



**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, 7th April 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 3.24 p.m.

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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

Road Traffic fixed penalties Incorrect extra charges

1.1. The Hon. Member of the Council, Mr Turner, to ask a Member of the Treasury:

- (1) *What arrangements are being made for persons who have paid the Coroner of Middle an extra 2.5 per cent (£3) 'poundage' on Road Traffic fixed penalties (in particular parking) to be refunded this money to the extent the amount was incorrectly charged;*
 (2) *how many people have been subject to this extra ultra vires levy; and*
 (3) *if he will instigate an investigation into how this matter has occurred?*

The President: This morning, Hon. Members, we have got two Questions to deal with. I understand, Mr Lowey, you will not be asking Question 3.

We will move on, then, with the first Question, Mr Turner, please.

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

The President: I understand Mr Downie has the Answer to this Question.

A Member of the Treasury (Mr Downie): Thank you, Mr President.

In relation to part (1), any person who considers that they have paid any excess amount in relation to any execution enforced by a Coroner should, in the first instance, contact the relevant Coroner with appropriate supporting documentation to obtain a refund.

Part (2), according to information received from the Coroner of Middle, due to an initial systems error occurring when fixed penalty enforcement was first transferred to the Coroners, the documentation produced by the Coroner's Office included this additional £3 poundage fee. However, the Coroner stated that, as and when payment in full was made, only the correct sum of £120 was collected. The Coroner

estimates that approximately 150 fixed penalty tickets were affected by the incorrect documentation.

If the Hon. Member is aware of any fixed penalty tickets that may have been incorrectly charged the 2½-per-cent poundage, then he should make the Judgements Officer aware of them.

Part (3): a preliminary investigation has already identified that this error occurred due to a computer error following the transfer of vehicle fixed penalties enforcement to the Coroner. All other executions enforced by the Coroner automatically include a 2½-per-cent poundage fee and, initially, the system could not differentiate between fixed penalty executions and other executions. The system has now been corrected.

The President: Mr Turner, Hon. Member.

Mr Turner: Thank you, Mr President.

Would the Member not agree that it is highly unreasonable to ask people to come forward if they think they have been overcharged? Surely the Coroner... Would he not agree the Coroner must have accurate records of who has and has not paid this extra £3?

In his answer, he used the word 'approximately 150 people'. Does this not show that there is potentially not accurate record-keeping being made here; and would he not think that it should be for the Coroner to reveal how many people have paid, rather than allowing it for people to come forward?

The President: Mr Downie.

Mr Downie: I am sure the Hon. Member is aware that the Coroner for Middle probably deals with literally thousands of fixed penalty fines on an annual basis. I understand that the issue arose during the transfer, but I am advised by the officers in the court that, to the best of their knowledge, when the payments were actually made, the matter had been brought to light and that they had not charged the initial £3 poundage fee. However, some people may have paid this in good faith and gone into the courts and paid it, but if they are aggrieved by this, there is a system where they can be refunded.

Once it leaves the Coroner's hand, it is very difficult then to keep track of who they actually see when they come in to make a payment because if the Coroner, having served the notice, there are provisions for people to come back and pay over the counter, as it were.

The President: Mr Callister, Hon. Member.

Mr Callister: Thank you, Mr President.

A wonderful phrase 'computer error'. (**Mr Downie:** Yes!) Can a computer error occur without some human involvement and is this computer error due to the actual programming or the inputting?

The President: Mr Downie.

Mr Downie: It is probably due to the inputting and we are asking computers to do tasks that, where half a percentage poundage is involved, it probably cannot understand the task that it is being programmed for.

I am only answering this Question on behalf of the... The Coroners are not even part of the court system. They work independently, but this error has been brought to light and, quite correctly, by the Hon. Member of Council, Mr Turner,

and the Coroner is fully aware of it. In fact, what I will do after the Question, I will circulate a letter that was provided by the Coroner for Middle to Mr Wade, the Judgements Officer, explaining how this glitch occurred in the software and what he has done to deal with the matter, and that will be available after this meeting today. I hope that rectifies the problem.

The President: We are going around a bit in circles. Mr Turner.

Mr Turner: Thank you, Mr President.

With the new Fees Order which has been recently passed by Tynwald, what performance monitoring will now be in place to make sure that the Coroners stick to this Fees Order and charge the correct amounts and any poundage that they are actually due, and no extra charges will fall on the public?

The President: Mr Downie.

Mr Downie: I think there has been a lot of discussion lately and the Transfer of Fixed Penalty Enforcement Orders to the Coroners has had significant benefits, not least that Police time is no longer required to enforce what amounts to a £60 debt. That is under normal circumstances.

Of course, when we get on to the extended period, that then becomes a £120 debt. But, notwithstanding this, the General Registry is also currently undertaking a review into the effectiveness of enforcement following the transfer.

The President: Mr Lowey, Hon. Member.

Mr Lowey: The only thing that I say is whether it is a glitch or whether it is a computer error, I noticed in the reply there was not one scintilla of regret or apology to the people it had affected, 150 or less. Would the Hon. Member agree that perhaps it would have been correct to have said 'we apologise for our glitch' and that it will not occur again?

The President: Mr Downie.

Mr Downie: Could I advise Mr Lowey that it is not 'our' glitch; it is the Coroner's glitch. (**Mr Lowey:** Whoever.) The Coroner acts independently. They are self-employed. They are part of this unique system that we have in the Isle of Man and I am sure when he reads the letter which I will make available at the end of...

I do not want to read it out here. I will provide it. It is quite clear that anyone who is upset by the possibility that they may have been charged an additional £3 does have redress. There is a refunding process, provided that they can show they have paid the extra money.

If the Hon. Member wants me to apologise on behalf of the Coroner, I am perfectly willing to do that, but I think you will see from the spirit of his letter, he explains it and gives an assurance it will not happen again.

The President: Final supplementary, Mr Turner.

Mr Turner: Yes, a final supplementary, Mr President.

Can the Member agree with me that – he keeps saying that people have to come forward – surely, the Coroner has records of who has overpaid and, therefore, as this is their

error, they should be writing and refunding those people, not waiting for those people to come forward?

The President: Mr Downie.

Mr Downie: I will give the Hon. Member an undertaking that, following the sitting today, I will go back to Mr Wade, who is the Judgements Officer, and I will make it abundantly clear to him that we expect the Coroner to go through his files and, if he identifies anyone for whom there is the remotest chance that they may have overpaid, I will make sure that they are contacted.

TOURISM AND LEISURE

Villa Marina, Colonnade and Arcade Advertising policy

1.2. The Hon. Member of the Council, Mr Lowey, to ask a representative of the Department of Tourism and Leisure:

- (1) Who decided to allow the 'paper advertising' on the new Villa Colonnade advertising the Sayle Art Gallery, which is akin to down-market graffiti;
- (2) what is the policy towards advertising on the Villa Colonnade, Arcade and Villa Marina?

The President: We will move on, Hon. Members. Question 2, Mr Lowey.

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

The President: Have we got somebody who...? Mr Waft is the Hon. Member – the Department of Tourism and Leisure representative this morning.

Mr Waft.

A representative of the Department of Tourism and Leisure (Mr Waft):

Thank you, Mr President.
In undertaking the refurbishment of the Villa Marina Colonnade shop units, the Department of Tourism and Leisure employed a design brief to retain or replicate the existing art deco shop fronts. The traditional shop units of the period had a name board, which was a space above the shop window for the operator to place their name and this was generally done by a sign writer. Clearly, you are able to see that this traditional layout for the shop fronts has been maintained in the refurbishment of the units.

Under the terms of the leases, the Department, as landlord, has permitted the tenants to use the space provided for their shop name and, as an art gallery, the Sayle Gallery has chosen to do so in their own artistic way. I am informed that the signage on the Sayle Gallery has attracted some very diverse views, some positive and some negative. The comments that the signage is 'akin to down-market graffiti' is clearly one opinion, although I am sure my hon. colleague appreciates that taste and opinions on signage can be very polarised and this is just one perspective.

Moving on to the second part of the Question, apart from the name board spaces previously referred to, any advertising on the Villa Marina, the Colonnade or the Arcade is completely under the control of the Department. If any

tenant wishes to put up signage over and above that on the name board, the Department would consider that request on its merits.

The Department itself has recently erected a name board with the Government crest on the Promenade frontage and is also looking at a proposed sign to go above the entrance to the Arcade. Apart from this, the only other advertising on any of the buildings are the temporary banners which advertise forthcoming events. The Department does not envisage that it will be putting up any more advertising than that.

The President: Mr Lowey, Hon. Member.

Mr Lowey: Thank you, Mr President.

One understands the need to advertise what you are and where you are, but would he not agree that to have 'Sayle Art Gallery' replicated six times is a little bit of overkill? Would he also agree with me that, even as down-market graffiti goes, the efforts of the Sayle Art Gallery are of a low standard?

Would he also agree with me that, if you take an area of the Promenade which is the Sefton, the Gaiety Theatre, the Colonnade and the Villa Marina, which is looking an absolute picture, if I may say so, at the moment, having just been newly decorated, it does not enhance that Palladian frontage by having advertisements prominently displayed?

The President: Mr Waft.

Mr Waft: I am sure the Member who was greatly involved within this structure, and the changes that have taken place down there, is very interested in its future. However, the current lease does allow the Sayle Gallery to use the spaces above the shop front as they see fit. So, the Department cannot construct anything. The Department could ask the Sayle Gallery to change the signage, but the Department is aware that the Gallery is very pleased with it.

To say it is of a low standard depends on the eye of the beholder, Mr President.

The President: Mrs Christian.

Mrs Christian: Mr President, thank you.

Whilst I too, like the Hon. Member of Council, Mr Lowey, welcome the name on the Villa Marina, which now signifies what the building is and where it is, would he not agree that there should be some concern expressed that, having refurbished the whole of that Arcade and the Villa Marina, it is plastered with temporary banners? And whilst he has stated that the advertising is under the control of the Department, would he ask the Department to consider whether they feel that those temporary banners plastered all over the Arcade are appropriate and indeed, whether or not they have read the planning regulations relating thereto?

The President: Mr Waft.

Mr Waft: Thank you, Mr President.

I am sure that one Department would be in harmony with other Departments, with regard to the legislation required from planning.

Mrs Christian: You are very confident, sir; I wish I was as confident! (*Laughter*)

Mr Waft: However, the new leases, could I say, for the internal units will include the provision of the right for the Department to approve all signage with regard to future leases. With regard to banners, etc, and the need for them and the time they are up, I am sure the Department will take on board the comments this morning and look to their laurels for future signage in and around the Villa Marina.

The President: Mr Lowey.

Mr Lowey: A final thing: the Hon. Member said that the Department is responsible for the advertising in and around that area. Does that include street furniture? I noticed, the last time I was down, there was a billboard outside the unit of the Art Gallery declaring 'Open'. Would he not agree that this also detracts from the general overall picture?

The President: Mr Waft.

Mr Waft: The street furniture, Mr President, I do not think is within the remit of the Department of Tourism. However, I will check that for the Member.

Mr Lowey: Thank you.

The President: Mrs Christian.

Mrs Christian: Would the Hon. Member consider that street furniture randomly placed is a hazard to the disabled, with sight impairment, and is also possibly in breach of planning regulations?

The President: Town byelaws come in there somewhere. Mr Waft.

Mr Waft: Thank you, Mr President.

This does arise from time to time and I also received a phone call from a certain person who has problems with street furniture. It is an ongoing situation which has been allowed to occur for too long in my estimation.

LOCAL GOVERNMENT AND THE ENVIRONMENT

Lord Street development plans Question withdrawn

1.3. The Hon. Member of the Council, Mr Lowey, to ask a Member of the Department of Local Government and the Environment:

- (1) What is the current position regarding the progress of the Lord Street Bus Station hotel and shop development;
- (2) what is the position in respect of the application for a proposed multi-screen cinema and entertainment complex at the old Customs House site on the north side of Lord Street?

The President: Hon. Members, as I indicated earlier, Question 3 is not to be asked.

HEALTH AND SOCIAL SECURITY**Neural tube defects****Information re folic acid for pregnant women**

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

What information is given in the interests of public health promotion to females of child-bearing age, including teenagers, on the need for early appropriate levels of folic acid to reduce the risk of neural tube defects such as anencephaly, spina bifida and other spinal defects etc?

The President: Hon. Members, we go on to Question 4. Mr Waft.

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

The President: I think Mr Butt, this time, to reply.

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

Mr President, women are advised to take folic acid as soon as they know they are pregnant and for up to 12 weeks in pregnancy. All women who think or know they are pregnant on the Isle of Man attend their GP for referral to antenatal services from four to six weeks and most women are booked at Noble's Hospital by 10 weeks. At the first visit to the GP in early pregnancy, all women are advised to take folic acid and those who do not wish to purchase folic acid over the counter are prescribed with a supplement by their GP. At the same visit, they are each given an award-winning publication called 'Emma's Diary', which contains all sorts of useful information for pregnancy, including sections on the importance of folic acid in early pregnancy.

In addition, when pregnant women are booked into Noble's Antenatal Services, they are given a booklet on screening tests and there is a chart in this booklet which advises when to take folic acid. In addition, midwives who visit the GPs' surgeries also check that pregnant women are taking folic acid. GPs also offer pre-conception advice when rubella antibody concentrations are checked and they talk about folic acid at these visits.

There is no standardised education programme in schools that deals specifically with folic acid in pregnancy, but when healthy diets are discussed with school nurses, folic acid may well be one of the topics at these sessions.

The President: Mr Waft.

Mr Waft: Thank you, Mr President.

I am a bit concerned at the Answer, with regard to the statements that as soon as they know they are pregnant, they are under the auspices of the GP, the hospital or the clinic. The reason I raised the question was the need for three months prior to conception, they need to have 400 micrograms of folic acid.

The problem, as I see it, with teenage pregnancies, etc, is the fact that there is no standard laid down with regard to the education of conception and the need for folic acid, only if it is mentioned in the attendance at the schools. I would ask if the Member could look at that and see if the Department

could perhaps be a little pro-active in making sure that the information is given to all female teenagers and indeed, all women planning pregnancies and indeed, others who have unplanned pregnancies, to make sure that everybody is aware of the need for 400 micrograms of folic acid three months before and certainly, three months after the pregnancy has been recognised.

The President: Mr Butt.

Mr Butt: Yes, thank you. In fact, I think it is a good thing that Mr Waft has raised this question and that the press are here because it is a matter which does need highlighting. I have done some research myself and it would appear that, as Mr Waft says, to take folic acid before you are pregnant is a good idea as well, because some women are deficient in folic acid.

I believe the problem is in the first 28 days after fertilisation, the neural tube which is, in effect, the precursor in the embryo to the central nervous system, can become damaged in those who have insufficient folic acid. In that first 28 days, it is very important that there is sufficient folic acid. If there is not, this is when we get the spina bifida and encephalic defects.

I will, having read and researched this Question and having spoken to certain officers, try to ensure that Dr Kishore, the Medical Officer of Health, perhaps raises the profile of this in accordance with the wishes of the Member.

The President: Good. Mr Waft.

Mr Waft: Could I just ask, Mr President... Some time ago now, I did express the possibility of introducing folic acid into the bread making process. We know that it is found in cereals and green leaf vegetables, etc, but with regard to the people who are not on a good diet prior to the conception and do not take cereals, the possibility of a lack of folic acid is of concern. Has the Department done anything with regard to looking at the Food Standards Agencies and their recommendations?

The President: Mr Butt.

Mr Butt: Thank you, Mr President.

