

Electoral Reform Bill 2011
Consideration of clauses continued
Bill withdrawn

1. Mr Callister to move.

The President: We come back to the Electoral Reform Bill. We have considered clause 1 and we began the debate on clause 2. Since that time, at Mr Callister's request, a marked-up version of the Representation of the People Act 1995 has been prepared and circulated.

Mr Callister has also requested that we move each subclause separately for consideration and I propose to do that, Hon. Members. So, if we now turn to continuation of the debate on clause 2, I think it would be as well, Mr Callister, would you like to debate the sections separately?

Mr Callister: Yes, well...

The President: Or would you like to have the debate on all of it at once?

Mr Callister: I think there are two options. One is to take the whole clause through, but under Standing Order 5 it is possible to move these separately, as subclauses. I am not clear, and I do not think the Standing Orders are clear, as to whether they would be voted on at each stage or not.

The President: If I am moving them separately at the end, we can vote on them separately at the end and debate it all as one, but it might make more sense to debate the subsections separately and vote on them at that time.

Mr Callister: Yes, I agree with that, but the question is do we vote on each subsection separately?

The President: If you are moving them separately, they will be voted on separately. I understand that could have consequences for the whole clause.

Mr Callister: Of course.

The President: If you seek to have them moved separately, it does imply that they will be voted on separately.

Mr Callister: Alright, so shall we begin?

The President: Yes. You have moved, sir, the clause 2. We have not had any –

Mr Callister: No, sorry, we have moved clause 1 and approved clause 1.

The President: Yes, but you have moved clause 2 –

Mr Braidwood: And it was adjourned.

The President: And it was adjourned. So you have moved it. We are now open to debate. (**Mr Callister:** Yes.) But I think that what I will do, sir, is seek that we consider... shall we say, the first three sections?

Mr Callister: The first subclause.

The President: The first subclause (2).

Mr Callister: Yes, 2/2(1) we are talking about, are we?

The President: Clause 2(1).

Mr Callister: Yes, well, yes indeed. What I would also say, Madam President, is I have distributed to the Members this particular document, which marks on one side the clauses and the subclause and a description of what that item... what the subject matter is of that item. Also the page of the Representation of the People Act which will be helpful to find them quickly and deal with them as we go through them.

The President: Right. In that case, let's go through them singly. Clause 2(1).

Mr Callister: Yes, clause 2(1) reads as follows:

'The Representation of the People Act 1995 is amended as follows.'

Now you wish me to move that?

The President: We will have to have clause 2(2) and (3).

Mr Callister: We do, Madam President, I think. That is, if it says 'as follows', clearly we do certainly need to have subsection (2).

The President: All of them yes.

Mr Callister: In that case, looking to clause 2, Madam President, if Members would turn to page 7 of the Representation of the People Act, we come to the first amendment marked in this Act.

The President: On page 7? Yes.

Mr Callister: This is on page 7 and it is section 1(ca), which states 'he is not a Member of the Council'. This is a qualification for membership of the House of Keys – and I did refer to this at our previous sitting – that the situation in the legislation at the present time is that a Member of the Council can leave the Council without resignation, can go and stand for House of Keys. If they fail to be elected in House of Keys, they can return to their seat in the Legislative Council. This will provide for the fact that they would not be a Member of the Council if they wanted to stand for the House of Keys. It is fairly unlikely, if this Bill became an Act, that people would want to change between Council and Keys. They may wish to go from Keys to Council, but I would have thought Council to Keys would be fairly unlikely.

However, I did refer previously to the Question that was asked and I found the information on this. In 1981, the Speaker of the House of Keys put a Question to the Attorney General on this very subject, stating that because of an ambiguity in the law, there is no legal obligation on a Member of the Legislative Council to resign before seeking election to the House of Keys. The Attorney General said:

'I confirm that if a Member of the Legislative Council stands as a candidate for the House of Keys but is not elected his membership of Legislative Council is not affected.'

After a number of other questions he then confirmed that, having had his attention drawn to it, he said in a forcible way:

'... and at a suitable opportunity a suitable amendment will be introduced into the Isle of Man Constitution Amendment Act 1919'.

But subsequent and following that, Madam President, the Attorney General's office was not then putting forward legislation, the work was carried out by the newly formed Council of Ministers and this was never done and that is the situation that stands at the moment.

I beg to move, if I may, clause 2(2) qualification of candidate.

The President: Do you want to move clause 2(1) and (2)?

Mr Callister: Clauses 2(1) and (2) together, of course, yes.

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

The President: The Hon. Member, Mr Butt.

Mr Butt: A simple clarification, then. If a Member of the Legislative Council wants to stand for the Keys, they have to resign first and they cannot be a Member?

Mr Callister: Yes, that is what it means.

The President: The Hon. Member has responded to that, so I will put to the Council that clause 2(1) and clause 2(2) do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Subclause (3).

Mr Callister: Yes, subclause (3) Madam President, on page 8: may I refer to it as the RPA, rather than using Representation of the People Act every time? This really only relates to the situation where a national emergency requires the Governor by an order to extend the term of the House of Keys by one year and the amendment refers to 'any elected member of the Council':

'During any period of national emergency the Governor may by order –
(a) extend the term of the Keys or the term of office of [any elected member of the Council], by a period of one year from the date when otherwise the term of the Keys would expire...'

The reference here to 'any elected member of the Council' is essentially there to exclude the Lord Bishop and the Attorney General, whose presence in the Council is continuous.

I beg to move.

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

The President: The Hon. Member, Mr Lowey.

Mr Lowey: There is an anomaly, is there not? This, I know is for an extension of the Keys, but in recent times, the Keys have terminated their tenure early and for the last election, the elections were brought forward from November to whenever – (**Mr Downie and Mr Braidwood:** September.) September. What is the difference between extending in a national emergency or any other sort? What was the emergency there for the diminution of their terms?

Mr Callister: Well, if I may –

The President: Does any other Member wish to speak before we have a reply? Mover to reply.
Sorry, Mr Downie.

Mr Downie: Looking at the Representation of the People Act, I would like to know what they term as a definition, bearing in mind we are back to legislation that was written some time ago, surely 'any elected member of the Council' in the original Act here, refers to a Member of the Council elected by the Keys?

Mr Callister: Sorry, Madam President.

The President: Sorry. I am sure the mover will respond by addressing the wording in subclause (3).

Mr Downie: When we go to – I just do not see – I think the spirit of the original legislation was that, in a national emergency the Keys and the Council continue for another year, until the emergency has resolved itself?

Mr Lowey: 1919 was just after the war.

Mr Downie: Yes, that is how I look at this and this, obviously, goes back, this clause probably, if we had time to research it, to the period after the first war.

The President: I think there is a confusion here about the annotated draft. This is what it will change *to*, not what it will change *from*. The wording of the current Act is in subclause (3) and refers to Members elected by the Keys, which will not be relevant in the future.

Mr Braidwood: If the Bill goes through.

Mr Butt: Just taking out the Keys.

The President: If no other Member wishes to comment, the Member may reply.

Mr Callister: The Bill with this yellow-coloured addition is simply to bring in line the Legislative Council, if there is a national emergency. The situation would have been prior to this, it would be the term of the Keys

that we extended. There would be no need to extend the term of the Legislative Council in line with the Keys, they would continue sitting, as I see it in any case. (**Mr Braidwood:** No.) No, I am sorry, he would not be extending the term of Tynwald; he would be extending the term of the House of Keys. I cannot recall any time when that has ever happened. If it did, it is a very long time ago.

