Lord Williams of Mostyn: My Lords, I am most grateful for that contribution from the noble Viscount

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who, after all, will have to grapple with these practical problems in the future. I have a sneaking sympathy for the robust approach adopted, as usual, by the noble Lord, Lord Campbell of Alloway. On reflection, the noble and learned Lord may think that he has been uncharacteristically acerbic in complaining about the explanation given to him.

I wrote to the noble and learned Lord fully in a three-page letter on 14th January, which gives ample time for consideration for a Report stage on 19th January. The letter included this paragraph:

> "I thought you would like to know that your amendment has occasioned a good deal of thought within the Government, and we have decided to table our own amendments in response to it. I attach a copy of these".

That lengthy letter concluded:

> "I am sorry to have written at such length. This is a difficult issue, and I wanted to give a full explanation of our reasoning".

I do not believe that that, in all conscience, exhibits any symptoms of a pathological or a psychopathological condition on my part or on the part of the noble and learned Lord the Lord Chancellor. We listened carefully to what the noble and learned Lord said. As I said earlier, we discussed things carefully. When we came to our conclusion the letter was delivered to the noble and learned Lord last Wednesday. I was not to know--pathologically or psychopathologically--that he might have had other things to occupy his attention on Thursday, Friday, Saturday and Sunday.

The noble and learned Lord might agree with me that he has been unduly and unfairly harsh. It is self evident--I say it, and I almost said, "for the last time", but no one is that fortunate--that this point will involve a balancing exercise. Article 8.1 and 8.2 will not just have to be balanced internally, they will have to be balanced, as the noble and learned Lord the Lord Chancellor has told our friends and colleagues in the media, with Article 10. They will have to be balanced--to take up an implied point put by the noble Viscount, Lord Colville of Culross--with the question of a right to a fair trial. There may be many circumstances with which he and I are well familiar in practice over the years where a fair criminal trial for one person may well involve an infringement of someone else's private confidences or family life. That is a commonplace that we all know.

There is nothing difficult about the balancing in principle. It will be an anxious task for the courts to carry out. We believe that we have the formulation right. I respectfully commend our amendments to your Lordships.

On Question, amendment agreed to.

Lord Williams of Mostyn moved Amendments Nos. 14, 15 and 16:

Page 2, line 38, leave out ("one or more of the Convention rights") and insert ("a Convention right").

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Page 2, line 43, leave out ("one or more of the Convention rights") and insert ("a Convention right").
Page 3, line 2, leave out ("one or more of the Convention rights") and insert ("a Convention right").

On Question, amendments agreed to.

Lord Hardie moved Amendment No. 17:

Page 3, line 11, leave out ("as a court of criminal appeal") and insert ("otherwise than as a trial court").

The noble and learned Lord said: My Lords, in Committee, the noble and learned Lord, Lord Mackay of Drumadoon, tabled an amendment which would have conferred on the High Court of Justiciary, sitting as a trial court, the competence to make a declaration that a provision of primary or secondary legislation was incompatible with one or more of the convention rights.

My noble and learned friend the Lord Chancellor explained that it was not the intention that any such power should be conferred on judges who preside over criminal trials. The noble and learned Lord's amendment, as well as concerns expressed separately by the noble and learned Lord, Lord Hope of Craighead, caused the Government to look again at the provision. As currently drafted, the provision would prevent the High Court of Justiciary from making declarations of incompatibility when considering applications to the nobile officium. That is not the Government's intention which is, as I have explained, only to prevent judges presiding over criminal trials from making such declarations. Amendment No. 17 accordingly provides that such declarations may be made by the High Court of Justiciary, except when it is sitting as a trial court. I beg to move.

Lord Mackay of Drumadoon: My Lords, I am grateful to the Minister for bringing forward the amendment, which meets in part the matter I raised in Committee. I suggest to the noble and learned Lord the Lord Advocate that the precedent of meeting my amendment with a government amendment is one which he would be well advised to follow in relation to a matter which we discussed earlier.

Lord Hope of Craighead: My Lords, I was among those who asked the noble and learned Lord the Lord Advocate to consider the matter again. I, too, am grateful for the amendment which is tendered. It is an important amendment. It is not commonly appreciated that there is a complete separation between the civil and criminal courts in Scotland. Judicial review as practised in Scotland extends in the civil courts to matters of a civil nature. Without the amendment, it would be difficult for the High Court of Justiciary in all its forms to cover the various situations in which questions of incompatibility might arise. I am particularly grateful for the amendment, therefore, because it will give considerable importance to the way in which criminal jurisdiction in Scotland will develop in the light of the provisions of the Bill.

