



**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 March 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.

Business transacted

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The Council adjourned at 11.17 a.m.

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Legislative Council

The Council met at 10.30 a.m.

[MR PRESIDENT *in the Chair*]

PRAYERS

The Lord Bishop

Question for Oral Answer

GOVERNMENT

Manx Radio

Treatment of public affairs; subvention paid

1. The Hon. Member (Mr Lowey) to ask a representative of the Government:

(a) How does Manx Radio comply with its mandate to give fair and equal treatment to public affairs when it does not advertise the fact that the Legislative Council is sitting; and

(b) how much is paid in public subvention to Manx Radio?

The President: This morning, Hon. Members, we will go straight in to our Order Paper. We have first the Question for Oral Answer.

Hon. Member, Mr Lowey.

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

The President: As I understand it, the Answer is in the hands of the Hon. Member, Mr Downie.

A representative of the Government (Mr Downie):
Thank you, Mr President.

Manx Radio is the national public service broadcaster for the Isle of Man and, as such, it is required to provide a balance of programmes which reflect the cultural identity of the Isle of Man.

Its programmes reflect the various elements which make up the culture of the people of the Island and have special regard for the elements which distinguish that culture, where the programmes have a wide range in their subject matter, and having regard both to the programmes as a whole and also to the days of the week on which, and the times of the day at which programmes are broadcast, and where a sufficient amount of time in the programmes is given to news programmes and to current affairs programmes which are of a high quality. Consequently, careful consideration is always given to the scale and scope of all political and parliamentary coverage on the station.

In respect of the radio station's coverage of the Legislative Council, there have been 33 news items over the past 12 months. This excludes coverage within Manx Radio's current affairs programmes, all of which regularly feature the business of the Legislative Council and indeed, include contributions from Members of the Legislative Council.

The Purpose Trust was specifically established with the public service broadcasting obligations as its purpose, so that it is the role of the Manx Radio Trustees to oversee and monitor the provision of a balanced broadcasting service. The enforcer of the Trust is independent of the Trustees and his role is to enforce the Trust.

Manx Radio is further subject to the Programme Code, as issued by the Isle of Man Communications Commission, which details how the broadcaster is to apply impartiality to its broadcast output. The Controller of Programming Content is a member of the management team responsible for programme content. Complaints should be addressed, in the first instance, to the Managing Director at Broadcasting House.

Manx Radio does broadcast details of forthcoming sittings of the Legislative Council and has done so this month. In fact, since asking the Question, we have had more coverage on Manx Radio in the last two days than we have, in my opinion, in the last two years. (*Laughter*) (**A Member:** Hear, hear!)

The amount payable in public subvention to Manx Radio for the current financial year 2008-09 was £973,799.

The President: Mr Lowey.

Mr Lowey: I thank the Hon. Member.

The Hon. Member said in his reply – which I am grateful for – that they provide balance. Would he not agree with me that they have got a funny idea at Manx Radio of balance? If we take from the start of this parliamentary session, which started in October, there could not be claimed to be a fair and a balanced reporting of the Legislative Council, no matter what they say.

Would he also agree with me that, when they say they give careful consideration, having spoken with one of their senior reporters about advertising the fact that the Council were sitting and that we had an agenda – and I know Mr President asked a director about the problem – that could not be considered careful consideration, because there was nothing done after both those entreaties?

The President: Mr Downie.

Mr Downie: Thank you, Mr President.

As an avid listener and supporter of Manx Radio, unlike some of the other listeners who appear to be falling by the wayside and switching to other channels, I have always been an avid supporter of Manx Radio and stayed loyal to them. But I do have to agree with the questioner that there are times when there is not balance and in particular, until some of the issues about coverage of Legislative Council were raised, there was never, in my view, any recognition that Legislative Council was sitting at the same time as Keys. There was never any reference to our agenda or the work that this Council had carried out.

Of course, most Tuesday mornings, there is a very useful spot on the radio where they do talk about Keys Questions, they do talk about what is being discussed in the other

place. Even if we had a 20 or 30-second spot allied to that, I think it would make the work of this Council much more understandable to the general public. It is as if, as the Hon. Member of Council, Mr Lowey, says, there has been an unawareness of what we do, and I honestly think that there is an obligation on Manx Radio to report what goes on in all the branches. A lot of people out there are interested in it. I am hoping that, given the very good interview that was held on Manx Radio last night, perhaps there can be a revisit to the work that is undertaken in this particular Council, and in the future some reference can be made to us.