As Mr Waft says, folic acid is found in healthy foods such as peas, broccoli, brown rice and some fortified breakfast cereals and bread, and, for information, the Food Standards Agency, in 2007, agreed that mandatory fortification with folic acid should be introduced alongside the use of supplements.

A mandatory fortification means that it would become compulsory to add folic acid to either bread or flour. The purpose of mandatory fortification with folic acid is to reduce the number of neural tube defects in children. It is estimated that there are between 700 to 900 pregnancies affected by neural tube defects in the UK each year, roughly equivalent to one every 18 months in the Isle of Man.

Before making its final recommendation, the Food Standards Agency is awaiting the review of a number of ongoing trials which are looking at the effect of folic acid on some types of cancer. Once the results of these trials are known, the UK Department of Health will consider whether to proceed with mandatory fortification, which is expected to happen some time during this year.

The President: Finally, Mr Waft.

Mr Waft: Could I ask, Mr President, if, when he gets the information back that he requires from the Food Standards Agencies with the requirement to introduce, perhaps, some folic acid into bread of all kinds, he will consider the situation with Laxey Mills who, I understand, do not put anything in the bread other than the usual?

The President: Mr Butt.

Mr Butt: Yes, Mr President, I am sure that if the Food Standards Agency in the UK reports back that it is safe to do so and recommends it, that Dr Kishore will be pushing this very hard to make sure that we do that.

The President: Mrs Christian.

Mrs Christian: Mr President, does the Member think that putting it in bread will help a great deal, given the diet consciousness of many young women these days who probably do not eat much bread?

I accept the point that it is one route by which folic acid could be made more available to the public.

The President: Mr Butt, but let us not debate the positives.

Mr Butt: Yes, every lady who is pregnant is given the publication, 'Emma's Diary', which is a fairly comprehensive leaflet, which does detail healthy eating and what sort of foods to eat whilst pregnant. If they follow that advice, they should obtain sufficient folic acid without anything being added to bread.

The President: Mr Waft.

Mr Waft: Just the need for some high input to the youngsters who can possibly become pregnant in their teenage years, to make sure that they are aware of the need for folic acid... It is within our remit, perhaps, to have a campaign to make sure that they do get a sufficient diet.

I know it is in some foods, but certainly not others. So, there is a need there to make sure everybody is aware of it.

The President: Mr Butt.

Mr Butt: Mr President, I hope that the reason for this Question by Mr Waft will actually start that process off.

The President: It possibly has.

Orders of the Day

Gender Recognition Bill

Second Reading approved

2. Mr Lowey to move:

That the Gender Recognition Bill be now read a second time.

The President: In that case, Hon. Members, we will move on to our legislation and the first Item that we have is the Gender Recognition Bill. It is down for Second Reading.

Mr Lowey, in your hands, sir.

Mr Lowey: Thank you, Mr President.

The purpose of the Gender Recognition Bill is to provide transsexual people with legal recognition of their acquired gender. This recognition will be available to those persons who have been able to satisfy the United Kingdom's Gender Recognition Panel of legal and medical experts that they meet the strict criteria required for them to be issued with a full gender recognition certificate.

As I said at First Reading, the treatment of transsexual people is very specialised and it could not reasonably be provided in the Isle of Man. As with other specialised conditions, it is likely that Island residents who have an established clinical need for such treatment will have been referred to the United Kingdom. It would also be difficult for the Island to provide an appropriate assessment panel. The necessary expertise would almost certainly have to be sought from outside the Island.

Given that Isle of Man residents can already apply to the UK Panel in the same way as United Kingdom residents, it was therefore considered appropriate for the Island's legislation to link into the United Kingdom's gender recognition process.

The Bill is necessary to ensure that the Island complies with an obligation under the European Convention on Human Rights and, as I said during its First Reading, I believe that this legislation is also very much the right thing for the Island to do.

Mr President, I was very pleased with the reasonable and constructive tone of the debate during the First Reading. There has been a short break since that Reading and I think it might be helpful just to briefly run through some of the points that Hon. Members made.

My good friend, Mr Callister, asked how a clergyman

would know whether a person seeking to have their marriage solemnised had changed gender. Of course, a clergyman – or perhaps I should say ‘cleric’ – does not need to know for certain that the person has changed gender. Following the amendment made in the other place to new section 5A of the Marriage Act 1984, they only need to reasonably believe that the person has changed gender, in order to be excused from their duty in relation to marriage.

In addition, the Chief Minister has asked me to advise Members of Council, and to put on the public record for *Hansard*, that at a meeting between the Chief Minister, the Lord Bishop and myself last week, the Chief Minister gave his personal assurance that the Council of Ministers will make an order under clause 12(5) to describe additional permitted disclosures of information before the Act is brought into force. This order will include disclosures of information to assist a cleric with exercising his or her right not to solemnise the marriage of a transgendered person and the Chief Minister also gave his assurance that the Lord Bishop would be fully consulted about the order *before* it is finalised.

My hon. friend, Mr Callister, again asked about the minimum age for a person to be able to legally change their gender. I advised that it would be 18 years. What I should perhaps have also said was that, with the detailed evidence that the UK Gender Panel requires, including proof that the person has lived as the other gender for at least two years, in practice, there would be very, few gender recognition certificates issued to anybody as young as 18.

Again, my good friend, Mr Callister, also asked whether a person should be required to inform their intended spouse if they had changed gender. Of course, two people who are considering getting married, should be totally open and honest with each other about all things and without such honesty I think it is very unlikely that the relationship will succeed, but I speak very much as an amateur on this, being the only single person here, but I think that is a reasonable assumption. But I do not believe it is the place of the law to try to ensure such honesty.

When gender recognition legislation was being considered in the United Kingdom, the UK government was asked to include provisions concerning disclosure of information to the intended spouse. This was rejected there on the grounds that it would be likely to breach the rights of the transgendered person under Article 8 of the European Convention on Human Rights. It would be a discriminatory application of the law because, in other cases, there is no provision for the disclosure of what amounts to a person’s medical history to the intended spouse.

There does, of course, have to be a carefully considered balance of rights of the two people. The situation is likely to arise extremely rarely, if at all, on the Island but if it does happen, the balance of the rights is achieved by allowing the marriage to be annulled if one party did not know that the other person had changed gender.

I was particularly grateful to the Lord Bishop and Mrs Christian for their carefully considered contribution to the First Reading debate and to the Bishop for his in-depth knowledge of the issues, as they relate to the Church. I have already mentioned the conscience of doubt for the clergy and I will come back to this in a moment.

My Lord Bishop said that medical science is not agreed on the origins and nature of gender dysmorphia. I acknowledge that the understanding of the causes of the condition is still very incomplete and the issue is open to debate. However,

there is no doubt in my mind that it is now very widely recognised, internationally, as a medical condition that causes genuine suffering to those who have it.

Some people might believe that it is a simple condition of mind or will, a choice, a whimsy or character defect, perhaps. I personally do not believe that to be the case. Of course, almost all European countries, together with others around the world, not to mention the European Court of Human Rights, accept that it is appropriate to recognise a transsexual person as being of their acquired gender.

I realise that many in the Church may have difficulty with the ideal of solemnizing the marriage of a person who has legally changed gender but my Lord Bishop accepted that the law can say that someone who has done so can marry a person of the opposite gender to their acquired gender and he outlined the legal obligations of the Church of England, as the Established Church, in relation to marriage. It was because of these legal obligations that the conscience of doubt for the clergy that I mentioned before was included in the UK Act and is now in our Bill.

The draft Bill was, of course, subject to full public consultation last year. This resulted in just five responses, with only one opposed to it being progressed. However, some months later, the Chairman of the Legislative Committee of the Diocesan Synod, drew the attention of the Council of Ministers to the fact that the wording of the conscience of doubt in our Bill gave less leeway to the clergy in the Island than in the United Kingdom.

In moving the Government amendment in the other place to change the basis of the opt-out from factual knowledge to simply reasonable belief that a person has changed gender, I believe the Council of Ministers has demonstrated its willingness to listen to the Church concerns on this matter. Our opt-out for the clergy is now in line with that in the UK legislation, which has been fully operational for four years without any problems that I am aware of and particularly because our Bill piggy-backs on the gender recognition processes in the UK Act, I believe the legislation gives adequate and appropriate protection to the Church of England in the Island.

Finally, I would just like to refer to Mr Downie’s question about the publication of court judgments concerning a person who had changed gender and especially in relation to trustees and personal representatives. I can advise the courts also have been consulted on this matter and their view is that to protect the privacy of all concerned it would be appropriate for such judgments to be published in an anonymous form, for example, *Miss X v Mr Y*.

Mr President, I beg to move that the Gender Recognition Bill be read for a second time.

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

The President: Mr Callister.

Mr Callister: Thank you, Mr President.

I think there are concerns here, at least as far as I see, anyway. For our sitting on 24th March there were a number of amendments tabled, or at least we have copies of those amendments, and again further amendments are listed for today, which I understand from my Lord Bishop are not being moved. While this legislation may not very often, perhaps ever, apply in the Isle of Man, it is important that when we are

dealing with Bills that we send through in a correct form.

First of all, as far as I can see – and I may be wrong when we get to clauses – the references here are all to the clergy, with no legality for ministers of other religions and in relation to what they may or may not do in these situations. When the Hon. Mr Lowey says, ‘if a clergyman reasonably believes there has been a gender change’ how on earth can he ‘reasonably’ believe it? Do they pluck it out of thin air? That I cannot understand.

The other point is that these meetings that have taken place with the Chief Minister, I was invited to attend those meetings: unfortunately, I had not diarised it so I did not go and I forgot about it, but why we have intervention by the Chief Minister saying that he is going to bring Orders to Tynwald to correct this Bill baffles me because, presumably, what he requires to go into the Bill by Order should be actually put into this Bill now and we are being asked, are we not, to approve a Bill that is defective through omissions?

The President: Lord Bishop.

The Lord Bishop: Mr President, if I may clarify the amendments that are standing in my name.

The first amendment, I think, can be withdrawn immediately, on the basis that the Chief Minister has assured me that a Bill is going to be introduced to clarify a number of inconsistencies in various Acts of Tynwald, particularly relating to marriage and that that Bill will include the substitution of the term ‘cleric’ for ‘clergyman’ everywhere it appears and that it will clarify the other gender issue that relates to this Bill, the gender of female clergy. So I am happy to withdraw the first amendment.

As to the second, the meeting that was held with the Chief Minister led to my being given the clear assurance; an assurance which has been recorded that the cleric involved in arranging the wedding of a person of reassigned gender would be protected in making a direct enquiry as to the gender of the person. In other words that, given a list in a regulation under section 12(5), it would be clear that a clergyman – that is, a minister of the Established Church, or another minister of religion of another denomination, or even another faith – would be given immunity from asking the question of a person who may be assumed to be of an assigned gender.

I am satisfied that, with that protection and protection which would be brought to Tynwald in terms of the list and the regulations being brought to Tynwald for Tynwald approval, then the amendment that I propose under section 12(4)(k) and (l) seem to me now to be irrelevant and therefore, that they could be withdrawn.

However, what the Hon. Member, Mr Lowey, has just said about the persons involved in contemplating a marriage, the amendment I suggest under subsection (m) seems now still to be relevant and although I had agreed at the meeting last week to withdraw that amendment, I am now a great deal less sure about that because I think that if a person wishes to marry another person, that to have what is effectively deceit at the very heart of a marriage is a totally disastrous way to enter into something which is of lifelong commitment, not just in Christian terms but in terms of the law. Therefore, I am in some difficulty and do not know how to propose the amendment.

The President: Well, at present we are dealing with the

Second Reading, Hon. Members, and we will go over the clauses stage.

Mr Turner.

Mr Turner: Thank you, Mr President.

I have a couple of questions for the mover of this Bill. First of all, I seem to have a little bit of difficulty with the whole issue. I understood that a human being’s sex was defined biologically and I do not see how, regardless of a law, surely biologically you are what you are when you are born but, nevertheless, I have a couple of other questions.

The first one is does this affect any other religions who may not recognise this? Religious studies was not my strongest subject at school but I just wondered from the mover whether there are any religions which now in society as we are seeing more and more people from around the world settling in different countries with their religions, and we accept that as part of everyday life now, and I wonder whether this is going to cause any problems that the mover is aware of?

Also, I would like to know, with regard to clause 9 to do with sport, where it says that a body responsible for regulating the participation of persons as competitors in sport may well bar people from taking part. I just wonder how they would know. I have had a look through the schedules and I am not quite sure how the governing bodies, referees, organisers, would be aware of the situation with regard to a person’s sex, if they are somebody who has been recognised as the opposite sex. I just wonder if the mover could explain quite how that section is going to work because I can foresee there will be some difficulties with that.

The President: Mrs Christian.

Mrs Christian: Mr President, I am supportive of the Bill and I think that, when we look at this, we have to recognise that nature produces a whole spectrum of biological features, does it not? You can go from the extremely feminine to the extremely masculine and if one has an unfortunate problem of being neither, either psychologically or physically, or being both, one can sympathise that there is a trauma there. That is being recognised, I think, through this Bill.

Whether or not you accept it is a medical condition or whether it is purely a psychological condition, I do not, like the hon. mover, think that it is simply a matter of whim in anybody’s circumstances that they choose to have some sort of gender realignment. So I do think that we have to recognise that, whereas most people are clearly defined as feminine or masculine, there are circumstances where this is not the case and we have to recognise that people wish to have change. I think most people, in accepting the First Reading, have recognised that.

We come then to the more detailed aspects of the Bill and again I think that perhaps it will be that the place to discuss this will be in the clauses, but I think that the point that the Lord Bishop is raising with regard to part of his amendment which he has talked about, with regard to disclosure, is a difficult one which I hope that we will debate when we come to clause 12, because there are many things that are not disclosed, many which we would feel would be abhorrent not to know about somebody you were marrying, but we do not make laws about it and I think this is an interesting point to debate when we come to that.

With regard to the position of the Church, I do think that

we... I certainly would recognise that the Church has a right to exercise its discretion with regard to the position of its clerics deciding whether or not to marry people. I think there is a perfectly simple way of them being made aware and that is on the questionnaire which the Lord Bishop alluded to at the First Reading stage, where people are invited to disclose. If they tell a lie in that disclosure, the Church is not to know: the fault lies not then with the Church, but with the people who have made a false disclosure.

So I do think that we need to embrace the conditions of this Bill to bring ourselves into line with Human Rights in respect of people who have, in my view, suffered quite a lot of trauma in their lives.

The President: Mr Butt.

Mr Butt: Thank you, sir.

I would tend to agree with Mrs Christian's comments. People who undergo gender reassignment have had a lot of trauma before they even take that stage and then it is a long and arduous process, both mentally and physically, to undergo that change.

As regards the question of clause (m) which the Bishop was going to add to, I think a lot of marriages – those with experience of life will know – that lots of marriages are entered into with some deceit at the heart of them, unfortunately. Lots of marriages do fail and this is just one on the list of things that can be perhaps lied about between partners. It is not a thing that you can legislate against, in my view, and I would generally support the Bill, Mr President, and wish the mover well with it.

The President: Mr Crowe, Hon. Member.

Mr Crowe: Thank you Mr President.

Just a simple question, really, as to whether... Are birth certificates a public document? Can I ask for a copy of your birth certificate?

The President: You could.

Mr Crowe: I am just saying that it is the mechanics of this that I am looking at. If I was to go to the Registry and ask for a birth certificate of any Member here, would the Registrar allow me a copy of that birth certificate?

However, if I go to the Registrar and say, 'I want a copy of X person', if the list is on the gender recognition register, presumably he would then release it in a new form. It is the simple mechanics I was looking at so perhaps you could just clarify that, please.

Thank you.

