



**LEGISLATIVE COUNCIL
OFFICIAL REPORT**

**RECORTYS OIKOIL
Y CHOONCEIL SLATTYSSAGH**

P R O C E E D I N G S

D A A L T Y N

(HANSARD)

Douglas, Tuesday, 3rd February 2009

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

The Lord Bishop of Sodor and Man (The Rt Rev. R M E Paterson), The Attorney General (Mr W J H Corlett QC),
Mr D Butt, Mr D A Callister, Mrs C M Christian, Mr E A Crowe, Mr A F Downie,
Mr E G Lowey, Mr J R Turner and Mr G H Waft,
with Mr J King, Clerk of the Council.

In attendance:

Mrs R Oldham, Head of Policy and Legal Division, Financial Supervision Commission

Business transacted

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Legislative Council

The Council met at 10.30 a.m.

[MR PRESIDENT *in the Chair*]

PRAYERS

The Lord Bishop

Questions for Oral Answer

TREASURY

Government funds

Fees paid to investment fund advisers

1.1. The Hon. Member (Mr Lowey) to ask a Member of the Treasury:

(a) How much has been paid by way of commission or fees to investment fund advisers for Isle of Man Government funds; and

(b) are the financial targets set for the investment teams being met?

The President: We have a full House, this morning, Hon. Members, so we turn straight to our Order Paper and the first Item: Questions for Oral Answer. I call on the Hon. Member, Mr Lowey.

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

The President: I think the Answer on this occasion is in the hands of a Member for the Treasury, Mr Downie.

A Member of the Treasury (Mr Downie): Mr President, for the last financial year, ended 31st March 2008, investment managers' fees of £3,444,345 were paid to Government's external investment managers. This information is also provided in Government's detailed annual accounts. The Light Blue Book for the subsequent period from 1st April 2008: investment management fees paid to date are £3,518,074.16. However, Treasury is still awaiting some invoices for the December period.

In answer to the second part, the financial targets set for Government's external investment managers have not been met for the 12-month period ending 31st December 2008. The Council will be aware of the global economic turndown and this has had an impact on the market value of Government's investments.

Hon. Members will be aware that Government is a long-term investor and, as such, assesses performance over a longer period of time. Investment managers are appointed for a five-year term and Treasury continues to monitor their performance.

The President: Mr Lowey.

Mr Lowey: While the targets have not been met – and I note that the targets for their expenditure are being exceeded in this financial year, as opposed to last financial year – would the Hon. Member not agree that it is a win-win situation for the people who are investing the money and not for the people whose money is being invested? Surely, that is the wrong way round. It should be based on performance.

The President: Mr Downie.

Mr Downie: I would agree with the sentiment expressed by the Hon. Member, but you are in a Catch 22 situation here. There will be people who have extensive sums of money who will find it very difficult to get people who are willing to invest it for them at the present time.

Government does have a tendering process. We do put out for expressions of interest for people to come in and manage Government's accounts. But when you actually break down the figures into a percentage form, if a portfolio, say, is £200 million-plus, the fees on that are somewhere in the region of 1½ to 2 per cent. Now, really that is not very much and if you looked at the performance, say, 12 months ago, Government was expecting to earn somewhere in the region of 7 to 8 per cent for that type of investment. That is the norm.

I agree with the Hon. Member, I would like to see a fee structure based on their performance, but I think it is very, very difficult to obtain that in the present climate.

The President: Mr Lowey.

Mr Lowey: Yes. Well, I would agree with the Hon. Member's comments. We are in difficult times, but it does seem rather strange to me that the people we employ can increase their fees at a time when we are actually decreasing the return to our investment.

You mentioned... I have used the words 'fees' and 'commission'. I am told people get paid commission every time they buy and sell shares for us. So, it is in their interest to be commissioning. So, is the breakdown in fees and commission available to the Hon. Member and, if not, would he get the breakdown for me, please: as to how much is paid in fees and how much is paid in commission?

The President: Mr Downie.

Mr Downie: Yes. I do not have that figure, Mr President. There are steps that the Treasury does take to monitor performance of its investment managers. In fact, Treasury has an investment committee who meet all the performance managers a minimum of twice a year. Treasury also receives quarterly reports on the managers' performance and the minutes from the various investment committee meetings.

We know that, in the present climate, the Isle of Man Government's portfolio is spread over quite a broad range. I am sure the Hon. Member would agree, if we had nothing but Shell and BP shares, we would be in absolute clover at the moment, but amongst our portfolio we will have, perhaps, Barclays Bank, we will have Royal Bank of Scotland and so on, who have done extremely badly.

So, just to stress, we are in very difficult times and I am quite amazed sometimes that the professionals who give us advice about the fund managers cannot be a little more

accurate, but as part of the remit that they are given, they are told to spread the net, as it were, so that we have a good broad base. But, as we all know, long term, all of these shares will probably come back again and the value of our portfolio will increase significantly.

The President: Mr Callister.

Mr Callister: Yes, thank you, Mr President.

I note the Hon. Member refers to five-year terms for these investing fund advisers. If they fail to perform or, if they are considered to be performing badly, is there any break point in that or is that a fixed five-year term?

Mr Downie: I do not have any direct dealings with the investment managers as it is dealt with by another Member within Treasury, but I will find out that information for the Hon. Member and see what the situation is.

The President: Mr Crowe, Hon. Member.

Mr Crowe: Would the Hon. Member, Mr Downie, agree the investment for our reserve funds is for the long term and we have to take account of the ups and downs in today's financial markets?

The President: I think he has said that, but Mr Downie.

Mr Downie: I would agree with that. Also, what we have seen in recent years: there are one or two smaller fund managers who are resident on the Isle of Man. There is a very good one based in Castletown and Government has the policy now to try and spread as much locally as it possibly can. As I say, we are in a very difficult time at the moment, but I think if we had the vision to look long term and look over the next few years, I think what is not doing too well at the moment will probably be doing very well in the years to come, so this is a long-term approach that we have got to take.

The President: I think a final supplementary, Mr Lowey.

Mr Lowey: Yes, sir. Would the Member not agree that it will be over £1 billion worth of investments if we take all of the investment portfolios. I know some are national health; some are insurance funds and all.

Taking the point that it is long term and I know the difference between long term and capital growth as opposed to income growth, where you get a higher interest in the long term, is the Member satisfied and is the Treasury satisfied that they are performing satisfactorily?

I have not yet got a clear indication. Difficult times, I know. Anybody can invest, as I said at another place, Mr President. If I had put all that money in the Post Office, I would have got a bigger return than I did paying these big fees to these particular investment managers for the sums of money involved.

The President: Mr Downie.

Mr Lowey: No risk.

Mr Downie: I do have some sympathy with the Hon.

Member, but if you look at the benchmarking for all of the fund managers throughout the UK and probably throughout Europe, you will see a similar pattern. What is happening in the Isle of Man is no different than happening everywhere else.

Regarding the Post Office, the Hon. Member, perhaps, is not aware that the Post Office account is now run by the Bank of Ireland and I, perhaps, would take a slightly different tack, as I would not like to see all of our eggs in one basket. At least, at the present time, our investment portfolio is spread throughout a whole range of different types of investment opportunities. Some are doing very, very well; some are doing badly, but I think, when the proof of the pudding comes out in the eating, I think, on average, we will have been doing alright.

The President: Let us move on, Hon. Members.

Mr Lowey: I thank the Hon. Member.

LOCAL GOVERNMENT AND THE ENVIRONMENT

Land at back of Government buildings Current use and future plans

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

- (a) *What are the short-, medium- and long-term uses of the plot of land adjacent to the back of Government buildings;*
- (b) *who is currently using this land for parking;*
- (c) *why are the general public denied access at weekends, evenings, etc; and*
- (d) *who controls the use of this important piece of real estate?*

The President: Question 2. The Hon. Member, Mr Lowey.

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

The President: I understand that Mr Butt is answering this on behalf of DoLGE.

A Member of the Department of Local Government and the Environment (Mr Butt): Yes. Thank you, Mr President.

As the Member asked a similar Question in April last year and we were aware of that, I can report there has not been a lot of progress since then, but I can give an up-to-date position as to the future of that car park.

With regard to the first part of the Question, the area is intended for use as a contractors' compound for the remedial work to the defects of the Registry and the Courthouse, but also for sundry works in Government Offices, the timescales of which are still to be finalised, but I would hope they will be completed in the next 12 months.

In the longer term, the Department has still not determined the site usage for the future, but it is still the intention to

submit a planning application, for medium-term use, of the site as a temporary car park, once the timetable for the Registry and Courthouse remedial works is more certain. This will enable the site to be tidied up and used whilst the future long-term use of the site is determined in consultation with the Council of Ministers.

With regard to the second part of the Question, the land is currently used for parking by contractors to Government buildings and temporarily for 10 Government employees where other parking has not been provided elsewhere.

With regard to the third part of the Question, the temporary nature of the car park surface and the need to have the site available for contractor use makes it inappropriate for use by the general public at present.

Moving to the final part of the Question, I can confirm that the freehold of the site is vested in the Department of Local Government and the Environment.

The President: Mr Lowey.

Mr Lowey: Would it surprise the Hon. Member to learn that, this morning, there are no lorries of any description parked in that place? There are 20 cars parked in that place. I counted them as I came in.

Does he not agree that the Courthouse has been operational now for a long, long time: many years and how long are the repairs going to take to that building, if they are still going on to that?

Can he explain or expand on the view that it is quite safe to park a car there, albeit 10, from Monday to Friday but not at weekends or the evening, for a similar number of cars used by the public?

The President: Mr Butt.

Mr Butt: Thank you, Mr President.

With regard to the contractors' vehicles which use the site, often lorries from Stewart Clague Services, 2e2 and DoT... I am not sure whether or not they are there this morning. Maybe it is too early in the day. Perhaps you arrive too early. But, I can tell you the site is used by 10 vehicles. If you wish for the details: one member of the Clerk of Tynwald's Office is using it, because of a disability at the moment; two members of ISD who are there to transfer data in the computer systems; six members of Income Tax have been moved out because of St Andrew's House now being occupied by Tourism, who are now using that car park; and one member of the Chief Secretary's Office uses it for disabled purposes.

Contractors, in addition, that use it are 2e2, Stewart Clague Services and DoT vehicles and other contractors working in Government offices have access to it.

As regards parking at the weekends, as I said in my original Answer, the condition of the surface is not considered suitable for members of the public to use as a car park.

The President: Mr Lowey.

Mr Lowey: I still come back. There are more than 10 cars parked there at the present time. Could I suggest that who has authorised them and why are they there then, if it is only limited to 10 cars?

If it is a disabled person that is using the car park at the moment, I would have thought, if a disabled person can use it during the week, then how on earth...? I find it very hard

and I am sure Members are getting the gist of my question.

The President: Mr Butt.

Mr Butt: Yes. I think there are two disabled people using the car park, because they cannot access the car park they should be using. I think the condition and the surface of the road will not be about disabled people; it will be about the possible damage to cars which you would not allow the public to use.

As for the 20 cars currently parked there, I will cause enquiries to be made as to see why they are there and who they are.

Mr Lowey: I thank the Hon. Member.

The President: Mr Callister.

Mr Callister: Thank you, Mr President.

If a Member of Legislative Council or Keys, perhaps, were to park there at the weekend, would they be liable to a ticket under the system or not?

The President: Mr Butt.

Mr Butt: I am sure they would not be liable to a ticket, because it is private land and not part of the remit of the DoT or the Police.

Mr Lowey: You could not get in because it is wired off.

HEALTH AND SOCIAL SECURITY

Coroners' criticisms of DHSS services Actions taken

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

(a) *How many adverse criticisms have Coroner's Courts made regarding the services provided to individuals over the past three years;*

(b) *what steps have been taken to hold to account those providing these services;*

(c) *have any groups or individuals been demoted or dismissed, or have any other actions been taken, and if not, why not; and*

(d) *what steps have been taken to increase public confidence in the services provided by the Department?*

The President: Okay, Hon. Members, we go on to Question 3. Mr Lowey.

Mr Lowey: Thank you, Mr President.

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

The President: Again, I think it is Mr Butt to answer. Hon. Member, Mr Butt.

A Member of the Department of Health and Social Security (Mr Butt): Thank you, sir.

In regard to part (a) of the Question, with regard to Health Services, I can advise that there have been three cases in the last three years where the Coroner has made adverse criticism concerning the clinical services provided to individuals by the Department of Health and Social Security. To the best of our knowledge, there have been two recent cases involving Social Services in 2009 where there has been adverse comment, and one case in 2007 relating to a young person where there was some adverse comment by the Coroner.

In respect of part (b) of the Question, I can assure the Member that the Department has in place robust policy and procedures for managing cases that, unfortunately, but rarely, come before the Coroner. The Department, through its clinical risk teams and operational managers, investigates thoroughly and impartially any untoward patient safety incidents, including those where a patient has died. Usually the expert reviews are commissioned from outside the Department which provide an additional independent view of what has happened and always include recommendations of how things might be improved for others in the future.

It is usual in these circumstances for the review reports to be shared with the patient's family and with other authorities, where appropriate, including the Coroner. An example of that is in the recent incident at Gardner House in Ramsey, the Department realised there had been errors in different areas and commissioned an independent report. The report was submitted to the Coroner before the Inquest so he was aware of where there had been failings, which he was able to comment upon during the inquest.

Such reports identify the individual circumstances of the case, any causes and all contributing factors and the appropriate actions to remedy this situation and reduce the chance of a further occurrence. At all times, our intention is to minimise the risk of adverse events recurring.

It is our experience and my experience, certainly in recent months, that these reports identify, in the main, system failures rather than individual culpability. That is not to say, Mr President, that individuals will not be held to account and I would stress that, where appropriate, they will be. In such circumstances, the Department will invoke internal disciplinary procedures and may very well refer qualified health and social care practitioners to the regulatory bodies such as the General Medical Council, Nursing and Midwifery Council or the General Social Care Council. In these cases, senior professional advice is sought.

Turning to part (c) of the Question, in the best interests of reducing the risk to patients overall and making sure the best service possible is delivered, it is important that during the investigations, the staff co-operate fully with any inquiry or internal investigations. In operating within a clinical culture of fairness and responsibility, we depend upon all our staff to co-operate fully with our internal investigations and to help identifying remedial actions. Consequently, to target individuals can sometimes impede that process.

In the cases to which I refer in the first part of the Question, investigation processes have concluded in the three health cases and in one of the social service cases. No individuals have been demoted or dismissed as a consequence of these cases. Where failings were identified in these cases, they were not apportioned to individuals, but to complex system failure. Investigations are still to be concluded in two of the social service cases, but again, failures of systems are to the fore in those inquiries.

I would stress the point that health and social care

professionals do not come to work to intentionally harm their clients. Sometimes a chain of events or sometimes separate events lead to an unfortunate final outcome and apportioning blame to one area or one person is not always possible. Our staff work on a day-to-day basis in an extremely high-risk environment and, despite all our efforts, sometimes things do go wrong. It is important that we support our staff and work with them to identify, where appropriate, improved policies and procedures or training needs.

