



**LEGISLATIVE COUNCIL
OFFICIAL REPORT**

**RECORTYS OIKOIL
Y CHOONCEIL SLATTYSSAGH**

P R O C E E D I N G S

D A A L T Y N

(HANSARD)

Douglas, Tuesday, 29th April 2008

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

Her Majesty's First Deemster and Clerk of the Rolls (His Honour J M Kerruish QC)**Business transacted**

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The Council sat in private at 1.00 p.m.

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Legislative Council

The Council met at 10.30 a.m.

[MR PRESIDENT *in the Chair*]

Swearing-in of the newly elected Member of the Legislative Council, Mr David Alexander Callister

The President: Hon. Members, it is a great pleasure this morning that, once again, we are here in the Legislative Council and it is my pleasure to welcome His Honour, the Deemster, who is here to perform yet another swearing-in ceremony. The swearing-in ceremony this morning which will take place is the swearing-in to complete the Legislative Council's elected Members, elected by the House of Keys.

It is a little unusual, maybe, that the elected representative to the Legislative Council's nomination is one which has been expected for a long period of years and one who, on being elected, has commented on the radio that it is his wish to change the procedures within the election to the Legislative Council. That is fair and very much to the fore, I think, in both the general public and politicians' minds in the Isle of Man.

So, Your Honour, it is with particular pleasure this morning, knowing as I do and as Members of Council do, that you have always conducted the swearing-in of Members with considerable dignity, as befits the office both of the new Member coming into the Legislative Council, sir, and particularly I am pleased that you can carry out this particular job because of the manner in which you, in your distinguished office, sir, have always carried out this swearing-in ceremony.

We have reached the position, I think, Hon. Members, with my welcome to the Deemster here to our Legislative Chamber and with the newly elected Member of the Legislative Council, elected by the Keys, before me in the Gallery, that we proceed with the swearing-in.

So with the swearing-in procedure to be performed by His Honour, Your Honour, I am totally now in your hands.

The First Deemster (His Honour M Kerruish QC): That is very kind, Mr President. Thank you very much indeed.

If you would like to come forward, Mr Callister.

The Clerk led Mr Callister to stand before the First Deemster.

The First Deemster: First of all, I will read the warrant, if I may. It is the warrant of certification of election to the Legislative Council:

'At the sitting of the House of Keys held at Douglas on Tuesday, 22nd April 2008, David Alexander Callister was elected to serve as a Member of the Legislative Council until 28th February 2013. The said David Alexander Callister, since his election, has signified to me in writing his willingness to accept the office and has given an address to which all communications may be sent. Therefore I, Stephen Charles Rodan, Speaker of the House of Keys, in exercise of the authority vested in

me by the Isle of Man Constitution Acts 1919 to 2006, this day certify David Alexander Callister to be an elected Member of the Legislative Council until 28th February 2013.'

It is dated 22nd April 2008 and is signed by the Hon. Stephen Charles Rodan, SHK.

Now, Mr Callister, that is the warrant. I understand you are happy to take the oaths.

Mr Callister: Yes, I am, sir.

The First Deemster: Now if you will repeat after me:

I, David Alexander Callister, do swear by Almighty God that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth II, her heirs and successors. So help me, God.

Mr Callister took the first oath, phrase by phrase, as administered to him.

The First Deemster: That is the Oath of Allegiance. Now, if you can hold the Testament, please, and I administer this oath.

This is the oath administered to elected Members of the Legislative Council:

You shall well and truly serve as a Member of the Legislative Council of this Isle, according to the statute in that case made and provided. You shall use your best endeavours to maintain the laws and customs of this Isle, and shall justly and truly deliver your opinion and do right in all matters which shall be put unto you, without favour or affection, affinity or consanguinity, love or fear, reward or gain, or for any hope thereof, but in all things you shall deal uprightly and justly and do wrong to no man. So help you, God.

Those are the oaths.

I will now read the *Liber Juramentorum* entry which states, under the Island's crest:

'At Douglas, 29th April 2008

On this day the Oath of Allegiance and the foregoing oath was taken by and administered to David Alexander Callister, sworn into office as a Member of Legislative Council by virtue of a warrant of election dated 22nd April 2008.'

If you could put your usual signature there.

Mr Callister signed the Liber Juramentorum, witnessed by the First Deemster.

The First Deemster: Mr President, the warrant I present to you. I confirm that the oaths have been duly taken and Mr Callister is now entitled to take his seat with this Council.

The President: Thank you.

Statement of thanks and welcome by the President

The President: Mr Callister, it is my pleasure to welcome you here to the Legislative Council, as now a fully subscribed Member of the Legislative Council. I present to you the

Standing Orders of the Legislative Council. You will find in your duties, whilst sitting on your chair, that we do tend to follow Standing Orders, though sometimes they might get a very liberal interpretation. *(Laughter)*

Mr Callister: Thank you, Mr President.

The President: Hon. Members, it is indeed a pleasure to welcome Mr Callister to his chair in the Legislative Council. I think all of us have known David Callister for a very long time. I had the privilege, Hon. Members, of inviting David Callister to be a member of my particular committee, when we were considering what we would do to put a mark on the Isle of Man for Millennium Year.

In fact, Mr Callister was one of the committee who was responsible for – as Mrs Christian well knows, as the Minister for Health at the time – putting the oak wood on the face of the Isle of Man, alongside Noble's Hospital, an oak wood which I am pleased to say is developing nicely. So that is a mark and Mr Callister was, at that stage, prepared to join with me on the committee looking at various suggestions. In the end that was, in my opinion, a good suggestion which was carried to fruition by that particular committee.

I am sure that David Callister with his long experience of watching Keys, Council and Tynwald will find it interesting sitting on the other side of the fence, because now he will be commented upon, rather than being the commentator. So we welcome David most sincerely

Your Honour, once again can I pay tribute to you, the Deemster, for the manner in which, on every occasion, you have conducted the swearing-in ceremonies. No matter what, when someone stands in front of you, sir, whether it be in court or in this particular Council Chamber, there is an aura of dignity, there is an order of proper, true dispatch of the oaths which are being sworn. I am sure that every Member around this table who has taken the Oath of Allegiance, who has taken the oath under your guidance, sir, has been grateful that in fact you have been on this side of the table putting forward that particular ceremony.

It is with pleasure that I am telling you, this morning, that in all probability we will not need another swearing-in until 2010 and then maybe we can go even longer than that!

But thank you, sir, for being prepared to give of your time, once again, to come to carry out the swearing-in ceremony here in the Council Chamber, which brings our elected representatives up to strength. Thank you.

The First Deemster: Thank you, Mr President.

The President: Now, Hon. Members, that concludes the swearing-in ceremony. In order to allow photographs to be taken of the Deemster, the ceremony itself and Mr Callister and his family, I think we will take a break, to allow those photographs to take place.

Council will resume its deliberations, Hon. Members, let us say at 11 o'clock. Is that alright? Thank you.

*The Council adjourned at 10.41 a.m.
and resumed its sitting at 11.00 a.m.*

PRAYERS

The Chaplain of the House of Keys

Leave of absence granted

The President: Well, Hon. Members, we have apologies this morning from the Hon. Member, Mr Downie, who has my permission to be off the Island. I understand he is in London on Treasury business.

Welcome to new Member, Mr Callister

The President: Hon. Members, before we start, can I once again welcome Mr Callister to his seat in the Legislative Council. I am sure, as I have said earlier this morning, that he will enjoy being a Member of the Legislative Council. He will find that the work goes on day by day, and you learn to read and to find what other Members are thinking very quickly in the Legislative Council.

So welcome indeed, Mr Callister, to your seat here in the Legislative Council.

Mr Callister: Thank you, Mr President.

Congratulations to Mrs Christian on becoming Treasurer of the Commonwealth Parliamentary Association

The President: Hon. Members, I have also just been told, and I think it is important that I alert, on this occasion, the Legislative Council Members to this bit of information first – so you are getting red hot news this morning!

Hon. Members, it is with absolute pleasure – and I mean that sincerely – that this morning, I can announce to the Legislative Council that our colleague, Hon. Member, Mrs Christian, is now the Treasurer of the Commonwealth Parliamentary Association.

Mrs Christian was our branch representative at the recent executive meeting. As you know, she has been serving on the executive now, as a representative of the Isle of Man for some time. At the recent one in Jersey, as I understand it, the Treasurer by dint of ill health had to resign, at this particular stage, and the members of the Executive Council have elected our colleague, Mrs Christian, Isle of Man Tynwald Member to be the Treasurer of the Commonwealth Parliamentary Association.

It is certainly a feather in Mrs Christian's cap, of which I am absolutely delighted, and I am sure Members will agree and concur. Congratulations, Clare!

Members: Absolutely. Hear, hear.

Mr Lowey: Mr President, can I, as a former member

of the executive, just say I am thrilled and I know that she will do a first class job. It is one of the key positions in the executive, and I think – I may be wrong – but in living memory anyway, it is the first time it will not be an English or British – whichever way you want to call it – a Westminster member who has not been the Treasurer.

I think it is an immense accolade to Mrs Christian personally and to the branch itself. Well done, Clare!

A Member: Hear, hear.

Orders of the Day

Insurance Bill

Consideration of clauses resumed and concluded

2. Mrs Christian to move.

The President: Hon. Members we then turn to our Order Paper and the Insurance Bill for the continuation of the clauses, at clauses stage. We move on, Mrs Christian, with your Insurance Bill. Now, we had –

Mrs Christian: Clause 22, Mr President.

The President: – completed up to part 5 on your listing, so we need to start this morning, Hon. Members, at clause 22. Mrs Christian.

Mrs Christian: Thank you, Mr President.

Clause 22 has changed slightly. The Supervisor's existing powers in relation to foreign insurers are extended so that, broadly speaking, the powers available in respect of Isle of Man insurers are also available in respect of insurers incorporated elsewhere.

Regulations may apply the Act or parts of it to foreign insurers.

I beg to move clause 22 stand part of the Bill.

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

The President: Mr Lowey.

Mr Lowey: I note, Mr President, in the side notes, it is 1986. Is this the same position that we have been in since 1986 just being replicated in this particular clause?

