



**LEGISLATIVE COUNCIL
OFFICIAL REPORT**

**RECORTYS OIKOIL
Y CHOONCEIL SLATTYSSAGH**

P R O C E E D I N G S

D A A L T Y N

(HANSARD)

Douglas, Tuesday, 28th April 2009

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

The Attorney General (Mr W J H Corlett QC),
 Mr D A Callister, Mrs C M Christian, Mr E A Crowe,
 Mr E G Lowey, Mr J R Turner and Mr G H Waft,
 with Mr J King, Clerk of the Council.

Business transacted

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The Council sat in private at 12.11 p.m.

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Legislative Council

The Council met at 10.30 a.m.

[MR PRESIDENT *in the Chair*]

PRAYERS

The Chaplain of the House of Keys

Leave of absence granted

The President: This morning, Hon. Members, we have leave of absence granted to the Lord Bishop; the Hon. Member, Mr Butt; and the Hon. Member, Mr Downie.

Orders of the Day

Gender Recognition Bill

Third Reading approved

1. Mr Lowey to move:

That the Gender Recognition Bill be now read a third time and do pass.

The President: Hon. Members, on our Order Paper we have three Bills to deal with this morning: the Gender Recognition Bill, the Prohibition of Female Genital Mutilation Bill, and the Advocates (Amendment) Bill.

Dealing first with the Gender Recognition Bill, Hon. Members, it is up for Third Reading this morning and I call on the Hon. Member, Mr Lowey. Thank you, sir.

Mr Lowey: Thank you, Mr President.

The purpose of the Gender Recognition Bill is to give legal recognition in Manx law to the acquired gender of a transsexual person who has been issued with a full Gender Recognition Certificate.

As I explained when I moved the Bill for the Second Reading and clauses, there is an obligation under the European Convention on Human Rights to progress this legislation and particularly at a time of increasing scrutiny of smaller countries, the Island must be able to show that it takes complying with its international obligations seriously, and the Isle of Man certainly does that. But over and above any obligation, giving legal recognition and protection for a small but potentially vulnerable section of our community is also very much the right thing to do, I believe.

Mr President, I think that we had a good debate on the detail of the Bill during the clauses stage last week, and I do not want to go over all of that ground again, but I will come to some of the concerns that were expressed at that time.

Mr President, it is almost impossible for most people to

understand how a person can possibly feel themselves to be of the opposite gender to the physical body they were born with. It is completely outside our experience as a norm, but from all I have read in preparing to move this Bill, it is clear – very clear to me, anyway – that it is a genuine medical condition and it does cause a great deal of distress, often from a very early age, to those who have it. However, with treatment and support it has been found that most transsexual people experience an improved quality of life.

Mr President, transsexual people represent a very small section of our community and if I can give a fact, in the period between the United Kingdom Act coming into force in April 2005 and the end of October 2008, with a UK population of 60 million people, the Gender Recognition Panel issued just 2,243 full Gender Recognition Certificates, the majority of which were issued to people who had changed gender in the years before the Act came into force.

I do not know the exact number of transsexual people who might be living on the Island at the moment, but in a way the number is irrelevant. Even if it was zero, the Human Rights obligation to allow for legal recognition would still exist and ensuring that there is a framework in place to protect the more vulnerable members of our society is always the right thing to do. I believe that this legislation is another small step in the direction of social inclusion for all our community.

Mr President, during the clauses stage of the Bill before us, I know certain Members, and Mrs Christian in particular, had some very valid points which I was unable to answer at that particular time. I think Mrs Christian asked whether it was unusual for a Bill to have different procedures for subordinate legislation made under different provisions.

In fact, there are many examples of different Tynwald procedures in Acts. A fairly recent example is the Financial Services Act 2008, which we have just passed, where there are four different procedures. They may not come into operation until approved by Tynwald; may come into operation, but if Tynwald fails to approve it, ceases to have effect; may come into operation, but if Tynwald resolves that it be annulled, it ceases to have effect; and simply laid before. So there are four different procedures in that one Bill alone.

In this particular Bill, Mr President, there are four instances of powers to make subordinate legislation in the Gender Recognition Bill and they are as follows: clause 12(5), which we know about; clause 13(1); clause 15(2); and schedule 1, paragraph 2(2)(b).

If I can deal with these briefly, and in reverse order, in schedule 1, paragraph 2(2)(b), this is the power to prescribe the types of information that must be recorded in the Gender Recognition Register, so that when a certified copy is drawn from the entry, it appears to be an ordinary birth certificate. Under paragraph 2(5) of schedule 1 as amended, this matter is prescribed by regulations made by the Clerk of the Rolls. It may be argued that this is really an administrative matter that perhaps did not need to be set out in legislation at all. It is in our Bill because the UK Act was followed in this respect.

However, for the certificate drawn from the Gender Recognition Register to be usable by the transgendered person in place of their original birth certificate, there is no real leeway in what must be recorded in that Register. It must match what is recorded on a birth certificate. It is therefore considered to be entirely appropriate for these regulations not to require Tynwald approval. But under paragraph 2(6) at schedule 1 they must be laid before the Court for information.

Can I deal with clause 15(2): this is the power of the Council of Ministers to make Appointed Day Orders to bring the Act into operation and in line with usual practice, these Orders do not require Tynwald approval; nor is there a specific requirement on the face of the Bill for them to be laid before Tynwald. However, as is standard procedure, the Appointed Day Orders will certainly be laid before the Court and it is currently envisaged that the order and regulation-making powers will be brought into force soon after the Royal Assent and the substantive provisions at the start of April 2010 for this particular Bill.

Clause 13(1): this provision is to allow the Council of Ministers to make any consequential amendment to other legislation that may in future be found to be necessary as a result of difficulties in its operation due to the ability of a person to legally change gender under Manx law. As an order made under the power could potentially amend different Acts of Tynwald, albeit only in the very narrow area of their operation in relation to persons who had changed gender, it does seem appropriate that such an order should not come into operation unless it has first been approved by Tynwald.

However, again I want to stress it is not currently foreseen that it will be necessary to use this power, because after four years in operation in the UK, it does not appear that they have had to use the equivalent power in the Gender Recognition Act 2004. However, given that there may be a difference between UK law and Manx law in some areas, it remains a useful contingency power, and that is why that is in clause 13(1).

The President: I think it is 14(1), Mr Lowey.

Mr Lowey: Is it? I will accept...

The President: I think it is 14(1).

Mr Lowey: Clause 14(1)? It is 13(1) on my paper. Has it been moved?

The President: Let me just get that right. Is it me, or...

Mr Lowey: It is 14(1), and I do apologise, Mr President. I obviously –

The President: Can we just be sure. I think we are dealing with clause 14(1) on page 7, is that right?

Mr Lowey: It is.

The President: No, hold on. I am getting told that I am on the wrong one. For my purpose and the purpose of *Hansard*, I think now I have started, Mr Lowey, I would like to get it right.

Mr Lowey: Yes, indeed. Perhaps Mrs Shimmin could assist me on this one. It is 13(1), the power to modify statutory provisions, and it is on page 7, line 12:

‘The Council of Ministers may by order make provision for modifying the operation of any statutory provision’.

And it is, as I said, Hon. Members, a contingency power.

Clause 12(5): under clause 12(1) of clause 12, it is an offence for a person who has obtained information about

a transsexual person, whilst they were acting in an official capacity, to disclose that information. This is necessary because one of the grounds on which the European Court of Human Rights found that the UK had breached the European Convention rights of transsexual people, in the case of *Goodwin and I v the United Kingdom* was the right to a private and family life under article 8.