Mr President, there is occasion when we get it wrong and it is with regret that the result can be tragic. However, we use the experience and circumstances of the event to identify areas of risk or absences in our systems and put in place remedial action, using best principles, to correct the state of affairs and prevent recurrence. In line with other health and social care systems, our aim is to learn from and improve our services when things go wrong.

Mr President, for the final part: part (d), notwithstanding the cases where the Coroner has been critical – and quite rightly in most cases – I believe we both uphold and maintain public confidence in our services through the Department's policy of operating in an open and transparent manner.

In that regard, we have had in place, for some time now, a developing programme of patient and public involvement which the Department feels is fundamental to the process of the review and development of services. This ensures that the Department of Health and Social Security, as a whole, listens to and acts upon the views of the people it serves.

We also take the opportunity to meet with families when things do go wrong. We openly share our findings and are able to demonstrate where we have changed our practices. In all sections of the Department, where services are delivered direct to patients and clients, our clinical governance and risk teams work to identify risk before things go wrong; striving to minimise risk and improve patients' safety.

Although it is no consolation to those affected by tragedies, the vast majority of people being dealt with by the Department receive an excellent service from all areas of the Department.

The President: Mr Lowey.

Mr Lowey: Yes. Can I state, straightaway, Mr President, that it gives me no joy to put these Questions down and, with this particular one and my own family's personal involvement with the Health Services in the past 12 months, I can only speak with the greatest respect and admiration for those who take part.

Notwithstanding that, I read in this week's paper, the Coroner, again having an adverse comment to make. Let me quote the Coroner when he says he feels, 'as if he is having an individual campaign against the Department', which I am certain he is not.

Having said that, the point I want to make is, would he not agree that the numbers, far from decreasing, are increasing? The numbers he has given us today is one from two years ago; two last year and three this current year. Would he not agree that it is actually increasing?

Would he also not agree that public confidence would be assuaged if there was some finality; that it is taking quite a length of time to deal with these cases? I do not want to have a John the Baptist's head on a platter scenario in these affairs, but there has to be some accountability. The general public do not seem to have that.

Would he not agree that, perhaps, if these institutions had a management committee of lay people that looked after the conduct, ultimately, of the running of the place, that that might be an avenue where people would have more confidence?

Could I finally say, with one particular reference – and you have mentioned Gardner House in Ramsey – would he also not agree that that building is a particularly old building? Would he not agree that it is time to upgrade those facilities and would that not help? In other words, are the facilities... The training is important for people, but they have got to be in places that are conducive to control. Would he not agree that some old buildings need to be upgraded in that area?

The President: Now, Mr Butt, I think you have four questions: are the numbers increasing? Is there a finality by accountability? Should it be managed by lay people? Do Gardner House and the premises need updating? Mr Butt.

Mr Butt: Yes, Mr President. Thank you.

The Member says it gives him no joy to ask these questions. It gives me no joy to answer them either, because these things should not happen and do happen, unfortunately, but they should not happen and I know the Department works very hard to try and reduce incidents like this. I am glad he had good service for his family. I, for my family recently, had some very good service and I have nothing but praise for the way they have been dealt with.

As to the Coroner's comments, I am sure he is not on a campaign against the Department. I think the recent case in the paper today, I think he said, he will criticise where the guidelines, etc, have not been followed and quite rightly so, too. He is right to criticise on those.

As to whether the incidents are increasing, I cannot say that. I have not got the figures for the previous three years. I have no knowledge personally of whether there is an increase or not. There have been two or three in the last few months reported in the papers.

The public confidence, the assurance I can give is that, from my experience of these incidents in the last few months, the Department are totally open and honest about what they do and the Coroner and the authorities are informed exactly of what has happened and get the full information before the inquest, because it is in our interest to make sure things do improve.

We have independent inquiries from independent persons who come in, look at our systems and give us criticism where it is due. I can say that most of the criticism seems to be – and I have come across this in lots of other Government Departments in my work in Public Accounts Committee – it is the failure to communicate, failure to pass on information, failure to share information between people and in some of these cases, this is a common theme that occurs and it is something that needs to be addressed.

As to lay people being on committees, there has been public consultation between the Department and the public for a series of public meetings which does not address issues like this, but it does give us some indication of what the public think of services. There is the Hospital Consultative Committee which are lay members who do look at certain issues, who could be tasked to look at some of these areas, but I think Mr Lowey may have a point that, perhaps, we should look at some sort of lay committee to overlook these and I will take that back to the Minister.

Gardner House is a wing which is part of Ramsey Cottage Hospital and is run as a mental health ward. I would agree with the Member that it is, perhaps, the nearest to the old system at Ballamona that we still have in existence. The other mental health units in the Department are down are Southlands and at Glenside and in Derby Square: much more modern, much more up to date.

Mr Lowey: That is the contrast.

Mr Butt: There is a contrast and I have been up there and I would agree with the Member that it does need to be updated. There are actually plans in being to build a new unit, a new MHU, in the north of the Island, in the Ramsey area as soon as possible. (**Mr Lowey:** Priority.) It is in the Pink Book and it is the Department's aspiration and I would pass that back to the Minister as well.

Thank you, Mr Lowey.

The President: Mr Waft, Hon. Member.

Mr Waft: Yes, thank you, Mr President.

The Mental Health Service has always been the Cinderella of the Health Services generally. I just wondered whether they had looked at the number of trained staff as regard to the clients and whether they are a recognised ratio of trained staff and untrained staff looking after clients and certain aspects? Do they follow national guidelines? And whether the systems that are in place are looked at by professional people who can give guidance? I wondered whether the Member knew if there were any staff shortages in any particular area which could be causing concern.

The President: Mr Butt.

Mr Butt: Thank you.

In the instance I know about, which affect mental health units, there were issues I believe, although the report has not been finalised, of training – whether training was up to date or not. They were part of the chain of events in one instance at Gardner House. I understand there are no staff shortages which were relevant to this particular instance.

I can say, although it is no consolation to that particular family or families who have lost members, that we had a choking incident in Grianagh Court about a year ago, another mental health unit, where a person died. On that occasion, the Coroner praised all the staff because of the work they did and the excellent way they handled the incident despite the fact the person died.

So the Coroner does occasionally praise the mental health unit staff for the work they do, because they are excellent people, who do a very good job for the community.

The President: Mr Downie.

Mr Downie: Thank you Mr President.

I would like to ask the Hon. Member if he can perhaps explain to us how the recruitment process of doctors takes place. For example, there seems to be a tremendous throughput into the Island, housemen, registrars, junior consultants. A lot of them do not have the same ethnic background that we have here in the British Isles. The Hon. Member said there were, from time to time, communication problems. There definitely appeared to be a communication

problem in the case that was outlined in the newspapers this week, where a lady fell in a home and, for whatever reason, she did not have a scan. That alludes to a problem there.

But will we ever see the days when we got good consultants who came to the Isle of Man and stayed here? We seem to have such a diverse turnaround that there never seems to be anyone who actively gets involved, puts their roots down and has some continuity with the Health Service Scheme. When a problem does arise, it is the British Medical Association (BMA) that are left to deal with it and sort it out and perhaps... I do not know, maybe the situation is even worse in the UK, but where do all the British and European doctors go? We do not see many of them in the Isle of Man.

The President: I do not want to start a debate on the Health Service, Mr Butt, but as a matter of communication, I will allow you to answer this one.

Mr Butt: Yes, I will attempt to answer that, Mr President.

I think as the Member says, the UK has similar problems to us. Where the British trained doctors go I am not sure but we certainly have some over here. I do know of some who have come over here and moved and put roots down on the Island. People do still come to put roots down here, but there is a turnover with locums etc.

I think one of the problems we are experiencing now is that some of our more senior doctors are about to retire who are consultants who can do two or three specialisms, when they go, we will have to replace them with three people because they have individual specialisms these days. That is a problem for the future.

The turnover of staff can be a problem, but I do not think, as far as I know, there is any indication that any of these deaths were caused by lack of communication because of the ethnic background of the people. I think that is a genuine point. It is nothing to do with ethnicity; it is to do with the way communication goes on between people.

Orders of the Day

BILLS FOR THIRD READING

Animal Health (Amendment) Bill Third Reading approved

2. Mr Callister to move:

That the Animal Health (Amendment) Bill be now read a third time and do pass.

The President: Hon. Members, I think we will move on to the legislation before Council then, and we have reached Item 2, which is the Animal Health (Amendment) Bill. This morning it is down for Third Reading and in the hands of the Hon. Member, Mr Callister.

Mr Callister: Thank you, Mr President.
I thank Members for their support of this Bill, in

particular my seconder Mr Waft for his support in opposing the amendment dealing with compensation and the use of 'may' or 'shall'. Mrs Christian's amendment was supported at Second Reading, in part perhaps because of my inability to persuade Hon. Members that there are some circumstances in which payment of compensation would not be appropriate.

The change from 'may' to 'shall', despite the qualification in the amendment that cites circumstances to be specified in regulations, is in conflict with the Act that the Bill is amending. The Animal Health Act 1996, where it deals with compensation for seizure, employs the use of the word 'may'. Nevertheless, assuming the Third Reading is approved today, this will be a matter for the House of Keys to reconsider.

The Animal Health (Amendment) Bill itself is essentially a series of enabling powers to allow the Department to act quickly to prevent the arrival or the spread of animal diseases that could have serious consequences for both the agricultural industry and the economy of the Island. It is to be hoped, Mr President, that none of the provisions in this Bill will ever be required, but they are vital precautions.

I would also, again, thank Members for their support of the Bill and appreciate the procedure that has been adopted in Legislative Council, whereby officers of Departments can attend. I am sure that that has proved to be extremely useful. Mr Stuart Jaques was able to answer a number of the technical questions: Mr Jaques is present again in the Chamber today.

Mr President, I beg to move that the Animal Health (Amendment) Bill 2008 be now read a third time.

The President: Mr Waft.

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

The President: Mrs Christian.

Mrs Christian: Simply to say, Mr President, that I note the comments of the mover with regard to the amendment which I put forward last week, and his observation that it differs from the principal Bill, in saying 'shall', where in other places it says 'may'. There are circumstances in this amendment Bill where it says 'shall', so I do not think it is entirely inconsistent, Mr President. I think there are different circumstances in which different matters apply. Of course, it will be for another place to consider whether or not they accept the amendment.

The President: Can I make it plain, Hon. Members, that in fact our Clerk has checked this: at the clauses stage, the Council agreed the amendment and the amendment has been looked at by the legislative drafting team. They have reported that it raises no concern, from a drafting point of view.

So in fact from the drafters, they see no concern from a drafting point of view.

Mr Crowe.

Mr Crowe: Thank you, Mr President.

Just to support the Bill and to say, really, that what the Department are asking for are defensive mechanisms in the face of, hopefully, none of these viruses or diseases that might come into the Isle of Man, so really it is saying forewarned is forearmed. I think that is all it is and I am happy to support this Bill.

The President: Reply, Mr Callister.

Mr Callister: Thank you, Mr President.

Well, there is not a lot more to say. Clearly another place will look at that amendment.

I would say, though, that in relation to that, there have been cases and I was cited a case yesterday, where someone in the farming industry who had been ill and was unable to submit the claim in time for the claim to be paid, not through any fault of his own – it ran out of time and it was covered by regulations in which it was very specific that, if that date was not met, then the payment would not be able to be paid. It did run into some considerable number of thousands of pounds, which was unfortunate for the claimant. I feel that the Department felt it was unfortunate, as well, that they were in no position, in order to help that particular person. But that is one issue that was involved with this ‘may’ or ‘shall’. However, that remains to be seen.

Thank you, Mr President, and I thank Members for their support.

The President: Perhaps the Department will take that into consideration when they draw up the regulations, Mr Callister.

Mr Callister: Yes, sir.

The President: Hon. Members, the motion that I put to Council is that the Animal Health (Amendment) Bill be read for a third time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Mr Callister, you did in fact mention that Mr Jaques was with us this morning. He is, I see him in the seats. Perhaps congratulations are in order to Mr Jaques. I understand that from your genealogy next step, you have now been... I read it in one of the Department’s glossy papers that you have achieved another set of letters. Congratulations!

Income Tax Bill

Third Reading approved

3. Mr Downie to move:

That the Income Tax Bill be now read a third time and do pass.

The President: Income Tax Bill: Mr Downie to move, please – Third Reading.

Mr Downie: Thank you, Mr President.

Within the clauses stage of the Bill, Mrs Christian expressed concern regarding the power to raise a benefit in kind charge on a hybrid car. I had an opportunity to discuss the situation through officers in the Income Tax Department and officers of the Department of Transport. They confirmed that a hybrid car does fall within the definition provided in the Bill. This is because it derives its power wholly from an internal combustion engine worked by cylinders or rotors.

I also had an opportunity to do some further research on the companies who make the Prius type vehicle and, in fact, you will see – anybody who goes down the same route – they actually produce more CO₂ than a conventional engine! So I

think, as regard to developing a hybrid car and utilising the systems that we use to calculate the road tax, I think there is going to be a lot of debate in the future. So I hope that clarifies that.

The Bill before us this morning for Third Reading contains 21 clauses and two schedules.

Clause 1 provides the interpretation of the Act.

Clauses 2 to 5 confirm 10 temporary taxation orders which deal with the attributed profits for individuals regime, eight international tax agreements and a number of budget measures.

Clauses 6 to 8 introduce a new calculation for cash equivalent values of cars and fuel provided to employees.

Clause 9 makes two amendments to sections 31A of the Income Tax Act that provides for prescribed reductions.

Clauses 10 and 11 introduce amendments that will modernise and streamline the ratification process of future international tax agreements.

Clauses 12 to 14 implement the 2008 Budget changes to personal allowance credits and ensure that any future amendments can be made by a temporary taxation order.

Clauses 15 and 16 extend the time limit that default assessments can be revised for both individual and corporate taxpayers.

Clauses 17, 18 and 20 make minor amendments to the Income Tax Acts.

Clause 19 repeals the now redundant Income Tax (Amendment) Act 1998.

Clause 21 provides the short title and commencement of the Act.

Mr President, I beg to move the Third Reading of the Income Tax Bill 2008.

Mr Crowe: I beg to second, Mr President, and welcome the Bill and welcome all these tax information exchange agreements we have with foreign countries and the new one with Australia which has recently been announced. All of this hard work by the Treasury I hope will convince those members of the G20 who are meeting in April that the Isle of Man is an upright and outstanding member of the financial community and a global player.

I also hope that the Chief Minister is able to make moves at this Select Committee meeting in London today, to push forward the Isle of Man and what a first class quality jurisdiction we are. I think it is always difficult when the *Guardian* newspaper and the *Panorama* programme that we saw last night put out the same message, they seem to overlook the truth. They seem to have a hidden agenda and it disappoints me when we seem to be facing an uphill battle on information.

So I fully support this Bill, Mr President.

The President: Mr Lowey.

Mr Lowey: Mr President, I understand the need for Income Tax Amendment Bills when they come in and because of the nature every year we have a Budget and we are looking to be nimble on our feet. Perhaps the mover could tell me when we are going to get a consolidated Bill to put them all in one place because it is alright having loads of amendments, but if I was outside wanting to look at the up-to-date income tax, I would have to get a pretty wide sheet of paper to cross-reference them. So there would be, I think, a need for that.

