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LEGISLATIVE COUNCIL OFFICIAL REPORT

RECORTYS OIKOIL Y CHOONCEIL SLATTYSSAGH

PROCEEDINGS

DAALTYN

(HANSARD)

Douglas, Tuesday, 22nd April 2008

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Present:

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

The Attorney General (Mr W J H Corlett QC),
Mr D Butt, Mr E A Crowe, Mr A F Downie,
Mr E G Lowey, Mr J R Turner and Mr G H Waft,
with Mr J King, Clerk of the Council.

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Legislative Council

The Council met at 10.30 a.m.

[MR PRESIDENT *in the Chair*]

PRAYERS
The Chaplain of the House of Keys

Leave of absence granted

The President: We have apologies this morning, Hon. Members, from the Hon. Member, Mrs Christian, who is serving on the Committee of the CPA this morning, so she is not with us in attendance here.

Questions for Oral Answer

LOCAL GOVERNMENT AND THE ENVIRONMENT

Car park behind Government Buildings Future plans

1.1. The Hon. Member (Mr Lowey) to ask a Member of the Department of Local Government and the Environment:

(1) when will the general public be able to enjoy access to, and benefit from, the large area of land at the rear of Government Buildings currently being used as a private car park; and
(2) what short, medium and long term plans are there for this area?

The President: Hon. Members, turning to our Order Paper, we have Questions, so I will call on Mr Lowey to ask Question 1.

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

The President: On this occasion, Mr Butt is to answer. Mr Butt, please.

Mr Butt: Thank you, Mr President.
The area in question is 1-4 Mount Havelock and, as the Hon. Member has stated, it has been used as a temporary car park. More recently, it has been used as a contractors' compound for the refurbishment of the old Government Office and the computer suite.
In the short term, the site will continue to be used as a contractors' compound, mainly for the remedial work to the Registry and Courthouse.
In the medium term, the Department will be using the site as a temporary car park, and a planning application will be submitted in the near future.
In the longer term, it is envisaged that the site will be developed as either public open space or for Government purposes, such as office accommodation or extensions to the Courthouse complex.
The Department will be considering all options later this year, as part of the strategic review of the site.
Mr President, I hope this information answers the Hon. Member's Question.

The President: Mr Lowey.

Mr Lowey: I thank the Hon. Member for his reply.
He did say that it has been used as a temporary car park; it will be, in the medium-term, used as a temporary car park, and planning will be required for that purpose. Is the temporary car park for Government, or is it for the general public?
It is an exclusion zone. The Courthouse has been a long time completed, the extensions to our Government buildings have been a long time completed, and yet this very valuable site is under-utilised and should be used by the public.
I would prefer, by the way, Mr President, for it to be an open space, (**A Member:** Hear, hear.) but that is a personal preference.

The President: Mr Butt.

Mr Butt: Thank you.
The use of the area as a car park would only be temporary, and I believe it will be for Government purposes, but this is a matter which has been considered actively within the Department on several occasions because, to be frank, it is often quite an eyesore, and this is one of the reasons why the Department does discuss it.
Until the renovations of the Courthouse were completed, there was no possibility of using the land for other purposes, but the review of later this year will perhaps determine finally what the final use will be, and until that is decided, the temporary use as a car park will be the medium-term objective.

The President: Mr Downie, Hon. Member.

Mr Downie: Would the Member for DoLGE answering the Question agree with me that the value of that site in commercial development terms is probably about £2 million?
Is he aware that, at the present time, the Public Records Office is operating out of an industrial building on an industrial estate? Would he take back to his Department that there is a pressing need for a new Public Records Office, which would give superb access to the public and all those who want to trace family history, genealogy, and do research? A proper development in that area, tastefully built to blend in with the surroundings, would be a tremendous asset to the law courts complex and the open mezzanine level and provide good value for money in Government terms.

The President: Mr Butt.

Mr Butt: Yes, I am aware of the Public Records Office location, having been out there a few times.

The review the Department is making at the end of the year is in relation to the fact that we are renting buildings in the centre of town at a lot of cost, and this site is a very strategic site which could be used for Government purposes, rather than commercial, and maybe mitigate the amount of money paid for renting buildings for Government purposes.

I believe the Courthouse and the Registry do have a considerable interest in the site, because they wish to extend some of their facilities, and that may or may not include the Public Records Office.

The President: Mr Lowey, Hon. Member.

Mr Lowey: Would the Hon. Member take back to his Department the fact that when we were discussing the Courthouse, the future use of this land was very much in the forefront of thinking then?

The quality of life of people living in towns is not all about buildings. It is about living in towns, putting people to live in towns. For people to live in towns, they do not need just buildings; they do need open space. The forefathers of the builders of this town made wonderful squares. We, in our dash for commercial benefit, are ignoring the qualify of life of people, not just this generation but for generations to come, and that site should be kept open, if at all possible.

Mr Butt: Yes, I will take that back to the Department, and I tend to agree with the questioner. There is a similar space down at the Villiers which is under-used in the same purposes, (**Mr Lowey:** Absolutely.) and I will take that back to the Department.

The President: Mr Downie.

Mr Downie: Mr President, would the Hon. Member agree with me that it is the role of the local authority to provide a green environment in Douglas? The ratepayers of this town have invested greatly over the years. We do have tremendous assets.

If you actually look at the footprint of the mezzanine level and the court buildings, over 60 per cent of it now is open space. There are gardens there, there are benches there. Sadly, the area has become a target for vandals and people in there abusing the situation. Would he not take that on board, when the Department makes its recommendations about the long-term use of the car-parking area?

Mr Butt: Yes, I will. The problem is that the area itself is either valuable for building land – it has great value there – but also potentially strategic value as an amenity area for the public to sit as an open space, and the balance between those two will have to be decided.

The President: We could easily develop this, I think, into an interesting debate, Hon. Members. (**Mr Lowey:** Absolutely!) I think we should not do that.

Mr Waft.

Mr Waft: Yes, Mr President.

I tend to agree with my colleague, Mr Lowey, that there is little chance of any entrepreneur leaving any open space in the situation.

With regard to the ratepayers, I appreciate that, but there is also taxpayers' money involved in the whole situation, and the quality of life in the Isle of Man depends on people leaving large open spaces as a lung within the city, or the town, or the village, to make sure that everybody has a raised quality of life, and this is a situation that could be addressed in that situation.

The President: And you are asking Mr Butt, would he agree with that, I think.

Mr Waft: It is just when the review is taking place, if he would take my views as well as Mr Lowey's! *(Laughter)*

Mr Butt: Mr President, I certainly will –

The President: Finally, Mr Butt.

Mr Butt: Yes, I certainly will take those views forward. We have had several discussions in the Department about the use of that area, and open space is often to the fore in the views expressed, but again, the financial costs of renting buildings in the town is a matter which we are considering as well.

TRANSPORT

Land at Douglas harbour
Use and future plans

1.2. The Hon. Member (Mr Lowey) to ask a Member of the Department of Transport:

With respect to the land at Douglas harbour purchased from the Isle of Man Steam Packet Company –
(1) what is it currently being used for, and by whom;
(2) what is it to be used for in future, and by whom;
(3) is any revenue being earned from this multi-million pound investment; and
(4) if so, how much?

The President: We move on to Question 2. Again, Mr Lowey, please.

Mr Lowey: Thank you, Mr President.

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

The President: This time, I think the Answer is in the hands of Mr Crowe.

Mr Crowe: Thank you, Mr President.

The land and property formerly owned by the Isle of Man Steam Packet Company Ltd was purchased by the Department in June 2006 from MIOM2 Ltd, a subsidiary of Macquarie Bank.

It comprises Imperial Building, which is occupied by the Isle of Man Steam Packet Company, the adjacent Parade Street car-parking area, and land and buildings adjacent to the harbour that is used by the Isle of Man Steam Packet Company for storage and vehicle maintenance.

All of the land and property used by the Company is the subject of commercially-based leases with the Department. The car-parking areas are mainly used by the public on a pay-

and-display basis, and there are some contract parking spaces that are paid for and used by the Steam Packet Company. The pay-and-display area is used on an overnight basis by freight vehicles that may otherwise have difficulty finding parking space within Douglas.

Finally, as the area backs onto the Circus Beach marshalling area and has access to it, it is used as a vehicle holding area at peak periods, for example TT and Manx Grand Prix weeks. Such peak usage may also be necessary should there be delays or disruption to the Steam Packet's normal service.

Members will recall that the Department received Tynwald approval to purchase the site in order to secure land with a high strategic value to Douglas harbour. It is sited immediately adjacent to the Circus Beach marshalling area and would enable Douglas harbour to cope with likely future demand for passenger vehicle and freight marshalling.

Although such use was the main reason for acquiring the site, the Department is well aware that there are additional developments that could occur on and over the site.

In approving the purchase of the site, Tynwald required the Department to work in close co-operation with other Government Departments and stakeholders. To this end, the Department established a working group comprising representatives of the Departments of Transport, Tourism and Leisure, Local Government and the Environment and Treasury.

In answer to parts (3) and (4) of the Question, I can confirm that the Department obtains commercial rents for the property and land leased to the Isle of Man Steam Packet Company, and also charges commercially-comparable parking fees for the car-parking areas.

The total income from vehicle parking since the site was acquired in 2006 is as follows: 2006-07, £148,409; 2007-08, £181,889.

The income from the property and land rental is £153,126 per annum excluding VAT.

Thank you, Mr President.

The President: Mr Lowey.

Mr Lowey: I thank the Hon. Member for his Answer.

I notice he did not say when the plans to develop the site… are plans being drawn up? Very vague on that.

Are the commercial returns for the buildings…? He used throughout his Answer 'commercially competitive' prices. Who bases those, and are these the same prices that Government are charged when they rent buildings, as we have heard in a previous Question? Are they on a par with those? These are in strategic places in the business community. Those offices are strategically placed and should have a premium rent placed on them, surely.

The President: Mr Crowe to reply.

Mr Crowe: Yes, thank you, Mr President.

Firstly, on developing the site, again, there are no plans at present to develop the site. The Departments meet occasionally to see what the future use might be for the site, but at present there has been no decision taken to develop it. You could leave it as it is for the time, or you could put buildings on it of a commercial nature, but at the present time there are no plans, or no decision taken on that.

The rents are, I am told, at a commercial rate, and the rents are subject to three-yearly open-market reviews, with the first review due on 13th June 2009, and there are powers to determine the lease at the end of the fifth year. So it is all done on open-market rates.

Mr Lowey: I am grateful to the Hon. Member.

The President: Hon. Members, we turn to Question 3.

Mr Downie: Mr President, I had a supplementary, sir.

The President: Sorry, Mr Downie.

Mr Downie: I would just like to ask the Hon. Member if the rental structure that is currently being charged comes anywhere near paying the loan charges on this particular site, and if this is not the case, are we merely using this means by paying a subsidy to the users, who are currently the Isle of Man Steam Packet Company?

The President: Mr Crowe.

Mr Crowe: Thank you, Mr President.

I thank Mr Downie for his very difficult question, because I have not got an answer to it. Knowing that he is on Treasury, he probably has the answer that I do not, but I am happy to obtain that answer and circulate it to Members, sir.

The President: You also need to take into consideration any capital appreciation in the value of the land from the time it was purchased.

Mr Crowe: Of course, Mr President, it is the strategic value that is so valuable to the land.

MANX NATIONAL HERITAGE

Rushen Abbey Hotel; Monks' Bridge Redevelopment and maintenance

1.3. The Hon. Member (Mr Lowey) to ask a Member of Manx National Heritage:

(1) what is the current position on the redevelopment of the Rushen Abbey Hotel;
(2) when will the project be ready for public use;
(3) what was the total amount of money spent on Monks' Bridge in repairs and maintenance;
(4) who were the contractors; and
(5) were they professional restorers of historic structures?