On Question, amendment agreed to.

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7 p.m.

Lord Lester of Herne Hill moved Amendment No. 18:

Page 3, line 14, at end insert--
("(f) in Jersey, the Royal Court or the Court of Appeal;
(g) in Guernsey, the Royal Court or the Court of Appeal;

(h) in the Isle of Man, the High Court.").

The noble Lord said: My Lords, in moving Amendment No. 18, I shall speak also to Amendments Nos. 20, 68 and 69. The purpose of the amendments is to incorporate convention rights into the laws of the Channel Islands and the Isle of Man. Perhaps I may give a brief background. The Channel Islands and the Isle of Man enjoy a unique status as dependencies of the Crown. Although they have their own legislative assemblies and by long-established convention are responsible for the regulation of their own domestic affairs, including taxation, the United Kingdom has ultimate responsibility for their good government and is responsible for their defence and foreign relations. Citizens of the Channel Islands and the Isle of Man are British citizens.

I turn to the power to legislate for the Channel Islands and the Isle of Man. Constitutionally, there is nothing to prevent the United Kingdom Parliament from legislating for the Channel Islands and the Isle of Man. In 1973, the Royal Commission on the Constitution (Cmnd 5460) concluded that,

> "Parliament has power to legislate for the Islands and that, in some matter at least, the exercise of this power is not dependent on the Islands' consent being given. It has, however, been the practice not to legislate for the Islands without their consent on matters which are of purely domestic concern to them. There has been strict adherence to the practice over a very long period, and it is in this sense that it can be said that a constitutional convention has been established whereby Parliament does not legislate for the Islands without their consent on domestic matters".

However, the convention is limited when an international obligation--for example, incorporation of the European Convention on Human Rights--is at issue.

The Royal Commission stated, at Paragraph 1472; that,

> "despite the existence of the convention, Parliament does have power to legislate for the Islands without their consent on any matter in order to give effect to an international agreement".

It states at Paragraph 1473:

> "in the eyes of the courts, Parliament has a paramount power to legislate for the Islands in any circumstances, and we have proceeded on this assumption ... But if, exceptionally, circumstances should demand the application to the Islands without their consent of measures of a kind hitherto regarded as domestic, then Parliament would, in our view, have the power to enact the necessary legislation".

I apologise for having quoted from that document, but it is important to be clear that one is acting in accordance with constitutional convention in a matter of this kind. I submit that bringing convention rights home to British citizens of the islands is an exceptional circumstance, so that they may obtain legal redress in the courts of the islands.

I turn briefly to what the precedents show. The power to legislate for the islands has been exercised in the past. For example, the Extradition Act 1989 is extended to

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the Channel Islands as if they were part of the United Kingdom. Prerogative powers have also been exercised in relation to the Channel Islands without prior request for such exercise; for example, the prerogative of mercy and the Court of Appeal (Channel Islands) Order 1949. Similar powers have been exercised in relation to the Isle of Man. The Isle of Man Act 1979 gives effect to an agreement between the Government of the United Kingdom and the Government of the Isle of Man by which both countries have been treated as a single area for the purposes of value added tax and car tax. In 1967 the United Kingdom Parliament imposed upon the Isle of Man the Marine Broadcasting (Offences) Act by statutory instrument outlawing broadcasting from marine structures within the British islands and the contiguous sea areas.

I turn to the obligations under the European Convention on Human Rights since that is an important and relevant matter. Under Article 1 of the convention, the Government have an obligation directly to secure to everyone respect for their convention rights in the territories for which the Government have responsibility, including the Channel Islands and the Isle of Man. In the inter-state case of Ireland v. United Kingdom in 1978, the European Court of Human Rights observed:

> "By substituting the words 'shall secure' for the words 'undertake to secure' in the text of Article 1, the drafters of the Convention also intended to make it clear that the rights and freedoms set out in Section 1 would be directly secured to anyone within the jurisdiction of the Contracted States".

Although in the case of Gillow v. United Kingdom in 1989, which related to regulations preventing foreigners from occupying property they owned in Guernsey, the British Government initially stated that they had not extended Article 1 of the European Convention to Guernsey, the matter was rectified and the Government wrote to the European Commission in February 1988 confirming that Article 1 had been extended to the Bailiwicks of Guernsey and Jersey. Similarly, the European Court rejected the argument in the Tyrer case in 1978, concerning the practice of birching in the Isle of Man, that the special position of the Isle of Man could justify a difference in the application and enjoyment of convention rights to the Isle of Man.

