



**HOUSE OF KEYS  
OFFICIAL REPORT**

**RECORTYS OIKOIL  
Y CHIARE AS FEED**

**PROCEEDINGS  
DAALTYN  
(HANSARD)**

**Douglas, Tuesday, 6th May 2008**

**Present:**

The Speaker (Hon. S C Rodan) (Garff);  
 The Chief Minister (The Hon. J A Brown) (Castletown);  
 Hon. D M Anderson (Glenfaba); Hon. A V Craine and Hon. A R Bell (Ramsey); Hon. W E Teare (Ayre);  
 Mr J D Q Cannan (Michael); Mr T Crookall (Peel); Mr P Karran, Hon. A J Earnshaw and Mr D J Quirk (Onchan);  
 Hon. G M Quayle (Middle); Mr R W Henderson and Mr J R Houghton (Douglas North);  
 Hon. D C Cretney and Mr W M Malarkey (Douglas South); Mr R P Braidwood (Douglas East);  
 Mr C G Corkish MBE and Hon. J P Shimmin (Douglas West); Mr G D Cregeen (Malew and Santon);  
 Mr J P Watterson, Hon. P A Gawne and Mr Q B Gill (Rushen);  
 with Mr M Cornwell-Kelly, Secretary of the House

**Business transacted**

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*The House adjourned at 12.41 p.m.*

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## House of Keys

*The House met at 10.00 a.m.*

[MR SPEAKER *in the Chair*]

### PRAYERS

*The Chaplain of the House of Keys*

### LEAVE OF ABSENCE GRANTED

**The Speaker:** Hon. Members, I have given leave of absence to the Hon. Member for Douglas East, Mrs Cannell, for this sitting.

## Questions for Oral Answer

### TREASURY

#### E-gaming regulator Progress

1.1. The Hon. Member for Douglas South (Mr Malarkey) to ask the Minister for the Treasury:

*With the visit of the IMF pending, what progress are you making with regard to the appointment of an e-gaming regulator?*

**The Speaker:** We turn to our Order Paper, Questions for Oral Answer. Question 1. I call the Hon. Member for Douglas South, Mr Malarkey.

**Mr Malarkey:** Mr Speaker, I beg leave to ask the Question standing in my name, sir.

**The Speaker:** I call on the Minister for Treasury, the Hon. Member for Ramsey, Mr Bell.

**The Minister for the Treasury (Mr Bell):** Mr Speaker, since responsibility for the Gambling Supervision Commission transferred from the Department of Home Affairs to the Treasury in September 2007, the Department has worked closely with the new chair in establishing the appropriate staffing structure for the Commission.

Following a review of the role, the position of Director of Gambling Supervision has recently been advertised, and interviews for the post will take place towards the end of May.

**The Speaker:** Hon. Member, Mr Malarkey.

**Mr Malarkey:** Thank you, Mr Speaker.

Is the Minister aware of the concern amongst the banking communication... the business community, of the lack of a regulator in place prior to the IMF inspection, and can the Minister give us some assurance that not having a regulator in place for the inspection will not alter anything that might come out of this inspection?

**The Speaker:** Minister for Treasury.

**The Minister:** Mr Speaker, I am well aware of the views expressed by elements within the financial services industry. I have met with them on occasions to explain what the position is. They know perfectly well what the situation is and a regulator will be in place well before the visit of the IMF in September.

It is a very important post and it is important that we get the right person for the job. It has taken longer than I had anticipated, but we are now in the finishing straight and there will be someone in place certainly by early next month.

### TRANSPORT

#### Mobile homes Restricting use in residential areas

1.2. The Hon. Member for Onchan (Mr Karran) to ask the Minister for Transport:

*Will your Department investigate changing the law so that larger mobile homes are not allowed to park on public roads in residential areas for more than 12 hours at a time?*

**The Speaker:** Turning to Question 2, I call the Hon. Member for Onchan, Mr Karran.

**Mr Karran:** Vainstyr Loayreyder, I ask the Question standing in my name.

**The Speaker:** I call on the Minister for Transport, the Hon. Member for Glenfaba, Mr Anderson.

**The Minister for Transport (Mr Anderson):** Thank you, Mr Speaker.

The Department has no plans at present to change the current legislation which regulates the parking of motor homes on the public highway.

The existing statutory instrument which restricts the parking of large vehicles is contained within the Road Traffic (Overnight and Weekend Waiting) Regulations 1993, which came into operation on 1st March 1994. This legislation prevents motor caravans exceeding 3,050 kilos unladen weight from parking on highways, or private roads if public access is allowed, which are subject to a permanent statutory speed limit, on Saturdays or Sundays or between 6.00 p.m. and 7.00 a.m. In short, vehicles of greater than 3,050 kilograms unladen weight can only park on the highways in residential areas subject to a permanent speed limit, between the hours of 7.00 a.m. and 6.00 p.m. Monday to Friday, which is an 11-hour limit.

**Mobile homes and commercial vehicles  
Parking provision**

1.3. The Hon. Member for Onchan (Mr Karran) to ask the Minister for Transport:

*Will your Department investigate the possibility of providing suitable parking facilities for both mobile homes and commercial vehicles in the east of the Island?*

**The Speaker:** Question 3, and again I call the Hon. Member for Onchan, Mr Karran.

**Mr Karran:** Vainstyr Loayreyder, I ask the Question standing in my name.

**The Speaker:** Minister for Transport, Mr Anderson.

**The Minister for Transport (Mr Anderson):** Thank you, Mr Speaker.

The Department currently provides space in its Parade Street pay-and-display car park, which is available for parking of mobile homes and light commercial vehicles not exceeding 3,500 kilograms. In addition, the Department allows self-propelled, heavy-goods vehicles to pay and display overnight in Parade Street.

The provision of any further parking facilities for either mobile homes or commercial vehicles in the east of the Island would be subject to a clear demand being identified for such parking. At present, there is no indication that additional demand exists.

**The Speaker:** Hon. Member for Onchan.

**Mr Karran:** Vainstyr Loayreyder, a supplementary. Can the Shirveishagh inform this House that if it gets representation from people, from the general public, he will actually do something about this issue? Would the Shirveishagh also consider seeing whether he could work with other Departments, like the proposal that was given some time ago, in order to develop an off-street facility for such vehicles on the back road in the plantation on the way from Creg ny Baa to Laxey?

**The Speaker:** Minister for Transport.

**The Minister for Transport (Mr Anderson):** I am quite prepared to take on the comments the Hon. Member makes in relation to this. If there is sufficient demand for this facility, the Department would look with neighbouring local authorities to see if we could come to some arrangement to try and accommodate these people. At the moment, we get a few complaints about people parking illegally on the highway, in which case we have to pass that information on to the local police authority.

**The Speaker:** Hon. Member for Malew and Santon.

**Mr Cregeen:** Thank you, Mr Speaker.

Is the Minister concerned regarding the large number of articulated trailers being left on the highway and the safety issues that this brings about?

**The Speaker:** Minister to reply.

**The Minister:** There is an issue to do with large articulated vehicles. It is something that we are looking into and I cannot say any more than that at this stage, Mr Speaker.

**The Speaker:** Hon. Member for Douglas North, Mr Houghton.

**Mr Houghton:** Thank you, Mr Speaker.

Can the Minister advise how many complaints he gets for large mobile homes parked on public roads, rather than the weight, but the size of those mobile homes, which are growing year on year in their size? Can he give any idea on that? Can he also advise whether he has had any representation from his own Members on his own Department for issues in their own constituencies?

**The Speaker:** Minister to reply.

**The Minister:** Mr Speaker, I am not sure if these vehicles are actually growing. However –

**Mr Houghton:** Come and have a look at one or two of them.

**The Minister:** – I believe, as I said in my previous Answer to the Hon. Member for Onchan, we do get a handful of complaints about vehicles being parked on the highways illegally, and we pass this on to the Police Force that have to enforce the regulations. However, I must say to the Hon. Member, we do have complaints even from Department Members about particular motor homes in the Onchan area and it is something we would like to talk to the local authority when they are in place following the recent elections. We are more than pleased to talk to the local authority in Onchan concerning those problems.

**The Speaker:** Hon. Member, Mr Karran.

**Mr Karran:** Vainstyr Loayreyder, a supplementary.

Can the Shirveishagh explain to this Hon. House, how he does not see that these issues are not a priority? Would the Shirveishagh not agree that it is making a joke out of these issues? It is not about the growing, it is the growing problem of the fact that it has not been resolved, and is this not just another case of where your Department is just...? There are none so blind as those who will not look.

**Mr Houghton:** Hear, hear.

**The Speaker:** Minister to reply.

**The Minister:** No, I would not agree with the Hon. Member. It is an enforcement issue. We have the regulations and it is not for us to enforce those regulations. It is not something that we are oblivious to, and as I have already said to other Hon. Members, we are more than happy to talk to the local authorities about finding a solution.

**TOURISM AND LEISURE****Closed hotels on Island  
Reopening for TT; debts to Government**

1.4. The Hon. Member for Onchan (Mr Karran) to ask the Minister for Tourism and Leisure:

(a) *What contacts, if any, have you or your Department made with the owners of the Castle Mona Hotel, the Castletown Golf Links Hotel and other hotels that are currently closed, with a view to them opening for the TT 2008 period;*

(b) *what money, if any, is currently owed by each of those hotels to the Isle of Man Government by way of outstanding Tourism Development Grants, etc; and*

(c) *when and under what circumstances does this money have to be repaid?*

**The Speaker:** Question 4. Again, I call on the Hon. Member for Onchan, Mr Karran.

**Mr Karran:** Vainstyr Loayreyder, I ask the Question standing in my name.

**The Speaker:** I call on the Minister for Tourism and Leisure, the Hon. Member for Onchan, Mr Earnshaw.

**The Minister for Tourism and Leisure (Mr Earnshaw):** Thank you, Mr Speaker.

Neither my Department nor I have made any contact with the Castle Mona Hotel, the Castletown Golf Links Hotel, or other hotels that are closed, to request them to open for TT 2008, as these buildings are no longer registered for tourism purposes. Current indications suggest there are sufficient bed spaces for anticipated TT arrivals.

With regard to part (b) of the Question, there are no outstanding moneys due from either the Castle Mona or the Castletown Golf Links Hotels by way of the Tourist Development Fund or previous tourism loans or grants.

In answer to (c), there are, therefore, no outstanding moneys to be repaid.

**The Speaker:** Mr Karran.

**Mr Karran:** Vainstyr Loayreyder, a supplementary.

Could the Shirveishagh explain to this Hon. House what is his Department's role as far as tourism is concerned? Aren't they supposed to be proactive? Is there not a problem as far as year on year the lack of bed spaces in order to bring TT to be a position of being unviable? When are we going to see actually some proactive action, as far as this Government is concerned, in order to keep this economic string of the economy afloat?

**The Speaker:** Minister for Tourism.

**The Minister:** Yes, I do believe we are proactive, Mr Speaker.

There are, as I have said in my original Answer, adequate bed spaces available for the TT Races, and in fact I can say that, at the moment, we have 700, or thereabouts, bed spaces in unregistered accommodation, that is registered for Homestay but not on our regular register.

**The Speaker:** Hon. Member for Rushen, Mr Watterson.

**Mr Watterson:** Thank you.

We have just heard that, despite the closure of these large hotels, there is still bed space for TT this year, Mr Speaker. Are we expecting a significant drop in numbers, then, Minister? Could I ask the Minister that? How big is the drop in expected numbers, given that we have had two large hotel closures?

**Mr Houghton:** What about Port Erin?

**Mr Watterson:** Yes.

**The Speaker:** Minister to reply.

**The Minister:** Thank you, Mr Speaker.

I do not have accurate figures at the moment – I am seeking those – but I can say that I expect there to be a considerable number more spectators visiting the Island for TT 2008 than there were for TT 2006, and less than there were for TT 2007. I am sorry I cannot give more accurate figures at the moment. Once I have more accurate figures, I will be pleased to make a press announcement regarding that.

**EDUCATION****Outside sports facilities  
DoE policy**

1.5. The Hon. Member for Onchan (Mr Quirk) to ask the Minister for Education:

*What is the policy of your Department with reference to sports facilities for outside use?*

**The Speaker:** Question 5, and I call on the Hon. Member for Onchan, Mr Quirk.

**Mr Quirk:** Thank you, Mr Speaker.  
I beg to ask the Question standing in my name.

**The Speaker:** I call on the Minister for Education, the Hon. Member for Ramsey, Mrs Craine.

**The Minister for Education (Mrs Craine):** Thank you, Mr Speaker.

All of our schools have indoor sports facilities and many have their own playing fields. Those which do not have playing fields make extensive use of other facilities, such as those available at the NSC or Noble's Park. The Department encourages the use of its facilities by the community through its lettings policy, which offers large discounts to those groups which consist mainly of children. This represents a significant subsidy for children's groups, with discounts of up to 80 per cent, which can mean charges as low as £4.50 an hour.

The availability of the facilities is restricted for various reasons. These include their use for educational purposes and practical uses such as wear and tear on the facilities

themselves. Playing fields need to be maintained, and given the Island's climate, cannot sustain constant use throughout the week, followed by regular use at the weekends.

This is not the case with the synthetic all-weather pitches at three of the Island's secondary schools. These have been provided by the Department of Tourism and Leisure and are operated on a dual-use basis. They are used exclusively by schools up to 6.00 p.m. on school days and are then available for booking, through the DTL, for evenings and weekends.

To sum up the Department's policy, Mr Speaker, the Department seeks to maintain all of its facilities to a high standard for both educational purposes and to maximise use by the community.

**The Speaker:** A supplementary, Mr Quirk.

**Mr Quirk:** Thank you, Mr Speaker.

Can I thank the Minister for Education for her comprehensive Answer.

Could she indicate to me that if the secondary school was to be built in Onchan –

**Mr Houghton:** Not 'if', 'when'.

**Mr Quirk:** – sorry, 'when', the Hon. Member says – when the secondary school is built in Onchan, this would assist both her Department and other sports facilities in the east, which are sadly needed? Would this not be a priority for your Department to progress the scheme?