The President: Question 3, I think. Mr Lowey.

Mr Lowey: Thank you, Mr President.

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

The President: We have a Member of the Manx National Heritage in Mr Turner to answer.

Mr Turner: Thank you, Mr President.

I would like to thank my hon. colleague, Mr Lowey, for

the Question, and obviously Council appointed me as their representative in February on Manx National Heritage.

In answer to part (1) of the Question, at the beginning of April 2008, work commenced on site on the first stage of the refurbishment and redevelopment of the former Rushen Abbey Hotel building. Construction work will continue through the summer, and in the next few weeks expressions of interest will be invited from potential partners with a successful track record in catering and in the service industry, wishing to explore the opportunity of working with Manx National Heritage on stage 2.

In answer to part (2) of the Question, subject to successful negotiations with a suitable business partner, it is hoped the new business will be launched during the 2009 season.

In relation to parts (3) to (5) of the Question, the Monks' Bridge is under the ownership of the Department of Transport. I can, however, provide the following information: £1,054 was expended in the autumn of 2006 by the Department of Transport to address urgent maintenance repairs to a section of a flank wall and re-point discrete areas of eroded lime mortar.

The contractor was Conservation Stonework, a mason who has considerable experience in the use of lime-based mortars and the repair, conservation and consolidation of Manx stone buildings, including that of Peel Castle and Rushen Abbey.

Mr Lowey: I thank the Hon. Member for his reply.

He would agree that this Hotel, this building, has been left empty for 11 years. I am always interested to get the *Examiner* newspaper to find out the Answers to the Questions prior to them being placed here!

However, I am very grateful to the Hon. Member to see that, at long last, the Hotel is coming to life.

Can I also ask: were the people who were actually working on the Bridge qualified to look after ancient monuments, notwithstanding that they have done some work on Peel Castle?

The President: Mr Turner.

Mr Turner: First of all, if I just comment on the Hotel, yes, I am sure everybody is pleased to see that finally coming to fruition and being available once again, and we look forward to that opening.

With regard to the Bridge, there was involvement with Manx National Heritage, who were involved in assessing the structure, and currently officers are finalising their advice for submission to the DoT, following their inspection.

Of course, the information that I have been given is that you cannot point the stonework with standard mortar; it has to be this specific lime-based substance which allows moisture in and out, from what I gather.

However, there is more extensive work required on the Bridge and obviously consideration will have to be given to suitable contractors to undertake major work. I know that some of this work will involve, or some of the recommendations may involve, scaffolding the entire structure, and obviously that will be extensive work, but the work carried out by the contractor was minor repairs for the general maintenance. The substantial work, obviously, suitable consideration will need to be given on appointing that contractor.

Mr Lowey: I am relieved to hear that. There was scaffolding erected on the temporary works on the Bridge, and there were areas that still need attention, but the Hon. Member has answered my Question satisfactorily.

Thank you.

HEALTH AND SOCIAL SECURITY

Young adults with learning difficulties
Provision of services

1.4. The Hon. Member (Mr Waft) to ask a Member of the Department of Health and Social Security:

(1) whereas the Department of Education is fulfilling its role in having a policy of including children within their special needs areas, which is to be commended, would you agree there appears to be a gap in the services we are providing within the DHSS to cater for young adults when they reach the age of 18;
(2) how many children with disabilities are coming through the system who will have to be catered for within limited existing resources;
(3) will you examine the situation as a matter of urgency and expedite some legislation which will cater for the increasing demand for services for young adults with learning difficulties who are in need of those resources?

The President: We turn then to Question 4. Mr Waft.

Mr Waft: I beg to ask the Question standing in my name, sir.

The President: Mr Butt again to answer.

Mr Butt: Thank you, Mr President.

In answer to the first part of the Question, when children reach the age of 18 years, the Department of Health and Social Services provides services to meet the assessed needs of individual children and their families.

Options open to people who have support needs when they reach 18 years of age not only include the Department's own facilities, but also college courses provided by the Department of Education at the Isle of Man College, and also access to the disability employment services provided by the DTI.

In answer to the second part of the Question, the DHSS records show that 37 assessments have been completed for children aged 14 years-plus, not all of whom will require specialist support into adulthood. It is estimated that around 15 will require either respite, residential, day or specialist services and planning is taking place around meeting their needs into adulthood.

In answer to the third part of the Question, this is not really a legislative issue as we do have the powers to assist. However, I do accept there is an issue of resources in how the Department can respond to the increasing demands placed upon it to meet the needs of people with learning disabilities and their other needs.

Co-ordinated work takes place between the children's and adult services of the Division and with other Departments,

particularly Education, in terms of planning to meet the children's and families' future needs. Planning work is also taking place to ensure that services meet changing needs and expectations, and a number of new initiatives are planned, including improvements to respite facilities and extending the range of opportunities available, including short breaks and temporary adult placements.

The Department is planning to make use of scarce resources by focusing on those with the greatest need and developing a range of services, rather than one size fits all, and in implementing proposals contained in the Department's Learning Disabilities Strategy.

Thank you, Mr President.

The President: Mr Lowey.

Mr Lowey: Yes. I am surprised the Member for the DHSS says that there are not individual programmes for individuals, because he is right: no one size fits all for a handicapped person. I always was under the impression – and obviously I have been wrong – that each individual has a programme designed and geared for that individual's needs.

Could I have an assurance that the Department will put the scarce resources to practical help for the families that these people actually will be… It is alright saying when they are 18 we look after them, and then at 18 they are into the community and family will then have an added responsibility. As far as I am concerned, I think these people will need support throughout their lifetime and a quality of life assured for them.

The President: Mr Butt.

Mr Butt: Yes, I think maybe then I gave the wrong impression. There are individual programmes for each person. They are assessed on their own needs, and then a programme is developed for their own needs.

The point he makes about the families and their support is correct, because one of the things I have discovered is that respite care is very important to families, and that is something we are trying to increase as much as we can.

The problems we do have are that there are an increasing number of people coming through now, particularly people with the autism spectrum. We have seven or eight children aged 14, 15 now who are coming through, who will need specialist treatment. Each of those people has an individual need too. You cannot just have one place where they can treat autism; they all have different needs.

In fact, we have seven or eight people away in England at the moment at special placements, suffering from this condition, and they are individual and very specialist. But the families are now moving up the list of priorities because we recognise the need for short breaks and respite care.

The President: Mr Waft.

Mr Waft: Thank you, Mr President.

Would the Member agree that the chronological age and the mental age vary considerably with these children, and the arbitrary 18-years-of-age cut-off point does not have any flexibility in it, with regard to immediately putting them under the care from Education to Social Services, irrespective of the need for specialist accommodation for them and specialist professional staff to accommodate. Is there any flexibility built in there, Mr President?

The President: Mr Butt.

Mr Butt: Yes, the assessments are actually done when the children are 14 years of age or so, to predict in the future what their needs may be, and the cut off does come when they leave education, but there are abilities to have continuing education at the College.

But some of my advice, from the mental health units, at Child and Adolescent Mental Health Service (CAMS) etc, earlier intervention would be much better if we can actually intervene, in terms of mental health problems, at a much younger age. We may actually alleviate the problems for the future, in terms of mental health needs later in life.

There is no cut-off point as such, because I hope that the money and resources will flow with the child through their life, from childhood into adulthood and beyond.

The President: There is no answer to Mr Waft's question about the arbitrary cut-off at 18?

Mr Butt: There is no arbitrary cut-off at 18.

The President: There is no arbitrary cut-off at 18.

Mr Butt: No. Services are provided from childhood into adulthood.

The President: Mr Crowe.

Mr Crowe: Thank you, Mr President.

Could I just ask where the respite care is undertaken?

The President: Mr Butt.

Mr Butt: There is respite care taken at Crossroads for Carers, who provide an excellent service in Derby Square. We are also setting up units in various residential homes to provide respite care where people can actually come into spare spaces during holiday periods, so that families can have breaks from looking after their children who are not actually children, but often young adults and even adults of a mature age.

The President: Mr Waft.

Mr Waft: Thank you, Mr President.

I thank the Member for his comments with regard to the 18 years.

I just wondered, with regard to the greater expectations nowadays and the limited resources and the personnel who are working in that situation, which has been recognised in UK law and special provision has been adopted and the Care Act does cover that area more completely than the Manx equivalent… Is your Department looking at providing a similar legislation on the Isle of Man?

The President: Mr Butt.

Mr Butt: The legislation on the books at the moment is an Act called the Regulation of Care Bill, which provides that the care we do provide is properly regulated and that

the service we provide is of a higher qualify than, in theory, is provided at the moment. But having visited many homes and establishments, I am amazed at the level of service provided, especially from the voluntary sector, apart from the Government. I am not demeaning the Government sector, but the voluntary sector do amazing work and without their support, we would have some serious problems – perhaps even financial.

But I am satisfied everywhere I have been that there is proper care being provided. The problem we have is the increasing number of people who are coming through who require care, and it is very difficult to actually organise budgets to cater for that increase.

The President: Interesting response which you have made two or three times this morning: increasing numbers coming through. Is that an actual increase in numbers, or is it a similar percentage increase as our population has been growing?

Mr Butt: I think – this is my advice, Mr President – that as medical facilities improve, more children are surviving the early days, or the early weeks, of their life, and they are surviving with disabilities which maybe in the past they would not have survived with, and they are maturing into adulthood, whereas perhaps they may have not survived beyond the teenage years, and those are the… not problems, but those are the reasons why we have to have increasing numbers.

The President: Thank you.

There we are, Hon. Members. That is the conclusion, I think, of our Question Time for this morning.

Orders of the Day

Joint Committee on the Emoluments of Certain Public Servants Mr Lowey and Mr Downie elected

2. To elect two Members in place of Mrs Crowe and Mr Lowey.

Mr Lowey is eligible to stand and has been continuing under Standing Order 5.5 of Tynwald Court. Mrs Crowe was previously a Member and has been continuing under Standing Order 5.5. The other Member of the Legislative Council on the Committee is Mr Waft.

The President: We move on.

Hon. Members, on the Order Paper, you will see at Item 2 you have 'Joint Committee on the Emoluments of Certain Public Servants'. It was put on quite deliberately, Hon. Members, but you will be aware that a view was taken in Tynwald Court last week that Tynwald should go ahead and fill the vacancies of the Committees of Tynwald, despite the fact that there is still a vacancy for an elected Member of the Council and, in fact, we do not have the Bishop yet in his seat.

The Emoluments Committee did not appear on the Tynwald Order Paper because, in fact, it is a Joint Committee of the branches. However, exactly the same considerations do apply insofar as, under the Tynwald Standing Orders, the Chairman of the Committee has reported the vacancies, and under Standing Order 5.15(2), the question is now if it is decided to fill the vacancy.

So, in fact, if Council wish to apply the same procedure as Tynwald Court, you will presumably want to fill the two vacancies on the Emoluments Committee now, drawing therefore on the people who are currently sitting as Members of the Legislative Council.

On the other hand, it would be open to Council to defer these elections until in fact Council is up to full strength.

So, Hon. Members, it is as I said quite deliberately on your Order Paper, because notification has been given that these positions are to be filled and it now in the hands of Members as to how they wish to deal with it, really. Do you wish to move ahead in line with the Tynwald decision of last week or are you content to defer until Council is back to full strength?

I am open to suggestions, Hon. Members.

Mr Waft: Could I, through you, Mr President… As we have a Member within our ranks who has previously been on the Committee and has performed excellent service to that Committee, we should go halfway, if you like, until we have a full Council to decide on the last person.

The Clerk advised the President.

The President: Right, with that quick little comment there from the Clerk, Hon. Members, as we understand it, Mr Callister has been elected to Legislative Council this morning, 13 votes.