In Written Answers on 12th January 1998 the noble Lord, Lord Williams of Mostyn, confirmed the obligation of the UK Government to ensuring that the Crown dependencies comply with the European Convention. He also confirmed that at present the courts in the Isle of Man and the Channel Islands are not required or authorised directly to provide remedies for breaches of the convention.

Finally, I turn to the discrimination in relation to legal remedies which will arise if the amendments, or something like them, are not enacted. If British citizens and others living and working in the Channel Islands and the Isle of Man are excluded from the benefits of the Bill, that itself will provide grounds for complaint under the convention of unfair discrimination in relation to legal remedies. In the Belgian Linguistic case (No. 2) in 1968, the European Court explained how Article 14 of the convention--the non-discrimination guarantee--applies with an example concerning state action in

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relation to the scope of remedies before domestic courts under Article 6. The court said that it would violate Article 6 read with Article 14,

> "were [a state] to debar certain persons from these remedies without a legitimate reason while making them available to others in respect of the same type of actions".

There seems no legitimate reason to exclude the inhabitants of the islands from the benefits of incorporation. Arguments to that effect by successive British governments have never succeeded in Strasbourg in previous cases. In the Tyrer case, a submission that the special position of the Isle of Man could justify a difference in the application and enjoyment of convention rights was rejected. The European Court said:

> "Historically, geographically and culturally, the island has always been included in the European family of nations and must be regarded as sharing fully that 'common heritage of political traditions, ideals, freedom and a rule of law' to which the Preamble of the Convention refers ... Article 63 was primarily designed to meet the fact that, when the Convention was drafted, there were still certain colonial territories whose state of civilisation did not, it was thought, permit the full application of the Convention".

Therefore, it is quite clear that the European Court has regarded those islands as falling within the area of responsibility of this country in a different way from other, as it were, colonial territories.

I hope that I have explained that there is no constitutional barrier to the extension of the Bill to the Channel Islanc

and the Isle of Man. For Parliament to fail to exercise that power, while incorporating the convention rights into UK law, would clearly expose the Government to possible action under the convention for failure to provide the citizens of those islands with the same remedies as other British citizens would enjoy once the process of incorporation is complete.

Therefore, I very much hope that the Government will feel able to accept the amendments. I add two points only. First, unless Clause 22 is amended, there will be no power for this Government or a future government to do so except by enacting further primary legislation. That seems to me to be clumsy and ineffectual as a position.

Secondly, if the noble and learned Lord the Lord Chancellor were able to indicate that the Government required further time to take soundings on this matter, I would understand that position, provided that we may return to the matter on Third Reading; otherwise it seems to me that we shall be failing properly to incorporate the convention in areas for which we are responsible and we shall expose this country to avoidable international proceedings. I beg to move.

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Lord Renton: My Lords, the noble Lord, Lord Lester of Herne Hill, has raised a delicate and uncertain constitutional point. I speak as one who, like other Members of your Lordships' House--in particular in recent times my noble friends Lady Blatch and Lord Elton--has had responsibility for watching the interests of the Channel Islands and the Isle of Man while serving in the Home Office.

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I must say that we must be very careful because, although from time to time the United Kingdom Parliament legislates on those independent territories under the Crown, they do so only when they have the agreements of the parliaments of those territories. Of course, Her Majesty has a direct responsibility for them but, by tradition, her Prime Minister and other Members of her government have been very careful not to impose obligations upon them.

I should be grateful if, in answering these amendments--and I believe it is to be the noble Lord, Lord Williams of Mostyn, which gives one great pleasure--the Minister will tell the House what consultation there has been with the Tynwald and the parliaments of Guernsey and Jersey. If they want to be aligned with the United Kingdom, of which they are not part, on these matters, so be it. But we must be very careful about it.

7.15 p.m.

Lord Monson: My Lords, as a layman and someone who has never been remotely anywhere near government, I am most hesitant to intervene. But it seems to me that it would take us down a very slippery slope if this quartet of amendments--in particular Amendment No. 69 which is the substantive amendment--were accepted.

The Channel Islands and the Isle of Man are extremely ancient jurisdictions. They are not and never have been part of the United Kingdom and they have no representation whatever at Westminster. Therefore, whatever the Royal Commission may have declared in 1973, it is surely quite wrong to interfere in their internal affairs unless there is some gross injustice crying out to be remedied, which is certainly not the case here.

