abattoir to suit the oval stamp at the time – if we want to comply with the rules and regulations of one of our market places, we have to keep our legislation up to date to comply with what is recognised in the European Union.

So, I fully support the Bill and recognise that we do not have to rubber stamp things as they come along but, whilst we want to be in the club as it were with regard to our situation and wish to continue, I do not think we have got any other option, other than make major new legislation.

**The Acting President:** Mr Butt to reply.

**Mr Butt:** Thank you, Mr Acting President.

In response to the comments of the Hon. Member, Mrs Christian, yes, she is quite right. It would be desirable if we could do our own legislation and use our own regulations generated from within these Chambers, but that would be time consuming and resource driven.

This way, by using these amendments, we can actually keep up to date. Things move very speedily, things change month by month, and we would not have time to keep up legislation by that process, although that would be desirable.

As for the comments by the Hon. Member, Mr Downie, this Bill would not prevent manufacture locally, but it does give the Office of Fair Trading power to actually do an inspection and sample regime to make sure that anything manufactured here would comply with the EU standards and UK standards. So, that does not prevent local industry manufacturing.

Finally, to comment on what Mr Waft says, he is right because we have to comply with EU standards to survive in the market. I think, with the proposed decoupling which is en route to the Island, the market is very important for

all our farmers. This type of legislation, keeping up to date with the international standards, would help us to compete in the market.

Thank you, Mr President. I beg to move.

**The Acting President:** Thank you, Mr Butt.

Hon. Members, I put that the Fertilisers and Feeding Stuffs (Amendment) Bill 2007 be read a second time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

### **Fertilisers and Feeding Stuffs (Amendment) Bill**

#### **Clauses considered**

**The Acting President:** Are you taking the clauses, sir?

**Mr Butt:** Yes, sir.

**The Acting President:** Clause 1.

**Mr Butt:** Yes, Mr Acting President, clause 1 of the Bill is intended to enable the Department to apply relevant United Kingdom legislation in respect of fertilisers and feeding stuffs to the Island, as part of the Island's law, subject to any necessary modifications or adaptations to suit our local climate.

Under the Fertilisers and Feeding Stuffs Act 1975, provision was made to allow the application of any Statutory Instruments relating to fertilisers and feeding stuffs to be made under the United Kingdom Agricultural Act 1970.

The United Kingdom now applies European Union legislative instruments in respect of fertilisers and feeding stuffs, through their European Communities Act 1972. It is not possible to apply this EU legislation under our 1975 Act.

The amendment made by this Bill to section 20 of the 1975 Act will enable the Department to bring up to date its legislation in respect of fertilisers and feeding stuffs.

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

**The Acting President:** Mr Waft.

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

**The Acting President:** Mr Crowe.

**Mr Crowe:** Thank you, Mr Acting President.

Yes, I think it gives the Department a great deal of flexibility here that, where they were restricted before, that they could not introduce legislation, they can now do it very quickly and be cognisant of the changes in legislation in Europe and in the UK. I think it is a very good move to give the Department that flexibility they need.

**The Acting President:** Anyone else wish to comment?

Mr Butt, sir.

**Mr Butt:** Thank you.

I thank Mr Crowe for support and just re-emphasise that

this legislation would enable us to always be up to date, which is the main aim of the legislation.

**The Acting President:** Hon. Members, I therefore put that clause 1 of the Fertilisers and Feeding Stuffs (Amendment) Bill be a clause. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 2, sir.

**Mr Butt:** Thank you, Mr Acting President.

Clause 2 gives the Bill its short title and provides that the Fertilisers and Feeding Stuffs Acts 1975 to 1985, which are the present Acts, along with this particular amending Bill, once commenced, will stand together.

I beg leave to move that clause 2 stand part of the Bill.

**The Acting President:** Mr Waft.

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

**The Acting President:** Any comments? Mr Crowe.

**Mr Crowe:** Again, Mr Acting President, just that Tynwald can do it by secondary legislation, by an Order, so again it gives the ability for the Island to keep pace with all new legislation. So, again, I am happy to support this clause.

**The Acting President:** Mrs Christian.

**Mrs Christian:** I just wonder, when they are going to be cited as standing together, that might not have been an opportunity to have a consolidation! I do not know how many Acts there are. We note that there is not a consolidation, but I will still vote for this clause.

**Mr Butt:** I will pass your comments on to the Department.

**The Acting President:** I put then to the Council that clause 2 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. Clauses read.

### **Fertilisers and Feeding Stuffs (Amendment) Bill**

#### **Suspension of Standing Order 22(2)**

#### **Motion withdrawn**

**Mr Butt:** Mr President, could I ask for the suspension of Standing Orders for the Third Reading of the Bill, if that is acceptable?

I move:

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

**Mrs Crowe:** I would be pleased to second that, Mr Acting President.

**The Acting President:** Anyone wish to speak against?

**Fertilisers and Feeding Stuffs (Amendment) Bill – Second Reading approved**

**Fertilisers and Feeding Stuffs (Amendment) Bill – Clauses considered**

**Fertilisers and Feeding Stuffs (Amendment) Bill – Suspension of Standing Order 22(2) – Motion withdrawn**

**Mrs Christian:** I just wonder is there a reason for requiring it to be read a third time?

**Mr Butt:** No, there is not any particular reason. If you wish to defer it, I am more than happy to do so.

**The Acting President:** It is not for me. It is for the Council to decide whether they wish to suspend Standing Orders.

**Mrs Christian:** I think, Mr Acting President, we always used to... We had Standing Orders to give the opportunity for the public to make any representations between the various stages.

I do not think that the public are going to be clamouring to comment on this particular Bill. (**Mr Downie:** Hear, hear!) (*Laughter*) But I think the principle, where it is not a question of necessary haste, perhaps should be observed.

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

**Mr Butt:** Mr Acting President, I would tend to agree with the comments of Mrs Christian and withdraw my request for suspension, if that is acceptable.

**The Acting President:** Yes, fine. It has not been put, so there is nothing to withdraw, but if you are quite happy to withdraw, I am quite happy to accept.

### **Prisoner Escorts Bill Second Reading approved**

3. Mr Waft to move:

*That the Prisoner Escorts Bill be now read a second time.*

**The Acting President:** Right, okay. Let us move on then to Item 3, which is the Prisoner Escorts Bill for the Second Reading, and it is in the hands of Mr Waft.

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

As I said in my speech during the First Reading of this Bill, it will make it possible for the Department of Home Affairs to effectively consider which is the most cost-effective and efficient way for prisoner escort duties to be undertaken when the prison is established at Jurby early in 2008.

Mr President, firstly, I would like to take this opportunity to place on record my thanks to the Hon. Members for their input into the First Reading debate and their support for the Bill.

Let me emphasise that this is not a threat to jobs. The only prison staffing implication of the Bill would be if the services were kept in-house, as this would require the recruitment of around seven more prison officers. Some factors that the Department will need to take into consideration are: the maximising of the deployment of prison officers; the inconsistent regime delivery at present due to increased and variable escort demands; diverting prison officers from delivering constructive activities for prisoners; and an increased awareness around the inefficiencies of deploying

prison officers to roles that do not require their full range of skills and powers.

Some potential benefits of this outsourcing which will be used as criteria for assessment would be: more effective use of resources; more appropriate deployment of prison officers to the delivery of front-line services; greater uniformity of the service; more clarity on delivery and performance, with better management information.

The proposal which I am putting forward in this Bill will give the Department the opportunity to ensure that they achieve the best possible value for money when the new prison at Jurby opens in 2008, by comparing the costs of the existing method of service provision to that bid by the tenderers.

Some questions that were asked at the First Reading, Mr Acting President: with regard to the contractors, the contractor's role within the courthouse will be to deliver prisoners to court; supervise them in the custody suite; receive new prisoners into custody; supervise prisoners in the courtroom dock; and to take them from court to the prison.

Reference was made to the problems that occurred in the UK in the early days of court contracting, largely centred around the publicity that was generated about various security breaches, escapes from courts, escort vehicles, wrongly released prisoners from court, etc. This type of incidents have always occurred. The newness of the contracting-out arrangements gave a fresh angle and there was, of course, some hostility with the whole concept of contracting out.

The fact that most of the contractors were new to the work also created incidents which were avoidable. The contractors were on a steep learning curve. The problem was not as severe or new as depicted in the media.

After a period of settling in, the performance of the contractors improved dramatically. Private contractors' performance now compares very favourably with the performance of the Police and Prison Service in the days before the contractors took over.

The Minister for Home Affairs has made a commitment with Keys to report to Tynwald after one year's evaluation of the contract, if the Department does not, indeed, go down this road.

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

**The Acting President:** Seconder?

**Mr Crowe:** I beg to second. I am happy to support this Bill.

If privatisation does come about, it is going to a very important role for the new custody officers, because it will mean escorting prisoners to court and back again, to hospital possibly, and even off-Island escort duties. So, I think it will need high standards of selection to see that, if privatisation goes ahead, it sits comfortably alongside the existing prison officers and their roles.

**The Acting President:** Mrs Christian.

**Mrs Christian:** Mr Acting President, I will support this, in that it is enabling. I do think that, if the Department of Home Affairs – if this is passed and it eventually becomes law – decides to go down this route, there needs to be very careful scrutiny of the reasons why.

Quite often, we use the head count issue as a reason (**Mrs Crowe:** Yes.) to move into a different mode of operation. I am not always convinced that mode of operation actually is better value for money.

Whilst I would not resist it, on the principle that it is a reasonable enabling power, I do think that, as we perhaps take up that opportunity, it should be carefully monitored by the Department of Home Affairs.

**The Acting President:** Mrs Crowe.

**Mrs Crowe:** Yes, maybe guided by my hon. colleague, Mrs Christian, I will support the Bill, although my real thoughts about this whole issue would leave me to suggest that I would not do so. But as it is only enabling legislation, then perhaps I may be persuaded to support it.

The whole point of the new prison, the way it was designed in a hub, was to release prison officers, so that the whole area could be viewed. It was the whole aspect of video conferencing, so that prisoners would not be required to be brought all the way from Jurby for court appearances, quite unnecessarily on many occasions. I am not sure where that is at, at the present time, either with the court or with the prisoners, or with the new prison.

In your foreword, the Hon. Member mentioned that, of course, the prison officers need to be available with the prisoners for many other activities that are required of them within the prison. But I do believe if we are going to have a Prisoner Escorts Bill that is an enabling legislation, maybe there needs to be a Prison Educators Bill, so that we have civilians dealing with the education of prisoners as I am sure happens now and will happen furthermore in the future.

I do have some concerns about the number of prison officers as against the number of prisoners, many of whom I do believe, from the prisoner statistics that I have seen, really are imprisoned for such things as non-payment of maintenance and other debt-related offences.

I do have some concerns about the amount of prison officers and the way in which this so-called new prison was meant to make efficiencies within the Prison Service for the management of a very small number of prisoners in a brand new prison setting. This business of bringing prisoners down to Douglas for court appearances on many occasions is not entirely necessary.

I would like to hear from the mover where we have got with all those various things that I mentioned.

**The Acting President:** Thank you, Mrs Crowe. Mr Butt, then Mr Downie, then Mr Turner.

**Mr Butt:** Thank you, Mr Acting President.

I would just like to echo some of the comments of my colleague, Mrs Christian, in terms of being slightly careful about the employment of these officers. The current prison officers are full-time, fully trained – extensively trained – and part of a disciplined body and they have their own discipline codes and regulations. The proposal in here is, in effect – without being rude – a sort of ‘subspecies’ version of a prison officer, who is just there for transporting prisoners to and from places. That is their main function.

I know there is an Independent Monitoring Board to look at their behaviour and their conduct, but I really do think that the additional officers should be under the same codes as the regular prison officers. When regulations are made, I hope that is taken account of.

**The Acting President:** Mr Downie, sir.

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

I think it has been an interesting debate this morning but, as someone who worked in close proximity to the courthouse, it is a rare occurrence now to see people coming to and from prison to the court. They do not make the appearances in court that they used to do a few years ago, and when you look at the principle behind this piece of legislation, I think what it is trying to do is to give the Department some flexibility.

In my mind, it is pointless employing escort officers if there is nobody to escort. I think what the Department is genuinely trying to do is come to an agreement with an organisation or a company, where they can have a fully flexible system in place and they can use these people as and when they are required, rather than have them sitting around and being paid expensive salaries.

I listened to what was said at the last Reading of this Bill, and I did mention that there is a group of people who work for Government at the present time – they are attached to the Coroners’ Office – and they deal with sudden deaths. They do an excellent job. Nobody knows what time of the day or night they will be needed, but they are contactable, they are available and they do a very, very efficient job, which is kept very low key. I have never, in my time, heard a complaint about them, and they have to deal with some really difficult issues.

