



**LEGISLATIVE COUNCIL  
OFFICIAL REPORT**

**RECORTYS OIKOIL  
Y CHOONCEIL SLATTYSSAGH**

**PROCEEDINGS**

**DAALTYN**

**(HANSARD)**

**Douglas, Tuesday, 24th February 2009**

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

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

*In attendance:*

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

**Business transacted**

	<i>Page</i>
Leave of absence granted and condolences to Mr Butt .....	149
<b>Questions for Oral Answer</b>	
1.1. Fibre optic cable – Progress with development .....	149
1.2. New school at Bemahague – Naming; pre-school education.....	151
1.3. Countryside Stewardship Scheme – Support available to farming community.....	154
Question 4 answered in writing .....□	157
<b>Question for Written Answer</b>	
1.4. Bonuses to Chief Executive Officers – Payments made; other rewards to civil servants.....	157
<b>Orders of the Day</b>	
2. Company Officers (Disqualification) Bill – Third Reading approved.....	158
3. Companies (Amendment) Bill – Second Reading approved.....	158
Companies (Amendment) Bill – Consideration of clauses commenced .....	162
<i>The Council adjourned at 1.05 p.m. and resumed its sitting at 2.30 p.m.</i>	
Companies (Amendment) Bill – Consideration of clauses concluded .....	171
Animal Health (Amendment) Bill – Conference with the House of Keys – Delegation of three Members elected.....	175
<i>The Council adjourned at 3.04 p.m.</i>	

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## Legislative Council

*The Council met at 10.30 a.m.*

[MR PRESIDENT *in the Chair*]

### PRAYERS

*The Lord Bishop*

### Leave of absence granted and condolences to Mr Butt

**The President:** This morning, Hon. Members, I have given leave of absence to the Hon. Member, Mr Butt, and we also acknowledge, that apart from his own particular problem being off-Island this morning, his mother died, I think, on Thursday last. Condolences, I am sure, to all the family in that regard.

## Questions for Oral Answer

### MANX ELECTRICITY AUTHORITY

#### Fibre optic cable Progress with development

1.1. The Hon. Member (Mr Waft) to ask a representative of the Manx Electricity Authority:

*If he will make a statement on progress with development of the fibre optic cable?*

**The President:** We turn, then, to our Order Paper, Hon. Members, and the first thing we deal with are the Questions for Oral Answer. I call upon the Hon. Member, Mr Waft.

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

**The President:** Mr Lowey to reply, I think, on this one.

**A representative of the Manx Electricity Authority (Mr Lowey):** Thank you, Mr President.

I would like to thank Mr Waft for giving me the opportunity to provide this Council with some additional information with regard to the MEA's progress on telecoms since our presentation to Tynwald Members some 16 months ago.

As we indicated in our briefing, we set up e-llan Communications Ltd, a wholly owned subsidiary of the Authority on 30th October 2007. This was done with the permission of the DTI, as required under statute, and with the full knowledge and approval of CoMin. The directors of

e-llan are Mr Geoff Corkish, MHK, Mr Stephen Christian, Mr Lewis and Mr Stevens as the company secretary. Mr Corkish and Mr Christian, as you know, are full Board members. Mr Lewis and Mr Stevens are officers of the Authority. I would like to stress no one receives any additional payment for their services on this Board.

E-llan has four full-time staff and these are all employees of the MEA who have been seconded over to the new business. We successfully lit the fibre optic cable on 14th December 2007 and it was immediately put into service. Our service includes interconnectivity with a UK supplier that allows customers to reach UK hubs such as London or Manchester and we are presently planning to improve the level of the UK service to provide our present and future customers with a different type of connectivity.

E-llan is using eight of the 12 fibres between Lord Street and the UK while the other four are kept for command and control of the electrical cable. This does not mean that there is no room for expansion, as the amount of bandwidth depends on the equipment placed at the ends of the fibre and although we have presently installed equipment that can deliver a bandwidth of 10 gigabytes per second – I look at Hon. Members, that has left me completely in the dark – this could be increased, I am told, a hundredfold without technical problems other, of course, than cost.

We serve three Island-based customers at present – I am sure the Members will appreciate that I cannot give too many details about these customers – and provide wholesale levels of bandwidth, that is, we sell high volume to other telecom companies who then sell this bandwidth on to customers such as businesses and householders, often packaged with other services.

E-llan is presently operating at break-even, which is an acceptable position for a start-up business, but we expect it to become very profitable and profits will be returned to the MEA and, subject to agreement with Treasury, will be used to reduce the Authority's requirement for an annual subvention.

Until e-llan entered the market, the Isle of Man was served by two cables, BT and Cable and Wireless, and both of these were wholly owned by UK entities. Developing the telecoms market on the Isle of Man and the cost of transmitting data to and from the UK was a significant barrier to CoMin's telecommunications policies, especially with regard to e-gaming and similar.

E-llan's business is, therefore, in competition with these UK businesses and is not displacing companies that have invested in the Island from business opportunities. In fact, by introducing additional competition in off-Island bandwidth, e-llan is also providing a hidden benefit to the economy as the other providers have had to – if you will pardon the expression – sharpen their pencils, when providing pricing for off-Island connectivity.

I consider that we have successfully delivered the business approved by CoMin and that e-llan will deliver both direct and indirect benefits to the economy now and in the future.

**The President:** Mr Waft.

**Mr Waft:** I wonder if the Member would clarify the situation with regard to Boeing. Boeing was identified in 2006 but since then we have not had any other firm identified, apart from this e-llan, which are members of the existing MEA.

**The President:** Mr Lowey.

**Mr Lowey:** Yes I can. Boeing was going to be the provider. That fell through, not from any lack of willingness on our part but because of internal matters with Boeing. Boeing had other interests in the UK which superseded that of the expansion in the Isle of Man and that is the reason why Boeing is not here.

**The President:** Mr Turner.

**Mr Turner:** Thank you, Mr President.

Is the Authority undergoing a rollout of a fibre network on the Island? Obviously, I am aware of the cable but, for example, when renewing underground cables, is it the Authority's policy to incorporate fibres into those works?

**The President:** Mr Lowey.

**Mr Lowey:** I cannot give a definitive answer to that because I am not technically qualified. I do know that the Authority is always conscious when we are putting in cables that we look to the future and we incorporate the best and the forward-thinking on that, so I would suspect – and I will come back to the Hon. Member with the detail, I do not carry that technical detail – but I will come back to him with the answer and other Members, of course.

**The President:** In my innocence, I thought the figure of eight MEA cable round the Isle of Man was already fibre optic, but I do not know.

Mrs Christian.

**Mrs Christian:** Could the Hon. Member indicate when the company will become profitable at the present capacity or will it require further investment to increase the capacity to make it profitable?

**The President:** Mr Lowey.

**Mr Lowey:** The plans are that it will be profitable within four years – it is now nearly in our third year. We have not lost any money at all, slightly in profit, but I call it break-even but we expect it to be – and I use the words 'very profitable' – because as it goes I have to say that the people who are using it are very satisfied with it and that is why we are attempting at this moment in time to keep ahead of the game.

This technology changes very fast and we have got to be ahead of it because the Isle of Man, in the sort of e-business that we are in, needs good, strong, reliable communications, so we are always looking to the future.

**The President:** Mr Downie.

**Mr Downie:** Thank you Mr President.

Would the Hon. Member agree that, in lighting the further strands of the cable, there has been a significant amount of resilience created so that we have now other options available to telecom providers and IT providers?

The main question is, who does the MEA market with at the present time or are they looking to further develop the business by forming partnerships and relations with other providers and to fully utilise the huge amount of bandwidth – it is several million terabits but I do not need an explanation

of that. There is a huge amount of bandwidth available and we really need to know how far the MEA are pushing on with this to get the right people in for the benefit of the business community in the Island.

**The President:** The question I suppose, is it e-llan or MEA? Mr Lowey.

**Mr Lowey:** E-llan is the wholly owned subsidiary and it is proactive in seeking business, it is not being passive, waiting for people to come to them. They are out. There are professional people there that drive it.

**The President:** Mr Downie, do you want to come back on that?

**Mr Downie:** No, I am happy with that.

**The President:** Mr Crowe.

**Mr Crowe:** Mr President, I was going to ask the same thing. If there is 100 times the existing for growth, are you looking at serious partnerships with others to develop that growth?

**Mr Lowey:** Oh yes, that is where the profitability comes in. We have got the basic in, which means everything now that we get in, the profit actually increases so the answer is yes, we are proactively going out looking for business.

**The President:** Mr Waft.

**Mr Waft:** Thank you Mr President.

I find it hard to believe, Mr President, that we are only talking about a break-even situation on the fibre optic cable. I think that is questionable, to say the least, and to think that Geoff Corkish, Messrs Christian, Lewis and Stevens can take the place quite readily from Boeing, I do not think there is any comparison there and I do not think we have investigated this far enough.

Could the Member perhaps tell me what the situation is with the fibre optic cable, given that there are different types of fibre optic cables and what the present one is capable of?

**Mr Lowey:** No, I cannot go into technical details because I am not a technical man. The break-even position was the one that was forecast when the company was formed. We are meeting those targets and it is, I am assured, satisfactory.

I do not pretend that Boeing, the partnership that we were going to have with Boeing, was not a disappointment to the Authority. It was, but it had nothing to do with the lack of drive and commitment by the Authority to capture that company. It was an internal matter for Boeing which we had no concern of and although we were dealing with Boeing, it was Boeing – which is a massive international company, I do not need to tell Mr Waft that – it was the very, very senior management that had other plans that did not include the Isle of Man.

**The President:** Mr Waft.

**Mr Waft:** Could I just, Mr President... So the MEA are continuing to do it themselves: is that, briefly, what it is?

**Mr Lowey:** No, the MEA are not. It is a wholly-owned company that is setting up to maximise the use of the fibre.

**The President:** Mr Waft.

**Mr Waft:** Could I ask if the MEA, talking about cables, have they decided to drop the provision of internet access through the power lines?

**The Lowey:** That is not being actively considered at the moment.

**Mr Waft:** Right, thank you.

## EDUCATION

### New school at Bemahague Naming; pre-school education

1.2. The Hon. Member (Mr Waft) to ask a Member of the Department of Education:

- (1) *Whether he has considered the naming of the proposed new school at 'Bemahague'; and*  
(2) *if he will make a statement on pre-school education?*

**The President:** Okay, we will go on to Question 2, again, Mr Waft please.

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

**The President:** The Member for the Department of Education to answer is Mr Lowey.

**A Member of the Department of Education (Mr Lowey):** I would like to thank my hon. friend, Mr Waft, for his Question, but before I answer directly the Question posed, I think it is relevant for me to reiterate just what the Department is proposing for Bemahague. It is to replace the Park Road complex known as Lower St Ninian's School and I do not propose to speak on why we are doing it, because that has been done before and agreed by Tynwald, but it is to replace the Lower St Ninian's complex, which is old, overcrowded and not conducive to modern educational needs.

It may interest Mr Waft that I have always referred to Lower St Ninian's School as Park Road. However, the Department has always referred to the complex as Lower St Ninian's and continues to refer to the new proposals as the new Lower St Ninian's School. Perhaps, as it is located at a higher level than St Ninian's, we should refer to it, perhaps – with tongue in cheek – as the new Higher St Ninian's School. I want to say that it is a working title, the new Lower St Ninian's School.

The direct answer to Mr Waft is the Department has not decided the name of the new building. The Department will, in due time, give due consideration and, as I said earlier, I call the present building Park Road, for obvious reasons. He may be able to glean from that which way I would be minded to go, but it has not been finalised and has not had any serious

consideration by the Department to date.

**The President:** Mr Waft.

**Mr Waft:** Thank you Mr President.

Could I remind the Member of his answer to me last week with regard to the Bemahague School. He intimated that local people would have a say in the naming of this school.

I have a letter here from the Onchan District Commissioners, which says your suggestion regarding the name for the new school in Onchan, Bemahague, was discussed by the board at their meeting on 9th February. Members agreed to support this idea, so if you could take that back to the Department.

**Mr Lowey:** I will certainly do that and could I just say to the Hon. Member, it will not be in my keeping, it will be the Minister's, but I am an adviser to the Minister and, as I said also last week, my Minister is a very listening Minister and I am sure she will take note of what you say sir.

**The President:** Mr Crowe.

**Mr Crowe:** Mr President, I am wondering if Mr Lowey is going to answer Question 2, the second part.

**The President:** Part (b).

**Mr Lowey:** I will do. I am trying to draw breath.

**The President:** Lord Bishop.

**The Lord Bishop:** Mr President, on the name of the school, I think it is obvious that it should be the new Upper Lower St Ninian's Park Road Bemahague School. *(Laughter)*

**Mr Lowey:** As always, sir, I take note of that committee reply.

**The President:** Mr Lowey.

**Mr Lowey:** In part (2) sir, I am very grateful again to my friend for asking this Question. You may have been shown a letter from the Mothers' Union and I have read a comment in the paper today with reference to nursery provision on the Island, in essence seeking universal free provision for all three to four-year-olds.

The Department of Education currently provides free part-time places in nursery classes and foundation units, some of which are run in public/private partnership but are nevertheless fully funded by the Department of Education. In the last 10 years, the Department has increased provision from two nurseries providing 80 part-time places, to 11 providing 420 part-time places. In addition, three years ago, we encouraged schools to use spare reception space to offer part-time foundation stage provision. The number of places varies, based on capacity, but averages another 40 additional places a year.

We have recently put out for consultation a new nursery admissions policy. One recommendation is to bring the staffing ratio in line with provision in England. This should create 180 additional part-time places. The new admissions policy clearly prioritises the needs of vulnerable children.

It is the Department's stated policy to create nurseries in new primary schools and when resources and locations are available elsewhere. In the past three years, senior members of the Department have met with representatives of the private and independent nurseries and have requested a costed outline of part-time nursery provision but, to date, we have had no response from the private sector, which is sad.

In March 2008, the Minister and Deputy Director met with Mrs Parry and members of the Mothers' Union to discuss the issues. It was fully explained at the time that the Department could only work to the limits of its resources, both financially and in terms of available space. We welcome very much the input by Mrs Parry and the Mothers' Union, who do show a great deal of interest in the community. We welcome their input.

If we extended the offer of places, as described by the Mothers' Union, we would have a shortfall of approximately 275 places. This is based on this year's reception class intake, if all our places were filled. Our present estimate of annual cost for this would be about £560,000. This would not include the establishment of new premises. I do not need to say to Hon. Members that some of the older schools have not got the space and they have not got the ability to add on to the schools.