Mrs Christian: Mr President, most of it is a replication, but the slight changes are the extensions in subclauses (2) and (3) which allow the imposition of rules on Isle of Man insurers to be applied also to foreign insurers. That has been extended somewhat. It also allows, in subclause (3), that regulations under the Act shall apply to foreign permit holders.

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

Part 6 then, clause 23.

Mrs Christian: Part 6 deals with insurance managers and insurance intermediaries.

Clause 23 in relation to insurance managers requires that any person carrying out the role of an insurance manager in or from the Isle of Man be registered with the Insurance and Pensions Authority. The clause restricts the activities of an insurance manager to insurance management and any additional activities which may be prescribed in the regulations.

There are fundamentally no changes in this clause. I beg to move that clause 23 stand part of the Bill.

The President: Mr Waft.

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

The President: The motion, Hon. Members, is that clause 23 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 24, Mrs Christian please.

Mrs Christian: Mr President, dealing with insurance intermediaries, this section has changed.

The principal purpose of chapters II and III of this part is to include general insurance intermediaries within the scope of the Bill. Consequently, the provisions of the Insurance Intermediaries (General Business) Act are repealed and they are going to be covered under this piece of legislation. By doing this, we will ensure that the Supervisor's and the Authority's powers in respect of all relevant insurance business are consistent.

So clause 24 requires those persons carrying on business as an intermediary in respect of contracts of insurance which are not investments within the meaning of the forthcoming Financial Services Act 2008 to be registered or exempted from registration by the Authority.

Reference to the Financial Services Act 2008 is for those contracts which fall under the Investment Business Act 1991. However, at the time this Bill is enacted, this is expected to have been replaced by the Financial Services Act 2008.

I beg to move clause 24 stand part of the Bill.

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

The President: Mr Lowey.

Mr Lowey: Thank you.

This is primary legislation and I take what the mover has said as an interim measure, because it will be superseded later on. I just use the word insurance intermediary. What is an insurance intermediary? I cannot recall seeing that.

Now we do have people in the finance sector who have got titles and names. This is the first time I have seen an insurance intermediary. Maybe I am wrong, but it is the first time I see it is primary law. Could the mover explain to me: is it a definitive operation or is it a transitional one, to fit in with what we are doing?

The President: Page 34, I think, Mr Lowey. Mrs Christian.

Mrs Christian: Yes, Mr President.

Intermediaries are general brokers: if I may suggest,

Marsh, Aon, Pearson's – people we know of out in the community selling general insurance, rather than insurance managers who are managing insurance businesses.

So, as Mr President has indicated, on page 34, there is a definition. They are being brought into the Insurance Bill, rather than being dealt with through the financial services... the legislation that covered them before, the Intermediaries General Business Act.

The President: It is in the interpretation clause, on page 34.

Hon. Members, the motion that I put to Council is that clause 24 do stand part of the Bill. Those in favour, please say aye; against, not. The ayes have it. The ayes have it.

Clause 25, Mrs Christian.

Mrs Christian: Thank you, Mr President.

Chapter III deals with common provisions. Clauses 25 and 26 are subject to some changes.

Clause 25 sets out the application process for registration as an insurance manager or an insurance intermediary. The clause also gives the Supervisor power to impose and revoke conditions on any registration.

The change from previous legislation comes in the introduction of indemnity insurance as a requirement for insurance managers. This is generally seen as good practice and most insurance managers already carry insurance, but we are now making it a statutory requirement.

Other changes allow the Supervisor to impose conditions on the registration of a manager or intermediary, rather than withdraw their permissions completely. In allowing the Supervisor this power, provisions would enable relevant businesses to continue subject to restrictions, rather than be wound up.

The insurance intermediaries were previously part of separate legislation and, as in previous clauses, have been brought into this document.

I beg to move that clause 25 do stand part of the Bill.

The President: Mr Waft.

Mr Waft: I beg to second, Mr President.

The President: Mr Crowe.

Mr Crowe: Yes, just to confirm that it is good practice to have professional indemnity cover. I am sure most companies would have that as a matter of course, but having it in legislation just adds to that.

The President: Do you wish to add to that?

Mrs Christian: No, Mr President, I think that is the essence of the changes.

The President: In that case, Hon. Members, I put to Council 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.

Clauses 26 and 27, Mrs Christian.

Mrs Christian: Thank you.

Clause 26 provides power for the Supervisor to cancel the authorisation of any insurance manager or insurance

intermediary, or to modify the exemptions that they may be subject to, or to direct them not to act for certain insurers or in respect of certain contracts. It sets out how this must be done and makes registration of insurance intermediaries annually renewable.

Clause 27, the winding up of insurance managers and insurance intermediaries, gives the Supervisor the power to petition for the winding up of any insurance manager or intermediary and sets out the situations when this power may be exercised.

These are clauses which are unchanged, except that the insurance intermediaries were previously covered by separate legislation and they have now been brought into the Insurance Bill's provisions.

I beg to move that clause 26 and 27 do stand part of the Bill.

Mr Waft: I beg to second, Mr President.

I wonder if the mover could just clarify for me on clause 26, when it says the Supervisor may at any time cancel the registration of a registered insurance manager or a registered insurance intermediary. What publicity would be given to that, when this person has been refused registration?

Mrs Christian: Mr President... I do not know whether there are any further queries or not.

The President: Continue, Mrs Christian.

Mrs Christian: The situation in most of these provisions is that when there is a cancellation, the Supervisor has a power to enforce on the person whose permission has been cancelled a direction to say 'you must inform certain parties'. The Supervisor decides how that information shall be provided and to whom the information needs to be given.

There are other provisions in the Bill about publicity. If there are matters of great public concern, then the Supervisor may make public notices in provisions which are dealt with later on.

The President: If I may, Mrs Christian, it does seem to be belt and braces in clause 27. At our last sitting, we were discussing the keeping of accounting records and here in subclause (2)(b), it says:

'that the company has failed to satisfy an obligation to which it is or was subject by virtue of this Act;'

and then in (d), it virtually repeats it:

'that the company, being under a statutory obligation with respect to the keeping...'

Well, presumably, it is if it is subject by virtue of the Act. So, it seems to me to be a bit of belt and braces, but none the worse for that possibly.

Mrs Christian: I do not think, Mr President, that there is any change from the original in that part of the Bill, but I take the point that you are making.

Well, there are two points. I think, in subclause (b), you are saying that they have failed to satisfy an obligation which was...

The President: But they do have a statutory obligation.

Mrs Christian: If they do something which is not in accordance with the Act, they are breaching a statutory obligation. I take the point that you are making. I am not quite sure why those two points are put in, in that way.

The President: It just seems belt and braces – none the worse for that. I am not decrying it all.

Mrs Christian: May I just suggest, possibly, that in subclause (c), it is talking about this part and that deals only with... Oh no, it was common provisions. I thought it might have been insurance intermediaries... It is – insurance intermediaries and managers – part 6. (**The President:** Right.) And this is a chapter of part 6.

So, in subclause (c), it is specifically about managers and intermediaries, whereas, in subclause (b), it is about any company rather than to do with the managers or intermediaries – perhaps. Perhaps the Attorney can steer us as to what the differences were.

The President: I was not overly concerned because, in fact, I felt it was just –

Mrs Christian: Doubly secure.

The President: – as I said, belt and braces and was doubly secure, if anything. On that ground, I was content.

Hon. Members, I put to you formally that clauses 26 and 27 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 28, Mrs Christian.

Mrs Christian: Thank you.

Clause 28 deals with connected persons and details those persons to whom the requirements in respect of connected persons apply and introduces in clause 28(2) a new power allowing the Authority to exempt, by regulation, certain persons from the requirement of this part.

Clause 28 has been introduced because, in practical terms, a connected person, by the present definition, can be rather remote from the situation.

So, I beg to move that clause 28 do stand part of the Bill.

Mr Waft: I beg to second, Mr President.

The President: Mr Lowey.

Mr Lowey: Could I just ask one query on the regulations? Are all regulations subject to Tynwald approval?

Mrs Christian: Yes, Mr President.

Mr Lowey: Fine.

The President: Hon. Members, I put to Council that clause 28 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 29, Mrs Christian.

Mrs Christian: Clause 29 remains unchanged. It imposes a requirement on regulated business to obtain approval from the Supervisor before appointing persons to certain specified positions and it gives the Supervisor the power to refuse

approval of the appointment or make conditions upon the appointment.

I beg to move clause 29 stand part of the Bill.

The President: Mr Waft.

Mr Waft: I beg to second, sir.

The President: Mr Turner.

Mr Turner: Yes, Mr President.

With regard to excluding persons from taking up certain posts, obviously it was referred to earlier on and that is an important part of the Act, to make sure that people holding these posts are fit and proper persons.

I just wondered what the appeals procedure is, in the event that someone who is excluded feels that they have been excluded and may have a case for the Authority to reconsider – what that procedure may be.

The President: Mrs Christian.

Mrs Christian: Mr President, further on in the Bill, there are provisions for appealing to a Tribunal, but there are certain matters which are not subject to appeal – and I am just trying to find it, at the moment. It is set out in clause 44: appeals are permissible

‘under section 45 except decisions to which sections 11(1) or 26(2) apply.’

The President: I think also under clause 45, Mrs Christian: clauses 44 and 45 are both the subject of review, are they?

Mrs Christian: Clauses 44 and 45 set out about the Tribunal and it sets out in subclause (6), ‘without prejudice to subsection...’ No, that is the binding.

I think that there are certain matters which are not appealable and, as far as I can see, they are set out in clause 44. And I think some of those do deal with the appointment to be a fit and proper person, but the decision of the Supervisor seems to be final in those situations.

I do not know whether Mr Attorney can assist on that.

The President: Mr Attorney.

The Attorney General: I may just refer to clause 44, to which the hon. mover has referred. I think the essence of clause 44 is that the decision-maker has to give written notice stating the reasons for the decision to the person in respect of whom the decision is made. That is clause 44(2).

It is saying in clause 44(1) that that duty to give reasons applies to all decisions, except those in clauses 11(1) and 26(2). It does not, I think, affect the right to lodge an appeal to the Tribunal under clause 45.