Many years ago, those territories agreed of their own free will--and that is the important point--to be bound by the provisions of the European Convention on Human Rights. That surely should be enough to satisfy any reasonable person.

Lord Henley: My Lords, like my noble friend Lord Renton and the noble Lord, Lord Monson, I should like to ask not only the Government but also the noble Lord, Lord Lester, when he comes to respond, what consultations have taken place with the various island governments responsible in this regard.

The noble Lord argued that the consent of the islands is not necessary. I believe that the noble Lord, Lord Monson, expressed the matter much more effectively when he said that even if, in strict law, their consent was not necessary, in all humanity they should be consulted and their consent should be obtained.

I have one further question for the noble Lord which relates to the first amendment in this group; namely, Amendment No. 18. As I understand it, that relates to the various courts of appeal in the three territories mentioned. Am I right to understand that it would allow, for example, the court of appeal in Guernsey to make a

declaration of incompatibility in relation to legislation coming from this Parliament? Would it be possible for

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the court of appeal in Guernsey to say that legislation relating to, for example, the outlawing of off-shore trusts, something which we have been promised by this Government, could be in breach of their human rights? I should like an answer on that point from the noble Lord, Lord Lester, and also from the noble Lord who speaks for the Government on this occasion.

Lord Williams of Mostyn: My Lords, a diplomatic deafness overtook me when the noble Lord directed his question, I think it was, to the noble Lord, Lord Lester; but I probably misheard.

I am most grateful to the noble Lord, Lord Lester of Herne Hill, for the way in which he has moved the amendment. He has correctly identified, as have other noble Lords, the constitutional position of the Channel Islands and the Isle of Man. It is a fact that there is a great reservoir of ignorance about the true constitutional arrangements between the Channel Islands, the Isle of Man and the United Kingdom. The noble Lord, Lord Renton, and latterly the noble Earl, Lord Ferrers, the noble Baroness, Lady Blatch, and now I--I am sorry, my amnesia was unintended but I forgot the noble Lord, Lord Elton--have all had responsibility for dealing with the Channel Islands. The fact is that they are independent jurisdictions and are extremely and understandably astute that their interests be properly considered; that they be properly consulted; and that every due regard be given to their views. Dare I say, in this evening's context, that that is one of their human rights?

Generally speaking, I do not disagree with the constitutional analysis put forward by the noble Lord, Lord Lester of Herne Hill. The Crown is ultimately--and I stress the word ultimately--responsible for the good government of the islands. We have full power in principle to legislate for the islands, but it is a fact that it would be contrary to constitutional conventions to which all governments of whatever political complexion have adhered for the power to be used in the ordinary course of events without the agreement of the island governments. I respectfully take the points made by the noble Lord; Lord Monson, but they have their own systems of government and are not represented at Westminster in matters which are entirely domestic to the islands. In extremis, we could take that power but we do not regard these circumstances as appropriate for the power to be taken. We prefer to work by co-operation, as did previous governments.

Enabling provisions are included in published Bills only after full consultation with the island governments. Similarly, any orders that the islands subsequently agree should be made are drafted in consultation with the island authorities. Many noble Lords asked, perfectly properly, whether Her Majesty's Government had consulted with the appropriate island governments. The answer is an unambiguous yes. All three stated categorically that they did not wish the Human Rights Bill to be extended to them in the way proposed by the noble Lord, Lord Lester of Herne Hill. All of them said no, and they were quite categoric in that respect.

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I respectfully suggest that we ought not to force different arrangements upon them when they have expressed themselves so firmly.

However, it is right that the Isle of Man authorities have announced their intention to introduce insular legislation. I say that knowing that I might be derided but I believe it to be the correct adjective. That insular legislation--it being an island, after all--would give effect to the convention on the islands. They have taken that view. The authorities in the Channel Islands do not intend to take that step for the present, but it is not ruled out for the future.

The Government's position is quite plain. We have our obligations. We have our obligations under the convention. We have consulted the islands fully and have our obligations to consider their views. We have done so, and have come to the conclusion that we ought not to accede to the proposals made by the noble Lord, Lord Lester of Herne Hill.

I am most grateful for the support expressed from various quarters of your Lordships' House. We are dealing with delicate matters and there are sensibilities involved which must properly be attended to and taken into consideration. We believe that the stance we have adopted is the correct one, bearing in mind the conventional history of the relationships between the United Kingdom and three islands which have their own distinct traditions, their own separate views and their own discrete legislatures.