I do not wish to go into the full details of the rights under article 8 of the Convention because they are not absolute rights, but they are described as qualified rights. However, interference with a person’s qualified rights is only permitted if there is a clear legal basis for the interference; for example, an Act of Tynwald, and the interference is to achieve a legitimate aim such as national security, public safety or the prevention of crime.

It is considered particularly important that the privacy of transsexual people is protected insofar as is possible and legitimate, because of the discrimination and abuse that such people have often been subjected to – and they have. Although there is now perhaps greater understanding and tolerance of the condition, only this year the European Commissioner for Human Rights, Thomas Hammarberg, issued a statement calling for discrimination against transgender persons to be no longer tolerated. Mr Hammarberg stated that transgender persons still encounter severe problems in their daily lives as their identity was met with insensitivity, prejudice or outright rejection.

Clause 12(4) sets out a number of circumstances under which it is considered that the disclosure of information about a transgendered person may be necessary and appropriate. These are generally in line with those set out in the UK Act.

Clause 12 (5) is an enabling provision to allow the Council of Ministers to prescribe additional circumstances under which information may legitimately be disclosed in line with the principles of article 8 of the Convention, and it has been envisaged that this would be little more than an administrative exercise. Before the UK brought its Act into force, it made two orders under this – one for England and Wales and one for Scotland – that set out additional permitted disclosures, and as the Manx Bill mirrors the UK Act, it was considered that they would simply be adopted to fit the Island’s needs.

The additional disclosures permitted under the UK orders were, and we discussed this closely last week: disclosure for purposes of obtaining legal advice; disclosure for religious purposes; disclosure for medical purposes; credit reference agencies; and insolvency. Although these matters could perhaps have been included in the body of clause 12 of the Manx Bill, in most cases there is a good deal of detail on the conditions of the disclosure and it was considered more appropriate to have the level of detail in an order made under clause 12(5) rather than in the Bill.

Hon. Members will be aware that lots of these orders are quite big; meanwhile, this Bill would be much bigger than it is now, cluttered with detail. This is not unusual in Bills, in legislation. We make enabling provisions for orders to be made, and this is no different in this particular Bill than many other Bills.

As it turned out, clause 12 has been the subject of more debate than any other provision of the Bill. Even so, for what the clause does, the Chief Minister still considers that, unlike an order made under clause 13(1), an order under clause 12(5) does not warrant the affirmative procedure in Tynwald and

laying before the Court is sufficient.

I have to say that the Chief Minister has, in another place, made a public declaration that he will place any of these orders before Tynwald Court as a matter of course. He has assured the Bishop in private conversations, again which were relayed here last week, and again I recite today those assurances to Members that orders under this provision will be laid before the Court.

Some Members may feel that it is not enough, that we need to have it in statute. I believe that to be belt and braces. I do not think there is a need, and as for committing future administrations, no parliament, I would remind Members, can bind their successors. That is the nature of politics, in legislative terms. No parliament can circumscribe the events of a future parliament.

Mr President, I think I have answered most of the queries that were raised at the last sitting and I therefore move that the Gender Recognition Bill 2008 be read a third time.

The President: Mr Waft.

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

The President: Mrs Christian.

Mrs Christian: Yes, Mr President.

First of all, can I say that I certainly support the Third Reading of the Bill and all its principles, and perhaps it is considered that this may be a bit technical, and the Hon. Member has kindly gone into a lot of detail why he thinks that amendments made by the Council of Ministers in an order under clause 12(6) do not need to be either approved or subject to a negative resolution procedure. Indeed, he says that it has to be laid before, but I am not clear in my reading of the Bill that it even has to be laid before, if the Council of Ministers makes such a change. He has referred to schedule 1 in stating that that would cover the requirement to lay before, but I would seek the learned Attorney's view on that at some point. It seems to me that the requirement to lay before only relates to the provisions of the schedule, but I will take advice on that, Mr President.

If I could just give you some reasons, Hon. Members, why I think that it should be subject to an approval in Tynwald, even by way of being laid before with a negative procedure if anybody disagrees.

First of all, in clause 12, we have quite clearly... it has been decided that it is appropriate to set out in statute in clause 12(4) what does not constitute an offence in relation to disclosing protected information, and we think that is important enough to put in the statute.

Then we go on in subclause (5) to say the Council of Ministers can make further orders to add to that list. If it is important enough to have it in statute in the first place, it is my view that it is at least important enough that if the Council of Ministers do alter the list, Tynwald Members should be made aware of that fact. After all, laying before Tynwald is a mechanism for making the public aware of what is going on; it is on the public record.

My amendment seeks to have it laid before Tynwald and then subject to a negative voting procedure at a following sitting if Members do not like it. I suspect that it may never be subject to an annulment procedure but at least I feel that we should have the opportunity and at least, in laying it before Tynwald, Members will become aware of what changes the

Council of Ministers have seen fit to make to this clause.

The Hon. Member has said that this is merely administrative and therefore it need not have been in the Bill, and he says it is in because it follows the UK. I would like to use the same argument, Mr President, in that my understanding is that, in the UK, it does have to be laid before and that there is, in my view, a drafting error here that it has not been provided to be laid before.

The mover has indicated that there are different procedures for orders, and I accept that there are different procedures. You can have an approval, you can have a laid before, a negative, an annulment, or whatever. So all those procedures are appropriate, but they all require something to come before Tynwald, and as I read it, this does not require this order to come before Tynwald.

The mover has said that the Chief Minister has agreed that he will lay this document before, if such an order is made and I have no doubt that the Chief Minister would be true to his word. However, he may not always be the Chief Minister. The Hon. Member has said parliament cannot bind future generations, but we can bind present ones and I feel that we should bind the Council of Ministers to at least make Tynwald aware of any changes that they make to this legislation, and in order to do that, Mr President, I am moving the amendment in my name:

*Page 7; line 8: after clause 12(6) insert –
'(7) An order under subsection (5) must be laid before Tynwald as soon as practicable after it is made, and if Tynwald at the sitting at which the order is laid or at the next following sitting resolves that it is to be annulled, it ceases to have effect.'*

Renumber subsequent subsection accordingly.

I beg to move.

The President: Mr Callister, Hon. Member.

Mr Callister: I beg to second, Mr President, and in so doing, I would speak purely to this amendment at this stage. I would rather see Tynwald approve any orders that come forward, than have them laid before, but if this is a preferred way for Mrs Christian, I am very happy to support it.

There are other matters that I will come to in the way that this is all being dealt with in relation to amendments and the Chief Minister's... I will not say 'interference', but the Chief Minister becoming involved in this through the whole process, which may have other concerns for us, but as far as this clause is concerned, I am very happy to support it.

The President: Perhaps we should just deal first with the clause, but Mr Lowey, if I may, when you were going through your brief, in relation to clause 12, which Mrs Christian has commented on, you did state at one time, I think, that in fact in relation to clause 12(4)... I think the words you used were that it was generally in line with the UK legislation. I take it that there is no alteration in the principles in subclause (4); it is just the wording. I am getting a nod of agreement and that is what I was looking for, that you did say that it was generally in line and so it is the wording of the Chief Registrar and... Thank you.

Mr Crowe.

Mr Crowe: Mrs Christian referred to the learned Attorney

making a comment. Does he wish to make a comment to clarify this, please?