Mr Braidwood: Madam President, I am sorry, if it just the extension of the Keys, following this Bill, this means that everybody is elected together. Therefore, it is the same standing for the Keys as for the Council, if this Bill goes through, because we are all popularly elected. So you are discriminating straight away in bringing in the Keys and not the Legislative Council.

Mr Callister: No, I am talking about what the situation currently is, Madam President. If this Bill were to go through into an Act, then clearly if there were going to be a national emergency, an elected Member of the Council... and when it refers to an elected Member of the Council, that is elected either by the Keys, or in future by the public – it is the same thing. The reason it says ‘elected member of Council’ is as I mentioned, because the Bishop and the Attorney General, their role is continuous in the Council, they do not have to be elected.

The President: Are Members clear?

Several Members: No.

Mr Callister: Okay, can we have further questions, please?

Mr Butt: It is just a simple matter of wording.

The President: It is simple.

Mr Butt: Instead of saying ‘a member of the Council elected by the Keys’, as they are no longer elected by the Keys, it just says ‘any elected member of the Council’. It is just simply a matter of changing the wording to account for the fact that they are not elected by the Keys any more, they are just elected. It is just simply an addition of words to clarify where they are – nothing to do with the extension, or who is eligible and who is not. It is just a change of wording. That is my view.

The President: That is absolutely the case. Are we clear now, Hon. Members, or does it need further clarification?

At the moment, the Governor in a national emergency may extend the term of the Keys and the Members of the Council elected by the Keys. If this provision goes through, there will no longer be Members elected by the Keys. The clause is being amended to reflect that they will be elected Members without reference to the Keys. It is as straightforward as that.

In that case, Hon. Members, I move, I put to you that clause 2(3) do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 2(4).

Mr Callister: Clause 2(4), Madam President, can be found on page 10 of the RPA. This is in fact, four words which are being removed, or would be removed from this Representation Act and it is, if we are looking at (6) on that page, towards the bottom of the page:

‘If any sitting Member of the Keys –
(a) accepts an office of profit under the Government of the Island or the government of any country or territory outside the Island, or
(b) becomes a member’ –

what would have been ‘of the Council or’

‘of a local authority’.

It removes ‘of the Council or’. This again simply puts Members of the Council on the same footing as the House of Keys.

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

The President: The motion before Council is that clause 2(4) do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 2(5).

Mr Callister: Subclause (5) is dealt with, Madam President, on pages 13, 14 and 11 in that order. First of all, under section 10A, the term of Members of the Legislative Council, this is a new section being introduced into the Act. Would you ask me to read the section in full, Madam President or not?

The President: I think it might be useful to consider this is the major part of the change and therefore, I will move the subsections of Part 1A separately, if you wish. However, I would point out that much of it hangs together, so we will see what we end up with at the end of it all.

At this point, we will take subclause (5), which is Part 1A, 10A(1) which deals with ‘Term of members of the Council’.

Mr Callister: It says:

‘An elected member of the Council shall serve until the Thursday following the third Tuesday in August –

(a) in the case of a member standing in a designated constituency, 2 years after the last general election of the Keys; and

(b) in the case of a member standing in any other constituency, 4 years after the general election of the Keys.

(2) In each year in which a member goes out of office in accordance with subsection (1) an election shall be held on the last Thursday of the September in those constituencies in which the member has gone out of office.

(3) In this section “designated constituency” shall be construed in accordance with paragraph 8(1) of Schedule 6.’

This is to have elections on the same day, in order to confuse the voting public in a way... to have the elections always on the Thursday in which Keys elections take place, so that they would have a Keys election, two years following that, four Members for election to the Council, then four years after that the other four Members, so that you keep continuity in the Council and you keep the election day always the same day.

The President: The dissolution day, actually.

Mr Callister: Well, yes, the dissolution day, of course, yes.

Mr Crowe: Are you moving that?

Mr Callister: I am going to continue this, Madam President, to 10A(2):

‘In each year in which a member goes out of office in accordance with subsection (1)’

– I think I have read that –

‘an election shall be held on the last Thursday of the September...’

If that changes, of course, it will change for everyone in due course.

And 10B then, Madam President, deals with a casual vacancy in office of the –

The President: Can we deal with 10A separately, sir?

Mr Callister: Yes, indeed, Madam President. So I beg to move that section 10A be moved.

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

The President: The Hon. Member, Mr Lowey.

Mr Lowey: I am flying blind, Madam President, from time to time, but I do like to know that the pilot has got an automatic machine that allows us to fly blind. I am clear in my mind that this actually will allow one election for the Legislative Council to be held on the same day as the House of Keys. (**The President:** No.) No, it does not, so we are at the same time putting into primary legislation extra elections –

Mr Braidwood: And costs.

Mr Lowey: – and costs which are already estimated at over £100,000 at the time – and we have not got £100,000 – into primary legislation, and where the Hon. Member says things like it is on the Thursday in September as in (2) here, unless, of course, it is altered by the Keys. Sorry, this is primary legislation and it

cannot be altered by the whim of the House of Keys. It is put down in primary legislation, it will be held on that specific day.

I do not see any get-out-of-jail clause. Although the mover believes it will be, I do not believe you can alter what is written in statute law. So I am far from happy that what we are doing is as clear and as precise and concise as the hon. mover of the clause is alleging at this particular time.

The President: The Hon. Member, Mr Butt.

Mr Butt: Thank you, Madam President.

I would like to support this Bill, but this is the part of the Bill which causes me greatest concern: the need for all these elections at different times, when you read the report of the Joint Committee, which is between this place and the Keys, comments by Robert Quayle, Malachy Cornwell-Kelly and Prof. David Kermode, all saying they struggle to understand the purpose of having them separate, because I really do think this Bill will eventually mean that the Keys and Legislative Council will become the same body in a way. (**Mr Braidwood:** Unicameral.) We will have a one system and therefore, why go through all the process of having these staged and staggered elections? I can see transitional points being in place, but why not have them all on the same day at the same time and save the expense?

I tried to go through the original Bill and this Bill to see how we could do it, amend it. And if you go to page 8 of the old Bill, the Representation of the People Act, clause 2 of that gives the term of the Keys. A simpler way would be to add a new 2A, in effect to say the term of the Council and define it in exactly the same way. That, of course, would mean that we have to do other things further down the line, the schedule – schedule 6 would have to be amended as well and other parts of schedules would be amended.

So when I tried to look at the amendment for this, it had got very complex and you need to sit down for quite some time with the legal draftsman or the Attorney General to try to work out an amendment, but it should be possible to amend this Bill to make the term of the Council the same as the Keys and save all these elections in the future.

I will be supporting what Mr Callister is trying to achieve today, but I wonder in the future or before, when it goes to the Keys, could there be some examination into amending this, so that we do not have all these extra elections? Prof. David Kermode said in his submission that the proposed staging of elections to the Legislative Council would result in the Island having elections in three of every five years, a sure recipe for instability of membership of both executive and legislature. I think he has got a valid point and I can see why the mover is doing this, to try to make sure there are transitions in place.

If this Bill could be amended, it could be that the election due in February would go ahead as normal; the election to the Keys and Council in February 2015 could be as normal, but those people only have a short term through to August 2016 and then they would combine with the Keys and have elections on the same day. From there on, we could just have the one election for all parties. That would be a much simpler way of doing it, in my opinion.

I tried to work out amendments for this and I found it impossible, to be honest at the time, because the schedules need amending quite considerably as well and there may be other consequences of amending them, which you cannot work out at the moment.