Mrs Christian: I thank the Attorney for the guidance on that.

The President: And, in fact, Hon. Members, clauses 11(1) and 26(2), which Mr Attorney refers to, both say that the Supervisor shall give written notice.

The Attorney General: So it would be superfluous.

The President: So it is superfluous. It is back to my belt and braces again, sir. In fact, in this case, they have taken it out because they have already (**The Attorney General:** Yes.) got it in clause 11 and in clause 26.

Mr Lowey: And clause 11(2) says that they get eight weeks' notice, normally, that something is going to happen, unless it is urgent. So, therefore, the idea that, somehow, you could know something was going on and then allow 10 weeks: it is not. If the Supervisor thinks it is urgent in the public interest, he can operate, step in and deal with it, nip it in the bud there and then.

The President: Mr Turner, you raised the question of the appeal. Do you wish to take it further?

Mr Turner: Yes, when we come to clause 45, I have a further question. It would probably be more appropriate to raise that on clause 45, so I am fine for the moment.

The President: So, clause 29. Hon. Members, those in favour of clause 29, please say aye; against, no. The ayes have it. The ayes have it.

That takes us to clause 30, Mrs Christian, please.

Mrs Christian: Clause 30 includes a new provision in that it has been extended to require persons who have been a chief executive, controller or insurance manager of a regulated business must provide notification to the Supervisor on their ceasing to hold that position, since there may be circumstances relating to them going out of office which the Supervisor should be aware of. That is the change in this clause, Mr President.

I beg to move that clause 30 stand part of the Bill.

The President: Mr Waft.

Mr Waft: I beg to second.

The President: Mr Lowey.

Mr Lowey: This is a strengthening of the public perception that the chief executive is pivotal in most of these companies, and I think the Authority should know when they leave office. I think that is a welcome development and I am glad that the industry feels it is necessary to support it too.

The President: Mrs Christian.

Mrs Christian: Yes, I do think...

The President: Sorry, Mr Crowe.

Mr Crowe: Yes, I would agree with Mr Lowey. It is a tidying-up exercise that, in the past presumably, if a director or even an auditor resigned, there was no requirement to inform the IPA. So now that will just tidy up the legislation.

Mrs Christian: Yes, Mr President.

It does not imply that there is necessarily something wrong, (**Mr Lowey:** No.) but it could allow the highlighting of a difficulty, if there was something wrong. (**Mr Lowey:** Absolutely.) I think, in the case of another auditor, by default,

the Authority would be notified because they would have to appraised of the new auditor being appointed.

The President: Mr Waft.

Mr Waft: Through you, Mr President, may I ask, with regard to the chief executive notifying the Insurance and Pensions Authority, what is the time lapse between appointing someone new? Are they able to carry on for a period of time?

The President: Mrs Christian.

Mrs Christian: Mr President, the notification has to be within a period of 14 days. It would be up to the company to determine how quickly they could replace that person, but there is not a statutory requirement for them to replace them within a particular timeframe.

Mr Waft: So they would not be in breach of any rules and regulations if going along without one for a period of time.

Mrs Christian: I do not think so. I think that the issue would be that, in order to replace another person, they would have to get the IPA's or the Supervisor's approval to that appointment.

By this provision, the IPA or the Supervisor will be aware that there is a vacancy and will be able to monitor the situation in relation to that company or business, to ensure that another person is appointed in a timely manner.

The President: In that case, Hon. Members, I put to Council formally that clause 30 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Mrs Christian, perhaps in part 8, chapter I: clauses 31, 32 and schedule 3, clauses 33 to 35. Can we take all the way from clauses 31 to 35, complete with schedule 3?

Mrs Christian: Yes, Mr President. Yes, I think so.

Clauses 31 to 35 set out the Supervisor's powers of supervision. Clause 32 introduces schedule 3.

The whole of this chapter is consolidated from existing legislation, without change and, therefore, I do not intend to say very much about it.

I beg to move that part 8, chapter I, clauses 31 to 35 and schedule 3 stand part of the Bill.

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

The President: Mr Lowey.

Mr Lowey: May I just say that it is a credit to the industry that the supervision element of the industry does not need updating. So, I think they have got the foundations right and the industry does seem to be content with the firm hand that is applied from the top, in allowing them to get on with the job of selling insurance.

I am quite happy to support the five clauses and the... Help me out!

The President: Supervision.

Mr Lowey: No, no. At the end of the Bill.

Several Members: Schedule.

Mr Lowey: Schedule! Yes, I am forgetful this morning!

The President: Mr Waft.

Mr Waft: The only thing, I feel, with these clauses is that they are, of course, permissive clauses and the Supervisor may, in each clause, or also the Supervisor may not. I thought it was worthy of note.

The President: Mrs Christian.

Mrs Christian: Mr President, if I may just respond to both those points. The fact that it is permissive in certain clauses and the fact that I think these supervisory powers, as Mr Lowey has indicated, have been exercised judiciously is indicative that these are fairly well drafted and that he does apply them in line with the principles set out in clause 1 of the Bill for the protection of policyholders. I do not think that there have been any high profile circumstances relating to the exercise of the Supervisor's powers in the insurance industry.

The President: Mr Turner.

Mr Turner: Thank you, Mr President.

Obviously, there are some similarities in this to the Financial Services Bill that we put through a while ago and I would just like to raise the cautionary notes that we made over the offering for sale of information and making charge for advice. I think we well aired that particular matter and would hope the same watch was put on the IPA for charging for certain services that should be provided free of charge.

I think we discussed, certainly in the case of the FSC, that they put on events to update the industry on changes and so forth, and there may be charges for that. I think we were all happy with that, but I notice that similar wording is in this Bill and I would reiterate the concerns I raised with the Financial Services Bill.

The President: Mrs Christian.

Mrs Christian: Thank you.

Just to wind up on that, Mr President, I am sure that the same sort of watch is kept by Treasury. They do have an advisory function, not in the specifics in relation to any particular business unless there are concerns where they can give information and carry out inspections and so on.

But the publication of general advice, I think, is done fairly widely and not with regard to specific business.

The President: Hon. Members, the motion that I put to Council is that clauses 31, 32, 33, 34 and 35, along with schedule 3, do stand part of the Bill. In other words, Hon. Members, the complete chapter I and schedule 3 – part 8. Hon. Members, those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Chapter II, clause 36 and schedule 5, Mrs Christian.

Mrs Christian: Clause 36 gives effect to the provisions

of schedule 5 which sets out in great detail the methods by which the Supervisor can obtain information or carry out investigations.

There is nothing new in this schedule, except for the addition of one new category of person whose books and documents may be inspected by the Supervisor in an investigatory process. This amendment to schedule 5 reinserts the provision of section 25(1)(c) of the Retirement Benefits Schemes Act 2000 as amended by the Insurance (Amendment) Act 2004. This was inadvertently omitted in the preparation of the Bill and its reinstatement in the other place ensures that there is no change to the existing provisions of that Act that is currently in operation.

I beg to move that clause 36 and schedule 5 stand part of the Bill.

The President: Mr Waft.

Mr Waft: I beg to second, Mr President.

The only comment I would make is with regard to the fact that we have missed schedule 4. That comes in later on in the Bill.

The President: In that case, Hon. Members, I put to Council formally that clause 36, along with schedule 5, do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Mrs Christian, clause 37.

Mrs Christian: Clause 37 provides for the Supervisor to impose civil penalties on a person where that person has acted in contravention of a requirement imposed by the legislation.

Also included in section 45 of this Bill is the right of anyone having a penalty imposed to appeal under the independent appeals process.

In the event that no appeal is made, this clause states that the penalty must be paid within 14 days and will form part of the general revenue of the Island. Failure to pay a penalty will result in the collection by the Treasury as a civil debt.

Since the Bill was drafted, the procedure under the Tribunals Act 2006 has been clarified and subclauses (4) and (5) have been amended in another place to bring this Bill into line with the Tribunals Act. However, I believe there is an error in the Keys amendment.

The President: I think if we just move it formally, Mrs Christian.

Mrs Christian: So I will move that clause 37 do stand part of the Bill.

The President: Mr Waft.

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

The President: Mr Crowe.

Mr Crowe: Mr President, I have been asked to move an amendment to clause 37. It concerns the amendments made in the House of Keys. If Members would look at the Order Paper, the new clause 37 on page 2 of the Order Paper, bottom of the page, subclause (5) says:

'If the person concerned does not appeal the decision'.

Now the amendment that I wish to move is to delete the word 'not'.

Mr Lowey: A minor detail!

Mr Crowe: The word 'not' needs to be removed. So, it is a typographical change. It restores the intention of what the House of Keys wanted.

So I would like to formally move that amendment, Mr President:

In subsection (5) as substituted by the Keys on 26th February 2008, after 'If the person concerned does', delete 'not'.

Mr Lowey: I will second it. It is a little bit more than a typographical one! (*Laughter and interjections*) It is the very opposite to what was meant!

The President: Hon. Members, one at a time, please.

Mr Lowey: I have pleasure in seconding, because it puts in what was meant; but it is more than a typographical error. That is the only point I was going to make and I understand why my hon. friend moved it.

The President: Hon. Member, Mr Butt.

Mr Butt: Thank you, sir.

To the main point of the main clause, I just wondered is there any definition of what the penalty is. Is it open-ended? Is it financial? I know there is an appeal under section 45, but I wonder if the Supervisor has any limitations on what he can actually do. Is it purely a financial penalty that is imposed?

The President: Mrs Christian.

Mrs Christian: My understanding is that this provision has never been exercised, but it would be a financial penalty, as I understand it.

My advice from the Supervisor is that he would – let us see... He would impose a financial penalty. He would have cognisance, take advice on what sort of level that should be pitched at. I am not aware that he would exercise any other kind of penalty, in relation to the powers under this clause.

The President: I think Mr Butt's comment really – forgive me if I am wrong, Mr Butt – is that, in fact, in (1), it says:

'A penalty of such an amount as the Supervisor considers appropriate may be imposed',

and there is no... When, in law, we often have six months and £5,000 or £20,000 and two years, it is written in. In this case, if I am right, Mr Butt, you are making the comment that the Supervisor has an open-ended...