**The Speaker:** Minister for Education.

**The Minister:** Thank you, Mr Speaker.

Yes, certainly, I can confirm that the scheme, as proposed for Bemahague School does include playing fields, which would take some of the pressure off some of the sporting facilities that we already use.

It would be worth saying, Mr Speaker, that, of course, those playing fields will not be built to over capacity and so, whilst it would be seen that it would serve the needs of the school, given wear and tear and the maintenance of grass pitches, it may not be that that would be able to support community use as well. However, it would, of course, take the pressure off the facilities that we are currently using at the NSC and at Noble's Park.

**The Speaker:** Hon. Member for Douglas South, Mr Malarkey.

**Mr Malarkey:** Thank you, Mr Speaker.

Could the Minister confirm that it is not her policy to lock up any of the school playgrounds or playing fields out of hours, and is it her policy to allow the use of these fields at all times?

**The Speaker:** Minister to reply.

**The Minister:** Yes, thank you, Mr Speaker.

I am grateful for that question because it is the policy of the Department that our playgrounds around schools should be open for use by children throughout the evening until a reasonable time, I would hope, because obviously there is the consideration of disturbance to neighbours. But certainly

it is the policy that those areas should remain open. If there is any difficulty with that from any Member's particular area I would be glad to know about it and we will obviously look into it.

**The Speaker:** Hon. Member, Mr Cregeen.

**Mr Cregeen:** Thank you, Mr Speaker.

With the use of these most valuable areas round the schools, what power does the Department have to stop people exercising their dogs on them?

**The Speaker:** Minister to reply.

**The Minister:** I believe that we have the same enforcement powers as any other public area, and that is that we require that people do not exercise their dogs or misuse any of our playing areas. However, if they do, then it is always the problem, when it comes to enforcement, of actually catching people carrying out those misdemeanours and having the ability to enforce it. But enforce it we will certainly attempt to do!

**The Speaker:** Hon. Member, Mr Quirk.

**Mr Quirk:** Thank you, Mr Speaker.

Could I ask the Minister, in her future plans for any of these areas – or when the schools build these little tarmacked areas – would she consider talking to the Isle of Man FA, and especially the junior league, when these are constructed, because when you put tarmac down we cannot have organised games? Can I seek an assurance from the Minister she would contact those two organisations for advice?

**The Speaker:** Minister to reply.

**The Minister:** Yes, thank you, Mr Speaker.

I think I should say at this point that, in fact, we do have quarterly meetings as a partnership – sporting and healthy schools partnership – with members from the Department of Tourism and Leisure, the Manx Sport and Recreational Association, Public Health, and our own Department of Education, in order to move forward the provision in various areas. In fact, we are working on various schemes at the present time.

I would have hoped that the Manx Sport and Recreational Association would have that link in with the Isle of Man Football Association, Mr Speaker, but if not, perhaps the Hon. Member would be able to have a word with me afterwards.

## LOCAL GOVERNMENT AND THE ENVIRONMENT

### Government Office canteen Current status

1.6. The Hon. Member for Onchan (Mr Quirk) to ask the Minister for Local Government and the Environment:

*What is the current status of the Government Office*

*canteen services controlled by your Department?*

**The Speaker:** Question 6. I call the Hon. Member for Onchan, Mr Quirk.

**Mr Quirk:** Thank you, Mr Speaker. I wish to ask the Question standing in my name.

**The Speaker:** I call the Minister for Local Government and the Environment, the Hon. Member for Douglas West, Mr Shimmin.

**The Minister for Local Government and the Environment (Mr Shimmin):** Thank you, Mr Speaker.

My Department currently operates the canteen for staff and Members on the top floor of Central Government Offices.

The Council of Ministers have agreed to relocate the canteen facility to new premises on the ground floor of Central Government Offices, subject to availability of funding and an appropriate staffing and management structure. Although the net cost of operating the canteen was £35,000 in the financial year 2007-08, my Department remains committed to providing this service.

However, in view of the significant amount of the operating costs, my Department is continuing to review the management and operational arrangements for the canteen to reduce the cost burden on the Department and this exercise is ongoing. The direct operation of the canteen by my Department is difficult because it is a one-off facility and does not sit comfortably within other key responsibilities.

For this reason, my estates team have sought advice from both within and outside Government to help identify the most appropriate model for operating the facility. This exercise is ongoing, but assurances have been given to the canteen staff that they will be consulted and kept informed of developments.

**Mr Henderson:** Hear, hear.

**The Speaker:** Hon. Member, Mr Quirk.

**Mr Quirk:** Thank you, Mr Speaker.

Can I thank the Minister for his response. Can I ask the Minister if the funding is in this year's current budgets and if that funding is available, has the Minister indicated when there would be a start for the ground floor development so this can take place? Could he indicate that?

**The Speaker:** Minister to reply.

**The Minister:** No, Mr Speaker, the timetable of this has not been approved. The funding of this will have to be found from within my estates budget.

We were hoping to make progress on it last financial year, when the Department had an underspend: however, if we are able to progress with the appropriate structure, we will have to find the money out of this year's budget, sir.

**The Speaker:** Hon. Member for Malew and Santon, Mr Cregeen.

**Mr Cregeen:** Thank you, Mr Speaker. Is the Minister aware that there are a number of people

throughout Government who are not aware that they can access this facility, and if it was moved to the ground floor, it may be of a more advantageous position than it is currently?

**The Speaker:** Minister to reply.

**The Minister:** I am anecdotally aware of that, as I am anecdotally aware that a number of members of staff do not attend because there are so many Members of Tynwald frequent the establishment! (*Laughter*).

We know that the facility is not fully utilised, it is not in a suitable location, which is why it has been determined that it will be moved. However, we have got to try and get a structure which will actually suitably allow members of staff and all appropriate persons to use it, whilst at the time being good value for money for the taxpayer.

**The Speaker:** Hon. Members, that brings us to the end of Questions for Oral Answer.

There are three Questions for Written Answer, and those Answers will be circulated shortly.

## Questions for Written Answer

### CHIEF MINISTER

#### Smoking shelters Provision for Government Offices

2.1. The Hon. Member for Douglas East (Mrs Cannell) to ask the Chief Minister:

*Will you consider the provision of 'smoking shelters' for use by Government Office workers, in view of the fact that smoking rooms were provided in a number of Government Office buildings up until the all-Island smoking ban in enclosed public spaces came into effect?*

**Answer:** As the Hon. Member is aware, the Department of Local Government and the Environment is responsible for maintaining Government Office and some 20 other offices occupied by Departments and Boards of Government.

I am advised that few of these offices have ever incorporated smoking rooms and many of the occupying Departments had already adopted a 'No Smoking' policy within their premises long before the all-Island smoking ban came into force.

Very few of those offices were fitted with smoking shelters but, in the light of the new legislation coming into force, the Department of Local Government and the Environment resolved in July 2007 that it would not provide smoking shelters at any of the offices for which it was responsible.

It is also worth pointing out that a considerable number of the offices used by Government are, in fact, leased and there is simply insufficient room, even if the landlord agreed, for shelters to be erected adjacent to the buildings.

It is deemed appropriate to have a standard policy and it would be inequitable if those working in Government Office

were provided with a smoking shelter whilst those working elsewhere were not provided with the same facilities.

### TREASURY

#### Civil Service/Whitley Council pay Increase 2001-09

2.2. The Hon. Member for Rushen (Mr Watterson) to ask the Minister for the Treasury:

*For each of the years 2001 to 2009 what has been, and will be the increase in –*

*(a) Whitley Council pay;*

*(b) Civil Service pay; in*

*(i) the Isle of Man;*

*(ii) the United Kingdom (where already negotiated)?*

**Answer:**

	a Whitley Council	b (i) IoM Civil Service	b (ii) UK Civil Service (see note)	IoM Private Sector Earnings Survey
2001	3.50%	3.30%		2.29%
2002	4.00%	5.60%		6.97%
2003	5.50%	4.20%	4.90%	7.44%
2004	4.25%	5.50%	3.50%	0.87%
2005	5.00%	4.00%	4.20%	0.86%
2006	4.00%	3.75%	3.25%	8.51%
2007	2.50%	2.50%	2.60%	3.53%
2008	4.10%	4.10%	not finalised	
2009	higher of 3% or March 2009 RPI			

**Note:**

The UK Civil Service increases relate only to the UK Senior Civil Service. Since 1996 in the UK, apart from the Senior Civil Service, there is no central bargaining for Civil Service pay. Departments have authority to determine pay and conditions for their staff below the Senior Civil Service, which are appropriate to their business needs and which take into account Government policies on public sector pay.

With regard to the UK Senior Civil Service, whose pay is subject to review by an independent review body, the UK has struggled to supply figures that will enable a like with like comparison. The figures supplied represent an average award for staff in post from one year to the next and include an adjustment for inflation and a performance related element.

### HOME AFFAIRS

#### Sale/supply of alcohol to under-18s Maximum fine and sentence

2.3. The Hon. Member for Rushen (Mr Watterson) to ask the Minister for Home Affairs:

*(a) What is the maximum fine and sentence for a licensed person/licensed premises selling alcohol to a person under the age of 18;*

*(b) what is the fine and sentence for a member of the public supplying alcohol to a person under the age of 18?*

**Answer:** Mr Speaker, in respect of part (a), the maximum fine and sentence for the holder of a licence, or an employee or agent of a licensee, who sells alcohol to a person under the age of 18 is a fine not exceeding £1,000.

In respect of part (b) of the Question, Mr Speaker, the fine and sentence for a member of public buying alcohol for a person under the age of 18, for consumption in a licensed premises, is a fine not exceeding £1,000\*.

In addition, if a person knowingly supplies liquor to a person under 18 for consumption in a highway or other public place, he or she is liable to a fine not exceeding £2,500.

\* A person who is over 16 may consume wine with a meal, if accompanied by a person who is aged 18 or over, in a licensed premises.

## Orders of the Day

### BILL FOR CONSIDERATION OF COUNCIL AMENDMENT

#### Insurance Bill

#### Council amendment approved

3.1. Mr Braidwood to move.

**The Speaker:** We turn to Item 3 on our Order Paper, Bill for consideration of Council amendment, and I call on the Hon. Member for Douglas East, Mr Braidwood.

**Mr Braidwood:** Thank you, Mr Speaker.

This amendment arises from the Council because of a typographical error which was in the amendment moved by the Hon. Member for Ramsey, Mr Bell, on 26th February, in that in the original Bill he was talking about 'does not apply for review' and then 'does apply for review'. The amendment changed it to 'appeal', but unfortunately, in the clause 37(5), there was an additional 'not', so 'if a person concerned does not appeal' should have meant 'if a person concerned does appeal'.

I beg to move:

*That the following amendment to the Insurance Bill made by the Legislative Council be agreed and that the Bill do now pass.*

*Clause 37*

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

**The Speaker:** Mr Bell.

**Mr Bell:** I am sure it was a fault of the printers, not the mover of the amendment, Mr Speaker! I beg to second.

**The Speaker:** Hon. Members, the motion is that the Council amendment to the Insurance Bill to clause 37 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

## BILL FOR CONSIDERATION OF CLAUSES

### Proceeds of Crime Bill

#### Clauses considered

4.1. Mr Braidwood to move.

**The Speaker:** Item 4, Bill for consideration of clauses, Proceeds of Crime Bill, and again I call on the Hon. Member for Douglas East, Mr Braidwood.

**Mr Braidwood:** Thank you, Mr Speaker.

It is my intention, in moving this very large Bill of 227 clauses, with your permission, sir, to put some of the clauses together and move them as one.

**The Speaker:** You have my permission, sir.

**Mr Earnshaw:** One to 99! *(Laughter)*

**Mr Braidwood:** Thank you, Mr Speaker.

Clause 1 explains the general purpose of part 1 of the Bill. Part 1 of the Bill contains draft clauses relating to the establishment of a new civil right of action to enable the Attorney General to sue for the recovery of property which has been obtained through conduct contrary to the criminal law.

The right is to have the character of a traceable proprietary interest with suitable safeguards for certain protected prior rights. It is to be exercisable through the High Court by means of a procedure during which the disputed property may be placed under the control of the court. The right to recover the property is to be based on its unlawful provenance, regardless of whether it was a respondent now in possession of it, or a third party who committed the unlawful conduct. Proceedings will not seek to determine the criminal guilt or innocence of any person, but will focus on whether the property can be shown to have been obtained through some person's unlawful conduct.

Part 1 of the Bill will also replace the cash seizure provisions found in the Criminal Justice Act 1990 and Drug Trafficking Act 1996 with a single unified regime. At the same time, it will extend the circumstances when cash

may be seized to cover any time when a Police or Customs officer is lawfully on the premises carrying out a search or otherwise lawfully engaged in their duties anywhere in the Island or in its territorial waters.

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

**The Speaker:** Hon. Member, Mr Bell.

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

**The Speaker:** Hon. Members, the motion is clause 1 to stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clauses 2 and 3, Mr Braidwood.

**Mr Braidwood:** Thank you, Mr Speaker.

Clause 2 provides the definition of what constitutes unlawful conduct as being conduct which is (a) unlawful under the criminal law of the Island, or (b) unlawful under the law of another country and which would also be unlawful under the law of the Island, if it had occurred in the Island.

Clause 3 provides a definition of what constitutes property obtained through unlawful conduct.

Mr Speaker, I beg to move that clauses 2 and 3 stand part of the Bill.

**The Speaker:** Mr Bell.

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

**The Speaker:** Hon. Members, the motion is that clauses 2 and 3 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clauses 4 and 5.

**Mr Braidwood:** Thank you, Mr Speaker.

Clause 4 permits the Attorney General to begin proceedings in the High Court against any person that the Attorney believes is in possession of property that is recoverable by means of civil recovery.

Clause 5 defines associated property as being property that is not itself recoverable but includes an interest or share in it that would be recoverable.

Mr Speaker, I beg to move that clauses 4 and 5 stand part of the Bill.