The President: Mr Waft, Hon. Member.

Mr Waft: Would the Member not agree with me that, with regard to the possible changes in the Constitution Bill, it is imperative that the public at large (**Mr Lowey:** Absolutely.) and everyone concerned with the Constitution of the Isle of Man are made aware of the work of the Legislative Council, and the fact that they need equal parity with the other Chamber to make decisions in their own mind as to what the situation will be? It is very important at this time that equal consideration is given to the Chambers.

The President: Mr Downie.

Mr Downie: Yes, I would agree with the Hon. Member. We are a very important part of the legislative process. There is probably as much, if not more, scrutiny carried out with legislation in this Chamber than there is in the other. Our meetings are much more in depth, I would say. We do not have the same protocol as Standing Orders provide in the other place. Here is a real opportunity for people to meet on a committee sort of a basis and really get into the nub of issues.

I think it is sad that, over the last few years, with the number of Constitution Bills that have been coming forward, there seems to be some misunderstanding now within the general public about what the role and duties are of Members of the Legislative Council and in fairness, I do not think that is helped by the lack of information that has been available through the channels of Manx Radio, and sadly, in other forms of media on the Isle of Man.

The President: Mr Turner, Hon. Member.

Mr Turner: Thank you, Mr President.

In the Member's original Answer, he mentioned an enforcer who enforces the programme policy of the Trust. Is this enforcer part of the Communications Commission, or is this an extra role? One would have thought the enforcement and compliance of any licence to any broadcaster or telecommunications company is why we are paying a Communications Commission. Where does this enforcer sit in this particular pecking order?

The President: Mr Downie.

Mr Downie: In the information that has been given to me, Mr President, they refer to this person as the 'Controller of Programming Content' who is a member of the management team responsible for programming content, and any complaints about Manx Radio – content, I would assume – should be addressed in the first instance to the Managing

Director at Broadcasting House, or if you feel the issue is much broader than that or much more important than that, you can actually make a complaint to the Broadcasting Commission.

The President: Mr Lowey.

Mr Lowey: Yes. Keeping to the point of the enforcer, does the enforcer have to wait for a complaint, or is the inference given that there is an enforcer, therefore he is keeping an eye on the public matter, or does he have to wait until somebody has a complaint before he acts?

The President: Mr Downie.

Mr Downie: You are asking me questions, Hon. Members, now that I really do not have the answers to, but what I would say is there is somebody present in the Chamber today from Manx Radio.

I think it is very useful that we are having dialogue about this particular issue. I sincerely hope that some of the views expressed by Council Members will be relayed to the enforcer and to the other people involved in Manx Radio, and that in the future, we might get a fairer crack of the whip, as it were.

The President: We do not want to debate the whole of Manx Radio, Hon. Members.

Mr Turner.

Mr Turner: Sorry, Mr President, it was just to confirm that the enforcer is not a regulator. It was just to clarify. Could the Member confirm that the enforcer he spoke of is not part of the regulator?

The President: By the answer given, it appeared to be a member of the management team.

Mr Downie, can you confirm that?

Mr Downie: Yes, that is correct.

The President: Fine.

Mr Waft.

Mr Waft: I would just like to say, Mr President, that the press seem to be doing their fair share in making the public aware of the work of the Council. It is a pity that Manx Radio do not do likewise. I do not think what we are asking for is anything more than any other body. The situation is that when we wait to hear what is happening in the Legislative Council perhaps in the morning, you do not even know they are sitting, and the fact that they do not even just report that the Legislative Council is sitting, as they do with the Keys each morning, the public think, perhaps, we are not there.

They also, I might add, mention if the Legislative Council is not sitting, so there seems to be some sort of concern there, in my view.

The President: I think that was a statement rather than a question.

Mr Lowey.

Mr Lowey: Yes, finally, if I can recite, really, the words of the... I thank my hon. friend for his replies to date. He

said, in his reply, they do provide a political balance of the legislature and careful consideration. My question, again, is: would he not concur that careful consideration has not been given in the immediate past?

The President: Right.