I would hope that the logic behind the Prisoner Escorts Bill would be to provide for a small core of people, who are properly trained, properly regulated within the system, to provide a service as and when required by the Department, at a significant reduction in cost to the taxpayer from what it would be to employ directly our own workforce.

You have got to be realistic about this, Hon. Members. There is a huge cost now in running the prison; comments being made about the additional prison officers that are required. I would support the Department in their endeavours to try and come up with a much more efficient and cost-effective approach to transporting prisoners either to hospital or to the courts or, on occasion, to establishments in the United Kingdom.

**The Acting President:** Mr Turner.

**Mr Turner:** Thank you, Mr Acting President.

Again, I appreciate that this is enabling the Department to possibly pursue a privatised service, but I think the proof of the success of this will be in the way a contract is awarded. The complete success or complete failure of the system will lean on the subsequent contractor regulations that come below this.

Mr Downie made a very good point that it may be that the Department has the scope to employ a small core of people, but it also gives them the scope to go down a route that we have seen many times in Government of employing the Rolls-Royce contract. Rather than having a small core of people who we could call on for duties as and when required, we have a full commando team sitting there in the contract ready to go, and we are paying a big contract. Yes, we may be saving salaries and pension liabilities; however, we could end up with a very extravagant contract.

I think the Department needs to sensibly assess, when it comes to looking at which way it is going.

One concern I do have – and maybe this is something

I should bring up in the clauses section, but nevertheless I will point it out now – in one of the sections to do with the prisoner custody officers, it says that rules will be laid before Tynwald. I would have felt more comfortable if they were approved by Tynwald, given that this is such a significant change to the way the system has operated.

I understand that, if they were laid before Tynwald, there would be the opportunity for a Member to pick up on it. However, I think that as it is such a significant or potential change in the system, maybe these rules should be approved by Tynwald.

My hon. colleague, Mr Butt, mentioned the discipline and procedures that existing staff are liable to conform to. I think – correct me, if I am wrong – that what we are moving to here is that we do not want to have the stage where we are effectively employing a cowboy outfit to undertake this task.

I notice in the Bill that there are heavy penalties for prisoners who assault prisoner custody officers but, equally, I think we should respect the fact that authority and power do not always suit the people who are granted that authority and power. What protection is there going to be for the prisoners against the abuse of that power?

I know it says here about the Independent Monitoring Board, but there does not seem to be any strong penalty against somebody abusing their position of authority. I think if we have a situation now, where it is a Department of Home Affairs prison officer, there are clear procedures, codes of conduct and disciplinary procedures in place. If we are outsourcing to a company, then clearly they will have to have their own internal procedures: will they be as stringent as what we have within the Department of Home Affairs?

I think these are all issues that the Department needs to look at very carefully when going to the next stage, which I understand is post this Bill.

**The Acting President:** Any other Member wish to comment? No? Then I call on the hon. mover, Mr Waft.

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

I would like to thank my seconder, Mr Crowe, for starting the debate off.

With regard to Mrs Christian, the need was expressed for careful scrutiny and monitoring by the Monitoring Board. There was hope that the Department of Home Affairs did give a lot of time to the way it had administered and to make sure we are getting value for money, I think that was the phrase used.

Mrs Crowe, with regard to the video conferencing, obviously the video conferencing will play a great deal, considering the distance from the courthouse and the prison. It is not an active provision at the moment; we are still in the process of setting that up. Nevertheless, it will be another tool that the prison officers can use.

She also mentioned the facilities for education at the present prison were minimal. I think even the Department of Education, which did provide staffing for that, knew full well the limitations of the work that they could do with prisoners who were interested in taking O-levels or other different sort of NVQs – things that they could do before they came out – so the rehabilitation was very poor. We were sending a lot of the prisoners out exactly as they came in, with no skills what so ever. This hopefully will be resolved, when the new prison is up and running.

She also mentioned the numbers of prison officers. That has been debated quite a few times within Tynwald, in fact. With regard to the non-payment of maintenance, I think you mentioned, that situation hopefully will resolve itself, inasmuch as although prisoners will be working, they will be under the guidance of someone who is able to give them skills that they can use outside and perhaps some qualifications as well. So that facility is not available at the moment.

Mr Butt mentioned to be careful about the employment of officers. He mentioned ‘subspecies’ and the same code for regular officers. I am sure they will be very carefully selected and we take on board exactly what was said and where it is coming from.

Mr Downie refers to expensive salaries sitting around and waiting, and could staff be used elsewhere? He also mentioned the sudden deaths and the occurrences of this throughout the Island, and the practice of dealing with them and how they go unrecognised by the public that it is actually going on, but it nevertheless is very successful.

He referred to a small core of properly trained staff. I would agree with him there, that it is essential, in addition to the prison officers.

Mr Turner referred to the way the contract is awarded, and to be watchful of employing a Rolls-Royce service and we do not need it. He refers to a commando team and a cowboy outfit. I am sure we are all aware of that situation and we will make sure that we do not go down that route.

The rules laid before Tynwald: I think you are referring to that in the clauses stage, we will probably get to that during the clauses stage.

He referred also to the protection for prisoners. In these days of Human Rights etc, I think they will be adequately protected as needs be, through the courts and through the governor and the prison rules.

I beg to move, Mr Acting President.

**The Acting President:** Thank you, Hon. Member.

I will now put the Prisoner Escorts Bill 2007 be read a second time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

## Prisoner Escorts Bill

### Clauses considered

**The Acting President:** Clauses: clause 1, sir.

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

Clause 1 will enable the Department of Home Affairs to make arrangements for prisoner escort functions to be performed by authorised custody officers.

The most important element is the regular escorts to and from Douglas Courthouse and staffing the court custody suite. However, the clause also provides the option for a contractor to escort prisoners to hospital and other appointments when required.

The provisions of clause 1(1) set out the functions that the Department can arrange to be contracted out, namely the delivery of prisoners between court, prison, police station, hospital or other designated premises, and this can include premises in the British Isles; the custody of prisoners held on the premises of a court and their production before

court; the custody of prisoners temporarily held in prison in the course of delivery from one prison to another; and the custody of prisoners while they are outside a prison for temporary purposes.

Under subclauses (2) and (3) relevant premises comprise premises in the Island which are designated under the Custody Act 1995. They may also include equivalent premises in the British Islands where a prisoner is being delivered to or from the Island. However, only one of the sets of relevant premises may be outside the Island. This is to enable the transfer of prisoners from the Island to the UK, as those premises cannot be designated under the Custody Act 1995.

Subclause (4) allows the Department to enter into a contract for the provision of prison custody officers.

Subclause (5) also allows for the persons responsibility under warrant or a hospital order or remand for any function referred to in subclause (1) to be complied with, as long as the person does all they can to secure that the function will be performed by a prison custody officer.

Subclause (6) deals with definitions under clause 1.

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

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

**The Acting President:** Thank you, Mr Crowe. Mrs Crowe, followed by Mrs Christian.

**Mrs Crowe:** Thank you.

We have mentioned, throughout this clause, the personnel that you are looking to contract. It mentions about the escort, the delivery of prisoners etc. It does not mention about the vehicles.

I just wondered: this contract for the personnel to escort these people – presumably this is not going to be done in their own private cars. So is there going to be a contract that includes the provision of the vehicles or, indeed, is the Department of Home Affairs planning to purchase vehicles that may or may not be left in Jurby?

Whilst it is not in the clause and does not have to be specifically, I was just wondering, there must be now, as this has been discussed for some time... The Department of Home Affairs must have a fairly clear idea what kind of contract they are going to award for this service.

Whilst we are talking about personnel, it is actually the service, isn't it? So it is the vehicles, whatever.

Thank you, Mr Acting President.

**The Acting President:** Thank you.

**Mrs Christian:** Could I clarify the position of the Republic of Ireland, please?

**Mr Waft:** I beg your pardon?

**Mrs Christian:** Could you clarify the position of the Republic of Ireland with regard to transport of prisoners?

**The Acting President:** Any other queries on clause 1? Mr Downie.

**Mr Downie:** Just on the comment my colleague of Council, Mrs Crowe, made about vehicles and things, it will maybe help the mover: there has been some significant

vehicle purchasing by the Prison Service. In fact, they have brand-new vehicles specially made. I think one of them is compartmentalised as well, so the prisoners are held individually.

So I think, at the present time, the system operates extremely well. We do not have a problem with it, they are well catered for, and as someone who occasionally has to frequent the prison, you do not hear any complaints.

**The Acting President:** Right, any other comments? No? Mr Waft.

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

I would thank Mr Crowe for seconding the clause.

Mrs Crowe referred to personnel and the vehicles. As my hon. colleague, Mr Downie said, there have been special vehicles fairly recently bought. The prison delivery van, I think, is quite an old vehicle, but nevertheless that will be written into the contract with regards to the vehicles, vehicle use and who purchases the vehicles. They will obviously have to comply to a certain standard of vehicle.

With regard to Mrs Christian and the Republic of Ireland, I have just looked at my colleague over there, with regard to the Republic of Ireland.

In Manx law, the British Islands mean the UK, the Channel Islands and the Island. That is the interpretation there.

Thank you, Mr Downie for his comments, and that is the interpretation in Manx law – I thank the Hon. Clerk – with regard to the British Islands, it means the UK, Channel Islands and the Island.

**Mrs Christian:** I understand that, Mr Acting President, if I may.

**The Acting President:** Yes, indeed.

**Mrs Christian:** I just wonder why this escort service cannot take prisoners to our other neighbour, the Republic of Ireland. I presume that you have got to have proper prison officers to do that, and if so, why?

**Mr Butt:** Can I just say, Mr Acting President, it is a rare occurrence, because of extradition these days, it is almost... Extradition is needed for some of these transfers and it is often not worth the effort of doing so – although it will be, on occasions, no doubt.

**Mr Waft:** As I understand it, the prisoner is transferred from here to the UK and a subsequent transfer would be from the UK system, or the British Isles system.

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

**The Acting President:** I will put clause 1 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 2, sir.

**Mr Waft:** Mr Acting President, clause 2 provides for monitoring of the prisoner escort arrangements by the Independent Monitoring Board. The Board administers the existing provisions for the prison within the Custody Act 1995, using the same body.

Under subclause (1), the Bill will keep the prisoner escort arrangements under review and report on them to the Department, and inspect the conditions that prisoners are transported or held in under the arrangements and make recommendations to the Department.

Subclause (2) provides that the Board will investigate and report to the Department on allegations made against prisoner custody officers and breaches of discipline on the part of prisoners whilst under the responsibility of prison custody officers.

Subclauses (3) and (4) deal with the expenses of the Board and their definition respectively.

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

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

**The Acting President:** Mrs Crowe.

**Mrs Crowe:** I am sure I should know, but I do not. The Independent Monitoring Board which is in place at the present time, this Board is set up by whom? Are they paid expenses, normal statutory expenses or whatever?

We have a number of these types of boards around Government, and I just wonder what was the make-up? Are they lay members or what is the make-up of the board? Do they receive any remuneration and, in fact, do they function well at the present time?

**The Acting President:** Any other Member wish to comment? No. Mr Waft, sir.

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

I thank Mr Crowe for seconding it, and Mrs Crowe for her comments, with regard to the Independent Monitoring Board.

The members are not anonymous and any vacancies are advertised. The Department is currently about to interview for a vacant post. The term of service is three years and they also receive an attendance allowance of I think it is £60 plus travel expenses, if they live outside Douglas, per meeting. The Independent Monitoring Board reports annually to the Minister and the Chief Executive of the Department of Home Affairs. The Independent Monitoring Board does not report to Tynwald.

So I hope that clarifies the situation for the Member.

**The Acting President:** Okay. I will put that clause 2 stand part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

Clause 3, sir.

**Mr Waft:** Clause 3, Mr Acting President, provides for the powers to be given to the prisoner custody officers to undertake their duties and provides the power for the Department to make rules relating to their performance.

Subclauses (1) and (2) set out the powers of a prisoner custody officer to search, in accordance with the rules made by the Department, which will be laid before Tynwald, any prisoner that they are responsible for and any other person and any article in the possession of such a person who wishes to enter the place where the prisoner is held.

The rules will follow best practice as to the search of persons currently used by prisoner officers, which have

proved satisfactory. The power to search is an integral and essential part of a prison custody officer's duty to ensure the security of prisoners and those who may come into contact with them.