The Department of Education is heavily involved in training staff in all early years setting, not least through our recently established Manx Quality Standard. Training costs are absorbed by the Department at the moment but an extension of bringing in these new teachers, additional funding would be required. I believe the Department has taken very seriously the needs of pre-school children. We have, over the last 10 years, proven in my view, by the increases that we have taken, that we are serious about it but I have to say to Hon. Members that we, too, like every other Department, have to live within the financial means that we are given, but we have a commitment to it.

I would disagree with the Mothers' Union when they say that we are not doing it speedily enough. I think we are doing quite a steady job. It is not as quick as we would like but, within the resources we have, I think we are meeting those targets.

**The President:** Mr Waft, Hon. Member.

**Mr Waft:** Thank you, Mr President.

Could I first, obviously, congratulate the Department on the progress that they have made over the last few years, but we cannot rest on our laurels and pre-school education does seem to be a little bit of a hit-and-miss affair when one family was told that they should have registered for a place as soon as the child was born. So would you agree that there needs to be a policy which is identifiable to everyone to identify what the situation is in their area and how they can progress the child going to pre-school education?

**The President:** Mr Lowey.

**Mr Lowey:** Yes, I would agree that there should be no doubts in anybody's minds and if that is the case then it is unsatisfactory. I said in my reply that we recently put out for consultation a new nursery admissions policy. We are consulting at the moment to see how we can best accommodate that and that obviously means talking with the professionals and with the schools.

It does seem to me, if I read the report right, that the Mothers' Union tend to think it is a postal lottery. Could I remind everybody, when we started pre-school nursery it was social need that drove the Department. If I remember rightly, 10 years ago we started at Jurby which was seen to be a deprived – and I use the word deprived area not to belittle that area at all – but it was a remote area that seemed to be on the outskirts and that was taken into recognition why that should be the place it was done.

We have come a long way since then and I can recognise people saying we have done well but we need to do more and that is precisely why the Minister, when she took over three years ago, set up all this additional spare capacity in schools that could and should be used. But, again, I am driven to this particular moment in time: it would be unwise for me to say that we could complete it sooner than we are doing because the resources are not readily available and I have to recognise that. I do not believe in heightening people's expectations when I know that the next couple of years are going to be very difficult.

The final point I want to make on that, Mr President, is that education is a priority for Government, that Health and Education are the two main priorities and to be fair to the Government, they have provided resources.

**The President:** Mr Waft.

**Mr Waft:** Thank you Mr President.

According to the letter from the Minister, it does seem to indicate that no response has been received from representatives of the private and independent nurseries. Does the Member not think that this should be followed up with a meeting to identify their concerns?

**Mr Lowey:** Yes.

**The President:** Mr Crowe.

**Mr Crowe:** Mr President, I think the Mothers' Union... and in the UK there are parallels to a voucher system. I do not know if the Department have considered that or ruled that out, or is this part of the negotiations with the private sector?

**Mr Lowey:** When we have gone out – sorry –

**The President:** Mr Lowey.

**Mr Lowey:** If I can go to Mr Waft, it does sadden the Department. We have actively gone out to see if we can make joint workings. If we have not got the capacity to build a building and there is a private school in that area, can they provide the service of getting the children involved? It is very important that young... It is not a question of baby-minding, this is educational. There is very strong evidence that if you have people in at three years of age, it makes a big deal of difference to that child's further education. So it is not a luxury, as we see it: we see it as a necessity.

My Minister has said in her priorities, if she had money and she was able to do it, this would be one of her priorities and it is disappointing that the private sector has not been able to come forward, for whatever reason, I do not know and we will be pursuing it. This consultation includes the private sector so, although we have not had a response from them, they are being involved in this review that is going on.

If I come to Mr Crowe's point, if he will remind once again –

**Mr Crowe:** A voucher system.

**Mr Lowey:** Voucher system. Yes, it is a very cumbersome affair. Again, it becomes a... Can you use it, will you use it? I think universal, that much I do agree with, it should be universal and not selective.

**The President:** Mrs Christian.

**Mrs Christian:** Given that the Department is unable to provide places for everyone and given that the Member has indicated that you are consulting at the moment about admissions policy, can you advise whether your current admissions policy requires assessment on the basis of need?

**The President:** Mr Lowey.

**Mr Lowey:** Yes, an element of that certainly does come into it. We do try to recognise where there is a need and try to meet that need, but I do have to say that that is on the margins. It is not a generalised thing. In other words, if there is a need for a child to be, for social reasons or anything else, and it is clearly defined, then it can be arranged or attempted to be arranged, anyway, but I have to say that we have come quite a way. We started off 10 years ago with two schools doing 80. We now do – was it four hundred and odd now? – forgive me if I do not quote exact figures but it was in the original reply. We have come a long way. We recognise the need, we are working now towards that need.

We tried when we first came, when the new Minister arrived, to identify... and that brought in another 40 places. Remember these children go in for part of the day, not a full day, it is part of the day. We are recognising that if, by increasing staff, we can perhaps increase it again by having it over two sessions in the one day – some come in the morning, some come in the afternoon – again that will increase the uptake. We are then back to the position of where, then, do you put the children? In some of the schools... New schools automatically included in the design is pre-school, the existing schools, can they be adapted?

We have even gone to the extent where we are using mobile classrooms, hardly the best ideal but in some cases they are the only answer to the problem. Some of the schools cannot even fit a mobile classroom at the moment. They are very far and few between, I may add, but these are the practical difficulties. We are addressing all of them and, meanwhile, we have gone out for consultation, how do we best deliver with the providers – the users and the providers.

So I think the Department is alive to the problem and tackling it with a vigour that, again, I have to say, financial constraints and physical constraints, we have to be real.

**The President:** You are doing your best to get the answer across, Mr Lowey, but you have still got a few questions. *(Laughter)*

**Mr Lowey:** I do not mind, I do not mind.

**The President:** Lord Bishop.

**The Lord Bishop:** Mr President, the Government is to be congratulated on the priority given to education, without any doubt, and the Department on its achievements of getting to 420 places and the aspiration to get to 600, if I read the figures correctly.

The only thing that puzzles me is that when we talk about negotiating with the private and independent nurseries, could the Member explain to the Council what means are used to consult with them? In other words, is there a body to which they belong with which the Department can consult and what exactly is the Department doing to make sure that the negotiations are advanced in the immediate future?

**The President:** Mr Lowey.

**Mr Lowey:** I am told that there is an association of schools, so we speak to them as an association. We speak to them as individuals and, like most of these things, it is senior officers. The senior officer is like, in most organisations, my Lord Bishop, with great respect to you, sir, the deputy does the work. *(Laughter)* I do not know whether you have a deputy, Bishop... No, you do not. *(Laughter)* But in most of these organisations, the Deputy Director of Education is the work-horse, is the engine and he is leading the drive. We have not deputed it down the scale. It is at the highest possible officer level. We do have our eye on this particular one.

I and the Minister welcome very much the Mothers' Union because we do need to be pressurised. We do need to be pushed. We do need to be told this is the expectation of the public. As far as I am concerned, they and others have always pushed for this and I welcome the pressure that they are applying.

**The President:** Mr Callister.

**Mr Callister:** Thank you, Mr President.

I just wondered if the Department gives any special consideration to single parents who, if they had this facility, would be able to perhaps return to work, if not full-time, part-time, and then would not require to be so dependent on benefits.

**The President:** Mr Lowey.

**Mr Lowey:** When I use the word social policy, that obviously comes into the consideration. We are not interested...

We should be, let me say that. I withdraw that remark that we are not interested. Of course, we are interested. What we are not concerned with is the state of the parents. What we are really interested in is the child. The Minister of Education now has been re-named, as you know, Minister of Education and Children. It is from even pre-school that our Minister is interested in the development of children at all stages of development.

We are not really interested in the marital status of the child. But, of course, you and I know, in the real world, that there is a need, an extra need, for children with one parent. So, the answer to your question is, yes, that does come into the consideration.

**The President:** Mr Waft, I think, finally, this time.

**Mr Waft:** Thank you, Mr President.

I would just like to congratulate the Department on the Sunshine School at Pulrose.

**Mr Lowey:** It was a pioneer.

**Mr Waft:** Is there grant aid available to assist those who are unable to obtain pre-school places? Is there sufficient publicity given to grant aid to alleviate what seems to be discrimination in certain areas?

**The President:** Mr Lowey.

**Mr Lowey:** I do not know whether there is grant aid *per se* on that but I agree with you, I knew the teacher – I am trying to think of her name now – from Douglas who was the head teacher at the Sunshine School. What was her name? Her husband worked for... I am sorry, Mr President, I should not be saying but this is the local... Nina Quiggin. I knew it would come to me sooner or later. Nina Quiggin was synonymous with the Sunshine School at Pulrose. It did a tremendous job of helping many generations of children. In fact, Mr Peter Karran has regularly mentioned the Sunshine School and the effect it had on him. We should all be grateful for that, shouldn't we?

But, seriously, I do not think the Department can be accused really of not advertising its courses and classes and what is available to people. The school is the pivot of our local community. We pride ourselves that the schools can pick up problems early on. They can tell if a child is happy. They can... It is a barometer of the community and, therefore, I do not think that we do anything that actually diminishes that.

Could I remind Hon. Members, if they also read in this week's paper, that the President of the National Union of Teachers came to the Isle of Man and there is a happy photograph of him in Ramsey School taking lunch with the children. He said that we are pioneers in leading the rest of the UK. We have got a lot to be grateful for and thankful for in the education service and that is not me, that is a member of the Board saying that, but I genuinely believe it to be so.

**The President:** Right. Finally, finally then, Mr Waft.

**Mr Waft:** Just one finally, Mr President.

I would ask the Member to take back the comments that have been made today to the Department and try and find a way forward with this –

**Mr Lowey:** Speed it up.

**Mr Waft:** – these problems.

**Mr Lowey:** I will willingly do that, Mr President.

## AGRICULTURE, FISHERIES AND FORESTRY

### Countryside Stewardship Scheme Support available to farming community

1.3. The Hon. Member (Mr Waft) to ask a Member of the Department of Agriculture, Fisheries and Forestry:

*What support is available to key areas of the farming*

*community since the decision to introduce the Countryside Stewardship Scheme?*

**The President:** We will take Question 3, Hon. Members. Mr Waft.

**Mr Waft:** I beg to ask the Question standing in my name.

**The President:** I understand that it is Mr Callister to answer this time. Mr Callister.

**A Member of the Department of Agriculture, Fisheries and Forestry (Mr Callister):** Thank you, Mr President.

What support is available to key areas of the farming community since the decision to introduce the Countryside Stewardship Scheme? It is a wide-ranging Question because there are so many key areas involved in agriculture so it will necessitate a fairly wide-ranging Answer. But I am grateful to the Hon. Member for the Question. It allows me to update Members on some of the excellent work that the Department is currently engaged in to help the industry to evolve and grow and, ultimately, achieve the Department's vision of a reliable, sustainable and self-reliant Manx food industry which was the vision that was supported by Members of Tynwald in April last.

The support ranges from purely financial assistance to technical and advisory services to help the industry help itself. In marketing, Members will be aware that all livestock slaughtered on the Island – and a vast majority of the meat produced is marketed by Isle of Man Meats, which is a wholly-owned farmer co-operative... Over the next three years, the Department is providing £350,000 per annum to Isle of Man Meats to allow it to restructure in the light of decoupling and the inevitable changes that will occur in the likely event that we lose the ability to protect the local red meat market after 2010 through restriction of imports and the derogation.

We are also supporting two quality initiatives at Isle of Man Meats aimed at improving the quality and consistency of stocks applied to the Meat Plant which, in turn, should allow Isle of Man Meats to obtain a better price for their product and pay a better price to farmers. This support amounts to around £200,000 per annum for the next three years.

Mr President, Government is also funding a three-year recruitment of a sales manager for Isle of Man Meats. The role of this person is to identify new markets for Isle of Man Meats and likewise improve market share and value. This new post appears to be bearing fruit. The latest figures compiled by DAFF show that the consumption of imported meat as a per cent of the total amount of beef eaten on the Island is the lowest for 10 years and licensed beef importers have only used 55 per cent of their quota, which is the lowest level for seven years.

The Department has also supported a series of technical 'live to dead workshops' for Isle of Man Meats and via practical workshops, farmers get hands-on advice on how to select the best animals for market and achieve the best return.

In other sectors, Mr President, we have initiated reviews of all the major food chains on the Island, that is, dairy, red meat and flour, and from these, we will implement action plans which will ensure that the supply chain is as efficient

and effective as possible and that all market opportunities have been fully exploited.

We have also been instrumental in developing the Manx Organic Action Plan. These plans and reviews will allow everyone in the chain, from the farmer through to the processor to the retailer, to ensure that they are best placed – as best placed as possible to meet future challenges.

We are providing support to Isle of Man Creamery and Isle of Man Pure Produce, which is an association of food processors, to market their produce worldwide, delivering increased sales. Manx cheese can now be found from Port Erin to San Francisco and is the Island's biggest export by weight.

The Department also recently supported the Isle of Man Agricultural Marketing Society to undertake a customer survey of consumer habits on the Island and this survey will allow farmers and their co-operative processors to better respond to the market. It was an extremely interesting survey because it gave a great deal of information about how the Manx consumer wants good quality Manx food.

In technical support, the Department is providing two full-time agricultural advisers at no cost to Manx farmers and also supplements these officers with additional technical advice from the UK. For example, we recently had a one-day training session for cereal farmers from a leading crops adviser. We also run a number of events aimed at improving farmers' technical skills and thereby improving their profitability. Whole farm reviews provide farmers with an in-depth review of their business and a new 'seeing is believing' initiative is to be launched this autumn which will offer farmers help to improve their skills to travel to off-Island events and learn from those.

Then, Mr President, there is the Manx National Farmers' Union 'I Love Manx' scheme – the recognised logo, of course. They are running a number of events and regular press articles are being produced. It is possible that Members may have seen the 100-metre high 'Thanks for Buying Manx' messages which were painted on the fields in Baldwin last summer.

In financial support, Mr President, the Countryside Care Scheme, of course, will be of major assistance to the industry, reducing the distorting effects of Government subsidy, at the same time maintaining the level of support, that is, £7.6 million per year. The majority of production-related support for farmers will be replaced over the next five years with a Countryside Care Scheme rewarding farmers for maintaining land in good agricultural and environmental condition and we continue also other grants aimed at allowing farmers to improve their business and therefore, their profitability. For example, capital grants are available for farm improvements, improvement of livestock and young farmers, and for organic conversion.