**The Speaker:** Mr Bell.

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

**The Speaker:** The motion is that clauses 4 and 5 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clauses 6 to 12 inclusive, Mr Braidwood.

**Mr Braidwood:** Certainly, Mr Speaker.

Clauses 6 to 12, Mr Speaker, explain property freezing orders. Property freezing orders may be used as an alternative to freezing property and appointing a receiver to administer it. They simply prevent anyone from dealing in the property specified and, in this regard, they resemble restraint orders that may be obtained to prevent anyone dealing with or withdrawing money in a bank account. These clauses deal

with the applications for property freezing orders and other matters relating to their use, including restrictions on other legal proceedings etc when a property freezing order is in place and the appointment of receivers to manage property covered by the order.

Clause 6 deals with applications by the Attorney General to the High Court for a property freezing order.

Clause 7 deals with the powers of the High Court to set aside or vary a property freezing order.

Clause 8 deals with the exclusions to a property freezing order that the High Court may allow. These include exclusions to allow a respondent, or other party to the proceedings, to meet reasonable legal or living expenses.

Clause 9 allows the High Court to stay any action, execution or other legal process in relation to the specified property whilst a property freezing order is in place. It also provides that no distress may be levied against the property.

Clause 10 allows the High Court to appoint a receiver for any property subject to a property freezing order either at the time of the original application or at any time afterwards.

Clause 11 deals with the powers of any receiver appointed to manage property covered by a property freezing order. This also allows the High Court to grant the necessary powers of management etc to a receiver appointed in relation to a property freezing order.

Clause 12 provides opportunity for any person affected by the property freezing order to apply to the High Court for directions as to the exercise of the functions of a receiver appointed to manage property subject to the order. This clause thus provides further safeguards to the actions of a receiver appointed pursuant to a property freezing order. Anyone affected may apply to the court for directions.

Mr Speaker, I beg to move that clauses 6 to 12 stand part of the Bill.

**The Speaker:** Mr Bell.

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

**The Speaker:** Hon. Members, the motion is that clauses 6 to 12 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clauses 13 and 14 and schedule 1, Mr Braidwood.

**Mr Braidwood:** Thank you, Mr Speaker.

Clause 13, the Attorney General may apply for an interim receiving order before commencing... proceedings for a recovery order in the High Court.

Clause 14 and schedule 1: the receiver may exercise any of the powers mentioned in schedule 1 or take steps to sort things appropriately.

Mr Speaker, I beg to move that clauses 13 and 14 and schedule 1 stand part of the Bill.

**The Speaker:** Mr Bell.

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

**The Speaker:** The motion is that clauses 13 and 14 and schedule 1 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 15, Mr Braidwood.

**Mr Braidwood:** Thank you, Mr Speaker.

Clause 15 requires that an application for one of the two types of order mentioned above is to be treated in the same way as a caution registered pursuant to section 61 of the Land Registration Act 1982.

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

**The Speaker:** Mr Bell.

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

**The Speaker:** The motion is that clause 15 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clauses 16 to 21, Mr Braidwood, or 16 to 18?

**Mr Braidwood:** Clauses 16 to 18.

**The Speaker:** Clauses 16 to 18.

**Mr Braidwood:** Clause 16 places certain requirements on the respondent when an interim receiving order has been obtained. These are designed to assist the interim receiver in the role of securing and managing the property involved.

Clause 17 is concerned with the supervisory role of the High Court in respect of the exercise of the functions of the Interim Receiver and implementation of an interim receiving order. Any person affected by an interim receiving order, or the actions of the Interim Receiver, may apply to the High Court to either have the Order set aside or varied or for directions as to the exercise of the functions of the Receiver. The Receiver can also apply to the Court for directions, if required.

Clause 18 requires that an interim receiving order must prohibit persons from dealing with a property involved but also allows for certain exclusions to that general rule. Exclusions can apply to providing, for example, legal and living expenses. The restriction on dealing with a property is designed to prevent dissipation of any assets before a recovery order may be made.

Mr Speaker, I beg to move that clauses 16 to 18 stand part of the Bill.

**The Speaker:** Mr Bell.

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

**The Speaker:** The motion is that clauses 16, 17 and 18 stand part of the Bill. Those in favour say aye; against no. The ayes have it. The ayes have it.

Clauses 19, 20 and 21.

**Mr Braidwood:** Thank you, Mr Speaker.

Clause 19 allows the High Court to stay any proceedings or action in the respect of any property to which an interim receiving order applies and provides that no distress may normally be levied against the property.

Clause 20 requires the High Court to exclude from the scope of an interim receiving order any property which it decides is not recoverable and allows it to vary the Order to exclude associated property.

Clause 21 requires the Interim Receiver to report to the Attorney General and the High Court as soon as practicable when certain circumstances arise.

Mr Speaker, I beg to move that clauses 19 to 21 stand part of the Bill.

**The Speaker:** Mr Bell.

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

**The Speaker:** The motion is that clauses 19, 20 and 21 stand part of the Bill. Those in favour say aye; against no. The ayes have it. The ayes have it.

Clause 22, Mr Braidwood.

**Mr Braidwood:** Thank you, Mr Speaker.

Mr Speaker, clause 22 shows that having established that there is a property which was obtained through unlawful conduct or represents that which was so obtained the High Court is obliged to make a recovery order unless the property is concerned in a trustee for civil recovery, who will be responsible for realising the value of this recoverable property. Subject to certain conditions contained in this clause, and in the following clauses 25 to 33, the Court must make a recovery order if satisfied that there exists recoverable property.

Mr Speaker, I beg to move that clause 22 stand part of the Bill.

**The Speaker:** Mr Bell.

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

**The Speaker:** The motion is that clause 22 stand part of the Bill. Those in favour say aye; against no. The ayes have it. The ayes have it.

I think we turn now to clauses 23 to 35 and schedule 2.

**Mr Braidwood:** Thank you, Mr Speaker.

Clause 23 and schedule 2: this deals with the appointment by the High Court of a person responsible for giving effect to a recovery order by securing and disposing of property so as to realise its value. Schedule 2 provides for the powers available to the trustees for civil recovery.

Clause 24 is where a recovery order is made it pre-empts any provisions of whatever nature that would otherwise restrict the vesting of the property in the trustee for civil recovery. This clause deals with this right of pre-emption and the overriding of previous rights.

Clause 25 allows the courts to treat the joint ownership as if severed so that it can treat the non-recoverable part separately.

Clauses 26 and 27 provide for agreements between the Attorney General and the joint owner as to how to treat their share and what may take place if there were to be no such agreement.

Clauses 28 to 30 apply to rights under a pension which are to be treated as recoverable property. They make provisions for how such rights are to be dealt with.

Clause 28 provides that a recovery order may require the trustees or managers of a pension scheme to pay to the trustee for civil recovery within a set time an amount determined to be equal to the value of the rights involved. The value is to be determined by the trustees or managers of the pension scheme.

Clause 29 is concerned with making consequential adjustments of liabilities under a pension scheme as a result

of the making of the recovery order.

Clause 30 makes various supplementary provisions in respect of recovery orders and pension schemes.

Clause 31 deals with consent orders in general and how they may have the effect of staying recovery proceedings.

Clause 32 deals with consent orders where rights under a pension scheme are involved.

Clauses 33 and 34 deal with situations where the Attorney General is seeking to recover property and the High Court believes it appropriate to limit his ability to recover in relation to property that represents the original property obtained through unlawful conduct. Such a limitation may be necessary as a series of transactions over a lengthy period may mean that there is a large number of items that represent the original property obtained through unlawful conduct. To allow recovery of this entire family may be disproportionate to the primary right of the Attorney to recover the value of the original property.

Clause 34 just gives examples of the Attorney's right to recover original property obtained through unlawful conduct.

Clause 35 governs the use of sums realised by the trustee for civil recovery. It prescribes how such sums should be disposed of. The trustee must, (a), first make any payment required to be made following an order made in default of an agreement under clause 27. Secondly, the trustee must pay any legal expenses provided for in a recovery order. Thirdly, the trustee must pay expenses incurred by a person acting as an insolvency practitioner and, finally, the balance must be paid to the Attorney General.

Mr Speaker, I beg to move that clauses 23 to 35 and schedule 2 stand part of the Bill.

**The Speaker:** Mr Bell.

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

**The Speaker:** The motion is that clauses 23 to 35 and schedule 2 stand part of the Bill. Those in favour, say aye; against no. The ayes have it. The ayes have it.

Clauses 36 and 37.

**Mr Braidwood:** Thank you, Mr Speaker.

Clause 36 gives the owner of property the right to seek a declaration that the property involved should be made over to them and not treated as recoverable property. An important class of person covered by this clause would be victims of theft.

Clause 37 provides that further exemptions from civil recovery proceedings and allows for certain types of persons or property to be exempt from civil recovery and permits the making of regulations prescribing those persons and/or that property against whom or which recovery may not be made.

Mr Speaker, I beg to move that clauses 36 and 37 stand part of the Bill.

**The Speaker:** Mr Bell.

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

**The Speaker:** The motion is clauses 36 and 37 stand part of the Bill. Those in favour, say aye; against no. The ayes have it. The ayes have it.

Clauses 38 to 42. Mr Braidwood.

**Mr Braidwood:** Thank you, Mr Speaker.

Clause 38 deals with situations where compensation may be due to the owners or holders of property subject to civil recovery proceedings.

Clause 39 deals with situations where property may be excluded from a property freezing order or interim receiving order in order that it may be used for legal expenses by the respondent. It allows the setting of conditions and regulations.

Clause 40 allows the Department of Home Affairs to make regulations governing the release of assets for the payment of some expenditure, including legal expenses of the respondent or other person involved in civil recovery proceedings.

Clause 41 prevents the Attorney General from commencing proceedings for civil recovery unless he reasonably believes that the aggregate value of any recoverable property involved exceeds a *de minimis* amount that would be set by order by the Department of Home Affairs. Thus the civil recovery powers would not be used in minor or trivial cases.

Clause 42 inserts a new section, 10(a), into the Limitation Act 1984 applying a different time-limit to civil recovery proceedings. Section 10(a) provides that the proceedings cannot be begun more than 12 years after the date on which the cause of action...

Mr Speaker, I beg to move that clauses 38 to 42 stand part of the Bill.

**The Speaker:** Mr Bell.

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

**The Speaker:** Hon. Member for Rushen, Mr Watterson.

**Mr Watterson:** I was just wondering if I could pick the hon. mover's brains here in terms of the Limitation Act element under clause 42. For fraud cases under the Income Tax Act, obviously, there is a 21-year limitation on this. This is a similar sort of provision, in terms of proceeds of crime, and yet this is only 12 years after the date on which the cause of action occurred. Perhaps the Member moving could explain why this is not also 21 years?

**The Speaker:** Mr Braidwood.

**Mr Braidwood:** Thank you, Mr Speaker.

Mr Speaker, the Limitation Act 1984 imposes time-limits on the commencement of proceedings: for example, six years in cases involving tort or simple contract. All we have done here is that we are increasing the time, or doubling them, in actual fact, for recoverable property from six to 12. I do not know why we have not gone to 21 years but I will try to find out for the Hon. Member and come back to the House on the Third Reading, Mr Speaker, if that is alright with the Hon. Member for Rushen?

**The Speaker:** Hon. Members, I put it to the House that clauses 38 to 42 stand part of the Bill. Those in favour, say aye; against no. The ayes have it. The ayes have it.

Clauses 43, 44 and 45. Mr Braidwood.

**Mr Braidwood:** Thank you, Mr Speaker.

Clause 43 provides a new power of search where there are reasonable grounds to believe cash liable to forfeiture is present. Prior approval is required unless seeking such approval is not practicable and the use of the new power will be governed by a code of practice required under clause 45.

Clause 44 is concerned with detailing where prior approval should be sought before carrying out a search under clause 43. Subsection 1 provides that the search powers may be used only with the appropriate prior approval or when obtaining this is not practicable.

Clause 45 is concerned with codes of practice for the exercise of search powers under clause 43 and requires the Department of Home Affairs to make such a code and bring it into operation by Order.

Mr Speaker, I beg to move that clauses 43 to 45 stand part of the Bill.

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

**The Speaker:** Mr Watterson.

**Mr Watterson:** I just wondered why we are dealing with just cash in this instance and not other things, such as, perhaps, bearer shares, or other such cash equivalents, perhaps. I know that bonds are covered – for the clarification of the Hon. Member for Onchan, which I heard from the corner of the room – but also I was just wondering if the Member could clarify the intention of the Bill in order to just provide for legal tender notes and coins in any currency. Obviously, this could clash with the Forgeries Act. I was wondering, just to clarify the intent.

**The Speaker:** Mr Braidwood to reply.

**Mr Braidwood:** Thank you, Mr Speaker.

Mr Speaker, under the next two clauses, that deals exclusively with the seizure of just cash. This seizure under the clauses 43 to 45 is for recoverable property so that could be houses, cars, whatever. So the next two clauses deal exclusively with cash, Mr Speaker.

**The Speaker:** Hon. Members, the motion is that clauses 43 to 45 stand part of the Bill. Those in favour, say aye; against no. The ayes have it. The ayes have it.

We turn now to clauses 46 to 55. Mr Braidwood.

**Mr Braidwood:** Thank you, Mr Speaker.

Clause 46 deals with the seizure of any cash found and where there are reasonable grounds to suspect it may be connected to unlawful conduct.

Clause 47 is concerned with the detention of cash that has been seized to enable further enquires to be carried out, or where consideration is being given to bring proceedings in connection with the cash.

Clause 48 requires any cash detained for more than the initial 48 hours to be placed in an interest bearing account unless (a) the cash itself is required as evidence of an offence under this part or another offence or, (b) forensic examination of the cash is required, in which cash deposit may be delayed until such time as the examination is complete. Where only part of any cash seized is, in fact, suspect then that part which is not suspect must be released when it is paid into an account.

Clause 49 is concerned with the release of detained cash. Seized cash may be either released or declared forfeit. It will be released if the court is not satisfied that it has been proven to be connected to unlawful conduct or if no application to the court is made to detain it further. In the proceedings before the High Bailiff and, if on appeal, the High Court, the civil standard of proof applies.