Subclause (3) lists the duties of the custody officer who has responsibility for the prisoner including to prevent their escape, prevent unlawful acts, ensure good discipline and order and attend to their well being.

The Department may make rules to be laid before Tynwald with respect to the performance of prison custody officers and their duty to attend to the well being of prisoners.

Subclauses (4) and (5) are supplementary to the powers to be given to prison custody officers to undertake their duties.

Subclause (6) requires the rules to be laid before Tynwald.

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

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

**The Acting President:** Thank you, Mr Crowe.

Mr Butt, sir.

**Mr Butt:** Thank you, Mr Acting President.

Reading clause 3(1), these powers are only given to the officers if they are acting in pursuance of prisoner escort arrangements. Can I just have confirmation that if the prison were short staffed, or needed extra staff through sickness or shift patterns, they could not then be drafted in to work in the prison and have these powers; they would only have the powers whilst acting as prisoner escort custody officers?

I could see this as being a back-door way of supplementing staff in times of shortage. This Act would mean they would not have any powers when they went into the prison, but only when they were doing the escort arrangements.

**The Acting President:** Any other Member wish to comment on clause 3? Mr Turner.

**Mr Turner:** Just as I mentioned before to do with the section about the rules being laid before Tynwald. That is my only comment on this. I would have preferred for them to have been approved by Tynwald, so they would be at least subject to closer scrutiny and debate.

**The Acting President:** Could I then suggest that if you felt that it should be approved by Tynwald, there is a course of action which is you could have moved an amendment to that effect.

Being laid before Tynwald, I believe, means that any Member can pick that up within the following month.

I am sure Mr Waft will be able to comment on that, but for Mr Turner's benefit: just talking about it will not affect it, but if you feel strongly, an amendment to that effect... which you can still do at Third Reading, if you wish to suspend Standing Orders, to move an amendment, which means you will have to have two thirds of those Members present. I am just putting the factual position to Mr Turner.

Mrs Crowe.

**Mrs Crowe:** Mr Acting President, picking up on the comments of my hon. colleague, Mr Butt and really in quite the reverse way: I do think this is an enabling piece of

legislation; if we have got this fully trained, fully monitored body of people under contract who might well be utilised as, perhaps, administrative officers for clerking prisoners in, or whatever happens in the system, I think that this *is* in fact, or should be, a valid use of these particular people.

If we are going to have enabling legislation that releases prison officers from escorting prisoners around the Island, which is a time, I would have thought, of the 'optimum' danger – if in fact there was to be any perceived danger, this is the one time when they are out of a secure area – I would have thought that it would be quite useful to enable these people to be utilised in the secure area for jobs that may release prison officers for other duties.

**Mr Butt:** Mr Acting President, could I just respond to that, in that I was making the point that this Act's actual wording means they cannot be used anywhere else other than –

**Mrs Crowe:** Yes, exactly. Yes, it is a shame.

**The Acting President:** That is fine. We are in committee: one at a time, through the Chair for *Hansard* purposes is appreciated. Mr Turner.

**Mr Turner:** Just to pick up on my hon. colleague, Mrs Crowe's point there, obviously Mr Butt has said that this does prevent that. Of course, if it did not, it would effectively mean that we are moving even closer to privatising the prison service and I think alarm bells would be ringing even louder.

**The Acting President:** Any other Member wish to comment on clause 3? No? Mr Waft to reply.

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

If I could refer to Mr Butt's comments first, with the fact that he was concerned that these prison escort officers could not be drafted in to the prison duties, I think that is correct. I do not think it is a way of using prison escort officers in this way.

It will be down into the contract exactly what their remit will be and what they can and cannot do. That is virtually 100 per cent certain that that will not occur, certainly not within this legislation.

Mr Turner referred to 'lay before' as opposed to 'laid and agreed'. As you have kindly mentioned, Mr Acting President, although they are laid before, they still can be picked up and sorted out, if a Member wishes to go down that route.

Mrs Crowe thought it was perhaps quite a valid ability to use these escort officers on prison duties, but I do not think that is the route which they are going down at the moment. It is purely for escort duties.

Thank you, Mr Acting President. I beg to move.

**The Acting President:** Right then Hon. Members, I will put before you that clause 3 of the Prisoner Escorts Bill be read. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 4, sir.

**Mr Waft:** Clause 4, Mr Acting President, provides for how breaches of discipline by prisoners under escort are to be dealt with, which in effect is the same as if the breaches

were committed within the prison that they were being delivered to.

Subclauses (1) and (2) ensure that a prisoner under escort is subject to custody rules and the governor in the receiving prison can deal with the charge.

Subclause (3) enables that offences committed during this time may be subject a disciplinary charge laid by the prison custody officer.

Subclause (4) will ensure that a prisoner is not punished under the custody rules for an act of omission for which he has already been punished by a court.

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

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

**The Acting President:** Thank you, Mr Crowe. Hon. Members, does anyone wish to take part in a debate on clause 4? No, right. There is nothing to reply to, sir, so I will then move that clause 4 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 5, sir.

**Mr Waft:** Clause 5, Mr Acting President, provides for the authorisation required for prisoner custody officers by the Department. A prison custody officer is defined as a person in respect of whom a certificate is in force, certifying that the person has been approved by the Department for the purpose of performing escort functions referred to in clause 1. This will ensure that a contractor cannot use casual untrained staff for escort duties.

The contract will stipulate that, in order for a prison escort officer to be certified, they must have received appropriate training and be security vetted.

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

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

**The Acting President:** Thank you, Mr Crowe. Mrs Crowe.

**Mrs Crowe:** Can we just clarify that the Department of Home Affairs is going to license these individual persons that are going to be employed via a contractor. Is that the case: that the Department of Home Affairs is going to license particular persons who will be not their own personnel but employed by a contractor?

So, presumably, when they turn up every morning, they have to produce their licence to say, 'I am the person that has been licensed to escort prisoners', because there will not be the freedom of the contractors, as you say, to use any staff that are available.

**The Acting President:** Point made. Any other Member? Mr Downie.

**Mr Downie:** I think this clause does actually strengthen the Bill. It means that you just cannot use anybody. At the end of the day, you need a person for this job who is properly trained, who understands the importance of the role, is somebody who can treat the prisoner whom he is escorting

with some dignity and a little bit of mutual respect here. It is all about dealing with people. I think that the Department, in probably running a course, making sure that the person is properly trained and issuing a certificate, is really doing the right thing.

Now, I do not know what decision the Department will take, but it could be that eventually you could get a core of people who are working directly for the Department, but working in a flexible manner.

**Mrs Crowe:** Exactly. Without a contractor.

**Mr Downie:** That is yet to be determined. It is not really alluded to in the legislation, but we are losing sight of the fact that this is only enabling legislation. It gives the Department options and stepping stones, but I think that is a good thing.

I referred, when you were doing your preamble to the legislation we had regarding night club staff and bouncers and things like that, to the fact that that has actually worked and we have taken all that rough element away. I am not suggesting these are the same type of people. I would think, in certain circumstances, you would probably want two or three people who may have a nursing qualification, particularly if you are dealing with somebody who has a health problem and needs to be escorted. Obviously, you want the right person for the job.

**The Acting President:** Mr Turner.

**Mr Turner:** Yes, Mr Downie covered one of the points I was... I am happy to support this clause.

I suppose I am right in thinking this is a similar system as operated for the night club security. Whereas they are working for the establishment or themselves or whatever, they have to be licensed or approved by the Department of Home Affairs. So I think that really does strengthen this Bill, as Mr Downie said.

I do think it is worth them taking on board the points that there could end up being a pool of licensed people available, because one would assume that if a contract was awarded to a firm, the onus would be one that firm to have a sufficient number of licensed personnel. One would wonder what would happen if there was a level of illness and they could not fulfil the contract. Apart from being in breach of contract, that would not address the problem of getting the prisoners from A to B.

So it may be worthwhile the Department considering licensing groups of smaller contractors as well – as my hon. colleague, Mr Downie, pointed out, with regard to the coroner's team, smaller teams as opposed to one contractor and to one firm.

So I think this is a very good part of this Bill.

**The Acting President:** Mrs Christian.

**Mrs Christian:** Yes, Mr Acting President.

I accept the point that this clause provides that the Department deals with the certification of prison custody officers in the same way as my hon. colleague has indicated they issue approvals for bouncers or whatever. I presume that it does not, in its turn, bring any liability to the Department having so granted a certificate. I just wonder what the relationships are there, in terms of the liabilities as between the Department and the employer.

The other point I want to ask is we are talking here about persons. Presumably, the rules which apply in the prison with regard to gender of prisoners and prison officers would apply to the escort service also, and that they would require to have a balance of escorts for male and female prisoners.

**The Acting President:** We are in committee.

**Mrs Crowe:** I am sorry, Mr Acting President, but it was a point I thought of as my colleague, Mrs Christian, was speaking.

In the certification process for these persons, which may or may not be involved in escort duties off-Island, the UK would need to validate that certification. I wonder, is this a normal practice in the UK? Has in fact the Department looked at that? It is no good us recognising some kind of certification on-Island, which would of course bring with it a degree of insurance and whatever, for whoever was involved in that duty, when the UK may or may not have validated this kind of certification.

I do not know. It is possible that they have a similar system in the United Kingdom, and it would be a very similar certification, but it is a point that has to be made that the UK would have to recognise and validate this, before these escorts would be utilised off-Island.

**The Acting President:** If no other Member wishes to comment, Mr Waft.

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

With regard to the Department of Home Affairs and their ability to license these officers, I think it is encompassed within the Bill, that is the situation. They have to be approved by the Department and, I would think, licensed by them.

Mr Downie referred to flexibility and the fact that we could have flexibility in the future. That situation has not arisen. Somebody mentioned earlier on about privatisation: that is not thought of at all, privatising prison. It is not a back door or anything like that. It is purely that the contract is to do this particular work.

Reference was made to nightclub staff by two Members and the nightclub security has worked, I think, to a greater degree. It was long overdue, but when it did come in, it certainly gave better credence to people who are on the door to these places. It certainly gave the public a sense of concern, if they have not been licensed, and I think most of them now are licensed.

With regard to Mr Turner and his pool of licensed personnel, and if they go off sick with the flu, bird flu is never very far from people's minds these days! I am sure that would be the concern of the contractor. We will have to deal with that, as other areas of Government have to deal with it, as and when the need arises.

The grant of licence and the eligibility with regard to the UK, Mrs Crowe mentioned: I am sure they have a similar validity of licences in the UK, because they have many of these groups over there, doing exactly the same work. So, I am sure that will be worked out when that situation will be faced.

Mrs Christian mentioned with regard to the gender. I am sure nowadays everybody is well aware of gender problems, and how we must conform to the different rules and regulations set out. As they are in the prison, so it will be within the confines of these offices.

With regard to the liability – the contract of liability and the Government’s liability – that will be worked out within the contract, I would have thought.

Thank you, Mr Acting President.

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

Clause 6.

**Mr Waft:** Clause 6, Mr Acting President, creates offences of assaulting, resisting and wilfully obstructing a prisoner custody officer who is acting in pursuance of prisoner escort arrangements.

Subclause (1) makes it an offence for a person to assault the prisoner custody officer with a fine not exceeding £5,000 or to custody for a term not exceeding six months or to both.

There was an issue raised previously that clause 6(1) as drafted implied that anyone who assaults a prison custody officer would be liable to a fine of £5,000 or six months’ custody. I would clarify that the actual wording of the clause is:

‘a fine not exceeding £5,000 or to custody for a term not exceeding 6 months or to both.’

Therefore, the drafting is correct in that it allows for either or both.

Subclause (2) makes it an offence to resist or wilfully obstruct a prisoner custody officer with a fine not exceeding £1,000.

Subclause (3) states that a person who is employed as a prison escorts officer, but who is not readily identifiable as such will not be treated under this clause as acting in pursuance of prisoner escort arrangements.

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

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

**The Acting President:** Thank you, Mr Crowe. Does any Member wish to comment? No. I will proceed then to put clause 6 to Council. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 7.

**Mr Waft:** Mr Acting President, clause 7 provides for an offence of disclosing information by a prisoner custody officer.

Subclause (1) provides where a person who is or has been employed in pursuance of prisoner escort arrangements discloses, otherwise in the course of duty or as authorised by the Department, information relating to a particular person, they shall be guilty of an offence.

Subclause (2) states that a person guilty of such disclosure is liable on conviction on information to custody not exceeding two years or a fine or both; and on summary conviction, to custody not exceeding six months or to a fine not exceeding £5,000 or to both.