There is also the Wool Marketing Scheme. We undertake milk recordings, soil sampling, beef performance recording for pedigree herds, and milk machine testing and operate as a testing centre for NVQs for agriculture.

The Department is not complacent, because there is work still to be done, particularly on labelling. The previously mentioned customer survey undertaken by the Marketing Society highlighted Manx consumers' demands for better labelling and the Department is committed to improving the labelling system so that when you buy Manx, you can easily differentiate between what has been packaged here and what has been grown and harvested here.

There is also, of course, the commitment to expand the Agri-Environment Scheme which rewards farmers for taking additional conservation measures and the Department will also be seeking to refresh the capital grants to stimulate farm diversification investment and revise the organic support scheme to stimulate conversion to this valuable niche area when it is commercially viable.

Mr President, I believe the Department and the environment which the Department has established, and the commitment and hard work of the industry in recognising the challenges ahead, mean that agriculture has the best possible opportunities for more than a generation.

Thank you, Mr President.

**The President:** Mr Waft.

**Mr Waft:** Thank you, Mr President.

The Member for Agriculture has missed what the Question is all about.

**Mr Callister:** It is a very wide-ranging Question.

**Mr Waft:** He refers to the review, the action plan and mainly, to do with the marketing, sales managers, two new people for advice. The fact that the £7.6 million is still in question there... The Question refers to the availability of support to these key areas, not the marketing, not the inclusion of new staff which will eat up any sort of funding that you have quite considerably. I understand that 40 per cent of the European Union budget goes on support for farming and there is a need to break between what the farmers produce and what the financial support is. However, the food security must be kept high.

Under the Rural Development Programme, we were shown that, in Northern Ireland, they were keeping to a first come, first served basis of grant aid. What I was trying to find from you was how the financial situation is working on the Isle of Man, rather than in Northern Ireland.

**The President:** Mr Callister.

**Mr Callister:** Again, that is wide-ranging. Financial situation for grant aid or financial situation for farmers?

**Mr Waft:** For providing the support that they have lost.

**Mr Callister:** They will not have lost any support, Mr President. The situation...

**Mr Waft:** It is a re-alignment for that support.

**Mr Callister:** I know.

**Mr Waft:** And what I am asking through you, Mr President, is how that works in reality?

**The President:** Mr Callister.

**Mr Callister:** No, Mr President. We have got a scheme here that is spread over 10 years. It is over two distinct phases. In the first five years, there will be some production payments to farmers and some historic payments. In that five-year period – during that five-year period – all the production

related support will disappear. It will be gradually removed over that first five years. Then you come into a second five-year phase in which the industry will move on to flat acreage payments. So, during this period of time, they will not be disadvantaged. The only way in which they will, or may, become disadvantaged – there may be a few that will become disadvantaged – is at the end of that period when we go on to a payment by acreage.

**The President:** Mr Waft.

**Mr Waft:** Thank you, Mr President.

Payment by acreage? So, somebody can do nothing with that acreage and still get payment on what they... And where do they get, how do they apply for this funding?

**Mr Callister:** This is where you go into the Countryside Care Scheme itself and if you want me to go through all the details of that, we will have another five minutes, unfortunately. This was all approved, of course, by Tynwald and Members will have in their possession, hopefully, the documents that were provided which gave all the details of the Countryside Care Scheme. But it simply is a process by which we move from production payments to land payment by acreage.

**The President:** Mrs Christian.

**Mrs Christian:** Thank you, Mr President.

When the Scheme moves to land payment by acreage, and given that the Department has encouraged farmers to diversify, will those farmers who have moved partially into equine pursuits be paid for the acreage which is used for horses?

**The President:** Mr Callister.

**Mr Callister:** Yes, the matter of equine pursuits is covered under the Scheme, but of course, what happens is that when the Scheme begins, you have historic payments. The farmer has historic payments. Those historic payments remain in place and the only difference that will be made when he moves, after the ten years, into the final section of this Scheme is that a certain amount of the land area will be excluded from his acreage, that is to say that buildings, hardstanding concrete areas, anything that is not for use agriculturally will be discounted from the acreage. So, there will be less acreage by a certain percentage by that time in which he will be able to claim payments.

That, essentially, is the only difference. However, people with small acreages will be at a disadvantage than those with a large acreage. However, that can probably be overcome because there is a national reserve to which farmers will be able to apply in circumstances where they are disadvantaged.

**The President:** Mrs Christian.

**Mrs Christian:** May I follow up from what the Hon. Member has just said, Mr President, in regard to equine pursuits being included as part of the acreage payment. Does that mean that the Department intends to change its definition of 'agriculture' and if not, and if equine pursuits are considered as part of the farm to be appropriate for the

flat rate area payments, will those areas which currently sit outside the definition of 'agriculture' become eligible under the Countryside Stewardship Scheme, if they comply with all the elements of that Scheme?

**Mr Callister:** As I understand it, yes, they will, Hon. Member, and the definition of 'agriculture' can be found in Government Circular 65/08 and it is defined as this, 'The production, rearing or growing of agricultural products, including harvesting, milking, breeding animals, keeping of animals for farming purposes, or maintaining land in good agricultural and environmental condition'. That is the basic definition.

**Mrs Christian:** There is nothing in there, Mr President, about horses, is there?

**The President:** Animals.

**Mr Callister:** Well, I think animals are horses.

**Mrs Christian:** For agricultural purposes.

**Mr Downie:** So are dogs.

**The President:** Mr Waft.

**Mr Waft:** Just on the financial situation and how they apply. Financial support is a finite ability. How do you rule from one area to another area, given the certain amount of finance you have available?

**Mr Callister:** Well, the same amount of finance will be available through these 10 years.

**Mr Waft:** But you have not got... sorry, through you, Mr President, but you have not got the same criteria how the finance is distributed. You are in a sort of nebulous area of stewardship so there must be, once you get this finite amount of finance, you are going to be in a grey area as to how that is distributed or not.

**The President:** Mr Callister.

**Mr Callister:** A grey area, no. The whole system has been worked out over a number of years – three years, I think – and in considerable detail so it is known precisely what will happen through this period of 10 years and what will happen after that. What could alter it, of course, is changes of rules from Europe.

**The President:** Absolutely.

**Mr Callister:** Because the whole European... our system depends entirely on that. There is, in the third year into this process, the whole thing will be examined. There will be a review of it and at that point, changes can be made and adjustments made.

**The President:** Right, can we move on, Hon. Members? Oh, Mr Downie.

**Mr Downie:** The Hon. Member referred to a survey carried out by DAFF which indicated that the lowest level...

We have just seen the lowest level of meat imports for seven years. Could the Hon. Member explain whether he has the overall figure for red meat consumption on the Isle of Man and does that indicate record exports from the Island or record amounts of red meat consumed here on the Island, produced locally? My understanding is that we are eating less meat now than we have ever eaten –

**The President:** Mr Callister.

**Mr Downie:** – and those figures are a skewed situation.

**Mr Callister:** I do not see that in the Question, Mr President, however, and I do not have the statistics there but I can say that, certainly in the past 12 months, there have been more exports than for some time, mainly because the market – the price that was being offered in the UK – was an advantage to the Island's farmers at certain times during the past year, not all of the time.

**The President:** I think you are talking about live exports rather than meat exports.

**Mr Callister:** Oh, sorry, yes. No, I do not have the statistics for meat imports and exports. I was not asked for those in this Question.

**The President:** Mr Downie.

**Mr Downie:** And finally, Mr President, does the Department have a final figure for developing a new ancillary industry to agriculture which is quite clearly an alternative to providing another state aid for agriculture in the form of marketing?

**Mr Callister:** Marketing, of course, is an essential part, an absolutely essential part of the products that we are making in the Isle of Man. This will be one of the keys to the future. The fact that this system is now changing over a period of time which will allow the farmer not to be driven by the amount of money he can receive for various areas of production but he will be driven by the market need. It will be the market need that will dictate what the farmer has to do in the future. So, crucially, marketing in its best possible form is what we need to do. If you think about the marketing of Manx products in the past, it has been one of the ways in which we have been able to grow.

**The President:** Finally, Mr Waft.

**Mr Waft:** Just finally, Mr President.

This Question arose from the situation in Northern Ireland, where farmers were queuing up to get grant aid from the European Union. You say the Manx farmers are going to have to follow the European Union Directive. Can he categorically state that there will be no queuing up for finances but it will be distributed evenly?

**Mr Callister:** Well, we cannot queue up for grant aid from the European Union, as you know, but the process will be that someone will make an application for grant aid and if the money is available, that will be able to be presented to them. If the money is not available, they will have to wait until the next tranche comes from the Treasury, I would guess.

**Mr Waft:** The queuing up, that is the thing.

**Mr Callister:** Well, they are not queuing up at the moment, let us put it that way.

#### Question 4 answered in writing

**The President:** Hon. Members, we will move on.

Hon. Members, on your Order Paper, you are faced with Question 4, which Mr Lowey had down for Oral Answer. Hon. Members, you will see that, in fact, Mr Lowey has agreed and Mr Butt has given the Answer this morning in writing, Hon. Members. We have a Written Answer. We will, Mr Lowey, for your purposes, make sure that, in fact, this Answer is replicated on the *Hansard* –

**Mr Lowey:** Thank you, sir.

**The President:** – that it does get through to *Hansard*.

## Question for Written Answer

### CIVIL SERVICE COMMISSION

#### Bonuses to Chief Executive Officers Payments made; other rewards to civil servants

1.4. The Hon. Member (Mr Lowey) to ask a Member of the Civil Service Commission:

- (a) *Whether any bonus payments have been made to Chief Executive Officers this year; and*  
(b) *how many more senior civil servants are to be included in the 'reward' culture the Commission is pursuing?*

**Answer:** The Civil Service Act 1990, as amended, determines the functions of the Civil Service Commission. Given that the Commission's functions and, thus, its authority and accountability are specific to the Civil Service, this response relates only to civil servants and does not include reference to those employed in the wider central Government Public Service in respect of whom the Commission has no role.

Part (a) – It is confirmed that no performance bonuses or performance related payments have been made to any Chief Executive Officer, who is a member of the Civil Service, during the current year.

Part (b) – It is well known that the Civil Service Commission is committed to the modernisation and reform of the whole of the Civil Service and, to this end, the Commission continues to pursue a programme which includes the updating of terms and conditions of service, to fully reflect modern requirements, and the introduction of systems and procedures to, amongst other things, support performance improvement.

A key element of the Commission's modernisation and reform proposals relates to the introduction of a direct linkage between personal contribution and pay and it is assumed that

the reference in the question to a “reward” culture’ relates to this.

The Commission has introduced the requirement for annual incremental progression to be subject to formal confirmation, and thus, in effect, ‘earned’ by the job holder, by way of the achievement of a level of performance which is at least acceptable for the grade – thereby establishing a direct linkage between personal contribution and pay. This provision applies to all members of the Civil Service who have not, as yet, reached the maximum point of the pay scale or range applicable to their job and replaces a system, whereby, incremental progression was previously, in essence, automatic.

There is currently no performance related pay mechanism for the Civil Service and before one could be introduced agreement would have to be reached with the Government Officers’ Association through established collective bargaining arrangements.

## Orders of the Day

### Company Officers (Disqualification) Bill Third Reading approved

2. Mr Downie to move:

*That the Company Officers (Disqualification) Bill be now read a third time and do pass.*

**The President:** We move on then, Hon. Members, to the Company Officers (Disqualification) Bill.

Mr Downie, this time we are down for Third Reading.

**Mr Downie:** Yes, thank you, Mr President.

In moving the Third Reading of the Company Officers (Disqualification) Bill 2008, firstly, I would like to thank Hon. Members for their support in taking the legislation forward thus far.

As discussed previously, the Bill seeks to bring together the current grounds for disqualification of company directors and of the company officers into one stand-alone and more accessible body of law and thus provide a single reference point. At the same time, it rectifies weaknesses in the law and procedures relating to the power of the Financial Supervision Commission to petition the court for disqualification under section 26 of the Companies Act 1992.

Mr President, I beg to move that the Company Officers (Disqualification) Bill 2008 be read for a third time.

**The President:** Mr Crowe.

**Mr Crowe:** I beg to second and would just comment that the overriding rationale is to further protect the public. It brings the law on the subject into one stand-alone and more accessible body of law of all the current grounds for disqualification of directors and other officers. It also simplifies and improves the law on disqualification and introduces a concept of disqualification undertaking, a quick, effective process which will avoid lengthy court action yet

have the same effect, that is, disqualification of that particular officer.

**The President:** Does any Hon. Member wish to make any comment?

In that case then, Hon. Members, what I put to Council is that the Company Officers (Disqualification) Bill 2008 be read for a third time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

### Companies (Amendment) Bill Second Reading approved

3. Mr Turner to move:

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

**The President:** We move on, then, to the Companies (Amendment) Bill and this time it is Mr Turner to read it for a second time.

Mr Turner.

**Mr Turner:** Thank you, Mr President.

As mentioned in the First Reading of the Companies (Amendment) Bill 2008, it seeks to make important amendments to the Companies Acts 1931 to 2004, Companies Act 2006, and the Limited Liability Companies Act 1996. The proposed amendments address recommendations made by the IMF following their visit in 2003, reflect evolving international standards, for example, ensuring compliance with the principles of IOSCO, which is the International Organisation of Securities Commissions, and address industry comments on significant issues.

However, the Bill will only make the most urgently required changes and is not a full-scale company law review. There are a number of areas where the Island needs to update its legislation in line with IOSCO’s objectives and principles of securities regulation, which are the internationally accepted standards for securities legislation. These standards form the basis for assessments by the IMF.

IOSCO’s principles are intended to ensure adequate investor protection and that the global securities markets are fair, orderly and efficient. In the absence of a securities market or a secondary market in any jurisdiction, the IMF looks, instead, to that jurisdiction’s company law to meet these IOSCO principles.

The Bill addresses IOSCO principles 14 to 16 in particular. The majority of the amendments proposed in the Bill relate to the Companies Act 1931. The Bill also addresses potential issues in relation to how the Companies Act 2006 meets the IOSCO principles. Amendments to the 2006 Act are limited, however, so as not to change the nature and the intention of that particular Act.

Looking at the consultation that has taken place, consultation on the draft Bill took place during January and February 2008. The consultation was published on the website of the Financial Supervision Commission and was notified to industry representatives’ associations and to professional bodies. There was a good response to the consultation.