The President: Mr Attorney, you are now being asked by both Mrs Christian and Mr Crowe to pass a comment on the need or otherwise for orders to come before Tynwald, which was, in particular, the point which Mrs Christian was making.

Mrs Christian: Yes, if I could clarify for Mr Attorney, please. The hon. mover, Mr Lowey, said that an order made under clause 12(5) would be –

The President: That is the Council of Ministers order.

Mrs Christian: Yes, would be laid before Tynwald under the provisions of schedule 1, paragraph 2(6), renumbered (7).

The Attorney General: Yes.

Mrs Christian: I did not read it that way, but perhaps I am wrong. If I am wrong, I would happily withdraw the amendment, but this seems to me to refer only to regulations made under the paragraph of the schedule.

The President: Mr Attorney.

The Attorney General: Mr President, I think the Hon. Member, Mrs Christian, is quite right. The position is that schedule 1 relates back to clause 3 of the Bill, which we see is concerned with registration practice and related matters, and subparagraph (6) of schedule 1 of the existing Bill states that regulations under this paragraph shall be laid before Tynwald. So it is quite clear, in my view, Mr President, that it is only regulations made under this paragraph, which as I say relates back to registration practice, which has to be laid before Tynwald.

Insofar as the Council of Ministers order is concerned, that is in clause 12(5) of the Bill:

‘The Council of Ministers may by order make provision prescribing circumstances in which the disclosure of protected information is not to constitute an offence under this section.’

And then we see the next clause:

‘An order under subsection (5) may make certain provision...’

And there is nothing within clause 12, Mr President, which contains any procedure at all for relating back to Tynwald. It is silent, so in my view there is no requirement in law, under this Bill, for the Council of Ministers to lay their order under clause 12(5) before Tynwald, under any mechanism whatsoever.

Clause 13, however, *does* contain reference to Tynwald approval, but that relates to orders made by the Council of Ministers making provision for modifying the operation of any statutory provision in relation to acquired gender description of such persons. So in other words, because the Council of Ministers is being given quite an extraordinary power to amend other legislation, that, because it has statutory effect, has to come before Tynwald.

But in my view, as I say, Mr President, I think that the Hon. Member, Mrs Christian, is quite right in her analysis.

The President: Mr Lowey.

Mr Lowey: Could I say I do not dissent from the Attorney’s interpretation of that. What I do say is that the Chief Minister has already publicly stated that he will lay these papers before Tynwald, notwithstanding that the Act is silent on them. I wonder why we feel it so necessary to have things in black and white. Mrs Christian says that she wants to bind the present administration. She concedes one session of parliament cannot bind a future one, so there is no disagreement with us there. She said, ‘I want to bind this administration.’ My point, and I think the point of the Government is that already, although this Bill has been in operation for four years in the United Kingdom, no such orders have been deemed necessary to be made.

Where we know that the Council, under clause 12(5) is to be made... we know that we have had assurances that the right to protect a disclosure by the Church – and I have itemised them – will take place under that, they will be laid before Tynwald. That has already been given. So the principle is conceded with Mrs Christian. The only difference between us is that she would like it in statute and I believe that we should deal with it in the way that it is being described by the Chief Minister.

Can I come to Mr Callister’s point about the involvement, and I almost got the impression that he thought it was improper. The Chief Minister actually took the Bill through and has ownership of the Bill. It is a Government measure and I think it is totally appropriate that the Chief Minister should meet with anybody who raises an objection, which the Bishop certainly did, and I thought it was totally appropriate that the Chief Minister should actually speak with those people to glean their knowledge.

I think it was a very healthy way in which we do... and it is not unique just for the Chief Minister to do it. Regularly in this Council, and in another place, they meet to discuss legislation between the sittings, so there is no ulterior motive and there is certainly nothing unique about the situation.

Again, I would just like to say... Mrs Christian concedes that there is legislation, which I was not able to confirm at the last meeting – I did not know why they were – but it is a standard procedure... not a standard procedure, but procedures that have been adopted in previous bits of legislation, and I think we are agreed on that.

In this particular Bill... The Appointed Day Orders have no requirement, in most legislation, to be laid before Tynwald, but they always are. Once again, the practice is there. Although it is silent in the Bill, it is practised, and that is the point that I am coming to. There is nothing unique in what is being done today, other than Mrs Christian’s... and I think it is a perfectly legitimate point of view to accept that it could be in the legislation. I think my job, as the mover of the Bill, is to try and persuade Members that it is perfectly workable in the way it is written, and I would urge Council not to support the amendment, although I know Mrs Christian fully supports the principle of the Bill, but she is wanting it, as a piece of legislative machinery, to be as perfect as it possibly can be. That is the role of this Council and I applaud her for her efforts in this regard.

The President: Mr Lowey, I am a little concerned that you have repeated on a number of occasions that we cannot bind a future administration. Whilst I accept and know exactly where you come from, it is a fact, I think, that if it is

written in the statute law, a future administration would have to repeal that law, otherwise they would be acting against –

Mr Lowey: *Ultra vires*, yes.

The President: – *ultra vires*. So I want to make that point, which had been made in your reply, Mr Lowey. Now you can wind up and complete that.

Mr Lowey: I could not disagree with a syllable of what you said, sir. You are quite right: to break it, they would have to actually repeal the particular piece of legislation. But the principle of binding is the one that I was getting at: how the mechanics have then resulted, or unpicked, as you have stated. I have no difficulty with that.

I did say, Mr President, in finally summarising my case, this piece of legislation deals with a very small minority of people. It does rely, to a large degree, on – and I used the word, I think, on the First Reading – piggy-backing on the English legislation, for practical, sound reasons, which I do not think anybody has objected to: that we are too small, we can get the expertise and the professionalism from away.

We use mainly their expertise in medical and all the other professions that are involved in this in getting their gender certificate. It seems to me that our laws should try, by and large, to mirror that, to make it much more acceptable. I believe we should keep it as laid down in the first draft, unamended, and I would urge the Council to give this Bill a Third Reading and to reject the amendment in the name of my friend, Mrs Christian.

The President: We are, Hon. Members –

Mr Callister: We are still talking to the amendment, I take it, Mr President?

The President: Well, I thought that we were winding up because... Nevertheless, Mr Callister.

Mr Callister: Well, I do want to respond in relation to the meeting with the Chief Minister.

The President: I will tell you that I will allow Mr Lowey to respond back again.

Mr Callister: Yes, indeed.

What happened was, of course, that the Lord Bishop placed some amendments in front of us which were for debate at one of our sittings. Subsequent to that, a meeting was arranged with the Chief Minister – and I will accept that he was moving the Bill in the other place – at which it appeared to me that nearly all of these amendments – in fact, I think all of the amendments – were described as being unsuitable, inappropriate or whatever, so we did not have the opportunity to even debate them. So when that came forward here, they were withdrawn, in fact.

I always understood that there were matters within the amendments that were then discussed with the Chief Minister and would be dealt with in an order to follow. These issues would be dealt with in an order that was coming forward, which I would have assumed would be for approval by Tynwald. However, if it is not for approval by Tynwald then this is some way towards that.

The other issue with this as well is – and I do not know

how well established this is, and this is a side issue, really – but we are now getting amendments in advance, rather than tabled as we go through the procedures from the floor, so I would, as a side issue, just have it clear from Mr President if this is now to be the standard procedure for the Legislative Council to table these amendments in advance and no longer have the opportunity to table them from the floor.