Mr Butt: Which could be a good thing, because it might be a multi-multi-million pound company, so he can go as high as he wishes, which is appropriate for the circumstances.

The President: Mrs Christian.

Mrs Christian: I accept the point that it is a fairly wide-ranging power. Fortunately, it has not yet had to be exercised.

Mr Butt: Thank you.

The President: Mr Attorney.

The Attorney General: If I may, Mr President, I think the important thing is that there is an appeal.

The President: There is a review, yes.

The Attorney General: And the Hon. Member is absolutely right that, technically, there could be an enormous penalty; but if it was completely out of proportion to the wrong-doing which had been detected, then the court, or, at least, the Tribunal would put it right.

The President: Mr Callister.

Mr Callister: Could I ask if it could go beyond the Tribunal. If you are talking about multi-multi amounts that could happen here, this could be a major international case, in fact, could it not? The Supervisor seems to have extraordinary powers to set such an amount, as far as I can see. The Tribunal is the final appeal, presumably. What happens... what if there is then a refusal to meet this; and through what process do the offenders find themselves jailed or whatever? It is a financial penalty with nothing else, as far as I can see.

The President: Mr Lowey.

Mr Lowey: Just following on the point that my friend has just made, the reality is that the Treasury would try to get that payment through the civil courts so they would have the appeal procedures of the Tribunal then looked at by the High Court, through the civil debts.

The President: Mrs Christian.

Mrs Christian: Mr President, so far as the Tribunal being the end point is concerned, it is, unless there is a point of law to be challenged. You can challenge the Tribunal in the High Court but only on a point of law and, as Mr Lowey has indicated, if they still do not pay up, then the Treasury pursue it as a civil debt.

Mr Waft: Do I understand that the Tribunal could not increase the penalty? They only have to approve it or...?

Mrs Christian: I think that is in clause 45. They can vary the decision.

Mr Waft: They could increase...

The President: Yes, they could.

Mrs Christian: Subclause (4) of clause 45:

'On the determination of an appeal [...] the Tribunal shall confirm, vary or revoke the decision'.

The President: If they can vary it, they can move it up or down.

Mr Waft: Thank you.

The President: In that case, Hon. Members, with no further comment on clause 37...

In clause 37, Hon. Members, where it has been altered by an amendment in the other place to clause 37 on page 20, line 7 to 13, you have subclauses (4) and (5) added. Subclause (4) says:

'If the person concerned does not appeal the decision under section 45, the penalty shall be paid to the Treasury within such period as may be prescribed.'

And subclause (5) says:

'If the person concerned does not appeal the decision under section 45...'

Now the amendment is to remove that 'not', so that, in subclause (5) it will read – Mr Crowe, forgive me if I am wrong – 'If the person concerned *does* appeal the decision under section 45 and on determination'. So, if we take out the 'not'. In fact, the way it is written in the other place, in both instances, the person concerned does not appeal the decision. What you are saying is that, in subclause (4), the provision is that the person does not appeal the decision, and in subclause (5), the provision is that the person does appeal the decision. (**Mr Crowe:** Yes.)

Hon. Members, I hope that is clear. Moving that as an amendment, putting to you first the amendment, those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Then, Hon. Members, clause 37, as amended: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

We move then to clauses 38 to 41, Mrs Christian, please.

Mrs Christian: Mr President, part 9, clauses 38 to 41 is purely consolidation without change and these clauses set out the special remedies available, injunctions, restitution orders, actions for damages, and the applications of sections 39 and 40, which deal with contraventions of activities which are investment business activities within the meaning of the Financial Services Act 2008.

I beg to move that clauses 38 to 41 stand part of the Bill.

The President: Mr Waft.

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

The President: In that case, Hon. Members, I formally put to Council, part 9, special remedies: that clauses 38, 39, 40 and 41 do stand part of the Bill. Hon. Members, those in favour, please say aye; against, no. The ayes have it. The ayes have it.

We turn, Hon. Members, to clause 42, and as Mr Waft pointed out earlier, this will introduce schedule 4.

Mrs Christian, please.

Mrs Christian: Clause 42 gives effect to schedule 4

which modifies the Companies (Transfer of Domicile) Act 1998. The clause also permits regulations to provide for the provisions of part XI of the Companies Act 2006 to have effect – that is the new vehicle – in respect of insurers which are companies or foreign companies under that Act.

This section has changed from existing legislation. In order to have consistent provisions in this regard for all Isle of Man companies, the provisions of the Companies (Transfer of Domicile) Act are applied to insurers, in place of the existing provisions contained in the Insurance Act 1986 as amended.

Schedule 4 of the Bill contains the necessary modifications to that Bill in respect of insurers to ensure that the Supervisor's approval is still required. Provisions have also been introduced which will permit the Supervisor to apply part or parts of schedule 2, which is to deal with the transfer of long-term business, and make regulations in relation to the redomiciliation of non-life insurers.

I beg to move that clause 42 and schedule 4 stand part of the Bill.

Mr Waft: I beg to second, Mr President.

I wonder if clarification can be given to clause 43, with regard to the Authority 'may' make regulations regarding establishing a compensation scheme.

The President: I was not actually moving clause 43 at this stage, Mr Waft; it is 42 and schedule 4.

Mr Waft: Clause 42, I beg your pardon sir.

The President: Hon. Members, clause 42 and schedule 4. Hon. Members, those in favour please say aye; against, no. The ayes have it. The ayes have it.

Now I take clause 43, Mrs Christian.

Mrs Christian: Clause 43 makes provision for compensation schemes to be established should either an authorised insurer or a retirement benefits scheme become unable to meet its liabilities. It sets out the areas regulations may cover in the operation of a scheme.

Mr President, these provisions were originally included within the Investment Business Act 1988, which is currently being revised, and this opportunity has been taken to include the provisions within this legislation as they apply to operations supervised by the Insurance and Pensions Supervisor or the Insurance and Pensions Authority.

There is a life assurance levy, if needed. I think at the moment that is the only scheme which has any life in the Island.

I beg to move that clause 43 do stand part of the Bill.

The President: Mr Waft.

Mr Waft: I beg to second, Mr President.

With regard to 43 the Authority 'may' again make regulations establishing a scheme for compensating. Could I just ask on that one, why might they 'may not' make regulations?

And again, 'without prejudice to the generality', clause 43(2) the regulations 'may' establish a fund – on (2)(b). With regard to the 'may' and the permissive, what could be seen as a 'may not' also, for somebody who needs to become compensated, is there no possibility of a generic

compensation scheme which could be applied in these instances, without being too onerous to comply?

The President: Mr Lowey.

Mr Lowey: Again, I take the point that my hon. friend has moved about a comfort factor for those investing in pensions. Regrettably in the past, there have been – not on the Isle of Man, I do not think – but externally, there have been pension schemes which have collapsed and people have been hurt – and when I use the word ‘hurt’, I am being very light with my adjectives.

The idea, what we have got to try and strive for, in the industry is regulation with an industry with a heart. I think the industry in the Isle of Man must be one of the few jurisdictions that does have schemes for compensating people and it is trying to get that balance.

The ‘may’ as opposed to ‘shall’, I think, is to help the industry: I think it would help the people who are insured by having ‘shall’ in it, as opposed to ‘may’, but it is striking that balance. I think the Bill and our history show that we have got the balance just about right.

I am comfortable with this as it is written, but I can quite see why depositors or people who are involved in seeking insurance should have a comfort factor. I think they have got about the balance right.

The President: Mrs Christian.

Mrs Christian: Mr President, I think that it would be for the Insurance and Pensions Authority, under the wing of the Treasury, to introduce schemes of a different nature if they thought that was necessary. Clearly, in promoting this Bill, they consider that powers to set up schemes in the situations established in 43(1)(a) and (b) are the appropriate ones.

I think there are so many different kinds of insurance and insurance vehicles that to have a generic scheme which covered general insurance, how would you determine, in general insurance, how you would compensate people who were covered?

Mr Waft: Through you, Mr President. Could I just clarify –

The President: Just one moment, let Mrs Christian finish her little bit. You can come back.

Mrs Christian: Perhaps my knowledge of the insurance business is not adequate to say why there could not be a generic scheme, but I can imagine that there are so many different types of business that it would be hard to produce a scheme which was fair to all participants. The most likely situations where a scheme is necessary, I think, are set out in the Act. Civil liability claims under their policies and retirement benefit schemes.

There is a life assurance levy which can be imposed on companies which produce life insurance, I understand. Further than that, Mr President, I think that to... Perhaps the mover in saying ‘generic provision’ has a different concept of it than I do, but maybe he would expand on that. I think it is –

The President: Right, let us see if we can find out. Mr Waft.

Mr Waft: It is just the situation where the Authority ‘may’ make the regulations to establish a fund out of which compensation is to be paid. Now if they have not established the fund, no compensation can be applied. That was the argument I was putting forward, Mr President!

The President: Mr Callister.

Mr Callister: Only to ask have they established... Is there a fund?

The President: We will get that answer in a minute, but if we just... In Mr Waft’s query and then your response before Mr Waft came back there, Mrs Christian, you did make the case that there are many different types of insurers and in schedule 4 which we had with the last clause, I did notice at the time that in fact in paragraph 2(a), it says:

‘after subsection (2)(c) insert –
“(ca) a business plan for the continuation of the insurance business to the satisfaction of the Supervisor;”;
(b) in subsection (3), after the word “business” insert “and the classes of insurance business that it carries on.”’

In other words, many companies, in writing their company memorandum, will write in everything, albeit that they only are going to trade in buttons. They may say that they are trading in shoes and socks and everything else, but will only trade in buttons. Obviously, the company memorandum will be wide enough.

I think possibly it was something of that ilk that Mr Waft was coming from in then saying, ‘Well, if there’s no compensation scheme, how does the individual who is aggrieved win?’

Before you come back, Mrs Christian, Mr Lowey.

Mr Lowey: I think in writing the legislation, all we are doing is giving a framework to allow things to happen. I am sure this is the same sort of wording that is in the banking business: the Commission may be able to do things and they, in the light of their history, made things happen. This legislation would allow the industry, if something befell them, to apply levies to compensate in the future. It does not mean there is a pot of money there already waiting to happen but the legislation permits them to do it, to operate.

