



LEGISLATIVE COUNCIL OFFICIAL REPORT

RECORTYS OIKOIL
Y CHOONCEIL SLATTYSSAGH

PROCEEDINGS

DAALTYN

HANSARD

Douglas, Tuesday, 11th March 2014

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Present:

The President of Tynwald (Hon. C M Christian)

The Lord Bishop of Sodor and Man (The Rt Rev. R M E Paterson),
The Acting Attorney General (Mr J L M Quinn),
Mr R P Braidwood, Mr D M W Butt, Mr M R Coleman, Mr C G Corkish MBE,
Mr E A Crowe, Mr A F Downie and Mr J R Turner
with Mr J D C King, Clerk of the Council.

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Legislative Council

The Council met at 10.30 a.m.

[MADAM PRESIDENT *in the Chair*]

The President: Moghrey mie, Hon. Members.

Members: Moghrey mie, Madam President.

5 **The President:** The Lord Bishop will lead us in prayers.

PRAYERS

The Lord Bishop

Leave of absence granted

The President: Leave of absence has been given to the Hon. Member, Mr Wild, this morning.

Order of the Day

1. Commonwealth Day Message

The President: We commence business with the Commonwealth Day message from Her Majesty the Queen:

'In July this year, the opening of the 20th Commonwealth Games will be marked by the arrival in Glasgow of the baton that started its journey from Buckingham Palace five months ago.

Many of us are following closely the news of the baton relay as it passes through the 70 countries and territories whose teams will gather for the Games. The images bring vividly to life what we mean by the Commonwealth family: it is wonderful to see the warmth, shared endeavour and goodwill as the baton is passed through the hands of many thousands of people.

Affinities of history and inheritance from the past are strong, yet we are bound together by a sense that the Commonwealth is a powerful influence of good for the future. People of all ages from different cultures are weaving an ever-growing network of links which connect us in our diversity and our common purpose. It is this unity that is expressed in this year's theme: "Team Commonwealth".

While national teams will be concentrating on the competition in August, Team Commonwealth will have a longer focus, working together to achieve a more enduring success.

Experiences of life differ widely throughout the Commonwealth, and we each make contributions from sometimes very different viewpoints. But we are committed to the same goals. Together we offer each other encouragement and draw strength from this mutual support.

The understanding that we belong together, and are able, through teamwork, to achieve far more than we could do alone, has always been at the heart of our approach. For all of us this is now captured in the Commonwealth Charter which sets out the values and principles which guide and motivate us.

This year, more children and young people are participating in Commonwealth Day celebrations. Advances in technology enable us to reach a greater number of young people in schools, on-line using the "Commonwealth Class" initiative, and through events in local communities where the Commonwealth flag is being raised. I am delighted that in this, the year of "Team Commonwealth", we will be working to build a brighter, united future in which every one of us can play a part and share in its rewards.'

2. Control of Employment Bill 2013 – First Reading approved

Mr Crowe to move:

That the Control of Employment Bill 2013 be read a first time.

10 **The President:** We turn now to Item 2 on our Order Paper, Hon. Members, the Control of Employment Bill 2013 for First Reading.

As Mr Wild is not here, I am not aware that he has asked anyone else to take the Bill.

15 **Mr Crowe:** Well, I could take it Madam President, as a member of the Department of Economic Development, if I could be allowed to move the First Reading.

I know the legislative timetable is fairly tight coming up to the end of the legislative programme.

The President: I am content, Hon. Members, if you are.

20 **Several Members:** Agreed. Happy to agree that Madam President.

The President: The Hon. Member, Mr Crowe.

25 **Mr Crowe:** Thank you, Madam President. I thank Members for their forbearance in allowing me to take the First Reading in Mr Wild's absence.

I am very pleased to be able to bring this important Bill which is promoted by the Department of Economic Development before the Council today. The purpose of the Bill is to re-enact the Control of Employment Act 1975 with amendments, in order to modernise the Island's domestic Work Permit legislation so that it is in keeping with the needs of the economy and adequately serves the employers and the workforce of the Isle of Man.

30 The 1975 Act was last substantially amended in 1990 – that is nearly a quarter of a century ago – since which time the economy has greatly changed. So a review of the legislation is not before time.

35 The Bill and Regulations are intended to constitute a balanced package of reforms which liberalise the system of Work Permit controls where that is in the overall interests of the economy, but also tightens up controls in a number of important ways.

The Bill continues to protect the interests of Isle of Man Workers. The Department has chosen to retain the Work Permit framework across the economy in spite of considerable opposition from many contractees.

40 Further, the enforcement provisions of the 1975 Act have been strengthened. Loopholes in the existing legislation have been closed and the Bill facilitates the removal of those exemptions that are no longer necessary.

45 The Bill also takes into account the needs of employers, in particular by updating the criteria on which the Department decides whether or not to grant a permit, as well as by the modernisation and broadening of our exemption powers. A further intention of the Bill is to make the Island more attractive for prospective workers from outside the Isle of Man that we need, because even if every jobless person could find employment, the Island's diverse high skills economy would continue to require several thousand additional workers.

If the Island fails to attract those workers we ultimately risk losing some of our employer base or, in the case of the public sector, not being able to provide services to the standard we would like. Therefore the Bill seeks to make it more attractive for the prospective workers the Island needs to come here, both by a simple five-year qualifying period with no strings attached, and by alleviating the practical difficulties of spouses and civil partners of permit holders and exempt persons, in obtaining permits by changing the administrative process for those permits.

Turning to the history of the Bill: in 2011 the Department published a consultation paper containing a draft Bill and Regulations. The Bill and Regulations, which followed much internal discussion and analysis of how the existing legislation could be improved within the Department, were intended to iron out most of the known problems with the existing Act and Regulations, while returning the Work Permit framework.

The Department received approximately 40 submissions from consultees including detailed responses from the Chamber of Commerce, the Isle of Man Law Society and other organisations. The original proposals were amended in a number of respects, in light of consultees' comments and suggestions.

Whilst it is fair to say that many employers would like to have seen more radical legislation, or even the removal of Work Permit controls altogether, (**Mr Turner:** Absolutely.) having considered all options and taken into account the interests of all stakeholders at great length, the Department decided to proceed with its proposals to retain but modernise the existing system.