Mr Downie: In fairness, I would tend to agree with the Hon. Member, but as I have said in my opening remarks, I think we have heard more about the Legislative Council in the last two days than we have heard in the last two years, and I hope the message is getting across. Obviously, if the message has not got across, I am sure we will have some further questions to field.

Orders of the Day

Companies (Amendment) Bill Third Reading approved

2. Mr Turner to move:

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

The President: Hon. Members, we will move on then to Item 2 on your Order Paper, which is the Companies (Amendment) Bill. This time it is down for Third Reading and it is in the hands of Mr Turner.

Mr Turner: Thank you, Mr President.

In moving the Third Reading of the Companies (Amendment) Bill, firstly I would like to thank Hon. Members for their support in taking the legislation forward so far, and I also place on record my thanks to the team at the FSC who have been working with the industry, to bring forward this piece of legislation that is today at its Third Reading before us.

As discussed previously, 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 will address recommendations made by the IMF in 2003, reflect evolving international standards and address industry's comments on various practical issues.

It is important that the Island's company law meets the expectations of international assessors and provides appropriate investor protection whilst, at the same time, allowing quality corporate business to flourish.

Whilst not addressing all minor issues or reviewing company law in full, this Bill will bring the companies legislation up to date in respect of many significant issues.

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

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

The President: Does any Member wish to pick up on the Third Reading at all?
Mrs Christian.

Mrs Christian: I just wanted to say, Mr President, that, whilst it is not long since we dealt with companies legislation, it is important that we keep up with the requirements of the IMF and other bodies, and to that extent I certainly support the Bill, but would question why it has taken six years to get these amendments forward from the time of the IMF Report.

However, the fact that we are now doing it is to be commended and I accept that probably in this area of company law, there is quite a lot of consultation required before we can get it into a Green Bill form.

The President: Mr Crowe.

Mr Crowe: Yes, Mr President, I think it is like stepping on a moving escalator, or a moving staircase. This will sort out the issues raised by the IMF in 2003 and we are awaiting a 2009 IMF Report again, so I am sure we will be in the process of more legislation in the coming months and years.

I am a supporter of the legislation. It does bring us up to date in international standards, and as Mr Lowey said last week, we are an international player and we have to keep pace with international requirements.

The President: Mr Lowey.

Mr Lowey: Yes, I would just endorse what the Treasury are doing in trying to keep abreast. I noticed today that we are celebrating another international agreement with Germany along these lines. This Bill will make it more and more acceptable to more and more countries and as I said earlier, we are an international player now and we need to keep to international standards. This Bill is another step in that direction and has got to be supported for that.

The President: Mr Waft.

Mr Waft: I would endorse the last Member's comments, and it is absolutely necessary that we are quick on our feet with recognising the other areas that are watching what we are doing and we are watching what they are doing. We have to keep one step ahead of the game, if we can.

The President: My comment on the Bill would be, Mr Turner, that it is very much a permissive Bill, insofar as the bite will appear to come in the regulations and the regulations are possibly coming as a result of the Bill and maybe not, because in fact, as I said, it is permissive.

If we look at clause 11, they may make provisions in relation to takeovers and mergers, and if we go right over to the limited liabilities in part 5, modification to Companies Act, again the Treasury shares such things as those. They are all very permissive and subject to regulations, so I think it is the regulations which will contain the bite and not this particular piece of legislation.

Mr Turner.

Mr Turner: Thank you, Mr President.

You are absolutely right there and this is, I suppose, the problem with competing on, as Mr Lowey has put it in the past, the world stage. Countries are moving forward at different speeds and we have to try and keep up with that, constantly inventing new products to offer incentives for businesses to come here, invest here, do business here. Again,

I think we need to give the Treasury and the Commission the right tools to be able to react quickly.

I think that one of the points Mrs Christian made was how come it has taken so long to address the recommendations. Well, of course, Members will recall that last year we had two very substantial pieces of financial legislation in front of us. That all formed part of the reworking and updating of the financial law that we have. This is a further stage, and I suppose we are playing with some of the world's biggest powers here and competing with them, and yet we are such a small jurisdiction, so I think...