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

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

**The Acting President:** Thank you, Mr Crowe. Any comments on clause 7? No? Then I will put clause 7 of the Prisoner Escorts Bill to Council. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. Clause 8.

**Mr Waft:** Mr Acting President, clause 8 provides interpretation in relation to part 9, including ‘custody rules’ being rules made under the Custody Act 1995 and ‘prisoner’ being a person for the time being detained in legal custody.

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

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

**The Acting President:** Thank you, Mr Crowe. Any comment on clause 8? No. Alright, then I shall put clause 8 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 9, sir.

**Mr Waft:** Clause 9, Mr Acting President, gives the Bill its short title and provides for the Bill to come into operation on such days to be appointed by order of the Department.

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

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

**The Acting President:** Any comments on clause 9? No? Then I shall put clause 9 to Council. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

## Prisoner Escorts Bill

### Standing Order 22(2) suspended to take Third Reading

**Mr Waft:** Mr Acting President, can I ask for suspension of Standing Orders to proceed with Third Reading? I move:

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

In effect, this Bill is a little bit behind the times, with regard to the opening of the new prison. The officers need to get on ahead with the situation with regard to escort officers. In fact, this has to go for Royal Assent etc. Perhaps the Members might indulge me, to allow for the Third Reading at this time.

**The Acting President:** We have a proposal of the suspension of Standing Orders, and the reasoning behind that suspension. Have we a seconder for this?

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

**The Acting President:** Mr Crowe. So it is before Council.

**Mrs Crowe:** Could I just ask, Mr Acting President,

if what we are saying is that this Bill and this enabling legislation have to be introduced prior to the opening of the new prison; that for a short period prison officers could not perform this duty; that this contract has to be awarded immediately; or are we going to see if it absolutely necessary to have a prison escort contractor in place?

We were talking about looking at value for money and whether... I went along with the Bill because I thought it would enable some flexibility within the Department. But what we are saying is this Bill, actually, is a grant of contract for a service provision to be put in place with immediate effect.

**Mrs Christian:** Could I ask too, before we vote on suspension of Standing Orders, what is the reason that the Bill is behind? Is the prison ahead of schedule or has the legislation been held up and, if so, by whom?

**The Acting President:** Mr Waft, sir.

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

The prison is on time at the moment, Mr Acting President. It is not ahead of schedule. Nevertheless, there has been debate with regard to the number of prison officers required for the new prison to be open fully in the past, and it has been narrowed down to the situation we find ourselves in now, with regard to reducing, perhaps, the numbers of prison officers that would be necessary, by coming to an agreement that they be reduced to accommodate the escorts.

So the sooner we get this Bill on the statute book, and the ability for the officers to carry on and make facilities, find out what the cost-benefit analysis is, in the short time that we have before the opening of the new prison, which will be on us very shortly, I think the better.

**The Acting President:** Right, I will put to Council that the proposition is that we suspend Standing Orders to take the Third Reading of the Prisoner Escorts Bill. Those in favour, please say aye; those against, no. The ayes have it.

*A division was called for and voting resulted as follows:*

FOR	AGAINST
Mr Waft	Mr Turner
Mr Butt	Mrs Crowe
Mrs Christian	
Mr Downie	
Mr Crowe	

**The Acting President:** There are 5 for and 2 against. The quorum has, I believe, been met for the suspension of Standing Orders, but I will just check. *(Interjection by the Clerk)*

This is where experience comes in, Hon. Members. If Mr President was sitting here, he would be able to give us an adjudication on this in an instant, I am sure! But just to make absolutely sure that we are complying with Standing Orders, I will just check it.

**Mr Crowe:** Mr Acting President, it is 'Suspension of Standing Orders':

*'The Council may upon a motion of a member agreed to by a vote of at least five members, suspend all or any of the Standing Orders.'*

**The Acting President:** We have the requisite number. I would thank the Hon. Member. I have got it here before me now, and I am very grateful to Mr Crowe for pointing that out. Therefore, we have the suspension of Standing Orders.

## Prisoner Escorts Bill Third Reading approved

**The Acting President:** I would ask Mr Waft then to proceed.

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

I would like to thank the Members for their support in this.

The Department has a duty to identify the most cost-effective way of providing prisoner escort services. This Bill would allow the Department to implement such a process in an attempt to deliver the greatest value for the money to the public purse. We need to be able to assess what the private sector could provide and at what cost. The Bill certainly gives us the ability to go out to tender and establish the most cost-effective way forward.

With regard to the issue of contracting out some of the work of the prison staff, I can confirm that a briefing pack was issued to all Tynwald Members in May 2005, which detailed the staffing implications and capital requirements in the new prison. The pack covered the reduction in the original staff requirements for 64 reduced to 30. As stated, this reduction would be achieved by making sufficient reductions in the regime targets set out in the new prison, including the consideration of contracting out various functions.

I beg to move Third Reading of the Bill. Thank you, Mr Acting President.

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

**The Acting President:** Mr Turner has got an amendment. Now to move an amendment at the Third Reading needs the permission of Council to suspend Standing Orders to take a Third Reading. We have not circulated this amendment yet. Is it before all Members?

**The Clerk:** You need permission to bring a motion at such short notice, Mr Acting President. Then if you did want to amend the Bill at Third Reading, you would need six votes to carry the amendment.

**The Acting President:** Well, as I informed Mr Turner of his options, I think it would be remiss of me if I did not give permission then for him so to do, but Standing Orders will still appertain to whether the Council agrees with him or not. I am giving permission for it.

Now has the amendment been circulated? It has and I think it is quite clear –

**Mr Turner:** So we take a vote on suspending the Standing Orders first? I move:

*that Standing Orders be suspended to any extent necessary to allow the following amendment to be moved.*

**The Acting President:** Yes, indeed. So I will put to Council that we suspend Standing Orders to allow that a motion, i.e. this amendment to the Bill, be placed before you. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Right, the resolution is before us, and if you wish to move your amendment... Mr Turner.

**Mr Turner:** Thank you, Mr Acting President.

I have asked to move this amendment to clause 3(6), where it says 'rules under this section shall be laid before Tynwald.' The amendment is:

*Clause 3  
Page 4, line 22 –  
delete 'laid before' and substitute 'approved by'*

My feeling behind this was that once it comes into... If the rules are laid before Tynwald, they effectively will come into operation. There will then be a month before the opportunity would arise to closely scrutinise the documents.

My thinking of having them approved by Tynwald would at least give the opportunity for Members to view the rules, regulations etc, in the run-up to the sitting of the Court, give the content due consideration and debate the content of them, rather than have a document merely laid before the Court.

I would hope that Members would support this amendment. I am bringing it in a constructive form of assisting the Department in getting the rules right from day one.

I am supportive of this Bill and hope that we could maybe apply similar principles to other areas of Government perhaps. But in this, I therefore beg to move in my name.

**The Acting President:** Have we a seconder?

**Mrs Crowe:** I would be pleased to second that, Mr Acting President.

**The Acting President:** Mrs Crowe has seconded, so the amendment is before the Council. Does anyone wish to speak to the amendment?

**Mr Waft:** Through you, Mr Acting President, there are many times when we find that these sorts of things are 'laid before'. They are laid before because of the reasonable understanding that they have been discussed within the Department, they are for notification to Tynwald Members as such, and anybody can comment on them and try and sort it out, if they have a particular difficulty with them.

The rules and regulations I do not think would be any different, in any great effect, from that of an ordinary prison officer and the rules and regulations relating to them, their good order and their discipline, the well-being of the prisoners in their care. I think that is tantamount to what anybody would expect.

I do not think that having to approve them as well as view them would help them any great deal.

**The Acting President:** Does anyone else wish to speak?

No, right, I will then put the amendment standing in the name of Mr Turner to Council.

**Mr Turner:** Sorry, Mr Acting President, do I get to reply to that?

**The Acting President:** You can have a reply. Yes, certainly. I beg your pardon.

**Mr Turner:** Yes, I would like to thank Mr Waft for commenting on those. The points that I did raise were that this really is a significant change in the way we are going to be operating, effectively privatising a part of the operation. So this is quite a new road we are going down.

If the rules are that similar to what the existing prison officers have to subscribe to when being appointed to their posts, then I am sure there would be no problems with Members approving them. It would mean that they are still brought to the Court at the time that the Department wishes to do so and, in effect, if the rules are so good, then no doubt it will receive the unanimous support of the Court.

That was the thinking behind bringing this amendment: that the opportunity was given and it could be dealt with, without having it possibly dragging on to another month, where it could be then held up at a later date, thus causing even more delay for the Department.

I beg to move.

**The Acting President:** Mrs Christian.

**Mrs Christian:** Mr Acting President, I can understand the point of the Hon. Member. I just feel that this falls into the category, such as codes of practice and so on, which generally speaking are laid before. I should not say that they probably will not get the scrutiny that the Hon. Member may give them – that might be a wrong sort of statement – but I suspect that the rules may not be subject to very much change through this process, and that to lay them before probably would be adequate.

This should not be a consideration here, but we have just approved a suspension of Standing Orders to have a Third Reading because of the perceived urgency of the matter. If we do pass this amendment, it will have to go back down onto the Agenda Paper of the other place. If that is the case, then so be it, but personally I do not feel terribly strongly about the issue.

Because the Hon. Member, against my perhaps usual stance, did persuade me that suspension of Standing Orders was in order, I will accept the section as we have already approved it.

**Mrs Crowe:** As I seconded the Hon. Member in his... I think that the Hon. Member, Mr Turner, makes a very valid point. This is a very different way that Government is approaching dealing with the situation. It is not like our normal codes of practice for whatever it might be – feedstuffs, manufacturers or whatever. I think it is a different way.

I think that *if* Hon. Members of Council felt that it was just going to be a copy of whatever is in the so-called bouncers' security rules and regulations, well, fine. If that is what it is, fine. But I do think that this is very important that we have the right people performing this duty and not, as one Hon. Member of Council has already said, a 'subspecies' that may or may not be employed in this role.

So I felt in there some validity – much validity – in the comments that have been made by Mr Turner.

**The Acting President:** Fine, now I have allowed the debate to flow. I am not going to allow a reply to the reply! As far as I am concerned, I think, as we are in committee, we should really tease these out. I think both sides have had a fair crack of the whip.

Therefore, I am now going to put the Prisoner Escorts Bill amendment moved by Mr Turner to the vote of Council. Those in favour of the amendment standing in Mr Turner's name, please say aye; those against, no.

*A division was called for and voting resulted as follows:*

<b>FOR</b>	<b>AGAINST</b>
Mr Butt	Mr Waft
Mr Turner	Mrs Christian
Mrs Crowe	Mr Crowe

**The Clerk:** You need six for an amendment, sir.

**The Acting President:** You need six to carry an amendment, so my vote would not have made any difference anyway! (*Laughter*) I therefore will not declare which side I was going to vote for, if I had been free to vote!

**Mr Waft:** Just as an aside, Mr Acting President, I am sure due diligence will be applied to the concerns of the Hon. Member.

**The Acting President:** I am sure. Hon. Members, I now put to you that the Third Reading of the Prisoner Escorts Bill 2007 now be read and that the Bill do pass. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

I am very conscious that we have overrun our normal stage for lunch and I apologise to Members. Never trust a referee to keep proper time – or an ex-referee in my case!

Therefore Council will adjourn until 2.30 p.m. Thank you very much.

*The Council adjourned at 1.13 p.m.  
and resumed its sitting at 2.30 p.m.*

## Constitution (Amendment) Bill Second Reading approved

4. Mr Turner to move:

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

**The Acting President:** I bring the Council to order.

We carry on with our Agenda: we are now dealing with the Constitution (Amendment) Bill for Second Reading and it is in the hands of Mr Turner. Can I ask you, Mr Turner.

**Mr Turner:** Thank you, Mr Acting President.

This Bill, the Constitution (Amendment) Bill 2007, repeals and replaces parts of the Isle of Man Constitution (Elections to Council) Act 1971. The new provisions are designed to simplify the procedure by which the House of Keys elects the persons to the Legislative Council and to

avoid, as far as possible, there being frequently repeated stages of an election to fill a vacancy.

It is designed to improve the chances of filling all the vacant seats on the Council in the same sitting of the Keys. It also gives the Keys the opportunity to propose any other person for election to Council, if those previously nominated fail to become elected.

It contains two clauses. The first sets out which parts of the 1971 Act are repealed or replaced and provides the new provisions for nominating and electing candidates to the Legislative Council. The second clause provides the short title.

A number of Members of this Council also expressed concern about implications of the Bill for the timing of the new election process. We are aware, of course, that we asked for a conference, in order to help work constructively with the other place to resolve the matter. They did refuse this, but said that despite the urgency of the situation, they would prefer to let us amend the Bill and then consider our amendments in the normal way. So obviously that is what we must do.