The President: Absolutely not, Mr Callister. As far as I am concerned, if Council wish to amend at the clauses stage because something has come to a Member's attention, we will deal with those amendments in the normal and time-honoured manner. However, I have to point out to you, sir, that we are today dealing with the Third Reading of this Bill. We are not at the amending stage, but Mrs Christian had noticed the Council at our last sitting that she would probably be considering bringing forward an amendment for today. That is the reason it is before us today, and I think that was accepted at that particular stage. We are not at a further amending stage at all; it is just this particular matter for which notice was given when we were dealing with it. That is my interpretation. As far as your query as to if this is a change in our practice, I can assure you it is not.

Mr Lowey.

Mr Lowey: I would say the same exactly as you have, Mr President. There is no change and there was nothing to stop... Although the Bishop decided to withdraw his amendments, there was nothing to stop any other Member from actually piggy-backing on those amendments and moving them themselves in their own name.

I can assure the Hon. Member that the orders that will be laid under clause 12(5), although they are silent and do not have to be laid, the Chief Minister has given that assurance that they will be laid before Tynwald under clause 12(5) to protect the rights of disclosure that the English clergyman has in England for the Isle of Man. He also said that he would gladly discuss, prior to making those orders that will be laid before Tynwald, with the Bishop, and if the Hon. Member, Mr Callister, wishes to be included in those conversations, I am sure the Chief Minister, being the inclusive man that he is, would be only too happy to include him in those conversations. So, with that, sir, I would beg to move the Third Reading.

The President: Hon. Members, the way in which I am going to deal with this is first to put to you the amendment moved by Mrs Christian. You have had it circulated to you on the white paper, as indicated by Mr Callister. It is to add to clause 12, on page 7, line 8, a new insert:

'An order under subsection (5) must be laid before Tynwald as soon as practicable after it is made, and if Tynwald at the sitting at which the order is laid or at the next following sitting resolves that it is to be annulled, it ceases to have effect.'

That will be a new insertion, Hon. Members, to become a new clause 12(7), and the 12(7) in the Bill will naturally become 12(8). Hon. Members, those in favour of the amendment, as moved by Mrs Christian, please say aye; against, no. The noes have it.

A division was called for and voting resulted as follows:

FOR

Mr Turner
Mrs Christian
Mr Callister

AGAINST

Mr Lowey
Mr Waft
Mr Crowe

The President: Hon. Members, the amendment tabled by Mrs Christian therefore fails to carry.

I put to you then the Gender Recognition Bill for a Third Reading, Hon. Members. Those in favour, please say aye; and against, no. The ayes have it. The ayes have it.

Prohibition of Female Genital Mutilation Bill

Second Reading approved

2. Mrs Christian to move:

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

The President: We go on then, Hon. Members, to the Prohibition of Female Genital Mutilation Bill. Mrs Christian to move this particular measure, Hon. Members. Second Reading, Mrs Christian.

Mrs Christian: Thank you Mr President.

Members unanimously supported the First Reading of this Bill. The Bill is fairly simple and it states its aims in the four sections of the Bill. The principle of the Bill is to protect girls and women from female genital mutilation, which is, in the view of our society I would suggest, an abhorrent abuse. The Bill also provides that those who aid and abet in the procurement of such mutilation will be committing an offence, whether it is here or in another country.

Mr President, it is a Private Member's Bill. The mover of the Bill in another place consulted very widely, not only with people in the Island, but with people in the medical profession in the United Kingdom, with our obstetricians, our midwifery practitioners, people involved with the protection of children, the Education Department, the Police Family Unit and so on. So there has been a fairly wide consultation on this and, I think, unanimous support for embodying the principles of the Bill into our legislation, which indeed recognises the determination of many of the United Nations bodies to do what can be done throughout the world to eliminate this practice.

I therefore, Mr President, wish to propose that the Second Reading be approved.

The President: Mr Callister.

Mr Callister: I beg to second, Mr President, and in so doing just perhaps mention that this went through the House of Keys with no debate at any stage. Nevertheless, there may well be one or two weaknesses within it. There are one or two queries that I have which I am raising at the clauses stage.

Thank you, Mr President.

The President: Mr Turner.

Mr Turner: Thank you, Mr President.

I know when this Bill first landed on my desk it was something that I certainly was not aware of, and I think there

would be a great number of people, before this Bill came into the public knowledge in this part of the world, who were probably unaware.

I have to say the consultation and the presentation that we received from, I think it was Mr Fayle, a couple of months ago, was quite shocking, to see what is actually going on here. I think that we certainly have obligations to protect people from what is an horrendous procedure. Certainly, having seen some of the suffering that especially the children undergo, it is something that we most certainly need to progress, this piece of legislation.

As we heard from Mr Fayle, there is certainly no medical benefit to this procedure whatsoever and it is carried out for reasons that are completely beyond my understanding, and I think that it is essential that we put this Bill through. Obviously, it is a procedure that is carried out in certain communities around the world and is not all that common in the UK, but with the world becoming a smaller place and people moving around and settling in different locations, there is always the chance that this sort of activity could be carried out here, and the sooner we put safeguards in place with the likes of this legislation, the better.

The President: Mr Waft.

Mr Waft: I think, Mr President, in our society we regard this as a barbarous act and, to say the least, common assault. I would go as far as to say grievous bodily harm. I am delighted that the people who are aiding and abetting acts such as these are taken into consideration here and dealt with accordingly.

I just wonder, when it says, I think it is 14 years... I would ask the Attorney General, what does that actually mean when it says 14 years? How long do they actually receive at the end of the day? You might like to clarify that.

I do think this Bill is fundamental to our way of thinking, and although it has been tradition in groups – especially throughout the Eastern Mediterranean – and religious societies, it nevertheless should not be countenanced in our civilisation in the western view of society and we should do everything we can to get rid of it, certainly within our society.

The President: Do you wish to reply, Mrs Christian?

Mrs Christian: Thank you, Mr President.

Mr Waft: I wondered perhaps, Mr President –

The President: You want Mr Attorney...

Mr Waft: – if the Attorney would like to reflect on the 14 years.

The President: We could deal with it at clause 7, but Mr Attorney.

The Attorney General: Thank you, Mr President.

I am not an expert in sentencing. This is not a special provision; this is a provision for penalties which one would see in any sort of legislation at all. The general rule, Mr President, is that, of course, a convicted person who is serving a sentence of custody is entitled to remission for good conduct

and that, I think, depending on conduct, could mean that there would be a discount, as it were, of up to half of the sentence. But if I may just check for the current understanding of the prosecutors in Chambers, I will come back on that.

Mr Waft: Thank you.

The President: Now, Mrs Christian.

Mrs Christian: Thank you, Mr President.

I thank Members for their general support of the Bill.

The Hon. Member, Mr Callister, has indicated he feels there are weaknesses and I hope we can maybe try and address those as we deal with the clauses stage.

It is interesting, is it not, that a Member such as Mr Turner has said that this has raised his awareness of this issue, which is not perhaps generally known or recognised in our community, and that I accept. It probably is not, but once one is aware of it, you feel that you have to do something legislatively to make sure that such practice does not happen here or is not aided and abetted here.

Sadly, it occurs, throughout many countries in the world, to millions upon millions of women and children. Fortunately, the recognition that this is a practice which should be eliminated is beginning to be tackled, but it will take time, I feel sure, in quite a number of those countries in which it is very deeply embedded in the culture.

The penalty issues have been addressed by the learned Attorney and so I do not have to add any comment on that.

I would say again, Mr President, this may not seem to many people to be particularly relevant here, but I think if you have read much of the documentation you can recognise that women who speak out in some of these countries are at enormous risk, even of death.