I will support the mover as he is putting it, but I really do think consideration should be given to bringing the elections to be on the same day, because in the future that will happen anyway.

The President: The Hon. Member, Mr Braidwood.

Mr Braidwood: Thank you, Madam President.

I think the nail has been hit on the head by the previous two speakers, particularly, as we can see in the memorandum, it would be £170,000 for the elections. I was on the Committee listening and of course, as the Hon. Member of Council, Mr Butt, has said, from the people who gave representation to the Committee with the problems on the number of elections and this, as I said at the Second Reading of the Bill, Madam President, we have started the path, if we go down this path now to a *unicameral parliament*. It is out with... we are getting rid of the Keys, rid of the Council and sitting as one body as Tynwald.

I said at the Second Reading and it is when we get down to the constituencies, we have already got in front of us now from the Boundary Commission, which is looking... has put this proposal forward for 12 two-seats for the Keys and here we are talking about eight constituencies of basically three Members of each in the Keys and one Member of Legislative Council. I feel I will not be voting for this part of the clause, Madam President. It is far too complicated.

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

I think, with regard to the timetabling of these elections, we are going down a very dangerous path. I would like to know from the mover, whether he is aware of any other countries which have parliamentary elections with such short intervals? I think the observation needs to be made that I cannot see how any executive could effectively plan, put together a five-year plan when great portions of their elected assembly are going to be changing at numerous times through that five-year plan. I cannot see how that is a recipe for a stable way of going forward, whereas at the moment the way the Legislative Council is constituted and functions, the incoming Keys, there is then the election of the Chief Minister, which of course is through Tynwald, but the executive then at least has a clear five years to set out its policies and run with them. With elections every couple of years, I think it will be very difficult for us to get any proper work done.

The President: The Hon. Member, Mr Downie.

Mr Downie: Thank you, Madam President.

I am afraid I am going to have to nail my colours to the mast quite early, having represented Council on the Committee that looked at this particular issue and heard all the evidence. The old cliché, I still think is correct: 'if it isn't broken, it doesn't need fixing'. It was quite overwhelming that we had between eight and ten submissions to that Committee from the public and other organisations who wanted this Council to be elected by the public. There are 84,000 people on the Isle of Man and we need to get back to reality here.

The present system that we have in the Isle of Man is, in fact, completely different from the system that is in the UK at the moment. We know that there have been moves to have the House of Lords democratically elected, as they say, but they are finding a great deal of difficulty here. We have a half-way system, we are elected by the House of Keys. They are the body who supports elections to this Chamber and that has actually brought about a really good political stability over many years. There is nothing to stop any Member of this Council standing for the House of Keys if they want.

Mr Callister makes the point that he wants to amend the law so that they have to resign their seat. There have been numerous Members who have gone from Council back to the Keys, because of not only constitutional issues, but issues involving their constituencies or where they live and they have decided to make a point of it, so I do not see anything wrong with that. But I think what we are doing today is we are actually tinkering here with something that actually works very well.

When I meet various people from other jurisdictions around the world and other parliaments, we are complimented on how well the system actually works and from the man in the street's perspective, to go into this whole array of elections almost every other year with cost; to try and hang that on the fact that eight or ten submissions to a Committee want to see this place democratically elected, I think it is wrong.

The system actually does work well and as other speakers have said, if we are going down that route and we are going to destroy what has been tried and tested and worked, we are, without any doubt in my mind, going to finish up with a unicameral system, where there will be so much politics in this place, where you have not got a group of people who do not have hassle from constituents, who can make decisions clearly, people who have got experience – and let's face it, people are elected to this place because the 13 Members of the House of Keys think they have got special qualities and they are good people to have in Council. We are not in anybody's pocket and I would say categorically that to get 13 votes to be elected here is probably a lot more difficult than to get a majority as a Keys Member in some constituency, because most people here have either had a track record outside of this place or they have been Members of the Keys before, but you are judged by your peers. Unless they think you are worthy of your hire, you will not get a seat in this place and I think that has stood us in good stead.

What we are asking to do now is throw all this to the wind, have all these elections at all sorts of odd times, the public will be so confused and at the end of the day, I think what we are seeing is the demise of a well-operated, tried-and-tested system, which is a result of the two Houses and the parliamentary setting of Tynwald and the principles of Tynwald where we can come together and do all sorts of other things. It will just become a bear pit, in my opinion, in quite a short time and I will not be supporting the Reading of this particular clause.

The President: Hon. Members, I just want to make the point please, in terms of procedure, and that is the Hon. Member, Mr Butt, said we do not have time. We have as much time as this Council wants. The Council has within its power the ability to adjourn to consider this; it has the ability to set up committees – it is not a practice which has been used in recent times and perhaps newer Members are not familiar with these processes.

I do not make that point in order to influence anybody as to how they want to vote, but simply to say that we do not have to rush through something that you want to give further consideration.

The Hon. Member, Mr Callister, may reply at the end, unless there is a point that you want to –

Mr Callister: I do have a point, Madam President.

Could Members please stick to this particular clause we are dealing with, because certainly the contribution that we had from Mr Downie was not in any way related to this. This is simply about the terms of office of the Members of the Council. We do not get on to elections until we get to clause 2(8).

Mr Downie: It is the principle.

Mr Callister: No, it is not.

The President: We are dealing, actually, with the length... the frequency of elections.

Mr Braidwood: And the cost.

Mr Lowey: Could I come in on that? That is part of the thing I have got down here. It is foreign for us to be making legislation on the hope that another House will amend it.

First of all, as Madam President has said, it is not normal for us to send anything that has not been... and I think it is a principle, a cardinal principle. The present system costs nothing to the electorate for our elections. We are proposing in this particular clause to implement another form of election, which is going to cost – a six figure cost. That is accepted by most of the... *[Inaudible]* There are countries that have constant elections. America is one. It is in the news now and it is every three years. Australia did and they altered it in the last decade to a longer period, because of the point that was made by my good friend, Mr Braidwood, that it is in constant election mode. I think our five years is about right for the Council as well.

The case for having a split time was continuity. The new Council, if it is elected, undoubtedly, when it says it will be the same, it will not be the same and we all know it will not be the same. Sooner rather than later, the electoral college will come up and we have got to pick a constituency, therefore, we should have more power, at least they are saying not less, as we have already debated and accepted our particular role, so we are talking about massive changes. Therefore, I do think it is wrong – I am hesitant to say that it should go to a committee – because the most likelihood, which I will announce in the next week is that I will certainly not be here to be taking part in that, but the reality is for this Council, in my view, to be passing a piece of legislation which the Hon. Member himself says, he is uncomfortable with and should not be, but it is very difficult and he is absolutely right, by the time you come to unravel this, you will find that there will be repercussions – what is the word I paraphrase? – unintended consequences and I think when we are dealing with primary legislation for the constitution, that is what you have got to avoid at all costs.

I do not think by voting for this on the hope that somebody in another place will actually get up and introduce it, which means it would then have to come back here, seems to me the wrong way and foreign to the very things that we have preached over the years. I do not accept that that is the right way to turn it and let a Bill be introduced in another place, where they have always emanated in the past.

The President: The Hon. Member, Mr Butt.

Mr Butt: I just come back in briefly, Madam President, about this actual clause. Some Members have said it is very complicated, actually, it is not that complicated. It sets down the procedures for electing Members of Council with different times and when you read it carefully with the Bill, I would like to thank the mover, because he has given us the old Act marked up accordingly with his notes and it is actually not as complicated as I thought it was at the last Council meeting we had.