Notwithstanding that, Mr Waft, Hon. Members is making a suggestion in relation to our Item 2 on the Order Paper, the Joint Committee on the Emoluments, that in fact we take a halfway stance, insofar as Mr Lowey is concerned. I am not sure that is actually the right way of dealing with it, as to whether we should do it half and half, or not.

Mr Crowe.

Mr Crowe: I would like us to follow the Tynwald precedent last week, that we elect two today. I move:

That the two vacancies be filled at the current sitting.

Mr Downie: I would support that, Mr President. I think as Council stands at the moment we have Members here who are more than capable of serving the Legislative Council on this Committee, and with your agreement, I would like to propose Mr Lowey.

Mr Crowe: I would second, Mr President.

The President: Yes, that is fair enough but let us cross the first barrier first. Hon. Members, it is proposed and seconded that we follow the Tynwald line of last week and that we continue to vote for the two Members to serve on the Emoluments Committee. Are we agreed with that Hon. Members?

A Member: Agreed.

Mr Turner: No.

The President: Mr Turner.

Mr Turner: Yes, Mr President, obviously we have Mrs Christian absent today and we have just had news that we have the new Member joining. I feel that we should defer this until we next sit or until at least the new Member is sworn in and we can give consideration to the appointments of our two Members to this Committee.

The President: Mr Butt.

Mr Butt: Yes, Mr President, I think we could follow Tynwald, but we are in a slightly different position in that we have over a quarter of our number missing here, whereas in Tynwald it was not anywhere near that proportion. So we have less to vote from or for and I think with two Members actually being absent at the moment, it would not be as necessary to vote as it would be in Tynwald, sir.

The President: I am now faced with the position, Hon. Members, that in fact there are two distinct lines proposed and seconded both ways round, so I think we should simply put it to the vote, Hon. Members. The easy way is putting it to the vote Mr Crowe's proposal, that we elect, seconded by Mr Downie, being put before Mr Turner's that we defer. Whichever way you vote, Hon. Members, we will end up in the same thing, it is either for or against.

So, Hon. Members we put to the vote that Council elect two Members to the Emoluments Committee. Hon. Members, those in favour say aye; against, no. The ayes have it.

A division was called for and voting resulted as follows:

FOR	AGAINST
Mr Lowey	Mr Butt
Mr Waft	Mr Turner
Mr Downie	
Mr Crowe	

The President: With 2 against, 4 for, Hon. Members, therefore we move forward to nomination and election of two Members for the position.

Now, Mr Downie.

Mr Downie: If I could propose the Hon. Member of Council, Mr Lowey.

Mr Crowe: I would second Mr Lowey.

Mr Turner: I would like to propose Mr Downie.

Mr Waft: I would second Mr Downie.

The President: Now, Hon. Members, we have the two proposals, Mr Lowey proposed and seconded on my right and Mr Downie proposed and seconded on my left. Hon. Members, are we content with those two Members? Those in favour, please say aye; against no. The ayes have it.

There we are, Hon. Members: we have elected two Members, Mr Lowey and Mr Downie to serve on the Emoluments Committee.

Collective Investment Schemes Bill
Clauses considered

3. Mr Downie to move.

The President: Now that takes us to Item 3 on our Order Paper. Hon. Members, we are now round to the Collective Investment Schemes Bill, and I am in the hands now of Mr Downie.

Mr Downie: Thank you, Mr President.

We are also joined at the sitting today by Claire Whitelegg from the Financial Services Commission. She is attending with one of her colleagues who has been involved in the drafting and progression of the Collective Investment Schemes Bill.

Before moving to the consideration of clauses, I would just like to respond briefly to the points made by my hon. colleagues at the Second Reading of the Bill. Firstly, Mr Lowey asked for more information about the types of arrangements that would not be treated as a scheme through regulations issued under clause 1(5).

The definition of a scheme in clause 1 of the Bill is based on the definition of the scheme in the Financial Supervision Act 1988. This clause sets out what characteristics are needed before something will be treated as a scheme. However, in some circumstances, this basic definition of a scheme would catch some arrangements that should not be treated as schemes. That is why there is power to make subordinate legislation setting out what is not a scheme.

The Financial Supervision Commission is currently consulting upon subordinate legislation under clause 1, which will establish what will not be treated as a scheme. This includes, amongst others, bank deposits, franchise arrangements, timeshare arrangements, contracts with insurance, occupational pension schemes, building societies or industrial or provident societies or friendly societies, employee share investment schemes, an arrangement where the investor is an employee, former employee or connected to the employee.

All of the items that the FSC are consulting upon are in line with the current exclusions and the definition of 'scheme' contained in section 30 of the 1988 Act. It is intended that the supporting legislation setting out what will not be treated as a scheme will be brought in at the same time as the Bill is enacted. This will ensure that the status quo is maintained for industry practitioners.

Mr Waft asked for additional information about how the Bill relates to schemes that are not Isle of Man schemes. Collective investment schemes can be set up using a variety of legal structures, including companies, unit trusts or limited partnerships. If these structures are established under Isle of Man law, i.e. are a Manx company, unit trust or limited partnership, they are Isle of Man structures for the purposes of the Bill and must be set up as an authorised scheme, international scheme or exempt scheme.

However, the schemes industry is a multi-jurisdictional industry. As such, schemes that are established as legal structures outside the Isle of Man still need to be subject to Isle of Man schemes legislation in the following circumstances.

Recognised schemes, schedule 4 of the Bill: these schemes established outside the Island are allowed to be sold directly to the Manx general public. To protect the Manx public, the Bill will only allow such schemes to be sold to the public if they are subject to the same level and type of regulation as an Isle of Man authorised scheme.

Finally, Mr President, in case of problems the Bill does allow the Commission and courts to use a variety of powers to obtain information and intervene at the scheme level, where appropriate. As such, Members will note that where a scheme established outside the Island is sold in the Island or is managed or administered in the Island, the Bill gives the FSC appropriate powers to deal with any issues in order to protect the Manx population, investors generally and the Island's reputation. I trust the additional information that was circulated prior to this sitting has assisted Members gaining a better understanding of some of these issues.

Turning then, Mr President, to clause 1 of the Bill, which deals with the –

The President: Mr Downie, I apologise for stopping you, but in fact what you have done is answered the queries in relation to what was raised at Second Reading time and I am grateful for that, sir. But before we move on to clauses – and I should not really do this, but I will anyway – in re-reading myself, Hon. Members, I noticed when going through the clauses last evening that you are right: clause 4 specifies the four schedules in relation to authorised schemes, the international schemes, the exempt schemes and the recognised schemes.

Now, in your response now, which you have just read now, you have said in your response that the recognised schemes are treated the same as an authorised scheme. However, if you turn to clause 7 of the Bill, you will see that in fact – and I am sure there will be an answer – it specifically refers to authorised schemes and international schemes and in relation to bookkeeping, etc, and exempt schemes and recognised schemes, which you have just said are treated the same as the authorised, are treated differently.

I assume that there will be an answer and I have said that so that in fact maybe you will get the answer by the time we have reached clause 4.

But now, Mr Downie, perhaps we could start at clause 1.

Mr Downie: Thank you, Mr President.

That you for that because it is quite technical and to flag these things up at the start I think is very useful.

The President: Try clause 1 now, sir.

Mr Downie: Clause 1 sets out the meaning of 'collective investment scheme' for the purposes of the Bill. It also empowers the Commission to make orders which prescribe that certain arrangements are not collective investment schemes. The definition is based upon the existing definition of a collective investment scheme under the Financial Supervision Act 1988.

Certain exclusions from the definitions of 'collective investment scheme', including those currently set out in the definition of the 1998 Act, will be set out by order. There is no intention to modify the existing exclusions. However, this approach means that the primary definition in the Bill is clearer and allows the exclusions to be modified after appropriate consultation, where this is required.

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

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

The President: Seconded by Mr Crowe. Mr Lowey.

Mr Lowey: I would just like to say that the mover said he hoped that the document that was kindly sent round to us last week was helpful. It was certainly helpful and, like Mr President, I read it on a Saturday afternoon, and I have to say I read it twice – first glance and then read it.

After I read it a second time, a pattern emerged and I could make sense of it, even to a layman. So I am appreciative to whoever wrote for it putting it in such a way that it unravelled the Gordian knot. It does make it clearer, and I am quite happy to support clause 1.

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

Mr Downie: No, I thank Mr Lowey for his supportive remarks and I am glad at least to know that he found the additional information helpful.

Mr Lowey: Extremely good.

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

Clause 2.

Mr Downie: Clause 2 sets out the types of scheme that may be established in the Island as being an authorised scheme, international scheme or exempt scheme. This restriction does not prevent schemes that are established outside the Island from being managed, administered or promoted in the Island.

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

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

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

Clause 3.

Mr Downie: Clause 3, Mr President prevents schemes being advertised or promoted in the Island, unless they are authorised schemes or a recognised scheme. This restriction does not apply where the persons to whom an advertisement is directed or who are being advised about the fund or meet certain criteria.

This provision prevents the general public from promotion of schemes that may not be suitable for retail investors. The Commission may make regulations which exempt any scheme, class of scheme, person or class of person from the restriction on promotion.

This clause requires that advertisements must not be false or misleading.

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

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

The President: Again, Hon. Members, the motion I put is that clause 3 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Mr Downie, clause 4.

Mr Downie: Part 3 deals with the types of scheme and consists of clause 4 and schedules 1 to 4.

Clause 4 gives effect to schedules 1 to 4 which set out specific requirements for particular types of scheme, authorised schemes, international schemes, exempt schemes and recognised schemes, with the exemption of recognised schemes. These types will all be Isle of Man entities: for example, companies, trusts or partnerships.

Other schemes which are established overseas, but are managed or administered in the Island will be subject to specific requirements in their home jurisdiction, and as such the Bill does not set out additional structure requirements.

Schedule 1 sets out specific requirements relating to authorised schemes which must be established as Isle of Man companies or unit trusts.

In particular, paragraph 1 sets out the mechanics for making an application to become an authorised scheme.

Paragraph 2 sets out the mechanics by which the Commission considers applications and, where approved, issues an authorised order. An authorisation order may be subject to conditions.

Paragraph 3 sets out the obligations for the Commission to be notified about and approve alterations to an authorised scheme.

Paragraph 4 sets out the mechanics for revocation of an authorisation order.

Paragraph 5 brings in a requirement that the manager of an authorised scheme must not undertake, without the Commission's agreement, activities other than acting as a scheme manager.

Schedule 2 sets out the specific requirements relating to international schemes, and in particular, paragraph 1 establishes that an international scheme can be a full international scheme, subject to paragraphs 2 and 3, or another class of international scheme which is prescribed by the Commission under paragraph 4. All international schemes other than those subject to transitional provisions must be Isle of Man structures.

Paragraph 2 sets out the requirements for full international schemes and the mechanics for a manager to apply to be a manager.

Paragraph 3 deals with what the Commission considers any alterations to a full international scheme.

Paragraph 4 establishes that the Commission can prescribe other classes of international scheme and sets out certain basic criteria for the establishment of such schemes.

Paragraph 5 sets out the obligation for the Commission to be notified about alterations to other classes of international scheme.

Schedule 3 deals with the requirements relating to exempt schemes. All exempt schemes, other than those subject to transitional provisions, must be Isle of Man structures.

Schedule 4 sets out the specific requirements relating to recognised schemes. These are schemes established outside the Island which, due to their regulatory status, can be promoted to the public on the Island and recognised schemes fall in to two types: those that are regulated in a designated territory – that is, a territory with a framework for such schemes that the Commission recognises as being equivalent to authorised schemes; and individually recognised schemes, which are regulated in a territory which has not be formally recognised as being equivalent.

Paragraph 1 deals with the mechanics for a scheme from a designated territory to notify the Commission that it wishes to be recognised on the Island. The paragraph empowers the Commission to designate territories by order.