I do not like to trot out the old 'resource' card, because I think that is overused sometimes. It is very convenient for people to say we have got a resource issue, but if we look at the resources we do realistically have available in Departments, especially such as the Financial Supervision Commission that are looking at worldwide regulation, I think we are doing rather well. No doubt the recent IMF visit... they will be taking on board what has come out of that latest assessment and no doubt we will have further Bills before us in due course, as they constantly fine-tune the legislation we have.

But Mr President is quite right that there are a lot of permissive parts to this legislation which will allow the Commission to adapt quickly. They have managed to get the industry on board with some of the things that they were not too keen on, and they have thrashed that out and come to agreeable content in there. I think Mr Crowe's comment is very accurate – a moving escalator, moving walkway – and I do not think we are going to stop that. I think it is going to continue to move and we have to make sure we are keeping up with it as best we can. In some stages, we have actually got ahead of the game, as has also been debated in here in the past. We have managed to come out with some firsts.

I think it is unfortunate we still get the negative press from time to time. We hear national newspapers talking about 'seedy tax havens' and so forth, and I think the Island should be very proud of the legislation it has got in. I think a lot of that is a little bit of envy and almost bully tactics at times. So we have got to continue flying the flag and showing these jurisdictions that we do have good regulation and legislation in place.

I thank Members for their support in progressing this Bill.

I beg to move the Companies (Amendment) Bill 2008 now be read for a third time and do pass.

The President: The motion, Hon. Members, that I put to the Council is exactly that, that the Companies (Amendment) Bill 2008 be read for a third time. Hon. Members, those in favour, please say aye; and against, no. The ayes have it. The ayes have it.

Social Security (Amendment) Bill **First Reading approved**

3. Mr Butt to move:

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

The President: Hon. Members, we turn then to Item 3 on

your Order Paper, which is the Social Security (Amendment) Bill, and this time it is in the hands of Mr Butt, so Mr Butt, over to you, sir: you are down for First Reading.

Mr Butt: Thank you, sir.

Mr President, the Social Security Act 2000 allows the Department of Health and Social Security to apply, by order, benefit legislation enacted in the United Kingdom.

Section 1A of this Bill amends that Social Security Act and allows the Department, if it appears expedient, to have regard to social conditions in the Island and to make Social Security provision which does not correspond with the legislation in the United Kingdom. In fact, this has already been done for some years by orders put before Tynwald.

Over the last few years, several schemes have been specially developed for, and particular to, the Isle of Man and have been approved by Tynwald. Although those schemes have been approved by Tynwald, a stronger legal basis is required and this Bill will put those schemes and any future schemes on a sound and proper statutory footing, by amending the Social Security Act 2000 with this Bill.

So, Mr President, the purpose of this Bill is to regularise the legal position with respect to certain schemes of Social Security provision which already have effect in the Isle of Man but which have no direct comparison with the United Kingdom; and also the Bill will provide a firm legal basis for any future schemes which do not have a direct equivalent in the United Kingdom.

The schemes so far passed, Mr President, which have no UK equivalent, are: the TV Licence Refunds Scheme; the Pension Supplement Scheme 2001; the Retirement Pension Premium Scheme 2002; the Jobseeker's Enhanced Allowance Scheme 2002; the Family Income Supplement and Disability Working Allowance (Childcare Adjustment) Scheme 2004; the Carer's Bereavement Payment Scheme 2008; and the Nursing Care Contribution Scheme 2008.

At clause 2 of the Bill, it will provide that those schemes that have already been passed by Tynwald by order will now be treated as if they had been passed by the primary legislation of the Social Security Act 2000. There are no schemes being added or withdrawn by this Bill and any future schemes or changes to any schemes will still need the approval of Tynwald.

On a more minor matter, the Bill also makes minor amendments to existing legislation which reflect the transfer of responsibility in Great Britain for some Social Security provision to the Commissioners of Revenue and Customs from the United Kingdom Department of Health and Social Security.

Mr President, this is a positive move, enabling Tynwald the flexibility to provide better services for our citizens, to demonstrate that we are innovative in how we creatively provide additional safety nets and continuously strive to improve the lot of those who need Government assistance.

Mr President, I beg to move the Social Security (Amendment) Bill 2008 be read for the first time.

The President: Hon. Member, Mr Crowe.

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

The President: Mr Lowey.