The President: Schedule 1(4). Mr Waft.

Mr Waft: I would just like to say, Mr President, most of the comments that have been made will be gone into in detail in the clauses stage, I would be given to understand. It is a very serious issue we are dealing with here and should not be taken lightly. If we do progress through the Bill in the clauses stage, with a little bit of credence to the angst that has gone into producing the Bill and the problems that people have in society and there are problems in society from time to time...

Individuals do have problems with counselling and

getting their situation sorted out, which takes many years. I think we should process through this Bill to get to clauses stage and reached so we can look at the individual concerns of Members at that stage.

The President: Right, Mr Lowey to reply.

Mr Lowey: Thank you Mr President.

I can quite understand how Hon. Members feel perplexed with a difficult subject but, you know, there is nothing new in history. If you read history, you will see that this sort of – I used the phrase, I think, in the First Reading – of mother nature playing tricks on individuals. It may be not the most apt quotation I have ever made but I think it is a relevant one: this is not a new 21st century phenomenon.

What is new is that there is recognition that there is a problem in certain people. Should they be penalised and punished, as they have in the past? The general consensus today is, no, they should not. I come from a New Testament element of my loose church beliefs. I believe in a loving, caring, society – God.

Mr Callister started our debate today by saying he had concerns, as if somehow the meeting was behind closed doors, clandestine. It was not and I think he would agree with that. It was a listening attempt to concerns being expressed and seeing how we can best rectify them. I see nothing wrong at all in that move. Can I also say, it is not unusual in primary legislation, for primary legislation to be enabling. In other words, the nitty-gritty, the regulations that put it into effect, come later. That is why these matters, when they come as regulations, will be placed before Tynwald for debate and can be accepted.

So, again, because clause 12(5) says they will produce this, what the Chief Minister was saying at that meeting, he gave a guarantee, a public guarantee, that it would be in place before the Act was given an Appointed Day Order. Again, I think that is a positive, not a negative.

He also mentioned the clergy and what about other clergy? Well there is nothing different for the other clergy. The other clergy can virtually agree or not agree. It is the Established Church that has these obligations on it. It does not apply to the other clergy. As I say, ministers of other religions have no obligations. It is the Established Church and that is what we are attempting to deal with the problem. We have now decided that it will be to almost replicate the United Kingdom position, where reasonableness, as opposed to factual... I think that was right.

Can I also say to my Lord Bishop, I thank him very much for his contribution to the meeting with the Chief Minister and I am sad that he believes that amendment (m) is one that gives him concern and that he would feel he would have to press today.

I did say, in my opening remarks, that this problem had been broached in the United Kingdom debate in the committee stage and it was decided there not to have cover on that because, on the probability, and these things are weighed up carefully by the lawyers, that amendment (m) would be the most likely one to breach the Human Rights Convention and the balance, as I said, was to try and get the balance between both people.

I agree with the Lord Bishop that many marriages, to go into marriage on deceit, to use his phrase, is certainly not the right approach but it presupposes, in my view, that we would be very unwise if we did put into legislation a piece

of legislation that on the law of probability of the United Kingdom, in the European Convention, would be in breach of that Convention. That is the advice that has been given to us and I think that is the advice I have to stick with.

Mr Turner and religious differences: I am like him, religious education was not my strongest point. Perhaps I should have taken more interest in it but all we can do is legislate here. I am sure that, in lawyers' terms, and here I look to the learned Attorney General for advice, we live in a society where monogamy – is that the right word I am looking for? – one man, one woman, and other religions have multiple, we do not find any difficulty with that. I should see the same principle if I may say so, applies here.

Can I come to sport? More and more sporting organisations are recognising transgender people in their acquired gender in sport. The International Olympic Committee will allow transgendered people, two years after they have changed gender, to compete in their newly acquired gender. I believe golf, women's golf, is another example. More and more international sports are recognising the change and allowing them to compete. So I believe that the sporting body may only object if the person competing may cause harm to other competitors – this is the advice that I am being given – or the competition would be unfair.

You and I have been long enough to know that along... Remember when the eastern European ladies used to compete, there was always a question mark over the field events of the eastern European ladies. They now have tests and all the rest of it which they have to comply with but there are transgendered people now competing openly in the sports of their acquired gender and allowed to by their operating bodies –

Mr Turner: How would they know?

Mr Lowey: Well, sex gender can be in many ways, physical, chromosomal... In other words, they can do by blood tests whether they are or whether they are not and while I have not got all those answers, I will certainly try and get them for the Third Reading. But the point I am making, and I want the Council to know, that more and more international sporting bodies are recognising transsexual people: usually, after two years acquiring their new gender they are allowed to compete.

Mrs Christian is absolutely right with her assessment of the need for this legislation and the very sound reasons, in my view, that she puts forward.

Mr Butt: I welcome his support and when I come to Mr Crowe and the certificate, as Mr President has said, the certificate will be issued, the new birth certificate will be almost an exact replica, as I said, but it will be on a different register in the General Registry and it will be only at that level that the secrecy... but you would not be able to tell the difference on the birth certificate that would be issued to you. Mr Waft has rightly said, most of these points again I am sure will come up when we deal with the clauses and I will attempt at that stage to go into more detail.

As I said, Mr President, I beg leave to move the Second Reading of the Gender Recognition Bill 2008.

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

Gender Recognition Bill Consideration of clauses commenced

The President: We then go straight on to the clauses stage of the Bill, Hon. Members, and bearing in mind the Lord Bishop's comments earlier this morning, it was my intent, actually, to delay clause 1, which is the interpretation clause, because it would have been relevant to the amendment being accepted or rejected later on in clause 12. However, if the Lord Bishop is not moving the alteration to clause 1, we will go straight on with clause 1.

Mr Lowey.

Mr Lowey: Thank you, Mr President.

Clause 1 defines the main terms that are used in the Bill. The most fundamental definition is 'the acquired gender'. This is a person's new gender, as set out in a full Gender Recognition Certificate that has been issued to them by the expert panel, established by the UK Gender Recognition Act 2004.

Mr President, I beg to move that clause 1 stands part of this Bill.

The President: Mr Butt.

Mr Butt: I beg to second, Mr President.

The President: Hon. Members – Mrs Christian.

Mrs Christian: Mr President, can I just ask the mover, I think he has outlined it before, but he feels no concern about the fact that a certificate has to be obtained in the UK, under the UK Act. Does he envisage any circumstance where the Isle of Man would be issuing its own Gender Recognition Certificates?

Mr Lowey: I think, the Isle of Man is one of scale and expertise. The number of people in the UK that undergo this act... I could give you facts and figures regarding the numbers that underwent it in Scotland, even on the smaller scale and then relate it to their population and the numbers acquired here in the Isle of Man with 80,000 people, is very, very minute. Spread over ten years, you are less than a handful.

So, my honest answer to Mrs Christian is, I could see no reason, in the future, why we would want to, or could or have the acquired expertise within the Island to go across the wide expertise that would be needed in granting a certificate for the medical; for the psychological; for the legal: people that sit on that board. So, in practical terms, I think, it is highly unlikely.

The President: Mr Waft.

Mr Waft: I would like just to say, Mr President, I think the numbers involved give credence to the fact that they have gone to the UK for the odd time that it might arise.

The President: Mr Downie – we are going backwards now; never mind. Mr Downie.

Mr Downie: I would just like to ask the mover whether he feels that, should a person have a certificate issued in the UK, should there not be a procedure where that certificate could, at the wish of the person, lodge it with some appointed person in the Isle of Man, either with the Treasury or with the Registry

or someone else, bearing in mind, it is confidential?

At some future time, if the person who had undergone the change in gender had gone to the trouble to get the certificate and then wanted to enter into a marriage or a civil partnership, it would make the whole process much easier. By doing a thing like that, as I understand it, anybody who gets married today, they need either their parents' marriage certificate; they need their own birth certificate, both parties and surely, all that would be required, then, for the Church or anybody else, or whoever is conducting the civil partnership in years to come, to say that the paperwork is in order and things can go ahead and be much simpler to do.

The President: Lord Bishop.

The Lord Bishop: It is just a point of order, really, that you actually do not need those papers in order to get married. You just have to make a declaration that they are true.

Mr Downie: It is a long time since I was married, you see.

The Lord Bishop: It has been a long time since I was married, too!

That is the fact of the matter: you do not need to produce that evidence.

The President: It is accepted by the declaration.

Mr Lowey: Again, I take note of what the Hon. Member has said. There is nothing to stop... It is not required, but there is nothing to stop somebody who has already acquired a Gender Certificate, getting that certificate from the UK and registering it here, if they so wish. There is not. I cannot see the advantage, but that is an option that is open to that individual, if he or she so wished.

Mr Downie: Just to come back on there, Mr President. If the person had changed from a male to a female and had been a Manx person away in the UK, the difference is then that they would qualify for the pension much earlier, surely. There have to be these little things that pop up from time to time and if there were provisions there to identify what had happened, so that everybody was... I am not suggesting for one minute that people may question things, but there is a process to follow here.

I think a person, having gone through the problems with their gender; having been recognised in the UK; having been provided with this piece of paper, it would be much easier if there was a process in the Isle of Man where they could claim whatever their full entitlement was, if they were due pensions earlier because of their gender or so on, or they wished to enter into a civil partnership, it was there.

The President: Yes, Mr Lowey, finally, to answer.

Mr Lowey: Can I say, on the pensions one, I think, is it not now the policy for equalising the retirement age for everybody?

Mr Downie: That is a number of years, yet.

Mr Lowey: Well, it is in progress. I happen to know – some of my sisters. I take the point, as I said in my earlier response to, that... Yes, indeed, just on the pension which I

have no wish to further debate.

Can I say, at the moment, the certificate can be got and recorded here, if that individual requires. It is not a prerequisite, but it can actually be done, if that person so desired. That, I think, is the way it should be.

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

Clause 2, Mr Lowey.

Mr Lowey: Thank you, Mr President.

Clause 2 of the Bill deals with the effect in Manx law of a person having received a full Gender Recognition Certificate from the UK Gender Panel. The general principle is that the person will be legally recognised as being of the required gender for all purposes, so that a male to female transsexual person will be recognised as a woman and vice versa.

However, subclause (1) provides that this recognition does not rewrite the person's gender history. When the Act comes into operation, Manx law will only recognise a transsexual person as being of their acquired gender from the date that they were issued with the full Gender Recognition Certificate.

Where a person was issued with a Gender Certificate before the Act comes into force, legal recognition of their new gender will be from the day the Act comes into operation.

Subclause (2) confirms that, once a person's gender change has been legally recognised, they are considered to be that gender for the purpose of interpreting other Manx legislation.

Subclause (3) allows there to be lawful exceptions to the general principle that a person with a full Gender Certificate is to be considered as their acquired gender for all purposes.

These exceptions may be set out in the Bill itself or in other pieces of legislation and regulations.

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

The President: Mr Butt, Hon. Member.

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

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

Clause 3.

Mr Lowey: Thank you, Mr President. Clause 3 and schedule 1.

Mr President, clause 3 gives effect to schedule 1, which establishes a process to allow a transsexual person whose birth was registered in the Island to obtain a certificate that reflects their new name and gender. The original birth certificate will remain on file as an historic document, but the new certificate will be indistinguishable in appearance and function, from an ordinary birth certificate.

Paragraph 1 of this schedule requires the Chief Registrar to establish a new register, to be called the Gender Recognition Register. Mr President, this Register is established as a means of providing Manx-born transsexual people with a

replacement for their original birth certificate. To preserve the privacy of transsexual people who wish to obtain a replacement birth certificate, the Register will not be open to public inspection.

However, during the Second Reading of the Bill, in another place, the Hon. Member for Rushen, Mr Watterson, raised the possibility of a 100-year rule for access to information in the Register and the Chief Minister agreed that the Council of Ministers could look at the possibility of including such a provision in an order under clause 12(5). This is, again, they are trying to listen to the concerns of Members and reach out.

Paragraph 2 of schedule 1 sets out the detail of how a transsexual person will apply to have their new details recorded in the Gender Register and it also sets out the process that the Chief Registrar has to follow. A number of amendments were made to this paragraph in the other place. These amendments were essentially procedural and did not affect the substance of the provision.

Paragraph 3 of this schedule provides that entries in the Gender Register are to be included in the Registry's searchable index, but the index must not show that an entry is in the Gender Register rather than the ordinary Birth Register.

Paragraphs 4 and 5 of the schedule provide that both full certified copies and short certificates can be obtained from entries in the Gender Register, in the same way as for the entries in the ordinary Birth Register. In each case, the documents must not disclose the fact that they were drawn from the Gender Register.

Paragraph 6 of the schedule gives the Chief Registrar the power to re-register an entry in the Gender Register in the same way as an entry in the Birth Register.

Paragraph 6(a), which was inserted into the Bill in the other place, makes it an offence for a person to obtain or attempt to obtain an entry into the Island Gender Recognition Register by fraudulent means.

Paragraph 7 gives the Chief Registrar the power to correct entries in the Gender Register.

Paragraph 8 deals with the situation where a person has an entry in the Gender Register and their Gender Certificate is subsequently quashed by a UK court, because it was obtained from the UK Gender Panel by fraud. The person concerned must inform the Chief Registrar that the certificate has been quashed, so that the entry in the Gender Register can be cancelled. Failure to notify the Chief Registrar that a Gender Recognition Certificate has been quashed is an offence and on conviction, the person can be fined up to £5,000.

Under paragraph 9 of schedule 1, a certified copy of an entry in the Gender Register has the same value as evidence of identity as a certified copy of an entry into the original register.

Mr President, I beg to move that clause 3 and schedule 1 stand part of the Bill.

The President: Mr Butt.

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

The President: Now then, Hon. Members... Right, Mrs Christian.

Mrs Christian: I would just like to clarify the issue of

recording the change of gender. We have got it set out here in schedule 1: a change is made in the Manx Register by the Chief Registrar who can consult with the United Kingdom authorities, if he or she sees fit.

When we come to the alteration of the Gender Recognition Register, after a revocation of Gender Recognition Certificate, at 8, now renumbered 9, if it is found in the United Kingdom that the certificate should be quashed, because there has been a fraudulent action, who is then responsible? It talks about 'the person concerned must forthwith inform the Chief Registrar of the quashing of such a decision.' Is that the person whose gender has been changed?

Mr Lowey: Yes.

Mrs Christian: Right, okay. Is it likely that they are going to come along and tell the Chief Registrar that they have acted fraudulently and there is a false entry? Is there any way in which there should be an automatic communication between the Registrars?

I see, in the first instance, the Chief Registrar in the Isle of Man 'may make or cause to be made' enquiries. It does not have to confirm with the United Kingdom authorities that this is a legitimately produced certificate and indeed, the Registrar in the Isle of Man would not be aware of a change in the United Kingdom unless the person concerned comes along and tells them. I wonder whether that is actually strong enough in terms of keeping the records straight in the Isle of Man?

There is a penalty, of course, in subclause 8(4) or 9(4). A failure... shall be an offence, but it may not come to light. Is it then a matter of whether or not the person concerned... I presume they do not want their fraudulent action to be noted or changed in the Isle of Man and therefore, a false record will be retained on our Register. I can see, if they wanted the change to be recorded in the first instance, they may want it to remain there. I just feel that, maybe, there is a lack of obligation to communicate between the two Registrars here.

The President: It may be a lack of clarity.
Mr Crowe, Hon. Member.

Mr Crowe: Yes. I am still struggling a bit with the replacement of the birth certificate. If a person is born on, say, 12th May 1957, they would have a birth certificate. If they changed gender, they will get, on application, a Gender Recognition Certificate. But, we heard in clause 2 that it only takes effect from the passing of this Act.