I too welcome the fact that the Treasury are making these tax information exchange agreements (TIEAs). The last one that we learnt about – through the press I may add, we have not been told yet by the Treasury officially, to Members – we have not had an official presentation as to the advantages – I am certain there are many advantages. I think what they have done with Australia is quite remarkable, because that does... They are one of the leading players in South-East Asia and, therefore, it is an area where I think we can do a lot of international business and if we can get the main player in that region, or one of the main players in that region, to have an agreement with us, it certainly assists in that development.

So I welcome the Bill. I am sure it is meant to be in the right way. Perhaps the mover could tell me if we can get consolidation at some time. I know it will never be perfect, because every year we have a Budget and I am not saying that every year we alter the income tax: we do have a lot of tax alterations. But I do think that we need to consolidate, from time to time.

The President: Mrs Christian.

Mrs Christian: Thank you, Mr President.

I thank the Hon. Member for his response from the Treasury on the issue of the hybrid car. I might like the Hon. Member to look at little more closely at the workings of the hybrid car. I think if I were a mischievous lawyer, I might be playing with the words 'wholly' and 'combustion', because I find it very difficult to accept what they have said, particularly when, in the second part of the interpretation, it says it does not include a hybrid car where more than one type of fuel or source of power can be used – which sort of contradicts it, in my view!

However, I do not suppose there will be many people claiming for hybrid cars under this scheme and I doubt that anyone will ever test the question.

The President: Mr Waft.

Mr Waft: I would just like to congratulate the Department for bringing this through very quickly and recognising the problems previously. It certainly has done away with the loopholes that were there to be criticised.

I would like to congratulate the Treasury, as well, for all the work that they have on board on moment and the work that is going on as we speak in London, and the officers there, throughout the whole of that Department. I think they are a credit to the Department and I give my congratulations to them.

Thank you, Mr President.

The President: Mr Downie to reply, then.

Mr Downie: Thank you, Mr President.

First of all, I will start by thanking Mr Crowe for seconding the Third Reading today. We know Mr Crowe has an interest in tax and finance matters and it is very good to actually have him sat next to me on occasion, because he puts things in front of me that are helpful and useful, when we are answering questions here. So I thank him for his support and the remarks he made about how important it was to keep moving forward.

The new TIEA that has recently been signed will undoubtedly show us in very good stead with the Organisation

for Economic Co-operation and Development (OECD) and fits very nicely into their structure. Of course, we know that the Foot Report, which to date has not commenced, is supposed to give an interim report prior to the UK budget, but we know that it actually has not got underway yet. From what we are doing and continuing to pursue our aims and objectives under the OECD model, I am sure that will speak well in our favour.

Moving on to Mr Lowey, he again was supportive. He asked if there was any way that we could consolidate the tax legislation. I am sure that would be a very useful tool, if it were available, and equally useful would be some sort of a consolidation of the companies legislation, so that anyone who is looking to do business in the Isle of Man could go to the various websites and see it all before them, and how it all worked. Those who are out there selling Isle of Man related products could show what was available and how the legislation works.

I think that came through in the very useful presentation that was given to Council recently by some of the legislative draftsmen from the Attorney General's office. I think with the good team of people that are there and the good team of officers within the taxation department, the FSC and other areas, we will do much better in the forthcoming years.

I am sorry that Mr Lowey did not pick up that the Australia TIEA was about to be signed.

Mr Lowey: The first thing we heard was on the radio at Mount Murray.

Mr Downie: I will be reporting that back to the Minister. I think at a Tynwald briefing, perhaps six or seven weeks ago, he did indicate that there were others in the pipeline. My understanding is that an opportunity arose in connection with the business that they are to do in London this week, to meet in the Australian High Commission, and things were laid on there and they got the TIEA signed –

Mr Lowey: The only complaint, Hon. Member –

The President: Now, Mr Lowey –

Mr Lowey: With respect, I think I am being misrepresented, in the sense that Members should be informed before an invited audience at the Mount Murray.

The President: I think we got that.

Mr Downie: I agree with you entirely, Mr Lowey, and I will be relaying that back to the Treasury Minister. We have got to keep the finance sector on board, but we have got to keep Tynwald Members even closer on board, and I think you are quite right to comment.

The Australians have been very hawkish in the past about offshore jurisdictions. They have, in the past, been critical of the Isle of Man, and I think now this is a move in the right direction. (**Mr Lowey:** Absolutely.) It will allow certain types of business to take place and it will also have an exchange agreement in place for various taxation issues, so I think this is another –

Mr Lowey: Big plus.

Mr Downie: – tick in the box and a plus for us.

Mrs Christian again on the issue regarding the hybrid car, I have some sympathy with Mrs Christian, because I think that as technology is moving forward, sadly the instruments that Government uses to measure things by do not move quite as quickly. Although we have a zero tax for an electric car, to date the Department of Transport does not feel that should be extended to the hybrid.

I think what we should be looking for now is a halfway house, because there is no doubt in my mind, in the next few years, there are going to be a lot more environmentally friendly vehicles coming along, and even though they may not have the zero tax that the all-electric has, we should be reviewing that situation. At the end of the day, if responsible governments do not encourage the research and development of hybrid vehicles and they do not offer incentives, it is not going to happen. I think other jurisdictions have taken that on board and, in my view, the Isle of Man should not be any different. So I am sure when Mr Anderson moves the road transport fees in another place, there will be lots of debate on that issue.

I would just like to thank Mr Waft for his support. As a former Treasury Member, I am sure he is well aware of the tremendous amount of work that the Treasury has had to undertake, particularly in the last 12 months and not just to tread water, they have had to move forward and move forward very quickly in lots of areas, and they have done an awful lot of things which have been outwith the normal duties of Treasury. So his thanks and congratulations are very much appreciated.

With that, Mr President, I beg to move that the Income Tax Bill be read for the third time.

The President: Hon. Members, the motion I put to Council is that the Income Tax Bill be read for a third time and, in doing so, Hon. Members, we note that the same spelling error which was pointed out to us as being in clause 11 is carried into clause 10 as well. Hon. Members, those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Value Added Tax (Amendment) Bill **Third Reading approved**

4. Mr Turner to move:

That the Value Added Tax (Amendment) Bill be now read a third time and do pass.

The President: We go to Item 4 on our Order Paper, which is the Value Added Tax (Amendment) Bill: Mr Turner, please.

Mr Turner: Thank you, Mr President.

Promoted by the Treasury, this short Bill amends schedule 13 to the Value Added Tax Act 1996, so that an independent VAT and Duties Tribunal will continue to be available for appeals against decisions of the Treasury in Customs, Excise and VAT matters after April 2009. The amendments are necessary due to changes to the independent appeals machinery in the United Kingdom and ensure that Island taxpayers continue to have access to an impartial and expert body that can adjudicate in disputes with the

Treasury. Changes also fulfil the Island's requirement under the Customs and Excise Agreement to use the same appeals process as used by HM Revenue and Customs.

In April this year, the UK is implementing sweeping changes to the system of appeals bodies for a wide range of matters, not just those relating to taxes, but encompassing such varied matters as immigration appeals and also pensions. All tribunals affected will be brought together under the Ministry of Justice, whereas previously they were devolved to a variety of government departments and local authorities.

The former VAT and Duties Tribunal in the UK will become part of the Tax Chamber of the new structure with a two-tier arrangement: the First-tier Tribunal, dealing with the vast majority of cases; and the Upper Tribunal, dealing with the most complex cases and hearing appeals on points of law from the first tier.

The tribunal system will continue to be wholly separate from HM Treasury and HM Revenue and Customs. A senior court of appeal judge has been appointed to head the new service as President of Tribunals and the UK Court Service will continue to provide administrative support.

Decisions in Customs, Excise and VAT matters made on or after 1st April 2009 will be dealt with under the new arrangements.

In the Isle of Man, schedule 13 to the Value Added Tax Act 1996 deals with the establishment and constitution of the VAT and Duties Tribunal. The Tribunal for the Island will continue to use this title, but the effect of the changes made to schedule 13 is to substitute the First-tier Tribunal and various officials of the Tax Chamber for those mentioned in schedule 13.

Clause 1 of the Bill contains all the necessary amendments.

Clause 2 is simply concerned with the short title and commencement.

Clause 1 replaces paragraph 4 and schedule 13 of the 1996 Act and amends paragraphs 5 and 6.

Dealing with the membership of the Tribunal, the main effect of the changes to paragraph 4 is to provide that the Chairman of the Tribunal shall be: the Senior President of the Tribunals, i.e. the head of the service; the President of the Tax Chamber of the Tribunals or a judge of the First-tier or Upper Tribunals of the Tax Chamber. In reality, it is expected that the judges will remain the same chairmen currently allocated to deal with appeals in the Island.

There are also two of these who combine an expert understanding of revenue law and tribunal procedures with knowledge of how the Tribunal in the Island fits into the overall system. These chairmen can sit alone or with up to two other members. Those members are chosen from a panel of suitably qualified people appointed by the Council of Ministers under the Tribunals Act 2006.

The amendments at paragraph 5 and 6 consist of replacing references to the post of 'President of the VAT and Duties Tribunals', which is a post being abolished, with reference to the 'President of the Tax Chamber'.

For the most part, the effect of the changes made by this Bill on taxpayers in the Island will be minimal. They will continue to be able to appeal decisions of the Treasury and its Customs and Excise Division to an independent body, confident of the body's expertise and impartiality. The same Manchester Tribunal Centre will continue to receive and administer appeals, arranging for directions, organising hearings and so on.

When considering Isle of Man cases, the Tribunal uses

Manx law, but the same rules of procedure would apply as to cases in the UK. However, in the Island, appeals from the Tribunal would go to the Staff of Government Division and not to the Upper Tribunal. This will continue to be the case from April 2009.

So in summary, this Bill provides for essential changes to the Island's legislation that will ensure taxpayers continue to have access to a fair mechanism for dealing with situations where they are affected by, and object to, decisions made by the Treasury officials in Customs, Excise and VAT matters.

Mr President, I beg to move that the Value Added Tax (Amendment) Bill 2008 be read a third time.

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

The President: Mr Lowey.

Mr Lowey: Just to say, really, I think we are in danger sometimes in passing legislation as if we are highlighting we have a major problem, when really we do not have very many major problems. That is a great reflection on the service that is provided by the VAT and the Customs Service on the Isle of Man. They are very rare indeed.

But it is very important that we do have an independent appeals procedure and this Bill makes that quite clear. Even if you only have to have it used once every five years or whatever it is, then I think the route has got to be clearly signed and people should know that.

Having said that, I do think there is an exceptionally good working relationship between the officers who act on our behalf and the people who are collecting our taxes for us. So, I do think that needs to be said publicly, too.

I support the Bill.

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

Mr Turner: Yes, I do. Thank you, Mr President, and I thank Mr Lowey for his comments.

As he said, regardless of the fact that we have minimal cases for this procedure to be used, it is very important that we have access to the procedure. I think we have well aired at previous Readings the reason why it is administered by a UK body: that is because of our links with VAT matters in the UK and, as we have discussed, these go further afield into Europe. So, it is important that we are singing off the same hymn sheet. Also, there is expertise we can tap into and there should be some comfort, as well, to know that members of the panel are drawn from locally appointed people, by the Council of Ministers' appointment panel.

I thank Mr Lowey for his comments and the other Members who spoke at previous Readings and, with that, I beg to move.

The President: The motion that I put to Council is that the Value Added Tax (Amendment) Bill be read for a third time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Fees and Duties (Amendment) Bill Third Reading approved

5. Mr Downie to move:

That the Fees and Duties (Amendment) Bill be now read a third time and do pass.

The President: We move on then to Item 5, the Fees and Duties (Amendment) Bill. Mr Downie again, please, for the Third Reading.

Mr Downie: Thank you, Mr President.

The Fees and Duties Act 1989 gives only the Treasury the power to prescribe fees and duties and make regulations in respect of charges for Government services, etc, where the provision for such charges is not provided under other enactments. Fees and duties under this Act are often made by Treasury on behalf of, and at the request of, other Departments and Boards. This short Amendment Bill will extend that power vested in Treasury to other Government Departments and Statutory Boards who may, with the concurrence of Treasury, make their own fees and duties, orders and regulations which will still require the approval of Tynwald before they come into effect.

Mr President, I beg to move that the Fees and Duties (Amendment) Bill 2008 be read for a third time.

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

The President: It is just my peculiar mind, Hon. Members, on this one that... I am sorry, Mr Downie, and I know it is not really relevant, but in fact it says:

'(2) In subsections (1) and (3) after "Treasury" insert "or a Department or Statutory Board".

(3) After subsection (3) insert –

“(3A) The powers conferred by subsections (1) and (3) –

(a) on a Department other than the Treasury; and

(b) on a Statutory Board,

are exercisable only with the concurrence of the Treasury.”'

In other words, this gives the Department the right, but in fact they can only do it with the concurrence of the Treasury. The Treasury still remains, in subsections (1) and (3), because it says ““Treasury”... “or a Department””. The Treasury does not have to have the concurrence of a Department.

Mr Downie: I think you have to look, Mr President... At the end of the day, the Treasury has the overall responsibility for the finances and, under the present system that we have, the financial control has to be there. I think it was one of the points that Mr Lowey made, that with the devolving of more of the decision making to the Departments, yes, Treasury has to be kept in the loop, but it is the Government Departments that should be standing up in Tynwald and saying why they want to put these fees up.

The President: Why Treasury want to put them up; that is the point.

Mr Downie: It is a double-edged sword, really. They have to make the case to Treasury in the first place –

Mrs Christian: Treasury makes the case to itself.

Mr Downie: – but at the end of the day, there has to be some controlling factor in all this.

The President: Yes, but if the Department does not wish

to do it and the Treasury does, the Treasury still has the power to do it, and they should then, in those cases, make the case. Anyway, Hon. Members, I have made the point, I think.

The motion that I have to put to Council is that the Fees and Duties (Amendment) Bill be read for a third time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

BILLS FOR FIRST READING

Education (Miscellaneous Provisions) Bill First Reading approved

6. Mr Lowey to move:

That the Education (Miscellaneous Provisions) Bill be now read a first time.

The President: We go on to the Education (Miscellaneous Provisions) Bill, and this time it is in the hands of Mr Lowey.

Hon. Members, before inviting Mr Lowey to move the First Reading, I think you have all been noticed, have you not, that I did speak with Mr Lowey and it is his intention to, if possible, take the Second Reading as well this morning, but not go on to the clauses, taking the clauses and the Third Reading again at a following sitting, so that in fact we are moving in the order of taking First and Second today, and clauses and Third on another sitting in order to keep the progression moving in an orderly manner.

Mr Lowey.

Mr Lowey: Thank you, Mr President.

Could I, before doing that, just say to Hon. Members I will go through the statutory procedures of seeking your permission to see if we could suspend Standing Orders, because it is very much in your hands, and at that stage I would like to present the case why I wish to do the procedure in the manner as prescribed by Mr President.

Before introducing the First Reading of the Education (Miscellaneous Provisions) Bill, I would like to thank Hon. Members for attending the presentation by the Minister last October.