That is, I think, why I am comfortable. The experience in the past has proven the worth of the legislation, so I think putting this legislation in has got a track record in another area.

The President: Mr Callister.

Mr Callister: Well, just to add, as far as the banking world is concerned, there is a generic scheme, is there not?

Mr Lowey: Yes, there is, now.

Mr Callister: Yes, there is now – well, there has been for some time, I think. But a generic scheme in insurance would be a very different animal, but there are no certainties in this.

Mr Lowey: It permits them to do it.

The President: Mrs Christian.

Mrs Christian: Thank you, Mr President.

To deal with the question of whether there is a fund, my understanding is that there is not any fund at this stage, but under (2)(c) there is a provision to apply a levy, rather like the banking sector. It is not applied unless it is needed, but there is a provision that a levy may be applied in respect of life assurance.

With regard to the point on the company memorandum, first of all, there is a restriction on permitted insurers being allowed to do anything else without authority from the Supervisor and, irrespective of what it says in the company memorandum, it is only the classes of business that they are licensed to carry out that they can carry out. So whilst they may say they want to do *x*, *y* and *z*, it is the permission from the Authority which defines what they can actually do.

The question of a generic provision: again, I think that is a difficult issue because of the varied nature of insurance sorts of business, some of which is captive and specialist to one particular owner and so on.

So I think, Mr President, given that most of this has not changed, and it seems to have worked so far, that we should leave it to the discretion of the Authority to make schemes. Indeed, if it was felt that that clause needed to be expanded, I should have hoped that the Treasury and the IPA would have suggested an amendment at this time.

The President: Mr Attorney.

The Attorney General: I absolutely agree with the analysis made by the hon. mover, but could I also suggest, Mr President, that when we look at the wording of clause 43(1)(a) and (b), it talks about schemes for compensating policyholders in cases where persons who are or have been authorised insurers 'are unable or likely to be unable' to satisfy claims.

So in other words, it seems to me that the wording of (a) and (b), which has the same wording, does not really envisage a standing fund which is available there, come what may. What is envisaged is that where a case has been made out that policyholders are unable or are likely to be unable to recover, then you can have an ad hoc scheme established. Then all the powers to make levies and so on and to ask for contributions from insurers are going to kick in.

But I do not think it is the intention that there be, as it were, a standing fund which is made up say by an annual levy from all insurers established in the Isle of Man. I think that must be...

The President: In that case, Hon. Members, what I put to Council is that clause 43 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 44, Mrs Christian, please.

Mrs Christian: Thank you, Mr President.

Clause 44 prescribes the range of decisions in respect of which the result and reasons for the decision is to be given in writing to the person in respect of whom the decision is made. There is no change in this, as it came from another place, where the original Bill was amended to substitute 'appeal' for 'review'.

I beg to move that clause 44 stand part of the Bill.

The President: Mr Waft.

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

The President: The motion that I put to Council is that clause 44 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. Clause 45, Mrs Christian.

Mrs Christian: Clause 45 has been amended in another place and as we have it before us now, it provides the method for any person who is aggrieved by a decision of the Supervisor or the Authority, made under the legislation, to appeal that decision. This clause updates the existing provisions to take account of the Tribunals Act 2006.

Subclauses (1) and (2) establish the Insurance Tribunal and provide for its constitution. The determination of the Tribunal may confirm, vary or revoke the decision in question.

Finally, the clause makes any determination of the Tribunal binding, except upon appeal to the High Court on a point of law.

I beg to move that clause 45 stand part of the Bill.

Mr Waft: I beg to second, Mr President.

The President: Mr Turner.

Mr Turner: Thank you, Mr President.

I read with interest the changes made in another place and certainly feel that the Bill in its original form was rather weak, talking about 'reviews' and 'Review Committees'. That certainly gives the impression of a light-hearted approach and not as strong as using the words 'appeal' and 'Tribunal'. Just coming back though to... In the original form, it says 'a person may apply for a review'. Is there no procedure which is a half-way house between going to a Tribunal? For example, if a decision is made and somebody wishes to make a representation, is there any scope in there for the Supervisor or the Authority to revisit a decision, taking into account whatever facts may be presented and possibly change their mind, or is the only option open to a person or body the Tribunal procedure?

The President: Mr Butt.

Mr Butt: Thank you, Mr President.

I was going to ask the mover: this amendment in the other place, was that at the instigation of either the Treasury or the Authority or is this from the floor of the Keys?

The President: Mrs Christian to reply.

Mrs Christian: Thank you.

With regard to the suggestion that there is an intermediate stage, I do not believe there is any intermediate stage; but I would not be sure whether there can be any dialogue with the Supervisor, other than to establish the accuracy of the information which has been submitted to him, perhaps. I think the issue is that if he, on the basis of the information that is submitted to him to give an approval, makes a determination, then the next stage is to the Tribunal.

My understanding is that the change was made in another place on the basis of advice from the Attorney General's Chambers, which pointed out that now that the Tribunals Act 2006 has become effective, it is necessary that we update

legislation, where there are reviews, to use the Tribunals Act which, as the Hon. Member, Mr Turner, has indicated, is a more independent process.

The President: Hon. Members, the motion that I put to Council is that clause 45 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 46 and schedule 6, Mrs Christian, please.

Mrs Christian: Mr President, clause 46 gives effect to schedule 6, which sets out in greater detail the occasions when information obtained by the Supervisor or the Authority may be passed to a third party.

The layout between the clause and the schedule has been changed, but there is no change in the text, so this is purely consolidation, with some interchange between what is in the clauses part of the Bill with that which is in the schedule.

I beg to move that clause 46 and schedule 6 do stand part of the Bill.

The President: Mr Waft.

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

The President: The motion, Hon. Members, is that clause 46 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.

Perhaps we can take clauses 47, 48 and 49, Mrs Christian, please.

Mrs Christian: Thank you, Mr President.

Dealing again with supplementary matters, clause 47 deals with fees, grants the Insurance and Pensions Authority power to levy fees for authorisations and registration, and sets out the powers open to the Supervisor when fees are not paid.

Clause 48 requires a Supervisor to maintain a register which is available for inspection by members of the public.

Clause 49 details the indemnity applicable under the legislation to the Supervisor and members and officers and staff at the Insurance and Pensions Authority or other persons acting under the provisions of the Bill.

It also extends this indemnity to functions conferred by the Retirement Benefits Schemes Act 2000 and the Insurance Companies (Amalgamations) Act 2006. But of course it does not apply to awards made in respect of an act or omission under section 6 of the Human Rights Act. There is no indemnification against Human Rights claims.

It was amended in another place, again to bring it in line with the Tribunals Act 2006. Apart from that, there are no changes to these provisions.

I beg to move that clauses 47, 48 and 49 stand part of the Bill.

The President: Mr Waft.

Mr Waft: I beg to second, Mr President.

It just that on reading clause 49 and the fact that in the Insurance Bill, they appear to be indemnifying themselves under their own legislation here, which seems quite surprising, but whatever.

The President: Mr Crowe.

Mr Crowe: I think they have always had a statutory indemnity in previous legislation.

Mr Lowey: Yes.

The President: The guide notes tell us it has been there since 1986. Mrs Christian.

Mrs Christian: Yes, I note the comment of the Hon. Member, but it is surely easier to have it in an Insurance Act, where you can see where it is, than in some other piece of legislation, where you are not sure where it is.

It is only when actions have been done in bad faith that they are not indemnified, and that seems to me to be appropriate.

The President: Hon. Members, the motion is that clauses 47, 48 and 49 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 50 along with schedule 7, Mrs Christian, please.

Mrs Christian: Clause 50 confers the power for the Insurance Authority to make regulations and to bring this legislation into effect. There are no changes to the text of clause 50 and schedule 7, but there is an alteration to the layout between the clause and the schedule.

All regulations made under the Bill must be laid before Tynwald as soon as practicable after they are made and they can be annulled at the sitting at which they are made or at the next sitting.

I beg to move clause 50 and schedule 7 stand part of the Bill.

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

The President: Hon. Members, the motion that I put to Council is that clause 50 and schedule 7 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 51, Mrs Christian.

Mrs Christian: Mr President, clause 51 is unchanged from the existing legislation. It allows a Supervisor to issue Guidance Notes for the purpose of providing binding guidance and it details the areas which may be covered by Guidance Notes, which in themselves have to be laid before Tynwald.

I beg to move clause 51.

Mr Waft: I beg to second, Mr President.

The President: The motion I put to Council is that clause 51 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Chapter II and perhaps clauses 52 and 53, Mrs Christian.

Mrs Christian: These two clauses, Mr President, remain as they are in the present legislation. They deal with false statements and offences.

I beg to move that clauses 52 and 53 stand part of the Bill.

Mr Waft: I beg to second, Mr President.

The President: Again, Hon. Members, I put to Council that clauses 52 and 53 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Now chapter III of this section, clauses 54 and 55, Mrs Christian.

Mrs Christian: Thank you, Mr President. We are coming to the final provisions, you are probably pleased to hear!

Clause 54 is the interpretation section of the Bill and is self-explanatory.

Clause 55 provides that any expenses incurred for the purposes of the legislation will be defrayed out of moneys provided by Tynwald and any fees generated will form part of general revenue.

I beg to move clauses 54 and 55 stand part of the Bill.

The President: Mr Waft.

Mr Waft: I beg to second, Mr President.

It does bring in what we spoke of earlier about the minor son – who was the minor son?

Mrs Christian: Mr President, if I may respond on that point. A minor son is any son who is a minor, presumably, and not an adult!

I think, at an earlier stage, Mr Butt asked about the interpretation of ‘associate’. Generally speaking, in the context of the Bill, in most circumstances, the associate is a body corporate, but there are some circumstances where it is an individual. Particularly in the regulations and the guidance, I understand, there are references more to individuals and the definition of ‘associate’ as an individual is relevant in those regulations and Guidance Notes.

The President: In that case, Hon. Members, the motion that I put to Council is that clauses 54 and 55 do stand part of the Bill. Hon. Members, those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 56, which introduces schedule 8, Mrs Christian, please.