I am aware that there are some amendments that have been distributed to Hon. Members in the name of Mr Downie and also Mrs Christian. I think we have a further amendment there, so it seems that, in the absence of our request for a conference, the way ahead is quite clear for us.

With that I beg to move the Second Reading of this Bill.

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

**The Acting President:** Can I, just for clarity: the request for a conference by Council was formally submitted in the proper way by letter to the Secretary of the House. I am led to believe we have not yet received a formal reply, i.e. a letter, to our request but I too, like most Members, have heard – I heard this morning on the radio – that it had been declined.

Perhaps our Clerk, who was in the House on that particular day, can either verify or give a complete answer to the queries, just to make it official.

**The Clerk:** Thank you, Mr Acting President.

I did transmit the request for a conference to the Secretary of the House of Keys, as required by Council Standing Orders in writing. The House of Keys did consider the matter, there and then, last week. Their Votes and Proceedings, which are now published, say:

'Motion made  
That a deputation of three Members be elected to confer with the Council on proposed amendments to the Constitution (Amendment) Bill in response to their request.  
[Motion made by] Mr Gawne  
House divided  
Motion lost'.

That was the latest official position.

**The Acting President:** It is just for housekeeping, just to let you know. As the mover of the Bill mentioned the conference and Members may have been asking whether we were up to date. Now you know the position.

Right, Hon. Members, the Bill has been proposed and seconded. Mrs Christian.

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

The hon. mover has indicated that the way ahead is clear. Well, it may be procedurally vis-à-vis the other place, but it is not a bit clear to me, (**Mr Downie:** Hear, hear.) in terms of how we are going to make changes to this piece of legislation which are practical and sensible.

Looking at the Bill as it has come to us – and I know there are amendments proposed – this seems to me, in the light of the amendments made in another place, to do little to improve the situation over the current procedure, however inadequate or otherwise that may be.

I think perhaps I should reword that. The procedure is not inadequate; it is simply not tackled with any great vigour in another place, (**Mrs Crowe:** That's right.) in terms of any kind of determination to elect Members to the Council.

This particular piece of legislation adds very considerably to the time which it is proposed should be allowed for nominations and then consideration before actually even getting to a vote. The only benefit that may seem to be contained in it is a rather less convoluted voting procedure and the ability to nominate from the floor of the House when the first process has been exhausted. So, to that extent, some elements of it may introduce beneficial features.

But there are those which counteract that by making the whole process very long-winded and with a potential to be just as long and delaying as the current process.

So I will support the Second Reading, because there are elements which we might be able to amend to give a satisfactory resolution. I am not entirely convinced about that, but we can debate as we go through.

**The Acting President:** Mrs Crowe.

**Mrs Crowe:** Thank you, Mr Acting President.

Actually, I think what this Bill does is it formalises and builds in a delay, in a way that... There may have been a delay before by no making of our own, but this Bill actually builds in a delay. There is this number of weeks to wait and then there will be a number of weeks after that, before another set of proposals can be in place.

So I actually think that... I am not sure, maybe that is what the other place wish to achieve, and if that is the case, well, then this is the way to have gone about it. But I thought this Private Member's Bill in the name of Mr Gawne was actually to provide for a more robust and timely system. Well, I think, unfortunately when you read the Bill, that will not be the case.

**The Acting President:** Mr Downie.

**Mr Downie:** Mr Acting President, you and the rest of Council will be aware that I intend to move a number of amendments. I think this would be a good time just to elaborate on the reasons for the amendments.

When the Council debated the First Reading last week, a number of Hon. Members were concerned about the timing. I see we have covered some of that background again here this afternoon.

As I see it, the summary of the problem is that, under the existing process, when Hon. Members go out of office at the end of February, an election is held at the next Keys sitting – that is the first Keys sitting of March. This is set out in section 8 of the Isle of Man Constitution Amendment Act 1919, which states:

'Within fourteen days from the date on which any members elected to the Council by the House go out of office pursuant to section 10 of this Act, the House shall elect [...] such number of persons as are equivalent to the number of Members who have so gone out of office...'

It is therefore possible to fill the vacant seats promptly. This means that the business of the Council and of Tynwald Court, and indeed of the Government of the Isle of Man, can go on relatively seamlessly.

The House of Keys may not in fact fill all the seats at their first sitting in March, but the important point is that, under the legislation, they can do so. There is nothing to prevent a seamless transition.

Under the Bill as coming to us from the House of Keys, a delay is built in. This is because it says in clause 1(3):

'(1B) As soon as practicable after any members elected to the Council by the Keys go out of office or a vacancy otherwise occurs the Speaker shall invite proposals from the members of the Keys.

(1C) Proposals may be made at any time during the period of one month immediately following the invitation made by the Speaker.'

And:

'(1E) The sitting of the Keys at which the election to the Council is held shall be not less than 14 days after the end of the period for the making of the proposals.'

Mr Acting President, I do not have a problem with the Keys giving themselves a month to make proposals and 14 days to consider those proposals; but I do not see why they should wait until Hon. Members have gone out of office and seats have become vacant before they even start that six-week process. This seems to me to be at odds with the stated purpose of the Bill, which is to avoid delay of filling these seats.

Just to give you an explanation of the amendments I am proposing, when we get to that particular part: the amendments which have been circulated in my name change the Bill so that the process would start one month and 14 days or a longer period *in advance* of Hon. Members going out of office. The amendments to do this are by adjusting new subsections (1A) and (1B) to cater specifically for the circumstances where a vacancy comes up at the end of a Member's five-year term. This is what is meant by expression 'going out of office in accordance with section 10 of the principal Act'.

Under new subsection (1B)(b), it would still be possible to start the process off after a Member has gone out of office, if a seat becomes vacant for another reason. These other reasons are set out in sections 13, 18 and 26 of the Isle of Man Constitution Amendment Act 1919 and they include, for example: where a Member ceases to be a resident in the Isle of Man; is bankrupt or insolvent; suffers from a mental disorder; becomes a member of a local authority; is absent for sittings for six months; or resigns within one month's notice.

Just on the subject of the resignation provision, the mover of the Bill in the other place, Mr Gawne, has said that even when someone resigns with one month's notice, he would see no reason to start the election process before that month was finished. He would feel that it would be appropriate to commence the process after the Member went out of office. This is what would happen under my amendments.

Subsection (1F) in the amendments is there to cover the position where the Speaker decides to use the longer time

period leading up to the election, longer than the one month and 14 days he has to allow. Subsection (1F) means that he could not run the election itself until the seats were actually vacant. This is necessary because it avoids the possibility of a seat in this Council being occupied by two persons at the same time!

Handling the 2008 elections – and that is something that... there are Members here who are aware of what is coming up – I would like to say a word about how this may unfold between now and next February, when four seats, including your own, Mr Acting President, fall vacant.

If it is the Council's will to amend the Bill, then the Bill will have to go back to the other place for them to consider the amendments, assuming the two branches can reach agreement. The Bill will then be sent to the Ministry of Justice to advise Her Majesty as to whether Royal Assent can be given.

If my amendments are agreed by the Council and by the other place, then we will need Royal Assent by the January sitting of Tynwald, otherwise we will not be able to use the process in this Bill for the coming set of elections. If my amendments were agreed by the two branches and Royal Assent did not come in time, to be announced at the January sitting of Tynwald, the existing process would stand and would have to be followed. I do not think it would be sensible to try and bring this Bill into effect until after those four vacancies have been filled.

It could, however, be brought into effect and could be used when four seats fall vacant at the end of February 2010 or for any vacancies arising before that, unless of course, there is a move for a directly elected Council before that.

Mr Acting President, if we take a step back from the immediate question of February 2008, the amendments that I am going to propose make what I believe is a simple and constructive improvement to the Bill. The Bill requires a six-week process before the Keys hold an election. As drafted, the six weeks start after the seats become vacant. The amendment would start the clock from six weeks *before* the seats become vacant, and this would make possible a seamless transition which is in the interests of Council, Tynwald Court, the Government and the people of the Isle of Man.

Thank you.

**The Acting President:** Mr Waft.

**Mr Waft:** Mr Acting President, I take on board all that Members have said with regard to this. The thing is we are where we are, and if we want to progress this Bill in any shape or form, we need the amendments to determine the correct way forward in the shortest space of time – especially in the absence of the Lord Bishop, with Tynwald meeting.

So I think if we press on with this, make the amendments and then send it back down, it is the best way forward, because we will get into too many hypothetical arguments, if we do not carry it through.

**Mr Butt:** Thank you, Mr Acting President.

The dates of people leaving or the seats falling vacant in the Legislative Council are set in stone. They are known years ahead. It would make eminent sense to try to pre-empt those vacancies by progressing matters before they actually occur, although the other place have decided otherwise. I wonder, have they perhaps overlooked that fact by mistake? Perhaps not; perhaps it is deliberate.

But I would like to make the point that we should let other people know that we are not in any way, by amending this, if we do amend, trying to obstruct this Bill or delay anything in any way, shape or form. It is purely to make it more workable because the intention of the original mover, I am sure, was to streamline the process. That was his main intention, especially in terms of the actual voting on the day.

So our amendments, if they go through – or Mr Downie's amendments, if they should go through – should bring it back to a streamlined version again. I think it must be emphasised that this Council is not in any way trying to obstruct the progress of this Bill, because if it seemed to be obstructive, it is not meant to be by, I am sure, any Member of this Council.

**The Acting President:** Mr Crowe.

**Mr Crowe:** Thank you, Mr Acting President.

The only reservation I have concerning the amendments is whether it would appear that we are giving an unfair advantage to sitting Members. I think, with sitting Members in post and then, six weeks before, asking for nominations, would it lead to other nominations to compete for those positions?

I am just thinking, would the status quo be cemented in place, rather than have elections of a number of candidates for the different vacancies that would be available. That is my only reservation.

I am sure the House of Keys must have had some reasoning behind this delay in the process.

**Mrs Crowe:** Mr Acting President, I am sorry –

**The Acting President:** We are in committee, so –

**Mrs Crowe:** And we are not sitting in private which was the criticism the last time we sat in committee considering a Constitution Bill. But I think it is for that ease of being able to speak that –

**The Acting President:** Let me be brutal: I said we are in committee; we are not in committee until we go into clauses, so really –

**Mrs Crowe:** It was just really a matter of clarification, really, because I think what my hon. colleague Mr Butt said is there is no way – in the same way as there was not with the last Constitution Bill – that Council want to be seen to be doing anything than be other than helpful to the House of Keys, when we thought that the original intention of the mover, Mr Gawne, was to simplify and speed up or provide a timely election for Council.

My query is that – I have just heard what the hon. mover of the amendment has mentioned about how it would speed up the process – maybe it should be clarified in clauses, but at the present time, am I right to understand that, after the first initial election, there would then be another six-week gap before another election could take place?

**Mrs Christian:** Yes.

**The Acting President:** If there were vacancies, yes.

**Mrs Crowe:** So when I made the comment about

building in delay, we are talking about 6, 12 or 18 weeks' delay maybe, *at least*, before a Council might be elected, and I feel certain that was not the intention of the mover of the original Bill.

**The Acting President:** Mr Turner to reply.

**Mr Turner:** Thank you, Mr Acting President.

I would like to thank my hon. colleagues for their contribution to the debate on this Second Reading.

Mrs Christian raised a few points and picked up on something I said about the way forward being clear. If I could just clarify, what I meant is it was clear that we are now the body which has to deal with this, as our request for a conference was turned down.

I explained in the First Reading that the original Bill – the Private Member's Bill – was amended at the Third Reading stage in another place, which did quite drastically change the whole ethos of the original Bill. I think much focus was put on that particular element of the Bill, as opposed to the timetable. I would think that we are looking at part of this Bill that has simply been overlooked, dare I say it.

Mrs Crowe says it builds in a delay: it most certainly does. I concur with the points raised by Mr Downie in his amendments that should address that delay, because I am sure it was not the intention of the mover in another place to have a delay built in. In fact, his intention was quite the opposite.

Mr Downie did make reference to the timetable. As we know, the Bill came about through quite a bit of media hype, I think. There is a lot of this built up in the media about the inability to elect a Legislative Council, which I think was slightly unfair, when the Keys had a job to elect people who it considered were the right candidates. A procedure like that should not be rushed and they should be given the ample opportunity to do it.

However, we are where we are today, and it seems inevitable that we are going to have to consider these amendments as put down by my hon. colleagues.