Lord Lester of Herne Hill: My Lords, perhaps the Minister could deal with one matter that I raised. I refer to the problem that if we give remedies to British citizens in the UK but do not give the same remedies to British citizens living in the Isle of Man or in the Channel Islands on the basis of the courts' case law, which I quoted all too extensively, we will be in breach of Article 14 of the convention, read with Article 6, for discriminating in the provision of remedies in the determination of convention rights. The course that I take will depend very much on the answer that I receive to that question.

Lord Williams of Mostyn: No, my Lords, with the greatest of respect we do not accept that argument because there is no discrimination: the jurisdictions are different. Therefore, one is not comparing like with like. We do not believe that we would be in default of our Article 14 obligations. I fully recognise the noble Lord's interest in these different jurisdictions, especially recently in the Isle of Man. Therefore, I dare say it is a kind of gratification to him to know that the Isle of Man has decided to legislate internally on the lines that I suggested.

Baroness Blatch: My Lords, before the Minister sits down, perhaps he will answer one further question. Does he agree that the arguments that have been deployed in response to the amendments--all of which I agree with wholeheartedly--would also be pertinent to the Scottish amendments that we discussed earlier on the Church and those which are to follow? Surely, the arguments are exactly the same.

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Lord Williams of Mostyn: My Lords, the arguments are not remotely the same. Indeed, they are utterly distinct. One is to do with the 1922 settlement of the Church of Scotland which is an Act of Parliament. As my noble and learned friend the Lord Advocate said--and he is always right on these occasions--that remains wholly intact. Th question of introducing convention rights into the Isle of Man, Guernsey, Sark, Brechou and Jersey has nothing a. all to do with the position of the Church of Scotland. I venture to suggest that, were I to ask the wife of my noble and learned friend the Lord Advocate, who is an Elder of the Church of Scotland, whether she lays awake at night worrying about the position of the Channel Islands and whether to have any necessary or sensible connection with them, I think that the answer would be, no.

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Lord Lester of Herne Hill: My Lords, I am most grateful to the Minister and all noble Lords who have taken part in this short but important debate. My starting point is that of course there should be effective consultation. I am glad to hear that there has been. I am also glad to hear that the authorities in the Isle of Man have shifted in the way outlined. However, the Channel Islands remain. They have already caused this country to be held to be in breach of the convention in one case. When one is talking about fundamental human rights and freedoms anchored in an international treaty where the UK has international responsibility for breaches of the rights of British citizens in the Channel Islands, as well as in the Isle of Man, I can see no answer to the point that there is a difference of treatment made in the protection of access to courts for enforcing convention rights as between the islands and the mainland.

I turn now to the arguments about distinct traditions and local circumstances. This is an argument which one has heard time and again in the human rights field in this country and beyond. Indeed, we heard that argument in Northern Ireland in the Dudgeon case where the UK was forced to change the criminal law so as to give equality of treatment to homosexuals. We had the same argument with regard to corporal punishment in Scotland; namely, that there was a different tradition there. In each case the UK Parliament was compelled to legislate, and the same would apply to breaches in the Channel Islands.

I turn now to the courts in the Channel Islands which, in answer to the noble Lord, Lord Henley, would not have the power under my amendments to strike down Acts of the Westminster Parliament, any more than the Scottish courts will have the power to do so under the devolution legislation. I have not heard any arguments to suggest that those courts are not capable of providing effective remedies for breaches of the convention. As the rights of British citizens are at stake, it seems to me that the same rights and obligations should apply across the mainland and the offshore islands.

I have quoted the Royal Commission under the chairmanship of the late Lord Kilbrandon indicating that where an international agreement is concerned special considerations are involved. It is in respect for the

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citizens of those islands, and not through any disrespect to them, that I believe they should have equal protection. For that reason, I wish to test the opinion of the House.

7.28 p.m.

On Question, Whether the said amendment (No. 18) shall be agreed to?

Their Lordships divided: Contents, 32; Not-Contents, 176.

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Resolved in the negative, and amendment disagreed to accordingly.

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7. 38 p.m.

Lord Hoyle: My Lords, I beg to move that further consideration on Report be now adjourned. In moving the Motion, perhaps I may suggest that Report stage does not begin again before 8.38 p.m.

Lord Simon of Glaisdale: My Lords, perhaps I may ask how late we are expected to sit this evening.

Lord Hoyle: My Lords, the answer is that we do not know at this stage.

Lord Simon of Glaisdale: My Lords, perhaps I may ask how soon the noble Lord will know.