Is that Gender Recognition Certificate issued effective 12th July 1957 or is it effective... So, the document would be dated, shall we say, tomorrow's date, if it happened a few weeks ago or when the law is passed. So, the certificate would have a current date in 2009, rather than a replica of the birth certificate which is 1957. I am struggling to get what it will actually look like when the Bill goes through.

The President: Mr Waft.

Mr Waft: Thank you, Mr President.

It is just a query. It is the fact that the genealogy researchers, that do research their past history; to what degree will the information be available to the researcher with regard to their history? What will be available to them?

The President: Now, Lord Bishop.

The Lord Bishop: Well, I am just intrigued as to what happens if somebody is of an enquiring mind and knows that a person of acquired gender has had a child and goes to the Registry and presumably has access to the child's birth certificate and looks to see who the father or mother of the child is and sees the evidence there and draws a conclusion?

Mrs Christian: Mr President, there will be some people in the world who know that this has happened; whether it is family or friends or whatever, so it is inevitable that there will be some people who will be aware that there has been a change and I suppose it is almost inevitable, as the Lord Bishop indicates, that there will be some people who will discover that there has been a change. Does that... It slightly conflicts with the fact that the Gender Recognition Register is to be private (**Mr Lowey:** Anonymous.) and not open to public inspection, but then there is a difference between, I suppose, a publicly available register and finding out by deduction.

The President: Mr Callister.

Mr Callister: This may be daft, Mr President, I do not know, but it seems to me there is a more basic situation, isn't there? That someone goes to the UK, let us say a man, aged 30, or any age you like; goes to the UK; has this operation to change sex. They then receive their Certificate. They are then classified as female. Then, they return to the Isle of Man. They require a new passport, do they not? They require a new driving licence, because they are now not Mr, they are Mrs or Miss. They require to inform the Tax Office. They require to, perhaps, if they are on benefits, the DHSS needs to know about it. Would it not then become widely known?

The President: Mr Lowey to reply.

Mr Lowey: Yes, interesting. Can I say to Mr Crowe, if I can come to Mr Crowe first. The new certificate will show the person's date of birth, not the date the certificate was registered in the Registry. So, it will be a birth certificate in the transgender... and there it will be and the certificate will be almost an exact replica. You would not be able to tell the one from the other. That is the advice that I am given.

This has been in operation now for four years in the UK with little or no problems, but can I come back, Mr President, to what Mrs Christian said? Whatever we do here in legislative terms is the best that we can do. There will be – and I agree with the Lord Bishop here when we say we have a press – and that is not to be dismissive of the press – but we have a tabloid press that actually, at this moment in time, finds it of public interest.

The law is quite clear: that people do have a right to privacy and in this area, the international court has said they have that right to privacy, notwithstanding a public right of knowledge by the press. Yes, there is a conflict of interest and I am quite sure there will be people that will want to know and go out of their way to know. Why, I do not know.

I have to say, genealogists – and for my good friend, Mr Waft – do not have a public interest right to know a person has changed gender, for example. They do not. It may not be the perfect answer, as I say, but it is an answer that, I think,

when people do research and they do, it is of genuine interest: genealogy and family trees and there is an interest.

I said, the Chief Minister, in responding to an Hon. Member in another place, on the 100-year issue, has said that they will look and consider that and maybe, bring forward in the Regulations a rule that will allow it to be disclosed in 100 years' time, if that is possible.

If you will forgive me, Mr President. Mr Callister's request that taxes and all the rest of it should... People can already have the documents he refers to. However, clause 12 prohibits the disclosure of the personal information by public officials, once this legislation comes into force. So, they have the right to know the facts and what have you, but they are not allowed to disclose the personal details of whether the man has moved to a woman or a woman has moved to a man. That is the advice that I have been given.

I just want to say to Hon. Members that – and the Lord Bishop who was on about disclosure, the point that he makes, which is reasonable: if they go back and they see the birth certificate; that he has fathered a child, that he was a man, and he has now changed to his transgender. That is not being disclosed to him deliberately and that is the legal thing. You are not permitted to disclose.

You can do research for yourselves, if you so wish, but it is not for officials to make that easier for you and as I come back to the point that this Bill has been in operation and this Bill that we are dealing with is replicated in the UK. I believe this is the best that we can do in legislative terms, to meet the legal requirements of the Isle of Man, under its international obligations.

Mr President, I beg leave to move clause 3 and schedule 1 stand part of the Bill.

The President: Hon. Members, the motion that I put to Council is that clause 3 and schedule 1 do stand part of the Bill. Hon. Members, in doing so, we notice, in fact, or we take recognition of the fact that the amendments which were made in the other place to schedule 1.

So, Hon. Members, with that proviso, I put to Council clause 3 and schedule 1. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

I now take clause 4 and schedule 2, Mr Lowey, please.

Mr Lowey: If I can get my papers, Mr President, I will be delighted to do so. Clause 4 and schedule 2.

Mr President, clause 4 gives effect to schedule 2, which deals with the amendment of marriage law, to take account of the legal recognition of a transsexual person's acquired gender.

Paragraph 1 of schedule 2 makes a consequential amendment to section 1 of the Marriage Act 1984 which concerns marriages within prohibited degrees, to take account of the fact that a person may have legally changed their gender.

Paragraph 2 inserts a new section 5(a) into the 1984 Act, so that a clergyman will not be obliged to solemnise a lawful marriage where the ceremony involves a person who has acquired a new gender. An amendment was made in the other place to change the basis of the opt-out for the cleric from certain knowledge that a person has changed gender to simply reasonable belief.

Paragraph 3 amends section 13 of the Matrimonial Proceedings Act 2003 and it inserts two new grounds under which a marriage can be annulled by the court. The first

situation is where a person has been issued with what is known as an Interim Gender Recognition Certificate by the UK panel. This type of certificate is issued where a person meets all of the panel's criteria for recognition in their new gender, except that they are still in a marriage in their original gender. I should mention that a person cannot be legally recognised in their new gender if they are still married in their original gender.

The second new situation under which a marriage can be annulled is where a person did not know, at the time of the marriage, that they were marrying someone who had changed gender.

Paragraph 4 of the schedule amends section 14 of the Matrimonial Proceedings Act 2003 to establish time limits within which an application can be made to the court for a marriage to be annulled under one of the situations that I have described.

In the case of an Interim Gender Certificate, this time limit is six months, as a married transsexual person only has that period to end their marriage, if they are to reapply to the Gender Panel using a simplified procedure for a full Gender Certificate.

In the case of someone who did not know that they had married a transsexual person, the period is generally three years, which is in line with other situations set out in the 2003 Act. However, the court can agree to hear applications after that time in certain circumstances.

Paragraph 5 of schedule 2 confirms that marriages celebrated before 1st April 1976 may be annulled in the same way as a marriage after that date where an interim Gender Certificate has been issued.

Mr President, I beg to move that clause 4 and schedule 2 stand part of the Bill.

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

The President: The motion, then, Hon. Members, that I put to Council is that clause 4 and schedule 2 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it, the ayes have it.

Clause 5, Mr Lowey please.

Mr Lowey: Thank you, Mr President.

Clause 5 confirms, for the avoidance of doubt, that where a person is the mother or father of a child, they retain that status once they have changed gender. This is in line with the provision in clause 2, which sets out that, legally, changing gender under this legislation does not rewrite the person's gender history.

Mr President, I beg to move that clause 5 stands part of the Bill.

The President: Mr Butt.

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

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

Clause 6, Mr Lowey.

Mr Lowey: Thank you Mr President.

Clause 6 provides that the distribution of property under a will or other such instrument made before the legislation comes into operation, is not affected by the fact that a person has changed gender. In addition, the descent of any property that passes with a peerage or other title will take place as if a transsexual person was still of their birth gender, unless a will or other instrument expressly makes a different provision.

Mr President, I beg to move that clause 6 stands part of the Bill.

The President: Mr Butt.

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

The President: Lord Bishop.

The Lord Bishop: In some ways this actually, although it may seem fairly trivial, strikes at the heart of the issue raised by the Hon. Member, Mr Turner, at the beginning that if you were to, say, inherit a peerage because you were male, it seems to me that it exposes a primary question, which is the question that underlies all the business of whether clergy consider that it is appropriate to marry somebody with a reassigned gender or not.

It is the question, really, of whether the person is or is not of the new gender. That is a question which, however much you legislate in this, it does not altogether answer. All it is a way of fudging around the problem. I will support this Bill provided, I think, that certain amendments are made to it, but it does expose in quite a simple way the dilemma that we are in, in passing a Bill such as this.

The President: Mrs Christian.

Mrs Christian: Mr President, in terms of, for example, a will which is made before the law comes into place, if the person is still alive, they can determine whether or not they want to change their will, but presumably, wills normally talk about a person or a named person in it. Whether the person has made their decision in respect of their will on the basis of that person's gender or position in the family is a matter for them to decide.

The other issue, I suppose, is in relation to peerages. Whether or not we accept the principle that the eldest male shall inherit is one that I suppose is dealt with in law. but I wonder if the mover can explain to me the wording in clause 6(2), where it talks about:

'a will or other instrument to devolve (as nearly as the law permits) along with any peerage or dignity or title of honour unless an intention that it should do so is expressed in the will or other instrument.'

Could he explain what it means where it says 'as nearly as the law permits', please.

The President: There you are, Mr Lowey. Over to you.

Mr Lowey: Yes, I knew when I woke up today it was going to be one of those days! *(Laughter)* I accept what the Lord Bishop has said, that there are differences. Even today we are hearing that... We are questioning whether males should have dominance over females in the succession race. I

noted what Mrs Christian said, even to the heirs to the throne, whether it should just be male domination, because the law says so. Well the law, of course, is not... It was man made and can be changed by man and they are looking at that now, so we are in a changing position.

I do not have an adjective as good as the Bishop's when he says it seems to be a 'fudge'. Well, looking really, I perhaps would not use the word 'fudge' that this legislation is attempting to do. I think my Lord Bishop accepts – I know he accepts – that he is trying, or the law is trying, to get rid of stigma, prejudice and hurt, for individuals and we have recognised that these people have a right to a dignified life and that is really the essence of what we are attempting to do with this legislation.

They may be small in number but they are entitled... they have a right to dignity and as far as I am concerned if you wish to call it a fudge, I am quite happy to accept that as a fudge. I do not accept it as a fudge, I think it is a workmanlike attempt to meet a requirement that we think supersedes the difficulties. I may have expressed that rather badly but I think most Members around this table know where I come from.

Can I try... Before I attempt to explain it, can I attempt to fudge and say the point, 'a will or instrument to devolve as nearly as the law permits', if I could ask my learned friend the Attorney General to give me a steer in this? (*Laughter*) That is a fudge with a capital 'F', I grant you. I think I would try but if I have the learned Attorney who perhaps might be able to tell me what those instruments really are, then I can make a better attempt at it.

The President: Well now, Mr Attorney. Mr Lowey is asking for your assistance here –

Mr Lowey: I am.

The Attorney General: I thought I was doing quite well up to now, Mr President, sitting tight in the midst of this very interesting debate, but I think, Mr President, the way that I would look at it is that if, for example, one had a situation where, shall we say, there is an estate in the north of the Island – that is where all the estates are likely to be – and the landowner in his will says that he gives his estate to his son upon trust for his lifetime and with that benefit he confers the right to be known as the Lord of Ballaugh.

If, in fact, that will was made and subsequent to the will, but before the landowner died, the son in fact changed his gender, so instead of John, the eldest son, he became Joan, the fact that that gender change had taken place would *not* prevent Joan taking the land and being known as the Lord of Ballaugh.

However, if the landowner was very far sighted and perhaps had doubts about John wishing to retain his gender for the rest of his life, it says in his will, provided that if John undergoes an operation which changes his gender, then I give the estate to my youngest son, Edward, then in those circumstances the estate would pass to Edward and not to Joan.

So that is the way I would interpret it. I think it is a very remote set of circumstances but no doubt it has happened in the past and the law is seeking to guard against a remote circumstance which could have, of course, a very dramatic effect on the devolution of land.

The President: Mrs Christian.

Mrs Christian: Mr President, can I just ask, that would be the intent of subclause 6(2) without the wording 'as nearly as the law permits', would it not? I just wonder what those extra words signify or unless it means that you could not be Lord Joan if it did not have that in. What...

Mr Lowey: If I could, that was the interpretation that I would have put on it, what the learned Attorney has said. My clear... is that this has not been... There is no precedent yet in this. This is a steer to the courts because it would be the court if it was not in the instruments in the will, then it is up to the court to steer, to come to the primary legislation and see where the intent and that is, quite clearly, in my view, put in there to steer the lawmakers, i.e. the judges, listening to the case, if they had to err on probability, that is the route that they should take.

The President: Mr Attorney, do you wish to add to that?

The Attorney General: I think, Mr President, the Hon. Member, Mrs Christian, has spotted a very good point, as is so often the case.

I am afraid I cannot really suggest what those words in brackets add, but I think it probably gives – as the mover of the Bill has indicated – the courts some discretion as to how it may deal with a situation which almost by definition is impossible to predict. I am sorry that I cannot really give any further guidance on that.

The President: If you wish to add, Mr Lowey.

Mr Lowey: No, the only thing I would like to... Is it not a strange coincidence that Her Majesty the Queen is called Lord of Mann? That is masculine, is it not, indeed, and nobody can accuse Her Majesty of being... You could accuse her of many things but not being masculine. I only put that through as a flippant remark, but...

The President: Hon. Members, the motion that I put to Council is that clause 6 do stand part of the Bill. Hon. Members, those in favour of clause 6 please say aye; against, no. The ayes have it. The ayes have it.
Clause 7.

Mr Lowey: Thank you, Mr President.

Clause 7 relieves trustees or other personal representatives who are responsible for distributing the property of a trust or estate from any duty or liability in relation to checking whether a person has changed gender. However, a person who considers that they have lost an entitlement to property because they or another person have changed gender, may still seek to enforce their claim on it.

I beg to move that clause 7 stands part of this Bill.

The President: Mr Butt.

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

The President: Mrs Christian.

Mrs Christian: I think the question which this raises, Mr President, is how the other person who may be affected by someone else's changing gender might be aware of it,

in order to make their representations. One presumes that a trustee or personal representative would have a fairly intimate knowledge of the people for whom they were acting as trustees and therefore may have an awareness, but again, it is a difficulty of the privacy element of the Bill and the impact it might have on other people here which, again, relies on other people somehow discovering a change.

The President: A sibling, contesting.

Mr Lowey: Can I just respond to that. Who would be a trustee in these circumstances? I think what this particular clause does is, it relieves the trustees of a legal obligation to go and search out. Mrs Christian is absolutely right: most of our people who are trustees or executors or whatever you are, close friends anyway of the people they are involved with, but this relieves them of a legal obligation to do just that.

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

Clause 8, Mr Lowey, please.

Mr Lowey: Thank you, Mr President.

Clause 8 makes provision for any situation where the distribution of property under a will is different from what it would have been if a person had not changed gender.

For example, if a will refers to an eldest daughter and there is an older brother who changes gender, then the person who was previously the eldest daughter may no longer be legally in that position. A person who has been adversely affected by such a change may make an application to the High Court and if the Court is satisfied that it is just to do, it may make an order for what it considers to be a fair and appropriate distribution of the property.

Mr President, I beg to move that clause 8 stands part of the Bill.

The President: Mr Butt.

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

The President: Mrs Christian.