Mr Lowey: Yes, absolutely.

Mrs Christian: They are persecuted in the countries where they have the courage to speak out, and it does take them enormous courage to speak out against the members of their families, of their tribal issues, of their cultures, and in recognising that I think that we have to take what small steps we can at least to support their cause and to ensure that any woman or child who comes to the Island, who has been subject to such mutilation and who has need of health services here, is given the proper care that they need without the practitioners here being themselves at risk.

I thank Members for their support, Mr President.

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

Prohibition of Female Genital Mutilation Bill **Clauses considered**

The President: Perhaps now we will go through the clauses, Hon. Members, and we will take clause 1. Mrs Christian, please.

Mrs Christian: Thank you, Mr President.

This Bill is following the more modern format, with the first three clauses usually being at the end, but we deal first, in clause 1, with the short title of the Bill, which will mean that we are dealing with the Prohibition of Female Genital Mutilation Act 2009.

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

The President: Mr Callister.

Mr Callister: I beg to second, Mr President.

The President: Hon. Members, 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.

Now, clause 2.

Mrs Christian: Clause 2, Mr President, deals with commencement. It provides that the Council of Ministers may, by order, make Appointed Day Orders, bringing in different sections of the Act at different times, if they see fit, once it has been given Royal Assent. Such orders may cover consequential and transitional matters and savings but nothing in the Act affects criminal liability which arises apart from this Act.

I beg to move that clause 2 stand part of this Bill.

The President: Mr Callister.

Mr Callister: I beg to second, Mr President.

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

Clause 3, Mrs Christian.

Mrs Christian: Clause 3 deals with interpretation. It interprets definitions related to nationality which are used in the Act. It makes it clear that it covers Manx residents and all forms of UK nationals. However, the learned Attorney's Chambers wish to clarify the definition of 'Manx resident' and to that end there will be an amendment moved to the clause, Mr President.

I beg to move that clause 3 stand part of the Bill.

The President: Mr Callister.

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

The President: If I may call on Mr Crowe, please.

Mr Crowe: Thank you, Mr President.

The amendment is being moved at the request of the legislative draftsman in the Attorney General's Department in order to provide a clearer definition of a permanent Manx resident. It has the support, as Mrs Christian has said, of the mover of the Bill and the originator of the Bill in another place, Mr Gill MHK.

I beg to move:

Page 1, line 13
 For the definition of 'Manx resident' substitute –
 "‘permanent Manx resident’ means a person who
 is settled in the Island (within the meaning of the
 Immigration Act 1971 (of Parliament) [c. 77] as that Act
 applies in the Island);”

The President: Mr Lowey.

Mr Lowey: I beg to second the amendment, sir, standing in the name of the Hon. Member, Mr Crowe.

The President: Mr Callister.

Mr Callister: Speaking to that amendment, Mr President, we all regard ourselves as Manx residents, however described. Fletcher Christian was a Manx resident and it happens to be the 220th anniversary of the mutiny of the *Bounty* today, and I dare say that Fletcher Christian, and probably Captain Bligh, were well aware of this abhorrent practice which was taking place in various places around the world even then.

As far as the definition is concerned, I would just like to have clarification on where illegal immigrants stand in relation to residency. We know that there are vast numbers of illegal immigrants in the UK; there could well be illegal immigrants here in the Isle of Man. What is their status as far as residency is concerned?

The President: Mrs Christian?

Mrs Christian: Mr President... Maybe someone else wants to...

The President: Any other Member wish to... No. Mrs Christian.

Mrs Christian: An illegal immigrant, Mr President, will have the nationality of their home country. They would not be defined as Manx resident, and I think this is why we are partly changing this definition of Manx resident so that we are making it quite clear that a person, for example, who is on holiday here, but lives here – let us say an American citizen or any other citizen who is not Manx or British – is not covered by this definition.

What we are seeking to do here is make sure that Manx-resident people are going to be caught by the Bill, or the United Kingdom provisions if they are British citizens, so that in the event of someone coming here to incite an act which is against the Bill in another country, they can be covered by the provisions of the Bill. But an illegal immigrant would be not a permanent Manx resident, which is what the amendment is introducing.

Mr Waft: So, through you, Mr President –

The President: Yes, Mr Waft.

Mr Waft: – in effect, there is a proportion of the population not subject to this?

Mrs Christian: No, I think they are.

The President: Could you just get that clear, Mr Waft? What you are asking is that there will be a proportion of the

population of the Isle of Man who would not be subject to this. In what regard, sir?

Mr Waft: In regard that they do not come under the residency, the definition that has been portrayed.

The President: Mrs Christian.

Mrs Christian: Perhaps I did not clarify it very well, Mr President. The amendment will make them... A 'permanent Manx resident' means a person who has settled in the Island and it is also within the meaning of the Immigration Act of Parliament. So if they have got immigration clearance to be here, they may not be British but they are Manx permanent residents with immigration approval.

Mr Callister: But we are talking about illegal –

Mrs Christian: They will be covered by the Act.

Mr Callister: But illegal immigrants.

Mrs Christian: An illegal immigrant would not be covered by the Immigration Act.

The President: Mr Turner.

Mr Turner: Presumably, any person who aids, abets or carries out this procedure would still be breaking the law, would they not – that is how I read it (**Mrs Christian:** Yes.) – regardless of who they are? If they were someone who had been involved in carrying out the procedure, or aiding or abetting, in another country and then later comes here, that would not count under this – that is how I would read it – if it was a previous activity. However, if they come to the Island, regardless of their nationality or residency, and then carry out this procedure or making the arrangements whilst here, they would still be breaching this Act.

The President: Well, they would, but we are dealing with this particular bit, which is just their actual residency.

Mr Turner: Yes, it was just a bit of confusion there that Mr Waft had created.

The President: Mrs Christian.

Mrs Christian: The importance of the definition is in relation to clause 6, so that when we come to clause 6 we have a clear idea of... We are defining who is not a United Kingdom national or a permanent resident of the Island, so that those people will be covered by the legislation in clause 6. So in clause 6:

‘(c) a person who is not a United Kingdom national or a permanent resident of the Island...’

and those people are defined in clause 3, and they are effectively British citizens of one description or another. So in clause 6, anyone who is not a British citizen is covered by this.

The President: Mr Callister, you are still looking –

Mr Callister: No, but I think I might come to that at clause 6.

Mrs Christian: Yes.

The President: Hon. Members, in that case, we will deal with this by putting to you the amendment circulated to you, the amendment moved by Mr Crowe, which will be:

‘Page 1, line 13
For the definition of “Manx resident” substitute –
““permanent Manx resident” means a person who is settled in the Island (within the meaning of the Immigration Act 1971 (of Parliament) [c. 77] as that Act applies in the Island);’.

So it defines more clearly ‘Manx resident’.

Hon. Members, those in favour of Mr Crowe’s amendment, please say aye; against, no. The ayes have it. The ayes have it.

Now, clause 3, Hon. Members, as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 4, Mrs Christian.

Mrs Christian: Thank you, Mr President.

This clause, importantly, creates the offence of female genital mutilation and defines what constitutes such mutilation. However, it does allow that no offence is committed by approved persons who perform surgical operations, which may otherwise constitute a female genital mutilation offence, if such operations are necessary for the mental or physical health of a woman or girl or are carried out in connection with labour or birth.