Turning now to the Bill, which will address the matter of the Isle of Man Board of Education and which will introduce certain measures which will enable improved safeguarding measures for the Island's young people. These measures have been appropriate due to changing circumstances since the enactment of the Education Act 2001. This Bill, Mr President, is very much... What do they say? What you see on the tin, on the label, you get in the tin. It is a truly miscellaneous Bill. In other words, it has got the first two clauses, which deal with the abolition of the old Board of Education, and all the rest are nine or ten separate items dealing with specifics.

In the first clause, the Bill seeks to abolish the Isle of Man Board of Education and replace it with an Education Council. Before reaching this conclusion, a review of the role of the Board of Education was carried out. Meetings were held with the current members of the Board of Education to obtain their views on their method of selection and what role they felt was appropriate for any new body. The Board

members agreed that the current practice of an election every five years was now inappropriate and a long-term alternative should be found. A number of options were considered by the Board members for the selection of the new body and its future functions.

As Hon. Members will remember, in order for the Department to continue to progress the review and the drafting of this Bill, the Department of Education promoted a Bill to extend the life of the old Board from 30th November 2007 to 1st June of this year. This was enacted as the Education (Amendment) Act 2007. Hon. Members may be interested to note that when there have been general elections for the Board of Education, the interest amongst members of the public has been poor. I use that adjective wisely. The last Board of Education general election was held in November 2002 and on that occasion there were eight uncontested seats of the seven... The percentage of turnout for the elections has been declining, and in some cases was in single figures. Details of the Board of Education elections since 1972 were included in the explanatory notes which Hon. Members have received. Most recently in 2007, and again in October of last year, the Department sought to fill casual vacancies in West Douglas and Ramsey. On both occasions, no candidates came forward and the Department was required to re-advertise the vacancies. On these occasions, when there was no requirement to face an election, the Department received eight applications for the seat in West Douglas and five applications for the seat in Ramsey. On both occasions, the Board of Education met to consider the candidates and was able to fill the vacancies.

During the period of consultation, those who responded expressed concern over the method of selection for the new Council. The Department considered these concerns and Members will see that the recommendation within the Bill is that the appointment to the Education Council will be made by the independent Appointments Commission so that the Department will have no direct say on who is going to be elected onto that Council. Once established, the Education Council will be consulted by the Department on educational matters and from their numbers the Department will draw members to represent the Department on governing bodies of schools and the Isle of Man College, and will also provide a body of people from which we will be able to draw members to sit on various committees and appeals panels. The committees are the awards to students and things like that.

Now, if I can come to clause 3, this Bill also empowers the Department to give directions where it considers a governing body, headteacher, or principal has acted unreasonably or contrary to the articles of government of a school or college; or where it is satisfied that a governing body, headteacher, or principal has failed to discharge its duties imposed by the Education Act 2001 or the articles of the governance of a school or college. The Education Act 1949 introduced a principle of school governance to Island schools. This principle was reaffirmed by the Education Act 2001. This system has resulted in areas of responsibilities and accountability being divided between the Department, the headteacher or principal, and the governing body. The Department believes that there is a need for machinery to ensure that the governors and the headteachers act reasonably and in accordance with their legal duties. This clause will establish, within our primary legislation, a power for the Department to give a direction to the governing body or headteacher if they act contrary to the rules.

Clause 4, the education of children with special needs, is an area where the Department has sought to ensure, through its policy of inclusion, that those young people obtain the most appropriate education for their needs. In the Education Act 2001, provision was made for the assessment of special educational needs when requested by the parent. It also enabled the headteacher to refuse admission to a child with special educational needs if they were of the opinion that those needs could not be met within their school. This has, on occasions, resulted in difficulties and delays in the placement of children. The Department feels it is appropriate to extend the provision made under the Education Act 2001 for the assessment of children and ensures a school cannot refuse admission to a child purely on the grounds of their special educational needs without a certificate from the Department clearly stating that the school cannot cope with them within their existing resources. Once this assessment has been made, the Department, together with the school, will be able to examine more carefully whether the child's needs can be met within the existing resources, or whether additional resources or alternative placement would be appropriate for the child. Hon. Members, this clause extends the right of handicapped children to an education system. We do a good service now; this will enhance that.

Clause 5: the Bill will require the parents of a child who is of compulsory school age, and who is not a registered pupil in a state school, to notify the Department of the arrangements that are being made for the child's education. The background to including this clause within the Bill is that, ever since compulsory school education began, there has been a duty on the education authority, now the Department of Education, to ensure that children of school age are being educated.

Today, parents have the right, within the Education Act 2001, to opt out of the state system. It is not the Department's intention to remove that right, as we recognise the parents' right to educate their child otherwise, but in opting out of the system, they must ensure they cause the child to receive suitable education, either by regular attendance at school or otherwise. Parents who opt out of the state system are required to ensure that their child receives an efficient, full-time education, suitable to the child's age, ability and aptitude and to any special educational needs which they may have. This is usually accomplished by sending a child to an independent school as a day or boarding pupil, or by educating them at home.

Again, the Department has no intention to interfere with this fundamental curricular right. However, the Department, at present, has no accurate idea of the number of children on the Island who are being educated outside the state school system. This information is required for a number of reasons: firstly, it would enable us to make more accurate projections regarding the number of applications to be received for financial support for further or higher education; and it will enable the Department to discharge its existing statutory duties under section 25 of the Education Act, where it is required to intervene when it has reason to believe that parents are not ensuring that their children are receiving suitable education. How can we do that if we do not know where they are or how they are being educated?

The difficulty that the Department has is that it does not have the accurate records to indicate to it which children resident on the Island are being educated at home or at an independent school. In bringing forward this clause – which was amended in another place – within the Bill, the

Department requires only basic information to be provided which will be limited to the name and address of the parent, the child, the age of the child and whether the child is at an independent school, and if so, the identity of the school, and if not, the name and address of the person providing the education in the case of those being educated at home. The Department has powers, within section 25 of the Education Act 2001, to issue a school attendance notice to parents, but this is a more formal method and requires the Department to bring the request for a school attendance order before the courts. Our reason for including this within this Bill is to enable the Department to carry out their statutory duty.

Clause 6, Mr President. The Department has noticed an increase in recent years in the number of unauthorised absences, as well as of the number of children who either arrive late or attend when the register is taken but then fail to attend classes for the remainder of the day. The Department, through this Bill, seeks to introduce additional measures to improve the attendance of pupils at school. At the current time, the Department is monitoring the attendance of over 300 pupils whose attendance causes concern. That is a large number. The schools, the Department of Education liaison officers, and in some cases other Government Departments such as Social Services, the Police and Youth Justice Teams, become involved. However, there are occasions when, despite all the interventions which are put into individual cases, the attendance continues to be at an unacceptable level.

At the present time, the Department's only option is to summon the parents of the pupil to appear before the courts, where the penalty of up to a £1,000 fine can be imposed. But the Department also has the power to take a young person to court if they feel that they are mature enough and it is evident from the work that has been carried out that the parents have done all within their powers to ensure their child's regular attendance. In these cases, the Department will seek an education supervision order from the Juvenile Court.

The clause introduces three new measures which we hope will improve attendance of pupils at schools. It seems strange that the first one is to introduce a power to the Department to issue a fixed-penalty notice. We are of the opinion that in some cases it would be more appropriate – and experience in the UK has proved that they do work occasionally – than proceeding with prosecution, which is the only sanction, as I said, suitably and currently available, and impacts on the family from both the experience of appearing in court and the costs involved.

The second measure is to include the court to order the parents of a child to attend counselling and parenting classes. At the present time, parents are recommended to attend these as a way of helping the parent to develop strategies for getting their child into school, but we cannot require them to do so and neither can the court. Research has shown elsewhere that when parents have attended such classes there has been a marked improvement in attendances.

The final measure is to give power to a police officer, should they see a student who is truanting from school in the street, to remove them from the street back to the school. At present, they can and do speak to them, taking their details, but they have no statutory power to remove them and take them back to the school unless they feel they are at serious risk.

Hon. Members, it is a very last resort that the Department take parents to court, but it is important at times. We want to counsel them first, give them a sharp lesson maybe with

a fixed-penalty notice as another alternative, and the Police should have the ability, if they think there is a child loose on the streets... They should be able to bring them back during school time to the schools. I think that would be helpful.

Clause 7: within the Education Act 2001, power is given to schools, through their articles of governance, to impose certain penalties for misbehaviour, and included within the list of 22 penalties which the schools can do is that of detention. The Department has received legal advice, following an incident at one of the schools, that the Department needed to enable a school to notify parents of the intention to detain their child after normal school hours, otherwise the detention without the parents' consent could constitute unlawful imprisonment and enable the parent to sue the teacher or the headteacher on behalf of the child. The Bill will therefore give the school the authority to detain a pupil at the school, providing the parents have been given written notice 24 hours ahead of the proposed detention. In giving this advanced notice, it will enable the parent, if they feel the detention is unjustified, to have the opportunity to contact the school, meeting with the teacher, headteacher or a member of the senior management team, in order to discuss the proposed punishment.

Clause 8 deals... It is a fact of life, but unfortunately sometimes pupils' behaviour towards staff and fellow students is such that the school is left with no alternative but to suspend them for a period of time. During the course of the suspension, parents and the students are notified that they must not attend school. However, it has been found on a number of occasions that the young people, whilst suspended, have returned to their school, and on some occasions have caused major disruptions. Currently, the Education Act 2001, section 21, makes it an offence for a person to be on school or college premises after being required to leave because their presence is causing a major disruption. However, this section cannot apply at present to a registered pupil and therefore the proposed clause will remove that anomaly and allow the school to have suspended pupils removed.

Clause 9 deals with the position of searching and restraining of pupils. This has, for a number of years, been giving the Department, officers and schools – all concerned – concern. At present, there is a possibility that if a member of staff wishes to restrain a child, where they feel the child is going to cause harm to themselves or another pupil, they could be charged with assault. A recent Act of the UK Parliament has given teachers in England and Wales a defence in law, in certain circumstances, and it is considered appropriate that teachers and staff in our schools are afforded the same protection.

This Bill also gives power to confiscate prohibited items – for example, drugs, knives, alcohol, and there are others – and the Bill deals with the method of disposal of these confiscated items. The Department also feels that it is appropriate to enable schools to carry out basic searches of pupils and of their belongings for weapons or items which could be used to cause harm to either the pupil or to others. Should this clause be enacted, the Department intends to introduce a detailed policy for schools and colleges, indicating how searches should be carried out and who should be in attendance. For example, all searches should be carried out by two members of staff, one of whom must be the same sex as the person being searched, and searches will not include the removal of clothing. In respect of the restraint of pupils, the Department will continue to train its staff in appropriate methods of

restraint and de-escalation techniques.

Clause 10: the Bill will make it unlawful to administer corporal punishment to a minor at any school or place of education on the Island. Currently, the position is that the Education Act 2001 prohibits the corporal punishment of a pupil at a provided or maintained school. This prohibition does not apply to independent schools on the Island. Teachers at King William's College could, if given authority by the child's parents, administer corporal punishment as a reasonable chastisement.

During July 2008, a delegation from the United Kingdom was questioned by the United Nations Human Rights Committee, which monitors the implementation of the United Nations International Convention of Civil and Political Rights. Attention was drawn to the fact that in some Crown dependencies corporal punishment was not prohibited in all schools, and in the case of the Isle of Man they acknowledged that in state schools it had been prohibited but that there are independent schools and other educational establishments that were not. Following discussions with the trustees of King William's College, it was felt appropriate by the Department to include within the Bill a prohibition of the use of corporal punishment in every school. Members also will be interested to know that King William's College has not used corporal punishment for some very considerable length of time.

Clause 11: one of the major changes following the introduction of the Education Act was the Department's Regulations concerning the employment of children. These Regulations make considerable changes to the old byelaws governing the employment of children. It introduced a much more streamlined and less bureaucratic system whereby children could obtain employment within certain hours and undertake certain duties whilst still at school. The Regulations which we now operate in the Island are the envy of other local education authorities in England and Wales, and in fact at a national conference recently of all local education authorities, officers of the Department were asked to give a keynote speech outlining the developments on the Island, and many of the local authorities wished that they too could have had the same Regulations to replace their current regulations which, in many cases, date back to 1935.

However, after operating the Regulations for the last five years, the Department considers that it may be appropriate to modify the primary legislation slightly to include a requirement for employers, because we do talk to the employers and this is one of those where we have spoken with the employers and, at their request – not their request, but their suggestion... It is a way of enhancing an already good system. This will include a requirement for employers to notify the Department of the commencement of any child's employment with them. Currently, the Department's officers pay visits to all businesses on the Island to establish whether children are employed. The introduction of this method would give the Department a statutory means of ascertaining the extent of children's employment on the Island. A clearer picture of this may be required in the future and therefore we would wish to include this within the Bill.

Clause 12: in September, Hon. Members, the Department opened a brand new school building in Ramsey to replace the former Albert Road Junior School. It was clear to the world and all concerned that Scoill Ree Gorree was a replacement for Albert Road, and it would have been inappropriate to call the new building 'Albert Road' when in fact it was not located there. Therefore, the school was renamed Scoill Ree

Gorree. It seems reasonable to me, even now.

The Education Act 2001 provides a legal procedure for the closure of a school and the establishment of a new school. This procedure requires publication of a notice in the press, giving members of the public the right to object to the closure of the school or the establishment of a new one. Clearly, Hon. Members would agree that it would have been inappropriate to go through this procedure as, in practice, the Department was neither closing a school permanently nor establishing a new one, but merely replacing an ageing building with a state-of-the-art facility for the young people of Ramsey. However, in order to legally establish Scoill Ree Gorree as a provided primary school, the inclusion of this clause within the Bill will rectify the anomaly that we have committed.

Clause 13 is the short title.

Mr President, the Education (Miscellaneous Provisions) Bill has been brought forward by the Department to introduce measures to address what are viewed by the Department, in the light of our experiences, as omissions or deficiency in the existing legislation, and to provide additional safeguards regarding the welfare and general wellbeing of the children of the Island.

I beg to move the First Reading of the Bill.

The President: Mr Butt.

Mr Butt: Yes, Mr President, I beg to second and welcome this Bill. Most of the clauses... It seems to be a very practical and sensible, pragmatic Bill. It looks as if somebody has sat down and thought, 'What are our problems, and how can we sort them out?' and they seem to have done so with lots of the clauses.

There will, no doubt, be controversy over some of the clauses, particularly the replacement of the Board of Education, but it mostly is a Bill which gives powers to the Department, gives it lots of sticks rather than carrots, where the only carrot is the removal of the cane from them – the children at King William's College – by removing the stick, in effect. Yes, the stick, or the powers given to the Department, should help with truancy and attendance, to hold a headmaster to account in his school, and the Police have powers to detain, the school has powers to search. I suspect these are things which have been long sought after by teachers for many years.

I welcome the reinforcement of the special needs children being given extra leeway, in terms of whether they can be admitted or not. I do have some concerns over the use of fixed penalties to try to deal with the truancy problem or absence problem. I would be interested to know how that can be justified and what the UK experience is, because I suspect there is a more underlying problem that needs to be dealt with, which fixed penalties cannot actually deal with.

I would support this Bill and second it.

The President: Mr Callister.

Mr Callister: Thank you, Mr President.

It is an interesting Bill and it is a sort of '57 varieties' Bill here.

Mr Lowey: It is.