Towards the end of last year the Council of Ministers approved the Bill and draft Regulations, and subsequently the Department published a comprehensive review of consultees' comments together with our final proposals as to the contents of the Bill.

Madam President, I would now like to turn to the contents of the Bill and the draft Regulations which need to be considered together if Members are to understand the Department's full intent as regards the legislation. Of course the Regulations will be dealt with separately by Tynwald at a later date.

There are numerous differences between the existing and proposed legislation, so I will concentrate on the most important points. The Department has looked carefully at the main components of the Work Permit framework and has made reforms in each area.

Firstly, Madam President, most persons who are not Isle of Man Workers, or not in an exempt category of employment, require permits under both the old and the new legislation. The Bill re-enacts and updates the categories of persons who are 'Isle of Man Workers' for the purposes of the legislation.

Most notably, it is proposed that a person should be an Isle of Man Worker if he or she is resident in the Island for an unbroken period of at least five years. This new definition removes a complicated proviso that is attached to this category in the 1975 Act, the effect of which can be to deprive a person who has been resident for five years of his or her Isle of Man Worker status, if he or she ceases and recommences residence following the five-year period.

Most consultees favoured a simple five-year qualifying period on the Island, and that is what the Bill provides. This provision will not be retrospective but will apply going forward.

Turning to policy regarding which employment should be exempt under the legislation, the Bill contains more flexible powers to make and remove exemptions than are contained in the existing Act. For example, whereas the Department has power to exempt employments by order, it cannot remove any of the exemptions in the schedule of the 1975 Act which may no longer be required, other than in bringing forward new primary legislation. The Bill deals with this and other problems with the enabling powers.

In addition, there are powers to exempt not only employments but also persons of a description, which broadens the possibilities for making exemptions.

The Bill consolidates the exemptions contained in the schedule of the 1975 Act, as well as those exemptions which have been made subsequent to the Act by four orders into a new schedule to which the Department will be able to add or remove exemptions by order, subject to Tynwald approval.

100 Whereas most exemptions require the approval of Tynwald, the Bill contains a new power to exempt, subject to certain conditions, a person working in a specified capacity, if it considers the employment of that person to be in the national interest. This is intended to enable a Minister to deal speedily with an important case, and to ensure the legislation is not so rigid as to result in the loss of employment or the loss of employment opportunities.

105 When the Bill was with the Council of Ministers, some disquiet was expressed about the potential for this proposed administrative power of the Department to be abused. In consequence, the Department supported an amendment in another place which requires the Department to report annually to Tynwald if any such national interest authorisations are made.

110 Turning now to the treatment of spouses and civil partners. The existing legislation provides that the Department must grant a one-year permit in respect of the spouse or the civil partner of a permit holder or a person whose employment is exempt under the schedule of the Act. Other than in cases of self-employment, the employer is to apply for the permit.

115 The problem with the existing provision is that many employers tend to overlook applications by spouses and civil partners of permit holders and exempt persons, either because they may be unaware the person has a legal entitlement to a permit, or because they are deterred by the cost and trouble of making an application. In order to fix this problem under the new Bill and Regulations, the spouse or civil partner will be able to apply to the Department for a one-year permit which is not limited to any particular employment, which can be then presented to a prospective employer.

120 Moving on, the Bill closes loopholes in the 1975 Act, which enables persons with unspent criminal convictions under the Rehabilitation of Offenders Act 2001, to either take advantage of an exemption or to apply for an automatic spouse or civil partner permit. Once the Bill is enacted, persons coming to work in the Island with unspent convictions will not be able to use an exemption, nor have any entitlement to an automatic spouse or civil partner permit, but will have to apply for a permit in the normal way in order to work in the Island.

125 Madam President, where a prospective worker is not an Isle of Man Worker, or not an exempt person, an application can be made to the Department for a Work Permit. The criteria in respect of which the Department will base its decision on whether or not to grant a permit are contained in Regulations.

130 The Bill contains more comprehensive enabling powers for the criteria that the Department is to take into account, and whereas the 1993 Regulations contained five matters to which regard *must* be had and 11 matters to which regard *may* be had, the draft 2014 Regulations contain nine matters to which regard *must* be had, and a further 17 to which regard *may* be had. So the newer Regulations are much more comprehensive.

135 The Regulations take greater account of employers' business needs and the needs of the economy and, in particular, try to better balance the consideration which must be given to Isle of Man Workers, with the employer's particular requirements.

140 It should, however, be noted that there is a common misapprehension as to the effects of the legislation. Some people think that where there is a suitable Isle of Man Worker who is available, the Department is prevented from granting a Work Permit to any non-Isle of Man Worker, and that the legislation prevents employers from being able to recruit the best person for the job.

This is not in fact, the case and I would draw Members' attention to the High Court judgment of June 2007 in respect of the case of the *Department of Education v Hedges*. Some paragraphs of the judgment are as follows:

'Thus the statutory position is that, although persons cannot undertake employment on the Island unless he/she is an Isle of Man worker, WPC [*Work Permit Committee*] may grant a permit to work. However, in deciding whether to grant such permit, WPC shall have regard to the fact that a suitable Isle of Man worker is available, or likely to become available to undertake such employment.

It may be asked whether such statutory position prevents WPC from granting a work permit for a non Isle of Man worker when it is satisfied that an Isle of Man worker could undertake the employment in respect of which the work permit is sought. We are satisfied that it does not. Although the WPC is required to have regard to the availability of a suitable Isle of Man worker to undertake the employment in question and there is an onus on the applicant for a work permit to justify the granting of a work permit, the availability of an Isle of Man worker does not prevent WPC from

granting a work permit to a non Isle of Man worker if it concludes that the factual background justifies the granting of such a work permit. In our judgment such is the plain effect of the statutory wording. This legislation does not require the employment of an Isle of Man worker who, whilst suitable, is considered to be less suitable for appointment than another applicant. Although the legislation was described during submissions as protectionist legislation, in our judgment such legislation has a limited protectionist effect.

In reaching its decision we have no doubt that WPC will take into account the nature of the employment in respect of which a work permit is sought, and matters such as the public interest. It may be that WPC would require more persuasion to grant a work permit if the employment requires skills, qualifications, knowledge, and/or experience of a nature ordinarily available in the Island, than where the employment requires skills, qualifications, knowledge, and/or experience of a nature not ordinarily available in the Island.'