There were some differences of opinion between different segments of the industry on certain issues. Discussions took place with the various parties and the most appropriate way forward was determined in light of the FSC's statutory remit. In addition, meetings were held with industry participants, the relevant associations and the Income Tax Division of Treasury, both before the consultation paper was issued and after the consultation responses were received. All the significant issues that were brought up during that process were satisfactorily resolved.

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

There are some new provisions. The Bill introduces new requirements which are necessary for the proper regulation of the sector and to meet the international obligations and standards. These are as follows.

Part 1, which is modifications to the 1931 Act, prospectus requirements: changes to prospectus requirements in the 1931 Act are made in response to an IMF comment and expectations in respect of IOSCO principles 14 to 16.

Now, just to expand on those principles that I referred to – 14 to 16 – principle 14 says there should be full, accurate and timely disclosure of financial results and other information which is material to investors' decisions; principle 15, holders of securities in a company should be treated in a fair and equitable manner; and principle 16, accounting and auditing standards should be of a high and internationally acceptable quality. So, if we refer to these principles, that is the basis of them.

The IMF suggested there should be powers of intervention where there is a concern that a company's prospectus may be false or misleading. Clauses 1 to 5 require directors to ensure that prospectuses contain all material information relating to an offer and that the information is set out fairly and accurately.

The FSC is given the power to issue a direction to have a prospectus amended, if it contains untrue or misleading statements. That direction will be recorded on the company's public file so that it is clear that there is a misstatement in the prospectus, if the company does not file a corrected prospectus.

Now, as mentioned by Mrs Christian during the First Reading, clause 5 repeals the fourth schedule. The reason for this is because clause 1 now requires a prospectus to contain 'all material information relating to an offer'. Therefore, there is no need to retain the schedule which states what a prospectus should contain. The schedule is no longer required, as a result of clause 1.

Statements in lieu of prospectus: provisions in the 1931 Act relating to statements in lieu of prospectuses are repealed, as the industry advised that such statements are neither used nor understood by UK lawyers. Also, a power for the Treasury to provide exemptions from the prospectus requirements of the Companies Acts 1931 to 2004, which was removed in error by a consequential amendment in the 2006 Act, is reinstated, as it is needed for collective investment schemes.

New provisions in the 1931 Act will require that a charge must be registered if a company controls, is beneficially

interested in or is able to legally charge the property concerned. This makes the sections easier to apply to complex security cases and was instigated by the industry to address a lack of clarity in the current wording.

The amendments also permit a certified copy of the charge to be lodged with the Companies Registry, instead of the original. There was a conflict, in that different registries all required the original. Well, of course, it can only be in one place, so that conflict has been removed by this.

Takeovers and mergers: in relation to takeovers and mergers, the FSC is empowered to make regulations which will facilitate compliance with the EU Directive on Takeover Bids and follows a 2006 Act in the UK.

Employee share schemes, offered to employees of any company within the same group are clarified as not being classed as public offers. This change was requested by the industry and removes potential conflicts with other legislation.

Looking at part 2, now, which is modifications to the 1982 Act, accounts and audit: modifications relating to accounts and audit requirements and provisions are proposed, so as to bring the 1982 Act requirements into line with IOSCO principles, as expected by the IMF. Changes also address concerns of the Island's accountancy profession.

Clauses 13 to 20 shorten the period within which a company must present its accounts to a general meeting each year, which addresses the IMF's expectations regarding compliance with IOSCO principle 14. The clauses provide that directors may depart from the accounting provisions in special circumstances to ensure that a true and fair view is given. This brings the Island in line with internationally accepted conventions.

The clauses require accounts to be consistent with the generally accepted accounting principles or practice, including US GAAP and compliance with IOSCO principle 16. As mentioned in the First Reading by Mr Waft and Mrs Christian, clause 16 permits the Financial Supervision Commission to make regulations, which are subject to Tynwald approval, to require compliance with standards recommended by a body from time to time – after as well as before, etc. The reason for this is that the international bodies that set accounting and audit standards make changes to their standards from time to time. If the regulations could not prescribe these standards in a way to include any updates made by the bodies, then regulations would have to specify the version and the date of the standards, and they would need to be amended each time the standards were amended. This would be resource intensive and, more importantly, it would prevent the Island's accountancy and audit profession from being able to follow the international standards as set out. There would be a delay in applying the new standards, until such time as an amendment to the Island's requirements could be progressed.

The clauses provide clarity about the qualifications for an auditor and permit the FSC to authorise persons to be appointed as auditors in certain circumstances. This revision has been achieved in association with the industry. The clauses provide for a register of auditors to be maintained by the FSC to enable Isle of Man auditors to continue as auditors of Manx companies listed on EU exchanges. Such a register is required by the EU Eighth Directive on Statutory Audits. The clauses permit regulations to be made concerning the public oversight of auditors, as well as concerning accounts and audit in general, in order to meet the EU Eighth Directive.

Finally, the clauses amend the accounting treatment of dividends in order to remove a conflict with UK legislation and accounting standards. That is contained in FRS21. To expand on that, that removes the requirement to report dividends proposed after the balance sheet date in the profit and loss account and, instead, requires disclosures in the notes to the financial statements. This FRS21 I refer to has been in force in the UK since 2004.

Looking at part 3 now, which is modifications to the 1992 Act, financial assistance for the acquisition of shares: in private companies under the 1992 Act, this is clarified. In certain, very limited, circumstances, public companies may also provide financial assistance for the acquisition of shares. This change was requested by the industry following the introduction of similar provisions in the UK Companies Act 2006.

Treasury shares: the provision for the creation of regulations about treasury shares is included in the 1992 Act. Treasury shares are included at the request of the industry, since they can assist companies to manage their capital and thus reduce their costs of capital. The UK companies legislation currently contains provision relating to treasury shares. Further industry consultation will take place before any regulations are made.

Part 4, which concerns modification to the Limited Liability Companies Act (LLC Act), automatic winding up: amendments to the LLC Act remove the mechanism for providing for the automatic winding-up of a limited liability company on the death, retirement, resignation, etc of one of the members, if the company fails to file a notice stating that the remaining members agree to continue in business. This change is as a result of an industry request. It will not be retrospective.

Part 5, modifications to the 2006 Act, treasury shares: an amendment to the 2006 Act admits the possibility of the creation of treasury shares as per the amendment proposed in the 1992 Act, which was in part 3.

Accounting records and financial statements are next. Clauses 27 to 30 make changes in relation to the 2006 Act accounting records and financial statements. These changes will clarify the form that accounting records must take and lessen the burden of responsibility on the registered agent. This change was requested by the corporate service providers to prevent the records requirements being more onerous than under the 1931 Act, thus making the 2006 Act more marketable. The changes clarify the form that financial statements should take and provides that, where accounting records are not kept at the office of the registered agent, copies of the records must be provided to them annually or on request. This brings the requirements in line with the 1931 Act and is necessary following the Island's OECD commitments. It also balances the relaxation of reporting requirements with maintenance of control over the records.

The changes give any member or director the right to request that financial statements are prepared. In the event that financial statements are not produced as prescribed, there will be a right to inspect the underlying accounting records of a company. These requirements will enhance investor protection and address expectations of the IMF.

The changes require that financial statements are prepared in a manner that gives a true and fair view and according to generally accepted accounting principles, including US GAAP. This will be in line with the 1982 Act and in accordance with IOSCO principle 16.

The changes will require that auditors are qualified and enables regulations relating to the public oversight of auditors and regulations concerning accounts and audit in general to be made. Again, this is in line with changes to the 1982 Act and complies with IOSCO principle 16.

Another change to the 2006 Act permits the Registrar to make regulations concerning takeovers and mergers. As with the 1931 Act amendment, this facilitates compliance with the EU Directive on Takeover Bids. The 2006 Act is also modified in relation to appeals of the decisions of the Registrar in line with Human Rights requirements.

Looking at parts 6 and 7, now, miscellaneous modifications which were identified by the Attorney General's Chambers are made to the Contracts (Rights of Third Parties) Act 2001 and to the Financial Services Act 2008.

Part 7 provides for the interpretation of the Bill and its short title and commencement.

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

Mr President, I beg to move the Second Reading of the Companies (Amendment) Bill 2008.

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

**The President:** Mrs Christian.

**Mrs Christian:** Yes, Mr President.

I thank the Hon. Member for that very detailed outline of the purpose of the Bill at Second Reading. I do support it, in the sense that we do want to keep our company law up to date with international standards and incorporate here all the changing accountancy requirements.

I would just like to ask the mover, though, if we are now acting on a report of 2003 from the IMF, why some of this work was not done in 2006, when so much of the company legislation was dealt with? It seems to have taken rather a long time to implement the recommendations of the IMF or the comments that the IMF made.

**The President:** Mr Crowe.

**Mr Crowe:** Yes. Thank you. I am supportive of the Bill. It struck me, when the mover was moving it, the mentions of all these international bodies: the IMF, IOSCO, UK and EU stock markets, the EU Directives. We are constantly updating our legislation to meet international standards and we consider ourselves to be a first rate financial centre, and yet we always seem to be under threat from outside bodies who, I feel, do not recognise what we are trying to do in keeping ourselves a prime financial centre.

**The President:** Mr Callister.

**Mr Callister:** Thank you, Mr President.

The Hon. Member mentioned the concerns of the Island

accounting profession. I just wonder if he is able to say what those concerns were. As far as this Generally Accepted Accounting Principle or practice – the GAAP accounting system – if that is the same system that operates worldwide now, or is hoped to operate worldwide – that is to say, as far as we are concerned, in Europe and in the United States – as I remember it, Government Departments, I think, and certainly local authorities were required to adopt the GAAP system for accounting. To what extent that has happened, I do not know. I just wonder how widespread the use of GAAP is and whether it will cause any difficulties, say, to small companies.

**The President:** Mr Waft.

**Mr Waft:** I fully support the Bill, Mr President. With regard to the GAAP and the SORP and all those things, I think this Bill offers the opportunity to change as and when it needs to change the accounting practices in Europe. I just wondered – there is one query – if they required all auditors to be registered by the FSC or just auditors who were particularly concerned with that particular area.

**The President:** Mr Lowey.

**Mr Lowey:** Yes. First of all, I congratulate the mover on his comprehensive opening address to us. I remember when we started, this Bill, if you like, typifies for me the changing role of the Isle of Man. If you want to play in the international league, then you have got to be prepared to put up with these... a lot of local people call them irritations. They are not. They are standards. If you want to play in that league, you have to play by their rules. We, if you like, have transformed from being a local player, to a national player – if I can use the adjacent islands around us – to an international player. Therefore, I think it is right that our laws should reflect that. It is a sign of the Isle of Man's growing international reputation and standing that we need this sort of legislation.

Again, I agree with Mrs Christian. The one thing that the law should not be and that is being... We should pass the law and then just amend it occasionally to meet changing external circumstances. But, we do seem to be in that position where we are always altering our law. So, I can quite understand anybody picking up a piece of legislation, thinking, 'This is the current – is it?' Then you have to go and find another piece because it has been updated.

But, the Bill itself is a necessary piece of legislation. It does recognise the Isle of Man's international status and is a price we have to pay, if we want to play in that league and I think it is a price well worth paying.

**The President:** Hon. Members, before Mr Turner replies, I think it was interesting, if you read through the Bill, when you come to the registrations part and it says you have one month in which to register, it then spells out quite specifically what a month is, including the normal time of posting, etc. If it comes to lodging an appeal later on in part 5 of the Bill, it just says you can appeal within a month and it does not say what a month is. It just strikes me that... I appreciate, we all know what a month is, but why does it spell it out in one part and not spell it out in the other part, trying to define what the month is?

I have an even bigger query, Mr Turner, in relation to part

4, which intrigued me. I am sure Mr Attorney will, by now, have worked out the answer, but I do not know. It appears as if, in the winding-up part of the Limited Liability Companies Act on page 30, we insert into the 1996, a new subsection (2), which is fair enough:

'The affairs of a limited liability company are only to be wound up on the occurrence of an event specified in subsection (1)(c)...'

So that is put in and that part deals with a single member of the company; whereas in subclause (2)(c), we introduce this new subsection (2) into the Limited Liability Companies Act, it deals with all members, but we take out the words, 'under a right to do so stated in the articles of organisation'. So, on the one we are putting in for a single member and in the other, we are taking it out for all members. I have to say, when I read through that, I found it most confusing! So, perhaps, when we get there, Mr Turner, you will have an answer for me.

Would you like to reply, sir?

**Mr Turner:** Yes, thank you, Mr President.

I will try and answer all the points, here. First of all, Mr Lowey is quite right. This is dealing with businesses which are trading worldwide. I think it has been said many times in here and I think Mr Lowey's phrase is 'we are on the world stage', and to play with those boys, you are quite right, we have to have the right framework in place.

Mr Crowe said that we have all these international standards and it is unfortunate that we do often come under threats from outside bodies, always very quick to refer to us as tax havens and so forth when, quite clearly, we have an incredible amount of legislation in place which defies their statements, really. That is unfortunate.

If I just answer some of the questions. First of all, Mrs Christian's question, the 2006 Act was not a change to existing law. It was to make a new company type entirely and was not made by the FSC. I am told it was an actual Government initiative. That is why, I think some of the issues that were raised were not incorporated into that, because it was to form a new product, I suppose, in creating the 2006 Act companies.

The standards we are referring to – the likes of US GAAP – are international standards and countries will generally have their own versions of these. I suppose that is why they are called Generally Accepted Accounting Principles, which I would imagine will be broadly similar in the different jurisdictions, but with their own slant on various things. Again, if we are to trade with businesses in these countries, then we need to have some sort of standards which are recognised in these other areas. So, hopefully, that answers Mr Callister's question.

We do not envisage that it will provide small companies with difficulties. Some of the smaller providers that are going to be covered by this Bill will be working to these standards, anyway, in parts of their business, so I do not think it will cause difficulties. However, any new legislation is going to mean that they are going to have to get up to date on it and, of course, there is going to be some burden to get to grips with the new legislation when it comes in. I think that will be the same in any legislation that is passed.

Mr Waft queried auditors. Only auditors who are auditing Manx companies listed on a major EU stock exchange have to register. I hope that answers your question on that.

Also, Mr Callister asked about some of the disagreements.

Well, during any consultation, there are going to be issues that come up that are not to everybody's taste. But, through the consultation process, the Commission and the industry have thrashed out what is acceptable to both parties from a regulator's point of view, and from the people who are going to have to operate under this.

I will just give you an example. One of the suggestions was that accountants suggested that auditors of Isle of Man companies should be restricted to Isle of Man resident auditors. Now, if you think about the increasing international use, it may be that some of these companies, although here, are elsewhere, if that makes sense and, of course, it would cause great difficulties to some of these companies. They have their own preferred auditors and so forth. So, to then stipulate you have got to choose somebody from here possibly could put us at a disadvantage.