Mrs Christian: Clause 56 gives effect to the provisions of schedule 8, which make amendments to other enactments as they have been superseded by this Bill.

The legislation listed is extensive, as the Insurance Act 1986 in particular is mentioned in many other Acts. However, most of the changes are merely the substitution of the reference to the relevant clause in that legislation with the reference to the equivalent clause in this.

There are a number of amendments to the Retirement Benefits Schemes Act 2000 which applies sections of this legislation to that Act. These bring consistency in the powers of inspection and investigation, restrictions on the disclosure of information and regulatory objectives which may be applied.

I beg to move that clause 56 and schedule 8 stand part of the Bill.

Mr Waft: I beg to second, Mr President.

The President: The motion I put to the Council is that

clause 56 and schedule 8 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 57 and schedule 9, Mrs Christian.

Mrs Christian: Clause 57 gives effect to schedule 9, which repeals in whole or in part other enactments which are superseded by the provisions of the Bill. Most are related to the consolidation process, but section 130 of the Companies Act 1931, which requires the displaying of a balance sheet in an insurer’s registered office, is also being repealed, to be replaced in due course by different disclosure provisions.

I beg to move that clause 57 and schedule 9 stand part of the Bill.

Mr Waft: I beg to second, Mr President.

The President: Hon. Members, the motion before the Council is that clause 57 and schedule 9 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 58 and schedule 10.

Mrs Christian: Mr President, savings and transitional provisions are included in clause 58, which gives effect to schedule 10. This specifically provides for the continuation of the existing Life Assurance (Compensation of Policyholders) Regulations 1991, so that continuity is maintained in the existing arrangements under those regulations.

Clause 59 deals with the short title and commencement of this Act, which will be the Insurance Act 2008, and provides for it to be brought into operation on different days by Appointed Day Order. It gives power to the Insurance and Pensions Authority to make transitional and savings provisions, if they consider them necessary.

I beg to move that clause 58 and schedule 10 and clause 59 stand part of the Bill.

The President: Mr Waft.

Mr Waft: I beg to second, Mr President.

The President: The motion that I put to Council is that clause 58 along with schedule 10 and clause 59, the short title and commencement, do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Insurance Bill

Standing Order 4.3(2) suspended to take Third Reading

The President: Mrs Christian.

Mrs Christian: Mr President, may I seek suspension of Standing Orders to take the Third Reading of this Bill.

I do so because we have amended it and I believe it will need to go back to another place and I think there is some concern that they would like to see this progressed in a timely manner.

I would not seek suspension of Standing Orders if I had

felt there had been anything very controversial raised during its progress through the clauses stage.

I move:

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

Mr Crowe: I would second, Mr President, the suspension of Standing Orders. It is largely consolidation legislation.

The President: There seems to be a fair amount of agreement, Hon. Members, but I will formally put to Council that we suspend Standing Orders to allow the Third Reading of the Insurance Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Insurance Bill Third Reading approved

The President: Mrs Christian, then, for the Third Reading of the Insurance Bill 2007.

Mrs Christian: Thank you, Mr President.

Members will recognise, after going through all these clauses, that a great deal of this legislation is consolidation. The original insurance legislation has now been in place for some time, and it was considered appropriate to update it by way of introducing some new measures which we have highlighted as we have gone through, particularly in relation to insurance intermediaries.

It gives some changes to the power of the Supervisor. It ties in the transfer of foreign companies to current company legislation. It introduces the provisions of the Tribunals Act into the appeals process in the Bill and generally recognises practices which have been carried out by insurance registered businesses in practical terms already, such as the appointment of auditors and the holding of indemnity policies. Those issues which have been in practice have been put into statutory requirements in this Bill.

I think, all in all, the fact that there is not a great deal of change in it indicates that the insurance provisions that we have in the Island have been working well. It is a strong sector in the Island's community and is still changing to meet the changing demands.

Mr President, I think that the Bill will help the Island continue to develop its insurance sector. It gives appropriate powers to the Supervisor with suitable restraints.

I therefore beg to move:

that the Insurance Bill 2008 be now read a third time and that the Bill do pass.

The President: Mr Waft.

Mr Waft: I beg to second, Mr President.

Just to comment, when you think back to clause 59 and it says they may bring it in on certain days: I thought the whole opinion of this Insurance Bill was to bring it up to date as quickly as possible. Could there be any delay by allowing these days to come in, as and when they think necessary?

The President: Mr Lowey.

Mr Lowey: Yes. It is just a general one. The insurance industry is a major player in the success story of the finance sector of the Isle of Man. Mr President and I were around – and others, I suppose – when we actually introduced the insurance sector. I remember the late John Bolton moving it. We did not get it right first time round. We did not get it right second time round.

I can remember, in Tynwald Court, saying to them, 'well, you are coming down with the fees you are asking; you are setting the bars; better to pick apples off a tree year after year after year.' I am glad John Bolton really pushed on that philosophy and the success story that this industry now is, as a world player, the Isle of Man is worthy of it.

I take note of what the mover said. After 20 years of legislation, most of it has remained intact, but I think it has needed a spring clean. I think the industry have co-operated well. I think the result is here for all to see.

I would commend the mover of the Bill, taking a very complex matter through with the skill that she has and I will be supporting the Third Reading.

The President: Mr Crowe.

Mr Crowe: Mr President, I would echo all of those remarks about the importance of the insurance industry to the Isle of Man. It is always worthwhile taking stock of legislation, periodically.

Looking at the explanatory notes, there are Acts of 1987, 1995, 2004, 1996. All of these had important adjuncts to the original legislation and it is worth now consolidating these to have a one-stop shop, shall we say, for people wishing to set up insurance companies or people dealing with insurance companies.

I am in favour of the Third Reading, Mr President.

The President: I concur entirely with what Mr Crowe has just said in relation to a one-stop shop. In fact, schedule 9 repeals four different insurance Acts.

I think that is the important part, it actually repeals them – which takes me back then to Mr Waft's point, which I had not thought about, but he says that in clause 59(2), the Act shall come in... bearing in mind that we are repealing four insurance Acts, and we are only going to introduce this as and when. I think that is the point which Mr Waft is making. So, perhaps, Mrs Christian, you could comment on that.

Mrs Christian: Thank you, Mr President.

I thank Members who have spoken in support of the Third Reading of the Bill.

The point made in relation to the Appointed Day Orders is that the Authority will be responsible for bringing in the Appointed Day Orders and, whilst we are repealing all of these provisions, they should have been substituted by other clauses. I am sure they will take it into account that they no longer have the other legislation in place.

It is important, then, that this is brought into effect in a timely manner unless, of course, they delay the removal of the schedules; in which case, they may have a hiatus of conflict between two Bills!

I am sure that they will carefully consider how they want to bring the Act into operation. It is they who are seeking these changes. I am sure that they will not sit upon the

provisions in the Bill unduly. If they do, I am quite sure the Treasury and the industry will make noises.

The President: Sorry, Mrs Christian, but sitting here now, Mr Waft has raised it, I am not aware of the regulations which have been introduced under the four Bills which we have been repealing. Presumably, there are regulations there. Now, it may have been better, when we are on the Third Reading, to have said that all regulations remain in force and the rest are replaced by... I do not know.

Mrs Christian: Well, Mr President, under clause 59, the Authority may make the necessary transitional and saving provisions, as far as they see fit. I think that gives them the responsibility to make sure that there is a dove tailing between the old legislation and the new in this process of bringing it into effect.

The President: But that saving and transitional provision is only in relation to the Life Assurance (Compensation of Policyholders) Regulations 1991. Is that the only one that there is?

Mrs Christian: Sorry, Mr President –

The President: In paragraph 1 of schedule 10: the saving and transitional –

Mrs Christian: No. I am looking at the savings provisions in clause 59.

The President: I am sorry.

Mrs Christian: In fact, they have a carte blanche to make the proper transition from one to the other.

The President: But we have specific savings in schedule 10. Okay. Mr Callister?

Mr Callister: No, thank you, Mr President.

The President: In that case, Hon. Members, what I will do is formally put to Council that the Insurance Bill 2007 be read for a third time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Agricultural Tenancies Bill

First Reading approved

3. Mr Butt to move:

That the Agricultural Tenancies Bill be now read a first time.

The President: Hon. Members, having completed the Insurance Bill, we turn to Item 3 on our Order Paper which is the Agricultural Tenancies Bill. It is down for First Reading. Mr Butt, Hon. Member in charge.

Mr Butt: Thank you, sir.
The next few years see Manx agriculture facing some

of its biggest challenges for over 70 years. This Bill is a fundamental part of the Department's response to those challenges. The Bill assists the development of a sustainable agricultural sector on the Island by giving landlords and potential new landlords, such as retiring farmers, confidence in letting land, thereby releasing land previously not let and allowing new business to be established or existing business to expand.

The current agricultural tenanted sector is all but stagnant. Although much agricultural land is rented, a substantial amount of this – in the region of 40 per cent – is under seasonal grazing agreements or other short-term agreements.

This position is largely due to the restrictive aspects of the Agricultural Holdings Act 1969 which, by providing lifetime security of tenure for all but short-term tenancies, has arguably discouraged landowners from offering land to rent, due to concerns about inadvertently establishing lifetime tenancies.

This fear of establishing lifetime tenancies under current legislation means that neither landlords nor tenants can plan ahead with much confidence and the shortage of land for rent for reasonable periods of time causes serious problems for would-be new entrant or established business seeking to expand.

This Bill is intended to provide a major revamp of the letting arrangements for agricultural property by creating a flexible and lasting legal framework, where landlords and tenants may let land on freely negotiated terms but with key safeguards. The Department believes this new legislation will significantly improve the confidence of landlords and tenants in this sector, allowing them to build profitable longer term businesses. The greater freedom to contract, provided by this Bill, is likely to lead to a greater supply of agricultural land coming onto the market for rent.

The aims of this Bill are: to increase lettings on freely negotiated terms with key safeguards; to provide a flexible and lasting legal framework and, within this new framework, the terms and conditions of the new tenancies will be for negotiation between the landlords and the tenants, who can decide between them what is right for their particular circumstances. In particular, the proposed new legislation does not impose any extended security of tenure beyond the specific length of the tenancy agreed between the parties.