Mrs Christian: Again is the issue here the date at which the will was made or the knowledge of the person who is making the will? Are these the issues which would have to go to the court? If, for example, a parent made a will leaving something, as the Hon. Member has said, to the eldest daughter who might have been the second child, and then the first-born son changes gender, would not the date at which his intention was recorded in the will be the critical matter?

The President: The date is the date of birth again, is it not? Mr Lowey.

Mr Lowey: Yes, again, this particular clause allows an aggrieved party to go and let the court decide. What the court – I think it says in one of the subclauses – subclause (3) – if it is satisfied that it is just to do so, make in relation to any person benefiting from the different disposition or devolution of the property, if it considers it appropriate. So it is a matter to be decided by the court and then it goes on to say how it could be done.

I take the point that Mrs Christian makes, is it when the will is made and that intent by the owner of that property, whether it is money or land or whatever, he or she wanted that to go to a specific individual. The mere fact that that person then has changed their gender is a matter then for the court to decide whether it was the intent of the person to do it and the courts do this all the time, do they not? Not all the time, but they have been called in to settle disputes in wills that have been drawn up.

The President: Mrs Christian do you wish to come back?

Mrs Christian: Yes, Mr President.

It seems to me that it is rather onerous on the other party having to go to the High Court. Well, it might not be onerous, but it seems to me that you are putting an obstacle in the way of the person, whom it was intended by the person who wrote the will should be the beneficiary. Mr Attorney may be able to cast some light on this, I think, I hope.

The President: I also think that when this Bill becomes legislation I can imagine that advocates writing wills will be taking recognition of the Gender Recognition Bill, as well. Mr Attorney?

The Attorney General: I think, Mr President, we have got to bear in mind, have we not, the principal provision in clause 2 of the Bill, which is that if there is a gender change, that gender change takes effect for all legal purposes from the date of the change, so that, whereas you were female before the change, you are male after for all purposes.

So I think if we bear that in mind and then perhaps look at an example in the context of clause 8, shall we say that there are two children who are beneficiaries under a will and one is male and one is female when the will is made, but after the will is made and again before the person, who made the will, dies, one of the children changes gender.

So shall we say that we had a boy and a girl and shall we say that the boy changes gender, so that there are now two girls and let us say that the father of those two children in his will said, I give all my estate to my eldest daughter. It could well be, Mr President, that the person who would have benefited under the will, now finds herself not the eldest daughter, or indeed the only daughter, but is now the youngest daughter because her erstwhile brother has become her elder sister.

Shall we say that the daughter who would have benefited, but now does not, on the face of what her father said about the will, has gone to a bank and has raised a great deal of money on the expectation of inheriting and the bank has taken a mortgage and so on and so forth and shall we say that, as another detail, her sibling has kept secret the fact that she has undergone a gender change and has gone to live in Australia, the person who is now affected is very dissatisfied and perhaps would have a very good case going to the court and saying, 'Look, I had no idea that my sibling had changed gender and moreover, on the faith of what my father said about my inheritance, I have incurred all manner of liabilities to the bank. It may be, in those circumstances, Mr President, the High Court would very easily say, 'Well in order to do justice between these two people, we must rearrange the devolution of the title to the property.

Again, perhaps a rather bizarre example but one can see

that those sort of situations sometimes have to be sorted out.

The President: Mr Waft.

Mr Waft: Just a query on that comment from the Attorney General. Does not the concept of the person at the time of writing the will decide what is the situation at that time, irrespective of what happens 10 years down the line and some High Court judge can come along and say, 'Oh, yes, well we're not giving it to this person, we're giving it to somebody else'. The person writing the will I would think has a right to decide what the situation was at that time rather than subsequent changes of gender.

The President: Mr Attorney.

The Attorney General: I think the position is, Mr President, though, that wills take effect on death, not when they are written and time and time again in the courts we have situations where people make wills when a certain situation pertains, but when, unfortunately, the will takes effect, there might be a completely different set of circumstances. That is why it is so important generally for people to revise their wills constantly. Good work for the lawyers, perhaps, (*Laughter*) but it is, I am afraid, a fact of life.

The President: Mrs Christian.

Mrs Christian: I thank the learned Attorney for that comment because I did wonder whether or not clause 2 would have covered the issue of the time at which the will was made, but he has now clarified the issue it does not matter when he makes it, it only comes into effect later, so I can see very well now why there is a need for clause 8 to be there.

Mr Waft: So Mr President, if the writer of the will died last week and the change takes place the week after, if it changes before probate or after, there is still a claim if you change your –

The President: That would be the view of the court –

Mr Waft: – to decide to change the whole thing.

The President: Mr Turner.

Mr Turner: Yes, a very interesting part of the debate, this. In this Bill it states that a person who has changed sex will remain the mother or father. With regard to somebody making a will, would that mean that the person remains that person's daughter or do they then become a son with the changing of sex?

The President: Well, it comes back to the interpretation I think, doesn't it, Mr Attorney.

The Attorney General: No, Mr President, I think the two have to be kept separate and apart. Whereas you retain your status as the parent of someone, in other words you are either a mother or father forever, you can... Otherwise you do change.

Mr Lowey: I think it is quite clear –

The President: Mr Lowey, hold on, I am sure you will get the final say on this one.

Lord Bishop.

The Lord Bishop: It never occurred to me before but Mr Turner has made an interesting point. If you are a son or daughter, then the person always remains your father or mother as originally, but if you are a father of the person, the father in terms of certification, becomes the father of a daughter or a son. The father of the person whose gender has changed loses the right, in a sense, in terms of certification to say, I have a son or I have a daughter because the person has reassigned their gender. It is interesting, isn't it?

The President: Mr Waft.

Mr Waft: Mr President, it appears that if there is any money to be gained or land or anything, you can then revert to the status that you are in now, but nevertheless you are still a mother or father from the original conception. You cannot have it both ways, you are either father for this part of the Bill but you are not a male to the other part of the Bill, as the case may be.

The President: Clause 5 dealt with parenthood, we dealt with that.

Mr Lowey, finally then on clause 8.

Mr Lowey: Clause 8 is an instrument to allow the court to decide. I do not think... The Attorney General gave a scenario and there could be a variation on that scenario: it is a bit like disability, you cannot describe disability, there are so many forms of disability and degrees. What we are trying to do in this is, if there is a doubt and somebody feels aggrieved, they can go to the court and let the court decide and this is an instrument that is necessary, I think, to be placed there to allow an aggrieved party.

We talk about appeals for different people. This is an appeals procedure which I think is right. It may be that going to the High Court is rather – as I think Mrs Christian used the word – top heavy, but they are important principles, as the Bishop has already said. There are repercussions down the line. It is not easy, but then we knew it was a complicated position and situation that we were entering into and it is an honest attempt to keep everybody satisfied of their rights to be able to appeal if they so wish.

I beg to move clause 8 stands part of the Bill.

The President: In that case, Hon. Members, the motion I put to Council is that clause 8 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Now clause 9, Mr Lowey.

Mr Lowey: Thank you, Mr President.

Clause 9 permits a body that is responsible for regulating competitive sporting events to prohibit or restrict the participation in such events of a person who has changed gender, but only if this is necessary to secure fair competition and/or the safety of other competitors.

It is appropriate that a sports governing body should be able to make the decision on these matters and it is worth noting that a number of international bodies do now permit transsexual people to compete in their new gender and I

have already given two examples, the International Olympic Committee and the ladies European Golf Tour, two extremes I know, to allow male to female transsexual people to compete in the women's event two years after they have had gender reassignment surgery.

I beg to move that clause 9 stands as part of this Bill.

The President: Mr Butt.

Mr Butt: Mr President, I beg to second and I do have some queries for the mover on this clause.

Like Mr Turner, it is the only clause that I have a problem with. Mr Lowey says that some sports accept people of transgender to actually take part in their sports, but there will always be some sports where competition will not be fair because of the physical nature of the sport: there will always be some exceptions.

I wondered how will the organisers find this out? Will they, for example – and I suspect not – be on the Chief Minister's list at clause 12? I suspect not, Mr Lowey, and if they are not, will sports organisers be within their rights to actually have some sort of form for people to fill in and some declaration to say, 'have you been transgendered?' Will they have a right to actually ask the person that question before they permit them to take part in an event?

The President: Anybody else? Mr Lowey, then. Hold on, Mrs Christian, I think.

Lord Bishop, then.

The Lord Bishop: This is exactly the same problem that we are in. It is sport or Church, but it is exactly the same problem, and therefore, when this matter goes to the Council of Ministers, I would have thought it needed to be raised as a crucial issue, Mr President.

The President: Mrs Christian.

Mrs Christian: I think this is an area where there can be difficulties of definition. It is almost inevitable that, across the spectrum of humanity, people have different characteristics. You could say that it is unfair that I cannot run as fast as Mr Butt, for example! It may be a matter of genetics, it may be a matter of gender, who knows? But I do think that sport has to find some way of enabling people to participate in some way or other, either on one side of the line or the other, but it will not be an easy one, I think, for sport to come down with definitions, particularly with regard to not affecting the dignity of the people concerned.

There was an article in, I think, this week's press about a tennis player who was born with two sets of genitalia and has now had to opt to be one or the other and is subject to all sorts of inspections and medical examinations and all the rest of it. That person is a person who, nevertheless, is good at tennis, whether or not he or she, and I think she is determined – she is a woman – to be a very good woman tennis player, or perhaps not-so-good a male tennis player. Somewhere in the middle we have got to find capacity to let human beings participate in sport and other aspects of life without their gender becoming a major issue.

The President: Mr Callister, Hon. Member.

Mr Callister: I suspect – of course, this Bill has come

to us from the UK – that it has primarily in mind major professional sporting events, major events, at the Olympics and so on, where it, I am sure, is possible to determine whether these people are male or female, and cases have happened in the past where examinations have taken place.

What happens, then, when we come to the Isle of Man and some of our amateur sporting events here? Are we going to have to be in a position – a suggestion that perhaps Mr Waft made – that a declaration has to be made? That in itself would be very difficult to deal with, in any case. Or is it something here that we could effectively ignore?

The President: Mr Lowey to reply.

Mr Lowey: Can I just deal with the last point first. This clause allows the governing bodies to decide. Can I tell you the changing nature of sport, even on the Isle of Man... as has been raised, how will it affect amateur sporting on the Isle of Man?

Let me just tell you, football used to be the preserve of men. I remember telling my sisters to go in goal. We were short of a goalkeeper. It was unheard of – not in the Lowey family: the girls went in goals and we boys were left out to play. In football terms now, there are girls playing football, which was a recognised man's preserve, in my lifetime. The reality is that the governing bodies should be given that right, and this clause gives them that right to decide whether they should allow transsexuals to compete in their chosen sport in their new gender.

I said the International Olympic Committee. There is no higher than that, and I use that deliberately to explain the Olympic movement is huge, in the number of games that take place in that. The sporting bodies have got to agree to an overall picture in that umbrella organisation which covers so many sports. It is now an accepted principle that persons in transgender situations can, after two years, compete in their acquired gender, except the sporting bodies can disqualify them from taking part if they deem it unfair competition.

Let me just say, and I am being crude here, but if a male goes into a female, a male may be stronger physically and all the rest of it, and even in the new acquired gender may have those characteristics that may give an advantage in that particular sport. I think that is reasonable for that sporting body to say, 'Sorry, on this occasion we think that is an unfair advantage and you cannot compete.' I think that is both reasonable and fair. That is what this clause is about. So I do not think it matters very much in the sense that it will affect people's lives.

Can I also say that there is nothing to stop any person asking, 'Have you acquired a gender?' It does not give an obligation, if I am asked, whether I should reply or not, but there is nothing to stop you asking. So do not think that because you have been asked and you do not give an answer, somehow you would be disqualified forever and a day.

But I have to say, in international sport in particular, and I have used international competitions, European ladies'... Look, you do not compete on an international stage and people do not ask questions, because they do. If you are on the block, your history, you are examined. Can I also say, in these new international sporting organisations they undergo an awful lot of tests now – blood tests, chromosome, for obvious reasons, drugs and all the rest of it – so there is a spotlight on them there.

So international bodies have already accepted that

this is happening. There are a few people there who will compete and most of them now – and I would say it will be in increasing numbers – they will permit people who have moved from one sex to another to compete in their newly acquired gender, and as far as I am concerned, two years does seem to be reasonable after they have acquired it, because it seems to be that is the starting and ending point. You do not immediately have your operation – not your operation, but your gender certificate – today, and then you compete tomorrow. There is a two-year gap between getting your gender certificate and competing.

The President: Now, Hon. Members, using Mr Lowey's comment about international bodies, I doubt if FIFA are drawing up the rules as the body responsible in the Isle of Man. It would be the Isle of Man Football Association, but never mind.

Hon. Members, the motion I put to Council is that clause 9 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 10, Mr Lowey, please.

Mr Lowey: Thank you, Mr President.

Clause 10: in Manx law, many definitions concerning sexual offences are still gender specific and refer, for example, to acts committed by a man upon a woman. Clause 10 ensures that where such a crime has been committed, the fact that either the victim or the perpetrator has changed gender, or changes gender after the offences were committed, does not prevent the crime being prosecuted in the usual way. In other words, it is not a clever get-out for somebody to decide that they would change gender after having committed... I know it sounds less plausible, but this is an insurance.

I beg to move that clause 10 stand part of the Bill.

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

The President: The motion I put to Council is that clause 10 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 11.

Mr Lowey: Thank you, Mr President.

Clause 11 deals with the situation where a person from a country outside of the Isle of Man or the United Kingdom has legally changed their gender under the law of that country. Essentially, such a person will not be legally recognised in the Island as being of their new gender and any marriage they have entered into will not be recognised as valid unless that person also obtains a gender recognition certificate from the UK Gender Panel. It is for the avoidance of any doubt.

Mr President, I beg to move that clause 11 stand part of the Bill.

The President: Mr Butt.

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

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

Now clause 12, Mr Lowey.

Mr Lowey: Thank you, Mr President.

Clause 12(1) makes it an offence for a person who has obtained certain information about a transsexual person whilst they were acting in an official capacity to disclose that information inappropriately.

Subclauses (2) and (3) define exactly what information is protected and what is meant by acting in an official capacity. Mr President, this is not a blanket ban on talking about transsexual people; it is about taking reasonable steps to protect a transsexual person's Human Rights to privacy. I would hope that most Hon. Members would agree that it is reasonable to require people who obtain information about a transsexual person whilst they are acting in an official capacity to keep that information confidential. There are, of course, situations where the disclosure of information is either necessary or appropriate, and the disclosure is not an offence under these circumstances.

Subclause (4) sets out a list of situations where disclosures may take place, for example, where it is necessary for the prevention or investigation of crime or for the purpose of proceedings before a court or tribunal.

Subclauses (5) and (6) provide that the Council of Ministers can make orders to establish additional circumstances under which the disclosure of information is permitted. I have already mentioned the Chief Minister's personal assurance that the Council of Ministers *will* include provisions in such an order to assist the cleric to exercise his or her right to opt out from solemnising the marriage of a transsexual person. It is intended that other appropriate situations will also be covered.

The maximum penalty for an offence under this clause is a fine of up to £5,000.

Mr President, I beg to move that clause 12 stand part of the Bill.

The President: Mr Butt.

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

The President: Now, Lord Bishop.

The Lord Bishop: Mr President, if Members of the Council will refer to the amendment paper that I have had circulated:

Clause 12

(1) Page 6, line 32: Delete 'or'.

(2) Page 6, line 34: After 'other than this section', insert:

'; or (m) the disclosure is made to any person who makes an enquiry in contemplation of his or her marriage to a particular person as to whether the gender of the intended spouse has become the acquired gender'.

(3) Page 6, line 35: Delete 'may' and substitute 'shall'.