Paragraph 2 sets out the mechanics for a scheme which is not from a designated territory to apply for a recognition order and the matters that the Commission will take into account when considering whether to make or refuse such an order. A recognition order may be subject to conditions.

Paragraph 3 sets out the obligations for the Commission to be notified about and approve alterations to an individually recognised scheme.

Paragraph 4 sets out the mechanics for directing that a scheme is no longer a recognised scheme under paragraph 1 or revoking a recognition order.

Finally, paragraph 5 establishes that regulations may require the governing body of a recognised scheme to maintain such facilities on the Island as are prescribed.

Mr President, I beg to move that clause 4 and schedules 1 to 4 now stand part of the Bill.

Mr Crowe: I beg to second, Mr President.

Can I just say that I would also like to thank Mr Downie and the author of the explanatory notes which arrived at the weekend for the very helpful information it provided.

Can I also make reference and thank the drafter of the Bill for putting the schedules so neatly and concisely, so that any promoters of a scheme would look at the particular schedule that related to their scheme. It is not an amalgam of one schedule for all the schemes; it is separating them out, delineating and I think this is very helpful for promoters of the schemes.

The President: Mr Lowey.

Mr Lowey: Just one little query in schedule 2, seventh line up from the bottom, where it says the name of the scheme must not be undesirable or misleading. I can understand the misleading. 'Undesirable': well, if I was selling a scheme, I would not be putting something in the title that would be undesirable, because it would be self-defeating. Who would actually adjudicate?

The question I really pose: is the schedule the same as existing? The need is already there to have somebody to be able to say what is being sold. It just seems to me…

I cannot come to terms with the word. I can understand 'misleading' being in it; I cannot understand why we have got 'undesirable' written in there. What might be desirable to me may be undesirable to someone else, but if I am selling something I surely would be wanting to sell the positives and not the 'undesirable'.

It may be necessary: I am just querying the necessity for 'undesirable' being included.

The President: Mr Waft.

Mr Waft: It is just one point on schedule 1, page 29, halfway down:

'(4) The manager and the trustee or fiduciary custodian must each be a body corporate which has a place of business in the Island.'

Would you like to explain what a body corporate would be for an individual?

The President: It is an authorised scheme. Mr Attorney.

The Attorney General: Well, I hope I can help, Mr President.

I think in relation to the undesirable element of a name, if, for example, the promoters brought about a scheme which was entitled something like 'guaranteed investment fund' or 'wonderful return investment fund', something like that which gave –

Mr Lowey: I follow that.

The Attorney General: – a completely inappropriate –

Mr Lowey: Misleading.

Mr Butt: Isle of Man Government Investment Fund…

Mr Downie: A guaranteed –

The President: Hold on, hold on. Mr Attorney.

The Attorney General: So that sort of application for approval of the name would likely to be refused, and I think I am right in saying that it is the Registrar of Companies who has the power to adjudicate on whether a name is appropriate.

Insofar as 'body corporate' is concerned, Mr President, that is simply another way of referring to a company, a limited company as opposed to an individual.

The President: Mr Downie, apologies: in relation to the brief which was sent round, I thought it was interesting that in fact they used a different terminology in the brief, in relation to exempt schemes, than we do in the Bill.

The Bill itself says in schedule 3 that an exempt scheme which is a private trust scheme, in effect very similar to a private company, as against a public company, in company law, has less than 50 participants – so it says in the schedule, which leads you to believe that you could have 50. It has 'less than 50'; but in the brief which came round at the weekend, it actually reverses that to say it shall have 'no more than 49 participants'. Now, one is wrong and one is right, because if you have no more than 49, you can but have 49; whereas if it says it has less than 50, presumably you can have 50.

The Attorney General: I don't think so, Mr President, if I may – (*Interjections and laughter*)

The President: A nice little argument there as to how you read it, and I am sure we could spend a long time arguing over that little nicety!

But that aside, I have no particular worry on the schedules, there is lots to read in those schedules. I am still concerned that in fact, when you get to clause 7, which you will arrive at, clause 7 deals with 'every authorised scheme and international scheme must ensure', and in your brief, you said that recognised schemes would be treated exactly the same. Now, they are not treated the same, unless you get to reading the schedule, and the schedules are not worded again the same.

If it is easier, Mr Downie, I am quite willing to have your officer make the comment at that stage.

Mr Downie: Right, that is good.

The President: If you would please, because you are now going on to *Hansard,* if you give your name, nice and clearly, and speak because you are at a greater range to the microphone than we are.

Mrs Whitelegg: My name is Claire Whitelegg and I am from the Financial Supervision Commission.

Information to recognised schemes, as Mr Downie has already explained: the Commission evaluates the regulatory system which those schemes are subject to, and part of looking at the equivalent of that territory or system, or the regulations that apply to the individual scheme, would be looking to see whether there is a requirement that those documents will be kept up to date, where there is a requirement for documents to be kept up to date.

So whilst they are not mentioned under clause 7, they are caught as part of the assessment process that the Financial Supervision Commission goes through, before designating a territory as being an appropriate territory.

The designated territories we have got currently under the Financial Supervision Act are the UK, Jersey, Guernsey and Ireland. It is only certain types of schemes within each of those territories that are deemed to be equivalent to authorised schemes and are, therefore, recognised.

So it is only a small number of territories that can have the automatic equivalent and, therefore, other schemes that would wish to be a recognised scheme, so they can sell to the Manx public. We would look, as part of our assessment process, to see whether there is a requirement for those documents to be kept up to date, so it is done at the assessment level, rather than under clause 7, because clause 7 is dealing with the Isle of Man schemes and what we require of those schemes.

The President: Right, I understand where you are coming from, but I just still have that little wonder in the recognised scheme, and you say it is done at assessment level, why could we not have it written in to the primary law? Is it because in fact these schemes will be recognised in another jurisdiction, and it is because it is recognised in another jurisdiction that we are not putting the requirement to have them treated the same in the primary law here?

Mrs Whitelegg: Yes, effectively they are authorised schemes in another jurisdiction, so they are already subject to a raft of legislative requirements in that jurisdiction.

The President: But that might not be the same as ours.

Mrs Whitelegg: But that is what we look at when deciding whether we would allow that territory to be a designated territory or that scheme to be sold to the public. So effectively what we are saying is, in relation to their equivalent to an authorised scheme, the Irish schemes, the Jersey schemes, the Guernsey schemes and the United

Kingdom schemes have regulations in place that are equivalent to our schemes on the Island.

In the same way, for example, the United Kingdom has a process where they designate Isle of Man authorised schemes as capable of being sold to the general public in the United Kingdom, because they have undertaken an assessment to make sure that our authorised schemes have an equivalent. It is a mirror situation, so in that sense, it would not be appropriate for us to be trying to legislate for those schemes; we rely upon the fact that their system of regulation is appropriate and that it is equivalent to ours, so the same protections are offered to the Manx public.

The President: We are expecting the same primary law in the other jurisdictions as equivalent to ours?

Mrs Whitelegg: Yes, very much so.

The President: Thank you. Mr Downie.

Mr Downie: Thank you Mr President.

I would like to thank Mr Crowe for his help and his support.

I think the Attorney General went a long way to describing to Mr Lowey what undesirable schemes were and who decides. Obviously, things purporting to be gilt-edged Isle of Man Government guaranteed schemes and all the rest of it, they are the things. There are people, often in the entertainment world, 'Uncle Joe's slush fund' and all this sort of thing: well, we do not want things like that.

Mr Waft: a body corporate is actually a company and in the Isle of Man we have legislation where we can have a single member company, if we wish, so there is a whole variety now of companies. I would like to thank the Attorney for his help there and clarification.

Mr President, your issue, I think that has been capably dealt with now.

With that, I would like to move that clauses 4 and schedules 1 to 4 now stand part of the Bill.

The President: Now, Hon. Members, whilst Mr Downie has correctly moved clause 4 and the four schedules, because the four schedules equally deal specifically with authorised schemes, international schemes, exempt schemes and recognised schemes, Hon. Members, I am going to put to you the schedules individually and then the clause and schedules.

Schedule 1, Hon. Members: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Schedule 2: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Schedule 3: Hon. Members, those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Schedule 4, Hon. Members: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 4 and the schedules, Hon. Members, now there can be no doubting: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Part 4, Mr Downie, clause 5.

Mr Downie: Thank you, Mr President.

Part 4 deals with the miscellaneous provisions. It is split into three chapters which deal with requirements for managers and administrators.

Clause 5 sets out certain matters which managers and administrators must be satisfied about, before agreeing to act for a scheme. These include whether the other parties appointed to the scheme are suitable, and if the scheme is not an Isle of Man scheme, whether the jurisdiction is established in a suitable jurisdiction.

This is an important provision, which is intended to prevent future issues which could arise if unsuitable parties or jurisdictions were involved in a scheme.

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

The President: Mr Crowe.

Mr Crowe: I beg to second and would just like to say this obviously incorporates the view that the Island should maintain high standards and so avoiding reputation risks for the Isle of Man Government and the regulators.

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

Clause 6, Mr Downie.

Mr Downie: Clause 6 sets out an obligation for managers and administrators to notify the Commission about anything they are aware of which could have a material adverse effect on the scheme, together with the reasons for that belief.

The clause also establishes that where a notification to the Commission in good faith will not breach any duty of confidentiality, this early warning mechanism will ensure that the Commission is put on notice about issues and will enable the Commission to consider appropriate actions at an early stage.

This power is particularly important in the context of schemes which are not subject to detailed prescriptive regulation.

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

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

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

Mr Downie, I have already queried 7, so perhaps we could take this section of chapter II, clauses 7 and 8 together, sir.

Mr Downie: Thank you, Mr President.

Clause 7 requires a governing body of an authorised scheme or an international scheme to ensure that a scheme's documentation is materially up to date and complies with the Bill. It is important that such documents are up to date as potential investors rely on such documents when deciding upon the merits of a scheme.

Clause 8 prevents the governing body and certain functionaries of a scheme from avoiding liability where they fail to exercise due care and diligence in discharging their functions. It does this by making any such provision in documents constituting an authorised scheme or an international scheme, void.

Regulations may extend or restrict this clause.

Mr President, I beg to move that clauses 7 and 8 stand part of the Bill.

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

The President: The motion, Hon. Members, is that clauses 7 and 8 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Chapter 3, clauses 9 and 10 together, Mr Downie.

Mr Downie: Chapter III and clauses 9 and 10, Mr President: clause 9 requires the governing body of a scheme to ensure that the scheme's accounts are prepared and audited in line with regulations.

Clause 10 requires the auditor of an authorised scheme or an international scheme to notify the Commission of any matter which it has reasonable cause to believe may be of material significance to the Commission's functions under the Bill. Where a notification is given in good faith, whether or not it is about an authorised scheme or an international scheme, no duty of confidentiality of the auditor will be treated as being breached. This clause only applies to matters concerning the scheme which the auditor becomes aware of in the capacity as an auditor.

The effect of this clause is to provide an appropriate gateway through which auditors can inform the Commission of the concerns about the scheme.

I beg to move that clauses 9, 10 and chapter III stand part of the Bill.

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

The President: Mr Lowey.

Mr Lowey: Normally, I would just nod these through but in the light of what I have been hearing about audits in various places, I sometimes wonder, are we…? This is a comfort factor. I think in a Bill of this sort we need to… and we have a pretty good reputation for auditing, except when it comes to problems and they say, 'Well the auditors say' – forgive me, if I am paraphrasing this but – 'Well, it wasn't our job to draw your attention to this, all we do is add up the sums and the figures that were submitted to us.'

As a layman, I think, if I am getting audited accounts from a professional qualified firm, that they mean something, that they have researched it. Any sixth-form maths student should be able to add up figures and, therefore, can I have an assurance that the Audit Bill, which we have passed recently, makes it compulsory on the auditors, whoever they may be, to audit to a standard that gives confidence to the public? In other words, they are not just there to add up.