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And the quote ends at that point.

Madam President, it is thus apparent that while the Department must consider any suitable Isle of Man Workers who are available for a particular job, this does not prevent a Work Permit from being issued to a non-Isle of Man Worker. Whether or not a Work Permit is issued would depend on the circumstances of the individual case.

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The Bill also contains stronger enabling powers for the Department to take account in the Regulations of the potential economic and social costs of prospective workers, their spouse and civil partner and their dependants, including any medical, social security or educational costs that may be incurred by their coming here. Account must also be taken of any unspent convictions under the Rehabilitation of Offenders Act 2001, while, in addition, the Department may also take into account the ability of the prospective worker and his or her family to speak English. As far as this latter matter is concerned, it is to be noted that the Department supported an amendment in another place, which provides some additional powers if it is decided to make any arrangements for English language testing.

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Madam President, moving on, the Bill makes certain reforms relating to the Work Permit Appeal Tribunal. Whereas the 1975 Act contains little information as to the purpose and functions of the tribunal, the Bill takes account of two High Court judgments, one of which is the Hedges case, which I have just mentioned, to clarify any grey areas. The grounds on which the Work Permit Appeal Tribunal can allow an appeal against the decision of the Department are defined in the new Bill, as are the powers of the Tribunal.

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A further change the Bill makes is that, whereas at present any person aggrieved by any decision of the Department can appeal, in future an appellant must have a direct interest in the matter being appealed, as is the case in planning matters.

Madam President, turning now to enforcement, the Bill enhances the powers contained within the 1975 Act. Maximum financial penalties for offences are increased from £2,000 to £5,000 and for aggravated offences from £5,000 to £7,500, while in addition as an alternative to prosecution, the Department will have new powers to impose fixed penalties of up to £1,000 for an offence of working or employing a person without a Work Permit, or up to £200 for a breach of the Regulations.

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The Bill contains express powers to share information with the Police, Treasury and other relevant agencies and Departments, in order to enable officers of the Department to both receive and pass on relevant information which will help them to enforce the legislation. These powers override any data protection considerations, which at present can impede information sharing.

The Bill contains enabling powers for regulations to provide for the revocation of permits. The grounds for revocation in the draft 2014 Regulations are wider than in the 1993 Regulations. Under those Regulations the Department may revoke a permit where the permit holder has provided false information on an application form, been convicted of a criminal offence subsequent to a permit being granted, or not paid National Insurance contributions.

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New grounds provided for in the Bill and the draft Regulations include: not complying with a condition attached to the issue of a permit, not paying Income Tax, and a significant number of complaints being passed to the Department by the Office of Fair Trading. This latter provision should assist the Department to prevent any so-called 'cowboy builders' who are not Isle of Man Workers from continuing to work on the Island.

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Mr Turner: No it will not. Will it heck!

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Mr Crowe: Madam President, before finishing I would like to mention that the Department will be seeking to bring forward some amendments to the Bill which I will say more about at the Second Reading. And now I trust that Hon. Members will now confirm their support of this Bill.

Madam President, I beg to move that the Control of Employment Bill be read for the first time.

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Mr Downie: I beg to second, Madam President, and in doing so would just like to say a little bit about why I think this piece of legislation is required.

The original Control of Employment Bill goes back to 1975 when the Isle of Man was a much different place than it is now. And those of us who were around in 1975, the economy then was based largely on tourism, people coming in to work during the summer months and at the end of the year as we entered into the winter we finished up with large numbers of people – it could be up to 2000 or 3000 some winters – who were unfortunately out of work.

That is when it was decided that they would try and devise a solution to this by bringing in the Control of Employment Act so that local people had preference over certain types of jobs. There are exemptions under the old legislation: it allows, for example, for people to come in and work through the TT period, which is very busy – there are no Work Permits required there, certain categories of workers have been exempt. But by and large the Control of Employment Bill has been a bit of a blunt instrument that some Tynwald Members have tried to utilise as a form of immigration control as well.

I do not want to digress too much, but I think we would all agree that *any* business... and in an economy like the Isle of Man we do need a regular supply of new blood, fresh ideas, people who have experience in the developing of businesses which sadly can be lacking in certain instances in the Isle of Man.

Some of the areas I have had concern about for some time, and perhaps not directly covered in the Bill, but you invite somebody to come to the Isle of Man, they get a job, they get a Work Permit and initially lots of the Work Permits are only for 12 months. If you want to become established here, it is very difficult to convince your bank manager that you are worth investing in, so over the years we have not been able to recruit, I do not think, a good standard of teachers, a good standard of nurses – people who get caught up in all this. So I think in bringing the Bill before us today, it is a good opportunity to try and fine tune it, as it were, and make it more effective to modern day thinking.

I still have one or two concerns. One of the areas that I think we are lacking in the Isle of Man, we have no actual registration process and as we find now to our cost that people do not go on to the jury list, they do not go on to voters list and so on, they are not in the Telephone Book any more.

It would be useful if perhaps at some stage in the future – not using this piece of legislation – there could be an opportunity for people to register here so you actually *know* that you are here for the five years and there can be no argument about it, because I still think that is an area of contention.

I would say that over the two or three years that the Bill was being worked up and the consultation that they have had, they have arrived at what I think is a system that will probably work. It will not be perfect, and that is why there is a tribunal element to this, because there will always be people who will feel that they have been adversely affected by the decision and they can take that on to the Tribunal and see if they can overturn the decision.

My hon. colleague, Mr Crowe, mentioned the problems that people have. If you are developing a business where there is a likelihood that you can possibly create 20 or 30 local jobs, really your heart tells you that you want the best person for the job. But the legislation tells you that you have to have the most suitable Manx person for the job if there is a person who is available or could be trained at some time to do that job.

The nature of business is you need to make decisions very quickly in this day and age, and you need to get the thing right first time. We have all had a taste of the downside – I am sure my hon.

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colleague, Mr Braidwood, will tell us this morning about problems he has had recruiting fire chiefs and people like that in the past, which have been very contentious. But, there again, we go back to the old adage, I think, that you have got to try and get the best person you can in some of these jobs and you have got to have somebody with wide ranging experience and the necessary skills to make things work. Unfortunately it is not always available locally. I know we do an awful lot more to try and bring people along, to train people up, but you will always find that there is someone there who just has that little bit of an edge. I think this particular Bill now will allow us to work with that person who has got that bit of an edge.