This is to ensure that if a woman has been subject to female genital mutilation and then has mental or physical problems which require a surgical procedure to undo or repeat what might have been considered an offence under the Act, then the practitioner who is an approved practitioner is not committing an offence, because what they are doing is to assist that person.

The reason, in subclause (3), that we have this permission to carry out certain procedures is to protect those people who are responsible for the care of women or girls who have had FGM procedures which subsequently impact on their health, and certainly, in particular, in childbirth.

Approved persons are defined in subclause (4). They are registered medical practitioners, and in matters relating to labour and birth they further include registered midwives. Trainees in both these categories are also protected.

I beg to move that clause... Sorry, I missed out subclause (5). It is important in that it establishes that a belief that an operation is necessary because of custom or ritual does not constitute a mental health justification for an FGM procedure, however powerfully held that view is by the individual concerned or by some other party who may be influencing, maybe a family member. So that in itself – a belief that you have to have this done and it may affect your mental health – does not, however, constitute a mental health justification for a surgical procedure.

The President: Mr Callister, Hon. Member.

Mr Callister: I beg to second, Mr President.

Under clause 4(3)(a), which reads... and these are areas where this act, in fact, could be committed:

‘a surgical operation on a woman or a girl which is necessary for her physical or mental health;’

the Hon. Member, Mr Turner, referred to a presentation, which I was unable to attend but I have read the House of Keys comments by the mover, and it was made clear, I think, at that presentation and certainly, as far as I know, widely, that there are no health benefits with this operation at all and I question why that subsection (a) even exists in the Bill.

Further, if a surgeon, shall we say in the United Kingdom, decided that this operation should take place in the Isle of Man with another surgeon carrying it out, would that then still qualify under this, where this could actually happen here?

The President: Mr Crowe, Hon. Member.

Mr Crowe: Thank you, Mr President.

Just in response to Mr Callister’s question on subclause (3)(a), this is obviously to protect the medical profession who perform an operation to correct or rectify an act carried out illegally which affects the physical or mental health of that individual. So it is to give assurance in clear legal terms that that surgeon or consultant is acting within the law to correct what might be harmful, physically or mentally, to that individual.

The President: Mr Turner.

Mr Turner: Yes, on similar lines to Mr Crowe, it may be that, for example... Obviously I am no medical expert, but there may be complications during birth where a procedure has to be carried out and this, I imagine, gives them clear understanding that if the procedure is carried out and it has the effect of causing some level of mutilation, then they are obviously protected by that, but it does go on to say who the approved persons are. I know there are very strong feelings, certainly from the presentation we had, that the medical practitioners are against this procedure, but should they be in a situation where they have to carry out some sort of operational procedure, then they are going to be covered under this section. That is how I understand it.

The President: Mr Attorney.

The Attorney General: Thank you, Mr President.

Could I just seek to clarify one aspect of the presentation by the Hon. Member. As I understood it, the Hon. Member was saying that it is not an offence, for shall we say a surgeon, to carry out an operation which undoes the wrong which is being suffered by the girl or the woman as a result of an operation carried out on her. In other words, it is as if the surgeon has to carry out a remedial operation.

I must say, as I read clause 4(3)(a), the clause is not limited to that extent. In other words, if there were to be a situation, and it must be very remote, but let us say that a girl or a woman has not had an unlawful operation carried out on her, so she has not been mutilated, nonetheless the surgeon could, in extreme circumstances, carry out an operation on that person, on that girl, on that woman, which would otherwise be mutilation because, as I say, there would be an exceptional health risk. I wonder if the Hon. Member could just perhaps let me have her views as to whether that is right.

The President: Before Mrs Christian replies, Messenger, do you think you could somehow or other get rid of this irritating fan which is running behind me?

Mrs Christian.

Mrs Christian: Thank you, Mr President.

If I could address the comments first of all made by the Hon. Member, Mr Callister, he is quite right in that we have portrayed the surgeons who are going to carry out procedures for the benefit of the woman under the Act, but there are surgeons who might carry out a procedure which does not comply with this Act. Indeed, in the United Kingdom some surgeons have been struck off for carrying out female mutilation because they did not comply with the Act.

So there has to be a proper justification to use the no-offence subsection. If there are medical practitioners – and it obviously seems to us abhorrent that there are such practitioners – who would carry out female genital mutilation in the terms of the Act for cultural reasons or whatever else... but the learned Attorney is quite right in that (3)(a) is not only confined to a reversal of a procedure which has already taken place.

There may be some circumstance in which a surgeon deems it necessary, for the physical or mental health of a woman, to carry out one of the procedures set out in subsection (2). I do not know... If a person had a cancerous growth or something, it might be necessary for a surgical procedure to be carried out for the health of that woman, so there are a number of circumstances here where the provisions of subsection (3) can take effect.

In the presentation we were given by Mr Fayle, he clearly was perhaps focusing on the reversal procedures and the protection of doctors who may have to reverse an infibulation while a woman is giving birth, or whatever, but they are not allowed to reinfibulate. So it is a matter of interpretation here and a matter of justification on the part of a surgeon or a midwife that the procedure that they have carried out falls within the provisions of the Act. If they do not – if they cannot justify what they have done – then they may well be subject to disciplinary procedures by the medical profession, or indeed subject to the force of the law under the Act.

I think, Mr President, that has covered the points which have been raised by Hon. Members, so I hope that they will support clause 4.

The President: The motion, therefore, Hon. Members, that I put to Council 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.

Mrs Christian: Clause 5 allows the Council of Ministers to amend section 4 by order, should it be deemed necessary, and such an order must be approved by Tynwald.

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

The President: Mr Callister.

Mr Callister: I beg to second, Mr President.

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

Clause 6, please, Mrs Christian.

Mrs Christian: Thank you, Mr President.

Whilst clause 4 creates an offence of actually carrying out female genital mutilation, clause 6 deals with aiding and abetting, and this is a fairly powerful force in a culture which supports this procedure.

Clause 6 creates the offence of aiding, abetting, counselling, procuring or inciting a person to commit an offence under section 4, which is the offence of mutilation. It also creates an offence where a person incites someone to carry out a procedure upon that person, and in subclause (3) it creates an offence if a person aids, abets, counsels, procures or incites a person, who is not a United Kingdom national as we defined it earlier on, or a permanent resident of the Island, to do a relevant act of genital mutilation outside of the Island.

We clearly feel that mutilation itself is offensive, but the aiding and abetting of these actions is just as offensive because of the powerful cultural and traditional influences underlying the procedure, and we consider, in this clause, that it is essential that anyone who aids and abets procuring mutilation is also guilty of an offence under the Act, even if it is the person who is seeking to have that process carried out upon themselves.

So anyone who encourages another to be subject to FGM, or invites them to carry out an FGM procedure on themselves, is guilty of an offence. This applies if the actions take place in the Island, and clause 6(1)(c) covers the situation in which someone in the Island might aid and abet an act of FGM outside the Island beyond the UK, for example by sending a child away to a country in which this process could take place. So if they are aiding and abetting a procedure to take place in another country, they are still guilty under this Act.

Mr President, it is recognised in other countries which have legal provisions like this that children do go away for holidays at a certain age and come back quite disturbed and shocked and it is recognised through the schools and so on, and I think that was why Mr Gill, in carrying out his consultation, felt it entirely appropriate to talk with Education and Social Services and other providers in relation to this measure.