Maybe the mover will be able to tell me that is exactly what auditors do and we cannot add to them. I am looking for the public reassurance that auditors are actually doing the job that I think most ordinary members of the public think they are doing.

The President: Mr Waft.

Mr Waft: I think, Mr President, the auditing profession has to comply with the international issues on auditing. They have a professional body which controls their licence to be able to do auditing and, within those criteria, there are enough fail-safes within their professional body to make sure that everything is complied with, when they do report on an audit, that all the i's are dotted and the t's are crossed before they present the audit.

The President: Mr Butt.

Mr Butt: Yes, Mr President.

In relation to the duties of the auditor or the obligations, I wonder: if they do find something amiss and report it to the FSC, are they barred from tipping off the company they are working for? There could be a tipping off an issue, if they find something wrong, tell the Commission. At the same time, nothing in here says that they cannot tell the company themselves they have discovered this discrepancy.

The President: Mr Downie to reply.

Mr Downie: Yes, Mr President, dealing with Mr Lowey's point, first of all, I can understand where he is coming from, because there has been an issue regarding some of Government's audited accounts.

I would ask him to expect that, out in the real world, in the financial sector, there is a much more rigorous regime in place and in fact the legislation that we have enables a whistleblower gateway and protection to ensure that the Commission has appropriate information to protect investors and the Island's reputation.

With companies which are found to be acting improperly, it then becomes a significant matter for the Institute of Chartered Accountants in England and Wales (ICAEW) – this is the Chartered Accountants' own body and the auditors' own body – and they actually can be struck off. So it is very important.

Throughout this Bill, you have to accept that what we are trying to do here is not only encourage business to come to the Isle of Man, but make sure that the reputation and the quality of business is there and, at all times, we are not putting investors in a position that could be harmful both to them and to our good reputation of the sector.

I think that clarifies what Mr Butt was trying to get at, but there is, in clause 10, where a notification is given in good faith, whether or not it is about an authorised scheme or an international scheme, no duty of confidentiality of the auditor will be treated as being breached. So there are safeguards there and what we are trying to do is that if there is something going wrong, even if it is somebody else in the industry, they can come along and blow the whistle and say, 'Will the FSC have a look at that?' That is part of their functions, to police these.

With that, Mr President, I hope I have answered everybody.

The President: In that case, Hon. Members, I put to Council that clauses 9 and 10 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Now, in dealing with part 5, Mr Downie, perhaps we could take clauses 11, 12 and 13 together.

Mr Downie: Clauses 11, 12 and 13, Mr President: clause 11 sets out the circumstances in which the Commission can issue a direction under clause 12 or make an appointment under clause 13, including where it appears that (a) it is desirable in the interest of investors or potential investors in the scheme; (b) the scheme is or may become insolvent; (c)

the scheme has not been operated, managed or administered in a fit or proper manner; (d) the governing body manager, trustee, fiduciary custodian or custodian, has contravened provisions of the Bill or the Financial Services Bill 2008, or any conditions, prohibitions, directions or requirements under either of the Bills; or (e) requirements relating to an authorised or recognised scheme are no longer satisfied.

Clause 12 sets out the types of directions that the Commission can make in the circumstances set out in clause 11. It is important that the Commission has power to make directions in appropriate circumstances, in order to safeguard the interest of investors in the scheme. Directions can require the issue and redemption of units in the scheme to cease; require the governing body to instruct the scheme's auditor and undertake a special audit of the scheme's accounts for submission to the Commission; require the scheme to be wound up; require any other action necessary to protect investors and potential investors.

The clause sets out the types of information that can be considered when assessing whether a direction is desirable in the interests of investors or potential investors in a scheme, including any matter relating to the scheme, its governing body and functionaries and their controllers, employees and associates.

To ensure that there is appropriate flexibility, there is a power to vary and revoke a direction at the instigation of the Commission or an application from the governing body or the functionaries of the scheme.

Clause 13 sets out the types of appointments that the Commission may make in the circumstances set out in clause 11. These are to appoint a person to advise the scheme or a person to assume control of the scheme. Appointments are made at the expense of the scheme. An appointee will have all necessary powers to advise on or operate, manage or administer the scheme in the best interests of investors and potential investors. These powers are to the exclusion of the governing body, manager or administrator.

Appointees must report to the Commission. On receipt of the report, the Commission may require the scheme to reorganise its affairs or to be wound up. The Commission has the power to inform investors of actions taken and proposed actions under this clause. The Commission has power to terminate appointments under this clause.

Mr President, I beg to move that clauses 11, 12 and 13 stand part of the Bill.

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

The President: Again, Mr Downie, if I may, sorry, clause 12, I am just trying to get my head round.

Clause 12(1):

> 'In the circumstances mentioned in section 11 the Commission may make a direction –'

If you come down to clause 12(3) of that particular section it says:

> 'A direction under subsection (1) may be given in relation to a scheme in respect of which –
> (a) an authorisation order or a recognition order has been revoked; […] if an earlier direction in relation to the scheme under subsection (1) is already in force at the time of the revocation or direction'.

And then we have got in brackets '(as the case may be).' Now we have got an authorisation, we have got a direction being issued under subsection (1) and yet we have revoked it and we are bringing it back into being. Is that the answer to that? Perhaps –

Mrs Whitelegg: Basically, what this is saying is that if we have got an authorised scheme which might have been a direction and it has been allowed to wind up or potentially change to a different type of scheme; and the same with recognition. So it might be a recognised scheme under a designated territory which has stopped being that type of scheme, so it is no longer an equivalent scheme, so obviously therefore it is no longer a recognised scheme. We have got the power to issue a direction if there have been issues on an ongoing basis, where we had already issued a direction, so that we can protect those existing investors.

What that means is that the operators of the authorised scheme or recognised scheme cannot get out of putting things right by merely saying it is no longer a recognised scheme or an authorised scheme, so therefore they cannot direct us to do something else.

So really if the scheme has changed its status, is no longer a recognised scheme or an authorised scheme, but it used to be, we have got power to go in an act on behalf of those investors – being fair, those investors were investors in an authorised or recognised scheme. So it is an additional investor protection which allows us to look through and treat the scheme almost as though it is still an authorised or recognised scheme, so we can issue a direction.

Does that make sense?

The President: Yes, you make a change or the trust people have made a change, but notwithstanding the fact that they have made a change to their circumstances, the FSC are saying, 'Well, regardless of that, we've still got the right to go in behind your change.'

Mrs Whitelegg: Precisely.

The President: Okay, thank you. Mr Downie do you wish to continue sir?

Mr Downie: I just beg to move that clauses 11, 12 and 13 now stand part of the Bill, Mr President.

The President: In that case, Hon. Members, the motion that I put to Council is that clauses 11, 12 and 13 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Perhaps we can complete part 5, with clauses 14, 15 and 16, Mr Downie.

Mr Downie: Thank you, Mr President.

Clause 14 requires the Commission to give written notice to the governing body, manager or administrator of a scheme in relation to directions made, varied or revoked under clause 12.

Where the Commission refuses to revoke or vary such directions and where the Commission intends to make or refuse to terminate an appointment made under clause 13, in each case the notice must state the reasons for the Commission's decision.

Normally the notice given must be given prior to the

direction or appointment taking effect. However, it would be seriously prejudicial to the interest of investors to give prior notice when then the notification can be given after the action has been taken. Where it is necessary to inform the public, the Commission can publish notice of the action, including any reasons for it.

Clause 15 allows the Commission to make an application to court for an order removing any governing body or functionary of a scheme and replacing them with a person nominated by the Commission or appointing a liquidator to wind up the scheme. An application can be made in the same circumstances in which the Commission can take action under clauses 12 and 13.

The court can make any order that it sees fit. The Commission is required to give notice of an application to court to the governing body and the scheme functionaries and to take necessary steps to bring it to the attention of the investors.

Clause 16 sets out the process for the Commission to apply to court for the appointment of an inspector to investigate and report on a scheme or its governing body and functionaries. The court may make that appointment if it is satisfied it is in the interests of investors or the matter is of public concern. An inspector is required to report to the court as directed. A copy of the report must be provided to the Commission and may be provided on payment of the prescribed fee to functionaries, investors and persons named in the report. The court may have the report published.

Mr President, I beg to move that clauses 14, 15 and 16 stand part of the Bill.

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

The President: Mr Turner.

Mr Turner: Yes, it is more of a general housekeeping query really, with regard to publishing. It seems to be common practice that public notices go in two newspapers. I just wondered why 'one or more' was put in this particular Bill, when it seems to be quite common that two-newspaper publication of such notices is common?

The President: Mr Lowey.

Mr Lowey: Yes –

The President: Clause 14(6), Mr Downie, I think Mr Turner refers to.

Mr Turner: It is, sorry, Mr President, yes.

The President: Mr Lowey.

Mr Lowey: Yes sir. My query is on clause 16. The court may on the application of the Commission appoint one or more 'competent inspectors'. Are we and the courts in the business of appointing incompetent inspectors?

It says 'competent inspectors': we are writing primary law. I notice the mover of the clause has said 'inspectors' when he was talking. The Bill says 'competent inspectors'. I have looked at the clause that describes the –

The President: Interpretation.

Mr Lowey: Interpretation, thank you Mr President – the interpretation clause – and I do not see any 'competent inspector' defined there.

It is just the writing of the word 'competent' in front of it in primary legislation, because the implication is that the court would appoint an inspector, he would be competent.

The President: Mr Attorney.

The Attorney General: Mr President, hopefully with a view to assisting: the wording 'competent inspectors' actually appears quite frequently –

Mr Lowey: Does it?

The Attorney General: – in the companies legislation, perhaps in the context of appointing competent inspectors to look at a company that is in difficulty or to appoint competent persons to be liquidators of a company. Certainly, when an application is made to the court, the court will require evidence that the proposed inspector or proposed liquidator is a fit and proper person, and therefore, competent so you would look to see for example that the person has experience, in relation to collective investment schemes, maybe an accountant or lawyer who has relevant experience or so on.

So it is really with a view, Mr President, I think to protecting the investors in a scheme which is in difficulty, to ensure that the inspectors are indeed fit and proper to do their job.

The President: Mr Waft.

Mr Waft: It is just a generalisation, Mr President. The very fact that we are talking about collective investment schemes, if you invest in something, there can be a possibility of it not panning out as it were, and under clause 15 it mentions appointing a liquidator to wind up the scheme.

With regard to the hoops and difficulties – not difficulties *per se* – the things that they have to comply with, to come under the Collective Investment Schemes Bill, would indicate that the FSC is doing its best to ensure that they are *bona fide* schemes, but in a case of when a problem arises with regard to the monitoring of a scheme by the FSC, and the investor finds out that there is a possibility that the problem arose because of lack of supervision of the FSC, where does the investor then go? Does it just go to court in that situation?

The President: Mr Downie, if I may, in relation to Mr Turner's comment in 14(6), I did notice in fact that the Commission *may* publish a notice of a direction, so it is permissive rather than mandatory to them; but if you turn to clause 14(5), it says:

> 'The power to give a direction under section 12 or make an appointment under section 13 may be exercised [in writing]. The Commission may publish notice of any direction, appointment, withdrawal, variation…'

Similarly, we have 50 participants in any particular scheme. Presumably, the FSC, under directions in clause 12, can make the governing body, the manager or administrator of the scheme notify each of the participants in writing, in which case, if they are notified in writing, which they

could be under clause 14(5), I fail to see the point of them publishing a notice in the paper, unless in fact the governing body is going to try to gain new participants to a scheme.

Mr Downie. Are you going to ask Mrs Whitelegg? Right, Mrs Whitelegg.