It is very much aimed at developing the business and bringing good people here to the Isle of Man who will bring benefits long-term to our economy.

So I will be supporting the First Reading.

The President: The Hon. Member, Mr Corkish.

Mr Corkish: Thank you, Madam President.

As a former member of DED I am well aware of the moves made and as illustrated in this particular Bill. It provides, I think, a balance of consideration to Isle of Man Workers and the demands of the businesses springing up here, and the diversity of businesses locating and springing up on our Island, where particular skills and qualifications are needed. And to pass on, indeed, those skills to the local workforce. So such changes as illustrated, show the flexibility that we need here for this particular area.

It will not be easy, there will be times when there will be confliction, however, I understand, acknowledge and support the Bill.

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

I am sorry for being the voice of doom, but I am afraid I do not support the whole principle of the Control of Employment Act. However, I will support the First Reading because the changes that are being proposed do actually make the situation a little better.

There is a whole host of words I could use to describe the Act itself: draconian, outdated, bureaucratic and, indeed, intrusive. I think that in this day and age we are trying to get companies to flourish – we have the Freedom to Flourish. Yet the tail is wagging the dog and we are effectively telling people who they can and cannot employ, which I know from my days as an employer was something that does irritate employers.

I was surprised at the presentation to hear that proper consideration had not been given – and the Minister knows my views and did actually thank me for raising it – into actually abolishing the system altogether.

I think, whilst there are merits in 1975 of having this, as Mr Downie said, we lived in a completely different era. Today we are in such a competitive worldwide market, we seem to want to have our cake and eat it. And if businesses are having to go through what is an incredibly over-bureaucratic system, it borders on farcical at times – because we all know that if people are determined to employ the person they really want, they will find a way around it.

There are fees involved, there are forms involved, there is enforcement, there are now penalties. We have to remember that it is the businesses that are providing the wealth that is coming into Government, and yet we are dictating to them who they should and should not employ. I am afraid I just do not agree with that. I think employers should be enabled.

There is other legislation which ensures the fair treatment of employees, but when it comes to employing people, that I think should be the employers. They are the ones who are taking the risks. They are in some cases – especially small businesses – taking out loans, they are putting everything they have got... and yet everything is loaded against employers.

We have seen other legislation where employers have fallen foul because they have had workers that are not pulling their weight and they have not gone through the various processes of dismissal. They have not followed something to the letter and have then been prosecuted and heavily fined. And I think it is all very well for these bigger companies who are part of some of these bigger trade organisations saying, 'Oh well, it is fine, we can handle it' – but they have whole HR departments.

It is a well-known fact that the majority of employers in Britain and the Isle of Man – this was a question I raised in another place – the majority of employers are businesses that employ 10 people or less, and these are the ones that find this sort of legislation over-bureaucratic.

We heard from the Chief Minister that he wanted a smaller Government, less bureaucratic: well this, actually, is an example of something that should be completely done away with.

It is not going to stop cowboy builders, that is complete nonsense – that, unfortunately, is something that has to be dealt with. The Office of Fair Trading is always pursuing these people – they are breaking all sorts of other laws. The fact that this is brought in is not going to make any difference whatsoever, so I think that also is quite a nonsense.

The fact that we were told abolishing the system was not seriously looked at, I think, has done a disservice to the consultation. I think it is a flaw, because I think when you are coming to looking at revamping primary legislation, especially one that has been running for so long, there has to be the opportunity to say in full detail, 'What are the implications of abolishing it?' And only until that study is properly done, can we say that it has been looked at and we will not abolish it because of XYZ.

I think there is an opportunity missed there and I suspect it was because it is possibly a little too hot to maybe go into that area. The Minister knows my view, because I did raise it and he did say, 'You are quite right for raising it'. So this will come as no surprise to the Department that I am speaking against the principle. However, I will support the Reading because it does improve what is a really poor situation to start with.

I do intend to bring forward some amendments at a later stage of this Bill – while Mr Braidwood slightly stole my thunder there – but it will seek to abolish the entire system. I do not for a minute think... I would like to hope that it would progress, but I hope that when I do so Members will at least support a debate on that subject, even if they intend to vote against it. I would certainly like to get the points aired and have that opportunity, so at least if this Bill does succeed and go through, we have at least debated fully and properly the implications of abolition of what I think is an outdated piece of legislation, and has no place in the fast-changing modern world of business.

The President: The Hon. Member, Mr Braidwood.

Mr Braidwood: Thank you, Madam President, and I will not be so much of a Job's comforter as my colleague on Council, Mr Turner. *(Laughter)*

Madam President, the Control of Employment has always been a blunt instrument, to protect Manx workers from people coming into the Island. But at least this legislation gives a lot more flexibility.

The Hon. Member of Council, Mr Turner, did mention that some companies, because of job descriptions, were able to circumvent the procedures and the job description would be such that they knew that the person they wanted to bring in from the UK was the only person – that no Manx worker would be able to have those qualifications. And I know that has happened in the past.

Mr Turner: It makes a mockery of it.

Mr Braidwood: My colleague in Treasury, Mr Downie, mentioned about the Fire Service and I was going to bring this up, Madam President, particularly in the exemptions in schedule 1, where we have exemption for the Chief Constable; we have exemptions for a minister of religion; a qualified medical practitioner; a registered dentist; and we have just added for a teacher in a secondary school.

One thing I would like to see is also an exemption for a Chief Fire Officer. This is not in here at the moment, but we have got Chief Constable, *why* they do not have a Chief Fire Officer as well? I would think that would be probably appropriate.

So as far as I am concerned I will be supporting the legislation, Madam President, I will not be as brutal as my hon. colleague in Council, Mr Turner, who would like to completely abolish it.

The President: The Hon. Member, Mr Butt.

Mr Butt: Thank you, Madam President.

I would just like to refer to a technical area which maybe the mover on the next Reading could perhaps address.

Clause 7(5), which is about the exemptions, gives the Department power to authorise in writing the employment of a person where it is in the national interest. Talking in respect of Health and Social Care, there are certain professions which are not medical practitioners who are in very short supply throughout the British Isles, and there are people like radiologists, midwives, social workers etc, where we are trying to compete with the UK for these posts. To get people to move over here is difficult enough as it is and then to have the hurdle of having to apply for a Work Permit individually makes it even harder. They do not want to go through that process.