Mr Lowey: Why am I always suspicious of small Bills,

Mr President? I think there is a phrase, isn't there: good things come in little bottles. But I am reminded that poison comes in little bottles, too.

I look at this Bill and the first thing I think of... Yes, at first glance it seems alright and it does what it says on the tin: we are giving a stronger legal basis. I cannot understand that, for a start. Either there is a legal basis, or there is not a legal basis – not a stronger one or a weaker one, but anyway...

It is right, if I have read it right, that anybody who is not declared or is absolved from any... I just want to know, has anybody been prosecuted under these other ones or been denied, and will they be able to get some recompense if they have not, under that particular clause?

But, you know, the thing that concerns me... I am reassured with the likes of Mr Butt and Mr Crowe being there now at the moment, but this is primary legislation and Mr Butt and Mr Crowe will not always be on that board. When he says this provides us with the vehicle to do additional pluses for our thing, it can be equally used to take away things from the local community, and therefore we have got to be very careful, when we are legislating, that we are legislating and not leaving a door open for it to be used, because they will come back and say, 'Well, you passed the legislation, and therefore...' It quite clearly states exceptions, adaptations and modifications which may exist in a different form from that having effect in the UK... So that is a Manx equivalent of doing the same thing, but doing it the Manx way.

But in 3.2.3 of the very helpful notes that have been provided by the Department:

'Provision by order is also made for the repeal or amendment of any legislation (other than the 2000 Act) which is inconsistent with, or is unnecessary or requires modification in consequence of... under [the new section].'

So it does give unlimited powers, and while we are saying it is going to be used now for the right reasons, that self-same power could be used against what I would call improvements. I would like a reassurance from the mover that that is not... and perhaps my fears are unfounded.

As I said, I welcome certain parts. I understand that we are introducing legislation that, perhaps, because of the changes in the United Kingdom where they have put it from the Secretary of State for Social Security matters into the hands of the Treasury and we have not done that here, we have got to get the legal position sorted out. I can understand all of that and I recognise that may be the purpose of the Bill, but in doing that, are we opening the doors for this legislation to be used in the future for less worthwhile motives?

The President: Mr Waft.

Mr Waft: Thank you, Mr President.

It does open some doors, for me, of concern, inasmuch as every Tynwald we get these Orders put through by the DHSS. It does not actually say 'these are reciprocal' or 'these are not reciprocal'; it is usually left for somebody to work out whether it is or it is not, or the Minister to say, 'This is a reciprocal arrangement.' The situation is that there is a chink in the armour with regard to that reciprocity. Are we talking about just a different revenue for the legislation to go through – Customs and Excise or Treasury – or are we talking perhaps, as Mr Lowey has probably espoused, with regard to changes in our own legislation to conform with the Isle of Man situation?

The problem with that is sometimes we get so far apart

and amendments to legislation which we would like to put in cannot be done because the Bill is not actually there, so you are trying to amend something that is not actually on our Statute Book. So I think it needs careful consideration as to the route that we go down here to make sure all the ducks are in a row and we know exactly what is going to happen in the future.

The President: Mrs Christian.

Mrs Christian: Mr President, I think some of the Members who have spoken so far are seeing ghosts where none exist, and indeed this is a practical legal measure. I have to confess that when some of these Schemes were introduced, I was Minister for the DHSS and I certainly was not advised, or I did not understand, that we were introducing Schemes for which there was no primary legislative power to do so, which is what seems to me to be the implication of this Bill.

I would disagree with the Hon. Member, Mr Lowey, in suggesting that this somehow introduces a power to take things away. There already is a power to take things away, in that if a scheme has come before Tynwald, an alternative scheme can come before Tynwald to be removed, but apparently we are all acting without primary legislation to back this up at the moment. So this seems to me to be a position to regularise the actions of the Department and to make sure that they have legislation in place which will allow them to introduce, quite properly and legally, schemes in the future, or to change schemes or to remove schemes. All that has happened in the past, but without this comfort, and it is an important issue, I am sure, of primary legislation which allows them to do that.