Existing agricultural tenancies will be unaffected by this new legislation and remain subject to the 1969 Agricultural Holdings Act.

The Department first published its consultation and review of the tenancy legislation in March 2007. Prior to this, shortfalls of the current legislation had been extensively discussed with the Manx National Farmers' Union (NFU), having regard to the advantages and disadvantages of tenancy structures in other jurisdictions.

The Manx NFU which represents the interest of landlords, landowners and tenants have considered all aspects of the Bill in detail and their input has been invaluable. Whereas the Department has not adopted all the suggestions of the Union, particularly in relation to expanding the scope of the Bill in some areas, the Department has endeavoured to address the issues raised by the Union and others who responded to the consultation.

A number of contributors to the consultation on the Bill made specific comments in relation to the 1969 Act.

It has always been the intention, firstly, to introduce new,

more flexible, agricultural tenancy legislation, such as this Bill, to allow for the creation of new tenancies and then to review the legislation governing existing tenancies formed under the 1969 Act. Agricultural tenancy legislation is both a complex and highly emotive area and the Department and the agricultural industry are clear that reform is only likely to be successful if done in stages.

The first stage of that reform is this Bill and the Department now feels it is appropriate to begin consideration of the next stage. To this end, the Department has started a new consultation that seeks specific comments and opinions on the operation of the 1969 Agricultural Holdings Act. The Department is particularly keen to receive views on the need to retain the Act and introduce amendments to it or appeal it, and Members will have received copies of the consultation paper. It is hoped that this new consultation will identify the best way forward. I believe the consultation is due to end some time next month.

In summary, I would like to restate the benefits of this Bill in that it removes the fear and myth that currently surround the letting of agricultural land by providing a simple framework. This may provide an exit route for retiring farmers who could let their land and receive an income, and also have confidence that they can regain their land if necessary. Also, existing landowners may be more willing to let land.

This should provide additional land for rental, thereby increasing opportunities for expanding businesses and for new entrants. The Department is strongly of the view that this Bill is an essential step in giving the agricultural industry the freedom to restructure, so to meet the changes which lie ahead.

Mr President, before I conclude, I would just point out two typographical errors in the Bill and the explanatory notes.

At clause 9(1)(a), you will see there is, on page 7, the phrase is:

‘specifying the relevant land, land’.

That should be ‘land’.

In your explanatory notes, there is a misnumbering of the clauses beyond clause 35. Clause 34 should say ‘clause 36 and the schedule’ and clause 35 at the bottom should say ‘clause 37’.

With that, Mr President, I beg to move the First Reading of the Agricultural Tenancies Bill.

Mr Crowe: I beg to second.

Just on a point of detail, Mr President, could the mover then say, about these areas, are they to be changed by amendments in the clauses stage or is it retyping of the Bill?

Just a question on assignment by the owner or the tenant. I have looked through the Bill, but I do not see whether... There is clause 10 which talks about the assignment on the death of a tenant; but I am just wondering, is there going to be general powers of assignment under a normal lease? It is just a question. I do not need an answer immediately.

Thank you, Mr President.

The President: Mr Turner.

Mr Turner: Yes, thank you, Mr President.

I am very happy to support the First Reading. I think the key here is the word ‘flexible’: one size certainly does not fit all. I think, as the hon. mover said, this will give flexibility for agreements to be more relevant to the circumstances. We have discussed the future of the farming industry many times and anything that is going to give confidence to both landlords and tenants – certainly it is important that both parties have a deal that is good for them both – then I think it is important we look at the legislation, not just in farming but in other areas as well.

I am very happy to support this. I just wonder how, in technical terms, a tenancy will fall under the auspices of this Act? Will it be written when the agreement is written; will there be some reference to the Act or will it automatically, by virtue of what it is, fall under this Act?

The President: Mr Lowey.

Mr Lowey: I will say that the mover of the Bill talks a good case, but the problems of agriculture are complex. They are not simple, but they are urgent and there is a changing face of agriculture. I have got to ask myself, is this Bill flexible or is it a wimp of a Bill? I have not made my mind up yet.

The reasons for the Bill: does it effectively deal with the reasons? I will try to expand on them. Will it improve the position? I think most of us would say marginally, but it is only marginally, because it does not go to the root cause of the problem.

Does it equip agricultural industry for the changing world which is entering? Again, the best that can be said for it is ‘marginally’.

Land is not being made available for cropping and medium/long term – the mover recognises that straight away. As he said, most of the leases now are for grazing rights and for very, very short term. We all know that agriculture is anything but about grazing. It is about long-term investment and rotation and the rest.

So, I understand what the mover says to me, that we have got major problems, but we are not dealing with them again; we are going out to consult and the major problem is 1969 Act. There is no doubt about that. Most people think that when they lease land for five years or ten years, that it will be, but we know that under the 1969 Act that does not apply.

We have a situation where I think it is imperative to act. The changes that we are asking the industry to undertake at this moment in time, I think, are not a reason for not doing it quickly; it is for doing it all at the same time, to get the structure right. Part of that structure is the leasing of land for what I would call farming purposes: the long term and not just grazing rights.

It is a malaise we have got ourselves into. I liken it to having spots on my legs and I go to the doctor and he says, ‘You have got spots on your legs, Lowey. We know where it is coming from: it’s this lump on your arm.’ You do not deal with the spots on your legs; you deal with the lump on your arm. Literally, we are ignoring the lump and dealing with the spots, in this first...

If I take what the mover has said, this is an interim measure to deal short term and I come back to the real one. I have spoken with the Minister about what I see as the problem.

I do not want to sound too negative on this, but the

marginality of this legislation is really not going to be dealing with agricultural problems. It is not, really. I do not like saying that, but I think it is so marginal as to be... not meaningless, but it will not add to the overall picture to a degree that makes it really the Bill that we should be dealing with.

We should have had the 1969 Act looked at, however difficult that may be. No matter when you deal with it, it is still going to be difficult. Do you know what I mean? It is still there. These additions of freeing up some land at the moment: there is not that much land to free up, so I think it is, again, whistling to keep our spirits up in the dark. 'We are doing something boys, but we will get round to the real problems later,' when we should be really dealing with the real problems.

I am sorry to be such a pessimist, because agriculture is important. Good husbandry of the land is important – not just to farmers, to every individual on the Island and the Island itself. That is why I feel for it.

I think we have fudged the issue and for good reasons. I can understand why: we have got so much else going on externally and the changes of support that we have given to agriculture traditionally. That has been wiped away and a new regime brought in. I think that is bold and imaginative. I think the industry would and should have been able and capable of dealing with what I would call this root malaise at the very heart of landlord and tenant.

I can remember when it was brought in in 1969. There were, if you like, swings and roundabouts. I think the emphasis from the tenant as opposed to the owner of the land was wrong then; but I equally think it is wrong now where land is, if you like, tied up in 'hereditary rights'. I use those words in inverted commas, but you know what I mean. They are in and they cannot be got out.

I do think we need a flexible sort of mechanism. It goes some of the way; it does not go all the way.

The President: Mr Callister.

Mr Callister: Thank you, Mr President.

I can only assume from what I have heard so far that, if it is going to attract anyone at all, it will attract existing farmers to, perhaps, take on some additional land: hill lands or whatever.

If this is intended to attract new entrants into agriculture, I do not see it starting because, if you are going to be a new entrant into agriculture today, presumably the amount of investment that you are going to require, not only in fertilisers and so on and everyday things, but in equipment, will be colossal. Now, if there is a five-year tenancy option – and landlords will be very keen, I suspect, to offer a five-year tenancy, rather than a longer term tenancy – then I cannot see any new entrants into farming under those terms. In fact, they would be very foolish to accept a five year and then hopping on a year at a time. There is a disincentive for new entrants.

I would have thought that your minimum would need to be 15 or 20 years if you are going to seriously take part in farming as a career. That is one point. If it is a farm of large acreage, you really then need a very long tenancy. Even if it is a small farm, perhaps, you might get a ten-year minimum. There very well could be a preference on landlords to keep the tenancies as low as possible, given the uncertainty of the future of farming in the Isle of Man.

In a few years' time, farming will be nothing like what it has been in our time, unless the EU, perhaps, goes back on some of its more outrageous ideas on farming. There is this uncertainty over the future.

Diversification is also referred to in here which I would like to talk about at a later stage.

Good husbandry, you spoke of, Mr Lowey. Well, that is part of the requirement for the tenant, isn't it, I think? If he is going to have good husbandry, I would have thought he would want a fairly long tenancy.

Hereditary rights, as I read it, are still in this Bill.

Those are just the points I would like to make.

The President: Mrs Christian.

Mrs Christian: Mr President, I see there are different points of view being taken on this, standing at different sides of the table, if you like. I do see it as an improvement on the current situation.

For those who are in protected tenancies at the moment, they can continue under the 1969 Act. For those who are not at the moment, they are very often faced with a 364-day provision and then having to move on. There is no real incentive in that to deal with the matter, as a matter of good husbandry. We recognise that it is longer term than that, and so for those people who are the land owners but who do not want to embark upon giving a protected tenancy forever and a day, this, at least, allows both the farmer and the landowner to let for a longer period which has got to be beneficial under the circumstances, I think.

I do agree with the Hon. Member, Mr Callister, that agriculture is changing. It is interesting to note that in some of the clauses, we are now talking about 'primarily agricultural' and that we are talking about 'diversification away from agriculture' and it will be interesting to see how the definition of agriculture changes in years to come and how these tenancies may have to be amended to meet such changes, whilst the Department still tries to contain an element of what we traditionally call agriculture in the countryside.

So, whilst some Members feel that it has its faults, I do think it is a step in the right direction. It does allow for tenancies of longer than five years, should the landlord and tenant wish to embark on such an agreement, but it does provide that the landlord can get the land back. That is the difficulty at the moment. This is why we have all these 364-day licences which are difficult to monitor when you are supposed to be saying, 'get your stock off that field for a day' – although stock is quite often inside. When you have to take it off for day to ensure that the tenancy requirements are met.

There has been quite a long gestation period for this particular piece of legislation and so I think that, at last, it has emerged and it is a step in the right direction.