Mrs Whitelegg: Yes, if I start with Mr Cringle's point: in relation to exempt schemes then it will be fewer than 50 participants, but some of the other types of schemes that are operated which are sold directly to the general public, in particular the authorised schemes, may have many thousands of investors. So whilst obviously, once this power is in place, the Commission would use its best endeavours to ensure that each and every investor was communicated with. Actually, putting a public notice out about the scheme in that circumstance might be appropriate to ensure that as many of those investors as possible are notified.

It is not something that we would do lightly, though.

The President: In that case, Mr Turner's point becomes more relevant, does it not? If they cannot notify the individual participants and there are hundreds of participants, presumably then a public notice becomes more relevant.

Mr Turner.

Mr Turner: Yes, I think so. I think there was a reason why, certainly, if you take road closure notices that can effect thousands of people, it was deemed reasonable to try and get that message out by publishing in two titles, because not everybody might get the *Courier* or not everybody might buy the *Manx Independent*. So, I think –

Mr Downie: Just to clarify that, there is also, the FSC has its own website and as well as two local newspapers, there would be a press release given to, I assume, the radio stations as well. They would get that information out. It would depend on the particular circumstances. Obviously, if there is a problem, they want to do their job and let the public know what is going on.

Mr Turner: Mr President, I think my point was that we are trying to look at being a little more universal here in tidying these matters up, and that is why I said it was more of a housekeeping point. In other areas, I think, in past Bills we have had through here recently, we have stipulated two.

Mr Downie: I think just to come back at that: this publishing in two newspapers as it were, that seems to be standard practice throughout a lot of legislation and, in fact, this Bill which is replacing the old Act does have the same terminology in it about the advertisement.

The President: Mrs Whitelegg.

Mrs Whitelegg: If I could just add to that, because the schemes industry is a very diverse industry and some of the schemes might not be sold on the Isle of Man at all; some of them might be sold only to a very particular sector or segment of people somewhere else in the world. So, the question of where we publish, we would have to look at what that scheme was and where the investors were.

In the case of some schemes, there may only be two investors, for example. So, actually publishing in two newspapers when we have only got two investors might not be appropriate, and those investors might not be in the Isle of Man, they might not be in Europe; they could be anywhere in the world. So, the actual provision does not allow us to be flexible: looking at the scheme; where the investors are; what type of scheme it is, whether it is a retail scheme, whether it is purely institutions who are investing in it; and then look at where is the most appropriate place to publish that information.

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

Mr Downie: Yes. I would like to thank Mrs Whitelegg for providing us with the additional information.

Mr Lowey made the point about the competent inspectors. The Attorney General dealt with that and I think you have to bear in mind that the court has to satisfy itself. You are taking it away from the FSC now. It has gone into a court situation. They need to satisfy themselves that the money and responsibility that has been handed over by the courts to another body, another group of people… they need to be certain that they are competent. I thank the Attorney General.

The issue that Mr Waft made, over lack of supervision, 'where do they go?', I think there is a number of places that people can go. They can make a complaint directly to the Commission. There is provision within the legislation that we are looking at today to go to the Office of Fair Trading. There is a whole host of areas where if people have a feeling that there is something happening with their money, then they can actually go to have a grievance dealt with.

So with that, Mr President, I would like to move clauses 14, 15 and 16 stand part of the Bill.

The President: I put that as a motion to Council, Hon. Members, that clause 14, 15 and 16 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

We turn them to part 6 and, perhaps, we could take chapter I, which is clauses 17, 18 and 19, sir.

Mr Downie: Thank you, Mr President.

Clause 17 makes it an offence for a person to provide to the Commission, for any purpose under the Bill, a document that they know to be, or are reckless as to whether it is, false or misleading in a material matter, or make a statement to the Commission for any purposes under the Bill that they know to be, or are reckless as to whether it is, false or misleading in a material particular.

Clause 18 makes it an offence to contravene a provision of the Bill or a provision of orders and regulations made under the Bill which specify that contravention is an offence.

Clause 19 provides that where a company is found guilty of an offence under the Bill, an officer of that company may also be personally guilty, if it is proved that the offence was committed with his consent or connivance or was due to his negligence.

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

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

The President: Mr Lowey.

Mr Lowey: Just one little query on 18 and the penalty. I notice there is a fine not exceeding £5,000. Is that adequate in this day and age, because some of these sums could be quite large?

I notice in 18(4)(b):

> 'on conviction on information, to a fine or to custody of a term not exceeding 2 years'.

Is the £5,000 maximum penalty for the six months the same as the fine for the two years? In other words, is it unlimited?

The President: I think Mr Attorney will answer this one again, I think. I think a summary conviction and conviction, I think.

The Attorney General: Thank you, Mr President.

Yes, the Hon. Member is right. These offences are so called… they are triable either way. In other words, they may be triable either summarily, that is before a magistrate; or before a Deemster and jury, on information. So, if the matter is dealt with summarily, the maximum fine is £5,000 or custody not exceeding six months.

Those sort of cases would be, perhaps, not as serious as some that come on the Richter scale, as it were. The very serious cases will be referred to the Court of General Gaol and there the court has a power to impose an unlimited fine, but imprisonment is limited to two years.

The President: Mr Turner.

Mr Turner: Yes, Mr President.

With regard 18(5) then, would it be the Attorney General's Office which would decide the level of severity as to which route that would go or would that be… Who would decide the level of severity?

The President: Mr Attorney, I think, has to decide which court it would go to, not the level of severity.

Mr Turner: Sorry, that is what I was questioning.

The President: Mr Attorney.

The Attorney General: Yes, Mr President, you are quite right. It would be for the lawyers in Chambers, consulting with myself, to decide whether the matter should be prosecuted summarily or an indictment on information. Of course, it is for the court to decide what penalty there will in fact be.

Mr Turner: Indeed. Indeed.

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

Mr Downie: Yes, I thank the Attorney General for his support there in giving a couple of very good examples of what actually takes place when a case is brought by his Chambers.

With that, I would like to move that clauses 17, 18 and 19 now stand part of the Bill.

The President: Hon. Members, I put to Council 17, 18 and 19. Hon. Members, those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Perhaps we could take chapter II, which is clauses 20 through to 23. Mr Downie.

Mr Downie: Thank you, Mr President.

Clause 20 allows the Commission to give guidance on the requirements of the Bill, the Commission's functions under the Bill or any other matter.

Clause 21 gives a right of appeal against the Commission's decision to the Collective Investment Schemes Tribunal, which will be established under the Tribunals Act. This right of appeal covers decisions of the Commission under the Bill relating to authorised, full international and recognised schemes, directions, appointment of advisers to a scheme and persons appointed to assume control of the scheme.

Appeals will be conducted by the Collective Investment Schemes Tribunal, which will consist of a chairman and two members selected from a panel, appointed by the Appointments Commission, established under the Tribunals Act 2006. The Collective Investment Schemes Tribunal has power to confirm, vary or revoke the Commission's decision. There is a right of appeal to the High Court on a point of law. Otherwise, the Tribunal's decision is binding on the Commission and the applicant for the appeal.

Clause 22 requires the Commission to keep a register of authorised schemes, international schemes and recognised schemes containing prescribed information. Under the provision, any person will be allowed to inspect the registers during ordinary office hours.

Finally, clause 23 provides that unless otherwise recoverable, any expense incurred by the Commission or a person appointed by the court under clause 16 will be provided for by Tynwald and that fees received under the Bill shall form part of the general revenue of the Island. This provision is in line with current arrangements.

Mr President, I beg to move that clauses 20, 21, 22 and 23 stand part of the Bill.

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

The President: Hon. Members, the motion that I put to Council is that 20, 21, 22 and 23 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Mr Downie, we will have to revert to taking it individually, because clause 24 introduces schedule 5, sir.

Clause 24 and schedule 5.

Mr Downie: Clause 24 and schedule 5 allows the Commission to make orders and regulations necessary to give effect to the Bill. Such orders and regulations can relate to any of the matters mentioned in schedule 5. The Commission is also empowered to make orders and regulations to exempt any person or classes of persons from the provisions of the Bill.

Additionally, the Commission is empowered to direct that an order or regulation does not apply to a particular scheme or applies with such modifications as are directed. This power can only be exercised with the consent of the person or scheme subject to that order or regulation. It is envisaged that this power would be used in limited circumstances for commercial reasons.

The Commission has a statutory obligation to consult Treasury and the persons likely to be affected before making delegated regulation.

Mr President, I beg to move that clause 24 and schedule 5 stand part of the Bill.

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

The President: Mr Downie, is it possible for you to give us some example in relation to clause 24(7):

> 'The Commission may, on the application or with the consent of any person to whom an order or regulation applies, direct that the order or regulation –
> (a) does not apply to that person in respect of a particular scheme'.

What would be an example of someone applying individually, that it does not apply to them? Mrs Whitelegg, you are going to answer this.

Mrs Whitelegg: This is a new power for the Commission; one that we would have liked to have had at the moment and for a very good reason. If you think of our authorised schemes which are designated in the UK as being equivalent to UK authorised schemes for consulting that can be sold to the general public.

The President: So we are dealing with a recognised scheme?

Mrs Whitelegg: This is actually an Isle of Man scheme being sold to the public in the UK. So, it is an Isle of Man authorised scheme, but where we use the equivalent procedures and we are selling into the UK.

Now, the UK have dramatically upgraded their authorised schemes regime, which has removed a lot of the red tape from their authorised schemes regulations and made them a lot easier for the scheme operators to comply. It gives them more flexibility about what the schemes can invest in but, again, maintains investor protection. So, they have really modernised their legislation.

A lot of these schemes on the Island – we have only got, I think it is, eight authorised schemes at the moment – but of those, a number of them are mirror schemes where they actually are run by a fund manager who has a UK fund operation and the schemes have the same investment objectives and try to operate in exactly the same way. For those schemes, their UK schemes now have a lot more flexibility than the Isle of Man schemes have – because this is something we are reviewing at the moment and we will be bringing to the House in due course. If we had the power to disapply, in accordance with this one, what we could do in that circumstance is say to the schemes which are affected by this provision, providing you follow the UK requirement, which we are happy with and we are quite content that it meets the appropriate standards, as long as you meet the equivalent UK requirement, you do not have to meet our more prescriptive requirement as to what you can invest in, until you have gone through the process and operated our regulations.

What it means is we have got just a small degree of flexibility where our regulations are behind the UK in that circumstance. We could actually allow that scheme to continue to be the same as its UK counterpart.

The President: I could argue, then, Mrs Whitelegg, could I not, that, in fact, this is a method whereby our strict controls can be lessened? Mr Downie was making play that, in fact, this law brings us into having a good protection for the participants.

Mrs Whitelegg: Yes, I mean, certainly we would not use this… This is not a provision that we would use in an inappropriate way. Certainly, it is a power for the board of the Commission, so our Commissioners would look at this and then decide whether they thought there was an appropriate and equivalent requirement we were allowing the scheme to do. What it does do, it allows us to continue to be flexible, but at the same time the Commission would not do it, if it was lessening the standard.

The President: A bit of smoke and mirrors here, isn't there? *(Laughter)* Anyway, Mr Lowey.

Mr Lowey: Could I just ask, is this, in effect, an interim measure until we bring ours more up to date?

Mrs Whitelegg: It is an interim measure and, what is more, if you think about the other types of schemes, the unauthorised schemes, a lot of them are operating in a huge number of markets around the world. Some of them are listed on the South African stock exchange; others are listed in different jurisdictions; others are aimed at particular parts of the public, the institutional investors and other people. Some circumstances are general regulations which really say how the scheme must be set up; what sort of reporting is in place.

In some circumstances, it could be appropriate to say, because you are selling into that particular market, we will change that requirement to match it, so if you are being listed in a particular stock exchange, we will allow you to follow a requirement that that stock exchange imposes, because sometimes they are in conflict. So, what our regulations say may be achieving investor protection but, at the same time, what they are saying might also achieve it in a different way, and if they are in conflict, it allows us to look at those circumstances as well.