Mr Callister: I can see why it is in this one, because the Department is trying to deal with matters that have really

cropped up over a period of years in some of these areas, but I just wonder... I think everyone accepts, including the Board, that the Board of Education had done its time and it really was time for it to go, but we are now putting in an Education Council and I wonder to what extent that will be a like-for-like exchange, because if there were so many vacancies not filled, or not contested at the last Board election, there is obviously a very limited pool of people who will be interested in being part of an Education Council.

It also says, in schedule 2, that the Council will consist of not more than 20 persons, but it does not define a minimum number, such as 'not less than...', so presumably, you could have three people on this Council, unless it is in some way defined.

I would also be interested to know who the members of the Appointments Commission are.

Mr Downie: The Chief Minister.

Mr Callister: I am sure they are a very good body to deal with appointments, but I do not know who they are.

I wonder, will there be any financial savings to the Department in the change from the Board to the Education Council, and has that been considered?

The 300 pupils regularly absconding from school is a shocking figure for the Isle of Man. It is a small percentage, perhaps, in relation to the total number of pupils, but nevertheless, 300 truants is quite astonishing. I was amazed to hear that. But I am not either convinced that fixed-penalty notices are going to help the situation. I think that is something that will get a lot of discussion, probably.

On offensive weapons, which are actually defined on page 12, it just shows, to me, how sad it is that the world has changed so much, because when I went to school we always had an offensive weapon with us: our pocket knife.

Mr Downie: Yes, still got mine.

Mr Callister: We would not go anywhere without our pocket knives in those days, but that, of course, is eliminated.

I hesitate to mention American colleges. We do not use the word 'firearm', but presumably it is covered under the description 'any article made or adapted for use for causing injury to a person'. So it rules out catapults as well. We used to have those at school, I do remember.

Mr Lowey: Blowpipes and hockey sticks.

Mr Callister: Nevertheless, the fixed penalty is the one that I think I will be querying.

It was good to hear the news about King William's College as well – the fact that corporal punishment will not be allowed there – but, as I understand it, it has not been used for a long time at King William's College.

I have always assumed – and I have not checked this, so someone will advise me – that the age of a minor, or the age at which you cease to be a minor, is 18, but I am not entirely clear on that. If it is 18, and there is someone of 19 misbehaving, then corporal punishment could be applied to them, certainly under this clause.

Apart from that, I do have a number of queries on specific clauses, but I will leave that until the clauses stage, Mr President.

The President: Mr Downie.

Mr Downie: Yes, thank you, Mr President.

In the main, I am supportive of the Bill, but I just want to make comment on one or two points. The replacement of the Board of Education by the Education Council... I think we need to be careful that that does not just become a system of nodding dogs, to use somebody else's terminology. You really need someone in there who will provide some checks and balances within the system. We all know why the old system failed, and in my opinion people just did not want to stand for election and trudge round in a similar vein that our colleagues in the other place have to do. The remuneration was not there, for a start, the kudos was not there, and I seem to feel that members of the old Board, whom I spoke to, felt that they, in the last several years, have been usurped to some extent and they were not seen to be valued. So I think, with the new wave, it is important that the Education Council has people in there of the stature to challenge the present system, and, as I say, have the right amount of checks and balances.

The Appointments Commission, as we all know, comes under the auspices of the Council of Ministers, and I would assume what will happen is they will put an advert in the newspaper and we will probably be inundated with people who want to serve on the Education Council, but would not want to take out a nomination paper under the old system and go and talk to people on the doorstep. That is, as we say, progress.

Moving on to clause 5, no figure is currently available of children being educated at home. This is a new clause, and whilst I think it is important that the Education Department knows how many people are being provided for at home, or have opted out, as it were, I think it is also equally important, from the Department's perspective, that if they are going to allocate money to these children, people just, in my view, should not be able to opt out and opt in. You are either in the system... There is a budget allowed for the progress and education of children, and I think it should be wrong that some individual has half a dozen kids at home and then they decide, when they become 13, 14, 15, that they are all going to go off to Harvard, or some other international centre, at the taxpayer's expense. I think there has to be provision within the regulations for there to be a regular dialogue, to have them independently assessed from time to time, and an undertaking given that they are receiving a proper education. Saying that though, on the other hand, if you look at the statistics in the UK and in Europe, where people are educated at home, you generally find that there are much higher standards achieved, but that is probably down to the fact that they are virtually one to one, or two to one. So a little bit of concern there.

Clause 6: like my colleague, Mr Callister, I was absolutely mortified to hear that there are around 300 children regularly disappearing from school and being monitored. The question I would raise is what happened to the old truancy officer? They used to be regularly in Douglas here, even up to a few years ago – someone going round who would go and talk to the parents and take this matter in hand – but it is as if there are groups of children now who just seem to be, to use the terminology, 'at large', and this is why I think that we are seeing vandalism on the increase again and antisocial behaviour. Gymnasium's Football Club was a recent example, and I think we owe it to these children to get a grip and make sure that they are put on the proper track.

I feel sorry for the Police in all this, because this part of the legislation puts the onus on them to detain them, round them up, do whatever, and take it from me, a lot of policemen I have spoken to are very disgusted at the behaviour of some – not all, some – young people, particularly the rebellious ones, and often, if there are young girls present, a police officer on his own would in no way go near them, because they would be making allegations about him – he touched them or interfered with them – so I would suggest that every time a situation develops you are going to need at least two police officers, a male and a female, and then they are going to have to be transported off somewhere.

At the end of the day, there just does not seem to be a remedy, unless, when the Department is talking about fixed penalties and so on, the parents have to be brought in to this a lot more often, and maybe the Department should be looking at putting the charge on the parents, because if you start to hit them in the pocket they will maybe think twice about what their children are getting up to. I would have no qualms, personally. If children were continually not going to school, or going missing or causing a problem within the system, we should be questioning things like family allowance, whether that should be held or go towards other areas. I know it sounds a bit draconian, but you are going to have to deal with this problem some other way, because it is obvious to me, and a lot of other people, that the present system just is not working. It is alright giving them their liberty and giving them freedom and so on, but there is so much abuse within the system that there is a carrot but there is no stick. We cannot use the stick any more, so we have got to devise something else to try and deal with the situation.

Moving on to clause 9 and things children bring to school, what I do not want to see in the Isle of Man is children queuing up in the morning, like going through airport security, and Group 4 or Securicor there and the metal detectors. Sadly, that is a fact in other jurisdictions. Whereas there have to be some provisions to make sure that the unruly ones or the naughty ones do not bring these items into school, I think a heightening of the awareness is probably much better. But there again, schools are becoming dangerous places – teachers are being assaulted – and when we are keeping, I will not say children as such, but we are keeping people on until they are 18 or 19 now, my view has always been that if a person is unruly they are better off going out and being unruly in the workplace because their friends and people they work with will soon sort them out and they will soon find out that they have got to grow up and act responsibly.

Moving on to clause 11, which deals with the powers for young people to be employed, I think the current legislation that the Department has has actually worked very well, but what we are seeing is that, where it was common a few years ago for young people to get some work experience, understand what money was all about and put a bit away for a holiday, we do not see paper boys, we do not see young boys on milk rounds any more. The last bastion, in my view, and it heartens me, is when you go to an agricultural show, or you might go to a farm an odd time, and they still have young people there who are very, very keen to take an active role. Maybe the Isle of Man is different, but I think we should be encouraging more of that and not wrapping them up in cotton wool. I think the Department should be looking at, as some sort of a priority, if they want to work... The days are gone when people abused children by overworking them and all the rest of it, and I think it is a good opportunity to further

develop this legislation that the Department does have.

I am pleased to see that the other establishments on the Isle of Man are not allowed to use the cane, including King William's College, but the provisions do exist if they ever want to return to it.

On a personal matter, I actually supported corporal punishment in school; I think it was no bad thing. I am glad to see that the rest of the Crown dependencies still have it. It is still alive and well in Gibraltar and places like that, but I doubt whether they are putting them over the barrel of a cannon, which they used to do 150 years ago.

I am supportive of the Bill and I think the Department have gone the right way about bringing all these things together and moving forward.

The President: Mr Turner, Hon. Member.

Mr Turner: Thank you, Mr President.

We have heard the figure of the 300 pupils regularly being out of school and I cannot help wondering... We are talking about vandalism, kids running amok, teachers getting assaulted, and yet we have taken away corporal punishment. I just find that a sad day, really, because I do not think there is any incentive for youngsters to behave themselves.

I know, from my time at King William's College, the cane was not particularly handed out that often, but certainly the gym shoe was. It was a deterrent and it was the fine line of whether you were going to be a bit mischievous or whether you were going to toe the line, and I really think it is a sad day that this has been formally removed. I would certainly have liked to have seen it retained, even if it was not utilised on a regular basis. I think this is the real crux of the problem: that we have youngsters who, some of them, are out of control; the parents cannot control them, so we are going to hit the parents in the pocket. Quite often, the parents are victims.

I have been watching a very interesting series on satellite where some of these parents have sent their children off to the boot camp in America and they have been... There has not been corporal punishment dished out, but there has certainly been a very hard regime and some of these youngsters who were, you could see, completely out of control in their home life, were really brought down to size and the majority of them went back better people. I do think that is a great shame.

Moving on to the other principles of the Bill, I too feel that the Board of Education has run its course, and I hope that the establishment of the Council, as has been said by, I think, Mr Downie, will encourage people who are interested to come forward and sit on that Council. I hope that, when appointing these people, they draw them from a mix of age and ability, and hopefully we will get a good range of applicants. I hope that the publicity surrounding it is good enough and not just a small ad shoved at the back of the *Courier*, where only people who may be interested in public notices are going to read it, because I think we may miss out on some of the real gems out there who could give a lot to this Education Council. So I hope the Department will do a suitable promotion of this when it gets going.

Like Mr Butt, I am very pleased to hear about the extra provision that is made for special needs. I do have a question for the mover: are there any cases where a child has been unable to be accommodated in an Isle of Man school, and will this help?

The other concern I have is with the unauthorised absence,

and I know this is something I have spoken to the Department about recently. We are hearing regularly that family life is being eroded and families do not get to spend time together, and one of my concerns is that the family holiday is a time when families do get to spend uninterrupted time together. I just wondered, about the unauthorised absence, that some parents will choose to take time, to go on holiday, which encroaches into term time. I know, from trying to book our family holiday this year, that the difference of moving the trip two weeks increased the bill into the realm of thousands, so if you wanted to be really picky, it would be cheaper to pay a £50 fixed penalty and say, 'We're going,' than to incur the extra cost. I do feel that there should be a mechanism where parents can discuss time out of school with the Department and ensure that, in certain cases, taking into account the year that the child is in and whether it is an important academic year, the Department and the schools should be able to assess and take into account these things without being draconian.

With regard to the fixed-penalty system, I just wonder as well, if a parent has delivered a child to the school and the child then absconds, whether the school would, in effect, be the phrase *in loco parentis*, and would the school be the body who will get the fixed penalty? Obviously the parents could argue that they have delivered the child, they have done their statutory duty: 'My child was in your hands and you have let them abscond.' We have had a case recently where a child has walked out of school.

It was warming to know though, on another side of this, that... Recently, I presented an award on behalf of DTI to Andreas School. The school doors were locked and you had to buzz in, and that obviously is an important security mechanism, although that was a primary school and I suspect that some of the more unruly youngsters, on the whole – I am not saying specifically, but possibly – are in the secondary school when they become a little bit more opinionated and so forth. So I would like to know about the situation with the school, whether they are responsible for that.

With regard to clause 9 – the insertion of section 21A – it talks about a pupil at a school, and I just wonder does that include college, day release from schools attending college, which is a different... I do not know whether it is classed legally as a different institution, or what. Maybe we could have a bit of light on that to make sure it catches all of that.

I am pleased to hear about the cracking down on alcohol, because obviously drugs and alcohol in schools is something that everybody is concerned about, and that is something that the schools need to have the relevant powers to detain such drugs, alcohol, offensive weapons and so forth, although we did build up a nice picture of Mr Callister's days at school and he did not go so far as to say whether he had been on the receiving end of six of the best.

Mr Callister: Only one of the best.

Mr Turner: The issue with regard to searching... It says in here that:

'A girl may not be searched under subsection (1) except by a woman.'

I wondered whether that was the same for a male pupil, and if so, what the reason for that is and what the criteria would be. Also, what if there was a refusal to be searched?

What is the provision for a situation where the pupil may refuse?

Finally, I have mentioned the recruitment of members of the Council and I wish the Department success with this. I think that, whilst I have issues with certain parts of this Bill, the whole principle of what it is trying to achieve, I fully support.

The President: Mrs Christian.

Mrs Christian: Thank you, Mr President.

I think that clause 1 and schedule 1 deal with the changing political dimensions in education, don't they? I think it has been clear since we have had a ministerial system that there has been a tension between departmental responsibilities and the Board, and there has been a change taking place over a number of years. It is perhaps because it is known that there is going to be a change that there has been a reluctance for people to stand for election; I do not know. On the other hand, it may be, as has been indicated by some speakers and by the information given to us, that although in one constituency where there was not an election, when names were called for, a great number came forward, so there may be that fear of elections.

The Department, I think, has valued the contribution of members of the Board over the years, and when you look at what the Board did, they did a huge amount of work, which is still there to be done by somebody in some way or other, and to that extent it is useful, I think, that they are bringing forward the proposal for an Education Council whose members will still participate, I presume, on the Boards of Governors and so on, as indicated here in clause 2. So I will support that element of the Bill.

I am not going to go through clause by clause at this point, Mr President, save to ask one or two questions about specific ones, perhaps for answer maybe when we come to the clauses.

The issue of knowing where children are if they are not in our school system I think is very important. I know that there was a degree of concern by people who educate their children at home – a little bit of high dudgeon, if you like – and, to a degree, I can understand that they feel that they are doing the best for their children, but we are aware that in other places – and goodness knows it could happen here too – children can fall off the radar of everybody, and I think that having this provision – at least they have to be registered with the Department – is a good move. I am not quite sure what it does to enable the Department to check on the standards that are being provided, and I am sure that is an issue that the Department will have to work through with these home educators in due course, but at least it is a first step in the right direction.

I wonder, when we come to the clauses on this issue of funding for higher education, if the mover would be able to give us a rough idea of how many children who are educated out of the state system actually apply for fees assistance in higher education, and what percentage this is of the applications that the Department deals with.

Like the Hon. Members who have spoken before me, 300 pupils out of school is of concern, and perhaps I will explore that a bit further when we come to it.

I am not quite sure though about fines. Fines might work in certain circumstances. Sometimes they just impose another burden on a family that might be struggling, and I am sure

that the Department would exercise its judgement in the use of these particular penalties. I do not know what the answers are. I think that the Department is being experimental here, and maybe there is some evidence from other places that this works, and if what we do now is not working, then it is not unreasonable to try something different. I do think that if the Police can return children to school, that might be very beneficial, although I am not quite sure whether they will regard it as a good use of their time. They might, in the overall picture of things, given that we now have interdepartmental working on a much stronger basis.

The issue of corporal punishment is an interesting one. This covers corporal punishment of a minor, and the Hon. Member, Mr Callister, has raised the position of pupils who are 18 or over. I can only imagine that they, as adults, could take a case for assault –

Mr Lowey: That is right, common law, you are not allowed to.