I am saying it is not complicated; there is logic behind why he is doing it. There is logic behind the elections being split up at different times and different periods and different constituencies, even. All I am saying is that these elections really are unnecessary, if it could be amended to make them elected at the same time. The Bill as it stands, I think, is sound in that it is not complicated, it is logical, it is perhaps unnecessary to have these extra elections.

The President: The Hon. Member, Mr Wild, and then I will come back to you, Mr Lowey.

Mr Wild: Thank you, Madam President.

In principle, I agree with the direction of the Bill. I do struggle with this clause, in terms of the fact that, to me there are costs and complication and I question whether it is good legislation in terms of the way it is structured. In a sense it worries me that, as a revising chamber, we are generating a Bill that is going to go backwards into the House of Keys – or do you call it the other place? I am still quite new in that respect. I would almost prefer to see it come through the other way. We are giving a clear message to the House of Keys as a Legislative Council, we are not against change and we support change in terms of considering being popularly elected, but perhaps the driving legislation should come the other way.

The President: The Hon. Member, Mr Lowey.

Mr Lowey: I would not disagree with that. Quite clearly, Mr Butt is fully entitled to a point of view where he says the Bill is clear and the principle is clear, but it is far from clear. We have already agreed at a joint meeting of both branches, that we are having 12 two-seat constituencies – again not with my approval, but that is democracy. We have got a commission set up, which has produced 12 two-seat constituencies. It has been welcomed with open arms and lots of hallelujahs – not in my neck of the woods it has not, I can assure you of that. However, we have accepted that.

This Bill is dealing with three-seat constituencies and to suggest that that is not complications in the making for the future –

Mr Butt: No, I meant this clause we are talking about now, not the next one.

Mr Lowey: Well, whatever – you know the principle. The principle is that you argue the case as your usual lucid self that the principle is fine and it really is not complicated. *Oh, yes it is.* I have due respect for my good friend: we are not going to fall out. But this is *manifestly*, in my view, the wrong way of going about it and if you think, Hon. Members, that they are waiting in another place with open arms to receive this legislation at this particular time, you must be talking to a different group of people than I am.

The President: The Hon. Member, Mr Crowe.

Mr Crowe: Yes, I have listened to the debate with interest and I cannot see that the Council should always be immune from change.

Mr Lowey: I am for change.

Mr Crowe: If you look at the wider picture of the Island as a national government and local government, the moves are to reform local government and steps will be put into place to do that. I think there is a constant change in the world and constitutions change and I think we should not necessarily embrace change, but be aware that change sometimes is required to move forward, so I think, I am still in support of the Bill, but I will leave it to the vote as to how further forward it goes.

The President: The mover to reply.

Mr Callister: Thank you, Madam President, and I thank the Members who continue to support the Bill.

If I address first the question of the cost: obviously, one has to have Treasury concurrence for these, for anything that is going through, which will have financial impact and I have received, or did receive from Mr Clive McGreal, the Financial Controller in the Treasury, an e-mail response to my request for support on this and he told me:

‘The figure of £170,000 supplied by Mr Callister as the estimated cost of electing eight MLCs in a five-year period based on information supplied by the Chief Secretary’s Office appears reasonable.’

He goes on to say:

‘Should the number of constituencies be reduced from 15 to eight, there may be small savings in cost with the election of MHKs, as a smaller number of returning officers will be required. But in the current financial climate, resources of government are under pressure to achieve savings and restrict new expenditures.’

So it has the approval of the Treasury and the figure of £170,000, of course, dates from 2011 and clearly there could be additional figures of costs on top of that.

However, if you are going to reduce the 15 constituency elections down to eight in the House of Keys, you would have 12 persons elected in a five-year period for Legislative Council, the cost of the 15 merely becomes the cost of 16 individual constituencies to deal with, rather than 15. The cost will not be very much greater and certainly the figure that has been accepted, is one that, whereas it may have to increase to some extent due to inflation, it is something that is within the documentation that is acceptable.

So there will be fewer elections taking place overall, apart from an additional one for Legislative Council. What we have been debating in this element of the work is the term of office of the Members of the Council and it is perfectly straightforward. All it does is move the date of the elections of the Legislative Council Members from what it currently is, so that in order to have the public elect in public elections, it is far better for those

elections always to be at a recognisable time for the election of Members. Therefore, it seemed eminently sensible to me, that those should take place on the same Thursday in... and so on, as is indicated in this section.

The Hon. Member, Mr Butt – and I do thank him for his continuing support – talks about amending the Bill in the Keys. I have no intention, if this Bill ever got to the Keys to seek any amendment to it whatsoever. The main reason for that, of course, is – and those Members who were on the joint Committee will know – that the Secretary of the House of Keys, the Clerk of Tynwald, Mr Phillips, advised the idea that, if you dissolve the whole Legislative Council, it would have implications on the legislative process and could in itself be considered a constitutional innovation. Currently at a general election, it is only the House of Keys which is dissolved, while the Legislative Council and Tynwald Court continue in existence. A Bill which is before the Legislative Council can continue its passage, irrespective of a dissolution. So if you were to have an election, all Members of Keys and Council together, then parliament would be dissolved and there would not be a parliament.

These arrangements enable the Bill to be kept alive, despite a dissolution. If in future the Legislative Council and the whole of Tynwald Court were dissolved at the same time, this possibility would cease to exist and all business before Tynwald Court would also lapse.

Mr Braidwood: It would anyway.

Mr Callister: The question raised by Mr Wild about coming from the Council first, of course, you were not here at that time. I was not elected to the House of Keys; I was elected to the Council and my main objective was to have Legislative Council publicly elected. I am sure Mr Wild agrees and has quite clearly said on two occasions here, that he believes in the election of Council by the public.

On the question – and we are still going back over what was said at the Second Reading – this question of unicameral is not in this Bill. There is nothing about unicameral systems, whatever, in this Bill, but I know the opponents to it will be seeking every means they can to run it down. I know that is happening and it is clearly a viewpoint that is held by some of these Members. There is nothing unicameral about this, Madam President. If Tynwald were to become unicameral, all 33 Members would have to agree it and I think that would be a long way away. If I have not covered all the points that were raised, I can certainly go back on anything that Members wish to raise.

The President: It is not normal, but this is a significant measure, so if there is anything that anyone wishes to clarify?

Mr Lowey: I am certainly more confused than I was at the start. Mr Callister made great claims that – and you agreed, Madam President, because it is that the elections will not take place at the same time as the House of Keys elections, so there has to be a rolling programme separate from the House of Keys elections. I have already pointed out – and Mr Callister says there will be less demand financially, it will not make much difference. I cannot come to terms with that. How can it not be an added expense, when you have elections separate from the House of Keys? It means that there will be two elections to get the eight things spread over a two-term period, which will cost £170,000. The elections at the moment are free – not free, but cost neutral to the taxpayer, the way we elect now.

I am not here to argue; the principle has been conceded that there will be a directly-elected upper chamber, but I am trying to make sure that the legislation reflects that. At a cost, can we afford it? No, I do not think we can and when people say they are in favour of an elected Legislative Council, there is even less favour with them, when they say, by the way, it will cost me £100,000 less on expendable income and as far as I am concerned, Mr Callister has not explained it explicitly enough for me to say that it is going to be cost neutral and by the way the Treasury have approved it. I am a member of the Treasury and I certainly have not approved it. The Minister is the Treasury and I accept that and if the Minister has said that is what the cost is, all they are saying is, that is what it will cost. They are not saying whether they approve the expenditure of that money in this particular way at this particular time.