This was what the accountants suggested, but there was an opposing view, I am told, put forward by the legal profession. So, there were conflicting views here. So, it was not like it was a complete opposition to what the Commission were doing. So, the Commission decided not to restrict audits of Isle of Man companies to Isle of Man auditors only. That was one of the things and, no doubt, through the consultation there may have been many other issues.

But the advice I have received is that generally before coming to the branches, the Bill has pretty much the full support of the industry. So, hopefully, that answers your questions.

Mr President, I think I have answered everything there. So, if you are content, I move the Bill be read a second time.

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

### **Companies (Amendment) Bill** **Consideration of clauses commenced**

**The President:** Now, Mr Turner, I am in your hands, but let us start on the clauses, shall we? Shall we take them all individually, sir? Are you happy with that or do you want – ?  
**(Mr Turner:** Yes.) Right. Clause 1, then.

**Mr Turner:** Clause 1 modifies section 35 of the 1931 Act, which sets out requirements for company prospectuses. The proposal introduces a requirement that a company prospectus must contain all material information and that the information must be set out fairly and accurately. The prospectus must contain whatever information those persons relying on it could reasonably expect to find in it. This requirement replaces the prescriptive list of matters to be included in a prospectus under the fourth schedule to the 1931 Act.

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

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

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

Perhaps we could take clauses 2 and 3 together, Mr Turner.

**Mr Turner:** Certainly, Mr President.

Clause 2 repeals section 36 of the 1931 Act, permitting a relaxation of the prospectus requirements under the fourth schedule to the 1931 Act in certain defined circumstances. This section is no longer needed because the fourth schedule is to be replaced by clause 5.

Clause 3 amends section 38 of the 1931 Act, dealing with the process for registration of company prospectuses. The amendment requires an appropriately signed copy of the prospectus to be delivered to the FSC for registration before it is issued. The clause also requires that, under section 37, where the opinion of an expert is included in the prospectus, that prospectus must be endorsed by... or the written consent of that expert must be attached to the prospectus.

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

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

**The President:** Mr Lowey.

**Mr Lowey:** If I heard the mover right, he says that clause 2 is repealing that Act; it is unnecessary now because it is replaced by clause 5. Clause 5, if I read it at the moment:

'(1) The Fourth Schedule to the 1931 Act is repealed.  
(2) Section 6 of the Companies Act 1968 is repealed.'

They are just repealed. There is nothing added in there. Why is it, section 2, then being repealed because it is being replaced by clause 5?

**The President:** Mr Turner.

**Mr Turner:** I think the answer to that is that clause 1 deals with that, and clause 5 is the repeals.

**The President:** If you could just clarify, if you read the brief again in relation to clause 2, when you moved clause 2, I think it might clear it for Mr Lowey. *(Interjection by Mr Lowey)*

Mr Lowey, just let Mr Turner take that part again.

**Mr Turner:** Clause 2 repeals section 36 of the 1931 Act, permitting a relaxation of the prospectus requirements under the fourth schedule to the 1931 Act in certain defined circumstances. This section is no longer needed because the fourth schedule is to be repealed by clause 5.

**Mr Lowey:** I am quite happy to accept the mover's... It just seems a little bit strange to me.

**The President:** Okay –

**Mr Lowey:** By repealing, we are adding to.

**The President:** Right, okay, Hon. Members, the motion that I will put to Council then is that clauses 2 and 3 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 4, Mr Turner, please.

**Mr Turner:** Clause 4 introduces a new section 38DA to the 1931 Act. This empowers the FSC to direct that where a statement in a prospectus is untrue or misleading or a prospectus does not comply with the terms of the Act, the prospectus must be amended. A copy of the direction would be filed at the Companies Registry.

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

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

**The President:** Mrs Christian.

**Mrs Christian:** Mr President, accepting that it is appropriate for the FSC to have the power to direct when a prospectus appears to contain untrue or misleading information, I am trying to envisage how this will work in practice. If a prospectus has been issued which is wrong, and then it is required that it be amended, and there is something recorded at the Registry, if I have been the person who received the first prospectus, how am I to be advised that there has been a change?

I presume that, ultimately, if I found that I had made a decision based on wrong information, I would have some recourse to the company, but is there any way in which a company could recall prospectuses? I imagine in today's world where things go online or are issued in paper form, unless you record who has all these things, how could you advise that there has been a change – or can you not?

**The President:** Subclause (3) puts it on a public file, but...

**Mrs Christian:** Would you look at a file? Why would you look at the file, when you do not know it has been changed?

**The President:** Mr Crowe.

**Mr Crowe:** Mr President, I think to answer Mrs Christian's point, I believe from the legislation and just looking at prospectuses generally, in the 1931 Act there was a very long list in a schedule, which spelt out accounts and capital and shareholders, and now you have to provide what you believe is the right and reasonable figure. So I mean each company issuing a prospectus will determine what they believe is all the essential information.

In clause 3, it goes to the FSC for approval. Now I think –

**Mr Lowey:** Before it is issued?

**Mr Crowe:** Before it is issued, so I cannot see clause 4... The prospectus could not be issued unless the FSC rubber stamps it or approves it, hence... Or am I misreading this?

**The President:** I think there is a query over that, but I think that was Mrs Christian's query, that if the prospectus was issued and then the FSC come into the game, as it were, and make an alteration, how does the person who received the initial prospectus know?

Mr Attorney.

**The Attorney General:** Well, Mr President, certainly

when I was in private practice and did one or two prospectuses, the Financial Supervision Commission was not responsible for approving or vetting the prospectuses; that was a matter entirely for the directors or those who are responsible for filing the prospectus. Essentially the FSC, or the General Registry as it was then, was simply a repository of the document.

I think, Mr President, the point made by the Hon. Member, Mrs Christian, is a very important one. I would suggest that it is probably dealt with in the new clause 38DA(2)(b) – so in other words, towards the top of page 3 of our Bill – if the FSC becomes aware of matters which give it reasonable cause to believe that a statement may be untrue or misleading, the Commission:

'may direct the company to amend its prospectus so that –  
(a) it contains no untrue or misleading statement; or  
(b) the contravention or non-compliance ... is rectified.'

So in other words, I would envisage Mr President, that if the FSC became aware it would direct that an amending document be sent out to all persons who had received the original misleading one. That would be part of their function under this new provision.

**The President:** Mrs Christian.

**Mrs Christian:** May I follow up, Mr President, please: does that imply, then, that a company will be aware of who has received a prospectus? That was my point. How would they be aware, given that it may have been handed out in either hard copy form or on the net? How would they be aware and how would a person who had received the original un-amended prospectus, come by the corrected information or indeed if they do not, would they have a case against the company, ultimately?

**The President:** Mr Attorney.

**The Attorney General:** Mr President, I think prospectuses can be issued in varying circumstances. Sometimes prospectuses can be issued to existing members of a company. For example, when they want to issue new shares to existing members under a rights issue, it may be that the class of those existing shareholders is so big that you have to comply with the prospectus requirements. So in those circumstances, the prospectus can indeed be identified by the FSC.

But again, Mrs Christian is quite right: for general public offerings, it may just appear in the press or it might appear in a journal. It will be in the Companies Registry itself and I think that all that one can do, in those circumstances, is to replicate the issue which has already happened. In other words, let us say that the prospectus had appeared in *The Times* and *The Telegraph* and so on and so forth, you would direct that the amending prospectus be filed again in those publications, so that hopefully those who may have been misled would have an opportunity of seeing the corrected version. I think that is my understanding of the way it would work.

**The President:** The question is whether the Hon. Member feels that is satisfactory –

**Mrs Christian:** Well, I just feel, Mr President, that some people could fall through the net of the reissue and wonder if circumstances were such that they felt that they had been

misled that they would have a case against the company.

**The Attorney General:** I think, Mr President, if I may, it very much depends on the nature of the misleading or untrue statement. Sometimes these prospectuses are massive documents and if there has been an accidental slip, then one would hope that the promoters of the prospectus would not be in difficulty. On the other hand, if they had been wilfully wrong, then they can certainly expect to be sued if an investor suffers loss as a result.

**The President:** Mr Crowe.

**Mr Crowe:** Yes, I think if you are issued with a prospectus or you have had one downloaded, if you applied for shares, it begs the question then if there was a misleading statement, can you get a refund on your money as an investor? That is the question which is not clear to me. It may happen later in the Bill –

**The President:** Mr Turner, I think. Would you like to reply sir?

**Mr Turner:** Yes, certainly Mr President.

Interesting point, I mean this is effectively an enabling provision for the Commission to be able to demand that they amend, but Mrs Christian is quite right about how would they know.

There is of course the Commission's... the public file. I know it is quite easy, in this day and age, to always refer people to a public file somewhere, but the point, I think, is that you may not know that you have been misled, whether it be an error or whether it be intentional. Intentional, surely then there would be a very severe case, if it was an intentional misleading statement or if it was an error that was on there, then you may not know. I think then it would be up to the company who has issued that to make it known and one would hope that the Commission, as well as placing this on the public file, would also, as the Attorney said, advertise it as widely as they did the original and hope that catches as many as possible. If anybody felt aggrieved, of course, they have the right to take them to court and pursue it.

**The President:** The difficulty would come when the prospectus said that the directors would be trading in oil found in Ronague, when they wilfully knew that there was no oil in Ronague. I think then, Mr Attorney was making the point, (**Mrs Christian:** Treacle!) (*Laughter*) that the directors would wilfully be wrong.

**Mr Lowey:** Yes, but I think it is equally fair to say, this is a new provision which they have not got at the moment, which will... At least this gets a framework in. I think custom and practice will decide whether it is strong enough or not strong enough.

**The President:** Nothing further to add, Mr Turner? No? In that case, Hon. Members, the motion that I put to Council then is that clause 4 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 Turner:** Clause 5: the fourth schedule to the 1931

Act contains a list that sets out in detail exactly what must currently be included in a company prospectus. This schedule is to be repealed.

Following questions which were asked at the First Reading and following on from clause 1, I am able to explain that this schedule will be replaced with the requirement to ensure that all material information is disclosed in the prospectus, as discussed under clause 1. This places the onus to provide meaningful information on the company and its officers.

Clause 5 also repeals section 6 of the Companies Act 1968 which replaced the original fourth schedule to the 1931 Act.

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

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

**The President:** 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 Turner, please.

**Mr Turner:** May I take clauses 6 and 7 together?

**The President:** Clauses 6 and 7 together, yes sir.

**Mr Turner:** Clauses 6 and 7 relate to statements in lieu of company prospectuses and exemptions from the prospectus requirements of the Companies Act.

Clause 6 repeals and amends various sections, as well as three of the schedules to the 1931 Act, removing references to 'statement in lieu of prospectus'. This change is required because the concept of a statement in lieu of prospectus is not recognised or understood by professionals outside the Island. The revised prospectus requirements render this term obsolete.

Clause 7 supplements the current section 324A of the 1931 Act dealing with exemptions from prospectus requirements. New section 324A permits the Treasury to make regulations permitting exemption from or modifications to the prospectus requirements under this Act. Such regulations require the approval of Tynwald.

I beg to move that clauses 6 and 7 stand part of the Bill.

**The President:** Mr Downie.

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

**The President:** Mr Lowey.

**Mr Lowey:** Just on clause 7. Can the mover tell me, has the Financial Services Act 2008 been passed? It has? Okay. We have so many that I cannot remember whether we had passed that one or not. It has been passed, that is fine.

**The President:** In that case, Hon. Members, the motion I put to Council is that clauses 6 and 7 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

We come to the section headed up 'Registration of charges', Mr Turner. Do you want to take clauses 8, 9 and 10?

**Mr Turner:** Yes, if that is okay. Clauses 8 to 10 relate to the registration of charges.

Clause 8 amends section 79 of the 1931 Act which deals with registration of charges created by companies. The new provision allows for the registration of either a certified copy or the original charge instrument. This eliminates the current legislative conflict requiring registration of certain original documents at both the Land or Deeds Registry and the Companies Registry.

This clause also clarifies that section 79 only applies to charges if the company is or will be beneficially interested in the property and controls, or is otherwise able to charge the legal interest in the property. The time limit for registration of a charge which is created outside the Isle of Man and only relates to a property situated outside the Isle of Man is confirmed to be one month after the date by which it is reasonable to expect the document to have been delivered to the Island.

Clause 9 amends section 81 of the 1931 Act to clarify that references to the date registration of charges should be read as the date on which the instrument or a copy of that instrument is received.

Clause 10 adds a new subsection to section 91 of the 1931 Act. This deals with the application of part 3 of the 1931 Act, to charges created and property subject to charge acquired by companies incorporated outside the Island. The new subsection clarifies that section 91 only applies if a company controls, is beneficially interested in or is able to legally charge, the property concerned.

Mr President, I beg to move clauses 8, 9 and 10 stand part of the Bill.

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

**The President:** Mrs Christian.

**Mrs Christian:** It simply illustrates, Mr President, sometimes how difficult it is to get the meshing of different pieces of legislation. I wonder which Registry has been in breach of the law, whether it has been the Land Registry or the Companies Registry which has not been able to have the original documents! Not that they would be in breach but somebody must have been in breach, so it is interesting to see that this difficulty of having the original documents in two places at once is now to be resolved. I support that.

**The President:** Mr Lowey.

**Mr Lowey:** It is the overall cost that is interesting me in this series. If I have read them right, it is actually streamlining which must be good for companies, in that they do not have to pay for this Registry or that Registry. I notice the financial implications of the Bill are neutral, so there must be... If this is a reduction in costs, then there must be an increase in costs somewhere else, and I hope I will be able to pick that up later.

But let us make no bones about it, the registration of companies is a money earner for the Isle of Man Government, for the Registries, and by reducing what I would call the income in that stream, then hopefully there will be more companies registered, so we will make it on getting more – or is that not a major factor in this?

**The President:** It is the registration of a charge, not the company.

Mr Turner.

**Mr Turner:** Yes, thank you, Mr President.

There is a bit of additional information, if Mr Lowey desires it. It is about making the Isle of Man competitive and less administratively burdened. (**Mr Lowey:** That's right.) If we can make some of these 'streamlined', I think was the word you used, then that is inevitably going to help and enhance our reputation as a place to do business with good regulation and... well, these things cannot be simple, but if you follow – (**Mr Lowey:** Simplified.) simplified. So I hope that answers Mr Lowey.