Mr Lowey: Thank you.

The President: You are trying very hard. Mr Waft.

Mr Waft: Thank you, Mr President.

On part 2 of schedule 5, with regard to the offering document, it states that it does require:

> 'the governing body of a scheme to –
> (a) submit to the Commission; and
> (b) publish or make available to the public on request,
> an offering document containing such information about the scheme and complying with such requirements as are prescribed.'

Then on paragraph 8 there, it says:

> 'Provisions requiring the payment of compensation by the person who is treated as responsible for the offering document to a person […] (b) has suffered loss as a result of –
> (i) an untrue or misleading statement in that document; or
> (ii) the omission from that document of a matter required to be included.'

But have you not, under paragraph 5(a), had that document submitted to you anyway? Are you saying that, perhaps, the document is different from the one that has been submitted to yourself?

Mrs Whitelegg: It could be that, but actually we do not require all offering documents to be submitted.

We have got different schemes which operate in different ways. So, the authorised scheme, which we discussed, the Commission sees all of the documentation and approves it, and approves all changes to that document, before it can happen. But if you consider some of the other institutional funds, we may not receive the offering document before that fund has been launched or we might receive some detailed confirmation signed off by the directors of the fund and by the fund manager or administrator.

So, they confirm all sorts of details to us, but we might not actually have seen that document before it was launched or, in some cases, in certain institutional funds, we might not have seen it at all.

So, what this is saying is that we may be responsible for it and if they have lied in that document or misled the investor, then they are liable for it, which is a very important provision to ensure that there is some come-back for investors.

Mr Waft: But if the document has been submitted to yourselves and still has been a problem for the investor and he has suffered a loss because of that, where does the investor go then?

Mrs Whitelegg: They would have two routes: certainly, they could complain, if they thought that the Commission had not done their job properly. We have a complaints procedure and, ultimately, they could take action against the Commission – that would be one feasible route.

But I suspect what would happen – and certainly that would be a very unfortunate situation – but it would still have recourse to go to the issuer of that document who had misled them in the first place.

The Commission is not signing off against the document to say that they are correct in their particulars, because we are working on the basis of information provided to us, so it could be that we had also been misled about the nature of the scheme or how it was being operated.

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

Mr Downie: I think that…

The President: In that case, Hon. Members, the motion that I put to Council is that clause 24 and schedule 5 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 25.

Mr Downie: Clause 25 sets out the Tynwald procedure for bringing delegated legislation made under the Bill into operation. It allows statutory documents to come into effect before they are approved by Tynwald; but in this circumstance they would cease to have effect, if Tynwald does not subsequently approve them. This is in line with the current Tynwald procedure for schemes and it is important to allow for commercial flexibility.

Mr President, I beg to move that clause 25 stand part of the Bill.

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

The President: The motion, Hon. Members, is that clause 25 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 26 and schedule 6, Mr Downie, please.

Mr Downie: Clause 26 and schedule 6 define certain expressions used in the Bill.

I beg to move that clause 26 and schedule 6 stand part of the Bill.

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

The President: Mr Lowey.

Mr Lowey: Just a comment, Mr President.

I notice in many of the clauses that we are replacing a 1988 Act. It says a lot for the 1988 legislation that it has done 20 years and allowed the industry to develop as it has, but after 20 years, I think it is time to bring it up to date. I think we are getting a lot of this legislation at the moment. I think it is appropriate that we get the right legislation to last us the next 20 years.

I just notice it is 20 years and it is about time.

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

Mr Downie: Just to concur with the views made by Mr Lowey. The markets are changing out of all recognition, really, but it is very important that the Isle of Man has a wide range of financial opportunities available to it. I hope that when this legislation is finally enacted it will give us another opportunity to go out and promote all the things that our financial sector can provide.

With that, I beg to move that clause 26 and schedule 6 stand part of the Bill.

The President: Hon. Members, the motion is that clause 26 and schedule 6 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

We turn then to 27, which simply introduces schedule 6. Mr Downie, clause 27 and schedule 6.

Mr Downie: Clause 27 gives effect to schedule 6 which amends various acts in relation to the Bill.

I beg to move that clause 27 and schedule 6 stand part of the Bill.

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

The President: The motion, Hon. Members, I put to Council is that clause 27… 26 and schedule 6 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Now clause 27 and schedule 7, repeals.

Mr Downie: Clause 27 gives effect to schedule 6 which amends the various acts in relation to the Bill.

I beg to move that clause 27 and schedule 7 stand part of the Bill.

The President: Now, wait a minute. Either I have got out of sequence or you have got out of sequence. I think possibly I got out of sequence!

Mr Downie: Clause 28, schedule 7.

The President: I think I got out of sequence. Apologies for that, Hon. Members.

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

The President: In fact, what we are doing is clause 28 and schedule 7. Clause 28 and schedule 7, having completed previously 27 with schedule 6. That is the way it has to be, Hon. Members.

So, it is clause 28 and schedule 7: Hon. Members, those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Now we are onto the transitional and savings, which is clause 29, and that introduces schedule 8. Now we are right, back on sequence.

Mr Downie: Do you want to take the last two, Mr President?

The President: You can, yes.

Mr Downie: Clause 29 gives effect to schedule 8, which provides for transitional and saving provision to allow the smooth introduction of the Bill.

Clause 30 gives the short title of the Bill and provides for an Appointed Day Order to bring the Bill into operation. It allows for different provisions to be brought into operation at different times, and with appropriate transitional arrangements.

Mr President, I beg to move that clauses 29 and 30 and schedule 8 now stand part of the Bill.

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

The President: Hon. Members, the motion is that clause 29, together with schedule 8, and clause 30 do stand part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

That draws to conclusion the clause stage, Hon. Members, of the Collective Investment Schemes Bill.

Collective Investment Schemes Bill
Standing Order 4.3(2) suspended to take Third Reading

The President: Item 4, Mr Downie.

Mr Downie: Mr President, I wonder if I could ask: Hon. Members will be aware that I have leave of absence next week and, as we have had no amendments to the Bill, perhaps this would be the time to seek suspension of Standing Orders and move the Third Reading of the Collective Investment Schemes Bill.

I move:

that Standing Order 4.3(2) be suspended to the extent necessary to allow the Third Reading of the Collective Investment Schemes Bill to be taken at this sitting.

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

The President: Hon. Members, the motion is that we suspend Standing Orders in order to take the Third Reading of the Collective Investment Schemes Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Collective Investment Schemes Bill
Third Reading approved

The President: Therefore, Mr Downie, having got suspension of Standing Orders, I ask you to introduce the Third Reading of the Collective Investment Schemes Bill, then.

Mr Downie: Thank you, Mr President.

In moving the Third Reading of the Collective Investment Schemes Bill 2008, firstly I would like to thank Hon. Members for their support in taking the legislation forward thus far. Given the unanimous concurrence for the Bill during its early stages, Hon. Members will be pleased to note that I am in a position to keep the remarks to a minimum. As discussed previously, the Island has a significant fund industry, which contributes to the Island's economic success. It is important that this sector is underpinned by an appropriate legislative framework, which meets international standards and provides appropriate investor protection, whilst at the same time supporting the economic success of the Island's funds industry and the collective investment schemes operating within it.

The Bill repeals and replaces with modifications the provisions of the Financial Supervision Act 1988, which relates to collective investment schemes. The Bill is largely an update of current legislation, with some additional provision to complement the new funds regime introduced in response to the report of the Funds Review Group in 2007.

The primary aim of the Bill is to ensure that the legislative framework for schemes is transparent and appropriate to the different types of schemes that are established, promoted, managed or administered in or from the Island.

Mr President, I beg to move:

that the Collective Investment Schemes Bill be now read for a third time and that the Bill do pass.

The President: Mr Crowe.

Mr Crowe: Mr President, I would second the Third Reading of the Bill and, as Mr Lowey rightly says, it is updating the legislation after a 20-year period of running the existing legislation. The new Bill meets international standards. It considers investor choice and investor protection, and it assists the industry in the Isle of Man to promote business growth and, in turn, creates job opportunities for the Island workforce.

The President: Mr Waft.

Mr Waft: I would just like to say, Mr President, that, in view of the situation that we find ourselves in with regard to the necessity to tidy up the situation with regard to the financial Bills, etc, is there any sort of implication as to when the Royal Assent would be given?

The President: Mr Lowey.

Mr Lowey: Yes, I just want to say… One thing I have noticed, Mr President, is that the Bills seem to get bigger and bigger and more complex. This is… I use the words, a Gordian knot. As a layman, and I come from it as a layman, it is difficult.

All I can say is I think what we have had, we have had a learning curve and the information that has been given to us by the Treasury, via the Commission, and the information from the experts, has been extremely helpful.

I recognise that the Isle of Man now is a big player in the global village and we need to have legislation that is as flexible in maintaining high standards, and I think the Bill is imperative and, therefore, that is why I have been happy to support the Third Reading being advanced. I think it has been given a good airing and I welcome the legislation that has been produced.

The President: Mr Butt, Hon. Member.

Mr Butt: Thank you, sir.

I support the Third Reading and thank the mover for making the Bill understandable, intelligible, which it is now.

I particularly thank Mrs Claire Whitelegg for her impressive expertise which she has given to us today.

I do have one final query, though, before it being put to bed, and I apologise for that. My knowledge of investment schemes from the past – not in this jurisdiction, I hasten to add – is that the people who set them up sometimes are entrepreneurs who are not always of the highest integrity and, as Mr Waft pointed out earlier, there is a risk in some of these schemes.

In clause 5, it states that the manager, or the administrator, has to take reasonable steps to satisfy himself that a person, or some of the officials, are suitable people and that includes themselves. The manager, or administrator, has to ensure that the managers and administrators are suitable. I just wonder where the definition of 'suitable' comes. It is not in the definitions clause. Is the suitability decided by the manager or administrator? Do they decide that? Or do the Commission actually have some guidelines and criteria as to what a suitable person is?

I think that is at the crux of this Bill. If you have unsuitable people setting up the schemes, managing them, administrating them, there can be problems. I would hope that the FSC have their own standards which they would apply, but the way this clause is worded, it is up to the managers themselves, or administrator, to define what is suitable, the way the Bill is worded at the moment.

Thank you.

The President: Mr Downie to reply.

Mr Downie: First of all, I would like to thank Mr Crowe for his support all the way through the Bill. Having someone in Council who has a financial background is very useful on occasions like this and he does have quite a wide knowledge of matters in this area. So, I am grateful to him for his continued support.

Mr Waft asked when Royal Assent was likely to be given. Well, as far as I am concerned, the industry is waiting for this Bill. It does provide a whole raft of new opportunities for the Isle of Man, so we are now in the hands of the UK Department of Justice.

Mr Lowey said that the Bills were becoming bigger and bigger. He is quite right. We are dealing with a lot more complex issues and, as he said himself, we have to recognise the Isle of Man is quite a big player now in a global market, particularly in the collective investment schemes area. But he was prepared to support the Third Reading.

I have not had the length of time in Tynwald that Mr Lowey has, but I am sure that he must feel very proud, on occasions, to see how the economy of this Island has developed *(Interjection by Mr Lowey)* and how we have, actually, kept if not pace with what is going on, in certain circumstances, ahead of the game. It is very important to realise that.

Now, Mr Butt said he supported the Third Reading. He had a final query and it was not, in his view, always the people of the highest integrity who possibly set up some of these schemes, which is referred to in clause 5. The manager of an administrative scheme – the Financial Supervision Commission has issued guidance previously on suitable jurisdictions. It will be down to the manager or the administrator to decide what individuals are suitable. The Fund Management Association has also issued guidance.