Clause 50 is concerned with cases where an application for the forfeiture of detained cash is made to the High Bailiff by the Attorney General.

Clause 51 is concerned with cases where an appeal against the forfeiture order is made to the High Court.

Clause 52 is concerned with the application of any forfeited cash, this being paid into the general revenue.

Clause 53 is concerned where an application is made by a victim or a person who sold goods in good faith. This clause provides a mechanism for the release of some or all of the cash in question to that person.

Clause 54 deals with cases where no forfeiture order is made following the detention of cash. The person from whom it was received, or the person to whom the cash belongs, may apply to the court, which has discretion to award compensation.

Clause 55 allows the Department of Home Affairs to set by order the minimum amount of cash to which the cash seizure powers in this chapter should apply. The current threshold for cash seizures from persons entering or leaving the Island is £1,000, as it is for cash seizures in the United Kingdom.

Mr Speaker, I beg to move that clauses 46 to 55 do stand part of the Bill.

**The Speaker:** Mr Bell.

**Mr Bell:** I would like to second.

**The Speaker:** Mr Watterson.

**Mr Watterson:** I was just worried I have, perhaps, got myself a bit confused when reading this.

Just, perhaps, looking at clause 53 for a moment: in terms of the detained cash, can this cash be retained for discharge of debts, for example to Government or others, by the Coroner, who has the power to seize money held in court? Would it fall under that sort of provision so that cash seized could be used for the purposes of discharging debt and also, in terms of applying for orders – clearly, in criminal circumstances, there may be many calls on the cash seized – and is there a standard order of creditors, as there is for other amounts?

**The Speaker:** Mover to reply.

**Mr Braidwood:** Thank you, Mr Speaker.

I think that is a problem in having an accountant in our Hon. House... (*Interjection*) Some would call it an advantage, Mr Speaker! (*Interjection*)

In actual fact, the insolvency procedures takes precedence over recovery orders and if they continue with the action of the insolvency agent or the liquidator who is appointed, Mr Speaker, so, in actual fact, insolvency would take precedence over recovery orders.

**The Speaker:** Hon. Members, the motion is that clauses 46 to 55 do stand part of the Bill. Those in favour, say aye:

against, no. The ayes have it, the ayes have it.

Clauses 56 to 65, Mr Braidwood.

**Mr Braidwood:** Sixty-three.

**The Speaker:** Fifty-six to 63. Mr Braidwood.

**Mr Braidwood:** Thank you, Mr Speaker.

Clause 56 defines where property is recoverable and how the original property may be followed when it is disposed of by the person who originally obtained it or by the person who subsequently obtained it.

Clause 57 establishes the principle of tracing the original recovery property if it is disposed of with that property which represents property which is, or has been, recoverable, also being recoverable.

Clause 58 deals with situations where recoverable property is mixed with other property which may belong to the same or another person.

Clause 59 deals with situations where profits accrue on the original property and subsection (2) provides that this profit is to be treated as also representing the property originally obtained through unlawful conduct.

Clause 60 deals with general exceptions to the ability of the Attorney General to trace and follow property into and through others' hands.

Clause 61 provides for further exemptions from property being either recoverable or associated property. Aside from the general exceptions detailed in clause 60, there may be other circumstances where property should not be regarded as recoverable. This clause allows the Department of Home Affairs to deal with such matters by allowing it make an order detailing such circumstances.

Clause 62 makes provisions about the granting of interest in property. Any interest in property obtained through unlawful conduct is also treated as if obtained through unlawful conduct and any interest in property representing that obtained through unlawful conduct is also treated in representing the property.

Clause 63 provides that, subject to the provisions in this part of the Bill, any property recovered by the Attorney General under this part is to be paid into the general revenue.

Mr Speaker, I beg to move that clauses 56 to 63 stand part of the Bill.

**The Speaker:** Mr Bell.

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

**The Speaker:** The motion is that clauses 56 to 63 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it, the ayes have it.

Clauses 64 and 65. Mr Braidwood.

**Mr Braidwood:** Thank you, Mr Speaker.

Clause 64 deals with the interpretation of 'disposing of property' and the 'obtaining of property' for the purposes of this part of the Bill.

Clause 65 provides definitions of words, terms and references used in part 1 of the Bill, for example in respect of civil recovery of property or cash.

Mr Speaker, I beg to move that clauses 64 and 65 stand part of the Bill.

**The Speaker:** Mr Bell.

**Mr Bell:** I beg to second, Mr Speaker.

**The Speaker:** Mr Watterson.

**Mr Watterson:** Perhaps the Member could also just confirm here that, under section 64, the granting of an option on property would be considered as part of this section, in terms of 64(1)(b), probably? I just wanted to check that the granting of an option on property would be considered disposal, or part disposal?

**The Speaker:** Mr Braidwood to reply.

**Mr Braidwood:** I am sorry, Mr Speaker, could the Hon. Member for Rushen just repeat, please?

**The Speaker:** Mr Watterson, if you could repeat please.

**Mr Watterson:** Thank you very much. Just with regard to section 64(1)(b), reference to when a person disposing of that person's property include a reference to granting an interest in it: would the Member confirm that granting an option on land or property, would that count as a part disposal under this section?

**The Speaker:** Mr Braidwood.

**Mr Braidwood:** If the property has been obtained under unlawful conduct, even if there is an option on the property and that money that has been put down on the option is from unlawful conduct then that is recoverable, Mr Speaker.

Does that answer the Hon. Member's question?

**The Speaker:** Hon. Members, the motion is clauses 64 and 65 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it, the ayes have it.

Clause 66.

**Mr Braidwood:** Thank you, Mr Speaker.

Clause 66 is concerned with the making of a confiscation order, which is an order made by the Court of General Gaol of Delivery following a criminal conviction and providing for the forfeit of assets held to be the proceeds of crime. They are available following a criminal conviction.

This part of the Bill will replace part 1 of the 1990 Act and part 1 of the 1996 Act, bringing together in one regime confiscation proceedings, rules and procedures relating to both drugs and non-drugs offences.

Mr Speaker, I beg to move that clause 66 stand part of the Bill.

**The Speaker:** Mr Bell.

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

**The Speaker:** The motion is that clause 66 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it, the ayes have it.

We turn now to clauses 67 to 73. Mr Braidwood.

**Mr Braidwood:** Thank you, Mr Speaker.

Clause 67 deals with the recoverable amount, that is the amount of the defendant's benefit determined by the court to be his or her benefit from the criminal conduct and which can be recovered.

Clause 68 deals with determining what was the defendant's benefit from the crime or crimes involved.

Clause 69 deals with the available amount, that is the value of the defendant's remaining assets, representing the benefit he or she has obtained from their criminal conduct and which is available to satisfy a confiscation order.

Clause 70 applies where the court has decided that the defendant has a criminal lifestyle and it is, accordingly, considering the defendant's benefit from general criminal conduct. This also requires the court to make certain specified assumptions to establish whether the defendant has benefited from general criminal conduct and, if so, by how much.

Clause 71... how long the court may allow the defendant to pay the amount due under the confiscation order. It provides that the amount is to be paid immediately unless the defendant can demonstrate to the court that he needs more time to pay.

Clause 72 allows for the adding of mandatory interest to unpaid sums required to be paid under confiscation orders.

Clause 73 requires the court to have regard to the confiscation order before imposing a fine or other order involving payment on the defendant, except for a compensation order, but otherwise to leave the confiscation order out of account in sentencing the defendant.

Mr Speaker, I beg to move that clauses 67 to 73 stand part of the Bill.

**The Speaker:** Mr Bell.

**Mr Bell:** I beg to second, Mr Speaker.

**The Speaker:** Hon. Member for Rushen, Mr Gill.

**Mr Gill:** Mr Speaker, I wonder if I could ask the mover, the phrase which is repeated – 'general criminal conduct' – is an issue of concern to me.

If somebody has been convicted of a crime that can, quite rightly, be taken into account but the premise of a general criminal conduct seems to be one that we are almost making a value judgement without the evidence to support it, that somebody's actions are in some way criminal.

I wonder if the mover could elaborate a little bit on the meaning of this phrase and what it will actually mean in practice, because I think that there is the potential for it being misused or abused and used as a cause by a court... one that will put the court in an invidious position and would be a step, a very big step, potentially, in the wrong direction?

**The Speaker:** Mr Braidwood to reply.

**Mr Braidwood:** Thank you, Mr Speaker.

I think we have to look at the difference between a civil forfeiture regime and one which is on the criminal. The burden of proof on criminal conviction is a lot higher than that on civil forfeiture and what the Hon. Member is looking at is what is a criminal lifestyle.

There is a definition of criminal lifestyle in the Bill and this, in actual fact, is allowed for where criminal lifestyle or conduct is over six months in length or if we can have a situation, particularly in civil cases, where you may have...

or it is very difficult to pursue through the criminal courts a conviction where it might be a supplier of a person of drugs to somebody who is dealing in the street. It is quite easy to catch the person who is dealing in the street but very hard to pin anything on the big person who is actually supplying all the drugs. However, this person may not look like having any employment at all, but may have a Porsche, may live in a big house, so, in actual fact, the assumption is that where he is getting the money from must be under some sort of criminal lifestyle. That is why it is going through the civil courts instead of through the criminal courts, because the burden of proof in civil is not as strong as required if it is going through the criminal court. So, in actual fact, it is a definition of criminal lifestyle which is, you could say, unlawful conduct over a six-month period.

**The Speaker:** Hon. Members, the motion is that clauses 67 to 73 stand part of the Bill. Those in favour, say aye; against no. The ayes have it. The ayes have it.

Clauses 74 to 78, Mr Braidwood.

**Mr Braidwood:** Thank you, Mr Speaker.

Clause 74 allows that the court may postpone a confiscation proceedings. This would usually be to permit further investigations into the defendant's benefit.

Clause 75 is concerned with the effect of a postponement under clause 74 and deferment of any fine or deprivation, forfeiture or compensation order that might otherwise have been considered. Whilst the postponement halts the confiscation element of the proceedings, the court may still sentence the defendant. However, it would not impose a fine or other order for payment by the defendant in the meantime.

Clause 76 is concerned with a statement of information, where the court holds a confiscation hearing. The prosecution is required to give the court a statement detailing the defendant's benefit from criminal conduct.

Clause 77 deals with the defendant's response to a statement of information.

Clause 78 deals with the provision of information by the defendant where confiscation proceedings are under way. It includes a provision for the court to compel the defendant to provide information.

Mr Speaker, I beg to move that clauses 74 to 78 stand part of the Bill.

**The Speaker:** Mr Bell.

**Mr Bell:** I beg to second, Mr Speaker.

**The Speaker:** The motion is that clauses 74 to 78 stand part of the Bill. Those in favour, say aye; against no. The ayes have it. The ayes have it.

Clauses 79 to 86, Mr Braidwood.

**Mr Braidwood:** Thank you, Mr Speaker.

Clause 79 deals with situations where no confiscation order was made at the time of the defendant being convicted and, within six years from conviction, there is evidence that was not available at the time, and the court considers it appropriate to commence confiscation proceedings.

Clause 80 deals with cases where there was a conviction but the court found at the time that the defendant had not benefited from either their general or particular criminal

conduct. Again, here a six-year term limit applies.

Clauses 81 and 82 deal with cases where a confiscation order has been made but it is later believed that the amount of benefit is less than originally assessed.

Clause 81 imposes a six-year time limit on recalculations stemming from the receipt of new evidence of benefit accrued before the date of conviction. Clause 89 deals with cases where a confiscation order has been made but it is later believed that the amount of benefit is less than originally assessed.

Clause 82 has no time limit and provides for a reconsideration of the defendant's benefits, and can take into account new property belonging to the defendant. This clause may be used to include in a calculation property that accrues to the defendant after the date of the original confiscation order.

Clause 83 is concerned with cases where the actual amount available to satisfy the confiscation order is inadequate. Either the defendant or an appointed receiver may apply to the court for a variation to the order.

Clauses 84 and 85 deal with situations where there are either insufficient assets to satisfy the confiscation order or the amount outstanding is an insignificant amount, say £50. Where small or inadequate amounts remain available to satisfy a confiscation order, it may not be sensible or cost effective to pursue them. These clauses allow the Chief Registrar, who is responsible for the enforcement of an order, as he or she would be for a fine, to apply to the court for the order to be discharged.

Clause 84 provides that the Chief Registrar may apply to the court, and that the court may write the order off if the outstanding sum is under £1,000 and the reason for the shortfall is a fluctuation in exchange rates or some other factor specified in an order made by the Department of Home Affairs, or some combination of the two. The sum of £1,000 is variable by order.

Clause 85 provides that the Chief Registrar may apply to the court and that the court may discharge the order if the amount remaining to be paid under the order is £50 or less. The Department may vary this *de minimis* amount by order.

Clause 86 makes it clear that clauses 76 to 78, on statements of information from the prosecution and the provision of information by the defendant, apply to reconsideration proceedings, as they apply to confiscation proceedings immediately following a conviction.

Mr Speaker, I beg to move that clauses 79 to 86 stand part of the Bill.

**The Speaker:** Mr Bell.

**Mr Bell:** I beg to second, Mr Speaker.

**The Speaker:** Chief Minister, Mr Brown.

**Mr Brown:** Yes, thank you, Mr Speaker.

Really, just one clarification, mainly for the *Hansard*. I think the Hon. Member referred to the reference to time for a confiscation order to clause 89, and I think it is clause 69. It might be helpful, I think, for the record, if the Member could just clarify that.

**The Speaker:** Mr Braidwood.

**Mr Braidwood:** Thank you, Mr Speaker.

In actual fact, I was just looking where I mentioned, during those clauses 79 to 86, clause 89. I –

**Mr Brown:** In clause 81, sir, if I can help.

**Mr Braidwood:** Clause 81, Mr Speaker, in my notes, it just says ‘imposes a six-year time limit on the recalculations’. I cannot... The Hon. Member for Castletown mentioned clause 89. Did I...? Sorry, Mr Speaker, I cannot seem to –

**Mr Brown:** If I can just clarify, Mr Speaker, I am not being awkward. It was just that within the *Hansard* record the Hon. Member referred to clause 89 and I think it should have been a reference to clause 69. I am happy to leave it at that because it is not a big issue, except that anybody reading back might then pick up the wrong bit, but the Bill itself is clear.