The President: Can I make the point, I do not want to get into a further debate. I just want to clarify points of fact, please, if there is an understanding of fact.

The Hon. Member, Mr Butt.

Mr Butt: One point you mentioned, Madam President, about the time taken – we do have time to do things. There is a way to amend this Bill to make the elections – sorry, this clause only – to make the elections take place at one time. It can be done. It would take some time to work out how it could be done. I know the mover does not want to do that, because of Mr Phillips's contribution. I really did not think it was worth pursuing that, because first of all, Mr Callister will not be here to see the Bill through, I believe, after February.

Secondly, there are other clauses to come which I suspect may have similar debates and arguments and they may need amending as well at a different stage, so just by amending this clause, or adjourning to amend this clause may not achieve a lot. First of all it is stymying Mr Callister to bring it through, then the later clauses may need further adjournments to discuss those as well.

I would appreciate your advice on that, Madam President, because I think we could do it, but the question is, is it worth doing it?

The President: Hon. Members, it is your decision, not mine. I simply wish to point out to you that on any measure, our responsibility is, in my view, to send it forward in the best possible form. How you decide to do that is a matter for you. I was simply pointing out that if you did not have all these other considerations and we were looking at it as a piece of legislation, which we wished to – if you wish to amend it, there is nothing in terms of time, which prevent you from doing so. You may have political reasons why you want to manage it in a different way. I leave that with you, Hon. Members.

Mr Braidwood: Madam President, following on from Mr Butt, if you said you adjourned now until an amendment came forward again, we would come back to just this 10A. We have got the more importance on the constituencies, which I have already mentioned and other Members have already mentioned, which is on the Boundary Review Committee, so again we would get to that section and then discussing that and then there could be an adjournment on that to amend that, because if the Boundary Review Committee recommendations go forward, as far as I am concerned, this Bill is out.

Mr Downie: Could I make a point here, Madam President?

The other area that really has not been touched on in this, we are talking about having an election. Let's look at it sensibly. We are talking about four people going out to election outwith the normal election time. The normal election time could be either the year before or the year following, I am not quite sure how this will work, but some parts of the Island will not have an election. We have got four three-seat constituency areas, which have not been determined yet by anybody else, so we have got that, which is more confusing than anything else. We have got four people who are seeking to be elected. If you look at the fairness of all this, those people will now have to produce a manifesto, they will have to go and canvas. Are they going to get the same amount of media time, as it would be for a normal election?

As sure as night follows day it makes sense that if we are going to have this place elected by the people, you are going to do it all at the same time. This ridiculous cost of £170,000, which now by the mover's own admission is a couple of years out of date, I think it will be more than that and I think in the present climate, it is just too big a cross to bear on members of the public.

The President: Hon. Member, you are tending towards a repeat of the discussion. So, any *factual* issues –

Mr Downie: I just think that it could be very difficult for the man in the street to understand. And to put the legislation forward in this way, we would be ridiculed, personally.

The President: The Hon. Member, Mr Wild.

Mr Wild: Thank you, Madam President.

If I am debating, do tell me off! I am struggling with this legislation, because to me it is flawed and while I am 100% behind the mover's views and beliefs, in terms of a popularly elected Legislative Council, I am concerned about the fact that I do not think there is flexibility in the way the legislation has been written. If this Bill goes into the Keys, it will be able to adapt to the Keys' debate and decisions on the Boundary Commission Review, because in reality at this point in time we are talking about 12 times two and this refers to eight times three, so there is a mismatch and that is my main concern that we have mismatch of legislation without clause flexibility to say that if the Keys were to approve the 12-by-two recommendation from the Boundary Review Committee – and that is not a given, but it could – or the Keys may choose to an eight by three, we do not know.

I would prefer to see the clauses written in a way that gives flexibility for this Bill to align itself with the decisions coming out of the House of Keys. Therefore, on that basis I would find it difficult to support two clauses and I personally believe it needs more time – and no disrespect to the mover.

Mr Butt: One more point: on clause 10A which we are discussing, it actually is quite clear what it means. It actually achieves the purpose at once and it is the election of Council in different stages. There is not any ambiguity about that, it actually states what it means and what it says and it can be worked and can be done. My only point was 'Do we need the extra elections?' but the clause, as it stands, which we are discussing today now, is clear enough to understand.

The President: I will shortly be putting it to you, Hon. Members. You can vote for it, against it, you have had the opportunity to amend it, but nobody has come forward with an amendment.

Mr Braidwood: I think everybody is basically...

The President: I think I would allow Mr Callister... Mr Lowey.

Mr Lowey: It is very simple. My hon. friend, Mr Braidwood, said either the clause is accepted, but there could be difficulties later on.

Can I just say, the way forward for this Council, if it is in doubt and I... As I have already intimated, but I am not going to declare publicly yet whether I am standing or not, but I only say I am planning in retirement, so I will not be around, so I am not going to be accused of kicking it into the long grass, or my last gasp. Tynwald has decided we should be directly elected and they should be two-seat constituencies, etc. As far as I am concerned, that has already been accepted. I wish they had accepted it in 1999, when I proposed it, but they did not.

Having said that, the reality is this Council could set up a committee of three people to take this Bill, whether Mr Callister and I are around is immaterial, the Bill would be taken and adopted by somebody else to move. But at least it would be in a workable condition. I am interested in the reputation of this Council for doing the right thing for the right reasons and Hon. Members, it is alright saying, 'Oh well, it can do it, but it could deliver that', but you should do it for the right reasons and have it right. We have often complained about Constitution Bills coming up here, which we could not pass because they were not right and they had been passed in another place, when we knew it was not right.

Hon. Members, you know this Bill is not – I am being polite to the mover, my hon. friend – quite right and that is an understatement.

The President: Mr Callister.

Mr Callister: Thank you, Madam President.

I could not disagree more with my friend, Mr Lowey. I positively believe that this Bill provides the best system. If you are going to have a Council elected by the public franchise, there will be no better way found to do it.

Looking at this section 10A in the Representation of the People Act that we have supposedly been talking about, but have drifted wildly away from, as Mr Butt says it is perfectly clear. All that happens is there will be a different date for the election to take place. However, it will replicate what exists now and that is, there are two separate elections to the Legislative Council. We like to continue that, in order to maintain continuity within the Council, that to me makes perfect common sense. If you had the whole Council elected together, you could have eight people with no experience of politics at all, let alone understanding a Bill. So I disregard that argument.

First of all, it is clear that there are three Members who are totally opposed to this legislation and have been, virtually from the start. So we have to accept that they will be continuing to find any reason to find flaws in it. As far as flaws are concerned, the Hon. Member on my right says the Bill is flawed. Well, he has not actually pointed out where it is flawed. It has nothing to do whatsoever with the proposal to have 12 two-seat constituencies in the House of Keys. It is not the House of Keys that will be dealing with that; it will be Tynwald, because it was moved in Tynwald, it was put in Tynwald and it will be a Tynwald decision on those boundaries. The House of Keys will have its say on that, obviously, but there is no guarantee, Madam President, whatever that the House of Keys will accept the proposal, as forward currently for the 12 two-seats.

This is a separate issue. This is a different matter altogether and would go to the Keys. They would then, if it went to the Keys, deal with it in the normal way. It should not be confused in any way with the 12 two-seat proposal, which is positively a different issue.

I think, probably, I have covered the points at this stage, Madam President. I beg to move.