If I may refer first to paragraph (3) on that paper... As the Hon. Member has mentioned, the Council of Ministers will – or may, according to the printed document –

'make provision prescribing circumstances in which the disclosure of protected information is not to constitute an offence under this section.'

That use of the term 'may', a permissive use, should, I think, be made quite clear and I do not see that there could

be any problem in the acceptance of that amendment since I have had that direct assurance and that assurance has been recorded. So it seems to me that to put that amendment into the Bill, replacing the word 'may' with 'shall', ought to be acceptable to those who are behind this Bill.

When we reach (1) and (2) – (1) is consequential on (2) – it seems to me that the UK law is inadequate here. Having been involved in this process back in 2004 or whenever it was that it passed through UK law, I would assert very firmly that the Human Rights Act cannot be used in clear rejection of what I am seeking.

The proposal is that a person who makes an enquiry in contemplation of his or her marriage to a particular person as to whether the gender of the intended spouse has become the acquired gender... and it seems to me to be a fundamental human right in itself.

A registrar may know, a panel may know, a police officer may know, a judge may know, pension officers may know, but the prospective partner may not. As we have noted, if the person involved has had a child and the prospective spouse is of an enquiring mind – and I do not think that is a particularly unusual instance – he or she may look up the birth certificate of the child and see what is there.

Sexual union, or absence of it, may be cited as a basis for voiding or annulling a marriage. This is not simply a personal matter. The law recognises the sexual act, and schedule 2, paragraph 3, quite clearly affirms this. To say that disclosing this matter is one of a number of things that might be disclosed and that the law does not necessarily enforce that people should tell all the secrets about their previous life is not to see the point here. This is far more serious than whether somebody likes broccoli; this is more serious than whether somebody has a criminal record; this is a matter of the nature of the relationship involved in the sexual act itself.

The very fact that there are so many protections in schedule 1, and protections which all of us were agreed should be there, conclusively proves that the acquired gender is a matter of first-ranking seriousness and the information is a matter of first-ranking seriousness. If it were not, we would not worry about all these protections in schedule 1. That is why a prospective spouse must have the right to know.

I do not disagree at all with that right to be discreet about a person's gender reassignment. I am quite happy to recognise the right of anyone to know that I am male, I am married, I have fathered three children and so forth, and I am equally aware that people of reassigned gender would not want that kind of information disclosed, and I would be happy to protect that right in general; but the prospective partner must be allowed to know and must have the right to know. Others have the right to know. This is a matter of primary importance to the relationship and therefore I move the amendments standing in my name.

The President: Mr Callister.

Mr Callister: I beg to second, Mr President, giving my support entirely to that amendment, but also raising one or two matters about this information being disclosed in one way or another.

If we take an example of a male who has, at some stage in life, become a female but had, prior to that, during the time that he was a male person, made... Presumably his passport changed, or the passport would change. Various changes have to be made, but if you were, for instance, booking a flight on

the internet, you would have become a female person rather than a male person. How are you going to be then accepted? There are numerous ways that you could use the internet, your identity is known by companies and so on. You suddenly become someone of a different sex. You are going to have to prove to them why, or you are a different person altogether and you have no connection with the previous person.

That may be an extreme case, but anyone that you have been connected with commercially – through insurance, through business, through your accounts from the gas suppliers, your electricity suppliers and so on – all of these people are going to discover that you have changed sex. How is that going to be communicated to all of these people, either here or elsewhere, that that information must not be disclosed?

The President: Mr Turner.

Mr Turner: Yes, thank you, Mr President.

I would like to support the Lord Bishop. I think he has made some very interesting points and made a very strong case for supporting his amendment. Just picking up on what Mr Callister said, I do not entirely agree with him as regards some of the matters like booking on the internet, for example, because it would be the same as... You would just book in your new name and gender, one would assume, where you select the 'Mr/Mrs/Ms' in the drop-down box that appears. I would not have thought those sort of things would give any difficulty.

Where I can see there may be some difficulty and some justification, is possibly to do with credit checks and your credit history. There may possibly be some problems arising where you would have to provide some evidence, but again I do not know the answers to those. I think, although I do not agree entirely with some of the points Mr Callister made, the broad principles of scenarios may well arise.

The President: Hon. Members, before we continue with the debate, just for clarity, the Lord Bishop has referred to the white paper which has been circulated to you this morning, Hon. Members. So that you are all clear at this stage, I accept that (1) is the deletion of 'or' and then on to (2), 'after "other than"', (1) is incumbent upon (2). So I will take those two as a separate amendment, Hon. Members, when it comes to the vote. I will take (1) and (2) together as one vote, and I will take (3), which is the deletion of the 'may' and the substitution of the 'shall', as a separate vote. As long as you know that will be my intention when it comes to the voting.

Now, Mr Crowe.

Mr Crowe: Thank you, Mr President.

I think we should keep our eye on the ball. What we are looking for under 12(1):

'It is an offence for a person who has acquired protected information in an official capacity to disclose the information to any other person.'

Then it talks about what protected information is. I think the debate might go wider than we are actually looking at in this clause. I would like Mr Lowey to reaffirm what he and the Lord Bishop had when they met the Chief Minister, because I think what the Chief Minister said – and the Bill can only take effect with an Appointed Day Order – that in no way would the Council of Ministers approve an Appointed Day Order without an order under clause 12(5) being approved

by Tynwald, which I think would very well cover the issues raised by the Lord Bishop.

So I think I am in a bit of a quandary over this, because I think, whereas the ‘may’ to ‘shall’ might be acceptable, the rest of it might be covered under an order in Tynwald which would cover the points and issues raised by the Lord Bishop. So I am debating in my own mind as to how best to take this forward.

The President: Mrs Christian.

Mrs Christian: Mr President, with regard to the points raised by the Hon. Member, Mr Callister, it seems to me that if an individual has had a gender change they simply, in respect of the utilities which he has mentioned, close their accounts as the person they were and open a new account as the person they are. Whether the person in the office dealing with that makes a connection and says, ‘Aha, this person has had a gender change’... These things are inevitably, within some sphere in a community, going to become known. But I think, technically, it should be possible to simply close an account and open a new one. No-one has to declare with their certificate that ‘I am now Clarence instead of Clare,’ or whatever it may be! *(Laughter)*

I do not think that this particular clause... or I am not sure, perhaps the mover can indicate whether he feels that this particular clause would cover people in the office of the utilities company, or whatever it may be. It seems to me that we are perhaps stretching it a little too far to say ‘how do we tell those people, how do they know whether to ask the question and how do they know that they are not allowed to disclose?’ They do not need to know that these are the same two people, do they? I simply close an account and I come along tomorrow and open another one. You may, by local knowledge, be aware, but –

Mr Callister: It is not that easy with your bank, for a start!

The President: Mrs Christian.

Mrs Christian: So I think that in that context... Maybe with your bank, yes, they have got to know their customer. You, as the customer, may well say, ‘Well, in order to get banking services, I will reveal the fact that I have had a gender change.’ That is up to you as the individual, isn’t it?

With regard to the amendment proposed by the Lord Bishop, I find this an interesting one. I did mention earlier that there are other circumstances where you would feel, if you were marrying a person, you would want to know something about them, but there is not a legal requirement for you to do that. For example, if you were to marry someone and find that they were a paedophile, you may be horrified, outraged and it may be something that you feel would affect... you would not have married them, had you known. But there is not a law to cover that.

I think the Lord Bishop has illustrated something slightly different in this particular amendment in the context of marriage between a man and a woman and the sexual union being the result of marriage, in the Church’s eyes and legally.

If we are looking at the wording of this subclause, I think it is something that most people would feel that they would want to know about their prospective marriage partner and

to that extent, I am supportive of it. I suppose it does not necessarily mean that there cannot be a sexual union because of the result of this, and whether or not, if there can be a sexual union, there is a need for disclosure is a moot point, if those two people have determined that they want to be married to one another. So I am erring in favour of the amendment, but I am still not quite sure we have an absolutely clear-cut argument in favour of a compulsory disclosure.

The President: Mr Downie, Hon. Member.

Mr Downie: Thank you, Mr President.

I just want to talk about the issue of a person who has undergone a change and how significantly easier it would be if there were some sort of a certificate available to that person that they could obtain from the Registry. Then if they went to change their bank account because they had actually changed their gender, to do that you need your utility bills, you would have to advise them that you have changed. It is not a simple process by any means and, believe me, it is going to get worse before it is going to get better. So even if there was a reference number where you went to open your account and they could check up and, if it was done in a confidential manner... Do not forget, lots of the things are dealt with in banks on a confidential basis.

I think it would be helpful because I think, for some of these people, having endured all of this and gone to the trouble of registering in the UK and so on and so forth, it is going to be difficult for them, unless it is made easy.

I think that what the Church is trying to do – and I support this – is provide, or show that they have got a duty of care and they are trying to make sure that before people enter into this arrangement, or this marriage, they actually know what they are doing. It is not just a contractual arrangement for the Church; it is something different, and I think we have got to really bear that in mind.

I think there are circumstances when you have got to give as much protection as you possibly can, but at the end of the day, some of these people may want to say, ‘Well, I’ve changed my gender, I’ve had the various operations,’ and are quite prepared to come out into the real world, as we have seen with other groups, so I think we possibly do err too much on the side of caution. Give them the protections in law by all means, but at the same time, if they want a clear run and not have any hassle in the future, they should be able to ask for a certificate to say, ‘There it is, I have changed, I have gone from A to B and there’s the piece of paper to prove it. Let me get on with my life.’

The President: Mr Waft, Hon. Member.

Mr Waft: Just to throw a new light into the bank accounts and ‘Know Your Customer’ in the future, we are quite content with doctors, nurses, priests and Uncle Tom Cobbleigh having access to confidential information which they keep in confidence. Occasionally, things do get out in the public domain, but nevertheless confidentiality raises its head quite often these days, confidentiality clauses in this that and the other.

With regard to the amendment, I just wondered, with regard to Human Rights issues, whether the Attorney General does peruse the amendments – this amendment and indeed all amendments – to satisfy himself that the Human Rights regulations are abided by?

With regard to the delete 'may' and substitute 'shall', that was of concern to me because we have had many, many debates over this in the past. I fully understand the reasons why the Lord Bishop decides he would go for 'shall'. I can understand that. I think we must recognise that this is one of the most important decisions of any couple's life, the fact that they are going into the marriage situation. I think that they should have the full knowledge of exactly what they are getting into: it is a lifetime's – well, it usually is! – connection between these two people and they should be fully aware of what is going on. If the cleric or the person in charge of the ceremony is aware of one thing and he is not allowed to tell another, it makes a bit of a nonsense of it, really. He has heard all the rumours but he is not allowed to clarify the situation.

I think we should try and support the amendments as they are.

The President: Mr Attorney.

The Attorney General: Thank you, Mr President.

Could I just deal with the point raised by the Hon. Member, Mr Waft. All Bills that come before the respective branches of Tynwald are vetted by lawyers within Chambers and, for example, you will see on paragraph 6 of the explanatory memorandum:

'In the view of the Member moving the Bill its provisions are compatible with the Convention rights...'

Equally, amendments made of which Chambers has notice will be vetted for Human Rights compliance. There is always, of course, difficulty when amendments are made in circumstances where we have not had an opportunity fully to vet Human Rights compliance.

Mr President, if I may, I would just like to raise one or two points about the substantive amendment moved by the Lord Bishop, because I have to say that I do anticipate some difficulty with (m) which is proposed.

If we put this whole clause 12 into some context, I think we can break it down into three particular parts. The first part of clause 12 creates an offence for people who acquire protected information in an official capacity and who disclose that to any other person. The second part of clause 12 tells us what 'official capacity' and 'protected information' mean, and it seems pretty clear, for example, that if one were to receive information about a person's acquired gender in the capacity of, shall we say, a doctor, a lawyer or the Chief Registrar, one would be receiving protected information in an official capacity.

The third part of the clause is it carves out certain exceptions. It says that it is not an offence even if you do have protected information in an official capacity and you make a disclosure because there are other public interest exceptions. So, for example, if you make a disclosure for the purpose of preventing or investigating crime, that would be an obvious example.

And so, Mr President, if we look at the amendment moved by the Lord Bishop, we would see that it would not be an offence to disclose protected information if the disclosure is made to any person who makes an enquiry in contemplation of his or her marriage to a particular person, as to whether the gender of the intended spouse has become the acquired

gender. So (m) contemplates that someone who is about to become married to another person has perhaps a doubt or suspicion about the gender or acquired gender of his or her proposed partner. What (m) is saying is that if a disclosure is made to any such person who has that doubt, then no offence is going to be committed.

What it leaves open, though, Mr President, is this: that the disclosure could be made by, for example, a doctor, a lawyer or the Chief Registrar. If you have a doubt about your proposed spouse's gender, you might think to yourself, 'The obvious person that I should go and consult is my lawyer, who also acts for my proposed spouse', or 'I will go and have a word with my proposed spouse's doctor', or 'I might even go and check with the Chief Registrar', and what (m) is leaving open is that the disclosure could be made by any of those three persons I have indicated, to the person who has doubts about the gender of the proposed partner, and we are saying that there is no offence committed.

I do not think that that is what the Lord Bishop intends at all. I do not think it can possibly be the case that, if you have doubts about the gender of your proposed spouse, it is permissible to go to a doctor or lawyer who may have received protected information and you are not thereby creating an offence, if you make that disclosure.

So I quite see, as it were, the mischiefs that the Lord Bishop is trying to combat, but I do feel that (m) is not the way to do it and, in fact, it is going to create a terrific hole in the whole scope of clause 12, as we have just debated it.

The President: Hon. Members, I am very conscious of the clock; I am conscious that, in fact, Mr Butt wishes to come back; I am conscious that the Lord Bishop wishes to come back; and that is long before we get round to Mr Lowey winding up on clause 12. It may, I think, Hon. Members, be an appropriate time at which we take a break. I appreciate that you might have been thinking we would have been finished a little bit quicker this morning. Nevertheless, it is important and I think we are at a crucial state, that it is right that we should get this correct at this stage.

Mr Callister: Mr President.

The President: I am going to say, Hon. Members, that we will resume our deliberations at 2.30.
Mr Callister.

Mr Callister: Well, you have said it, but I was going to propose that we adjourn debate on this until we can find a solution.

The President: We are still working our way through this, Hon. Members, and I think at this stage, I would rather conclude this debate. If you wish to take that up later, as we are progressing, so be it. But at this stage, I think there is still room to keep the debate alive and you have the opportunity now to consider it over a lunch break.

So we will resume our deliberations at 2.30, Hon. Members. Thank you.

*The Council adjourned at 1.09 p.m.
and resumed its sitting at 2.30 p.m.*

Gender Recognition Bill

Consideration of clauses concluded

The President: Please be seated, Hon. Members.

When we broke off for our lunch break today, we were in the middle of clause 12, or dealing with clause 12, and to that you have the amendments moved by the Lord Bishop. I think at this stage I was due to call... Was it Mr Waft? No, Mr Butt.

Mr Butt: Thank you, sir.

As other Members have said, this is a very difficult issue, but my feeling is that, at the moment, I would oppose the amendment for several reasons: matters of principle and matters of the mechanics of the actual amendment. I am partly of that view because of something the Bishop himself said, when he said that failing to disclose the change of gender is much more important than failing to disclose previous convictions. In a standard marriage, people do not always disclose what their past history is, including previous convictions.