In addition, we have found in the recent months that health workers in particular – especially those from the Indian subcontinent – value education very highly, and the changes to the education system recently have actually deterred people from coming here. In fact we are losing some people who are currently working here because the education system is changed – they want to go back to the UK because it is cheaper to educate their children in the UK now in certain circumstances. This is a hurdle for those sort of workers who are in short supply.

The exemption says for ‘the employment of a person named’. I wondered if the Department has considered looking at the employment of a *class* of person, say midwife for example, rather than just every midwife having to apply through this process, that we could have some way of changing the regulations to say midwives as a whole, or radiologists, or social workers, or whatever the category is, which we need to employ in the national interest. So if the Department could bear that in mind for the Second Reading and clauses stage please.

Thank you.

The President: The Lord Bishop.

The Lord Bishop: Thank you, Madam President.

Again, looking at the first schedule, I am not quite sure whether I come under the category of ‘Crown employments’.

Mr Downie: You are a clergyman.

The Lord Bishop: When a Bishop becomes a Diocesan Bishop he has to swear that he receives his temporalities and spiritualities of Her Majesty, so that I think would qualify me in the first part of that sentence. But for second part, ‘and is paid out of money provided by Tynwald’ (*Laughter*) would mean that I do not qualify. But I am sure the Church of England would be very grateful to receive that money if it were offered.

There is a serious point under ‘professions’ in section 5. Employment as a minister of religion is a very broad category these days. There are some religions that – and I am not saying this in any kind of exclusive way – but there are some religions that are *bordering* religion and may not actually be religions at all in the modern world. And they are coming over here as much as they are in other parts of these Islands. That is the first problem there with a term like ‘minister of religion’.

The second is that increasingly, for instance in the churches, accredited lay workers are a very important of the Ministry, let’s just say from the Church of England’s point of view of the diocese.

395 There may be cases – well, there are cases, I can think of cases on the Isle of Man – where we are using an accredited lay worker to do the job that would in a previous generation have been done by an ordained minister. And we have faced this problem with the Department in applying for Work Permits before. And the workers in the Department found that they looked at this and said, ‘Well we have not got this category’.

400 So I would be grateful for some discussion as to the nature of this term, ‘employment as minister of religion’.

Thank you.

The President: The Hon. Member, Mr Coleman.

405

Mr Coleman: Thank you, Madam President.

I – I think almost uniquely today – have come to the Island and had to work initially on a Work Permit. This was in 1988, so I guess it was under the old Act. I came here to establish a business on this side of the Atlantic and move a lot of jobs to the Isle of Man, creating in 1988 an ICT department of about 70 people, which did all the IT for the rest of the operations around the world. At that time there were *very few* ICT candidates for positions in the Isle of Man. Therefore the majority of the technical people that we brought over here came from the UK and elsewhere.

410 My experience of using the regulations at that time, and also with those responsible for monitoring those regulations, was extremely positive. I personally had come to the Isle of Man from a jurisdiction where, if you had a Work Permit, your job had to be advertised annually and if someone applied – a local person – they had the right to go to a tribunal and say, ‘I was not selected for this job: why?’

415 It was also a jurisdiction where wives were not allowed to work on the Work Permit of the spouse – they had to apply for roles in their own right. Nurses and primary school teachers were normally able to get work.

420 The point I am really coming to is that, even on the old Act, I found that the issuance of Work Permits took due cognisance of the situations that occurred on the Island and of the shortages of people that organisations moving here required. In total I think we created about 200 jobs on the Island at that time.

425 One of the problems I did experience was people leaving because their spouses could not get adequate employment, because if they were secretaries or clerical-type people – and I include both sexes in that – and people left because of that.

I will be supporting the Bill, because having read it through I think it satisfies the problems that I encountered trying to create an organisation, and I think it also gives due cognisance of the fact that there has to be some level of protection for Manx workers.

430 So I think that I would be... if we do not protect Manx workers then it becomes a topic of dissatisfaction in my view. So, as I say, I will be supporting this Bill.

The President: The mover to reply.

435

Mr Crowe: Thank you, Madam President, and can I thank Mr Downie for seconding the Bill and for his comments and support.

440 As he rightly says, the landscape today in the employment world is much different to what it was in 1975, and I think what we are trying to do at this point is to update the legislation to bring it into line with the needs of the current labour market, and to take account of all the pitfalls and concerns and problems we have experienced in the past. So I thank Mr Downie for his support there.

445 He did actually mention about no registration process – I know other places sometimes do this, where you have to register and leave your passport with the police. He also mentioned the problems of getting people on jury lists and voters lists, but again, this is not subject to the actual Bill we are talking about.

I would also thank Mr Corkish. I agree with what he says: there is a balance between satisfying the needs of local Isle of Man Workers so that the employment opportunities exist for local Isle of Man Workers, but allows the recruitment of new skilled workers who add to the economy of the Isle of Man.

450 I thank Mr Turner, I know he says he is the voice of doom (**Mr Turner:** Not always.) – words of ‘draconian’ and ‘bureaucratic’ – and he would like to see the abolition of this altogether. We have with us Mr Jonathan Clague who is the Legislation Officer from the Department, who has spent a lot of time on this and probably worked on the 1975 Bill – oh, no, he did not!

455 But he has spent a lot of time on this and has briefed the Department all the way through this. I have been in meetings where we have talked about the existing legislation, what it is trying to do, and there was one point where abolition was considered, because some employers thought it would simplify the system. But it was decided that, shall we say, better to have *some* legislation which tries to take account of the various needs of the new employers and the existing employers, and the local workers and incoming workers.

460 So I think to be judgmental and say ‘abolish it’ altogether is a simplistic way of looking at it, and if Mr Turner does bring an amendment forward to abolish it, then obviously we will debate this and look at the pros and cons of it. So I thank him for his remarks and thank him for supporting the First Reading.

465 I thank Mr Braidwood, again, for his support. As he says, it has always been a blunt instrument and what we are getting now is the flexibility that should improve the Bill and improve the present system that we have of the Work Permits. As he observed and commented on there have been, in the past, ways to circumvent the procedures by styling the application process to needs of a particular individual, and we have brought in exemptions for teachers, etc. As to adding the Chief Fire Officer, I will take that on board and comment on that later.