So there is provision there, but I would expect that anyone who is not suitable will come out in the scrutiny that is given when a lot of these applications are made. The last thing we want are people operating from the Isle of Man who are going to cause the Isle of Man to be seen as a jurisdiction that is not really fit.

So, with that, Mr President, in moving the Third Reading of the Collective Investment Schemes Bill 2008, I just hope that the 'Farming News' gets delivered a little bit earlier on Saturday, which might give you something else to read other than the Bill! *(Laughter)* I appreciate very much your input. You have obviously gone into it very, very thoroughly and I think that, as a person who is probably not worldly wise on financial regulations, you have done us proud during the reading of this Bill and the way in which you have assisted me in bringing it forward.

I beg to move that the Collective Investment Schemes Bill 2008 be read a third time.

The President: I am happy to put it to Council, Hon. Members, though I think Mr Butt's query is still relevant there. Hon. Members, the Collective Investment Schemes Bill 2008 be read for a third time: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Having put that to bed, Hon. Members, may I also thank Mrs Whitelegg for her contribution this morning. I think there are times when it is useful for officers to be able to be queried directly. It certainly helps the Member in charge of the Bill and probably brings it to fruition a little quicker than otherwise we may do.

Collective Investment Schemes Bill – Third Reading approved

Administration of Justice Bill
First Reading approved

4. Mr Downie to move:

That the Administration of Justice Bill be now read a first time.

The President: We then move on, Hon. Members, to Item 4, which is the Administration of Justice Bill, for First Reading. Mr Downie.

Mr Downie: Thank you, Mr President.

This Bill contains miscellaneous provisions relating to the High Court and its judges, the law of evidence and civil litigation procedure, principally as follows.

The judiciary are to include a second tier of High Court judges, called 'Judicial Officers', enabling the workload of the Deemsters to be shared out. Wider powers are sought to make procedural rules for the High Court, enabling the present Rules of Court to be completely revised for the first time since 1952.

The Rules of Evidence are revised, enabling the High Court to admit hearsay evidence, subject to appropriate safeguards, and to order evidence to be preserved. The High Court is also to be given additional powers in relation to costs and interest on judgements.

Minor amendments relating to criminal procedure and jury lists are made. The Bill is part of a major review of the systems, practices and procedures of the courts which began in 2006 with civil proceedings. New Rules of Court have been drafted and are currently the subject of consultation.

The next phase dealing with criminal proceedings has begun and will be followed by a review in respect of family proceedings. Expenses, if any, incurred as a result of the Bill will be met out of the annual budget of the General Registry.

It is considered that the Bill is compatible with the Convention Rights within the meaning of the Human Rights Act 2001. The Bill and the new Rules of Court will enable the High Court to manage civil proceedings more proactively, which will secure better compliance with Article 6, Fair Trial, of the European Convention on Human Rights.

Her Majesty's Attorney General and the Isle of Man Law Society have been consulted during the drafting of the Bill.

The Bill is divided into four parts as follows. Part 1, clauses 1 to 7, deals with the judges of the High Court and powers of the High Court. Part 2, clauses 8 to 22 and schedule 1, updates the law relating to hearsay evidence. Part 3, clauses 23 to 24, deals with the preservation of evidence and updates the law relating to the making of oaths. Part 4, clauses 25 to 32 and schedule 2, contain miscellaneous and supplemental provisions, including a number of miscellaneous amendments in respect of civil procedures and the powers of the Deemsters.

Mr President, I beg to move that the Administration of Justice Bill be read for a first time.

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

The President: Mr Crowe.

Mr Crowe: Mr President, I found the explanatory notes very helpful for this Bill and taking an extract from this – and I know Mr Downie has mentioned this – but it mentions that:

> 'The Bill is part of a major review of the systems, practices and procedures of the courts which began in 2006 with civil proceedings. New Rules of Court have been drafted, and are currently the subject of consultation. The next phase, dealing with criminal proceedings, has begun, and will be followed by a review in respect of family proceedings.'

What strikes me about all this is that it is such a huge task to change an existing legal system and perhaps the Attorney General could give me some idea as to the major shifts that we are making. Is it to improve speeding up of justice? Is it really to allow the introduction of new systems, such as hearsay, to come in, which, in effect, will allow justice to be administered still as fairly and equitably as it has been done in the past? But will it help to improve the time taken because, sometimes, the court action you read in the newspapers might have been in process for up to two or three years or longer.

Will it help to speed up the administration of justice? That is the question.

The President: Mr Lowey.

Mr Lowey: Yes. Administration of justice – I think a lot of people find it quite incomprehensible how it takes so long for a trial, for cases to come to court. I recognise immediately the world we live in now is a different world than the one 10 years ago. We built a new Courthouse to deal with what I would call the justice system. We invested heavily in it. I think this is inevitable really, this Bill. I think we have the Deemsters now sitting on cases that will take months. It is not a question of a couple of days, give the judgment and down. Some of these cases take long, long months to take up. They are more complicated.

The thing that concerns me most is the almost open-ended view, that we can have as many Deemsters, Acting Deemsters, as you like, as this Bill enables the Deemsters to be brought in on a temporary basis. The only thing there that will restrict the growth of that is the number of courts available to take the trials.

I notice the expenses will be given out of the General Registry – will be charged. It does not seem to be what I would call the normal financial restrictions being placed on it. Should there be restrictions placed on it – financial restrictions on justice? I only use the word, the delay in justice…

There is one where we have the fishing boat one – the trial there. That seems to me and to the ordinary man in the street, an inordinately long time for it to be concluded. Now, I understand the reason about another jurisdiction and all the rest of it but, again, to the man in the street, they will say, 'Come on, that should have been dealt with by now.'

This Bill, I think, is one that we cannot avoid and, therefore, I will be supporting it, with the proviso that, somehow, it is not an open-ended way of getting extra Deemsters at the drop of a hat.

But I then query my own sentiment there. If the need arises, should not we be able to? And this Bill, at least, enables that to happen. It does not automatically follow that it is open-ended, but I cannot think of any other alternative,

other than the way it has been presented to us in this particular Bill, but there you are. I have to query my own doubts there. That is the only doubt I have got about it.

The President: Mr Waft.

Mr Waft: Yes, Mr President.

I wonder if it is possible for the Attorney General to make comments and explain to myself the line, with regard to schedule 2:

> 'The requirement for parental consent to adoption is removed where a UK court has made a "placement order" in respect of the child (paragraph 5)',

and the Adoption Act 1984 is amended.

Could he clarify the reason for that? Has there been a particular problem with that?

The President: Were you reading from the explanatory memorandum, Mr Waft? (**Mr Waft:** Yes.) Which page are you on, sir, sorry?

Mr Waft: Part 4, clause 31, schedule 2. It is the schedule 2, sir. Schedule 2, paragraph 5 – top of page 32 – schedule 2 continues with regard to the Adoption and Children Act 2002.

The President: Right, I have you now. Where it says:

> 'section 21 of the Adoption and Children Act 2002 (an Act of Parliament), or any corresponding provision having effect in Scotland or Northern Ireland.'

Is that the bit you are referring to? (**Mr Waft:** Yes.) Right. So you are referring to section 21 of the Adoption and Children Act 2002, an Act of Parliament.

Mr Butt: It is repealed.

Mr Downie: To be helpful, Mr President, in my notes when I get to clause 31: the requirement for parental consent to adoption is removed where a UK court has made a placement order in respect of the child.

The President: Well, we are on First Reading, Hon. Members. Perhaps it is something which Mr Downie will take cognisance of when it comes to the Second Reading at that particular stage. Perhaps Mr Attorney also will, so we can be up to speed in relation to the UK Act and our own Act, by the time we go to Second Reading.

Mr Attorney.

The Attorney General: Thank you, Mr President.

I certainly will, hopefully, be in a position to comment usefully on the question which has been raised by the Hon. Member, Mr Waft, in relation to the Adoption Act.

Mr President, in relation to the points raised by the Hon. Member, Mr Crowe, and indeed other comments made by Hon. Members, I think one of the things that brings a system of justice into disrepute is if cases are subjected to unreasonable delay. There have been times in our High Court when it would take a long time for a High Court case to be decided, and that is wrong – the well known maxim, 'Justice delayed is justice denied'.

I think, from my perspective, Mr President, there are one or two very important aspects of this Bill which will go to defeating any possibility or probability of delay. First of all, the Deemsters are given far greater powers of so-called case management. In other words, instead of allowing the parties themselves to set the timetable and to decide, for example, when a pleading is to be dealt with, when the defence is to be filed, when witnesses' statements are to be exchanged, and so on, now you find that the Deemsters play a very active role in setting a timetable.

This, I have to say, looking at it from a practising lawyer's perspective, puts a lot of pressure on the advocates in court. But, so be it. So be it if, in fact, the case comes to a hearing far more quickly.

The other point, which, again, I think Hon. Members have latched on to, is that we should not really be encouraging too much of a role for Acting Deemsters, that is Deemsters who are qualified in other jurisdictions. It seems to me, Mr President, that there will always be a role for Acting Deemsters. There will be cases – major fraud cases for example, and cases which require particular expertise – where our Deemsters simply do not have the experience, where it will be appropriate and, indeed, necessary for Acting Deemsters to be appointed. That is the position in the Channel Islands and I think it is right that we should have a panel of Acting Deemsters, but they should be used sparingly.

What the Bill does allow is far greater use of local advocates, who will be senior members of the Manx Bar who can be appointed to deal with a case as an Acting Deemster. I think this is a very worthwhile development.

Mr President, if we look at the explanatory notes, we will see – I will not go on very much longer – part 1 is probably the most important part, in many ways, insofar as it deals with the administration of justice and responds to the points raised by Hon. Members. The other parts are, as it were, technical rules which are going to be more the province of the practitioners.

I would have thought that, from the point of view of politicians, you would be far more interested in the way cases are managed and the value-for-money aspect.

The President: Mr Downie, do you wish to wind up?

Mr Downie: Yes, just to wind up.

First of all, I thank all those who have spoken. There is no doubt about it, this revision is long overdue. I know some Members have expressed concern about divorce and other matters. This will introduce more flexibility. There will be opportunities to introduce mediation, arbitration, and certain other matters, which are very, very important.

Just to add to what the Attorney General said, there are a lot of very proficient and expert advocates in the Isle of Man and I think, when this Bill is introduced, it will give them an opportunity to come in under certain circumstances and play a more active role in the administration of justice in the Isle of Man. Who knows, it may give them a taste for becoming Deemsters at a certain time later on in their careers?

But to deal with the frustration that we all feel about the amount of time it takes on occasion, and the amount of filibustering that goes on in courts between both parties about bringing cases, it does definitely put the Deemsters very much in the driving seat, and I think we will see some improvements there.

Administration of Justice Bill – First Reading approved

So, I am looking very much to the progression of the Bill. I have taken on board some of the issues that have been raised today, but I would ask Hon. Members, at the Second Reading and clauses stage… I do not know whether I will be flying blind on this one or whether there will be somebody available to come along and give some technical advice but we will meet that challenge when it arises, Mr President.

The President: Mr Attorney will deal with that, I think.

Mr Downie: With that, I beg to move that the Administration of Justice Bill be read for the first time.

The President: In that case, Hon. Members, that is the motion that I put to the Council, that the Administration of Justice Bill 2008 be read for a first time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

In that case, Hon. Members, that draws, I think, to a conclusion our business before the Court this morning.

Procedural

The President: We do have the Proceedings of Council of Ministers' minutes. I do not know whether we wish to take them at this particular stage, but I will also remind you, Hon. Members, that I need you back in your places for 2.15 this afternoon for a photograph.

Do you wish, Hon. Members, at this stage, to go into private to take the Council minutes? (*It was agreed.*) Okay. Council will now sit in private to go through the Council of Ministers' minutes.

The Council sat in private at 12.55 p.m.