Mrs Christian: – if in fact someone tried to apply corporal punishment in those circumstances. So I guess that they have a law that protects them in any case.

I note that this covers pupils in any school provided by the Department, or controlled by the Department. What it does not cover is corporal punishment where education takes place at home, and I presume that if it is a parent they still have a power to use corporal punishment, but if they employ a teacher for the purpose of educating their children, presumably they authorise that person to apply corporal punishment, do they? I would like to know what the circumstances are for them.

I would endorse the view that jobs for young people are very valuable experience and more of them should try it.

Coming to the costs of the new structure, there is a note here that the savings on the elections will help to fund the Council. It does indicate that something like £10,000 per annum will be saved, so I just wonder how that actually reflects against current costs.

Generally speaking, I am supportive of the Bill and interested in the results of the consultation. It is interesting that a limited number of school governors actually responded to this.

The President: Hon. Member, Mr Waft.

Mr Waft: Thank you, Mr President. Just a few remarks.

With regard to the actual principal clause of the Bill, that is doing away with the Board of Education, I find it quite incongruous that we should be even thinking about doing away with the Board of Education. Alright, we save £50,000, but that will ultimately be lost in the payment of the Council. It is in an era where everybody is going through... everybody should be democratically elected... quite horrendous to appoint people, and here we are, the Department of Education. But if that is the way they want to go, I am sure there are special reasons for it, but it has not really been explained in this Bill, apart from some figures as to when they did have a reference, how many applied, and the fact that when nobody applies there is a rush of people to apply. That happens in every election, every sphere. As long as they can do away with going round knocking on the doors... You can see where they are coming from.

With regard to clause 4, which particularly concerned me, with regard to the special educational needs – as you can understand, where I come from – and the fact that the headmaster can decide, on reference to the Department, with regard to whether they cannot be reasonably provided at a school, the special educational needs. I just wonder, Mr President, who actually decides when these special needs are not provided to the extent necessary to provide for that particular child, and if it can be reasonably provided, finance should be there.

When we talk about inclusion, we perhaps talk about inclusion for some. It is a moot point here, but some of the things can be provided quite easily if the finance is available, and indeed the *will* to actually provide the facilities. We do pride ourselves on inclusion, and then we set criteria as to whether there is a problem here.

So I would not like to think that a headmaster on his own decides, because there is a problem, take the problem away. I am hopeful that is not the case and every child is included. The fact that they refer it to the Department, the Department then makes a decision, where the parents have a right to make representation, it nevertheless is an incestuous sort of appeal procedure where the Department decides and the Department decides. If I am wrong there, please tell me, but that is the way I think it does work.

Most of it I do not find any problem with. I do worry that sometimes we concern ourselves with things that are not really explained. When we say there are 300 children... Somebody said at least... Just what does this 300 mean? Does it mean 300 at this very time, or over a period of years, or what does that actually reflect? We are talking about children of the Isle of Man, and I think we should be very circumspect when we do put out figures like this.

With regard to corporal punishment and the public, private... bringing in the private schools, and this has been... I should not make a case of that because the private schools, I am sure, have not administered any corporal punishment any later than our own schools have done so.

Just quickly going on to clause 12, when we have talked about Albert Road Junior School, it is impossible to call it Albert Road Junior School because it is not in Albert Road. Can we take from that that Bemahague School will be called Bemahague School because it is not St Ninian's? (*Laughter*) On that I rest my case.

Mr Lowey: Good lad!

The President: Hon. Member, Mr Crowe.

Mr Crowe: Thank you, Mr President.

I will be supporting this Bill because, as it says on the tin, it is a Miscellaneous Provisions Bill. It is a sweeping-up exercise. I did have the pleasure of being a Member of the Department of Education when you, sir, Mr President, were Minister for Education. I enjoyed my time there with you and with the Department. I learned a lot. What impressed me was that 99 per cent of the children attend school, they work hard, they participate in sport, they go on to further education, they go into the job market here and overseas and the UK and they are a credit to the Isle of Man (**A Member:** Hear, hear.) and I would compliment the education system that we have.

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

Mr Lowey: Yes, thank you, Mr President.

Can I thank Hon. Members for their contributions. It is refreshing for me and I am sure for the Department.

Many Members have recited the same sort of concerns and trials and tribulations. The Bill has been designed after consulting and listening to lots of people. It may interest people... If I can take first of all the abolition of the Board, it was, as Mrs Christian said, almost inevitable. When we had ministerial Government, there was a special dispensation left for the Board of Education, but there is no doubt at all it has withered on the vine over the years. The proposal to finally abolish it actually came – it may surprise Mr Downie – from a constituent of his who was a Member of this House of Keys, and when he lost his seat he became a member of the Board of Education, our great friend, the late Manx Radio man.

Mr Crowe: Geoff Cannell.

Mr Lowey: Mr Cannell. He chaired a committee of the Board which actually looked at the problem and said, 'This is what we recommend,' and so it actually came from within the existing Board at that particular time. So again it is about... I want to say... running the schools in the Isle of Man is a particularly time-consuming job. I do not think, if you had 10 members of the Board, we would have enough manpower to man all the committees and schools and the rest, so we do intend.

A lot of the concerns by the school governors, when we put out the discussion, was a fear that the Minister of the day would be able to appoint... and I will use the word 'cronism' in other words, appoint their people into places or positions. To overcome that, we said, 'No, what we will do is hand it over to the Commission that does the appointments for Government,' an independent body which is already set up.

I can tell you at the moment that the Appointments Commission appoints people to the tourist premises, the Income Tax Commissioners, the Independent Schools Tribunal, the Isle of Man Copyright, the Isle of Man Data, the Isle of Man Rent and Rating Establishment Appeals. It goes on and on and on. They already have a running track record of appointments to Government Departments. This will be doing just that.

That really comes to the point that Mr Turner made: will the Department do it? I am sure the Department will highlight the fact that there is a Commission appointing and anybody with interest in it will do it, but we cannot, on the one hand, promote people, but I agree with him that we should have a mix, and I am sure the Commission, when they do that, will take that into account. Young, old, gender – you name it, let us get a real selection. But it takes an amazing number of people.

Some Hon. Members have said, 'Just put a number of 20 in.' It is a maximum, not a minimum. I accept Mr Callister's criticism that we do not know exactly how many. We do not think it will take more than 20, but we will have a reasonable amount of appointments to fill the jobs and the roles, and that will increase or decrease as the time may go on. So I think there is flexibility built into that.

I just want to say that the running costs... I think most of us have accepted that the Board of Education has had its day and lived and done a very good job in its time. It really did do quite a remarkable job. It has now changed and we are going to appoint a new Commission to do a lot of the work

that the old Board used to do. But the Board of Education has no real power, really, since 1987. Its functions and authority are those delegated by the Department by means of regulation, so it has only operated on a grace and favour really since 1987, so let us not pretend that somehow we are taking all the powers away from them. There has been a long time in its demise.

The election part: you can either elect or you can appoint. I think the time has come now where we think we can appoint. We do not have elections to all those other bodies that I have said, and I have read out the list. There has to be a formula independent of the Minister, and I think we have found that formula. Most of the governors who did object, when that was put to them, accepted. We have gone back and spoken to the people who we have consulted and most of them accept now that that is the formula and the way forward.

Power to give direction. They would wish to use this power when it is clear that the school governors and headteachers are acting contrary to the policies of the direction of the Department. I can give you an example. There was one occasion where the school governors are told the term times and when they sit. The headteacher wanted to finish a day early, and we gave a direction that no, that was not to happen, it was... and the teacher, acting in their capacity of headteacher, closed the school early and the Board had no authority on which to say, 'Hang on, that's wrong.' That cannot be right. This power in clause 3 will be used sparingly, obviously, as a last resort, but if needs be, I think there has to be the ability to give a direction from the centre on the odd occasion that it is found wanting.

On clause 4, which is the assessment of special educational needs, and this has been touched on by many Members, in particular Mr Waft, and I am not surprised with his connections with... The whole aim of this is inclusion. I have been very, very impressed in my travels round the schools – and we finished our final high school last week – with the way in which we have included – I use the word 'handicapped' but it is the wrong word – people with special needs and how they have been assimilated into the schools with amazing success. From the smallest to the seniors, they have been a transformation to me, and seeing them in position and the way the schools have coped, the way they are included in the children's playing arrangements, the way that they are part of the school, I think it is an education for the children as well as those outside. I think the education authority are to be applauded with the special needs.

This particular clause just gives an added impetus that no matter... Let me give you an example. If the school has got no lifts and we have to have children up on the top floor, and headteachers have said, 'Look, it is physically impossible for the children to be part of the full school,' now we say, before the headteacher can say, 'No, we don't want that child in our school because of the disability,' we have the right to talk with the headmaster and say, 'Look, we can accommodate by putting a mobile classroom in or other provisions.' In other words, we will do everything we can to make sure...

If there is a rare occasion where we cannot, we will make better provision for that child in another establishment. This is not taking anything away from the inclusion. It is actually enhancing. So to Mr Waft's position and other Members who have raised this matter, it is a strengthening of the rights of the families and those children concerned.

Can I go to clause 5... and I will spell these out in more detail when we come to the clauses, so if I do not cover

everybody's views, I am sure you will be able to have another go at me when we deal with the clauses. The Department's legal opinion, provided by a barrister specialising in education and Human Rights law, indicated that they are of the opinion that the proposals are Human Rights compliant and that any challenge could be defended. The clause is not just about home-educated children, but all children not in state schools.

Again, can I come back to about school educators. My Minister, as I said at the start, has been a listening Minister, and it does not matter when the people raise points – legitimate points – she is prepared to listen to them. That is why we amended this Bill in another place to meet the concerns, albeit perceived concerns of those people but they were real to those people, and my Minister has been able to accommodate it.

Mark Overall QC made the point in the Commission of Inquiry that a fundamental part of the Department of Education's role is to ensure that they know what educational provision is offered to and accepted or rejected by each school, by each child on the Island. That was at the Commission of Inquiry, so we really do, and our Minister now has a new role and title. She is now the Minister for Education and the Child, so it is an embracing one.

We need to know where the children are and where they are going to be educated, and I will spell that out in more detail when we come to the clause, but the particular reason why we were able to amend it is the fact that we listened to what people's concerns were, and all of these clauses have been after listening to the teachers, after listening to the headteachers in particular, the teachers' unions, the people affected, and the school governors. So we are trying to respond in a positive and meaningful way.

Can I just touch on clause 6. The 300 children are currently being monitored. This involves meeting with parents, and I want to stress again, I think we can overlay the figures. As the Hon. Member, Mr Crowe, said, we have got 12,000-plus children going to school, the vast majority of whom are no problem at all. They are a credit to their families, a credit to their schools, a credit to themselves.

There is a small minority; there has always been a small minority. We all cast our minds back and look at our childhood through rose-tinted spectacles. I suppose I would have been on the suspect list, really. I took more than the odd day off to go ferreting and picking spuds and things like that. I broke all the rules – you bet I did, guilty as charged – but the reality is education in today's age is very, very important.

Three hundred children are currently being monitored. This involves meeting with parents, and the aim always of the Board is not to take parents to court at the first hurdle or the second hurdle. We try and talk things through. Courts are the last resort. There has been a period of at least 40 school days when the Department's staff will have been working very closely with the pupil and parents to try and resolve the situation.

Research has shown in England that parents have been helped by attending parenting classes. That is a new one. We could recommend that up to now. We are going to try and make that compulsory. In other words, you have got to attend counselling. That has proved its worth in the past; it has been proven in the United Kingdom, and therefore I do believe myself that we should try and get best practice. Like a magpie, let us take the best practices that are being successful.

I am told that, for example, on fixed penalties... Fixed penalties are a sharp, short lesson to somebody. You can go to court. We can say to them now, 'If you go to court and you are proven not to produce your children at school, you could be fined £1,000.' That usually makes people wake up, although a court... it is a maximum that they put in. Fixed penalties have been used in the United Kingdom now for, I think, three years, and they have had a remarkable success rate of between 35 per cent and 60 per cent. Of the cases where they have been applied, the resulting attendance of the children has been of that magnitude. So it is meaningful.

Should it be used in the Isle of Man? We do not know, but we think it should be there in case we need to use it in some cases. It will not be appropriate in every case, but it is another tool in the armoury that we should have.

Can I also go on to clause 7, which gives the start of the school year and the total number of 671 students have been punished by means of having to serve a detention. I have got to plead guilty to that as well, because I have been in detention at school. Now we have been told that we have to tell the parents, give 24 hours, if we are extending their school day by detaining them in school.

I think it is reasonable, I think it is the way we have to operate and that is the reason why, but 671, that does not mean... I am sure there must have been 671 in Castle Rushen when you and I, Mr President, were there, dealing with detentions. We can detain them during the dinner time and deprive them. There are a variety... There are 22 separate deterrents open to a school now of punishing children. That is the wrong word, 'punishing', but making children aware of their responsibilities.

Can I come to corporal punishment. I might as well deal with that now. I am totally dismayed at the youngest Member of this Council extolling the virtues of corporal punishment, I really am. I thought we had moved on, I really had. It does seem to me, in a world where every other country has abolished corporal punishment for children, that we should keep it in our institutions. (*Interjection by Mr Turner*) You cannot tell me that other schools in... the rest of the world are out of step and we are the only ones that are in step.

Mr Turner: Shootings, stabbings.

Mr Lowey: I am not a namby-pamby or a self... but the world has moved on.

Mr Turner: That is the problem.

Mr Lowey: We do not conform to our international obligations by allowing private schools to have education... The school has accepted it. I think we must move on. Those debates I think are long since gone. I really do believe it to be a non sequitur. I do not think it is on the table.

Can I just say that in clause 8... I have turned over too many pages, I am sorry. Somehow I have missed off some pages there, Mr President. Can I come to some of the comments that were made and raised by Hon. Members. I just want to touch on them briefly because... I had it here. I have got too many papers. If you will bear with me... Here we are. I do apologise to Hon. Members.

Holidays in term time, and I think that was Mr Turner too, if I remember rightly. We will not be using fixed penalties when parents take children on holiday, you will be pleased to know. That is not the remedy for that. That position is

reserved for later on and we are listening and we have given a year's breathing space and we are still continuing the dialogue. So that is for another day, but I am sure we will come up with the right answer – we will maybe compromise – and even the Hon. Member recognises that in exam years, it is important and so there we are.

Mr Waft: He is going to be missing next week.

Mr Lowey: Research has shown that students who take holidays during term time... Believe it or not, we can bring you proof that they are one or two grades lower at GCSE levels – people who take regular holidays in term time – and that is a measurable figure. So we are looking after the long-term interest of the child here.

Coming to searching, again Mr Turner raised a very interesting point: what if the pupil refuses? If they refuse, the school would have the right to call the Police, or for the parents, whichever, the teachers who were dealing with the position, would think or they get the parents. If not, if it was that violent, they would get the Police. So they would call them in to the position.

On the searching rights, I have to say it is sensitivities. If it is a girl, there has to be a lady to do it. I do not know the answer if it is not, but I am almost certain it is not. It can be, for the boys... We are less sensitive, I think is the truth of the matter.