470 I thank Mr Butt for his support as well. He does comment on ‘in the national interest’ and he has mentioned to me separately outside the Council Chamber that there are specialist health workers, radiologists, who suffer from some Work Permit restrictions, and even some are having to leave the Island because of changes to education. According to my notes DED could put forward an order to be approved by Tynwald exempting medical professions – if the Department of Health wish to move
475 the case the Regulations would allow that.

The Lord Bishop: I thank him for his support, and his query on the employment of a minister of religion. It is interesting as to the definition of a minister of religion, I think there has been case law in the UK as to, shall we say, some fringe religions being approved or not approved, because there is a tax implication if you are an approved religion.

480 Again my notes supplied by Mr Clague say, ‘minister of religion/lay worker, no need for exemption for this very special case, why not just apply for a Work Permit, there is unlikely to be any suitable Isle of Man Worker available’. So I am not sure if that is... the answer is what the Lord Bishop says, but again we can look at that in the next Reading.

485 I thank Mr Coleman for his support, he is a very interesting businessman and experienced person in life and business generally. And I was pleased to hear that, when he came in 1988 he was able to get the support and co-operation from the Department which allowed him to set up a business with an IT department with 70 people which extended even greater. So I am pleased that he was able to satisfy the problems that he encountered and the Department were able to give him the support he needed.

490 So overall, in conclusion, I think what we are trying to do at the Department is to maintain a framework of legislation which helps the local workers, as well as allowing new workers to be imported into the Island to create job opportunities, and the Regulations will allow the flexibility as times change so the Regulations will allow secondary legislation to be brought in, which will constantly improve the legislation.

495 So I thank everybody who has spoken, I thank them for their support in the First Reading, and I beg to move the First Reading of the Bill, Madam President.

The President: The motion is that the Bill be read a first time. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

500 We thank Mr Crowe for taking the First Reading in the absence of Mr Wild who is unwell, and it sounds as though we may be having a number of amendments coming forward.

3. Representation of the People (Amendment) Bill 2013 – First Reading approved

Mr Corkish to move:

That the Representation of the People (Amendment) Bill 2013 be read a first time.

The President: We move now to Item 3, the Representation of the People (Amendment) Bill 2013. I call on Mr Corkish to take the First Reading.

505 **Mr Corkish:** Thank you, Madam President.

I first apologise for the Wagnerian operatic overtones this morning.

Hon. Members will be aware that there has been considerable debate on this Bill in another place. In introducing this Bill to Council and moving its First Reading I will take the opportunity to outline what the Bill is about.

510 The purpose of the Bill is to equalise House of Keys' constituencies so that each one has the same number of Members representing broadly the same number of people.

Regardless of where they live, all electors will have the same number of votes in elections to the House of Keys and the same level of representation.

515 The Bill legislates for two of the recommendations of the Boundary Review Committee, an independent body which was appointed by the Governor in Council, following the resolution of Tynwald. These recommendations have already been approved by Tynwald.

The first of these deals with the process for reviewing boundaries. Boundary review committees are appointed by the Governor in Council, following a resolution of Tynwald. There is currently no requirement in legislation for any regular review of the constituency boundaries to take place.

520 This Bill provides for the Governor in Council to establish an Electoral Commission within 12 months of the general election of 2021, and thereafter following every second general election.

The primary purpose of the Electoral Commission will be to review the number *and* boundaries of constituencies. However, there is also provision made for the Electoral Commission to consider other electoral matters, if so directed by a resolution of Tynwald.

525 The second element of the Bill is the provision for the Island to be divided into 12 constituencies each returning two Members to the House of Keys, and that the new constituencies should apply to the general election to be held in 2016.

Madam President, having introduced the Bill and outlined its purpose, I beg to move that the First Reading of the Representation of the People (Amendment) Bill 2013 be approved.

530

Mr Downie: I have much pleasure in seconding, Madam President, and in supporting the Bill.

535 We know we have had this inequality for some years: the two examples which are often given, places like Glenfaba where you have a very small number of electors, and then Peel which has grown out of all recognition in the last few years. Obviously, the situation speaks for itself, it has to be changed. I think the opportunity now to have an Electoral Commission look at this situation periodically and make sure that the distribution of the numbers on as fair a basis as possible is what is going to happen in the future, I think has to be supported.

So I am supporting the First Reading of the Bill.

540 **The President:** The Hon. Member, Mr Braidwood.

Mr Braidwood: Thank you, Madam President.

545 Madam President, yes, I will be supporting the Bill as well. My preference – and I know in my submission to the Commission was 12 times two – as the Hon. Member of Council has mentioned and the mover, it is a far better system. It is fairer, everybody in each constituency has the same number of votes. There has always been controversy, as mentioned, such as you could say Castletown where they only had one vote; then you would go to Rushen or to Onchan where people could have three votes. So at least now we are on a level playing field.

550 It has been a long time in coming, but 12 times two for the Keys is the way forward and I will be supporting.

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

555 I too support the Bill. I think it has – the basics of it, of course – had much debate in another place, when the Boundary Review Committee came with their reports and then came back with subsequent reports. Obviously it has gone through the other place and ended up with us here.

I think the issue of a level playing field is an interesting one, and one that will always be at the centre of debate, because of course it could be argued that Douglas still has higher representation
560 **(Mr Braidwood:** Under-representation.) – under-representation says my colleague –

Mr Braidwood: – for their number of people.

565 **Mr Turner:** But there again if we are looking at certain issues that crop up, could be where to locate an incinerator, or a land-fill site –

Mr Braidwood: Energy from waste plant.

570 **Mr Turner:** – or anything else that may crop up, of course. The rural areas could always argue that they are at a disadvantage. I live in a rural area and I think the general feeling is that people out in that area are quite pleased they are going to be getting the opportunity to have two representatives when this comes in.

So I will keep my remarks at that, but support the Bill at this Reading.

575 **The President:** The Hon. Member, Mr Butt.

Mr Butt: Thank you, Madam President.

580 Very briefly and slightly tongue-in-cheek: I will also be supporting this 12 times two, but I think my personal preference would have been for there to have been eight constituencies with three people.

I think the maths make it more simple on the geography, and it may have actually made the reform of Legislative Council easier had they gone that way. But I will be supporting this 12 by two.
(Laughter)

585 **A Member:** Shame on you!