Mr Butt's point I think is valid and should remain firmly on the record that Council's possible amendments to this Bill should not be seen as being obstructive in any form. Indeed, that was the original intention of the conference to discuss those matters and I hope that to the outside world, when they are possibly reading the *Hansard* on this debate, it does not seem that we are, in fact, meddling in our own destiny here. We have been presented with a Bill which we have had to now deal with accordingly. I hope that it is seen that these changes are for the right reasons.

Mr Crowe mentioned sitting Members having an advantage. Well, if the proposals that are before us go through, then there will be ample opportunity for anyone to be nominated and campaign as to why they should be appointed to that position. So, I do not feel that sitting Members would have any more advantage than anybody here who is bringing potential new blood to the party.

I thank Hon. Members for their contribution and with that, I beg to move the Second Reading of this Bill.

**The Acting President:** Thank you, Hon. Member. Hon. Members, before us we have the Constitution (Amendment) Bill 2007 for its Second Reading. I will put that to the Council now. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

## Constitution (Amendment) Bill Clauses considered

**The Acting President:** We will take clause 1, Mr Turner, please.

**Mr Turner:** Mr Acting President, the Constitution (Amendment) Bill 2007, clauses: the Bill, as I mentioned earlier, repeals and replaces parts of the Isle of Man Constitution (Elections to Council) Act 1971.

Clause 1(1) provides that the Bill proceeds by detailed amendment of the provisions of section 2 of the Isle of Man Constitution (Elections to Council) Act 1971, which is the statute principally governing the procedure for Council elections.

Clause 1(2) paves the way for a repeal of the present basic structure of the present basic of the elections to Council. Standing Orders in the Keys may supplement what is left open in the Bill.

Clause 1(3) and (4) abolish the mechanism by which nominations have to be made to the Secretary of the Keys 10 days before the relevant sitting, but leave intact the requirement for a successful candidate to receive at least 13 votes in order to be elected to the Council.

Clause 1(3): (1B) to (1E) substitute a new timetable requiring nominations on the basis of the same qualifications to be proposed during the period of one month after the Speaker calls for them and for the election to be held by the House no sooner than 14 days later.

Clause 1(3): (1F) to (1H) require the election then held by the Keys to be completed at one sitting and it allows there to be, subject to any Standing Orders made to the contrary, more than two rounds of voting. Thus the present restriction to two rounds with the requirement for the candidate to obtain a majority of those present and voting on the first round is abolished. The present freedom not to vote at all remains.

Clause 1(3): (1I) adds a further opportunity to make nominations at an otherwise unsuccessful election sitting. If no candidate has been elected, new nominations may be made from the floor.

If the additional opportunity has still not produced a result, in clause 1(3), (1J) provides for the whole process to start again, with the Speaker calling for nominations within a month.

Clause 1(5) removes the basic obligation to fill vacancies in the Council within 14 days of an MLC going out of office because that timescale is no longer appropriate.

With that being the description of the first clause, I beg to move that clause 1 stand part of the Bill.

**The Acting President:** Seconder? Mrs Crowe.

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

**The Acting President:** Any debate?

**Mrs Christian:** Mr Acting President, all I would say is this clause in itself is set out in such a complicated way, it may be quite difficult to go through all the issues, because different parts are subject to amendment.

But if I may start by just going through it, if I can, I hope logically, to say which bits I can support and which bits I cannot, because I very strongly feel that the Bill as it

stands, and the clause in particular in terms of time frame, is just nonsensical. To have a gap of one month and then two weeks before you even begin the election process is an unnecessary waste of time.

I am not going to refer to the elections next February. I think we have got to keep in mind the principle of the process and not get too hung up on what happens then. We have got a process already: whether we are using the existing one, which has its defects, or whether we are using an amended new one, I think should not be concerning us too greatly at this time.

So, looking at clause 1, which starts off by saying that we are substituting part of the Election to Councils Act 1971, in subclause (2):

‘For subsection (2)(1) substitute –

“(1) Every election by the House under section 8 of the principal Act of a person or persons to serve as a member [...] of the Council shall be conducted in accordance with this section.”

It then goes on to say:

“But Standing Orders of the Keys may provide for the practice and procedure to be adopted in such elections, and shall have effect in respect of any circumstances arising for which this section does not make provision.”

Now that is belt and braces, but it is not a change.

I had a look at the original Act and that has provision in it, although this proposes to repeal it. It did say:

‘Notwithstanding anything which may from time to time be contained in Standing Orders...’

the procedure shall be as follows. Then it went on to say:

‘Provided that in respect of any circumstances arising for which this section does not make provision such Standing Orders shall have effect.’

So although it is presented in a slightly different way, it is not a change.

My only concern is that the new wording seems to imply that there could be new Standing Orders if they get into a pickle during the course of the election. Now if they do, they would have to suspend the election process and, if necessary, make provision for new Standing Orders.

In my reading of the existing Act, I think that the intention... that may be the case, but they do have procedural Standing Orders for elections which they could fall back on.

So whilst this does read as though Standing Orders may overtake statute law, it is not actually new. So I am not too concerned about that.

Moving on to subsection (3): ‘For section 2(1A) substitute –’ the following. We come into the procedures now for election, and I know my hon. colleague has some amendments to move, which I will be on the whole supporting. But we will come to a bit where I will be seeking to do something slightly different and I will explain why in a moment.

In subsection (3):

‘For 2(1A) substitute –

“(1A) Where there is a vacancy to be filled in the elected members of the Council, members of the Keys may propose persons to be candidates for election to the Council.”

I have no problem with that. Forgive me if I am going through this laboriously, but I feel I need to understand every line –

**Mrs Crowe:** You might be the only person that does!

**Mrs Christian:** So I do not think there is a problem with substituting (1A). They can nominate people to be elected to Council.

‘(1B) As soon as practicable after any members elected to the Council by the Keys go out of office or a vacancy otherwise occurs...’

and I had better make sure I am speaking to the Bill as it has been sent to us – they have amended it a bit further on –

‘the Speaker shall invite proposals...’

We know as the hon. mover has said, we know exactly when that is going to be and you could say he could invite proposals when they have gone out of office, but there has been precedent for doing it before, and I do not think it has presented any difficulties.

So I do not think it is necessary to wait until Members go out of office to seek nominations, particularly in the light of the following when it is proposed that there shall be a period of one month for nominations. I think we have all talked about that today and find that that is unacceptably long, if it is going to start at the date, the day after we go out of office.

In (1D): proposals shall be in writing and delivered to the Secretary – that is perfectly acceptable – setting out the experience of the candidates and why they are reasonable people to be nominated. That is a matter for the Keys to determine and I am content that they should do so.

But then we come to (1E):

‘The sitting of the Keys at which the election to Council is held shall be not less than 14 days after the end of the period for the making of the proposals.’

I wonder why they need 14 days to consider the proposals, particularly if this is going to take it to six weeks after the date when the vacancies occur. If they want 14 days to consider them, fine, that is for them to determine; but I think that we need to bring it more tightly in line with the date when elections should begin and that should be as close as possible to the date when the vacancies occur. (**Mr Downie:** Absolutely.)

So it is to that section that I will be proposing an amendment, but it will hang also on the back of amendments proposed by my hon. colleague.

The concern I have here is that this proposal suggests that there is a one-month nomination period, a 14-day deliberation period, if I can call it that, and then it says an election shall be held not less than 14 days after that.

It just says you have got to wait 14 days after nomination before you have an election, but it does not say when they have got to start that process.

**Mrs Crowe:** No, because Tynwald could interfere.

**Mrs Christian:** I believe that they should have that election within a week of that 14-day deliberation period.

Now, specifically in relation to the normal retirement

pattern for Members, we know that they will be... and again this ties in with the proposal to be moved by my hon. colleague, and I will support his amendment – I will move that there be a month nomination period before Members go out of office, a 14-day deliberation period before we go out of office, and what I am proposing is that the election should then take place within the next week.

I cannot see that that should create any problem. It does not clash with Tynwald. It is the first week in March, and we know that sittings are on the third Tuesday, so, unless there is a circumstance change where elections take place at some different time, it would not interfere with Tynwald.

This proposal... I would not expect – and I will come to it, because it is dealt with later – the same procedure to be applied particularly if someone died in the middle of a recess or decided to retire or was ill or something. That is covered by an amendment proposed by Mr Downie later on, and there is a provision in his amendment for that election to be held when practicable. I consider that it would be accepted as being practicable if you started the nomination process at a time which brought you into a normal sitting period of the election.

So if I may long-windedly continue, (1F) deals with:

‘Once the Keys have commenced the business of electing members to the Council then, subject to subsection (1H), that business must be completed on that day and cannot be adjourned to a sitting of the Keys on a later date.’

Here we are slightly coming into some area of difficulty, perhaps, depending on how the amendments go. I can see good reason for that, particularly as it is proposed that there will be an ability to nominate from the floor. I would be concerned that if, having had nominations from the floor, you still have not got an answer, you could not adjourn to the next sitting.

So I am frankly not too sure about this one – and I am not sure I have got an amendment ready either, Mr Acting President! But that one, I think, may hinge on how we go with the other amendments.

In terms of (1G):

‘Each member of the Keys shall, at each stage of an election to Council’

– and they have amended this in another place –

‘(a) vote for any one or more candidates up to the number of vacancies to be filled...’

That is a determination of the Keys, and I know the original mover of the Bill was trying to force people to vote. I could not really have supported that principle anyway, so I am happy enough to accept the amended version as it is before us today on that subclause; or indeed, they can vote for no candidates.

In (1H), if a voting paper does not comply – I am content to accept that. When I read this piece of legislation, I was looking for the bit that says you have got to have 13 votes. In fact, it is the only clause that is left in the 1971 Bill, other than the appointed day and a definition of the principal Act! So that is covered: we are still talking about 13 votes being required.

Now in (1I):

‘If the Keys do not elect any person who has been proposed for membership of the Council [...], any member of the Keys may then propose –

(a) another member of the Keys for election [...];

(b) a member of the Council whose going out of office has created a vacancy that has caused the election to be held.’

This, although it is not explicitly saying so, I think is meant to imply that you can have nominations from the floor from within the Keys or of a Council Member who... having said they are going to retire, I am not quite sure why they would be persuaded to come back again! But this is what it seems to allow.

I just want clarification from the mover that it is intended that there is an election there and then, and that there are no delaying or consideration periods attached to that proposal.

However, I will be supporting the amendment which has been circulated by my hon. colleague, Mr Downie, to make that less restrictive, in that it would allow nominations from the floor not only of the people specified here but of any nomination.

In (1J):

‘If a vacancy remains in the Council after the members have been given the opportunity to make proposals [from the floor], the Speaker shall invite the members of the Keys to propose persons to be candidates for election...’

and then we seem to go back to the original six-week proposal.

I think they should have to stay there until they have elected somebody. This is why I feel they should be taking nominations on the floor until they have elected the Council Members. That is why I am concerned that there may be a difficulty, if they are not allowed to adjourn to another sitting of the House, if they do not conclude it in one day.

We will see, perhaps, how we go with the amendments here. But I do have some concern about them having an ability to go into a whole six-week process, which is worse than the current position.

Sections 2(3) and (5) will cease to have effect – that seems reasonable enough.

Then we amend the Constitution Amendment Act by making a deletion, which I think is technically to make these things tie together.

I am sorry to be so long-winded about it, Mr Acting President, but there are things in here which I cannot accept. I am proposing – and I will move it now – an amendment:

*Clause 1*

*Page 2, line 29 –*

*After ‘not less than 14 days’ insert ‘and not more than 21 days’.*

So, they have got to start the election process within a week of the end of their deliberation period, whenever that may be. I do hope it will be when the amendment proposed by Mr Downie says it will be.

So there we are: those are my thoughts on that clause.

**The Acting President:** Have we got a seconder?

**Mr Crowe:** Mr Acting President, before you proceed, I am not sure if Mrs Christian was looking at the amendments –

**Mr Turner:** Yes, I was going to say that.

**Mr Waft:** – to (1I) to (1K). I think you were reading the Bill.

**Mr Turner:** This is page 3, lines 8 to 21.

**Mrs Christian:** Yes, sorry, they have been amended. If you want my comments on that, I will happily give them to you! I am sorry I did not...

My comments are the same. My comments are not altered by the fact that if I was reading off the Green Bill, the sense of what I said will not be altered by reading their amendments, because it is still, as I said it takes them back to that original four-plus-two principle.

Yes it does, I think. But my only other query was does that mean that they continue with nominations? I do not think they continue with nominations from the floor in that case, do they?