It was just I picked up the Hon. Member saying that, which is easy to say when it is such a complicated piece of legislation.

**The Speaker:** Certainly. Just for clarification, clause 81(8)(b) does make specific reference to clause 69, and if the mover actually said clause 89 I think he can take it that that would have been a slip of the tongue, if in fact that is what he said.

**Mr Brown:** Which is easy to do.

**Mr Braidwood:** Mr Speaker, I cannot remember saying clause 89 amongst all these clauses, but I will take the Chief Minister with his word and apologise that I have said 89, and of course, as you quite rightly pointed out, sir, in clause 81, in the main, it is specifying clause 69.

**Mr Brown:** Just trying to be helpful.

**The Speaker:** Thank you, Mr Braidwood.

The motion is that clauses 79 to 86 stand part of the Bill. Those in favour, say aye; against no. The ayes have it. The ayes have it.

Clauses 87 to 90, Mr Braidwood.

**Mr Braidwood:** I will be mentioning clause 89 in this section, sir! (*Laughter*)

Clause 87 is concerned with situations where the defendant absconds after being convicted, or after being committed to the Court of General Gaol Delivery with a view to the making of a confiscation order.

Clause 88 applies where proceedings for an offence have begun but the defendant absconds before the proceedings conclude. A period of two years must have passed since the date the defendant absconded before the prosecutor can make an application for an order.

Clause 89 is concerned with the variation of the confiscation order should the defendant cease to be an absconder, and allows for the defendant to apply to have the order varied, even though convicted.

Clause 90 applies when an absconding defendant is subsequently acquitted. It requires the court to discharge the confiscation order and to make any such consequential or incidental order as it believes appropriate.

Mr Speaker, I beg to move that clauses 87 to 90 stand part of the Bill.

**The Speaker:** Mr Bell.

**Mr Bell:** I beg to second, Mr Speaker.

**The Speaker:** The motion is that clauses 87 to 90 stand part of the Bill. Those in favour, say aye; against no. The ayes have it. The ayes have it.

Clause 91 and clause 92, Mr Braidwood.

**Mr Braidwood:** Thank you, Mr Speaker.

Clause 91 provides the prosecutor a right of appeal in the Staff of Government Division, including against a decision not to make a confiscation order.

Clause 92 is concerned with the Staff of Government Division’s powers when an appeal has been lodged. It allows that court to confirm, quash or vary a confiscation order or, if it believes that the original order was wrong, to either proceed to make an order itself or direct the Court of General Gaol Delivery to undertake fresh confiscation proceedings under clause 66.

Mr Speaker, I beg to move that clauses 91 and 92 stand part of the Bill.

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

**The Speaker:** The motion is that clauses 91 and 92 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clauses 93, 94 and 95.

**Mr Braidwood:** Thank you, Mr Speaker.

Clause 93 is concerned with enforcement of confiscation orders as if fines.

Clause 94 deals with situations where the defendant is in default of payment of the confiscation order and the defendant is liable to serve a term of imprisonment for the offence involved, this being in addition to that imposed for the original offence or offences.

Clause 95 deals with variation to the terms of custody or default in respect of the confiscation order when the confiscation order itself and the amount payable is varied by the court. The court may impose a reduced term of custody or increase it where interest adds to the total amount payable under the confiscation order, as provided for in clause 72.

Mr Speaker, I beg to move that clauses 93 to 95 stand part of the Bill.

**The Speaker:** Mr Bell.

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

**The Speaker:** The motion is that clauses 93 to 95 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clauses 96 and 97.

**Mr Braidwood:** Thank you, Mr Speaker.

Clause 96 lays down the conditions which are to apply for a restraint order to be sought in relation to a confiscation investigation and confiscation proceedings.

Clause 97 is concerned with the making of a restraint order, allowing the Court of General Gaol Delivery to make such an order if the conditions in clause 96 are met.

Mr Speaker, I beg to move that clauses 96 and 97 stand part of the Bill.

**The Speaker:** Mr Bell.

**Mr Bell:** I beg to second, Mr Speaker.

**The Speaker:** The motion is that clauses 96 and 97 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clauses 98 to 102, Mr Braidwood.

**Mr Braidwood:** Thank you, Mr Speaker.

Clause 98 is concerned with making applications for a restraint order and the discharge of variation of an order. This is essentially the procedure as currently exists.

Clause 99 is concerned with appeals to the Staff of Government Divisions. Such appeals may be by anyone affected by an order, or by the prosecutor against a decision not to grant an order.

Clause 100 provides that where a restraint order is in force a constable or Customs officer may seize any realisable property to prevent it being removed from the Island.

Clause 101 is concerned with hearsay evidence in restraint proceedings, with subsection (1) providing that evidence is not to be excluded on the grounds that it is hearsay.

Clause 102 contains supplementary provisions relating to restraint orders.

Mr Speaker, I beg to move that clauses 96 to 102 stand part of the Bill.

**The Speaker:** In fact clauses 98 to 102.

**Mr Braidwood:** Once again, Mr Speaker, a slip of the tongue.

**Mr Anderson:** Nervous 90s!

**The Speaker:** Mr Bell.

**Mr Bell:** I beg to second, Mr Speaker.

**The Speaker:** The motion is that clauses 98 to 102 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clauses 103 and 104.

**Mr Braidwood:** Thank you, Mr Speaker.

Clause 103 allows the Court to appoint a management receiver in respect of any realisable property covered by a restraint order and clause 104 deals with the powers which may be granted to the management receiver by the Court.

Mr Speaker, I beg to move that clauses 103 and 104 stand part of the Bill.

**The Speaker:** Mr Bell.

**Mr Bell:** I beg to second, Mr Speaker.

**The Speaker:** The motion is clauses 103 and 104 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clauses 105 to 108. Mr Braidwood.

**Mr Braidwood:** Thank you, Mr Speaker.

Clause 105 allows the Court of General Gaol Delivery to appoint an enforcement receiver if the prosecutor makes

an application and confiscation order has been made, has not been satisfied and is not subject to appeal.

Clause 106 deals with the powers a court may confer on the receiver.

Clause 107 is concerned with how any sums received by the enforcement receiver are to be distributed if they are the proceeds of realising the value of the property included in the confiscation order, or other sums in which the defendant holds an interest. Subsection (2) lays down the priority of distribution to be as follows: to pay the expenses of any insolvency practitioner payable under clause 208, to make any other payments directed by the Court of General Gaol Delivery and to satisfy the confiscation order made against the defendant.

Clause 108 deals with the sums received by the Chief Registrar in respect of a confiscation order and how these must be disposed of, whether or not the sums involved are received from an enforcement receiver.

Mr Speaker, I beg to move that clauses 105 to 108 stand part of the Bill.

**The Speaker:** Mr Bell.

**Mr Bell:** I beg to second, Mr Speaker.

**The Speaker:** The motion is that clauses 105 to 108 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clauses 109 and 110.

**Mr Braidwood:** Mr Speaker, clause 109 is concerned with restrictions that may be imposed where a restraint order has been made against property.

Clause 110 deals with the restrictions on property that in respect of which an enforcement receiver has been appointed.

Mr Speaker, I beg to move that clauses 109 and 110 stand part of the Bill.

**The Speaker:** Mr Bell.

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

**The Speaker:** The motion is that clauses 109 and 110 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clauses 111 to 115. Mr Braidwood.

**Mr Braidwood:** Thank you, Mr Speaker.

Clause 111 provides protection for management and enforcement receivers from liability for anything done by them to property which is not realisable property, unless they are negligent. It replicates existing legislation and protects the receiver if he or she inadvertently deals with the property of third parties.

Clause 112 relates to management and enforcement receivers and enables any person affected by any action taken or to be taken by such a receiver to challenge the action in the Court of General Gaol Delivery.

Clause 113 explains who may apply for the variations or discharge of a receivership order. It also provides the circumstances in which the Court is required to discharge an order appointing a management receiver. Applications may be made by the receiver, the person who applied for the

order or any other person affected by the order.

Clause 114 ensures that any property in the hands of a management receiver is handed over to an enforcement receiver when appointed. A Court Order provides for the transfer of any property held by the management receiver, except that property held to realise the payment of the management receiver's own remuneration and expenses.

Clause 115 is concerned with appeals by anyone affected by the staff of Government Division if the Court of General appoints a management or enforcement receiver or by the prosecutor, should it refuse to do so.

Mr Speaker, I beg to move that clauses 111 to 115 stand part of the Bill.

**The Speaker:** Mr Bell.

**Mr Bell:** I beg to second, Mr Speaker.

**The Speaker:** The motion is that clauses 111 to 115 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 116.

**Mr Braidwood:** Thank you, Mr Speaker.

Clause 116 provides the Court of Summary Jurisdiction with the power to order any realisable property in the form of money in a bank account to be paid to the Chief Registrar in satisfaction of a confiscation order. The power provides an alternative to garnishee proceedings to enable the Chief Registrar to seize money held by the defendant in a bank account or money seized from the defendant and held in an account.

Mr Speaker, I beg to move that clause 116 stand part of the Bill.

**The Speaker:** Mr Bell.

**Mr Bell:** I beg to second, Mr Speaker.

**The Speaker:** The motion is that clause 116 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 117.

**Mr Braidwood:** Thank you, Mr Speaker.

Clause 117 makes provisions about how the courts and receivers appointed under the Bill are to exercise their powers. This clause deals with the powers of the Court of General Gaol Delivery in relation to restraint and confiscation orders, a court of summary jurisdiction in relation to seizing money under clause 116 and management and enforcement receivers.

Mr Speaker, I beg to move that clause 117 stand part of the Bill.

**The Speaker:** Mr Bell.

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

**The Speaker:** The motion is that clause 117 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clauses 118 and 119.

**Mr Braidwood:** Thank you, Mr Speaker.

Under clause 118 a person may be committed to the Court of General Gaol for confiscation proceedings following a conviction of any offence in a court of summary jurisdiction.

Clause 119 provides that where a person is committed to the Court of General Gaol for confiscation proceedings that court will also assume responsibility for the sentencing process.

Mr Speaker, I beg to move that clauses 118 and 119 stand part of the Bill.

**The Speaker:** The motion is that clauses 118 and 119 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clauses 120 and 121. Mr Braidwood.

**Mr Braidwood:** Thank you, Mr Speaker.

Clause 120 provides for compensation to be paid to a person whose property has been affected by the enforcement of the confiscation legislation. Compensation is only payable where an investigation is started but proceedings are never brought, or the defendant is not convicted of an offence, or his conviction is squashed, or he is pardoned and there was a serious default on law enforcement or the prosecutor.

Clause 121 allows compensation to be payable where a person who absconded before trial and against whom a confiscation order was subsequently made, secures a variation or discharge of the order by the Court of General Gaol. The provision is not limited to serious default, as in clause 120, because it is considered that the court should be able to exercise a more flexible approach in circumstances where a confiscation order has been made without the defendant having been tried.

Mr Speaker, I beg to move that clauses 120 and 121 stand part of the Bill.

**The Speaker:** Mr Bell.

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

**The Speaker:** The motion is that clauses 120 and 121 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 122, Mr Braidwood.

**Mr Braidwood:** Thank you, Mr Speaker.

Clause 122 sets out the conditions under which requests for assistance in the freezing and realisation of property may be made to other jurisdictions. It will allow for requests for restraint orders and confiscation orders to be applied for and enforced in other jurisdictions.

Mr Speaker, I beg to move that clause 122 stand part of the Bill.

**The Speaker:** Mr Bell.

**Mr Bell:** I beg to second, sir.

**The Speaker:** The motion is that clause 122 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 123 and schedule 3, Mr Braidwood.

**Mr Braidwood:** Thank you, Mr Speaker.

Clause 123 defines criminal lifestyle for the purpose of the making of a confiscation order. In general terms where the defendant is convicted of certain prescribed types of offences, they can be assumed to have a criminal lifestyle. This then permits the court, when seeking to make a confiscation order, to apply the necessary procedures relating to their criminal conduct over a period of up to six years previously, instead of the particular criminal conduct relating to the offences involved in the immediate conviction.

Under the existing legislation drug-trafficking is always regarded as a criminal lifestyle offence. A conviction for any drug-trafficking offence triggers an examination of all of the defendant's past drug-trafficking and the mandatory application of the sections.

Schedule 3 to the Bill details the extended range of offences that can trigger this examination and mandatory assumptions of a criminal lifestyle. A defendant has a criminal lifestyle if the defendant has been convicted in the current proceedings of four or more offences in which he has received a benefit, or has been convicted in the current proceedings of one such offence and has other convictions for such offences on at least two separate occasions in the last six years, or (b) an offence is committed over a period of six months or more, for example a conspiracy.

Mr Speaker, I beg to move that clause 123 and schedule 3 stand part of the Bill.

**The Speaker:** Mr Bell.

**Mr Bell:** I beg to second, sir.

**The Speaker:** Mr Gill.

**Mr Gill:** Yes, thank you, Mr Speaker.

Could I welcome the clarity the mover has just offered in relation to criminal lifestyle, but the six months test which he emphasised in his moving, I wonder if he could advise us why, in that period... what the benefits of that period will be against the disbenefits, sir?

**The Speaker:** Mr Braidwood to reply.

**Mr Braidwood:** Mr Speaker, it is an assumption which the courts have to take on six months, I have said before, on the condition which I have just gone through. It is like six years of criminal... or six months, so, really, if you are on drug-trafficking or whatever, it is over a length of time of six months or, as I said, a conspiracy which can take quite a long time.

So, in actual fact, what the legislation is trying to do is that we just do not take confiscation on a conviction for one convicted, you could say, criminal action. We can go back now over periods and going back six years to twelve years and recover all property because of the reason. The only problem at the present time, we can only recover property for that... for the conviction which is current and not on those which are past.