**The President:** Mr Attorney, I think.

**The Attorney General:** Thank you, Mr President.

Could I just make one comment in relation to the point raised by the Hon. Member, Mrs Christian. I would not like it to be thought that the Registry was in breach of the law. What is required, I think, can be illustrated by an example where a company incorporated in the Isle of Man is buying property in the Isle of Man and takes a mortgage from a bank. Now, the essence of the registration regime in the companies legislation is that that mortgage has to be registered in the Companies Registry within one month of the date of its creation, otherwise it is void and that, of course, is a very serious repercussion. It is a nightmare for advocates sometimes to be told that they have overlooked the registration process.

But what would happen, Mr President, always is that the advocates would ensure that the registration in the Companies Registry was carried out within the one-month period, but then they would very quickly thereafter have to ensure that the deed, the conveyance in other words in favour of the company, plus the mortgage, was then registered in the Deeds Registry, which is a different Registry and that had to be done quickly because, of course, the bank needed to know that its security had been protected. So there was always a bit of tension between the two, but neither the Deeds Registry nor the Companies Registry was actually breaching the law.

**The President:** Mr Turner, do you wish to add to that sir? (**Mr Turner:** No, sir.)

In that case, Hon. Members, the motion that I put to Council is that clauses 8, 9 and 10 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Perhaps we could take clauses 11 and 12 and finish part 1.

**Mr Turner:** Clause 11 adds a new section 154A to the 1931 Act. This relates to takeovers and mergers. The new section allows the FSC to make regulations concerning the regulation of takeover bids, mergers or other transactions that affect the ownership and control of companies. Regulations made under this section require Tynwald approval before coming into operation.

Clause 12 relates to employee share schemes. This clause substitutes part of section 342 of the 1931 Act and clarifies that where an employee share scheme is made available to employees of any company within a group, it is not classed as a public offer. The net effect of this is to clarify that where

shares are offered to employees within a group, there is no requirement to issue a prospectus prior to the offer of the shares.

I beg to move that clauses 11 and 12 stand part of the Bill.

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

**The President:** Mr Lowey.

**Mr Lowey:** Just on clause 11, the very last one: regulations shall not come into operation unless they are approved by Tynwald. Can I get it clear, if we pass the legislation and that becomes the law, then the old law ceases but the regulations may not come before Tynwald until three months, six months, however long. Is there a gap there in the old legislation in this or that we do not have a vacuum, it carries over until the new regulations are brought into being?

**The President:** If there was a takeover or a merger and the regulations were not in force, what is the position? I think that is the question.

**Mr Lowey:** Yes indeed, it is that interim period, the law has ended, you have got a new law...

**The President:** Mr Turner.

**Mr Turner:** This again is an enabling provision for the Commission and it is permissive, so there may in fact be a case where they do not make regulations at all.

**The President:** Mr Attorney.

**The Attorney General:** In which case, Mr President, just to complete that, the old law, the existing law... (*Interjection by Mr Lowey*) We have got section 154 still in place.

**Mr Lowey:** I am grateful to the mover for that, thank you.

**The President:** In that case, Hon. Members, if you are content with that, the motion I put to Council is that clauses 11 and 12 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

We move on, then, to modifications to the Companies Act in part 2. How far do you wish to go on this one, Mr Turner?

**Mr Turner:** If I take... Clauses 13 to 20 relate to accounts and audit so...

**The President:** Let us take the complete section, if you like, 13 to 20. We may drag it out a little bit, we will see. Mr Turner.

**Mr Turner:** Well, we will see how we get on.

Clause 13 amends section 1(7) of the 1982 Act removing the reference to Non-Resident Company Duty, which no longer exists.

Clause 14 amends section 2 of the 1982 Act which deals with profit and loss accounts and balance sheets. Clause 14 replaces subsections 2(1) and 2(2) with new provisions that

clarify the requirement for company directors to prepare a balance sheet and profit and loss accounts or income and expenditure accounts annually.

Newly incorporated companies are required to prepare their first accounts for a period of no more than 18 months from the date of incorporation. There is also a requirement that the accounts of public and private companies must be laid before the members of the company in the general meeting within six and nine months of the financial year end respectively. This is a reduction in the timescale currently permitted and brings the Isle of Man in line with the United Kingdom. Provision is also made for the prescribed time periods to be extended at the discretion of the FSC.

Clause 15 amends section 3 of the 1982 Act which deals with general provisions about content and form of accounts. The changes include the insertion in section 3 of reference to a new section 3A which is addressed in clause 16. This requires accounts to be prepared in accordance with the Generally Accepted Accounting Principles and practices. These have been extended to include US GAAP, as well as international financial reporting standards and UK GAAP.

In addition to this, directors are required to ensure that the company's accounts give a true and fair view of the affairs of the company. In circumstances where true and fair reporting requires a departure from generally accepted accounting principles, the details of the circumstances must be set out in a note to the accounts.

I will continue through this, if that is okay, Mr President. Clause 16 adds a new section 3A to the 1982 Act. This requires that consideration is given to the substance of transactions and Generally Accepted Accounting Principles or practice in the preparation of accounts. This applies unless the FSC exercise their new power under this section to make regulations to require compliance with standards or practices recommended by a specified body from time to time, after as well as before, etc. As previously stated, international accounting bodies can and do make changes to their standards from time to time. Inclusion of this provision circumvents the need for regulations referring to a specific version of standards at a particular date which would need to be updated as and when the standards were amended.

Failure to do this would prohibit the Island's accountancy and audit professions applying/evolving those international standards until they were actually adopted by the Isle of Man, and it would be resource intensive, as we have also discussed earlier. Again, any regulations made under this section will require Tynwald approval before coming into operation.

Clause 17 adds new subsections (3A) and (3B) to section 6 of the 1982 Act. This deals with contents of group accounts and will help to ensure that directors give a true and fair view in a company's accounts.

In common with clause 15, directors will be required to depart from the current accounting conventions if any special circumstances require this. In these circumstances, the details would need to be explained in a note to the accounts.

Subsection (3A), permitting departure from GAAP in order to present a true and fair view, will require the notes to the accounts to disclose any such circumstances.

Clause 18 replaces section 14 of the 1982 Act which deals with eligibility for appointment as auditor. The new provisions are split into nine sections relating to qualifications for auditors and registers of auditors.

Section 14 deals with the appointment of an individual as an auditor.

Section 14A deals with the appointment of a partnership as an auditor.

Section 14B deals with the appointment of a body corporate.

Section 14C deals with the appointment of a limited liability company as an auditor.

Section 14D sets out the circumstances where an individual partnership, body corporate or limited liability company can be disqualified from appointment as an auditor. When an auditor is disqualified, he is required to vacate the office and give notice to the company of the reason.

Section 14E empowers the Financial Supervision Commission to permit persons not caught under sections 14A to 14D and not regulated by the recognised accountancy bodies under section 14F to be appointed as auditors of Isle of Man companies.

Section 14F defines the term 'recognised accountancy body'. This section also empowers the FSC to add, by order, additional classes of persons qualified for appointment as an auditor of a company.

The FSC is also able to amend section 14D by varying the persons who are disqualified from appointment as auditor or the circumstances in which such persons are disqualified. Orders made under this section require Tynwald approval before coming into operation.

Section 14G allows the FSC to make regulations permitting registers of persons qualified and appointed to act as auditors to be kept. Such regulations could require compliance with standards or the adoption of practices recommended by a specific body. The regulations could also be made to include the inspection and the form of registers in certain procedural and appeal provisions. The regulations again require Tynwald approval before coming into operation.

Section 14H defines certain expressions for the purposes of sections 14 to 14G.

Clause 19 adds new sections 17B and 17C –

**The President:** Could I just hold you there, Mr Turner. I think we have probably gone far enough in taking it up to clause 18. So, we have picked it up, haven't we now, (Mr Turner: Yes.) I think probably long enough to draw any comment out?

Perhaps I could start the fire, as it were, because, in one particular part here, where you were moving the appeal section, the appeals are:

'Section 32 of the Financial Services Act 2008 (appeals to the Financial Services Tribunal)' –

which is fair enough. That is a body already established. That is in section 14E. In the next section but one, 14G:

'provisions establishing a tribunal to hear appeals pursuant to subsection (3).'

I wondered, as we were going through, why, in fact, in one case you have the appeal direct to the Financial Services Tribunal, a body already set up and then, in another one, you are making provision to establish a tribunal. If there is a tribunal there, why does it not cover the whole lot? That would be my query.

Mrs Christian.

**Mrs Christian:** Has anybody seconded, Mr President, or...?

**Mr Downie:** Not yet. No, he has not moved it yet.

**The President:** Oh right, I am sorry.

**Mr Turner:** I was going to take up to clause 20, but I can move –

**The President:** I appreciate that you were going to take up to clause 20, so I did stop you there, because I thought we had probably gone far enough, rather than take it there. So, if I can draw a line under clause 18, effectively, then what we have to do is move – where did we start? – clauses 13 to 18. Clauses 13 to 18, at this stage. If you would formally move clauses 13 to 18, Mr Turner.

**Mr Turner:** Certainly. I beg to move that clauses 13 to 18 do stand part of the Bill.

**The President:** And Mr Downie to second.

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

**The President:** Right, and Mrs Christian.

**Mrs Christian:** Yes, perhaps my comment is a general one rather than a specific on a particular clause. Just to ask the mover, bearing in mind that this deals with accounting standards and then also with the qualification of the auditors and the appointment of auditors, in his Second Reading comments, he alluded to the fact that accountants or auditors in the Isle of Man – I cannot recall which or whether it was both – had argued with the Financial Supervision Commission that companies should be audited by Isle of Man auditors. There is not a provision in here, as he has indicated, but could he indicate what the arguments were in respect of that: why they felt that the Isle of Man audit should be carried out by Isle of Man auditors, given the international nature of the qualifications; or was it a concern that companies registered here perhaps need an Isle of Man scrutiny?

**The President:** Mr Lowey.

**Mr Lowey:** Yes, I have only got two. One is of a general nature. Under the legislation so far, the FSC is going to do more, I would have thought, than they have in the past. I know some of the repeals are taking work away from what they are doing now, anyway, so that it should... Is the FSC subject to the Government manpower cap or not? I think it is important that when we are doing that... It is just a general one.

Could I then just ask: on page 19, it is clause 18, I think... It is on page 19 and it is in (3)(b):

'require auditors to comply with prescribed systems'

– and this is the bit –

'to deter, correct and prevent...'

Well, are deterring and preventing not the same thing? I know it may seem picky, but I cannot get my head round here. I always think that to deter is to prevent and yet we are using the same two words in the thing to... There may be a reason why and, maybe in accounting terms, there is a difference between 'deter' and 'prevent'. I just wondered if

there is or am I just being too picky? But if we are doing primary law, we should know what the difference between 'deter' and 'prevent' is.

**The President:** Mr Turner to reply then.

**Mr Turner:** Thank you, Mr President.

First of all, Mr Lowey's point: 'deter' is to put somebody off doing something and – (**Mr Lowey:** Prevent!) Well, 'prevent' is when you actually prevent it.

**Mr Lowey:** I am struggling with it.

**Mr Turner:** I am sure they do do the same thing, but it is a real belt and braces, I suppose.

**Mr Lowey:** I will take that.

**Mr Turner:** It has certainly got the point across and there is no doubt what that means.

With regard to staffing levels at the Commission, they did indicate that this will not have any increased costs, so one can only assume that, specifically, to operate this Bill, they are not going to need an additional head count. The information that I have just received is that there is no intention for more staff at the FSC. There may be for other things that come along at some point but, specifically, for this, no. (**Mr Lowey:** Good.)

We also were discussing the tribunal. The regulations, I am told, will use the existing tribunal. I think your query, Mr President, was querying the enabling powers to set up another one.

**The President:** I just wondered, in fact, when the tribunal is already established, why they did not just write that straight in, that that would be the tribunal that would be used?

**Mr Turner:** This obviously gives them the power to create one, should they wish, specifically for this subject. So, if that is...

I will move that clauses 13 to 18 stand part of the Bill.

**The President:** The motion I put to Council, Hon. Members, is that clauses 13, 14, 15, 16, 17 and 18 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Perhaps we could now take clauses 19 and 20, Mr Turner, please.

**Mr Turner:** Clause 19 adds new sections 17B and 17C to the 1982 Act in respect of public oversight of auditors and accounting and auditing regulations.

The new section 17B allows the FSC to make regulations subjecting auditors to public oversight, quality assurance, investigations and penalties. Public oversight regulations will establish the criteria to be met and would require the compliance of auditors. Bodies to operate these public oversight systems would be appointed by and required to report to the FSC. Regulations will require auditors to comply with standards, practices and prescribed conditions and agree to be bound by the rules and disciplinary procedures of a body specified under the regulations. The regulations permit the FSC to pay for the services of the oversight body, where fees incurred have not been paid by the auditor concerned.

Regulations under this section need Tynwald approval before coming into operation.

A new section 17C enables the FSC to make regulations about accounting records and audit of companies, subject to the 1982 Act. Such accounting regulations may cover: keeping accounting records; the form, timing and publication of accounts; accounting standards and practices; provision of accounts to the auditor; qualifications of auditors and their countries of residency; and the duties and practices of auditors.

The regulations may provide for the appointment of bodies to perform prescribed functions in respect of accounting records and, where deemed appropriate or necessary by the FSC, may vary certain provisions of the Companies Acts 1931 to 2004. Regulations under this section need Tynwald approval before coming into operation.

Clause 20 amends schedule 1 to the 1982 Act, which sets out various matters relating to company accounts. The changes, which were requested by the Island's accountants, repeal paragraph 12(1)(h), which conflicts with the treatment of dividends under GAAP. The clause also clarifies the treatment of dividends in notes to the accounts and defines 'balance sheet date'.

This clause provides an illustration of the sort of issues that could be addressed under clause 16.

Mr President, I beg to move that clauses 19 and 20 stand part of the Bill.

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

**The President:** Mrs Christian.

**Mrs Christian:** Thank you, Mr President.

On page 21, we have the provision, and page 20, under section 17C, that the Financial Supervision Commission may make regulations in relation to certain aspects of audit, including determining the jurisdiction in which auditors must, or may be, based or resident. Presumably by default from those lists, any that are not either 'must' or 'may' are definite 'cannot be'!

But I think the Hon. Member did not actually answer my question on the last few clauses, about the arguments which were made – I do not know whether he has the information – by Isle of Man auditors, to suggest that the audit should be in the Isle of Man. Does the mover have...?

I acknowledge that this provision allows the Financial Supervision Commission to determine that, but I just wonder whether he can outline what the arguments were in favour of being restrictive in that way.