If what is done in another country constitutes an offence under section 4, in other words if the procedure carried out in another country constitutes an offence if it were carried out here, then it equally constitutes an offence here and you could be subject to the law. The savings in clause 4(3), that is for the medical practitioners and the midwives, would apply if the action taken in the other country is taken by an approved person in that other country or one equivalent to a registered medical practitioner or registered midwife. That is to allow legitimate acts which would comply with our law to occur in other places and people sending a child to another country for such a procedure – or a woman – would have the same saving provisions in that country as apply here.

I beg to move that clause 6 do stand part of the Bill.

The President: Mr Callister.

Mr Callister: I beg to second, Mr President.

The President: Mr Crowe.

Mr Crowe: Thank you, Mr President.

The amendment in my name is really to bring clause 6(c) into line with clause 3 – the amendment earlier in clause 3 we approved – and it is to standardise the wording of ‘Manx permanent resident’.

So I beg to move the following amendment, Mr President:

Page 3, line 13

For ‘permanent resident of the Island’ substitute ‘permanent Manx resident’.

The President: Mr Lowey.

Mr Lowey: I beg to second, sir.

The President: Mrs Christian, do you wish to comment at all?

Mrs Christian: No, Mr President, simply to support the amendment, in that it clarifies the definition of a permanent Manx resident.

The President: Hon. Members, I put to you then first, in dealing with clause 6, the amendment moved by the Hon. Member, Mr Crowe, where on page 3, line 13 of clause 6, it now reads:

‘(c) a person who is not a United Kingdom national or a permanent resident of the Island...’

instead of that, it will read:

‘... permanent Manx resident...’

the same as in clause 3.

Hon. Members, the amendment in the name of the Hon. Member, Mr Crowe: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 6 then, Hon. Members, as amended: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Finally, clause 7, Mrs Christian, please.

Mrs Christian: Clause 7 sets out the penalties for the offences under the Act: conviction on information, to custody for not more than 14 years or a fine, or both; and on summary conviction, to custody for not more than six months or a fine not exceeding £5,000, or both.

I beg to move clause 7 stand part of the Bill, Mr President.

The President: Mr Callister.

Mr Callister: I beg to second, Mr President.

The President: Mr Turner.

Mr Turner: Just a query with the two systems here – the conviction on information or on summary conviction. I wonder whether we could have some clarification on how or where it would be decided which route this goes. Would it depend on the investigation and be referred to the Attorney General’s Chambers for prosecution?

The Attorney General: That is the answer.

The President: Yes.

Mrs Christian, do you wish to add to that?

Mrs Christian: I do not think there is anything to add to that, Mr President, thank you.

The President: In that case, Hon. Members, the motion I put to the Council is that clause 7 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. Hon. Members, that concludes the clauses stage of the Prohibition of Female Genital Mutilation Bill.

Advocates (Amendment) Bill First Reading approved

3. HM Attorney General to move:

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

The President: We turn then to the Advocates (Amendment) Bill. The Advocates (Amendment) Bill is down for First Reading and on this occasion we have Mr Attorney to move.

The Attorney General: Thank you, Mr President.

The Advocates Act 1976 is one of the principal Acts which regulates the practice of law in the Isle of Man as an advocate. Section 26 and schedule 1 of that Act enable the Council of the Isle of Man Law Society to intervene in the practice of an advocate in certain specified circumstances: for example, where the Council has reason to suspect dishonesty on the part of an advocate or an employee of the advocate.

Clause 1 of this Bill supplements the 1976 Act by inserting a new section 26A and schedule 1A, the effect of which is to enable the Council to obtain information or documents for the purpose of investigating allegations of professional misconduct, breaches of practice rules and other contraventions, including anti-money laundering codes. It has been suggested that, under the existing law, a request by the Council to an advocate to obtain information or documents for the purposes of such an investigation could be rejected by the advocate on the ground that such information or documents would be protected by legal professional privilege.

In England and Wales, this has been put beyond doubt by the Administration of Justice Act 1985 and the Legal Services Act 2007. This Bill, therefore, Mr President, makes corresponding provision for the Island and will further enhance the reputation of the Island as a well-regulated jurisdiction. The fact that we do not have such a provision at present was noted by the representatives of the IMF when carrying out a review of the Island’s regulatory regime last year.

The Bill comprises one substantive clause which gives effect to the proposed new schedule. It preserves the provisions of section 17F of the Criminal Justice Act 1990 which enables anti-money laundering codes to be made pending the coming into operation of the relevant section of the Proceeds of Crime Act 2008 and makes it clear that the legislation can have retrospective effect so that the new powers of the Council can apply to an investigation which has begun before as well as after the passing of the Act.

Mr President, with that introduction I move that the Bill be read a first time.

Mrs Christian: I beg to second, Mr President, but would ask the learned Attorney if he could indicate whether a request for information has actually been challenged here on the grounds of legal privilege, or whether this is simply being introduced to bring us into line with other countries and to comply with the IMF suggestion and requirement.

The President: Mr Callister.

Mr Callister: Just briefly for clarification for my own benefit, Mr President, really... In clause 1, the insertion of 26A, where it refers to 'recognised body or any of its directors or employees', the definition of that is given. A recognised body has the same meaning as in the Advocates Act 1995, which I have not had time to look at. I wonder if we could just have what the definition of 'recognised body' is in that Act, Mr President, please?

The Attorney General: I am sorry, Mr President, I am just trying to...

The President: It is alright, Mr Attorney. I was just giving you time to look it up because I know there are other Members still wishing to speak, so –

The Attorney General: I am sorry.

The President: – I did not want you to be getting two jobs at the one time.

The Attorney General: Thank you.

The President: In that case, we will continue with Mr Crowe, I think.

Mr Crowe: Mr President, we hear a lot about consultation these days and I am just wondering, although the learned Attorney has mentioned the IMF had some concerns, has consultation been made with the Isle of Man Law Society?

The President: Mr Lowey.

Mr Lowey: I do not have any difficulty at all with the proposals. I just have to assuage myself. This is self-regulation, isn't it, really? The Society sits in judgement on itself.

I would just like to say that one of the nice things in my time in this place, and I am sure Mr President and Mrs Christian will know... When we first started, there would only be about 20-odd lawyers in the Isle of Man. We now have nearly 200 practising lawyers on the Isle of Man, and it is a young profession. That must be healthy. I really do applaud the way the Law Society has attracted a lot of very intelligent young people into their midst, and obviously we have, as an Island, benefited greatly from that.

As the Attorney said, we enhance our reputation as a well-regulated centre for a whole deal of practices and one of the key elements of that is the legal profession that backs it up and services it. But it is still self-regulation, and I think we have found in the past that self-regulation is not always the best.

I would just like an assurance from the Attorney that small jurisdictions... How does this comply in the UK? Perhaps this is my ignorance now bubbling to the surface. How do they regulate? Is it self-regulation in the United Kingdom? I know that it is a big jurisdiction. How do other small jurisdictions regulate? Is that self-regulation, so therefore, we are not alone, we are not unique in this position? I think, in general, I am not in favour of self-regulation, but if for practical purpose we have to, then I think this Bill is first class. I have no difficulty in supporting it. I would just like an assurance that self-regulation is not unique to the Isle of Man and it will assuage any fears that the IMF may have had that we had not got it in place.

The President: Mr Turner.

Mr Turner: Thank you, Mr President.