With regard to the United Kingdom position, again I take a different stance from the Hon. Member, Mr Waft. I think it is usually the case that the Department very clearly spells out what matters before Tynwald are either reciprocal or not reciprocal. There have been increasing difficulties in terms of the legislation which we are adopting from the United Kingdom, partly because of the way in which they are restructuring and putting Social Security matters and revenue matters together, so it is important that we try and keep track of those issues and make sure that whatever schemes we have got here are appropriate for the Island and are not somehow linking us with Her Majesty's Revenue and Customs if we do not want it to work that way.

I think there can be no argument against the Bill, frankly, and we should welcome it as strengthening the position of the Department to make schemes which suit the Isle of Man situation, and to amend them and to withdraw them if they choose to do so.

The President: Mr Callister, Hon. Member.

Mr Callister: Thank you, Mr President.

There almost seems to be an indication here that they did not have legal status. Surely they perfectly well had legal status as adjunct to the Act. But I just wonder – we are talking about going back here, for the TV Licence (Refunds) Scheme, to 1990 – if this has been so necessary, why it has taken so long for this requirement now?

I also had, when I read this Bill for the first time, similar feelings to Mr Lowey: 'Now, is there something here that is going on that will be of a disadvantage to the Isle of Man; major or critical changes to the Reciprocal Agreement within

this somehow?' I would not want to see people who are being dealt with under these Schemes being disadvantaged in any way because of this legislation, and I hope that could not happen. It is being put on a stronger legal basis: I do not quite see that. Surely the legal basis would have been quite strong enough in the position. So the other questions are: why now, and why is it necessary?

The President: I acknowledge that the usual rule of thumb is things under National Insurance are reciprocity and things under Social Security are not necessarily reciprocal. In that instance, it might have been helpful, in the explanatory memorandum, had the Social Security also told 'us' what Schemes are applied now in a matter of reciprocity under section 1 of the Act: which applies the UK legislation, and what does not apply. So that in fact what we have got is this list of what does apply since, but we have not got the other bits and pieces of the Social Security Act as a comparison, which, as I understand it, will still apply under part 1 of the Act allied to UK legislation.

Mr Butt.

Mr Butt: Thank you, sir.

I can perhaps deal with lots of the points with one summation. As to the legal status of the previous Schemes, they were produced under the Contributions and Benefits Act 1992 to a certain extent, but the Schemes that we are now producing to reflect particular Isle of Man circumstances are sometimes straying too far away from the intention of that Act. I believe the Attorney General's Chambers and Social Security have come together to say, 'How can we make it more specific to what the function is?' and the device of using the Social Security Act 2000 is being seen as the Act to use to make them more relevant.

Mr Lowey's point, if I can go to it... I think I was ahead of him, actually, because my first question when I spoke to the officials about this Bill in detail was, 'This means you can take things away as well?' and they said it does. But sometimes you do need to take things away – you need to change things, you need to actually disband the schemes – so you need to have the ability to increase, enhance and take away, but the final say will always be with Tynwald. So, if Tynwald does not approve of things being reduced or taken away, it will be Tynwald's decision.

If I can just say on that point, from my knowledge of the Schemes, that nearly every Scheme that the Isle of Man has is better than the UK. We provide better benefits in nearly every area that we do, and these listed Schemes here, which are extra to the UK, reflect that.

Mr Waft's comment about the reciprocity etc, we have, for example, on the list the Nursing Care Contribution Scheme 2008, which was put through some months ago. That is, in effect, a Scheme to reflect the *Coughlan* judgment in the UK to try to get some payment towards people for medical care when they are in residential homes. The only way we could do that was to use the device of using the Contributions and Benefits Act, and now it will be based under the main Social Security Act. Without being able to find some device of doing that, we may not have been able to bring that legislation in. That, for example, is not going to be taken away from or detracted from, unless things change radically. This is an example of where, in the Isle of Man we are being, I suppose, in a way, fleet of foot to actually provide better services for

old people and we do not have to slavishly follow the UK all the time.

I think Mr Callister mentioned the legal status, as well, and why it has taken so long. I think it has recently come to light that maybe the Contributions and Benefits Act is the wrong piece of primary legislation to support all these different Schemes.

I thank Mrs Christian for her support. I did see the ghosts initially – Why? Could this take things away? – as I have already explained, and I was assured by the Department that everything would go to Tynwald for their approval.

Mr President made the point about the Acts, the legislation that is not in here. I think, Mr President, there will be hundreds of them over the last 10 years or so which will have reciprocity, and we have, so far, these half dozen or so Schemes which are extra to those Schemes which are particular to the Isle of Man.