**The Lord Bishop:** Protectionist.

**The President:** Do you wish to...? I think we have an answer there. If we may, Mr Turner, perhaps we could get the response.

Could you please stand, give your name and office, and then we will pick it up from there – on the understanding that Mrs Christian or any other Member may wish to question you. Thank you.

**Mrs Oldham:** Yes, that is fine. My name is Roxanne Oldham and I am Head of Policy and Legal at the Financial Supervision Commission.

In relation to this question – the Isle of Man auditors – the main focus of their argument was the fact that Isle of Man auditors would know Isle of Man company law better than auditors in, say, the UK would know, and that was their main argument.

The legal profession's alternative view was that Isle of Man companies are used internationally now and may trade internationally and may have very little to do with the Isle of Man, other than the place of incorporation. There were even examples given of companies trading and based in Asia that had Big Four Asian auditors, and saying that to actually insist on them having to have their audit moved from that place and brought back to the Isle of Man would be a little parochial for an international finance centre. That was the reason.

**The President:** Mrs Christian.

**Mrs Christian:** No, thank you, Mr President. That is helpful.

**The President:** Mr Turner, do you wish to add to that, sir?

**Mr Turner:** No, I think it goes back to what we were discussing earlier in the Second Reading, I think, about being international players and some of these, it would not be altogether practical for some of these companies to have Isle of Man auditors. So, that hopefully answers Mrs Christian.

**The President:** In that case, Hon. Members, the motion that I will put to Council is that clauses 19 and 20 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

We move on to part 3, Mr Turner, and I do not know how far you are going in this. Keep moving and I will stop you, if I think Members are getting restless!

**Mr Turner:** Okay, I will make headway through here, then.

So, part 3 is changes to the Companies Act 1992, and the proposed modifications to this Act are contained in the following clauses 21 to 24, which form part 3 of the Bill.

Clause 21 substitutes sections 6 to 8 with new sections 6 to 8A in the 1992 Act. These sections define financial assistance for the acquisition of shares and the circumstances in which a company may provide finance for the purchase of its own shares. This area is tightly controlled to prevent manipulation of share capital, but permits flexibility in defining controlled circumstances, particularly in relation to private limited companies.

The new section 6 defines financial assistance to include gifts, guarantees, indemnities, waivers, loans, the assignment of rights under a loan, as well as financial assistance by a company whose net assets are materially reduced by the assistance or whether the company has no assets.

The new section 7 makes it unlawful for a company to give financial assistance for a person to acquire shares in that public company, subject to exceptions granted under the new sections 8 and 8A. This prohibition does not apply in relation to the acquisition of a company's own shares where specific criteria are met, including whether financial assistance given is incidental to some larger purpose of the company and is given in good faith.

New section 7A has provisions similar to those of the

new section 7, but in respect of shares in a private holding company of a public company. Financial assistance for the acquisition of shares in a private holding company of a public company is prohibited subject to the exceptions granted under new sections 8 and 8A.

The new section 7B makes it an offence to contravene certain provisions of section 7 or section 7A. Any such contravention is an offence committed by the company and every officer of that company.

The new section 8 lists unconditional exceptions to the prohibitions against financial assistance for the acquisition of shares of a public company and includes distribution of the company's assets via a dividend or in the course of its winding up, an allotment of bonus shares, redemption or repurchase of shares, and a reduction of capital for any matter confirmed by order of the court, or under a binding agreement with a company's creditors.

The new section 8A lists transactions that do not amount to prohibited financial assistance where the company giving the financial assistance is either a private company or, if a public company, whose net assets are reduced by the giving of the assistance, this must be from distributable profits. These transactions include where money is lent in the ordinary course of that company's business or for the purpose of an employee's share scheme.

Clause 22 amends the definition of 'distributable profits' in section 25 of the 1992 Act by replacing the reference to section 6(8) with new section 6 which is the new definition of 'financial assistance'.

Clause 23 repeals paragraph 4 of schedule 6A to the 1931 Act. The repealed paragraph refers to the written resolution of the members authorising financial assistance for the purchase of a company's shares under old section 7. Old section 7 has been replaced, under clause 21.

**The President:** Right, can we hold it there, then.

Mr Downie, would you...? Mr Turner, clauses 21, 22 and 23.

**Mr Turner:** I beg to move clauses 21 to 23.

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

**The President:** Any Hon. Member wish to...? Mrs Christian.

**Mrs Christian:** Simply to note, Mr President, for the average person, it can get very complicated where companies are acquiring shares in other companies and even in their holding companies, and to have a provision in here that they shall be prohibited from... 'a public company shall be prohibited from acquiring shares in its private holding company'. It is obviously something that the Financial Supervision Commission sees as proper. I think it is an example – well, it seems to me and perhaps I do not have the grasp of it very well – but it seems to me proper that we have these kinds of strengthening measures, because the whole financial world gets so complicated that one ends up not knowing who owns who or who owns what and what the real value of things are. We have a feeling today that the whole of the financial world is a virtual reality! So to see specific measures such as this one in section 7A, which is a single one, being enacted, I think it is good to see that we are putting in strong direction, really, as to how these structures

shall be managed or prohibited, so that there is a degree of clarity about appropriate ownership and so on.

**The President:** Mr Waft.

**Mr Waft:** Just to say, Mr President, that with regard to the change of rules and registrations and the way this Act is compiled, we must not lose sight of the fact that we have to remain competitive, at the end of the day. There has to be a line to walk, which complies with regulations; at the same time, we have to be competitive. So, it cannot be too onerous on the people you are trying to encourage to start up companies in the Island.

**The President:** Mr Turner to reply, sir.

**Mr Turner:** Yes, thank you, Mr President.

Of course, there is flexibility in this for the Commission – various references to exceptions – so it does give flexibility over certain matters. I think, with that, I beg to move that clauses 21, 22, and 23 stand part of the Bill.

**The President:** The motion I put to Council, Hon. Members, is that clauses 21, 22 and 23 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 24.

**Mr Turner:** Clause 24 adds a new section 25A into the 1992 Act, which permits the FSC to make regulations allowing a company to repurchase and hold its own shares as treasury shares. Such regulations could include provisions modifying part I of the 1992 Act or part II of the 1931 Act.

Treasury shares are non-redeemable shares of a company that are repurchased by that company. These shares cannot be cancelled or reissued. As such, they serve as a mechanism for maintaining the amount of capital in the company. Treasury shares may be used, for example, where the company has surplus funds and wishes to reduce the number of shareholders by buying some of them out. A good example of this would be where it has been decided to privatise a public company.

The maintenance of the capital in the company enables the company's creditors to continue to trade with the company with confidence. Any regulations made under this section require Tynwald approval before coming into operation.

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

**The President:** Mr Downie.

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

**The President:** The motion I put to Council is that clause 24 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 25, part 4.

**Mr Turner:** Clause 25 amends sections 27 and 28 of the 1996 Act, which deal with the winding up of limited liability companies. These amendments address the situation where a member of a limited liability company dies, retires, resigns, is expelled or is dissolved. Where the company has failed to file a notice in the prescribed form with the FSC within 60 days of the event, the amendments ensure the company will

no longer be automatically wound up. The winding up of the company will only commence where this is provided for by the operating agreement of the company.

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

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

**The President:** I am back to my own comment again, Mr Turner. I did get confused over this particular bit: the part where it says 'a single member', in the 1996 Act, of a company is being added to, but where all members are required, in fact, we are doing away with it. We are deleting the words 'under a right to do so...' In my reading of the 1996 Act, that section requires all members to sign and we are actually taking away the bit about it being in the articles of the organisation or not. I went round in circles reading it on a number of occasions.

I do not know, Mr Attorney, whether you can help or not.

**The Attorney General:** I will certainly try, Mr President.

As the Hon. Member, Mr Turner, has indicated, under the existing Limited Liability Companies Act, section 27 of the Act states the circumstances in which such a company can be wound up. What this new provision is doing, Mr President, is to state that a limited liability company can only be wound up, if an operating agreement so provides.

I am just...

**Mr Turner:** Mr President, if it is of any assistance...?

**The President:** Mr Attorney, I appreciate the point because I read it on a number of occasions, too, and I became more blurred, the more I read it, I have to say. I do not know if we... Have we got an answer from the...? Yes? Please.

**Mrs Oldham:** Yes, Roxanne Oldham, Financial Supervision Commission.

This provision, the changes to it were a request from the industry because the automatic winding-up provision means that we are asking for administration, a form to be sent in to us signed by all the remaining members of the company to say please keep our company alive because this member has died and the situation at the moment is the company is automatically wound up if one member dies or resigns, unless all the others complete a form together and send it in and say please do *not* automatically wind the company up.

The industry informed us that this was having difficult repercussions for people who may be, say, husband and wife type companies, where one partner dies, the other one has not quite got round to, obviously, dealing with everything and then find they have to sign a piece of paper and send it in to us for us to keep the company alive. If that has not been done the company is automatically wound up and that is why you have got two provisions: you have got a provision referring to the one member – the one member that has died or resigned or whatever – and the provisions relating to all of the members, of all of the remaining members who are having to sign that piece of paper to keep the company alive, in layman's terms, I think.

**The President:** Right, so in future what you are really telling me is that, whilst the addition to part 1 which deals

with individual members and the Act itself deals with when they die etc, in that provision you put in a new section which says that all members have to sign but in the section of the original Act which refers to all members you are actually taking the words out that they have to sign.

**Mrs Oldham:** Yes, the new provision simply means that automatic winding-up will not happen. If one member dies, resigns etc it will no longer be automatically wound up, it will only be automatically wound up if the provisions, if the articles, of that company make that a specific requirement.

**The President:** That is better, thank you. Mr Lowey.

**Mr Lowey:** Could I ask a question? Why was it inserted in the first place?

**Mrs Oldham:** I am not sure. I cannot answer that one.

**Mr Lowey:** I find that if we are going to repeal it, it must have been introduced as a safeguard for something, must it not? Practice has proved that it is unworkable but I am just fascinated why was it introduced in the first place?

**Mrs Oldham:** I am not sure. I am sorry I cannot answer that.

**The President:** It becomes clearer if you consider that, in fact, it is an automatic winding-up. That clarifies it.

**Mr Lowey:** Yes, yes I take that point. That is fine, that is okay, it is history.

**The President:** Thank you. Mr Turner.

**Mr Turner:** It may be that we could possibly get Mr Lowey the answer to that in due course, but I think it has been explained very clearly there the circumstances and it was an industry request, as Mrs Oldham has mentioned, so with that I beg to move that clause 25 stands part of the Bill.

**The President:** Hon. Members, the motion that I put to Council is that clause 25 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Hon. Members, I am in your hands now, I do not know whether you wish to continue? I do not know whether we can see this one through or, in fact, whether we should break and come back? I will leave it entirely in your hands. I have been noticed that the Keys have asked for a conference in relation to the Animal Health (Amendment) Bill so we will need to be looking at a delegation for that, as well.

Hon. Members do you wish to come back?

**Mr Lowey:** I would move that we come back this afternoon and finish the Bill.

**The President:** Come back and continue and try to move on as quick as we can. In that case, Hon. Members we will resume our deliberations on part 5 of this Bill at 2.30. Thank you.

*The Council adjourned at 1.05 p.m.  
and resumed its sitting at 2.30 p.m.*

## Companies (Amendment) Bill Consideration of clauses concluded

**The President:** Please be seated, Hon. Members.

We continue with our deliberations on the Companies (Amendment) Bill and, Mr Turner, we are up to clause 26, part 5, sir.

**Mr Turner:** Yes, thank you, Mr President.

Clause 26 adds a new section 58A to the 2006 Act. The provisions of this clause mirror the provisions contained in clause 24 for the 1931 Act. They permit the FSC to make regulations which permit a company to repurchase and hold its own shares as treasury shares and deal with those shares in accordance with provisions in the regulations. The regulations may include provisions further modifying the 2006 Act. As stated at clause 24, treasury shares are non-redeemable shares of a company that are purchased by that company. The shares cannot be cancelled or reissued. As such, these serve as a mechanism for maintaining the amount of capital in the company.

Treasury shares may be used, for example where the company has a surplus of funds and wishes to reduce the number of shareholders by buying some of them out. The regulations made under this section require Tynwald approval before coming into operation.

I beg to move that clause 26 stands part of the Bill.

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

**The President:** Mr Turner, if a company buys back in shares and they become treasury shares, it becomes part of the capital of the company and if, say, five years later that company wishes to increase its capital by a share issue or whatever, can they reuse that capital or does that capital treasury shares for all time just remain as capital in the company, in which case why do we call it shares?

**Mr Turner:** Because they are effectively holding their own shares. If it is repurchasing its own shares back it is holding them, as opposed to a –

**The President:** It effectively becomes capital within the company.

**Mr Turner:** Yes, but it remains as – yes, I see what you mean, Mr President.

**The President:** If they want to recapitalise the company can they reissue them?

**Mr Turner:** The shares they have bought back –

**Mr Crowe:** I think, Mr President, he said they cannot be reissued.

**Mr Turner:** They cannot be reissued or cancelled.

**The President:** Well, why are we calling them shares because they have just become part of the capital of the company.

**Mr Turner:** Well, they assist in the managing of the

capital so as to reduce the cost of capital. They do have similar provisions in the UK for this but, again, I think we have a technical answer just coming now.

**The President:** If it is helpful, by all means, please.

**Mrs Oldham:** It might be helpful. Roxanne Oldham, Financial Supervision Commission. No matter who the shares are owned by, that equity capital is part of the capital of the company. If they are owned by X and then re-bought by the company, normally that would cease being capital of the company because those shares would simply be cancelled. Treasury shares allow surplus funding in a company to be used to buy that company's own shares but keep them as treasury shares, which means that those funds remain capital of the company so that the capital is not reduced by the buy-back.

The reason behind that, one of the advantages behind that is that the creditors of that company, despite there being a capital buy-back from Mr X, Y and Z the company still retains that capital because that is what the treasury shares do, so they know, as creditors, that the capital has not been reduced in that company. It is just a mechanism and the provisions in the primary legislation allow treasury shares to be produced by regulations.

There are no regulations there at present. This is something that the legal profession felt very strongly would be useful when we went for consultation but because we did not have time to consult further on whether we should or should not, we put the regulation making power in here but before we go down the line of permitting treasury shares, we would go out to the full industry for a full consultation on this and whether, in fact, we ought to permit them or not, for this provision in the Act is a permission to make regulations allowing treasury shares *if* a future consultation determines that that is what we ought to do.