As Mrs Christian has already said – she hit the point exactly – if somebody were to become engaged or married to a paedophile, a sexual offender, a rapist or somebody who would inflict violence on them, they do not know that beforehand and that does not get disclosed. Those issues can lead to much more serious consequences, in my view, than passively marrying somebody who had a different gender at some stage. They can lead to extreme violence, they can lead to sexual abuse of family or themselves, they can even lead, in some cases, to murder – and have done, and there are many examples of that. So the right to know exactly somebody's background is not enshrined anywhere else and this is just one aspect which would affect how a relationship developed. You would not have, for example, the right to know that somebody had HIV, or even – and this has happened on many occasions – that they were already married. Offences of bigamy occur because nobody actually says you have got a right to know is this person already married, if there is a bigamous marriage already existing.

People marry for many different reasons and it is not always for love, unfortunately. They marry because they need security, they need companionship. Some people marry because they want control of somebody else and as we know, a lot of marriages do fail. I think up to 40 per cent of marriages do fail, for various reasons, and I think this element and the numbers involved is a very small issue.

I think if there was a genuine loving relationship between the two people, if the person had suspicions enough to make them go to somebody official and say, 'Can I find out has this person had a change in gender?' already there is some doubt as to what the stability of that marriage would be, if he is suspicious enough to make that move. I think the mover, Mr Lowey, said under schedule 2, there is power to annul a marriage if they later discover that they were, in effect, fooled as to the gender history of the person.

My other point, sir, is about the mechanics of it. The way the amendment reads, it would mean that anybody – an investigative journalist, a person making mischief, or even, say, a blackmailer – could, in effect, go to the Chief Registrar and say, 'I am contemplating marriage with person X, can you give me information as to have they changed their gender?' and be given the information. There are not enough

safeguards in the way the amendment is worded to stop that sort of thing happening.

Finally, sir, I think the Attorney General gave us some advice and information just before we broke up before lunch, which actually helps confirm my views that, perhaps, this amendment should be resisted.

The President: Lord Bishop.

The Lord Bishop: Thank you, Mr President.

There were a number of interesting points made by the Attorney General. The first was about an amendment being presented to us here that may not have been vetted for Human Rights compliance. I have to say this was written by lawyers. If you look at your Order Paper, you will see that the amendment that I had proposed – the amendment (m) – is identical to the amendment which is here. I explained the intent of the amendment to the lawyers and it was, in fact, the lawyers who wrote it, so I think – well, I hope – that one can trust the lawyers to have made it Human Rights compliant. So I do not think there is a problem there and I think that, for the same reason, the supposed holes in the amendment are not as big as they are made out to be.

Second, the circumstance of which we are talking. The circumstance is that a transgendered partner will not have told his or her prospective spouse that this is the case. So we are talking about the possibility of somebody who has had a gender assignment refusing to tell, or being embarrassed to tell, or, for some reason or other, not telling the person whom that person is marrying that he or she has had a gender assignment, but the Registrar, or the lawyer, or the doctor, as quoted by the Attorney General, does have that information. It seems to me that, if I were in that circumstance, if I were considering marriage to a person whom I might suspect of this, but I was not sure, I would have thought it was perfectly reasonable to go to ask, particularly, a doctor, and for the doctor not to be fined £5,000 for giving me that piece of information.

Paedophilia: if somebody has been a convicted paedophile, that person has a history.

If somebody is HIV-positive, agreed, there is no right to that information, but remember it is a criminal offence to deliberately infect a person with an agent such as HIV.

Yes, marriages fail. The suspicious person – if we are talking about the suspicious person, because perhaps that is the easiest way to describe it – does not want the marriage to be annulled. That is why the person wants the information. Nobody goes into a marriage *entirely* believing that they know everything about the other person; it is impossible to do that. Nobody goes into a marriage knowing that there is – much as people will say – total and absolute and unconditional trust, because we are all human beings, and human beings cannot do that. But if there is a suspicion about the nature of this thing, it seems to me that a responsible person – and I mean that both in the legal sense and in the common sense of the term – should not be fined for allowing that information to pass within the confidence of this relationship.

The third thing to say is why – and this was a question that Mr Crowe raised earlier – this could not be covered by subclause (5). When I spoke with the Chief Minister, I understood – and this may be my ignorance or misunderstanding – that the Chief Minister was going to allow the various things that were in my original amendment – that is particularly relating to the disclosure to clergy, but also disclosure to a

party prospectively contracted in marriage, which is there in the original amendment (m), exactly the same as under amendment (2) on this piece of paper – to be covered under the provisions prescribing circumstances in which the disclosure of protected information is not constituted as an offence.

During Mr Lowey's introduction to this earlier today, he made it very clear that the policy of the Government – and the policy, presumably, of the Council of Ministers – was specifically to reject that disclosure. That is why I did not withdraw all three of those clauses in the original amendment, but insisted on retaining this one, because that was not going to be guaranteed by the Council of Ministers.

That is the reason why this is here and is not in subclause (5). If the Council of Ministers were willing to protect the rights of somebody who told a prospective spouse, under subclause (5), and we were to get a guarantee of that, there would be no need for this subclause (m). But that guarantee is clearly not forthcoming by the introduction that we had to this Reading, and therefore that is why I am insisting that at least it be put.

The President: Mr Callister.

Mr Callister: Thank you, Mr President.

In view of what we have heard from the learned Attorney and Mr Butt, there are other elements now that probably were not considered when this amendment was put down, and I think, if we are going to try and deal with this at all, we need to look at what we are trying to achieve.

What we are trying to achieve, it seems to me, is to allow a person moving to marriage to be able to find out if there has been a change of gender by the prospective partner. It also seems to me that it is probably unlikely that you could put that into law as a requirement for that information to be given, though that may not be the case, but what I do think is that if this is worth pursuing, we ought to adjourn this debate to find a way forward which actually will satisfy the requirements without causing the obvious difficulties that this, as it is worded, would bring up for us.

So, I propose:

that debate on clause 12 be adjourned to the next sitting.

The President: Mr Turner.

Mr Turner: I am not sure whether I am able to second that. I have already spoken.

The President: I think you could, sir.

Mr Turner: I am happy to second Mr Callister's moving that the debate be adjourned whilst we seek further clarification and information on the implications of this amendment.

The President: I am certain, Hon. Members, that we are entitled to adjourn at any particular stage that Council wish, but I would like Council to consider the position, in the first instance, as to whether or not a case is made.

Mr Lowey.

Mr Lowey: I would oppose the suspension of Standing

Orders to allow it to be delayed.

Hon. Members, the difficulties that you are experiencing today are the difficulties that were experienced four years ago in the United Kingdom and before that, when this Bill was coming forward. Let me remind you of what I said when I introduced the clause, and forgive me, if I read it out:

'Clause 12(1) makes it an offence for a person who has obtained certain information about a transsexual person whilst they were acting in an official capacity to disclose that information inappropriately.'

That is the essence of the clause.

'Subclauses (2) and (3) define exactly what information is protected and what is meant by acting in an official capacity.'

It is straightforward, in my view, and clear. That is what this clause is dealing with. I then went on to say:

'... this is not a blanket ban on talking about transsexual people; it is about taking reasonable steps to protect a transsexual person's Human Rights to privacy.'

The whole purpose of this Bill.

The President: Sorry, Mr Lowey, I do want to interrupt you and I do not want to stop you, but you said you were opposing the adjournment.

Mr Lowey: I do.

The President: I do not want you to answer everything which is taking place, because we will come back to that.

Mr Lowey: No, but the reason why I am saying...

The President: Yes, alright.

Mr Lowey: I am making the case –

The President: You have to make the case, sir.

Mr Lowey: – why I do not think it would... because the same difficult –

The President: I will allow you to continue.

Mr Lowey: The same difficult decisions will have to be employed, will have to engage our thinking, whether we delay it for a week, a month or two months. The questions are almost intangible. There is a question... This debate took place in other jurisdictions at the time, in the House of Lords and in the Commons, and the problems that have been identified round this table were identified then and the route taken was this.

It does not meet everybody's approval. I have already pointed out, Mr President, that subclause 12(5)(a), which is going to be moved by the Chief Minister, to give the right from proof to just reasonableness, as opposed to factual, is already being addressed and given almost a guarantee – in this world, as big a guarantee as you are ever likely to get, when the Chief Minister says publicly he wants it on public record that he is doing it. I find it very hard to see that that will be improved by adding either a 'may' or a 'shall'. Anyway, that is by the by.

Coming back to the points that are being raised, I have not had a chance to answer them, but I will attempt to answer them.

The President: No, we are dealing with the adjournment, Mr Lowey.

Mr Lowey: I know, but I think the adjournment is being suggested because there are doubts in the Members' minds. The other side has not been able to put the answers to them yet to hopefully resolve the doubts, and therefore I think... What is it going to achieve? A comfort zone for us? I do not think so, and I do not think that is enough reason to delay it for a week or a fortnight.

The President: Does anybody else wish to speak to the adjournment?
Mrs Christian.

Mrs Christian: I think, Mr President, in determining whether we support the adjournment or not depends on what we have decided in our own minds about the principle here. If Members have decided that it is appropriate for a person contemplating marriage to get the definitive answer on the question of gender reassignment, then there is room for an amendment of this nature; but whether this amendment is tightly enough defined, I am not sure, because I think the illustration presented by the Hon. Member, Mr Butt, about it simply being an enquiry in contemplation of marriage... One assumes that the person who was asked the question would very seriously consider how they can establish that fact before they would give an answer, but whether or not they have sufficient protection in this, I do not know.

Mr Lowey: Data protection?

Mrs Christian: So I think there are two things: if you think that this issue is somehow different from every other issue that we feel should be divulged before marriage, or could be divulged before marriage, then you would support the amendment; if you think that it is like any other and we do not make provision for us to have a right to ask so many questions before marriage, then there is really no need for delay.

I think that my own view on it, the more I think about it now, is that we do not need to delay. There has to be an element of trust in a marriage and there are many situations where we do not legislate for one party to tell the other their history, and so I think, at this stage, that this does not differ sufficiently from those other issues for me to feel that we need to make a special provision for it.

The President: Mr Waft, Hon. Member.

Mr Waft: Thank you, Mr President.

When I asked about the Human Rights issue and for want of another word, making amendments on the hoof, I did not expect the water to be muddied as much as it has. I was of an opinion that it was a quite reasonable amendment, but then again, if the Human Rights issue is not satisfied and the comments made by my colleague, Mr Butt, are taken into consideration, I fail to see what would be the reason for the adjournment to be proceeded with. I do not think it is going to throw up anything more than what we already know. If it

has, if there was a certain issue, I could see that, but I do not particularly know what leaving it over for another couple of weeks will do. We have left this over previously and we have still got problems with it. I think we are going to have to make decisions on this and I think we should do it now.

The President: Mr Attorney.

The Attorney General: Mr President, could I just say very briefly, whilst I have, of course, every respect for the amendment moved by the Lord Bishop and what he has said about the drafting of clause (m), I personally have some very grave concerns about whether this provision in clause (m) is Human Rights compliant. I believe that there is a danger that it could offend the right to privacy in respect of one's own very personal affairs.

I also feel that it would be wrong, in principle, to substitute 'shall' for 'may', because the Council of Ministers must have a discretion as to whether or not there are circumstances which justify the making of an order. If you put a statutory duty on the Council of Ministers at the very beginning, it fetters their discretion and I think it is wrong in law.

So, Mr President, I just felt it was appropriate to advise Hon. Members on those two legal points I have concerns about.

The President: I do not want to keep going round in circles on this, but –

The Attorney General: No, I am sorry.

The President: No, I do not want to keep going round in circles on this particular point, but I will allow Mr Callister to come back.

Mr Callister: Thank you, Mr President.

We have had all these various instances of occasions where you would not inform your prospective husband or wife of numerous matters. The only difference here is that you are in a situation where previously one was a man and had become a woman, and vice versa, and that does not apply in all of the other instances that we have heard referred to. On the other hand, I can see the difficulty that, if this does not comply with Human Rights, this Bill is going nowhere, as far as I can see. So I think I will, at that point, just leave this over – I think we will lose this move for adjournment, I am quite sure – and see what happens with the vote.

The President: We are about to try. Standing Order 3.7(3) tells me that an adjournment requires a simple majority of the Council, Hon. Members. Those in favour of adjourning, please say aye; against, no. The noes have it. The noes have it. We will not adjourn; we will continue with the debate on clause 12.

I have been very lenient and allowed everybody to speak, so I may as well continue in that vein at this particular stage before I ask Mr Lowey to wind up on clause 12. Does anybody want a final word?

Lord Bishop.

The Lord Bishop: Mr President, are we –

The President: We are still on clause 12 and the amendment, sir.

The Lord Bishop: On the amendment?

The President: Yes.

The Lord Bishop: My only comment, really, would be that Mr Lowey... The references that I was making during my last speech to Mr Lowey's comments were actually the ones that he made in his initial speech presenting the Second Reading. He has said, just a moment ago, that the purpose of clause 12 is that information 'cannot be declared inappropriately'. Therefore, there is information that can be declared appropriately.

That is exactly the point that I am trying to make in the amendment, exactly the point. There is information you *cannot* declare appropriately; there is information that should be able to be declared appropriately without a £5,000 fine.

The President: Mr Turner.

Mr Turner: I just have one further point, Mr President, and this was coming from the whole Human Rights issue. I find it quite difficult to accept that the person who is marrying the transgender person does not have any rights here. I find that most unfortunate, because that person is believing they are marrying a man or woman, depending on who is who, when, regardless of what a certificate or a piece of paper says, it comes back to the point I was making earlier, biologically, of what that human being was born as. I just cannot believe that there are no Human Rights for that person, when there is... It just seems to me that we could debate what is or is not, or may or may not be Human Rights compliant, but of course that could only be decided if it was tested, surely.

The President: Mr Lowey, to reply.

Mr Lowey: I thank Hon. Members for the intense scrutiny of this particular clause. I think it is a very healthy thing and I would like to thank everybody for the manner in which they have conducted themselves. Again, we have been able to get over tricky situations without being personal.

Can I just say straightaway that minorities have rights, majorities have responsibilities, and this bit of legislation is about just that. The majority are saying to a very small minority that you should have the right, that all of us enjoy, to privacy. That Bill then throws up a load of what I would call... like a diamond, really, as many facets are there are, illustrated beautifully, if I may say so, by Mr Turner, who says he finds it difficult to understand why there are rights for the person to be able to find out. But as Mr Butt, my hon. friend, rightly said... and I really cannot add much to what Mr Butt said regarding the rights to know now about medical conditions. He illustrated it beautifully by saying who is to know that I have proposed marriage to somebody and I am seeking information on that person? I may be doing it for ulterior motives. Forgetting paedophilia, what if I was keen to marry somebody, to have a child, and the person I was marrying was infertile? I do not have a right at the moment to find that out.

When this issue was discussed in the House of Lords and in another place in the UK, the House of Commons, that right... I can only say to my Lord Bishop, when he says that he thinks that the lawyers, when they have advised him on the amendment, would have taken it into account... I can only say to my hon. friend that the advice I receive is quite

clear. The advice I have received is that it would *not* be compliant with the Human Rights legislation, and in fact the amendment which will come in the form, in our case, under subclause 12(5), to allow disclosure, is balanced in our law by the annulment.

We have altered the marriage law twice to get speedy annulments: if this is found out within a certain time, they can be annulled. That was as a direct result of what I would call the negotiations and the scrutiny that was being given to this piece of legislation in another place.

I defer to my good friend, the Lord Bishop, because I know he was involved in the Church representations many years ago in the UK, so I know he has had first-hand experience of this, and I do defer to him, but I do think we have... I come back to this cardinal point: we have chosen, in the Isle of Man, to honour our international obligations, which we have, which we freely entered into over 50 years ago, to honour our international obligations. Our obligation, in this instance, is to recognise the right to privacy for these people and therefore we do not have, in my view, an option: we have to.