The President: Mr Waft.

Mr Waft: I would just like to say, Mr President, in view of the comments, it is surprising the Member has got so much agreement with the farming unions, etc. I think we will have to look at this as we go through the Bill.

The President: Mr Callister, do you wish to come back?

Mr Callister: Just one question, Mr President.

If the mover would discover why and how this five year figure was arrived at.

The President: UK legislation! Mr Butt.

Mr Butt: Thank you, Mr President.

Yes, it is to large extent based on UK legislation. Of course, as Mrs Christian quite rightly says, it can go on for much longer than five years. It does give certainty for long-term businesses if they wish it.

I just give some general comments first of all, based on what Mrs Christian said, those who are involved in the industry know how you can inadvertently let some land go away from you – I have got personal experience of this – if you do not maintain the 364-day conditions and people are forgetful or neglectful or inefficient, they have been known to lose their land. It does happen and that is one of the reasons why there is a fear amongst farming communities about taking out leases or tenancies under the 1969 Act.

Can I just start with thanking Mr Crowe for his support. I will ask the Department to sort out for you the question about assignments on death, Mr Crowe.

Mr Crowe: Sorry, Mr President.

Assignments on death is clear. General assignments are the point.

Mr Butt: Thank you, Mr Crowe.

Mr Crowe: Thank you, Mr President.

Mr Butt: As to the typographical errors, Mr President, I will take your advice on that. Do they need to be amended or can they be...?

The President: I think the explanatory memorandum which you referred to, the typographical in there is immaterial. Strictly speaking the word 'land' which appears twice should be amended, I think. If the other place would accept it, I suppose, we could allow it go as a typo, but I think we will play that one by ear when we come. Strictly speaking, the Bill which is before us is the manner in which it has been placed in the other place, so it has come before us in that order. We ought to correct the Bill.

Mr Butt: I will move on sir. I thank Mr Turner for his support and point out that what he said is correct, that the heart of this Bill is the fact that any future tenancies under this Bill will be very flexible and will be with the consent of both landlord and tenant and they can put into the arrangement what they require and what they wish and what suits them both.

In effect, any new arrangements under this Bill will take effect from 12th November 2008, if this Bill has Royal Assent by that stage. The existing 1969 tenancies will carry on unaffected by that, but from 12th November 2008, new farm business tenancies can be established with this Bill.

Mr Lowey has some criticisms and I understand his point of view. As we know, the agricultural industry is changing dramatically, possibly in the next few months, the next few years. If the decoupling proposals come to fruition, this legislation will help people who have then got to make their

own way without subsidy from Government to diversify their businesses, expand their businesses, change their businesses. Without the freedom which this Bill may give to people to rent out land and take on different tenancies, they would be restricted in what they could do.

The 1969 Act tenancies still remain in place. There was wide consultation with the industry and I believe the industry was very largely supportive of changing the 1969 Act. There is land out there which is unaccounted for – possibly up to 40,000 acres which is not under tenancy, is not know about, which could be freed up, in theory, by these procedures. Whether that comes to fruition or not remains to be seen, but there is land out there which is not being used or is not being leased out, which may be there ready to be taken up by people wanting to be either new entrants or expanding their businesses. If that quantity of land can be made available or freed up, it is not exactly marginal; that would be quite productive for the industry.

The consultation on the 1969 Act is taking place and should be finished by the middle of May, I understand. I think the Department felt it would be too convoluted to actually unravel the 1969 Act, because it is very emotive, as has been said, and it is a very complex piece of legislation and would affect people's livelihoods and aspirations and hopes for the future. To tie that in with this may have been, I think the Department feels, too convoluted and complicated.

This was the first stage. This is a stand-alone piece of legislation, not interim: this is a way of establishing new tenancies. When the 1969 Act is reviewed and the changes made to that, that should be in addition on to this.

But I do understand from the Department it would have been very complex to have one Bill to cover everything at the present time, when there is some urgency to try to get established new tenancies.

Mr Callister's point about new entries: there are new entries to the industry all the time – not many, but there are some – and if anything can be done and if this does help in any way to provide more land for people to enter the industry, this is a small step perhaps towards that.

I suspect, primarily, it will actually increase the chances for people currently in this business to expand or move on or change the way they operate; but there is some element in which new entrants can get in here, because new entrants do come into the industry.

Just to conclude, Mr President, we are saying there has been wide consultation on this Bill, as is the way with this Department, I have discovered, and it has got general support from the industry and from the unions. They see it as a way forward, particularly in combination with the possible decoupling of the industry and the removal of the normal subsidies.

So, Mr President, I beg to move.

The President: Now, with respect, I think I have got both Mr Callister and Mr Lowey. I think in this instance, Hon. Members, as the Agricultural Tenancies Bill is here for First Reading, I will not allow further Members to come back, we still have Second Reading, clauses and Third Reading to go on the Bill.

So, Hon. Members, what I put to Council is that the Agricultural Tenancies Bill be read for a first time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Procedural
Agreed to start next sitting at 10.15 a.m.

The President: I think, Hon. Members, that brings to a conclusion the business before Council this morning on our Order Paper, Hon. Members. As a matter of procedure for next week, Hon. Members, I am aware that Mr Attorney will be away.

Hon. Members, for my sins, I also wish to be away on an aircraft at 1.30. Hon. Members, you are perfectly at liberty, of course, to appoint your own Chair to sit in the afternoon but the thought did cross my mind that, if Council would be agreeable, we could start earlier next Tuesday morning to allow me to get away for 12.30, so that I could get to the airport in sensible time to catch an aeroplane.

If Council would be agreeable to that perhaps we could start at 10 o'clock or even 9.30, so I am rather in your hands, Hon. Members – bearing in mind that I have only the time to be with you in the morning; you may sit in the afternoon but then you can appoint under our Standing Orders your own Chair to sit.

Mr Callister: Mr President, have we any indication at this stage what will be before the Council next week?

The President: Yes, we will have the Collective Investment Schemes Bill possibly for Third Reading, because Mr Downie will be back; the Administration of Justice Bill, continuation of clauses there presumably; and Agricultural Tenancies Bill now for Second Reading and clauses.

Mr Crowe: Mr President, can I move that we sit at 9.30 next Tuesday?

Mr Callister: I will second 9.30, Mr President.

Mrs Christian: Mr President, I am not quite sure how many clauses there are, but it sounds quite long and I am not sure we would conclude by lunchtime. I would make a plea that I have a meeting scheduled every Tuesday before –

The President: In the morning, I am aware of that.

Mrs Christian: – Legislative Council, which would lead me to please ask could it be 10 o'clock?

The President: Mr Butt.

Mr Butt: Mr President, for reasons I will explain to you later, it is... the Agricultural Bill could be left until a fortnight hence, if that is –

The President: It could.

Mr Butt: That would be suitable to myself and the Department for various reasons, sir.

The President: Mr Waft.

Mr Waft: I am quite content with either, Mr President.

The President: Mr Attorney, would it create you a problem if we were to start at 10 o'clock?

The Attorney General: No, Mr President, I shall not be here, but –

The President: No, exactly, you will not be here, (*Laughter*) and I have already said that! (*Laughter*)
Mr Lowey.

Mr Lowey: No, sir, I am fine: I will come in at six o'clock, if you like. (*Laughter and interjections*)

The President: That would cause me a problem, (*Laughter*) because I have other things to do at that hour of the morning!

The Clerk: Mr President, sorry, I need to report there was a mistake in the brief I gave you: it is not the Collective Investment Schemes Bill at all. We have finished that.

The President: I looked at that.

The Clerk: So that is my fault. I was thinking of the Insurance Bill –

The President: Which we have now completed.

The Clerk: So if the Agricultural Bill is delayed by a further week, it was only the Administration of Justice Bill on the Order Paper for next week.

The Attorney General: If I may, I know that the hon. mover of that Bill was a little concerned that I might not be present when the clauses were being dealt with. Without, as it were, blowing my own trumpet, it may be that I could give some assistance to the hon. mover of that Bill by being present, and dealing with any issues which arise. So I do not know whether you wanted to consider moving the Administration of Justice Bill to the next sitting but one?

The President: Right, now –

Mrs Christian: Mr President, can I make a further plea? There is a Bill currently in another place which is a matter of considerable urgency to do with planning issues and if that has a fast passage today – and I do not know whether it will or not – I would very much... Ah, Jonathan may have...

The Clerk: I can tell you that the Town and Country Planning (Amendment) Bill did not finish in the Keys this morning. They did the First and Second Readings and they agreed to take the clauses on 13th May.

Mrs Christian: So that will not be ready.

The President: So that is held up quite substantially in effect, that particular measure, 13th May – so it is going to be the end of May before it comes back to us, bearing in mind Tynwald...

But just coming back, Hon. Members, and it is a matter of procedure. The Insurance Bill we completed this morning. That would have been for Third Reading next week. The Agricultural Tenancies Bill: Mr Butt is suggesting possibly left for a fortnight would, in timing, satisfy the Department and the mover so there is no particular need for us to put that on the Order Paper for next week.

The Administration of Justice Bill: we have reached the clause stage there. Now, in the knowledge that Mr Attorney is missing next week the question is do you wish to deal with the Administration of Justice clauses next week? That would appear, unless anything else comes from the Keys today, the only matter which would be before Council next for Tuesday. Administration of Justice clauses next week, Hon. Members?

Mr Lowey: I think we should go ahead with it.

The President: I am content to continue and if we do come across a particular problem, Mr Attorney...? (*Interjections*) We are content.

In that case, Hon. Members shall we say, in deference to Mrs Christian then, would you be content to start at 10.15, to allow her to complete her meeting? The Council will meet

at 10.15, bearing in mind that we will operate up to 12.30, and if you do then desire to sit in the afternoon, that will be entirely up to you to, under Standing Orders, appoint one of your Members to be Chairman.

Mr Turner.

Mr Turner: Yes, I think Mr Lowey made an important point there: will we have representation present possibly from the Attorney's Department sitting in the – ?

The President: Well, I think the mover and Mr Attorney's Department can sort that one out.

Okay, thank you very much, Hon. Members. Council will now sit in private. Thank you.

The Council sat in private at 1.00 p.m.