Attendance officers... Mr Dibb. I am sorry, we really are going down Memory Lane, aren't we? But he was Mr Dibb.

Mr Callister: And Mr Lord.

Mr Lowey: And Mr Lord, yes. We still employ staff who go out to visit homes, chasing those who are not in school, and we already have joint patrols with the Police, for example, especially in town, the bulk of the people are anyway, but we do have joint things. Those people are still being employed. Those services are still being used, and they are the front line... but if we are dealing, operating with 300 individuals, children who are clocking in and then missing the lessons, that is a large amount. You would have to have an awful lot of officers to be dealing with over 300. But we do employ those officers. They still do an important job and they are our shock troops. They are the ones that we are still operating under.

Can I come back to the point of searching when you go into school. I think it was Mr Downie who mentioned whether we... When we go into school, do we then deal with every child who goes into school? No, we do not. We do not search every child who goes into school, but the realities of life are that children tell the teachers what is going on in the corridor – 'So-and-so has got something' – and then the teacher goes and investigates.

Who would be a teacher in this modern day and age? It is a sign of the times that we live in, and that is why one of the clauses that we are introducing gives a safeguard to teachers to be able to search, and that is right and proper. They should have that protection. Most parents believe that when they do send their children to school, the teachers act as parents *in absentia*, and I have forgotten the Latin explanation but they act... It has been used this morning, but I am sure Mr Turner will tell me what it is. But the answer is that most parents then expect the teacher to behave in a reasonable way. Most

teachers do, most pupils respond in a way.

Again, trying to stress to Hon. Members, the Bill is not the whim of the Department. It is after consulting. We have seen shortfalls, we want to improve the situation and I believe, by and large, we will do that with this particular Bill.

I am not going to go through every other detail. I would like to thank Members for their contribution.

As Hon. Members will already be aware, I have had in the Public Gallery Mr Gill, who is our legal draftsman for the Department, and any points that have been raised during the First Reading, I will certainly be able to respond to in detail at the clauses stage.

With that, Mr President, I would thank Members for their very wide searching review of this particular Bill, and I beg to move the First Reading.

The President: Hon. Members, the motion that I put to Council is that the Education (Miscellaneous Provisions) Bill be read for a first time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Education (Miscellaneous Provisions) Bill **Standing Order 4.3(2) suspended** **to take Second Reading**

The President: Mr Lowey.

Mr Lowey: Mr President, could I ask Hon. Members to suspend Standing Orders so that I can take the Second Reading? The reason is a simple one. I said my Minister has been very active in listening to concerns right the way through the process. We had a very good meeting with Members in the Barrool Suite last October. We have pursued this Bill as speedily as we could. Hon. Members will know that the abolition of the Board takes place on 31st May of this year.

If we take the normal course of three sittings to deal with the Bill – the First Reading, the Second Reading and clauses, and the Third Reading – intervening in that will be Tynwald, and that will take up the whole of February. We are informed that it could take 60 days when the Bill then goes for Royal signature down to the Ministry of Justice. It could; I am not saying it would, but it is not unusual for it to take two months. That would bring us to March, April. That would only leave May, four weeks, to do all the... That really is for an orderly transition from the old to the new, and the appointments would be a bit pressurised.

This way, at least we would save another two weeks. We would have six weeks at that end to do things in a more orderly way, and that is the reason why I am asking Council to take the unusual step of taking the First and Second Readings today.

I move:

that Standing Order 4.3(2) be suspended to enable the Second Reading to be taken at this sitting.

The President: Mr Callister, are you seconding, sir?

Mr Callister: Yes, I will second, sir, but one point: does that then mean that clauses and Third Reading will be taken together?

Mr Lowey: Yes.

The President: The proposal, Hon. Members, is that we suspend Standing Order 4.3(2) to enable us to take the Second Reading. I think you had been notified, and I indicated earlier that it was Mr Lowey's intention then to take the clauses and the Third Reading on the one day as well.

Hon. Members, those in favour of suspension of Standing Orders, please say aye; against, no. The ayes have it. So we will suspend the Standing Orders.

Education (Miscellaneous Provisions) Bill **Second Reading approved**

The President: Mr Lowey, I gave a fair amount of flexibility on the Reading the first time. Perhaps we could be very brief in this and get it over in, say, five minutes?

Mr Lowey: You would, sir. I –

The President: We will – you will. Second Reading then, Mr Lowey.

Mr Lowey: Thank you.

First of all, I thank Hon. Members for their patience, forbearance and tolerance. I appreciate it and the Department does.

The Education (Miscellaneous Provisions) Bill 2008, as the explanatory memorandum says, is promoted by the Department, deals with the abolition of the Isle of Man Board of Education and makes a number of amendments to the Education Act 2001, principally relating to the state education system, school attendance and school discipline.

Mr President, I am not going to go through all the clauses, but I will just say that clauses 1 and 2 deal with the abolition of the said Board and the creation, with schedules 1 and 2, of an Education Council which the Minister and the Department will consult on educational matters.

Clause 3 enables the Department to give directions to schools and colleges.

Clause 4 amends the provision relating to the education of children with special needs.

Clause 5 requires the parent of a child of compulsory school age, who is not registered in a state school, to notify the Department of the arrangements for that child's education.

Clause 6 enables the court to order a parent guilty of a truancy offence to attend for counselling, enables a fixed penalty to be imposed and allows the Police to remove a truant child from school to a designated premises.

Clause 7 authorises the detention of a pupil for misbehaviour, subject to restrictions.

Clause 8 makes it an offence for a suspended pupil to be on school premises until being required to leave.

Clause 9 gives teachers express powers to deal with misbehaviour, viz. to restrain unruly pupils.

Clause 10 makes it unlawful to administer corporal punishment to a minor at any school or other place of education. Just as a matter of fact, Mr Callister, if he is over 18, of course, he has the protection of the law which makes it illegal to inflict corporal punishment. So, that is the difference between 18- and 19-year-olds.

Clause 11 enables a regulation to require employers of children to notify the Department of such employment. Hon. Members, this is as a direct result, that particular clause, of talking with employers. Employers, instead of getting an annual visit, every employer, we will give them a card and they will send us the card when they employ somebody. We will still have spot checks. This is a request from the employers to speed the thing up.

To be fair to the employers of the Isle of Man, they want children where and when and how, and they want the same protection as we want. I think this is an admirable way of getting rid of the little bit of a layer of bureaucracy that we already have.

Mr President, the Bill on the name of the school: I am not going to argue on that. All I am going to say is it is right that we should remedy an anomaly that is already there.

Mr President, I beg leave to move:

that the Education (Miscellaneous Provisions) Bill 2008 be read a second time.

Mrs Christian: I second, Mr President. *(Interjections)*

The President: Mr Butt.

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

The President: In that case, Hon. Members, the motion that I put to Council is that the Education (Miscellaneous Provisions) Bill 2008 be read for a second time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Hon. Members, I think we have gone far enough for this morning. We will resume with the Companies (Amendment) Bill at 2.30 p.m.

Thank you, Hon. Members.

*The Council adjourned at 1.07 p.m.
and resumed its sitting at 2.30 p.m.*

Companies (Amendment) Bill **First Reading approved**

7. Mr Turner to move:

That the Companies (Amendment) Bill be now read a first time.

The President: Please be seated, Hon. Members.

Having got as far, this morning, Hon. Members, as Item 7 on our Order Paper, we have reached the Companies (Amendment) Bill. So, Mr Turner, Bill for First Reading.

Mr Turner: Thank you, Mr President.

The Companies (Amendment) Bill 2008 seeks to make important amendments to the Companies Act 1931 to 2004, the Companies Act 2006 and the Limited Liability Companies Act 1996.

The proposed amendments address recommendations made by the IMF in 2003. They reflect evolving international

standards, for example, ensuring compliance with the principles of IOSCO, which is the International Organisation of Securities Commissions, and address industry comments on significant issues. However, the Bill will only make the most urgently required changes and is not a full-scale company law review.

There are a number of areas where the Island needs to update its legislation in line with IOSCO's objectives and principles of securities regulation, which are the internationally accepted standards for securities legislation. These standards form the basis for assessment by the IMF.

Full consultation on the draft Bill took place during January and February 2008 and there was a good response to the consultation. While differences of opinion between stakeholders were evident in some areas, all significant issues were ultimately satisfactorily resolved. In addition, meetings were held with industry participants, relevant associations and the Income Tax Division of Treasury, both before the consultation paper was issued and after consultation responses were received.

The Bill has 36 clauses and seven parts, each of which change a separate Act. Part 1 modifies the Companies Act 1931; part 2 modifies the Companies Act 1982; part 3 modifies the Companies Act 1992; part 4 modifies the Limited Liability Companies Act 1996; and part 5 modifies the Companies Act 2006. Parts 6 and 7 make miscellaneous amendments and cover interpretation.

The Bill introduces new requirements which are necessary for the proper regulation of the sector and to meet international obligations and standards. These are in the following areas: information to be included in a prospectus prior to an offer for securities being made to the public; the revision of the existing regulations governing the registration of charges over property; takeovers and mergers; employee share schemes; accounts and audit provisions to bring the Isle of Man accounting standards in line with the internationally accepted accounting conventions; circumstances under which it is permissible for a company to provide financial assistance for the acquisition of its own shares are clarified; provision for the creation of Treasury shares; modifying a mechanism that results in the automatic winding-up of an LLC, limited liability company; miscellaneous modifications to the Contracts (Right of Third Parties) Act 2001 and to the Financial Services Act 2008.

It is not envisaged that the Bill will place any significant administrative or financial burdens on the finance industry, nor have any material cost implications for the Commission. It does not place any additional filing requirements on companies and is not expected to have any significant impact on the number of companies incorporated in the Isle of Man. The Bill is not expected to affect Government expenditure or to impact upon the income of Government. The Bill is considered to be compliant with the Human Rights Act 2001.

Mr President, I beg to move the Companies (Amendment) Bill 2008 be read a first time.

The President: Mr Downie.

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

The President: Mrs Christian.

Mrs Christian: Yes, thank you, Mr President.

It does not seem long since we had a Companies (Amendment) Bill. I expect one has to keep up with the changes that are required.

I have just got one or two queries, please. Normally, an explanatory memorandum is just that, but on clause 5 it says it repeals the fourth schedule in section 6 of the Companies Act and respective Acts. It does not give any explanation as to why. I wonder, when we come to that, if the Member would be prepared to explain why those things have been repealed.

Another interesting comment is in clause 16 in the explanatory memorandum, almost at the bottom of the explanation:

‘This section allows the Commission to make regulations that require compliance with standards or the adoption of practices recommended by a body specified in the regulations...’

Fair enough:

‘... and which may require compliance with standards or the adoption of practices recommended by that body from time to time –’

The significant bit for me here is that it says:

‘whether after or before the making of the regulations.’

It is unusual for something to be retrospectively applied, but I am trying to imagine why that should be the case, unless it is to apply a current standard to a previous year’s accounts or something of that nature. Perhaps the mover could just expand on that a bit when we do reach the clauses stage.

Those are the two main comments I had, Mr President, on this, and the other matters I will raise at later stages.

The President: Mr Waft.

Mr Waft: Yes. Just the point of the... I believe the Bill was making progress before the IMF had arrived on the scene here and it was not as a result of the IMF arriving at the scene – that is what I am trying to get at – to comply with the international standards expected by the IMF. So I take it that it was already on the way at that time.

With regard to clause 16 which has been mentioned previously: ‘the Government Accounting Standards Board or... known as US GAAP’, Generally Accepted Principles etc... There are other standards, but are you telling me, Hon. Member, that the GAAP is the most commonly accepted form of accountancy in Europe and the UK?

The President: Mr Crowe.

Mr Crowe: Just slightly intrigued by... We have not had the IMF Report yet – I am not aware of seeing it – and yet this is addressing recommendations of the IMF, so presumably the Treasury have been –

Mrs Christian: Previous Report.

Mr Crowe: Oh, sorry, it is the previous Report, not the current one. Sorry about that, yes.

Just on clause 16, Mrs Christian made a very valid move. It just says at the bottom:

‘If such regulations require compliance with standards of practice not

consistent with generally accepted accounting principles or practice, then the directors must follow the requirements of the regulations.’

It just seems illogical, shall we say, but that is just a comment, not necessarily a criticism.

That was the only point I had on the First Reading, Mr President.

The President: Mr Turner, would you care to reply, sir?

Mr Turner: Yes, thank you, Mr President.

I thank Mr Downie for seconding the First Reading.

If I just deal with a couple of the queries, with regard to clause 16, the variation to include US GAAP is in compliance with the IOSCO principle and that reflects the international nature of the Island’s business. It is very important... and I know Mrs Christian mentioned it does not seem long since we were amending legislation. I think things are moving so quickly we have to make sure that we are complying with a lot of these requirements that come from outside forces, and in some cases, if we are not in compliance, then that may well affect people doing business in the Isle of Man. So there is a reputational issue as well.

As Mr Crowe pointed out, the changes were from the IMF’s visit in 2003. Treasury no doubt will be assessing the recent visit on an ongoing basis in due course, but these are coming from the recommendations in 2003 and, as I said, reflect the ever-evolving – and I think that is the important word, ‘evolving’ – international standards of the likes of the International Organisation of Securities Commissions. So we have to embrace those to go forward.

Looking at the query over clause 5, the repeal, and Mrs Christian is right, the explanatory note is rather brief but I hope to be able to shed more light on the clauses section. But if I do, the fourth schedule to the 1931 Act sets out what is currently needed in a company prospectus, what is currently needed is to be repealed. The schedule will be replaced with the requirement to ensure that all material information is actually disclosed in the prospectus, as discussed under one of the earlier clauses, which I think is clause 1, which is specifically the first part of the 1931 Act.

I think Mr Waft had asked about the GAAP. I think I have answered that, but it is generally the accepted practices and it is only right that we follow those.

Some information just to hand: there is a need to bring in rules as made or may be made so we can apply whatever the current rules are. I think that answers Mrs Christian’s point about the rules and probably I will get more information on that in the clauses section when we deal with that specifically. I think that is a problem that the Commission has. With things changing so fast, they have to be able to react and we need to give them the scope. I understand that these rules will be approved at the following sitting of Tynwald. Am I able to ask our officers present about the procedure?

The President: If you so wish, yes.

Mr Turner: Mr President, through your direction, we have with us Roxanne Oldham and Gillian Prestwich from the Financial Supervision Commission in the Officers’ Gallery, and maybe we could just get an outline on the procedure with regard to these rules.

The President: If you just stand up and give your name

etc and then answer Mr Turner's question, because I think it is him who is actually forwarding this question to you at the moment.

Mrs Oldham: My name is Roxanne Oldham. I am Head of Policy and Legal Division at the Financial Supervision Commission.

To answer the query on the rules – as and when they may be made, or the ones that are in existence type point – that is because one of the things that this Act is doing is putting in a provision for the oversight of auditors, and this is so that we can enable the Isle of Man auditors to continue auditing companies listed on an EU exchange regulated market. The EU, in its directive, would prohibit that if they were not registered with us and subject to public oversight.