**Mr Crowe:** Mr Acting President, I was not going to say –

**The Acting President:** Before I call you, Mr Crowe, Mrs Christian has moved an amendment, so let us get the amendment on the floor. Is anybody prepared to second?

**Mr Waft:** I will second it.

**The Acting President:** Mr Waft has seconded Mrs Christian's amendment, so the amendment is before the Council. Mr Crowe.

**Mr Crowe:** Mr Acting President, yes, just to my mind, reading this whole Bill – and I will just concentrate on this business about the intention of the mover in the House of Keys – it seemed to be that he wanted the whole thing done and dusted in a six-week period. As far as I can see, ignoring the amendments that are coming forward, the intention was that, six weeks after the existing Legislative Council Members go out of office, there will be an election.

I think this business of voting from the floor comes in the new subclause (1I) agreed by the House of Keys, which says:

'If the Keys do not elect any person who has been proposed for membership of the Council under subsection (1D), any member of the Keys may then propose any other person for election to the Council.'

To my mind, that is voting or nominating from the floor; and (1J) seems to me to read, in my mind, that:

'A proposal under subsection (II)'

– and this is the important bit that, maybe, we need some interpretation on –

'shall be treated as a proposal made in accordance with subsections (1B)...'

It sounds as though if nobody is elected on the first ballot they call for nominations from the floor and those nominations are treated as being –

**Mrs Christian:** Yes, instant: they have been through the process.

**Mr Crowe:** – that they fulfil all the conditions (1B) to (1D). Now that is the intention then –

**Mr Downie:** You are ready to vote.

**Mr Crowe:** – that it would be all voted on and completed in the day – (**Mrs Christian:** Well, no...) subject to a saving clause, I think, that if it failed on the day, then it goes back to the six weeks.

**The Acting President:** Mrs Christian, you wanted to come in.

**Mrs Christian:** I think we need to be clear about this issue, and I apologised before for not reading clearly the amended version that came to us, rather than the original. But as I read this, the (1J) proposal which was accepted, effectively means that nominations from the floor – and it was another place that said any nomination, not just Keys or Council Members – shall be treated as though they have gone through that four-week and two-week process (**Mr Crowe:** Yes.), but if they do not succeed then in electing anybody, you are, I think, under... well, are you back to (1K)?

'An invitation under subsection (1J) shall be treated as an invitation...'

I am not clear how they proceed. It is not entirely clear – well, not to me, anyway. Where do they go, if they do not get an election at that stage?

**The Acting President:** You pose the question and perhaps the mover may be able to answer when he sums up.

**Mrs Christian:** Perhaps the mover can answer. Okay.

**The Acting President:** Mr Downie.

**Mr Downie:** Yes, I would like to take this opportunity to move the amendment I prepared for clause 1. I think the reason for this has been well discussed, but basically the amendments which have been circulated in my name change the Bill so that the process would start one month and 14 days or a longer period in advance of the Hon. Members going out of office.

The amendments do this by adjusting new subsections (1A) and (1B) to cater specifically for the circumstances when a vacancy comes up at the end of a Member's five-year term, and this is meant by the expression of 'going out of office in accords with section 10 of the principal Act'.

So I think the more we go into this Bill, the more we realise that, in my view, it was not dealt with in a correct manner in the other place. It has been rushed through and if I had a suspicious mind, I would be thinking that it was put through in this form, so it would not be available for use in February. But that is just my suspicious mind.

There again, it has been approved by the Keys and it is up to us now to put it into a workable piece of legislation, so that it can stand us in good stead in the future.

So I would like to formally move the amendments to clause 1 which have been circulated in my name:

*Clause 1*  
*Page 2, lines 10 to 12 –*  
*For subsection (1A) substitute –*

*'(1A) Where there is, or there is to be, a vacancy to be filled in the elected members of the Council, members of the Keys may, upon being invited to do so by the Speaker, propose persons to be candidates for election to the Council.'*

Page 2, lines 13 to 16 –

For subsection (1B) substitute –

*'(1B) The Speaker shall invite members of the Keys to propose persons to be candidates for election to the Council –*

*(a) not less than one month and 14 days before an elected member of the Council goes out of office in accordance with section 10 of the principal Act (retirement);*

*(b) as soon as practicable after an elected member of the Council goes out of office, or a vacancy otherwise occurs, for any other reason.'*

Page 2, line 28 –

At the beginning of subsection (1E) insert *'Subject to subsection (1F).'*

Page 2, line 30 –

After subsection (1E) insert –

*'(1F) An election to the Council shall not be held until an elected member of the Council has gone out of office or there is otherwise a vacancy to be filled in the elected members of the Council.'*

Page 2, line 31 –

For *'(1F)'* substitute *'(1G)'*.

Page 2, line 33 –

For *'(1H)'* substitute *'(II)'*.

Page 2, line 36 –

For *'(1G)'* substitute *'(1H)'*.

Page 3, line 2 –

For *'(1H)'* substitute *'(II)'*.

Page 3, line 3 –

For *'(1G)'* substitute *'(1H)'*.

Page 3, lines 5 to 18 (as amended by Keys) –

For –

*'(II)'* substitute *'(1J)'* whenever occurring;

*'(1J)'* substitute *'(1K)'*;

*'(1F)'* substitute *'(1G)'*.

**The Acting President:** Members are quite clear, they have got the amendment before them. Have we a seconder for that amendment?

**Mrs Christian:** Sorry, are we are talking about Mr Downie's amendment?

**The Acting President:** Mr Downie's amendment.

**Mrs Christian:** The whole amendments.

**The Acting President:** The whole group.

**Mrs Christian:** Well, if I had not moved one of my own, I would certainly have seconded it.

**Mrs Crowe:** I have seconded the Bill. I will second the amendment, if...

**Mr Downie:** George seconded them.

**Mrs Christian:** Has he? Oh, sorry! I didn't hear. *(Interjection by Mr Waft)*

**The Acting President:** We have a seconder. Right.

Now just for clarity and for housekeeping, can I suggest that I am not going to take them in the order that they were submitted. When we come to vote on these amendments, I will take Mr Downie's amendment first and then Mrs Christian's second. Okay? Just for clarity's sake.

Mr Butt.

**Mr Butt:** Thank you, Mr Acting President.

I just wonder: are we certain we are going the right way on this? We have concentrated on the timing and we have said, and I have said, that maybe the other House has overlooked the timing issue, and we are now trying to correct that, to make sure there is a more streamlined method.

Courtesy of my colleague I have had a quick scan through the *Hansards* and they do mention several times the word 'streamlined', bringing things through quicker. I think the mover said 'we want to draw the candidates out at an early stage'. Those sorts of phrases are in the debates – which are not lengthy, I have to say.

But I notice on the back of the Bill, I think it is called the long title. Mr Gawne presumably has authorised this. It does say that the nomination should be during a period of one month thereafter, so it does look as if perhaps that was the intention.

It is a shame that we did not have a conference with the other place, to see whether that was the intention or not. I wonder: are we perhaps going to take away what the original intention was, that they really did want all these procedures to take place once the vacancies had occurred?

**Mrs Christian:** I think if we read the long title, Mr Acting President, it is clear if you read the bit before that, it says: 'when there is a vacancy in the Legislative Council to be filled' – i.e. we have gone out of office –

*'an invitation to nominate candidates during a period of one month thereafter...'*

So I think it is clear and, in speaking to the mover of the Bill in another place, that was his intention.

**Mr Butt:** That was his intention. That is my cautionary: if that was his intention and the Keys put it though with that intention, I wonder if perhaps should we be more cautious in what we are trying to achieve today.

**Mr Crowe:** Mr Acting President.

**The Acting President:** Mr Crowe.

**Mr Crowe:** I would agree with Mr Butt. I think what we might do is totally unwind the whole object of the Bill as drafted and approved by the House of Keys. I think that there is a danger that, by reversing what they intended, we will end up with a piece of legislation that might not achieve what they are trying to achieve.

I would be interested to know if the mover in the House of Keys is happy with these amendments that Mr Downie is moving.

**The Acting President:** Mrs Christian.

**Mrs Christian:** Mr Acting President, we are in committee, so I would respond to the Hon. Member, Mr Crowe, by saying that we are not reversing; we are simply dove-tailing in a more timely manner the proposals of the Member in another place – the mover of the original Bill – with the dissolution of the term of office of certain Council Members. We are sticking to the same timetable with, if my amendment is accepted, one tiny addition in terms of timeframe. We are simply starting the process before we go out of office.

It still gives the Members in another place a month for nominations, a fortnight for consideration. So I do not think we are unravelling his principles to any great degree.

**The Acting President:** It is the timing issue that Mrs Christian is emphasising. Instead of starting when the date of annulment, if you like, of the term of office, we are bringing it forward six weeks, which has been practised in the past. That is the only point I am making to the Hon. Member.

Mrs Crowe.

**Mrs Crowe:** It was actually Mr Butt's drawing my attention to the long title which is something which one often really does not pay a great deal of attention to. But it does quite clearly state in there that:

'an invitation to nominate candidates during a period of one month thereafter shall be addressed [by] the House of Keys, following which the vacancy shall be filled at a single sitting [...] held no sooner than two weeks later'.

So we have got ourselves really quite hung up on having one month – four weeks – for nomination and then two weeks' consideration. But that actually does not say that in the long title. It actually says the election is to take place no sooner than two weeks later, so the election actually could take place, presumably... oh, that makes the full six weeks. Yes, it does. Yes, I am sorry about that.

Sorry, I thought that reading that, I was thinking about the election taking place perhaps... We cannot streamline that six weeks, no matter how hard we try!

**The Acting President:** One at a time. Mr Waft.

**Mr Waft:** I did look at the long title. I was concerned from time to time at the way the debate was going; but at the same time, I agree with the Hon. Member, Mrs Christian. We cannot start to unpick this too much or you will end up with so many pieces and so many amendments, it will not be worth the paper it is written on.

I think the amendments that we have got before us at least try to streamline the Bill to the best of our ability from what we have here; otherwise it is a new Bill. I do not think that is the intention, especially with the time involvement that we have here.

I propose we go on with the amendments and vote or not vote accordingly.

**The Acting President:** It is not a question of... Let us

make it quite clear. We are on the Second Reading stage of this Bill to which we have two amendments. Nothing is withdrawn, nothing is added, as far as I am concerned – (**Mrs Christian:** Clause 1.) Clause 1, I beg your pardon, of the Bill.

So we are dealing with clause 1 of this Bill at this moment, to which we have two amendments, and as far as I am concerned, there is nothing added, nothing taken away. We are in this debating position.

Right. Any other contribution to the debate? (**Mr Turner:** Yes.) You want to sum up now then?

**Mr Turner:** Well, I was just going to answer Mrs Christian's –

**The Acting President:** You can answer, when you summarise. You can speak to the amendment.

**Mr Turner:** I am perfectly happy with those amendments.

**The Acting President:** Okay. Mrs Christian

**Mrs Christian:** May I speak to Mr Downie's amendment?

**The Acting President:** You may.

**Mrs Christian:** So far as the amendment to subclause (1A) is concerned, I think that is a very fundamental and essential part of our proposals to change the Bill – not that we are changing the timeframe.

The Speaker is enabled here to go for nominations before elected Members go out of office. That is essential if we are going to accept the timeframe that is being proposed, so I certainly will be supporting that.

With regard to the proposal to change subsection (1B), the Hon. Member is accepting the timetable proposed in another place – i.e. one month and 14 days – which, to me, is a long period of time, but if that is what they want, I would not argue with it. As the Hon. Member says, we are not going to unpick everything that they are proposing, because we could go and do something different. So, I am content with that as well.

It does allow them 14 days of consideration after they have got all their nomination papers in. The Member, in his amendment, makes a distinction here between Members going out of office on the regular cycle, in subclause (a) and makes a different provision in subclause (b), which is what I referred to, when I was speaking, that if there is another reason for Members going out of office, then it is really a matter for the Speaker to deal with the election in a timely manner, in a practicable manner, according to when sittings may be. I think that is flexible enough, and it does allow them not to have to call sittings in the middle of a recess.

In respect of page 2, line 28 – and the mover has not said why he is doing this; perhaps he will elucidate a little bit – it is proposed that, in subsection (1E), we add the words 'Subject to subsection (1F)'. Then there is a proposal for a new (1F), which is that:

'An election to the Council shall not be held until an elected member of the Council has gone out of office or there is otherwise a vacancy to be filled in the elected members of the Council.'

I am not entirely clear why... I can understand why he is saying it. He is saying it is so that there are not two people in one seat. But can that happen? The only circumstances where I can think that could happen, with this proviso of one month and 14 days, is if the Speaker calls for nominations very, very early on, indeed, there is a leap year which takes us past 28th February or something! Perhaps we could have an explanation as to why this has to be stated.