We have chosen – and I think for very sound, legitimate reasons – to piggyback, as I have used the phrase, on the United Kingdom legislation. I do not think it would be right of us, as a legislature, then to dine *à la carte* on that legislation and say we should have another piece or another safeguard.

We know full well – and the Lord Bishop has even said this – we are dealing with human beings and we are dealing with people who cannot be forced to disclose everything, whether we think it good or not, and to think that we can actually put this clause in and make it enforceable I think is wrong in principle, I really do.

I would urge the Council not to delay this piece of important legislation. I think it should mirror broadly what the UK is. We have listened, the Government has listened and tried very hard to meet the genuine concerns of people, and I think we have gone as far as we can dare go, without contravening the Court of Human Rights and their judgment.

I have to say to the Lord Bishop, the message I have got clearly from our legal team is that this would contravene that. So as strongly as the Bishop would argue for it, I would argue against it, because it will interfere. I do not think Council would want for us to pass a piece of legislation that would be in direct conflict with the very organisation that has given that judgment.

I would also argue equally strongly that, even if this legislation was amended and passed, it would still fall foul of the Data Protection Act, because these are private details of an individual, and the doctor or the nurse could equally be prosecuted under that legislation. I put that forward as a possibility, because I am sure it would fall foul of that legislation. So on two grounds, I do not think it is workable, and I would urge the Council not to vote for it and just vote for the clause as is.

I beg to move, sir.

The President: Hon. Members, I now have another little difficulty. I apologise to Mr Lowey and the Lord Bishop on this one, but I have just had a chance to look at it, in conversation with our Clerk on our way in here, earlier.

There was a comment made as to whether or not the amendment proposed by the Lord Bishop, where it says 'Page

6, line 34 After “other than this section”, with (m) being put back in this place... I think if you look at our Order Paper, where we had (k), (l) and (m), which was your proposal, we had to leave (k) and (l) behind; in fact this (m) on the white paper submitted to you this morning should actually come after (j) in the list of disclosures, in subclause (4), and before (k) and (l). Is that right, Mr Attorney? I think it does.

The Attorney General: It would be perfectly alright.

The President: It would flow better.

The Clerk might be able to put a little bit more light on that. As I said, it has cropped up in conversation on our way in, and I have just looked at it now. I think you are right.

The Clerk: Mr President, the point I made to you outside was to reflect a comment I had from Howard Connell in the legislative drafting team by e-mail during this morning’s sitting, when I told him of the amendment which was on the white paper. He said that, from a drafting point of view, it would be preferable to put any additional item in the list after (j) and before (k).

The President: That is the way it looks, and when I have had a chance to look at what was on the previous one, what is on now and read (k) and (l) in conjunction, I think it would make sense. If the Lord Bishop was happy with that –

The Lord Bishop: Yes, I think, yes.

The President: – Hon. Members, that is the way I would put it to Council.

If, in fact, Council wish to support the amendment, and that is entirely up to Council, all I want to be sure of is it is in the right place as far as we are concerned, because I want Council to be happy and content with this one, with no additional queries.

That, Hon. Members –

Mr Crowe: Mr President.

The President: – and on the acceptance then... Mr Crowe, sorry.

Mr Crowe: You cannot delete ‘or’, so number (1) goes.

The President: Yes, but in effect, and what I was going to tell you is that, in fact, we will be voting on the amendment (m), which would come after (j) – it would become (k) in other words – and (k) and (l) would be renumbered, as it said on your Order Paper, which was submitted to you before this morning’s amendment. If you follow that, you will see where I come from, so that in fact:

‘the disclosure is made to any person who makes an enquiry in contemplation of his or her marriage to a particular person as to whether the gender of the intended spouse has become the acquired gender;’

– that would come as (k), following (j) on your list; and (k) and (l) would become (l) and (m). Does every Member of Council know where I am coming from?

Mr Butt.

Mr Butt: The new (k) would have ‘or’ following it.

The President: That is right.

Several Members: No! (*Interjections*)

Mrs Christian: No, you just need... the (l) would still have the ‘or’ that is there now.

The President: You do not need the ‘or’.

Mr Butt: No, it comes next.

The President: Right, Hon. Members, I put to you then clause 12 and to that, Hon. Members, you have the amendment which I have just read to you in the name of the Lord Bishop. Hon. Members, first putting to you the amendment, those in favour, please say aye –

Mrs Christian: Mr President –

The President: Sorry, we will hold that. Mrs Christian.

Mrs Christian: Are you dealing with the second part of the amendment separately?

The President: As I indicated, yes, I will deal with the second part... the ‘may’ and the ‘shall’ will be entirely separate, Hon. Members.

Part (1) you no longer need: that all goes. Part (2), as I am suggesting, comes in without the ‘or’ and becomes (k); and (k) and (l) will be renumbered accordingly.

Okay, Hon. Members, again I put to you the amendment in the name of the Lord Bishop:

*Page 6, line 30: After paragraph (j) insert –
‘(k) the disclosure is made to any person who makes an enquiry in contemplation of his or her marriage to a particular person as to whether the gender of the intended spouse has become the acquired gender;’.
Renumber following paragraphs accordingly.*

Those in favour, please say aye; against, no. The noes have it.

A division was called and voting resulted as follows:

FOR	AGAINST
The Lord Bishop	Mr Lowey
Mr Turner	Mr Waft
Mr Callister	Mr Butt
	Mrs Christian
	Mr Downie
	Mr Crowe

The President: With 3 for and 6 against, Hon. Members, the amendment, therefore, fails to carry.

Hon. Members, I now put to you the second amendment, which is:

Page 6, line 35: Delete ‘may’ and substitute ‘shall’.

So that subclause (5) of clause 12 will now read, if you follow the amendment, ‘The Council of Ministers shall by order make provision prescribing circumstances...’, ‘shall’

replacing 'may'. Hon. Members, those in favour of the amendment, please say aye; against no. The noes have it. The noes have it.

Hon. Members, both amendments failing, I now put to you clause 12, as printed in the Green Bill. Those in favour, Hon. Members, please say aye; against, no. The ayes have it. The ayes have it.

Hon. Members, we turn, Mr Lowey, to clause 13.

Mr Lowey: Thank you, Mr President.

Clause 13 provides that the Council of Ministers may modify other statutory provisions in relation to persons whose gender has changed. Power is strictly limited and is provided due to the specific nature of this legislation. Although we now have a policy of using gender-neutral language wherever possible in new Acts and orders, legislation has made distinctions on the basis of gender for a very, very long time. This provision allows the Council of Ministers to address any future unforeseen difficulties that might arise in the operation of other legislation as a result of the ability to change gender under this Bill. However, no order under this clause can come into operation unless it is first approved by Tynwald.

Mr President, I beg to move that clause 13 stand part of the Bill.

The President: Mr Butt.

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

The President: Mrs Christian.

Mrs Christian: Yes, Mr President, my question is partly about this clause. This clause makes provision for the Council of Ministers to make an order dealing with the issue that the Hon. Member has discussed and it requires that the section shall not come into operation unless it is approved by Tynwald – the order under this section. It is somewhat unusual to have such a provision relating only to one order in the Bill, rather than all orders in the Bill. There is usually an all-encompassing provision that orders or regulations under the Bill will have to have the approval of Tynwald.

Could the Hon. Member clarify where, for example, an order made under the previous clause shall have approval of Tynwald or will it not have to have the approval of Tynwald? It reads to me as though it does not have to have, which is rather unusual.

Mr Lowey: It is unusual, I would agree.

The President: Hold on, Mr Lowey.

Mr Lowey: Sorry.

The President: Anybody else wish to contribute to clause 13? Lord Bishop.

The Lord Bishop: Mr President, this is precisely the reason why I felt that the previous subclause (5) should be 'shall', because in conversation prior to this occasion, it was clear that that would not have to have the approval of Tynwald. Therefore this is as it says it is.

The President: Mr Lowey.

Mr Lowey: I would love to be able to say that I have got a definitive answer for the Hon. Member. I have not. I will do my very best at the Third Reading stage, whenever we take it, to come back with a definitive answer to a direct question which I am unable to answer. I could hazard a guess, but I do not wish to hazard anything, when we are dealing with something as sensitive as this.

Mrs Christian: Is that winding up, Mr President, or may we – ?

The President: I will allow you to come back, Mrs Christian. In fairness, Hon. Members, we are playing around on this one, but I think, in reality, I would like Council to have this correct.

Mrs Christian: I have not moved an amendment in relation to this, but I would be minded, unless the Hon. Member comes forward with a reasonable explanation before the Third Reading stage, if we get to it, to move an amendment at Third Reading, which would require the orders made under the previous clause to have Tynwald approval.

I do not want to draft an amendment on the hoof today, given that this is deliberate, it would seem, and not accidental.

The President: Mr Lowey, before you really wind up on clause 13, just to show a little bit of support for Mrs Christian's query on this one, I did notice that in schedule 1, in paragraph 2(6), I had made a big pencil mark alongside it, where it said:

'Regulations under this paragraph shall be laid before Tynwald.'

I put a big question mark against that, as to whether it should be approved, when I was reading the Bill myself.

So, Mr Lowey, you may now reply, sir, to clause 13.

Mr Lowey: It comes as no surprise to me, sir, to see that you have a big pencil mark against anything in legislative terms!

Again, I would only be hazarding a guess. I would not want to mislead. I will certainly do my best to inform Mrs Christian in advance why it is as it is and that should not proscribe her from moving an amendment at the Third Reading, if needs be. But I think I could not do justice to the question in all honesty, because I just do not know. I have not got an answer to it – a specific, definitive answer. It is not often I cannot find the reasons why; I cannot on this occasion.

The President: Hon. Members, I will put to Council clause 13, but Council will be aware that Mrs Christian may wish to come back at Third Reading stage of this particular measure.

So, Hon. Members, putting to you, then, clause 13, those in favour, please say aye; against no. The ayes have it. The ayes have it.

Clauses 14 and 15, Mr Lowey, please.

Mr Lowey: Thank you, Mr President.

As I explained at First Reading, provisions concerning social security and pensions were not included in this Bill, because the relevant sections of the UK Act were applied to

the Island with appropriate modifications in 2005 by Orders made under Act of Tynwald.

However, as there is a possible procedural flaw in the making of the Application Orders, to provide legal certainty – and we have had this before – clause 14 confirms the Orders as being legally valid, as and when they were made. In addition to the provisions concerning social security and pensions, the Orders also applied the prohibition on disclosure of information because it was relevant to the other matters.

As clause 12 deals with the disclosure of protected information in a comprehensive manner that aspect of the Application Orders that were applied then are revoked.

Clause 15, Mr President, gives the Bill its short title and it gives the Council of Ministers the power to bring the Act into operation.

I beg to move that clauses 14 and 15 stand part of the Bill.

The President: Mr Butt.

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

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

That means, Hon. Members, that we have completed the passage of the Second Reading and clauses of the Gender Recognition Bill.

Prohibition of Female Genital Mutilation Bill First Reading approved

3. Mrs Christian to move:

That the Prohibition of Female Genital Mutilation Bill be now read a first time.

The President: We move on to the remaining Item on our Order Paper for today, which is the Prohibition of Female Genital Mutilation Bill, and it is in the hands of Mrs Christian, please: First Reading.

Mrs Christian: Yes, thank you, Mr President.

Members will be aware that this measure has been introduced in another place as a Private Member's Bill by the Hon. Member for Rushen, Mr Gill, with the support of the Government. In its passage in another place, there was no opposition at all to this measure.

The Hon. Member, in coming forward with this Private Member's Bill, consulted very widely both with Government, with medical organisations, with Social Security and Social Services and relevant organisations inside the Island and on a wider footing.

The reason for introducing this measure is not that it is perceived that there is a problem in the Isle of Man currently in relation to the genital mutilation of women and girls, but because the Isle of Man has not taken any steps to make this practice illegal, whereas its neighbours have done so some

years ago. Indeed, in terms of the principle, there can be none in the Isle of Man who can accept this procedure which is, in most people's eyes, an abuse of children and women.

It is a brutal practice with no health benefits. It creates both physical and physiological problems for these people's futures and there are many countries throughout the world which are now taking steps to introduce a statutory provision to make the offence of female genital mutilation something that exists on their statute books, and to prevent the aiding and abetting of this mutilation in other countries.

The Hon. Member looked at the legislation which is currently in place in England and Wales, and in Scotland, and has based the Isle of Man's legislation on the model which has been introduced largely in Scotland, which seemed to be the best model for our own circumstances.

Mr President, this practice is very much grounded in cultural belief in many parts of the world. It is, indeed, a practice inflicted on girls and women by other women, in many circumstances, and there is much work going on throughout the world to change these cultural approaches to the issue, with some success, but it will be some time I think before long ingrained cultural practices can be overcome.

As a community which respects Human Rights, which abhors abuse of children and of females, I think that it is appropriate that, even if there is not a problem here, we take such steps to introduce a Bill which will bring us into line with what I would describe as proper-thinking jurisdictions, so far as this matter is concerned.

I, therefore, am content and pleased to move the First Reading of the Prohibition of Female Genital Mutilation Bill 2009.

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

The President: Mr Turner.

Mr Turner: Thank you, Mr President.

I am very happy to support the principle of this Bill. For those Members who were present at a quite a... I think you could describe a sobering presentation by one of the consultants from Noble's Hospital who came to talk to Members about this subject, it was quite alarming to hear from a medical professional about some of the acts that are performed.

As stated by the mover, whilst certain procedures have medical benefits, this particular subject that this Bill is covering has no such benefits whatsoever and, therefore, I will certainly be happy to support the passage of this Bill.

The President: Mr Callister, Hon. Member.

Mr Callister: Thank you, Mr President.

Just to say that I will be supporting it 100 per cent and I think I am, in a way, surprised that it has not come forward before. Presumably, it is now more in the public eye because of the increasing number of immigrants into both the UK and here in the Isle of Man. It is long, long past the time when this should have been in law, in any case. It is the most horrific action that can be taken, as far as I can see, on a woman or a girl and quite totally deplorable. I hope that we can get this through without any difficulty.

The President: Mr Lowey.

Mr Lowey: Yes, speaking in support: history, practice and custom have now been caught up with what I would call world population movement now. While it is wrong for us to impose our western standards on there, we have a right, I think, to say this is unacceptable practice here, and rightly so, and I hope that we would get the message out that it is not a practice that is accepted in this day and age, in the 21st century. I do think that it is worthy of support.

The President: Mrs Christian, do you wish to reply.

Mrs Christian: Thank you, Mr President and I thank the Hon. Members for their support of the Bill.

I can only respond to Mr Callister, in terms of his comment that it is surprising that it has not been introduced before, in the sense that I think probably we sit in a somewhat isolated position and feel comfortable this does not affect us; but there is an increasing awareness and a sense of responsibility for things which happen in other places.

In response to Mr Lowey, who said it is an unacceptable practice here: it is, as far as most people here are concerned, an unacceptable practice *wherever* it occurs, and indeed the Bill introduces provisions to make it an offence in relation to Manx residents to aid and abet or to carry out such a procedure outside of the Isle of Man.

I am grateful to the Hon. Members for their support.

The President: In that case, Hon. Members, what I put to Council is that the Prohibition of Female Genital Mutilation Bill 2009 be read for the first time. Hon. Members, those in favour, please say aye; against, no. The ayes have it. The ayes have it.

That, Hon. Members, draws to a conclusion the business before Council this morning. The Council will meet again on Tuesday, in a fortnight's time, in Tynwald Court.

The Council adjourned at 3.24 p.m.