The President: The move to reply.

Mr Corkish: Thank you, Madam President.

590 Firstly thanks to the seconder, Mr Downie, and for his supportive remarks. I thank also Mr Braidwood, who agrees with the 12 by two.

Mr Turner's support, and his remarks. I would just mention that the votes in Tynwald, of course, in Council: eight votes registered for this.

595 I also thank Mr Butt for his support. This Bill has no effect at all on Legislative Council elections in the future –

Mr Butt: Makes it harder.

600 **Mr Corkish:** This is all part, Madam President, of electoral evolution which has not happened now for over 25 years.

So, in thanking the Members, I beg to move.

The President: The motion is that the Representation of the People (Amendment) Bill 2013 be read a first time. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

4. Law Officers Bill 2014 – First Reading approved

The Acting Attorney General to move:

That the Law Officers Bill 2014 be read a first time.

605 **The President:** We turn to Item 4, the Law Officers Bill 2014.
I call on Her Majesty's Acting Attorney General to take the First Reading.

The Acting Attorney General: Madam President, the Law Officers Bill 2014 seeks to make further provision about the discharge of the functions of the Attorney General, and for connected purposes.
610 It follows on from the Law Officers Act 2013 which again, dealing with the functions of the Attorney General, in effect, then created the role which I currently occupy of Her Majesty's Acting Attorney General, under which I exercise the functions on a temporary basis of the Attorney General under Her Majesty's Royal Sign Manual.

615 With your leave, Madam President, in inviting Hon. Members of Council to take the First Reading of this Bill it is the start of the legislative process. Members of the public listening may be more familiar with Bills entering the legislative process in the House of Keys. From my very limited experience of such matters in recent years, it is where the Bills commence their passage through the two branches in Tynwald, originating the process in this Hon. Council.

620 It was considered with your leave, Madam President, that as in this case the Law Officers Bill 2014 aims to create the office of Her Majesty's Solicitor General for the Island, and addresses certain details as a consequence of the creation of what will become a second distinct Crown Officer for the Island. Bearing in mind that the Attorney General has as Crown Officer been a Member of this Council for many years, it was considered that, rather than commence the journey of the Bill in the other place, it was more appropriate to invite you to agree that the Bill's passage, with the scrutiny
625 of this Hon. Members of Council, will give provisions of this Bill a better start to its journey through the two branches.

630 Madam President, as I mentioned, the Law Officers Bill 2014 seeks to create the office of Her Majesty's Solicitor General for the Island. This step is proposed following the recommendations made following the report on the operation of the Attorney General's Chambers conducted by Stephen Wooler CB, formerly Her Majesty's Chief Inspector of the Crown Prosecution Service in the United Kingdom.

His report, which became known as the Wooler Report, was published in July 2012 – that is the executive summary was, I understand, published and circulated to Tynwald Members. The Report

recommended that, as is the case in all other jurisdictions in the British Isles, there should be a
635 second Crown Officer in the Island capable of supporting the whole range of duties of the Attorney
General.

I have made mention, Madam President, of the Law Officers Act 2013, which as I explained in
effect created my own role as Acting Attorney General, and it was under the provisions of that Act I
640 was appointed under Her Majesty's Royal Sign Manual to act as Attorney General in the absence
from office of the current Attorney General. My appointment is limited and temporary to the extent
and upon the Attorney General returning to office I immediately step down.

The creation of the second Crown Officer of Her Majesty's Solicitor General will ensure, going
forward, that there are two separate Crown Officers and so provide support for any absence of
either post holder.

645 The Law Officers Bill 2013 so seeks to make provision for the creation of the role of Her Majesty's
Solicitor General, and makes some amendments to legislation in consequence of the creation of that
second Crown Office. And so I would therefore move, Madam President, that the Law Officers Bill
2014 be read for the first time and be approved.

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

The President: The Hon. Member, Mr Downie.

Mr Downie: Thank you, Madam President.

655 I think all of us sitting round this table can see the dilemma that the office holds at the present
time, and a lot of us have thought for a considerable number of years that there is perhaps too much
responsibility put on to the one position. I know that historically the Council of Ministers has always
been provided with a representative from the Attorney General's office when they met, when the
Attorney General himself was not available. You can see now the sensible approach has been taken
660 to do something similar for Tynwald, as it were.

One of the concerns I have about this, there is mention here of the Wooler Report: I have had
sight of one or two of the recommendations in the Wooler Report but, to my knowledge, I do not
think has been circulated –

665 **Mr Braidwood:** It has not: only the executive summary.

Mr Downie: Pardon? Yes, and quite rightly, if there are things in there that are private and
confidential, I think they should remain private and confidential. But it seems to me that we are
trying to hang our hat on recommendations from Wooler, and I think very few people in the other
670 place will have had sight of Wooler, and it is going to be interesting to see when the Bill goes down
there, what the reaction is going to be. And I think now is the time, perhaps before we have the
Second Reading and clauses stage, that we do find out what the recommendation actually says.

I would be happy with that because I think there has been a lot of mystery about what happened
with Wooler. I know there were other recommendations and other areas of the justice system
675 looked at. One of the things I would have been much happier with is if that Report had gone to one
of the scrutiny committees and they could have looked at that, and then I do not think there would
have been a problem. But it still cast doubt over what the recommendations were and – if we are in
this day and age, where we are transparent and open – I think we owe it to everybody to make the
decisions for the right reasons. And if Wooler says in his Report a Solicitor General is required, and
680 these are the reasons why, no problem supporting that.

I have thought for a long time that it must be very difficult for the same person to provide advice
to Government about all legal matters and also deal with prosecutions and other things as well. The
time has come now when the job has just become too onerous.

685 I support entirely the recommendation in the Bill about having a Solicitor General and all that
goes with it. But I think if we are going to make the decision let's make it for the right reasons, let's

clear the decks, let's get to know what is in Wooler, and then we will feel much happier about it at the end of the day.

The President: The Hon. Member, Mr Turner.

690

Mr Turner: Thank you, Madam President.

Some interesting points raised by the Hon. Member, Mr Downie.

This is not really a new idea. I recall under the last administration I was sitting on the Constitution Committee under Chief Minister Brown, where there was discussion at that time, although it did not go any further, of looking at whether we needed a Deputy Attorney General and other such various titles were thrown around as to what that office-holder would be called. As I said, it did not appear to go any further at that stage.