**The President:** Will those treasury shares, held by the company as capital, be subject to any dividend payout?

**Mrs Oldham:** That is the type of thing that would be in the... Yes, that is the type of thing that we would cover in the regulation and that is the type of thing that we would have to discuss, whether it would actually be fair or not to do and that is what the consultation would take account of, but yes, those treasury shares are part of the share capital of the company still when they are bought back.

**The President:** It is easier for it just to be brought back in as capital full stop, rather than shares.

**Mrs Oldham:** I understand that the treasury shares are used in the... These are in the UK at the moment, they were brought in in the UK and that they are used quite often for companies that are closed-ended investment vehicles. I think it is something that certain closed-ended investment companies can use. I do not think it is the type of provision that all companies would find at all useful, it is only certain areas of the industry but, of course, part of the Isle of Man industry is closed-ended investment vehicles, so they may well find this useful.

**The President:** So they are using the value of the treasury shares as an investment tool.

**Mrs Oldham:** I do not know enough about them to answer that question, I am afraid.

**The President:** Mr Crowe, are you any wiser than me on this one?

**Mr Crowe:** Well, I think the share capital is a liability of the company so if you have £1 million share capital in the company and if you have £1 million in your bank account which is, you have sold the shares for £1 million. If you buy in 100,000 shares your share capital will remain as £1 million of share capital, but your assets reduce by the amount. Your bank would be £900,000 and you would have a debtor for £100,000, being the value of your treasury shares.

Whether you pay a dividend or not does not matter because you are paying the dividend to yourself, so whether you are paying five per cent on a million shares you are retaining that 5 per cent to yourself, anyway, so you would either increase your capital by dividend: it is all internal.

**The President:** But we are not talking about an individual, are we? We are talking about a company.  
Mr Attorney.

**The Attorney General:** Mr President, just a very, I hope, just a straightforward comment. The only way a company can raise capital is by issuing shares –

**The President:** Issuing shares.

**The Attorney General:** – so the share capital represents the capital with which the company has to do business, so there is no differentiation really between capital and share capital.

**The President:** But if the company buys back the shares because they are reducing the number of shareholders at any given time and then, five years down the road, they want to purchase, they want to expand, right, well yes I suppose they have still got the capital of the treasury shares, as well as any new shares that they issue.

**Mr Turner:** They would issue new ones.

**The President:** Okay, right, Mr Turner, sorry for that. Yes, Mr Turner.

**Mr Turner:** Yes, I found the example earlier which I will just read it again for a bit of extra clarity. A good example of this would be where it has been decided to privatise a public company, the maintenance of the capital in the company enables the company's creditors to continue to trade with the company with confidence because they are not reducing the capital and, again, the regulations that we referred to again will require Tynwald approval.

**The President:** Okay, Hon. Members, the motion that I put to Council is that clause 26 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 27, Mr Turner, please.

**Mr Turner:** Clause 27 amends section 78(1) of the 1976 Act to define what constitutes acceptable accounting

records and in what form they may be kept at the office of the registered agent. This change was requested by industry to make the 2006 Act more marketable, as the current requirements are more onerous than under the 1931 Act.

I beg to move that clause 27 stands part of the Bill.

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

**The President:** Hon. Members, the motion that I put to Council is that clause 27 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 28, Mr Turner, please.

**Mr Turner:** Clause 28 amends section 80 of the 2006 Act by removing the requirement to retain all financial documentation at the offices of the registered agent at all times.

The clause introduces a requirement to prepare financial statements with notes sufficient to explain the financial position of the company or to maintain copies of the accounting records. The financial statements, or copies of the accounting records, must be remitted to the office of the registered agent annually or on demand. Where the accounting records are not held at the office of the registered agent, the location of the records must be notified to the registered agent in writing and any changes to the location must be notified within 14 days.

The changes will bring the 2006 Act into line with the 1931 Act balancing reporting requirements and control by the registered agent over the records. The maintenance of, and access to, accounting records is very important in relation to the international obligations and particularly to assurances given to the OECD.

I beg to move that clause 28 stands part of the Bill.

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

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

And 29, Mr Turner.

**Mr Turner:** Clause 29 amends the 2006 Act by inserting new sections which deal with financial statements. The new section 80A provides that, where financial statements have not been prepared for 18 months, any member or director of a company may demand their preparation. The financial statements must be prepared within six months of the date of the demand. It will be an offence for the company not to prepare financial statements on demand.

The new section 80B brings the 2006 Act in line with the 1982 Act by introducing a requirement for directors to consider the substance of transactions and Generally Accepted Accounting Principles or practice and to do this when determining the presentation of accounts.

The definition of Generally Accepted Accounting Principles or practice is extended to include the US standards and practices known as US GAAP which we earlier discussed. The new section also allows the FSC to make regulations that require a company to comply with standards or adopt practices recommended by a specified body. Regulations

made under this section require Tynwald approval before coming into operation.

The new section 80C obliges a 2006 Act company to appoint an auditor if its securities, including shares, are listed or admitted to trade on the Stock Exchange. When an auditor is appointed that auditor must be qualified in accordance with sections 14 to 14H of the 1982 Act, as described earlier in clause 18. This provision may be modified under the new section 80E.

The new section 80D allows the FSC to make regulations which subject auditors to public oversight, quality assurance, investigations and penalties. These provisions in respect of the 2006 Act mirror those we have already considered in clause 19 regarding the 1982 Act, so as such I do not propose to recite the same details again.

The new section 80E enables the FSC to make regulations in connection with the accounting records, financial statements and audit of the 2006 Act companies. Regulations again require Tynwald approval before coming into operation.

I beg to move that clause 29 stands part of the Bill.

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

**The President:** Mr Lowey.

**Mr Lowey:** Yes, 80A is a new insertion. I just find it rather strange that if I have got a concern – and I am just putting myself in the position of a member of a company – I have got a concern, we have not had the accounts for 18 months and I ask for a copy of those accounts. Why do I have to wait six months?

**The President:** Mr Turner.

**Mr Turner:** Well, preparation of company accounts can be quite a lengthy task, I mean, if you were asking for a simple management account which, this is really referring to the actual accounts, as opposed to management accounts. These can take many months, as we know from deliberations in another place through a Select Committee the accounts were taking some time to produce and there are a lot of matters that need to be done in preparation.

If, as I understand, there is provision that if things are not forthcoming in this, you can then request to see the underlying accounts and other documents that are going to make up those accounts.

**Mr Lowey:** Can I have an assurance from the mover that six months is the accepted norm and not a Manx norm because it does seem to me if I have a concern I should not have to wait six months to get a set of accounts. I am only a layman.

**Mr Turner:** I think with these, this is providing for the actual full financial statements of the company, the finalised product and, in accordance with the 2006 Act, the company does not have to produce the statements ordinarily, I am told. So, therefore, as I have already mentioned that, if there is a demand for that it will take some time to put those accounts together.

If the business concerned is relatively straightforward then, obviously, it will be able to produce those quicker, but

I think that it is not uncommon for companies to take quite a few months to get their finalised financial statements and accounts prepared.

**The President:** Effectively this takes effect, 80A, if the company has not prepared its financial statement for 18 months and thereafter you get the six-month period.

**Mr Turner:** It does say within six months, so that is the maximum.

**Mr Lowey:** The other thing is I notice is this the norm for accounts because, again, I am trying to be as an ordinary member in the street. This is a comfort factor, this is new: under the 2006 Act they do not have to do accounts. This is as a member, not a director, because a director would have day-to-day knowledge of what was going on but I am a member and my money is invested in here and I am concerned. It does seem to me a long time to wait.

**The President:** Yes, please.

**Mrs Oldham:** Roxanne Oldham, Financial Supervision Commission.

The 2006 Act company is a completely different type of company to what I would call a 1931 Act company. It is a company that was designed by the Government as a new type of product. It differs from the 1931 Act company in a variety of ways and one of its differences is that standard financial statements do not need to be produced, so it is the norm for a 2006 Act company not to have financial statements.

This provision is giving the member a right to *demand* financial statements be prepared and if those financial statements are *not* prepared, that member then has the right to see the underlying accounting records of the company.

So the law itself and the fact that financial statements do not have to be prepared for a 2006 Act type company, that member should know that that by holding shares in a 2006 Act company that that is the norm. It is a different type of product and that is why it has different rules relating to it that we are trying to protect investors more by putting this provision in for them.

**The President:** Mr Lowey.

**Mr Lowey:** Could I ask the question: is it the norm, is this six months a normal length of time and is it in any other legislation enacted in the UK?

**The President:** In the UK legislation.

**Mrs Oldham:** As far as that is concerned, the provision of accounts in a 1931 Act company, accounts must be drawn up within six months or nine months of the accounting year end of the company and that is the provision that is in here now that has been shortened due to the IMF's comments. They believe that six and nine months was fair: previously it had been nine and 12. So I would suggest that a provision to say have them drawn up within six months sits quite nicely into the normal scheme of things, where they have up to six months from the end of an accounting period to produce accounts, yes.

**The President:** Okay, Mr Turner.

**Mr Turner:** Yes, sorry, I just have a question to expand on that because we have heard the term in the past, New Manx Vehicle, where does that fit into –

**Mrs Oldham:** The 2006 Act company is the New Manx Vehicle.

**Mr Turner:** Is the New Manx Vehicle.

**Mrs Oldham:** I do not know where that term came from but that is how the 2006 Act company is described, yes.

**The President:** Okay, Mr Turner.

**Mr Turner:** I was just getting clear that that was this new product they had designed and, indeed, I believe the Steam Packet has converted recently to this, I think it was in the report, to this New Manx Vehicle type of company.

**The President:** Okay, well, Hon. Members, the motion that I put to Council is that clause 29 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

We go on to clause 30.

**Mr Turner:** Clause 30 amends section 82 of the 2006 Act which relates to the inspection of company records by directors, members, the FSC or persons authorised by the Attorney General. The provisions replace the general right of a member to inspect a company's accounting records with new provisions which are contained in new sections 82(2A) and 82(2B).

Under the new provisions a member may, in specified circumstances, inspect and make copies of or take extracts of a company's underlying accounting records.

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

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

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

Clause 31.

**Mr Turner:** Clause 31 adds a new section 161A to the 2006 Act which allows the Registrar of Companies to make regulations in connection with takeovers and mergers. Regulations made under this section require Tynwald approval before coming into operation.

I beg to move that clause 31 stands part of the Bill.

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

**The President:** The motion that I put to the Council is that clause 31 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 32.

**Mr Turner:** Clause 32 adds a new section 208A which permits any person aggrieved by a decision of the Registrar under the 2006 Act to appeal to the courts within a month

of the decision, or such further time as the court allows. The court may confirm the decision or make such determination in the matter as it sees fit.

I beg to move that clause 32 stands part of the Bill.

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

**The President:** Again, Hon. Members, I put to Council that clause 32 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Part 6, 33 and 34 please.

**Mr Turner:** Clause 33 amends the Contracts (Rights of Third Parties) Act 2001. The Act currently applies to 1931 Act companies but does not apply to 2006 Act companies. The amendment extends the provisions about the rights of third parties to 2006 Act companies. Take 34, as well?

**The President:** 34, too, please, yes.

**Mr Turner:** Clause 34 amends the Financial Services Act 2008 to make a consequential amendment that reflects the repeal of the Financial Supervision Act 1988. The clause transfers the enabling power for the FSC's functions in the regulation and supervision of collective investment schemes to the Collective Investment Schemes Act 2008.

I beg to move that clause 33 and 34 stand part of the Bill.

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

**The President:** The motion I put to Council is that clause 33 and 34 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Part 7, 35 and 36, please.

**Mr Turner:** Clause 35 defines certain expressions used in the Bill.

Clause 36 gives the short title of the Bill and provides for the coming into operation of any of the provisions of the Bill by an Appointed Day Order. It also provides that different provisions may be brought into operation at different times and makes provision for the transitional matters.

I beg to move clauses 35 and 36 stand part of the Bill.

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

**The President:** In that case, Hon. Members, I put to Council Part 7, clauses 35 and 36 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

I just thought, Mr Lowey, that in Part 6 you would have been asking which comes into effect first: the Financial Services Act, the Collective Investment Schemes Act or this Act.

**Mr Lowey:** I would not dream of it, sir. It is presumptuous to ask which would come in first.

**The President:** Yes. Are they are all coming in together?

**Mrs Oldham:** No, the Financial Services Act and Collective Investment Schemes Act both came into effect on 1st August 2008 and they are already in place.

**The President:** Thank you. The answer was awaiting. All I was waiting for was the question.

### **Animal Health (Amendment) Bill Conference with the House of Keys Delegation of three Members elected**

**The President:** I think, Hon. Members, that draws our legislation to conclusion but, as I did indicate earlier, to some of you, anyway, I think, we will put it on the record, that the House of Keys have asked for a conference in relation to the Animal Health (Amendment) Bill. They have elected their delegation, as I understand it, and under Standing Order 4.4(2), where a conference is agreed, it should consist of three Members of each branch. So, in fact, Hon. Members, it is probably appropriate that we elect our delegation to deal with this particular matter of the Animal Health (Amendment) Bill.

I think it was Mrs Christian's amendment that went back to the House.

**Mr Downie:** I would like to propose Mrs Christian be one of the delegation. She actually brought to light which I think was a defect. If they are going to have regulations, well let us make it blatantly plain that we are going to have them, not 'shall' or 'may'. I think the legislation that we amended here and sent back to them was much easier for people to understand and, at the end of the day, people, I think, have a right to expect that if regulations are being mentioned somewhere, it is quite clear where they are and where to find them.

**Mr Waft:** I would second that, Mr President, and I propose Mr Downie.

**Mr Crowe:** I second Mr Downie.

**The President:** I want one –

**Mr Crowe:** I propose Mr Callister, who moved the Bill.

**Mr Waft:** The mover of the Bill, Mr Callister.

**The President:** Okay. So, are we happy that it should be Mrs Christian, Mr Downie and Mr Callister?

**Mr Callister:** Well, of course, my position –

**Mrs Christian:** Can I ask if Mr Callister's position would be difficult there, because he moved something opposing the amendment.

**The President:** He is also on the Department.

**Mr Callister:** I voted against the amendment.

**Mrs Christian:** I propose Mr Butt. Mr Butt, I think, supported the amendment.

**Mr Crowe:** I second Mr Butt.

**The President:** Okay, Hon. Members. I am sure we will pick that up. The committee, as a delegation from the

Legislative Council, will be Mrs Christian, Mr Downie and Mr Butt.

Thank you, Hon. Members. I think that does draw to a conclusion the business before Council for today. Thank you very much.

*The Council adjourned at 3.04 p.m.*