Again, Mr Lowey brought up a point I wished to raise, and that was the self-regulation. The Law Society is acting in a judicial capacity here, but if I may just focus on one of the points, maybe the Attorney could clarify how this particular system is going to work. It says that they may make an application to the High Court to authorise a person appointed by the Society to enter premises using such force as is reasonably necessary: effectively a raid on premises. This is in the schedule on page 4. With this Society being given these powers in law... These are quite substantial powers. Yes, they have to make an application to the High Court, who undoubtedly will not be dishing out these kind of orders willy-nilly – we understand that – nevertheless, we have a Society whose membership will be the people who potentially are being investigated, and I can see what Mr Lowey's point is. Would we, for example, allow the banking societies... do away with the FSC and allow them to regulate themselves? Well, no is the answer to that, so I can see the point there, and certainly when we come to effectively making raids on premises, who would this person be? It appears by this they could appoint anybody.

The President: I think Mr Lowey is correct. There are some strange things that go through our minds, and when Mr Attorney was commenting about subclause 1(5), which we are dealing with at the moment – that is the retrospectivity bit – the thought crossed my mind, where does that fit with statute of limitation legislation? I think it does, but there we are.

Mr Attorney.

The Attorney General: Mr President, I would thank Hon. Members for their very interesting and searching questions in relation to the Bill. I will try to deal with them in order of batting, as it were.

I am not aware of any point having been taken by an advocate against the Council of the Law Society when being asked to provide documents or information. In fact, I was, I think, careful in my introduction to state that it has been suggested that the current law is defective. In fact, Mr President, advocates have to produce a great deal of information anyway – files and correspondence – to their auditors, who have to check that advocates' practices are being run in full compliance with the Advocates' Accounting Rules because, of course, Hon. Members will be aware that advocates handle not only their own money, but more importantly, they handle clients' money and client

accounts have to be very carefully segregated from their office accounts. So advocates are well used to providing information and I regard this Bill as supplementing a regime of disclosure which exists anyway, in accordance with accounts and audit, but I am not aware of any refusal by an advocate thus far.

The second point, I think, Mr President, related to the definition of 'recognised body' and that appears in section 26(5) of the Advocates Act 1995. Section 26 in fact deals with incorporated practices. The 1995 Act, for the first time, enabled advocates' practices to be carried out through the medium of a limited company rather than through a partnership. So this new Act must deal not only with individuals carrying on business as advocates, but also through a corporation.

The next point, I think, Mr President, dealt with consultation. I can confirm that the Law Society have been consulted in great detail over quite some period of time and they are content with the Bill; indeed, they have encouraged it.

Then the Hon. Member, Mr Lowey, raises a very interesting and important point about self-regulation, and it is certainly true, Mr President, that the number of advocates has increased incredibly, really, over the years. I think I am right in saying that when I qualified way back in 1974, there would be about 20, mid-20s, maybe 30 advocates at the very most, and it was a very parochial practice, very rare indeed that there would be an international flavour to our work.

Now we have, I am sure, approaching 200 lawyers. We have a local firm that has recently been awarded the Queen's Award for Industry, which is absolutely first class, an acknowledgement of the calibre of legal practice which is being carried out. I think the Island has a very well-justified reputation as being a centre of excellence, and I am sure that is right – a centre of excellence in a very competitive world.

But that, of course, does not justify self-regulation, if self-regulation is not appropriate. What I can say, Mr President, is that to the best of my knowledge Jersey and Guernsey also regulate themselves in terms of legal practitioners, and in the larger jurisdiction of the United Kingdom we see solicitors' disciplinary bodies and the Bar Council looking after barristers, and I suppose really insofar as doctors, we see the General Medical Council. Professions do tend to regulate themselves.

It is important though that, if there is evidence of wrongdoing, the investigation then passes to an external body, and in our existing legislation, Mr President, that we have the existence of an Advocates Disciplinary Tribunal, which is able to deal with complaints of professional misconduct, and the Tribunal is made up of... I think it is the High Bailiff, accompanied by representatives from the Law Society and representatives from lay experts. Certainly the Law Society does not make up the majority of the Tribunal.

So whilst I agree that one has to be incredibly careful about self-regulation, I do not think in fact that there is anyone better able to spot incompetence and bad dealing on the part of an advocate than another advocate, but I accept the point that we have to be very careful about that.

The Hon. Member, Mr Turner, queries the point about entry in accordance with paragraph 5, I think it is, of the new schedule 1A, and asks what sort of person would be authorised by the Council to go into an advocate's premises. I think the answer to that, Mr President, is that in exceptional circumstances, which I am sure they will be, it

is probably likely to be a forensic accountant, someone who has good experience of dealing with perhaps fraud, criminal wrongdoing on the part of an advocate, and they would work perhaps with the Police as well.

Every case would have to be assessed and the Council will obviously be aware that if they misuse their powers then they could be open to not only criticism but also litigation at the suit of the advocate whose premises have been invaded.

Insofar, Mr President, as your interesting point about statute of limitations is concerned, I think the purpose of clause 1(5) is to make it clear that criminal investigations can take advantage of these new powers, albeit that the grounds for the investigation existed before the coming into force of the Act. It will not have any effect, I think, in relation to statute of limitations, which are generally concerned with bringing claims for negligence and so on, and it will not be affected by that.

So, Mr President, I hope that I have answered the questions to the satisfaction of Hon. Members and I therefore move that the Bill be read a first time.

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

Procedural

The President. Hon. Members, that actually brings us to the conclusion of the Order Paper before us this morning.

Hon. Members, having dealt with the Gender Recognition Bill and completed its passage now, and dealt with the Prohibition of Female Genital Mutilation Bill, so that in fact we are now awaiting its Third Reading, the Third Reading of this particular measure will now be the only business before us on 5th May. The reason I flag that up, Hon. Members, is because although we have had the First Reading of the Advocates (Amendment) Bill with Mr Attorney this morning, Mr Attorney has leave of absence on 5th May, and as Mr Attorney will be missing, I will be proposing to take the Second Reading of the Advocates (Amendment) Bill on 12th May, Hon. Members.

I point that out to you to make the case, Mrs Christian, that your Bill is down for Third Reading on 5th May and the only business before the Council. I am more than happy to call the Council on 5th May to deal with that measure, should you wish – and I do not know how much urgency is on it or not.

Mrs Christian: Mr President, I feel that there has been a unanimity about this Bill and I will be quite happy to propose a suspension of Standing Orders to consider the Third Reading now, if Members were of a mind to support that.

Mr Waft: I would second that.

The President: I am very reluctant to do that, Hon. Members. I am reluctant to do that because we are three Members down today, and had I noticed that on the Order Paper, that we would take the Third Reading, I would have been happy to concur, but as they have not been notified that

we may, I would be reluctant so to do.

I want to make it plain, Hon. Members, that we would require the voting strength anyway and in reality, it was interesting on the Gender Recognition Bill, when it came to the voting on that, that for your amendment to have passed, Hon. Member, I would have required six votes within this Chamber to have got it passed, so we sometimes have to count numbers as well as everything else.

Mr Crowe.

Mr Crowe: I think, Mr President, we should sit on 5th May, because I think there have been two amendments moved today and the Bill has to go back to the House of Keys and back before it can get Royal Assent, and delaying it a week

would... Maybe we could get this Royal Assent before the adjournment in July, Mr President.

The President: I am very happy, and I think that is probably the logical way to deal with it, on 5th May, but I point out that at the moment, subject to Questions, of course, Hon. Members, which any Member can raise, the business before the Council on 5th May will relate to the Female Genital Mutilation Bill, Mr Attorney's Bill coming before us for the important second and clauses stages on 12th May.

Thank you, Hon. Members. The Council will sit in private.

The Council sat in private at 12.11 p.m.