Then of course we were in the position where we were, effectively, in limbo whilst we did not have the services of an Attorney General both here in this Council and in Tynwald Court. However, we have had the legislation through which enabled the appointment of Her Majesty's Acting Attorney, and now we are presented with this.

So it was just some comments, really, that there is a bit of history behind such appointment, whether it is in the same guise as what the Wooler Report is recommending as to what we were discussing back in 2008 – somewhere around that period – I do not know because, as has been said before, the details of the Wooler Report have not been circulated. It would be interesting to know a bit more about it.

Thank you.

The President: The Hon. Member, Mr Braidwood.

710

Mr Braidwood: Thank you, Madam President.

As the Hon. Member of Council Mr Turner said, it is not a new thing, a Solicitor General. I know the other Crown dependencies have Solicitor Generals.

I have no problem actually with the Bill, with the creation of a Solicitor General, because we are abolishing the position of Government Advocate so we are not increasing any additional personnel there. But I have to totally agree with the Hon. Member of Council, Mr Downie. We have only had a synopsis of the Wooler Report, it has only been the executive summary, which the Acting Attorney General mentioned and I feel, personally, that before we go down to Second Reading that we should see more of the Wooler Report.

720

The President: The Hon. Member, Mr Butt.

Mr Butt: Thank you, Madam President.

I was just going to agree with Mr Downie about the separation of powers of the Attorney General from the prosecution system. At the moment he has to oversee both prosecution and giving advice, which may be sometimes in conflict. Previously there was – or even now – there was a Government Advocate who used to concentrate on prosecuting, and the Attorney oversaw that but still had to be separate as well.

I just make a comment from Mr Braidwood's point view, that this Bill does disestablish the role of the Government Advocate. I just record that I have had the privilege and sometimes exciting experience of working with Government Advocates in the past, from Mr Johnny Green through to Mr Moyle, and they were always interesting characters. And in a way it is a historic post that is now being lost, though I hope the new Solicitor General may be of equal calibre to those gentlemen. Thank you, Madam President. *(Interjections)*

735

The President: The Hon. Member, Mr Crowe.

Mr Crowe: Thank you, Madam President.

740 I just have a simple query on the mechanics of the Bill and it is to do with on page 6, clause 4, and if we look at subsection (4)(b) where we talk about, if ‘the Attorney General is for any reason unable to attend a sitting of Tynwald or the Council’.

And then we go on to subsection (5): ‘If this subsection applies the President may authorise... Her Majesty’s Solicitor General... or a person...’ etc ‘to attend the sitting’.

745 Will this be a one-off every time a situation occurs, that is the question I was asking. Or will it give a blanket authority to attend in future occasions?

That was the only point, the issue of the mechanics of that part of the Bill, Madam President.

The President: The Hon. Member, Mr Coleman.

750 **Mr Coleman:** Thank you, Madam President.

Quite frankly, until I read this Report, I was not even aware of the Wooler Report, and I would be grateful to see even the executive summary.

Secondly, I fully accept the need for second law officer. I think what has gone on in the last couple of years has indicated the necessity for that position to be created.

755 Now I am going to ask a question out of pure ignorance: why ‘Solicitor General’ when it is an anathema in the Isle of Man? Why not ‘Advocate General’?

Thank you.

The President: The mover to reply.

760

Mr Downie: Oliver Cromwell had a Witchfinder General! (*Laughter and interjections*)

The Lord Bishop: We may need one or two of those around here!

765 **The Acting Attorney General:** Madam President.

Firstly I would like to thank Mr Butt, for kindly seconding the motion – at the last minute, I might add. Thank you very much.

770 Turning then to Hon. Member, Mr Downie, to thank him for his support for the principle of the Bill and to make a few comments concerning the Wooler Report. That Report was commissioned by the Chief Minister and my understanding is that it was the Chief Minister who authorised the publication to all Tynwald Members of the executive summary.

I will certainly take back to the Chief Minister the request that the full Report or further details of the Report be circulated to Hon. Members and I will certainly come back at the Second Reading stage and let you know the position there.

775 Just by way of reminder, also there was a follow-up Report last year – I think it was in April/May time – by Mr Wooler, which was his ‘stock take’ report as he called it, and that was also circulated to all Tynwald Members and I will ensure that is again sent out. I am very sorry if it did not get to you but certainly the instruction was to circulate it, so I will certainly look into that by the Second Reading as well if I may.

780 Then the question raised by Mr Turner: again I thank him for his comments by way of support and for his helpful historic recollection of the position as it used to be, clearly before my time. Again, you will receive, hopefully, further details of the Wooler reports before the Second Reading.

785 My thanks to the Hon. Member, Mr Braidwood, for his indication of support and, again, his comments with relation to the Wooler Report will be addressed hopefully when further details are provided. And similarly to Mr Butt.

Like Mr Butt I am a bit old in the tooth as well, and I have fond memories of Johnny Green and Mr Moyle, and having good sport with them in their role as the Government Advocate.

I thank Mr Crowe for his support. As far as his comment on the mechanics is concerned of clause 4 of the Bill, it is intended that Madam President will have complete control be it for one

790 sitting or a number of sittings. Madam President will have to be consulted and her specific consent given to the Solicitor General taking the role of the Attorney General for any sitting of Tynwald. So it is not a carte blanche proposal.

Then it is to Mr Coleman, again, to thank him for his indication of support and hopefully his concerns with reference to the Wooler Report will be addressed when he considers it.

795 The name 'Solicitor General' did cause a lot of debate. My commission and every Advocate's submission is actually as 'Advocate, Solicitor and Attorney'. Our concern was in having an Advocate General and an Attorney General we would have two AGs – and it was as simple as that. *(Interjections)*

800 So we preferred to take the second route using the second title of the appointment which we all as Advocates hold.

A Member: Good point.

The Acting Attorney General: And with that, Madam President, I would beg to move the First Reading of the Law Officers Bill 2014.

The President: The motion is that the Law Officers Bill 2014 be read for a first time. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

810 That concludes our business for this morning, Hon. Members. Council will adjourn until 25th March in this Chamber, but of course before that we have our sitting of Tynwald.

The Council adjourned at 11.49 a.m.