The President: Let us be clear, Hon. Members, the motion before you is clause 2(5), section 10A, which deals with the term of the Members of the Council. Those in favour, please say aye; against, no. The noes have it.

A division was called and voting resulted as follows:

FOR

Mr Butt
Mr Crowe
Mr Callister
Mr Wild

AGAINST

Mr Lowey
Mr Turner
Mr Braidwood
Mr Downie

The President: Hon. Members, we have 4 votes in favour and 4 votes against. The position is here that I have a casting vote. There is nothing in Standing Orders which covers this issue, but in considering parliamentary practice it is normal at this stage of a Bill to vote in support of further debate. I therefore will cast my vote in favour, Hon. Members. The motion therefore carries.

We move on to section 10B.

Mr Callister: Thank you, Madam President.
'Casual vacancy in office of elected member' – this states:

'If a casual vacancy occurs in the office of elected member of the Council, whether by reason of death, resignation, disqualification by virtue of sections 12 to 18 of the Isle of Man Constitution Act 1919 or otherwise, the President of Tynwald shall report the vacancy in writing to the Governor, stating the name of the constituency by which the new member is to be returned.'

I beg to move, Madam President.

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

The President: If there is no comment, Hon. Members, I will put that –

Mr Lowey: Yes. Could I ask the mover, is this the normal procedure that applies to a House of Keys election and is it mirrored in the appropriate piece of legislation?

Mr Braidwood: That would be the Speaker.

Mr Lowey: Instead of the President, our presiding officer. Not word perfect, but the same procedures.

The President: Does any other Member want to comment?
The mover to reply.

Mr Callister: Thank you, Madam President.

I am not aware if this is something that happens in the Keys. It could well be covered here in this Bill, but it is not a question that I have researched.

But I can say that, if there is to be a casual vacancy in the Council of an elected Member of the Council, then it will come under this Constitution Amendment Act 1919. I assume – and I would have to have this checked – that this will be a reflection of what happens in the House of Keys. There has to be a vacancy reported and there has to be the constituency notified.

To the best of my knowledge, this will be reflected in the Isle of Man Constitution Amendment Act 1919. There are, as we get further into the Bill, some amendments and they are to be found in the Electoral Reform Bill at clause... On page 5 of the Electoral Reform Bill, there are some changes made to the Isle of Man Constitution Act.

The President: Before we come to the Constitution Act, I would refer Members to page 9 of the Representation of the People Act, clause 5, which deals with the report of a casual vacancy in the Keys, Hon. Members. I hope that might assist you.

Mr Crowe: It is exactly the same.

The President: It is the same as the provision, except that the President shall refer the matter to the Governor, whereas in the Keys vacancies, the Speaker shall refer the vacancy.

Mr Callister: Thank you very much.

Mr Braidwood: Madam President, I think the last time this happened was when the Hon. Member for Ayre, Mr Quine, resigned before the General Election and of course, then there was a vacancy and there was the position where Mr Teare was appointed.

The President: The Hon. Member, Mr Lowey.

Mr Lowey: The reason I posed the question – and I thank you, I had not spotted it, I was looking in advance of not going backwards – was that where we involve the Governor, really, if we are growing up politically, then the presiding officers, in my view, should be the deciding factor and we should not be having the Governor involved in constitutional matters. I say that as someone who spent many years in the advancement of the constitution in ridding the Governor's powers from the time he presided, because he presided in this chair in my time, so we have advanced from that.

Perhaps that is an area where, in the future, some other constitutional changes... which we have done mainly, to be honest, these are only residual efforts. I do believe that, if we are grown up politically, we should be confident enough in ourselves, I think, to have our presiding officers do what I would call the mechanics of electioneering and not involving the Governor. No reflection on the Governor, of course, but it is the office, but that is the reason I pose the question. I have seen the Governor involved.

The President: Hon. Members, the motion before you is that clause 2(5), part 1, section 10B stand part of the Bill, dealing with casual vacancy in offices of elected Members. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

We move on then to section 10C, dealing with sitting and voting.

Mr Callister: Yes, sitting and voting, Madam President:

'Sections 7 and 8 apply to elected members of the Council as they apply to members of the Keys.'

You will find this in the Representation of the People Act on page 11, if you turn back, which clearly shows 7 and 8. The first one is the penalty for sitting or voting when a seat is vacant and section 8 is:

'No member of the Keys shall be permitted to sit and to vote in the Keys until he has taken and subscribed the oaths required by law.'

So taking of oaths and the penalty for sitting or voting when a seat is vacant: I cannot ever remember any of these... the others, of course, clearly have to be taken, but the sitting in a vacant seat and subject to a fine exceeding £5,000 on each occasion in which he so sits or votes.

However, I beg to move that sitting and voting under 10C. I beg to move, Madam President.

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

The President: Does any Member wish to speak to that? If not, I put it to Council that clause 2(5), part 1A, section 10C stands part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

We move on to clause 2(6).

Mr Callister: Thank you, Madam President.

This, again, can be seen in the RPA on page 14, here we come to the main meat of the Bill. I will read... Do you want to take these in – ?

The President: You can take them in sections, if you wish, sir.

Mr Callister: In sections. So it is headed 'Constituencies'. This is the revision that would be required of constituencies. So if we take subsection (1):

'For the purposes of an election, the Island shall be divided into 8 constituencies, drawn up by the Boundary Committee subject to the approval of Tynwald, each of which shall return 3 members of the House of Keys and 1 member of the Council.'

Really, the important point there, it would be subject to the approval of Tynwald.

I beg to move this subclause (1), Madam President.

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

The President: The Hon. Member, Mr Lowey.

Mr Lowey: It just beggars belief and puts logic on its head. *(Laughter)*

We have already decided that the Boundary Commissioners have already met, given options and Tynwald has decided what it wanted and it did not want eight times three. And yet here we, passing a piece of legislation... If I were a Member in another place and Tynwald had decided, both branches being a majority in each one, here we are now deciding that that decision was wrong. It seems to me that we are trying to usurp the role of Tynwald, which makes policy, whose prime force in life is to make policy and to deal with financial matters. That is its primary purpose in life.

Here we are now passing a piece of legislation which flies in the face of a decision already done and actually being practised and actually... It just absolutely astounds me, it really does and for the mover to say, 'Oh well, this Bill was in being before that happened, but events have overtaken us' and really – as I say...

Mr Turner: Madam President.

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

I am against eight constituencies. I think 12 needs more consideration, from certainly the reaction that we had when these lovely colour maps were distributed, the anomalies that these have shown. I did take part in the consultation and did make a submission to the Boundary Review Committee. I felt there were even flaws in the suggestion of 12 two-seat constituencies, so I am wholly against this clause for a number of reasons, notwithstanding the reason that Mr Lowey has just mentioned, in that Tynwald has already declared its position on this.

I think, again and I said it at an earlier Reading, although voting for the principle of the Council to be publicly elected, the issue of how the constituencies for the House of Keys should be divided up. I think that matter should be for the elected lower House to take the lead on that. Our job here is to revise the legislation, and I think Mr Lowey has summed it up, that this is a major change and here we are changing what has already been recently decided by Tynwald. If this was a Tynwald policy decision of 10 years ago, I could understand maybe this coming through, but this has happened within the last few months, so I think for us to be dealing with this clause now is inappropriate. It is almost disingenuous, I think, to Tynwald Court to be bringing this particular clause through.

Personally, I am against eight constituencies for the Isle of Man, and that is looking at it from the point of view of a constituent, of a voter. I do not think it is a very good idea, so I do not support this clause.