**The Speaker:** The motion is that clause 123 and schedule 3 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clauses 124 to 126, Mr Braidwood.

**Mr Braidwood:** Thank you, Mr Speaker.

Clause 124 defines criminal conduct and the benefit a person obtains from such criminal conduct for the purpose of the Bill. Criminal conduct is defined as any conduct constituting an offence in the Isle of Man or which, if it took place abroad, would constitute an offence in the Island.

Clause 125 and 126 are concerned with defining gifts given by the defendant to other persons, which may be tainted gifts and may be liable to be recovered for satisfaction of a confiscation order. They align the different tainted gift schemes currently found in the drug and non-drug legislation. A gift may be tainted if it was obtained by the defendant as a result of, or in connection with, their general criminal conduct, as it represents wholly or partly, and directly or indirectly, in the defendant's hands, such property.

Clause 126 provides that where a person transfers property to another person for consideration that is significantly less than its value at the time of transfer, then this is to be construed as a gift. It also provides that the proportion of the property actually transferred in the transaction will be determined by reference to the difference in the value and price paid.

Mr Speaker, I beg to move that clauses 124 to 126 stand part of the Bill.

**Mr Bell:** I beg to second, Mr Speaker.

**The Speaker:** The motion is that clauses 124 to 126 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clauses 127 to 129, Mr Braidwood.

**Mr Braidwood:** Thank you, Mr Speaker.

Clause 127 is concerned with determining the value of property held by a person at a starting position. In subsection (2) its value is its market value at the time.

Clause 128 is used to determine the value of property obtained by a person as a result of, or in connection with, their criminal conduct.

Clause 129 is concerned with the valuation of tainted gifts: that is something gifted by the defendant that may have been transferred for significantly less than its value.

Mr Speaker, I beg to move that clauses 127 to 129 stand part of the Bill.

**The Speaker:** Mr Bell.

**Mr Bell:** I beg to second, Mr Speaker.

**The Speaker:** The motion is that clauses 127 to 129 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clauses 130 to 132, Mr Braidwood.

**Mr Braidwood:** Thank you, Mr Speaker.

Clause 130 introduces a new concept of free property, as any property that is not subject to certain kinds of forfeiture and deprivation orders. The underlying principle is that property already subject to one of these orders made in earlier proceedings should not be included in the calculation of the amount available for confiscation because it is already accounted for. In addition, property is not free if it is subject to certain orders under the part of the Bill concerned with civil recovery.

Clause 131 defines realisable property by reference to

the free property of the defendant and the recipient of a tainted gift. Realisable property is value of the recoverable property that may be realised by the trustee in civil recovery upon its disposal.

Clause 132 defines what is to be regarded as property for the purpose of this Bill and applies a number of rules as to the ownership etc of property. Property includes money, any form of real – that is land – or personal property and anything in action and other intangible or incorporeal property, such as intellectual property rights etc.

Mr Speaker, I beg to move that clauses 130 to 132 stand part of the Bill.

**The Speaker:** Mr Bell.

**Mr Bell:** I beg to second, Mr Speaker.

**The Speaker:** The motion is that clauses 130 to 132 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clauses 133 to 136, Mr Braidwood.

**Mr Braidwood:** Thank you, Mr Speaker.

Clause 133 is concerned with when proceedings for an offence have started and when it may be taken to have ended. Sorry, I will just redefine that clause, Mr Speaker. Clause 133 defines when proceedings are started, when proceedings and applications are concluded and where confiscation orders are satisfied and subject to appeal.

Clause 134 is concerned with specifying when the proceedings relating to various applications to the Court shall be taken to have been concluded.

Clause 135 lays down when a confiscation order is satisfied.

Subsection (1) provides that it is satisfied when no amount is due to be paid under it.

Subsection (2) deals with appeals against confiscation orders. It states that an order may be considered to be appealable until such time as there is no possibility for an appeal that could result in it being varied or quashed and ignoring the possibility of an out-of-time appeal.

Clause 136 deals with other miscellaneous matters requiring interpretation in connection with the seeking and making of confiscation orders.

Mr Speaker, I beg to move that clauses 133 to 136 stand part of the Bill.

**The Speaker:** Mr Bell.

**Mr Bell:** I beg to second, Mr Speaker.

**The Speaker:** The motion is that clauses 133 to 136 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clauses 137 and 138, please.

**Mr Braidwood:** Right. Thank you, Mr Speaker.

Clause 137 establishes the general rules that will apply to any appeal to the Staff of Government Division under Part 2 of the Bill.

Clause 138 is required because restraint and receivership are civil law functions. This clause removes the doubt that these matters may be dealt with in rules applying to the Court of General Gaol and Staff of Government Division.

Mr Speaker, I beg to move that clauses 137 and 138 stand part of the Bill.

**The Speaker:** Mr Bell.

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

**The Speaker:** The motion is that clauses 137 and 138 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clauses 139 to 141, Mr Braidwood, please.

**Mr Braidwood:** Thank you, Mr Speaker.

Clause 139 is concerned with the offences of concealing, disguising, converting or transferring criminal property or removing it from the Island and subsection (1) is concerned with stating this.

Clause 140 is concerned with offences where the prosecution would need to establish that a person, the alleged offender, entered into or became concerned in an arrangement which he or she knew or suspected would facilitate another person to acquire, retain, use or control criminal property and that the alleged offender also knew or suspected that the property constituted or represented benefit from criminal conduct.

Clause 141 is concerned with offences where criminal property is acquired, used or possessed. This offence is only committed where a person knows or suspects that the property which is acquired etc constitutes or represents his own or another's benefit from criminal conduct.

Mr Speaker, I beg to move that clauses 139 to 141 stand part of the Bill.

**The Speaker:** Mr Bell.

**Mr Bell:** I beg to second, Mr Speaker.

**The Speaker:** The motion is that clauses 139 to 141 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clauses 142 to 144. Mr Braidwood, please.

**Mr Braidwood:** And schedule 4.

**The Speaker:** And schedule 4, if you would.

**Mr Braidwood:** Thank you.

Clause 142 is concerned with the offence where a person in a regulated sector fails to make a disclosure and subsections (1) to (5) deal with the four conditions that must be satisfied if an offence is to have been committed. The important change for the regulating inspector is that an offence may be committed when they knew or suspected that someone is engaged in money laundering with the subjective test. Also, that they had reasonable grounds for knowing or suspecting the objective test.

Clause 143 deals with offences that may be committed by a nominated officer; usually the money-laundering officer in a business in the regulated sector, if they do not make a disclosure to the Financial Crimes Unit when required to do so.

Clause 144 deals with offences that can be committed by a nominated officer in a business that is not in a regulated sector. The provisions generally correspond to those in clause

143. However, under this clause, the officer must be proven to have known or suspected that another person is engaged in money laundering: a subjective, not objective, test.

Schedule 4 defines businesses in the regulated sector. The list is intended to comply with the requirements of international standards. The schedule also lists supervisory authorities, which include Government regulators such as the Financial Supervision Commission and the Gambling Supervision Commission and various professional bodies, such as the Isle of Man Law Society and the Institute of Chartered Accountants of England and Wales.

Mr Speaker, I beg to move that clauses 142 to 144 and schedule 4 stand part of the Bill.

**The Speaker:** Mr Bell.

**Mr Bell:** I beg to second, Mr Speaker.

**The Speaker:** Mr Gill.

**Mr Gill:** Thank you.

Could the mover, when he tells us about subjective and objective tests, elaborate a little bit further on that and could he advise what criteria for each of those and what measures of satisfaction to prove each of those tests will be applied and what levels of appeal there would be, sir?

**The Speaker:** Mr Braidwood to reply.

**Mr Braidwood:** Thank you, Mr Speaker.

There has been consultation with the Institute of Chartered Accountants and the Law Society over the regard of changing from subjective to objective tests. This is something now which is in all other countries, where it has now gone to an objective test. Most of the businesses in the Island, because they have UK parent companies, are already applying the objective test to the subjective test and this is really to comply in such with the regulations of the International Monetary Fund which all excellent jurisdictions – financial jurisdictions – around the world comply with. So it is just a change to the objective test and is already being applied in the Island and, even at our presentation...

All this means that more examination by the Financial Crimes Unit is required at the time of the presentation. The officer in charge of the Financial Crimes Unit reckons that there would be only four or five additional examinations per week and this would not put any additional pressure on the Financial Crimes Unit. This is really to just to stiffen, Mr Speaker, the regulations in regard to the tests.

**The Speaker:** The motion is that clauses 142 to 144 and schedule 4 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 145, please.

**Mr Braidwood:** Thank you, Mr Speaker.

Clause 145 creates offences of making disclosure likely to prejudice a money-laundering investigation being undertaken, or which may be undertaken, by law enforcement authorities. The tipping-off provisions in clause 145 are aimed at those who reveal that a disclosure has been made to the Financial Crimes Unit or that an investigation may be contemplated or is under way.

Mr Speaker, I beg to move that clause 145 stand part of the Bill.

**The Speaker:** Mr Bell.

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

**The Speaker:** The motion is that clause 145 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clauses 146 to 149. Mr Braidwood.

**Mr Braidwood:** Thank you, Mr Speaker.

Clause 146 provides defences to clause 145 where disclosures are made within the same organisation or group and subsection (5) permits the Department of Home Affairs to prescribe by Order what is a group.

Clause 147 is concerned with other cases where it can be revealed that a disclosure had been made to a nominated officer or the Financial Crimes Unit. This is where a credit institution, financial institution, professional legal adviser or relevant professional adviser reveals the facts to another institution or adviser of the same type.

Clause 148 is concerned with other situations where the fact that a disclosure has been made to a nominated officer, or the Financial Crimes Unit, may be revealed. This would be where it is made (a) to the supervisory authority for the undertaking concerned for the purpose of detecting, investigating or preventing a criminal offence, or for an investigation under this Bill, or for the purpose of enforcing any court order under this Bill.

Clause 149 provides further interpretation of terms used in connection with disclosures under clauses 145 to 148.

Mr Speaker, I beg to move that clauses 146 to 149 stand part of the Bill.

**The Speaker:** Mr Bell.

**Mr Bell:** I beg to second, Mr Speaker.

**The Speaker:** The motion is that clauses 146 to 149 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 150, please.

**Mr Braidwood:** Thank you, Mr Speaker.

Clause 150 provides for the penalties for conviction for offences: under clause 139, concealing; 140, making arrangements; 141, the acquisition, use and possession; and clauses 142 to 144, failing to disclose.

Mr Speaker, I beg to move that clause 150 stand part of the Bill.

**Mr Bell:** I beg to second, Mr Speaker.

**The Speaker:** The motion is that clause 150 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clauses 151 and 152.

**Mr Braidwood:** Thank you, Mr Speaker.

Clause 151 is concerned with appropriate consent that may be given by a nominated officer or the Financial Crimes Unit. This would allow a person making the disclosure to carry out what would otherwise be a prohibited act under this Bill. Subsection (9) defines 'a nominated officer' as someone nominated to receive disclosures under clause

154. Subsection (3) provides that consent is to be treated as having been given if (a) the Financial Crimes Unit gives consent, or (b) refusal to proceed has not been received from the Financial Crimes Unit within seven working days, or (c) if the Financial Crimes Unit refuse consent within the seven days, a further 31 days had elapsed. The seven-day period begins on the working day after the disclosure was made and the 31-day period on the day on which the refusal was received.

Clause 152 provides the nominated officer in an organisation does not give consent for a person to carry out a prohibited act unless he or she has made a disclosure to the Financial Crimes Unit and has received consent from the Financial Crimes Unit to continue, or the time-limits mentioned in clause 151 have expired and so consent is deemed to have been given.

Mr Speaker, I beg to move that clauses 151 and 152 stand part of the Bill.

**The Speaker:** Mr Bell.

**Mr Bell:** I beg to second, Mr Speaker.

**The Speaker:** The motion is that clauses 151 and 152 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clauses 153 to 155. Mr Braidwood.

**Mr Braidwood:** Thank you, Mr Speaker.

Clause 153 defines a protected disclosure. This is where a person has information that leads him or her to suspect money-laundering but where he or she has not carried out, nor is about to carry out, a prohibited act: the protection afforded being to the person making the disclosure to the Financial Crimes Unit or nominated officer from any legal action for breaching any restriction on the disclosure of information.

Clause 154 defines 'an authorised disclosure.' These are disclosures made to the nominated officer or the Financial Crimes Unit and where the person concerned has carried out a prohibited act and has reported the fact as soon as practicable after becoming aware of the fact, or has been asked to do so. In the latter case, he or she may not proceed without the appropriate protection of the Financial Crimes Unit.

Clause 155 is concerned with how disclosure should be made to nominated officers or the Financial Crimes Unit. The Department of Home Affairs may prescribe the form the disclosure must take and a person commits an offence if he or she does not make the disclosure in that prescribed manner. However, subsection (3) provides a reasonable excuse defence for not using the prescribed manner to make the disclosure.

Mr Speaker, I beg to move that clauses 153 to 155 stand part of the Bill.

**Mr Bell:** I beg to second, Mr Speaker.

**The Speaker:** Mr Gill.

**Mr Gill:** Mr Speaker, the mover tells the tests of knowing or suspecting I think is fairly clear but the 'reasonable grounds for knowing or suspecting' might be a little bit more problematic. What would the scenario be if somebody was uncertain whether they had reasonable grounds to disclose

in the manner we heard described but they chose not to for whatever reason? Would they be retrospectively liable for some form of action in case of that and, in order to clarify that situation in advance of it happening, what information is being circulated by the relevant authorities to give guidance on this reasonable grounds to suspect, or no, sir?

**The Speaker:** Mr Watterson.

**Mr Watterson:** Just as a follow-on from Mr Gill's comments and perhaps even being of some use to the Member for Douglas East this morning, would it not depend on whether money-laundering training is required for the position which the individual holds and which is obviously likely in senior positions within organisations? Therefore, if that person required money-laundering training they would therefore have less defence for not approaching the FCU beforehand?