Other than that, the consequential amendments I am quite happy to support.

**The Acting President:** Yes, okay. Mr Downie.

**Mr Downie:** The only thing I would say was when I took advice on this, following our meeting last week, this was suggested as a safeguard, really, to prevent this happening. It could happen and cause embarrassment, but it makes it quite clear in the legislation that you cannot have two people in the one seat.

**The Acting President:** Does any other Member wish to speak to the first clause or to the amendments?

**Mr Crowe:** Could I have confirmation that the mover of the Bill in the House of Keys is comfortable with these amendments?

**The Acting President:** I am going to call –

**Mr Downie:** We have got that. I have got a note here somewhere that says he is content. As far as I am concerned, Mr Gawne has been consulted on my amendments, but it is a Bill from all the Keys and they wanted to handle it this way. That is it.

**The Acting President:** Right.

**Mrs Christian:** Can I comment on my amendment? (**The Acting President:** Yes.) I have not spoken to the mover in another place about my amendment, but mine is, in a sense, belt and braces as well, because the Bill at the moment says when they cannot hold an election, but it does not say that they have got to get on with it. I think that we should be saying that they have to get on with it.

**The Acting President:** Okay, the mover.

**Mr Turner:** Thank you, Mr Acting President.

Where do you start with all of that? Just very briefly, then, Mr Crowe was asking for reassurance there. It was a little bit disappointing that the requested conference did not happen, as that was the opportunity indicated... or Mr Downie indicated that the mover of the Bill in another place had said it was the will of the Keys. Well, obviously, their opportunity would have been through that channel to discuss these matters, but we are where we are now. Mr Downie has indicated that the mover of the Bill was quite happy with these proposed amendments.

I do not really think I can add any more, other than one point my hon. colleague, Mrs Christian mentioned, and that is, if they fail to elect a person, where do they go from there? Well, reading the debate and the amended part of the Bill which they put through at the Third Reading, it seems that they were of the opinion that they kept nominating names

until the place was filled – which, after quite a stringent process, does appear rather ‘lastminute.com’, I suppose you could say, to finalise the process! (*Laughter*) However, that is how it ended up.

So on that basis, I think that is what they intend to do. Hopefully, the new procedure, they will elect and the ultimate safety net would be that they will just keep nominating, out of the 24 Members there, names. Surely, they would find somebody suitable.

So that was really the only comment I have, having read through the debate, so –

**The Acting President:** You are moving clause 1.

**Mr Turner:** I beg to move clause 1.

**The Acting President:** Thank you then. Hon. Members, we have had a good debate on that.

I just want to make one comment about the Keys and our request for a conference. It is for the House of Keys to decide whether they should have taken up the offer or not. They, on this occasion, chose not to. It is not for us to say that they were right or they were wrong. That is their right, and that is the only comment that I have on that.

Can I also now say, I am going to put clause 1 of the Constitution (Amendment) Bill 2007 be put to the Council. Those in favour, please say aye; and to that, I have...

No, I have got it out of sync. I knew I would! We have got to put the amendments, before we put the main proposition. I told you at the start of this session that you would have to have a little bit of forbearance: this is part of that forbearance!

To that motion of the first clause, we have two amendments. I am putting the amendment moved by Mr Downie. You all know which one we are going to do; I am not going to recite it chapter and verse. I take it you have seen and read and understood the amendment. I am putting Mr Downie’s amendment first. All those in favour of the amendment standing in the name of Mr Downie, please say aye; against, no. The ayes have it. The ayes have it.

To that amendment, we have an amendment standing in the name of Mrs Christian. I can afford to read that, because it is quite short:

‘Page 2, line 29 –  
After “not less than 14 days” insert “and not more than 21 days”.’

As Mrs Christian has explained, it is a belt and braces exercise. I therefore move the amendment standing in Mrs Christian’s name, which is in the possession of all Members. Those in favour of that amendment, say aye; against, no. The ayes have it. The ayes have it.

Now I put the main proposition of clause 1 as amended by Mr Downie and Mrs Christian. Hon. Members are quite clear in their minds what they are voting for: it is the amended clause 1. Those in favour of clause 1 as amended, say aye; against, no. The ayes have it. The ayes have it.

Clause 2, sir.

**Mr Turner:** Clause 2 provides the short title to the Bill. The Act will come into effect when Royal Assent is announced in Tynwald.

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

**The Acting President:** Secunder?

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

**The Acting President:** Mr Waft. Anybody wish to speak to the – ?

**Mr Downie:** Yes, Mr Acting President. I have circulated –

**Mrs Christian:** We are on clause 2.

**Mr Downie:** Yes, but the clause... sorry, is this not cited as the Constitution (Amendment) Bill?

**Mrs Christian:** It is the short title.

**Mr Downie:** Yes. I thought this might be an appropriate time... I have been advised by Council that we need an amendment to the long title. As this is the last clause and it relates to the Constitution (Amendment) Act –

**The Acting President:** You can do it on the Third Reading.

**Mr Downie:** But this would finish it off now, surely?

**The Acting President:** Would it? Right, okay.

**Mr Downie:** There are two versions of this. What you should have in front of you is a copy that says 'Revised' on the top:

*In the long title, delete –  
'during a period of one month thereafter'.*

*In the long title, delete –  
'held no sooner than two weeks later'.*

That is the version that you should have, and that makes everything correct then.

**Mrs Christian:** Can I just – ? I do not know whether it has been seconded or not.

**Mr Waft:** I will second that.

**Mrs Christian:** Mr Acting President, can I just ask the mover of this amendment why he wants... I can understand why he wants to delete 'during a period of one month thereafter'.

Let me just read it to be clear, because it does say, when there is a vacancy –

**The Acting President:** We have to take our time on these, if it is altering primary legislation. We have got to be careful.

**Mrs Christian:** I think, having read it now, I can accept that we take that out. There still will be a period of two weeks and they cannot have that election sooner than two weeks; but with reference to the nomination period, I suppose it has to come out of the long title.

**Mrs Crowe:** Sorry, Mr Acting President, presumably this

is to cover the event of the 'lastminute.com' elections that Mr Turner referred to, when there are nominations from the floor and someone could be elected immediately. So presumably, the reason this has all had to be deleted now is that, actually, whereas the Bill itself is this protracted area, it means that they can still have these ad hoc elections if required.

I presume that is what...

**The Acting President:** The long title is: somebody would read the Bill and say, 'What is in the Bill?' If the Bill then does not explain what is actually contained within the Bill, it is a misleading synopsis. So the attempt is to try and clarify the position and make it –

**Mr Downie:** It does not alter the basic principles of the Bill, but it is just put in to avoid any inconsistency.

**Mrs Christian:** Mr Acting President, just a further point – and I will support it now, but we have not finished yet on the clauses stage – I do hope that before we get to Third Reading, we might have the Bill presented to us as amended, so that we can go through it carefully.

I do have some concerns that I would like to consider carefully, about this issue of them having to do it all in one sitting. I think there may be circumstances where, given the change of procedure, they still might not get a conclusion in one sitting, but should be able to adjourn at least to the next sitting. I would like some time to consider that. *(Interjections)*

So there is, in the long title, a reference to a single sitting, but I am not sure how practical that might be.

**The Acting President:** Okay, we have got an amendment before us in the name of Mr Downie. Does anybody else wish to speak to the Bill to that amendment to the long title? Mr Crowe.

**Mr Crowe:** I think we need to read carefully this second amendment. If you read it, it does say 'an invitation to nominate candidates' and then it is full stop... Sorry, 'nominate candidates shall be addressed to the Members of the House of Keys, following which the vacancy shall be filled at a single sitting of the House' – 'held no sooner than two weeks later' disappears altogether, doesn't it? **(Two Members: Yes.)**

So really it is more tidying up what we have achieved by the amendments.

**The Acting President:** Making clear.

**Mr Downie:** More politically correct!

**Mr Crowe:** Right.

**The Acting President:** So, are all Members quite clear on that. Is there any other Member wishes to speak? No. Okay, let me put the amendment to the long title as proposed by Mr Downie of Council. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Then I will now put clause 2 as moved by the mover of the Bill. All those in favour please say aye. The ayes have it. The ayes have it.

Clauses read. Well, Hon. Members that concludes –

**Constitution (Amendment) Bill**  
**Suspension of Standing Order 22(2)**  
**Motion withdrawn**

**Mr Turner:** Mr Acting President, would I be able to ask leave to take the Third Reading?

**The Acting President:** You would have to suspend Standing Orders and it would be up to you, sir, to persuade your colleagues that that would be the wise thing to do on this occasion. But anyway, it is up to you, sir.

**Mr Turner:** I would like to ask leave to suspend Standing Orders to take the Third Reading of this Bill. I move:

*that Standing Order 22(2) be suspended to enable the third reading of this Bill to be taken.*

I think we have had a very thorough debate on this matter this afternoon. I feel that if we now wait to take the Third Reading of this, we may be seen as unnecessarily delaying this Bill from progressing, with the mind that it does have to go back for consideration in another place.

So I would urge Members to suspend Standing Orders, and see if we can see this through this afternoon.

**The Acting President:** Is there a seconder?

**Mrs Crowe:** I would be prepared to second that.

I do understand the reasons that Council would like to see this Bill, if you like, properly revised by us, but I think the other place had long debates about the purpose of this Bill and, indeed, the clauses. They realised that the single sitting clause was in the Bill and did not seek to amend a single sitting, so that single sitting could, I suppose, last for 24 hours, if that is what they wished.

So if, in fact, it is seen that we are delaying this Bill by not having Third Reading, then I would be quite pleased to second that the Third Reading takes place today.

**The Acting President:** Mrs Christian.

**Mrs Christian:** Mr Acting President, we are not delaying the Bill by not suspending Standing Orders. (**Mr Downie:** Hear, hear.) We are going through the normal process.

I personally want to see the amended version set out before me, so I have got another opportunity to consider that we have got it right. I do not think we should be hung up on the timetables.

If it is not right, and we have had all this procedure in the branches, and then find that we have a nonsense, where the other branch is sitting until goodness knows what hour, in order to conclude on a single sitting, when that might not be sensible or practicable, I really do want some time to consider whether or not I would seek to look at that again, at the Third Reading.

**Mr Downie:** Yes, I would support the views that have been expressed by my colleague, Mrs Christian. We are not in a rushed position, irrespective of what the other place may feel. The importance in all this is getting this right.

We have just dealt today with an extremely complex piece of legislation, something which actually almost affects the constitution of the Isle of Man – it is that important. I

think we should at least have the opportunity to see it all set out with its amendments, fully understand what we have become signed up to today, and who knows? There may be an opportunity to amend it even further.

I would suggest that, if it is available for the sitting either next week or the sitting after, there might be an opportunity for one or two of the Keys Members to look at it and make a comment. They should be following what is going on in here, because this an important piece of legislation to them.

So, I would be prepared to not rush at this in haste; just take a little bit of time and make sure that, when they get it in there, it is right, it is workable and everybody can sign up to it.

**The Acting President:** Is there any other Member wishing to speak?

**Mr Waft:** I would just like to say, I support the comments of the last speaker. Let us see the thing as set out, with all the amendments in place and the change to the long title – see what we have done actually, at the end of the day, and see that it does work.

**The Acting President:** Mr Butt.

**Mr Butt:** I agree, if the Third Reading does not go ahead today, I would like it to be... Like we discussed last week, if we need to have an extra sitting of the Council, on a different day from normal, to perhaps help speed up the process, at some stage, I can see no reason why we should not do that.

**The Acting President:** Having listened to your colleagues, sir, do you wish to proceed?

**Mr Turner:** Yes, I have taken on board the comments from my hon. colleagues, and I feel that maybe it would be beneficial to have a redraft of this, with all the amendments put into place, so that we can reassess it.

So, I will withdraw my request for the suspension of Standing Orders.

**The Acting President:** Well thank you very much, hon. mover of the Constitutional (Amendment) Bill.

That brings us to the end of our public session. Could I, again, thank my colleagues for their forbearance. You will not want Mr President to leave too often, having endured a full session with myself in the Chair! But I would thank you once again.

The Council adjourns now until next Tuesday at 10.30. Thank you.

*The Council adjourned at 3.54 p.m.*

### CORRIGENDUM

On Page 70, column 1, published to correspond with the electronic Early Publication, for: '**Mr Waft:** – to (1I) to (1K). I think you were reading the Bill.', read:

'**Mr Crowe:** – to (1I) to (1K). I think you were reading the Bill.'