The President: Hon. Member, Mr Braidwood.

Mr Braidwood: Thank you, Madam President.

I am just following on from the last two speakers and we are going to go into repetition, because it has been said at the Second Reading and it has been even said this morning. We have in front of us at the present time draft plans by the Boundary Review Committee, which Members have said was agreed by Tynwald, the highest Court in the land in December, that there should be 12 constituencies returning two Members each. We are now looking at going to the Boundary Committee again to have eight constituencies of three Members each.

As the Hon. Member of Council, Mr Turner, said, there is going to be consultation with members of the public still, with Members of Tynwald regarding these draft constituencies and there will, without doubt, be tweaking of the constituencies. We have already mentioned about the cost of going down this path of £170,000. We would then have to be paying more money to the Boundary Review Committee to draw up additional boundaries and constituencies in complete opposition to which has been agreed by Tynwald.

It is just as Mr Lowey said, it has turned everything on its head. It is just ridiculous to go forward at the present time.

The President: The Hon. Member, Mr Wild.

Mr Wild: Thank you, Madam President.

My hon. colleagues have probably summarised my own views on this particular clause. I thank my hon. colleague for correcting my misunderstanding between House of Keys and Tynwald. I accept that error.

I did speak to a my hon. colleague, Mr Crowe, about my concerns with this clause, because I hope that in the interim period from the last discussion and the adjournment that the Attorney General's Office could have perhaps suggested a different wording to balance the eight times three, which concerns me and when I talk about a flaw, speaking to my hon. colleague, Mr Callister, that is what I do not like about this particular clause. It still remains a concern to me and my views on that were expressed last time.

The President: The Hon. Member, Mr Butt.

Mr Butt: Thank you, Madam President.

I think, to be fair to the mover of this Bill, when this Bill was in genesis, or gestation, the proposals before Tynwald in December were nowhere on the horizon even. This Bill is a standalone Bill which gives constituencies of eight times three. My memory of December is that it was a choice put before Tynwald as to which scenario we would prefer. The preference was 12 by two, and then it was to go away to the Boundary Commission to decide on how they would be configured.

At the moment, they do not exist, these 12 by two; they just do not exist. (**Mr Braidwood:** As a draft.) We still are in the same electoral system we have got now, so 12 by two, actually, is just an imaginary figure at the minute. It does not actually exist. There has been no decision made on it and no decision may be made on it yet. So I think this Bill has to stand alone on its own two feet as eight by three, because one day, who knows, we may have eight by three because 12 by two may not receive support.

So, I support this clause as it stands. It was done separately to what Tynwald decided last December, and that decision was purely for the Boundary Commission to go away and work out a 12-by-two system.

Mr Lowey: A decision was taken to take –

The President: The Hon. Member, Mr Downie.

Mr Downie: Thank you, Madam President.

I had the privilege of meeting the Boundary Commission yesterday and giving my views and I must admit that I was absolutely surprised at the amount of work that they have had to undertake to find a way to make 12 twos work. Believe me, Hon. Members, it was no mean feat to overcome.

I do not agree with the previous speaker. I think what will happen now is the Report from the Boundary Commission will come back quite quickly and out to Tynwald, when they have had their various discussions with people and it will probably be voted on before this Bill reaches a decision. I think we might actually be faced with a *fait accompli* but who knows? You have got two things running at the present time.

What I must make comment on about here is we are just destroying again the principles here. We are having a situation where we now have eight four-seat constituencies, one of those is a Member of the Legislative Council. We are now bringing in the political machine, we are opening the Isle of Man up for party politics in my opinion and we are losing the ability of this Council to vote with our conscience and be free to look at issues without the strain or pressure from constituencies. On occasion we do actually challenge the Keys, so I just... I fear for the life of Tynwald and for this Court and I just think we are just coming at this from the wrong end, without thinking it through.

It is not new, this legislation; in fact, this is very similar to the draft that Mr Victor Kneale produced many years ago. So, it has been around for a long time and regurgitated on occasion, but I would ask Hon. Members again to think very hard about the way they vote on this, because this is quite crucial again to the continuance of this Bill.

The President: Hon. Member, Mr Lowey.

Mr Lowey: I want clarity, Madam President. Perhaps you can give me clarity.

My view is simple. We discussed boundaries in Tynwald Court and you are presiding officer of that Court, as well as presiding officer of this Council. Specifically, we were asked – they presented us choices and Tynwald Court decided that there would be 12 two-seat constituencies. That was clear acceptance of a principle and the agency of government or the Court to bring that into being was the Boundary Commission. They offered us choices, we picked one and said go and make it. Is that a choice or is that not a choice?

My good friend is trying to defend, 'Well, that is a standalone and it may not be and it could not be', but we have made a decision to go forward with 12 two-seat constituencies. This Bill is saying you are going to have eight three-seat constituencies, which is contrary to the declared position of Tynwald Court. Am I right or am I wrong? I would just like some guidance.

The President: I will help you with an opinion, Hon. Members, but I am not quite sure how far you will want to recognise it.

We are dealing with statutory provisions today and I think you need to vote on them in terms of whether or not you as individuals support these proposals. In Tynwald, we have had an expression of opinion, which is being pursued and which has not come to fruition yet. I think that Members have the opportunity to vote again on this issue as a separate matter. You may well vote, as you did in Tynwald, but I do not think you need to be

bound by the decision in Tynwald – you may be if you wish to be – but you do not need to be bound by it and should be considering whether or not you feel that the measure before you in here, should go into statute. I do not know whether that is helpful or hindered.

Mr Lowey: I am grateful, but if I remember rightly, it was not ‘Tynwald is of the opinion that’, which is a declaratory resolution, which is not binding, but in this specific case, specific choices were offered to the Court and accepted by the Court. I accept your ruling and I think that is an important point, just as I accept a Chair ruling on all things. I would not challenge the Chair.

Mr Butt: Can I have some clarification – there will be a further vote, though, will there not, on boundaries?

The President: There will be a further vote on boundaries.

The President: Does any other Member wish to speak on this clause? Mr Callister, do you wish to reply?

Mr Callister: Yes, thank you, Madam President.

Some interesting matters have arisen here, because, in my view – and it has been my view all along – is that this is a standalone piece of legislation to create in due course what is exactly we are debating now, the eight three-seat constituencies. First of all, the Boundary Commission did have a number of options, but no option was put before the Keys for eight three-seats. The Keys, to my knowledge, have never considered having eight three-seats – an eight three-seat option. So this would be something entirely new to them.

If the Boundary Committee work is finally decided again in Tynwald and then the Keys, presumably, will have to – Keys then – can I ask the President, then have to deal with it separately after Tynwald has voted or how do the Keys approve it?

The President: Can I clarify this, Hon. Members?

If this provision is approved today here, it will go to the House of Keys for their consideration. If it is agreed there, it becomes statutory in due course. If that is in conflict with something that has gone on in Tynwald, the statute will prevail and the Boundary Commission, in terms of the following subclauses will have to carry out their work.

I would suggest that what we are doing here, is giving Members a second opportunity to vote on the boundaries issue in the light of what you are proposing for elections to Council. One might consider – and maybe wrongly – that 24 seats divided into two is at the moment a Keys issue, but we are looking here at a change for the way of voting for the Council which will then impinge on the Keys.

So my view is that whatever happens with this statutory proposal will dictate what happens in the end. It will become part of the law and will overtake a policy decision in Tynwald.

Mr Callister: Thank you, Madam President.