**The Speaker:** Mr Braidwood to reply.

**Mr Braidwood:** Thank you, Mr Speaker.

I thank the Hon. Member for Rushen, Mr Watterson. As I have already said on previous clauses, Mr Speaker, the MLRO is the nominated officer. As the Hon. Member for Rushen, Mr Watterson, has said, the MLRO officer has to have training so, really, it would rely on him to realise... He knows the guidelines, he would know the reasonable grounds to contact the Financial Crimes Unit if he suspected that there was money-laundering or suspicious activity governing... If he felt that there was no point to contact the FCU and it turned out that a... you could say, that a criminal conduct had occurred, then he would be responsible.

Thank you, Mr Speaker.

**The Speaker:** The motion is that clauses 153 to 155 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clauses 156 to 158, please.

**Mr Braidwood:** Thank you, Mr Speaker.

Clause 156 sets a *de minimis* amount below which deposit-taking bodies defined in clause 158 subsection (13) may ignore transactions that would otherwise require a disclosure to a nominated officer in the organisation and/or to the Financial Crimes Unit and consent to proceed. The threshold amount is set at £250; however, the clause allows for a higher amount to be set by the Financial Crimes Unit in particular cases and for the Department of Home Affairs to vary this by order.

Clause 157 replaces section 17(f) of the Criminal Justice Act 1990, providing a continuing requirement for the Department of Home Affairs to make and publish such codes as it considers necessary to prevent and detect money-laundering.

Clause 158 provides definitions of various terms used in part 3, money-laundering.

Mr Speaker, I beg to move that clauses 156 to 158 stand part of the Bill.

**The Speaker:** Mr Bell.

**Mr Bell:** I beg to second, sir.

**The Speaker:** The motion is that clauses 156 to 158

stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clauses 159 and 160. Mr Braidwood.

**Mr Braidwood:** Thank you, Mr Speaker.

Clause 159 defines the type of investigations in respect of which the powers set out at part 4 may be variously exercised. These are: (a) an investigation as to whether a person has benefited from criminal conduct and the extent and whereabouts of his benefits; a confiscation investigation; an investigation as to whether property is recoverable property or associated property, who holds the property and its extent or whereabouts; a civil recovery investigation; an investigation into the derivation of cash detained by a Customs or Police officer under clause 47 and whether it represents cash intended for use in unlawful conduct; a detained cash investigation; and an investigation into whether a person has committed a money-laundering offence – a money-laundering investigation.

Clause 160 makes it an offence to prejudice an investigation, or prospective investigation, by making a disclosure about it or by tampering with evidence relevant to the investigation.

Mr Speaker, I beg to move that clauses 159 and 160 stand part of the Bill.

**Mr Bell:** I beg to second, Mr Speaker.

**The Speaker:** The motion is that clauses 159 and 160 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 161.

**Mr Braidwood:** Thank you, Mr Speaker.

Clause 161 provides that references to the court in this chapter are taken as being:

(a) The Court of General Gaol, where court orders relate to a confiscation investigation or a money laundering investigation.

(b) The High Court, where court orders relate to a civil recovery investigation or a detained cash investigation.

The different types of investigation are defined in clause 159. The civil recovery and attained cash investigations are regarded as civil proceedings and so use the civil court.

Mr Speaker, I beg to move that clause 161 stand part of the Bill.

**Mr Bell:** I beg to second, Mr Speaker.

**The Speaker:** The motion is that clause 161 stand part of the Bill. Those in favour say aye; against, no. The ayes have it. The ayes have it.

Clauses 162 to 168, Mr Braidwood.

**Mr Braidwood:** Thank you, Mr Speaker.

Clause 162(1) provides an appropriate officer may apply to a Deemster for an order and the Deemster makes such an order if satisfied that the requirements in clause 163 are met. An appropriate officer would be:

(a) for civil recovery investigations – the Attorney General or a person authorised by him, or

(b) the confiscation attained cash or money laundering investigation – a constable or a Customs officer.

Clause 163 lays down the requirements for making a

production order. The general requirements are that there are reasonable grounds to believe that the person named is in possession or control of the material and that the material is likely to be of substantial value to the investigation and that it is in the public interest to make the order.

Clause 164 provides that the production order may include a power to enter premises to gain access to material.

Clause 165 provides further provisions relating to production orders, providing that a person need not provide access to privileged or excluded material although subsection (4) provides that the order in general overrides any other restriction on the disclosure of the information involved.

Clause 166 is concerned with material that is held on computer. It requires the material to be made available in a legible, visible form.

Clause 167 is concerned with material held by Government Departments or Statutory Boards.

Clause 168 deals with supplementary matters, including allowing that orders may be obtained *ex parte* in chambers.

Mr Speaker, I beg to move that clauses 162 to 168 stand part of the Bill.

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

**The Speaker:** The motion is that clauses 162 to 168 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clauses 169 to 173, please.

**Mr Braidwood:** Thank you, Mr Speaker.

Clause 169 is concerned with the application for a search and seizure warrant. Subsection (1) allows that the Deemster may authorise a warrant if the requirements in subsection (6) are met, these being:

(a) that the production order has not been complied with and that there are reasonable grounds to believe the material is on the premises named, or

(b) the requirements of clause 170 are met.

Clause 170 provides the alternative conditions for the issue of a search and seizure warrant referred to in clause 169. The conditions are essentially that the person in ownership or control of the material involved cannot be practicably contacted or there is risk that the material may be lost, destroyed, etc or that otherwise access to the premises may not be possible.

Clause 171 provides that a search and seizure warrant does not allow access to material subject to legal privilege or to excluded material.

Clause 172 contains further provisions relating to the use of search and seizure warrants in confiscated and money laundering investigations. Subsection (2) allows the Department of Home Affairs to make an order applying any of the provisions of certain sections of the Police Powers and Procedures Act 1998 with modifications to search and seizure warrants. The relevant sections, 18, 19, 24 and 25 are concerned with various rules pertaining to normal search warrants: that is safeguards, execution of warrants, access to and copying of material and retention of material.

Clause 173 contains further provision relating to the use of search and seizure warrants in civil recovery and attained cash investigations. The extra provisions are necessary for the use of such a tool in relation to what are civil proceedings and generally bring their use in this regard into line with use

in criminal investigations.

Mr Speaker, I beg to move that clauses 169 to 173 stand part of the Bill.

**Mr Bell:** I beg to second, Mr Speaker.

**The Speaker:** The motion is that clauses 169 to 173 stand part of the Bill. Those in favour say aye; against, no. The ayes have it. The ayes have it.

Clauses 174 to 179, Mr Braidwood.

**Mr Braidwood:** Thank you, Mr Speaker.

Clause 174 deals with the making of a disclosure order by a Deemster if the requirements contained in clause 175 are met.

Clause 175 provides the requirements for the making of a disclosure order. These are that there must be reasonable grounds:

(a) in a confiscation investigation, to suspect the person named has benefited from their criminal conduct or

(b) in a civil recovery investigation, to suspect the property named is recoverable or associated property.

(c) to believe the information sought will be of substantial value to the investigation.

(d) to believe it is in the public interest for the order to be made.

Clause 176 provides for offences where the person fails to comply with the requirements of the order. Subsections (1) and (3) describe the possible offences: not complying without reasonable excuse; making a false or misleading statement; or recklessly making a statement that is false or misleading.

Clause 177 provides protection for those compelled to make a disclosure under an order. Subsection (1) provides that a statement made in response to an order may not be used in criminal proceedings against that person, but subsection (2) contains some exceptions to this general rule.

Clause 178 contains further provisions relating to the use of disclosure orders. They are not available for use to seize material subject to legal privilege, nor do they require the production of any excluded material. It does, however, otherwise override any restriction on the disclosure of information.

Clause 179 contains supplementary provisions relating to disclosure orders, including the following: that they may be applied for *ex parte* in chambers; for the making of necessary rules of court; or for the court to adopt such practices and procedures as it thinks fit if rules have not been made, and that the appropriate officer or any person affected by the order can apply for it to be varied or discharged.

Mr Speaker, I beg to move that clauses 174 to 179 stand part of the Bill.

**The Speaker:** Mr Bell.

**Mr Bell:** I beg to second, Mr Speaker.

**The Speaker:** The motion is that clauses 174 to 179 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clauses 180 to 186, Mr Braidwood.

**Mr Braidwood:** Thank you, Mr Speaker.

Clause 180 deals with the application for, and making of,

a customer information order, allowing a Deemster to make such an order if the requirements are met and providing that the order is not available for detained cash investigations; that is, only money-laundering, confiscation and civil recovery investigations.

Clause 181 defines customer information that might be covered by the order. Subsection (4) allows the Department of Home Affairs to describe by order what is customer information.

Clause 182 contains the requirements for the making of an order. These are that there must be reasonable grounds:

(a) in a confiscation investigation, to suspect the person named has benefited from criminal conduct.

(b) in a civil recovery investigation, to suspect that the property specified is recoverable, or associated property, and that the person named holds some or all of it.

(c) in a money-laundering investigation, to suspect that the person named has committed a money-laundering offence.

(d) in any type of investigation, to believe the information sought would be of substantial value to the investigation and that it is in the public interest to make the order.

Clause 183 provides for offences if the institution fails to comply with the order or makes a false or misleading statement in response to the order.

Clause 184 provides that a statement made in response to an order may not normally be used as evidence in criminal proceedings, except in confiscation proceedings under part (2) of this Bill, or prosecution for failing to comply, or making a false or misleading statement under 183, or, when being prosecuted for some other offence, the institution makes a statement inconsistent with the statement made in response to the order.

Clause 185 provides that an order overrides any restriction on the disclosure of information by the institution.

Clause 186 deals with supplementary matters relating to customer information orders, including that they may be applied for *ex parte* and that anyone affected by one may apply for it to be varied or discharged.

Mr Speaker, I beg to move that clauses 180 to 186 stand part of the Bill.

**The Speaker:** Mr Bell.

**Mr Bell:** I beg to second, Mr Speaker.

**The Speaker:** The motion is that clauses 180 to 186 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clauses 187 to 192, Mr Braidwood.

**Mr Braidwood:** Thank you, Mr Speaker.

Clause 187 is concerned with the application for, and the making of, account monitoring orders. They may not be used in a detained cash investigation, but can be used in a confiscation, civil recovery, or money-laundering investigation.

Clause 188 deals with a requirement for making an order. These are that there must be reasonable grounds:

(a) in confiscation investigations, to suspect that the person named has benefited from criminal conduct.

(b) in a civil recovery investigation, to suspect that the property is recoverable, or associated property, and that the person named holds some or all of it.

(c) in a money-laundering investigation, to suspect that the person named has committed a money-laundering offence.

Finally, (d) in any type of investigation, that the information will be of substantial value to the investigation and that it is in the public interest to make the order.

Clause 189 provides that a statement made in response to an order may not normally be used as evidence in criminal proceedings, except in confiscation proceedings under Part (2) of this Bill; for prosecution for failing to comply or making a false or misleading statement under clause 183 or, when being prosecuted for some other offence, the institution makes a statement inconsistent with a statement made in response to the order.

Clause 190 provides that an order may be applied for *ex parte* in chambers.

Clause 109 provides that an order overrides any restriction on the disclosure of information.

Clause 192 deals with supplementary matters in connection with confiscation and money-laundering offences, including provision for rules of court.

Mr Speaker, I beg to move that clauses 187 to 189 do stand part of the Bill.

**The Speaker:** 187-192.

**Mr Braidwood:** Isn't that what I...? I am sorry, Mr Speaker, I am getting a bit tongue tied now at clause 192!

**The Speaker:** 187-192, that is fine, Mr Braidwood. Mr Bell.

**Mr Bell:** I beg to second, sir.

**Mr Malarkey:** Once again, Mr Speaker, for *Hansard*, he did actually say clause 109 and not 191.

**The Speaker:** Yes, thank you, Mr Malarkey

The motion before the House is that clauses 187 to 192 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Making good progress. Clause 193, Mr Braidwood.

**Mr Braidwood:** Thank you, Mr Speaker. I do thank the Hon. Member for South Douglas, Mr Malarkey, for pointing that out, sir. I did get new lenses in my glasses! (*Laughter and interjections*)

Clause 193, Mr Speaker, allows for an application to be made to a Deemster for a letter of request to be sent to another country or territory if there is believed to be evidence there that a person has benefited from criminal conduct or by the extent or whereabouts of a person's benefit from criminal conduct.

Mr Speaker, I beg to move that clause 193 stand part of the Bill.

**Mr Bell:** I beg to second, Mr Speaker.

**The Speaker:** The motion is that clause 193 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 194.

**Mr Braidwood:** Thank you, Mr Speaker.

Clause 194 requires the Department of Home Affairs to prepare a code of practice governing the use of powers, orders and warrants under Chapter 2 of the Bill. This involves functions undertaken by the Attorney General and Customs and Police officers.

Mr Speaker, I beg to move that clause 194 stand part of the Bill.

**Mr Bell:** I beg to second, Mr Speaker.

**The Speaker:** The motion is that clause 194 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 195.

**Mr Braidwood:** Thank you, Mr Speaker.

This clause defines who is the relevant person for the purpose of carrying out functions under Part 4. In civil recovery investigations, the appropriate officer would be the Attorney General or someone authorised in writing by the Attorney. For other types of investigation, confiscation, detained cash and money laundering, the appropriate person would be a constable or a customs officer.

Mr Speaker, I beg to move that clause 195 stand part of the Bill.

**The Speaker:** Mr Bell.

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

**The Speaker:** The motion is that clause 195 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clauses 196 to 199.

**Mr Braidwood:** Thank you, Mr Speaker.

Clause 196 defines criminal conduct. It also provides that a person benefits from criminal conduct if he obtains property as a result of or in connection with the conduct. Clause 196(1) defines criminal conduct as conduct which constitutes an offence in the Island or would be an offence if it occurred here.

Clause 197 provides a broad definition of property.