The Commission has no desire to regulate the world. What it is doing is it is going to set up a register and it is going to set up a system of oversight, but it would like to delegate that to the UK system, which is the Public Oversight Board and the Institute of Chartered Accountants for England and Wales. So that would meet the requirements of the directive and it would allow the auditors to continue doing the business that they are currently doing.

In order to do that, the regulations have to prescribe a system of rules that those auditors have to comply with. The Financial Supervision Commission is not expert in this area at all, so the rules it will be expecting those auditors to comply with are the ICAEW's rules, as amended and Manxified – tweaked to make them Manx – but to all intents and purposes the auditors have to comply with the ICAEW rules that are in force at the moment and will be in force as they change, as the ICAEW change it in the future.

So that is the reason for the strange wording of those rules. They sound retrospective. That is why that is in there. But as far as any regulations under the Companies Act made by the Commission for whatever reason, all regulations, all secondary legislation, is subject to the approval of Tynwald. So it is not laid before Tynwald; everything has to be subject to Tynwald approval.

The President: Mr Turner. Thank you.

Mr Turner: Thank you very much.

You mentioned the importance of the Commission to be able to react quickly. I know you have given me an example of China. Maybe you would like to use that as an example for the benefit of Council.

Mrs Oldham: Yes. Again, this is where we are bringing in the Generally Accepted Accounting Principles. The UK ones have already been there. The international accounting principles are already there. We are bringing in the US because some of the Manx firms do a fair bit of business in the US and are part of groups that are US groups and use US accounting standards so that the whole group can use the same accounting standards for consolidated accounts.

The reason for being able to bring other ones in is, for example, China or India. If we find Manx companies are used a lot, as part of Chinese or Indian groups or any other – maybe Australia, now we have got the tax signed – we could then, if necessary, bring in those relevant general accounting principles and then they would be able to produce consolidated group accounts that would follow the same accounting principles for all companies within that group.

So it just gives that flexibility to move in line with business needs and the type of business that is being brought to the Island.

The President: On your original answer to us, not this second part... to just get it quite clear in my own mind that in fact what we are doing is taking on board the rules and regulations of the UK, as far as the audit firms on the Isle of Man are concerned, but at some stage, I think you also said that we were delegating power to them. I think your words were, 'We have no desire to oversee the world,' or whatever, and then you went on to say that we would delegate power to them.

I do not see any difficulty whatsoever in accepting that in fact the accountants on the Isle of Man will comply with UK accountancy laws or whatever, insofar as our students learning to become accountants follow the same procedure, and that is the way we are recognised, albeit that the Manx Bar is different to the English Bar, if I was to take the analogy of the legal system as against the accountancy system. But you did say, I think – and this is where I am little unsure – that we would be delegating some power. Could you just explain that a little better, or a little more, to me, please.

Mrs Oldham: Yes, I will. This is not a matter of the education of auditors. The EU, in its directive, requires auditors to be subject to a system of oversight and penalties and investigations, if necessary. In the UK, it is the Public Oversight Board that oversee and monitor the auditors that audit listed companies, listed on EU member exchanges. The power will be the Commission's power.

In this Act, it is the Commission that is responsible and will ultimately and always be responsible for the oversight, but the Commission does not have anyone in it, or the resources, to learn how to oversee the work of an auditor to the standards needed for the EU directive.

So the Commission will give the monitoring function – it will delegate the monitoring function – of the auditors to the ICAEW by regulation and it will delegate the oversight of that monitoring to the Public Oversight Board. So it is actually latching on to the same systems as in the UK, although the rules that they will apply will be the ICAEW rules as modified.

We are doing this in connection with Jersey and Guernsey as well. They are going down exactly the same route so that all our auditors are treated in the same way with the same set of rules. So the ultimate power would still rest with the Commission. The Commission could always take ICAEW and the Public Oversight Board off, and either take it on board itself if it had the right resources and staff, or pass it somewhere else.

The President: Thank you.
Mr Lowey.

Mr Lowey: Really, the point I was going to make is, it is not unlike, really, the VAT (Amendment) Bill which we passed earlier today, where we delegated the appeals to the High Court judge sitting in Manchester. Again, it is ours but it is the appeal is there. So the overseeing of the standards of the auditors is being done by this organisation in the UK on our behalf. I managed to follow that.

Mrs Oldham: Thank you.

Mr Crowe: Mr President, can I –

The President: I will take the vigorous nod as being a sign of approval.

Mr Attorney.

The Attorney General: Thank you, Mr President.

I think it is quite important to, if I may, just take up the point you have made there, sir, about delegation. Certainly the way it has been explained, I do not think that there is any intention to delegate enforcement of standards to anybody else, and in fact when one looks at the provisions of the Bill at page 8, clause 16, 3A(2), it makes it clear that the Commission have got the power to make regulations which require compliance with standards:

‘and which may in particular require compliance with standards or the adoption of practices recommended by that body’.

So if, Mr President, as I understand it, there were to be a firm of auditors carrying on business here who were involved with auditing a listed company, it would be the Commission that would enforce the standard, albeit that they might very well be acting on advice from the outside body, and I think that is an important distinction. It is not delegation.

The President: Thank you.
Mr Crowe.

Mr Crowe: Yes. Just the way I see it is, that we have certain Manx companies on the alternative investment markets and without this provision we would not be able to have Manx auditors audit those Manx companies quoted on the UK alternative investment market. Is that correct?

Mrs Oldham: Not for the alternative investment market. The EU directive definition of regulated markets, for some reason, does not include that, but it would include the main regulated markets of the UK, but not the AIM at the moment.

The President: Now, Mr Turner, continue your winding up, sir.

Mr Turner: Thank you, Mr President.

I thank Mrs Oldham for giving us that detailed explanation on some of those points. This is a very technical area and compliance with some of these international standards is very complex. As the Attorney has mentioned, it may be that they seek outside advice when they are looking to regulate these regulations. I think it is important we give the Commission this enabling power to make these regulations so they can keep up to date with the fast-changing world that the finance industry is.

I hope that we have answered all the queries at this stage. Certainly the clauses will be quite detailed and look into the actual clauses and what they will do and the effect of those.

But with that, Mr President, I beg to move the Companies (Amendment) Bill 2008 be read a first time.

The President: Hon. Members, the motion I put to Council is that the Companies (Amendment) Bill 2008 be read for a first time. Those in favour, please say aye; against,

no. The ayes have it. The ayes have it.

Just as an aside, and before we move on to the next one, I thought it was rather intriguing that on the front of your explanatory memorandum you use the word ‘prospectuses’ and I thought that it is not very often one comes across the plural of ‘prospectus’ as ‘prospectuses’, but anyway it is there.

Mr Turner, I will be interested when you come to the Second Reading and the clauses stage of the Bill, is there any control on these prospectuses now of a company? In fact, most companies... as my understanding is, you can write up your prospectus as a catch-all to cover everything under the sun, and a company, as long as its prospectus is wide enough, can more or less branch out into anything, so is there any control over that matter in this particular Bill, as we go along?

Company Officers (Disqualification) Bill **First Reading approved**

8. Mr Downie to move:

That the Company Officers (Disqualification) Bill be now read a first time.

The President: Anyway, we turn to Item 8 on our Order Paper, the Company Officers (Disqualification) Bill, and this time I am back to Mr Downie for the First Reading.

Mr Downie: Thank you, Mr President.

We have the same briefing team available to us from the Financial Supervision Commission, headed up by Roxanne Oldham, who has been instrumental in the drafting and putting together this legislation.

The introduction and the purpose of the Bill. The purpose of the Company Officers (Disqualification) Bill is to restate the law relating to the qualifications of directors and other company officers in a more coherent way. At the same time, the Bill rectifies some weaknesses in the law and procedures relating to the power of the Financial Supervision Commission to petition the court for disqualification under section 26 of the Companies Act 1992.

The Bill is predominantly a drawing together of all the current grounds for disqualification of directors and other company officers who may be unfit to be involved with the promotion, formation or management of a company. Once the Bill is enacted, all disqualification provisions will be in one stand-alone and more accessible body of law, providing a single reference point. It must be noted that this Bill relates to companies and officers in general and is not limited to licence holders of the Financial Supervision Commission.

The Bill also introduces for the first time a concept of a disqualification undertaking. This is an agreement by the relevant person and in the Financial Supervision Commission whereby that person acknowledges their previous unfit conduct and agrees not to be associated with companies for a number of years. The use of a disqualification undertaking means that aggrieved cases may be dealt with out of court, saving time and money.

Regarding consultation, before issuing drafting instructions for the Bill, the Commission issued a public

statement stating the key findings of an independent review that identified some weaknesses in the law and procedures relating to disqualification orders. The public statement explained how the Commission had already addressed, or proposed to address, the Report's recommendations and this Bill was one of the methods of progressing with the improvements.

Subsequently, initial consultation took place in early 2007 with a small number of advocates who had been involved in disqualification cases, followed by a further consultation in late 2007 via a consultative paper on the draft Bill. This consultation was notified to all the Commission's licence holders and their respective associations and professional bodies, as well as relevant Government Departments. It was also a news item on the Financial Supervision Commission's website, and the Bill takes account of the responses to the consultation.

Regarding burdens and costs, it is not envisaged that the Bill will have any impact on either public sector or private sector resources.

As far as Human Rights are concerned, the Bill is considered to be compliant with the Human Rights Act 2001.

Mr President, I beg to move the First Reading of the Company Officers (Disqualification) Bill 2008.

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

The President: Seconded by Mr Crowe.
Mr Turner.

Mr Turner: Thank you, Mr President.

I just wonder if the mover could answer... Company officers' disqualification is something that has come up in here, certainly when we were going through the Financial Services Act, and it does seem very easy for people to appoint themselves as directors of companies and then abandon those companies through trading, and then things not going very well, and rather than properly winding up the companies, they are just left abandoned.

One of the concerns I have is the number of these companies. This is more so on a local level than dealing with international business, but nevertheless it is a problem that a lot of people are being faced with. If you look at the numbers of debts that are going through the courts, people are starting up companies, hiding behind the law, and are virtually untouchable, and when you try and pursue the individuals through the company law there is no real appetite to pursue them and take them to task. Some officers' businesses fail through economic reasons, but there are others who are not holding up their duties as company directors or key officers and are untouchable. We do see cases where they start up again and do the same tricks, and do not seem to be brought to task and banned from holding those positions. So I just wondered if the mover could highlight specifically any powers where action can be taken by people who have a grievance with directors who have a track record of behaving in this manner.

The President: Mr Lowey.

Mr Lowey: Yes. It is just on that very principle, really. I notice the Bill uses the words 'unfit conduct'. I have used, underneath it, 'wrongdoing'. All the penalties in the existing

law for wrongdoing seem to be getting waived for the best use of the word 'probation': 'Don't do it, don't conduct yourself in these affairs for three years, five years, whatever it is, and after that time you are alright to come back.' Am I right?

What is the reason then for getting people who have conducted, to use your words, 'unfit conduct', back into action in a fit and proper way? In other words, who is this Bill designed to help? Is it to protect the public, or is it to protect those who have been found unfit by their conduct?

The President: Mr Crowe.

Mr Crowe: I am not going to answer Mr Lowey's point – I will leave it to the Member – but I think, in any company, any individual has to be aware of whom they are trading with, and I think every individual trading with a company needs to take out references – bank references, credit references – and make sure that they build up a decent track record with that company, and if they feel that that company is not paying its bills on time and is getting into difficulties, then that is the time to stop trading with them or to check deposits.

I think, Mr President, there was a case we talked about recently, but I think the onus sometimes is on the individual not to be sucked into a situation where they lose money. I know it is hard in certain cases because people can be very plausible, but I think 'know your customer and know his credit limitations' is one way of looking at it.

The President: Mr Downie to reply, then.

Mr Downie: Thank you, Mr President.

I would like to thank Mr Crowe for seconding the Bill that is before us today for its First Reading.

Mr Turner came up with some very useful points and I think, as we get into the clauses stage of the Bill, we will be able to identify the range of issues or the range of criteria that we can actually go to court on, or have a director removed under, or a person behaving in an improper manner.

The word 'abandonment' was mentioned by Mr Turner and that could be unfit and improper conduct and could be dealt with under this Bill. Previously, we did not have power to compel evidence. This Bill gives power to compel so we can do something about this and other related matters in the future, but what Hon. Members need to bear in mind is that a company going into liquidation, as we are seeing on a daily basis now in the UK, may be outwith their control. If they are owed a significant amount of money by another company, that could force them into liquidation, so there have to be quite clear and concise reasons for people misbehaving.

Mr Lowey raised some very good points about unfit contact. (**Mr Lowey:** Conduct.) Conduct, I should say, unfit conduct. Are we putting these people on probation? What is the reason they are unfit? Who is it designed to help? Primarily, the legislation is here to protect the public: that is the number-one priority. You may be pleased to know that the disqualification of directors does happen (**Mr Lowey:** Yes.) on a fairly regular basis, and I am advised by the Department... I know you like your figures, so I will be able to give you some figures as to what...

The current figures for disqualifications undertaken by the Commission under the existing powers... The Commission first brought an action for disqualification under section 26(1) of the Companies Act 1992 and 1999, acting as an agent for the Treasury, which at that time held a statutory

power. Section 26(1) of the Companies Act 1992 relates to the general unfitness and impropriety of company officers. The statutory power was subsequently conferred to the Commission itself and the Commission took on responsibility for the Companies Act, or the Companies Registry. Since 1999 the Commission has successfully petitioned the court for the disqualification from holding corporate office, under that legislation, of some 35 individuals. No disqualifications have been successfully pursued in relation to the powers to disqualify currently contained within the Companies Act 1931 and the Companies Act 1982.

The other system that we are looking to introduce is the situation where a person may know they have done something wrong and, under the terms of the legislation, can agree not to take part in activities for a number of years; in other words, enabling them to either get more experience in the meantime, or to get proper professional qualifications in that area. That would save a lot of money, because to take one of these cases to court I am told that it costs about £15,000, so that is a halfway house.

The other thing about the disqualification is there are considerable periods. For both qualification undertakings and disqualification orders, the minimum period of disqualification is two years, and a maximum of 15 years. That is the same as it is in the UK, and a lot of this legislation is very similar to what there is in the UK at the moment.

I was told not to say this, but I am going to say it, because I know you will have watched it. A lot of this legislation came in following the *Watchdog* programme a few years ago when they found that certain company directors and other individuals were abusing the system, and this legislation came through then. We are a little bit further down the line,

and that is really what we are trying to do for the protection of the general public.

I hope you are content with that. When we get to the clauses stage, there is a lot more flesh on the bones there, so you will get a better understanding of where the Treasury and the FSC are coming from.

With that, I beg to move that the Bill be read for a first time.

The President: Yes. Hon. Members, the motion I put to you is that the Companies (Amendment) Bill 2008 be read for the first time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Hon. Members, that draws to a conclusion the business before Council.

Good wishes to Bishop Noel Jones

The President: Council Members may be interested to know I heard from the Bishop's office last Friday that Bishop Noel Jones, who was with us for some time, is not very well and is subject to an operation, I think, tomorrow. I did take the opportunity to write to him last week on behalf of Tynwald, so if we think about Bishop Jones over the next few days when he may be not at all well.

Other than that, Hon. Members, we will sit briefly in private, I think.

Thank you.

The Council sat in private at 3.10 p.m.