So, it is clear then that the House of Keys has never been confronted with the option to have eight three-seats. If they have, it is a very long time ago.

The President: They could have had in Tynwald, but chose to – 24 times...

The Clerk: No.

The President: No?

The Clerk: Madam President, the option of eight threes was put as an amendment in the recent Tynwald debate –

The President: And was rejected by the Keys.

The Clerk: It fell in the Keys, 8-13 and in the Council 3-5.

Mr Callister: Thank you to the Clerk for that.

The President: So, I think, Hon. Members, when you are voting on this, clear your mind of all that. Vote on what is being put before us as a new piece of law.

Mr Callister: It is indeed and as Members have said, Tynwald has not yet decided on the position of 12 seats and it is not... it is more like the elephant in the room, I am afraid, Madam President. As Mr Butt said, it does not exist.

Mr Downie again, was referring to the 12 two-seats, I think it is quite correct to ignore that. What we are actually looking at, at the moment, is that for the purposes of election the Island be divided into eight constituencies, three Members for Keys, one Member for Council. The Isle of Man, Mr Downie said, we are currently able to vote with our conscience. I do not think that would change. If you are elected by the public, you still have the same duties and as far as challenging the Keys is concerned, it would not affect them either, it would be perfectly normal to challenge the Keys if you are publicly elected, in fact there may be more occasions when you would have to do so.

As far as the Tynwald decision is concerned, I understood that to be a declaratory resolution and certainly it is not a legal binding anything at the present time.

I refer to Mr Wild now with his doubts about what he said before, because on 18th December, he told us that he had stood for election to the Legislative Council twice in 2010 and 2011. On both occasions, I engaged a meeting of the Members of the House of Keys who talked and expressed views and asked me for my opinions. It came across very clearly to me from Members of the House of Keys that there is a wish for this body to be publicly elected. There is, he said, a groundswell of opinion in my view within the House of Keys for publicly elected Members of Legislative Council and therefore, I think, not to support this Bill will go against the views of many Members in that sense.

The other thing I agree with entirely with my hon. colleague, Mr Butt, is that if we are making decisions that affect people's lives, I would prefer to do it from the basis of being elected by the public and not elected by 24 people. So I would ask Mr Wild to take that into consideration when he decides how he will approach this.

I do not know if Mr Lowey actually had something that I need to answer. I think he was regurgitating his views.

Mr Lowey: No, I am regularly regurgitating, as you know, Mr Callister! But I will not deviate from what I have already said – (*Interjections*) but not this.

Mr Callister: I have a feeling, Madam President, that he is weakening! (*Laughter*)

Mr Lowey: Believe you me, I am not like poultry; I get stronger as I go on!

Mr Callister: Madam President, I beg to move this subsection (1) of section 11 in the Representation of the People Act, revised constituencies.

The President: Hon. Members, I am putting to you clause 2(6), section 11(1) dealing with the first element of the issue relating to constituencies. Those in favour, please say aye; against, no. The noes have it.

A division was called for and voting resulted as follows:

FOR

Mr Butt
Mr Crowe
Mr Callister

AGAINST

Mr Lowey
Mr Turner
Mr Braidwood
Mr Downie
Mr Wild

The President: There are 5 votes against and 3 votes in favour. The motion therefore fails to carry.

In the light of that, Hon. Members, we have to proceed through the rest of it, to give some steer, I suggest, but the remainder of that was contingent upon the first 11(1) being accepted.

I will take some guidance. I think I should move those for clarity. I will put the whole of 11 to you, Hon. Members, for a substantive vote, because without subsection (1), subsections (2), (3), (4) and (5) have no purpose. So what I am putting to you, Hon. Members, is that clause 2(6), section 11 stand part of the Bill.

Mr Braidwood: Madam President, because subsections (2), (3), (4) and (5) are consequential on section 11(1) surely the whole part is gone? There is no point in voting on it.

The President: I would like to put it to you. The voting should not change, unless anybody has a peculiar change of heart. I accept your point of view as a reasonable one, but I just want, on this particular measure, to be sure that everybody knows what they are doing. I am taking the position now on section 11 of subsection (6):

the whole of section 11, subclauses (1) to (5). Those in favour, please say aye; against, no. The noes have it. The noes have it.

Thank you, Hon. Members. We now move to clause 2(7).

Mr Callister: Can I just say, Madam President, that there seems to be little... there is not much point now in considering further clauses. If you are able to rule differently, then I will have to abide by that, but the essential part of this Bill now has been lost. So –

The President: I accept that, Hon. Member, I think then, what we will do is put to you clause 2 as a substantive motion, because all of this is a part of clause 2. Do you accept that Hon. Members?

It was agreed.

Mr Callister: Yes, it is in fact. Everything is –

The President: What we have done so far has given an indication of what Members did accept and what we have considered, but it may all now be rejected, as it is all a part of clause 2. I will put to Members –

Mr Crowe: One of the Members is not in the Chamber, Madam President.

The President: I think, as this is a significant measure, perhaps we should wait.

Mr Lowey: We already have one Member not here. That is why I would not agree to suspending Standing Orders to take the Third Reading, because I think it is a collective...

The President: I would just like to take some advice. I do not know whether you want to establish the view on the principle of there being eight elected Members, by dealing with clause 3?

Mr Crowe: Madam President, sorry, the Hon. Member has returned to his seat.

The President: Yes, I am just taking some advice from the Clerk.

Hon. Member, we are considering clause 2. I am putting the whole of the clause together as a substantive motion. It embodies that part of the Bill, which you have rejected, along with some parts that you have accepted. I put to you, Hon. Members, that clause 2 do stand part of the Bill. Those in favour, please say aye; against, no. The noes have it.

A division was called for and voting resulted as follows:

FOR

Mr Butt
Mr Crowe
Mr Callister

AGAINST

Mr Lowey
Mr Turner
Mr Braidwood
Mr Downie
Mr Wild

The President: With 5 votes against, 3 in favour, the motion therefore fails to carry.
Clause 3 deals with the Isle of Man Constitution Act.

The Clerk: Madam President, in the absence of an Attorney General, it is a difficult one to give advice on, but I am reminded of the position with the last Constitution Bill, which came to this Council, on which amendments had been made by the Keys, such that the Bill could not work. I remember the Attorney General at the time saying that it would be undesirable to pass a Bill which did not work.

You have asked if it would be a good idea for the Council to consider clause 3, because then the Council could express a view on the principle of clause 3, which is that you have eight Members up here elected in accordance with the Representation of the People Act 1995 and –

The President: And that would not work without the amendments.

The Clerk: Well, I think you can express a view in lots of ways and indeed, the Council have already passed this Bill in principle at First and Second Readings. The consideration of the clauses is the time to make a Bill which works.

The President: In that case, Hon. Members, what I would... It will not stand on its own, so there is not much point in moving... Unless I move clauses 3 and 4, but they will not work on their own.

Mr Braidwood: Madam President, there was a similar situation in another place with a similar Bill, when just part of one of the clauses failed and then the Bill was withdrawn because it was unworkable.

The President: Well, I put it to the mover – he is in charge of the Bill – whether he wants to move those clauses, knowing that on their own they cannot work; or whether you wish to withdraw the Bill, sir?

Mr Callister: There is no point in moving any further with the Bill, Madam President, if someone in the other place wishes to pick up this Bill, and move it there, they will be free to do so and that is a possibility, I dare say.

With that, yes, I will now withdraw the Bill, Madam President.

The President: Thank you, Hon. Member.