Clause 198 defines money-laundering offences as an offence under clauses 139: concealing; 140: arrangements or 141: acquisition, use and possession or section 10: money laundering under the Anti-Terrorism and Crime Act 2003. Money laundering offences under the Criminal Justice Act 1990 and the Drug Trafficking Act 1996 whose provisions will be replaced now by this Bill or caught by the definition for this Bill as inchoate offences such as conspiracy, etc. (*Interjection by Mr Watterson*)

Clause 199 deals with the interpretation of other words and terms used in Part 4. These generally link to definitions given elsewhere in the Bill.

Mr Speaker, I beg to move that clauses 196 to 199 stand part of the Bill.

**The Speaker:** Mr Bell.

**Mr Bell:** I beg to second, Mr Speaker.

**The Speaker:** The motion is that clauses 196 to 199 stand part of the Bill. Those in favour, say aye; against, no.

The ayes have it. The ayes have it.

We are now entering the home straight and clause 200.  
Mr Braidwood.

**Mr Braidwood:** Thank you, Mr Speaker. I hope I get to the finishing line as quickly as I can.

**The Speaker:** I am sure you will.

**Members:** Hear, hear. Step on it!

**Mr Braidwood:** Clause 200 provides that proceedings for a recovery order or further detention of seized cash may not be taken or continued unless the appropriate court gives leave and may only continue, subject to such conditions as the court may apply.

Mr Speaker, I beg to move that clause 200 stand part of the Bill.

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

**The Speaker:** The motion is that clause 200 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clauses 201 to 203, please.

**Mr Braidwood:** Thank you, Mr Speaker.

Clause 201 is concerned with situations where a restraint order has been made or an enforcement receiver appointed to enforce a confiscation order. The basic rule would be that property first goes to satisfy the confiscation order, rather than being dispersed to creditors and that receiver powers do not apply to any property subject to a restraint order. This is intended to prevent defendants from attempting to use the insolvency legislation to defeat the purpose of the confiscation legislation.

Clause 202 provides that satisfaction of a confiscation order normally takes precedence. This clause explains the circumstances on which the bankruptcy legislation takes priority. If a person is adjudged bankrupt before a restraint order is made or a management or enforcement receiver appointed, no property that is, for the time being comprised in the bankrupt's estate, may then be placed under restraint or subject to realisation under the confiscation legislation.

Clause 203 deals with the procedure under the insolvency legislation avoiding a gift made by a bankrupt to a third party, so that it can be used to pay creditors. This clause provides that the insolvency powers are not to be exercised when criminal proceedings, a restraint order or confiscation or a revaluation application has been started against a bankrupt and have not been concluded or when the property of the person, to whom the gift was made, is subject to a restraint order.

Mr Speaker, I beg to move that clauses 201 to 203 stand part of the Bill.

**Mr Bell:** I beg to second, Mr Speaker.

**The Speaker:** The motion is that clauses 201 to 203 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clauses 204 to 207.

**Mr Braidwood:** Thank you, Mr Speaker.

Clause 204 provides that, if a company is being wound up, the liquidator or provisional liquidator does not have power to dispose of property subject to a restraint order or an enforcement order with a view to confiscation.

Clause 205 applies where an order or resolution to wind up a company has been made and that company has been made a tainted gift; that is something gifted by the defendant that may have been transferred for significantly less than its value.

Subsection (3) provides that the transaction should not be treated as voidable under the bankruptcy code if any property or the recipient of the gift is subject to a restraint order or where an enforcement receiver has been appointed.

Clause 206 is concerned with cases where a company is subject to a floating charge. It generally mirrors the provisions of clause 204 in the manner it restricts either the receiver or operation of a restraint order or enforcement receiver.

Clause 207 applies the provisions of clauses 204 to 206 to limited liability companies.

Mr Speaker, I beg to move that clauses 204 to 207 stand part of the Bill.

**The Speaker:** Mr Bell.

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

**The Speaker:** The motion is that clauses 204 to 207 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clauses 208 and 209.

**Mr Braidwood:** Thank you, Mr Speaker.

Clause 208 explains what is to happen when an insolvency practitioner takes action against property subject to a restraint order. The main purpose of the provision in clause 208 is to protect insolvency practitioners who unwittingly interfere with property subject to the restraint order from liability, except insofar as is caused by their negligence and to enable such insolvency practitioners to recover their expenses.

Clause 209 defines insolvency practitioner.

Mr Speaker, (*Laughter*) Mr Speaker, instead of going to the optician, I think I should have gone to the dentist!

I beg to move that clauses 208 and 209 do stand part of the Bill.

**The Speaker:** I just thought you were speaking in German! (*Laughter*)

**Mr Bell:** I beg to second, Mr Speaker.

**The Speaker:** The motion is that clauses 208 to 209 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clauses 210 to 213, please.

**Mr Braidwood:** Thank you, Mr Speaker.

Clause 210 ensures that the Attorney General can use information obtained in connection with any of his functions to assist him in exercising any of his other functions. Clause 210 also places certain restrictions on the use of information obtained under powers in the Bill by customs and police officers. These involve the consent of a senior officer and it is intended that the controls will be further detailed and

internal guidance issued by the Customs and Excise and the Police.

Clause 211 deals with providing cover for disclosure by other individuals and bodies to the Attorney or a customs or police officer.

Clause 212 makes further provisions regarding the protection of any information an Assessor may supply under the Bill. The clauses are permissive in nature, allowing for disclosure without making them mandatory. Provisions are in addition to any existing powers.

Clause 213 provides that information received by the Attorney or a customs or police officer under this Bill may be passed on to other persons or bodies subject to certain conditions. It is intended that internal guidance to be issued by Customs and Excise and the Police to clarify the relevant criteria and procedures.

Mr Speaker, I beg to move that clause 210 to 213 stand part of the Bill.

**Mr Bell:** I beg to second, Mr Speaker.

**The Speaker:** The motion is clauses 210 to 213 stand part of the Bill. Those in favour say aye; against, no. The ayes have it. The ayes have it.

Clause 214.

**Mr Braidwood:** Thank you, Mr Speaker.

Clause 214 applies section 57 of the Anti-Terrorism and Crime Act 2003 to disclosures under this Bill. This allows the Department of Home Affairs to issue a direction preventing disclosure being made to a person or body located overseas under certain circumstances. The circumstances are where the disclosure is being made for the purpose of criminal proceedings and it appears that the matter will be better dealt with by a court in the Island or in another country.

Mr Speaker, I beg to move that clause 214 do stand part of the Bill.

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

**The Speaker:** Mr Gill.

**Mr Gill:** Mr Speaker, could the mover just confirm, I think I am correct in recollecting that the Terrorism Bill that he referred to of 2003 was liable to a sunset clause that we renewed just this year and that the provisions that he is describing will be subject to those periodic reviews of that other Act and what provision would there be if that renewal was not made at that juncture, sir?

**The Speaker:** Mr Braidwood to reply.

**Mr Braidwood:** Thank you, Mr Speaker.

As the Hon. Member for Rushen, Mr Gill knows, a sunset clause was put in for five years. It has been now for another five years through an order, however, in five years' time, if it comes in front of this Hon. House or another place with the order, then with that sunset clause, it would fail, sir.

**The Speaker:** The motion is that clause 214 stand part of the Bill. Those in favour say aye; against, no. The ayes have it. The ayes have it.

Clause 215 to 218. Mr Braidwood.

**Mr Braidwood:** Thank you, Mr Speaker.

Clause 215 is concerned with allowing that property in the Island may be restrained or frozen following the receipt of an appropriate request from another jurisdiction and that property in the Island may be disposed of to give effect to a court order made in another jurisdiction.

Clause 216 is concerned with providing that orders and warrants are available for investigation in the Island under part (4) of the Bill should be available where the authorities in the Island are co-operating with an investigation originating off Island.

Clause 217 allows for rules of court to be made to give effect to an order made under this part or for a court to adopt such practices and procedures as it thinks fit, if no rules have been made.

Clause 218 contains various definitions of terms using this part.

Mr Speaker, I beg to move that clause 215 to 218 stand part of the Bill.

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

**The Speaker:** The motion is that clauses 215 to 218 stand part of the Bill. Those in favour say aye; against, no. The ayes have it. The ayes have it.

Clause 219 and schedule 5.

**Mr Braidwood:** Thank you, Mr Speaker.

This clause and schedule 5 are concerned with inserting into the Customs and Excise Management Act 1986 a new part VA containing sections 76A to 76H. These new provisions provide a definitive regime for the declaration of large sums of cash by persons entering or leaving the Island and replacing a temporary regime implemented by order and regulations from 1st June 2008.

Mr Speaker, I beg to move that clause 219 and schedule 5 stand part of the Bill.

**Mr Bell:** I beg to second, Mr Speaker.

**The Speaker:** The motion is that clause 219 and schedule 5 stand part of the Bill. Those in favour say aye; against, no. The ayes have it. The ayes have it.

Clause 220 and schedule 6 please.

**Mr Braidwood:** Thank you, Mr Speaker.

Clause 220 and schedule 6 are concerned with amendments to be made to the Criminal Justice Acts 1990 and 1991. The amendments being made are concerned with a) extending the facility for hearing of witnesses by telephone or video link, b) replacing section 21 of the 1991 Act which applies where the Attorney General uses his powers to gain evidence for use outside the Island, extending the tipping off provisions that apply where an institution has made a suspicious activity report to a situation where the Attorney serves a financial institution with a notice under section 21 and allowing for the transfer of a prisoner to or from the Island to assist an investigation.

Mr Speaker I beg to move that clause 220 and schedule 6 do stand part of the Bill.

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

**The Speaker:** The motion is that clause 220 and schedule

6 stand part of the Bill. Those in favour say aye; against, no. The ayes have it. The ayes have it.

Clause 221 to 223. Mr Braidwood.

**Mr Braidwood:** Thank you, Mr Speaker.

Clause 221 deals with cases where offences are committed by a body corporate and if so, who of its officers may be liable to prosecution.

Clause 222 deals with financial provisions and also contains new provisions giving the Treasury explicit right to negotiate asset-sharing arrangements with other countries and territories and to then pay out or receive money under such agreements.

Clause 223 defines what constitutes subordinate legislation and provides that, with the exception of an Appointed Day Order or Orders, any orders, regulations or code shall not come into operation until approved by Tynwald.

Mr Speaker, I beg to move that clauses 221 to 223 stand part of the Bill.

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

**The Speaker:** The motion is that clauses 221 to 223 stand part of the Bill. Those in favour say aye; against, no. The ayes have it. The ayes have it.

Clause 224 and schedules 7 and 8 and 225 with schedule 9. Mr Braidwood, then you are nearly there.

**Mr Braidwood:** Thank you, Mr Speaker.

Clause 224 and 225 and schedules 7, 8 and 9. Mr Speaker, clause 224 refers to schedule 7 to the Bill which contains miscellaneous and consequential amendments. Clause 224 also refers to schedule 8. This schedule contains various amendments that may only be made to legislation following the bringing into operation of these various new Acts of Tynwald namely the Administration of Justice Act 2008, Collective Investment Schemes Act 2008, Corruption Act 2008, Financial Services Act 2008 and the Insurance Act 2008.

Clause 225 refers to schedule 9 which contains various repeals.

Mr Speaker, I beg to move that clauses 224, 225 and schedules 7, 8 and 9 stand part of the Bill.

**Mr Bell:** I beg to second, Mr Speaker.

**The Speaker:** The motion is that clauses 224, 225 with schedules 7, 8 and 9 stand part of the Bill. Those in favour say aye; against, no. The ayes have it. The ayes have it.

Finally clause 226 and as I ask the mover to rise for the last time I am sure the House wish to congratulate him (**Several Members:** Hear, hear.) on the steadfast and efficient manner in which he has taken the House through clauses this morning.

**Several Members:** Hear, hear.

**Mr Brown:** Even with his glasses!

**Mr Braidwood:** Thank you very much, Mr Speaker and I think as you have quite rightly pointed out, I have reached the end of the finishing straight and I am just ready to break the tape.

Clause 226 deals with the title of the Act and allows for an Appointed Day Order to bring the Act into operation and this may be on different dates for different provisions and purposes. Any such Order can also contain necessary transitional and saving provisions.

Mr Speaker, I beg to move that clause 226 stand part of the Bill.

**The Speaker:** Mr Bell, for the final time.

**Mr Bell:** Mr Speaker, can I second and can I also add my congratulations to the hon. mover for the sterling effort he has made this morning, but also to thank Hon. Members for their support for this Bill. This is a vitally important part of the package which Treasury has had to move to ensure the appropriate legislation is in place for the visit of the IMF. I am very grateful for the efficient and supportive way Hon. Members have handled the measure this morning.

Just as a footnote though, Mr Speaker, could I just add my disappointment in Manx Radio's presentation of the Agenda this morning, whereby the impression is given that there are only six Questions on the Agenda and therefore, there is nothing for Members to do. This is a vitally important piece of legislation which will have a real bearing on the legal structure on the Isle of Man and it is regrettable that the media do not feel it appropriate to consider that this in fact is the bread and butter, the meat of the work that the Hon. elected Members do. It is not Question Time, this is the work that we are elected to achieve and it is disappointing, Mr Speaker, that the media do not recognise that at the appropriate time –

**Mr Watterson:** Bring back David Callister! (*Laughter*)

**Mr Bell:** – but I sincerely would like to thank Members for their supportive attitude to this Bill, Mr Speaker, and I beg to second.

**The Speaker:** The motion is that clause 226 stand part of the Bill. Those in favour say aye; against, no. The ayes have it. The ayes have it.

Hon. Members, that brings us to the end of business on our Order Paper. I am grateful to the Hon. Member for Ramsey for making the remarks he did, because I think it does emphasise that the work of this House is primarily the passage of legislation and very important legislation, as has been said.

Hon. Members, with that the House now stands adjourned. There is a lunchtime presentation in Barrool Suite, I understand and the House will now stand adjourned until its next meeting in this House on 13th May at 10 o'clock. Thank you, Hon. Members.

*The House adjourned at 12.41 p.m.*