The President: Sorry, Mr Butt, but could I just query that?

Mr Butt: Yes.

The President: You are telling me that there are – and Mrs Christian might help me, as well – Social Security Act benefits which are reciprocal?

Mr Butt: Under the 2000 Act. That gives the power, Mr President, to provide the reciprocal benefits that the UK have to be enforced in the Isle of Man. This Bill is purely to let us have the different measures that we provide ourselves to be established.

Mr Lowey: But that should not make any difference to the UK if we do additional matters out of our own resources. That is the point I think Mr President is making.

The rule of thumb used to be the reciprocal was when we all paid and got a transfer of people's rights. If I take the Pension Supplement, for example, the British Government decided... What they did, in 1983 I think it was... Mrs Thatcher took the National Insurance Fund and gave tax cuts to the United Kingdom general populace. That is how she got rid of it. We decided to retain and invest that and later on, we decided to pay a supplement – I am being crude now – and therefore we were paying for that ourselves. That should be of no concern to the United Kingdom, other than ourselves, because we are funding it ourselves. So where is the doubt?

The President: Mr Attorney, am I going down a line here which is...

The Attorney General: Mr President, all I can say is that the Social Security Act 2000 is the basis, I think, of the issue.

The President: But it is not reciprocal, is it?

The Attorney General: Well, it says in section 1, sir:

'The Department of Health and Social Security... may by order apply to the Island as part of the law of the Island, subject to such exceptions, adaptations and modifications as may be specified in the order, any legislation of the United Kingdom to which this section applies.'

Then the Act goes on to define the legislation to which the section applies in a schedule – schedule 1 – and right at the top there we have got the Social Security Act 1973, the National Insurance Act 1974, and so on. So there is a list of Acts of Parliament, including Social Security, which are listed and therefore give the power – the power, not the obligation – to the DHSS to apply that legislation to us on a reciprocal basis with adaptations. That is the fundamental power.

Mrs Christian: Including the National Insurance Act.

Mr Butt: Yes, Mr President, I have the Bill. There are some 40-odd –

The President: Yes, I am sure there are and I apologise, Hon. Members, but I am back onto the same tack that, in fact, maybe I have been under a misapprehension for many years that the Social Security Act is not directly reciprocal. The National Insurance Act is directly reciprocal and that is the subtle difference which I was making.

Anyway, Mr Butt, is there any –

Mrs Christian: The National Insurance Act is introduced under the Social Security Act 2000.

The President: But it is written there specifically as a separate Act, a separate heading. Anyway, apologies, Hon. Members.

Mr Butt, do you wish to add anything more?

Mr Butt: No, Mr President, just that I have the 2000 Act here and as the Attorney has quite rightly and helpfully said, part 1 does allow the Acts in the schedule to be applied, which does not leave the –

The President: They are listed.

Mr Butt: They are listed, sir. There are about 40-odd Acts here, which include... The second one is the National Insurance Act 1974, which is one of those in the schedule which is empowered by section 1 of the original Act.

The President: So, if we read that National Insurance Act 1974, you would find that it is totally reciprocal. I may

be wrong, but I think... It is a long time since 1974, Mr Lowey, isn't it.

Mr Lowey: It is!

The President: Anyway –

Mr Butt: I must confess, Mr President, I have not read that Act.

Mr President, the purpose of this Bill is to actually give us the authority to make our own schemes, should we need to do so, using the original Act.

Thank you, Mr President.

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

Procedural

The President: That actually, Hon. Members, draws me to a conclusion of the business before the Council this morning.

The Clerk will be able to tell us what we have in relation to our Order Paper for next week. If you can tell us what we are facing, because I think Mr Callister wants to leave early next week. We will have, of course, the Social Security (Amendment) Bill now for its Second Reading and the clauses stage. Any other legislation before us?

The Clerk: Mr President, on the Keys Order Paper today they have the Third Reading of the Gender Recognition Bill, so assuming that passes its Third Reading in the Keys it would come to the Council for the next sitting.

The President: With that, Hon. Members, that is all the business which is in front of the Council for this morning. Thank you very much, Hon. Members.

The Council adjourned at 11.17 a.m.