Lord Hoyle: My Lords, when we adjourn depends to a large extent on your Lordships. At this stage we cannot give any indication.

Moved accordingly, and, on Question, Motion agreed to.

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Lloyds TSB Bill [H.L.]

7.40 p.m.

Baroness Hooper: My Lords, I beg to move that this Bill be now read a third time.

Since the merger between the TSB Group and Lloyds Bank in December 1995, the banking activities of the two organisations have been carried on separately. The need to have a Private Bill arises out of the fact that the bank may not transfer a customer's money to another body without the consent of the customer. Only through this me: can a bank's operations be merged without going through the massive administrative task and the uncertainty of

The First Deputy Chairman: Order. There are so many conversations going on that I cannot hear the Minister.

Mr. Hoon: Opposition Members have been anxiously awaiting these observations. I am sorry that they appear to find them less than exciting.

It is important that we deal properly with incompatibility and the declaration that might follow. Amendment No. 103 simply does not deal with it, and has no place in the scheme that we have established in clause 4.

The Government believe that this group of amendments is fundamentally misconceived. I do not believe that the amendments have been read carefully by Opposition Members. I therefore invite the hon. and learned Member for Harborough to seek leave to withdraw amendment No. 15.

Mr. Garnier: I am grateful for this brief opportunity to respond to some of the points made in this debate, particularly those made by my right hon. and hon. Friends.

In a considered and cogent speech, my right hon. Friend the Member for Suffolk, Coastal (Mr. Gummer) produced four reasons why this group of amendments should be supported: in defence of the people; in defence of the Government; in defence of the House; and in defence of the courts. Nothing that has fallen from the Minister's lips has done anything to persuade either me or my right hon. and hon. Friends that the arguments in favour of the amendments have been in any way defeated.

The right hon. Member for Caithness, Sutherland and Easter Ross (Mr. Maclennan) hides within his gentle exterior a waspish tongue. I am not in the least bit surprised that his nickname across the county that he represents is "Tiger". Despite his waspish tongue, he did not say anything to knock our arguments on the head one jot. The substance of his complaint was that the language of amendment No. 15 was confusing. That is a matter for him, but it seems pretty clear to us.

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My hon. Friends the Members for Vale of York (Miss McIntosh) and for Woking (Mr. Malins) spoke with experience of membership of the House and, in the case of my hon. Friend the Member for Vale of York, as a Member of the European Parliament and Scottish law graduate, and, in the case of my hon. Friend the Member for Woking, as a recorder and stipendiary magistrate, with practical experience of the judicial function. Both realise the dangers of breaking down the barriers separating two of the three limbs of our constitution. My hon. Friend the Member for Woking also very carefully suggested that the incompatibility which is to be declared under clause 4 must be properly particularised. Nothing has been said by the Minister to dissuade me from the rightness of that argument.

I am happy to say that my hon. Friend the Member for Aldershot (Mr. Howarth) gave a characteristically robust performance. He was certainly not put off his stride by some of the interventions with which he dealt so expertly.

My hon. Friend the Member for Beaconsfield (Mr. Grieve) has become a noted star of our debates on both the Human Rights Bill and the other constitutional issues with which he has had to deal. He supported amendment No. 15 from the interesting position of someone who supports incorporation. He deserves to be listened to with

particular attention. It is perhaps worth reminding the Minister of a point that he mentioned--the European Court of Human Rights does not distinguish between obiter dicta and the ratio of a judgment.

The Minister promised much, but delivered nothing. He is complacent. He is always complacent--on this subject and on others--about the prospect of a constitutional collision about which we have warned. He displayed a touching faith in his own rhetoric, without understanding what has been going on in this debate. Not a single argument that he advanced has persuaded me or my hon. Friends that the matter should be left to lie. I invite my hon. Friends to join me in the Lobby in supporting the amendment.

Question put, That the amendment be made:--

The Committee divided: Ayes 128, Noes 320.

Division No. 292

[10.8 pm

AYES

Ainsworth, Peter *(E Surrey)*
Amess, David
Ancram, Rt Hon Michael
Atkinson, David *(Bour'mth E)*
Atkinson, Peter *(Hexham)*
Beggs, Roy
Bercow, John
Beresford, Sir Paul
Blunt, Crispin
Body, Sir Richard
Boswell, Tim
Bottomley, Peter *(Worthing W)*
Bottomley, Rt Hon Mrs Virginia
Brady, Graham
Brooke, Rt Hon Peter
Browning, Mrs Angela
Bruce, Ian *(S Dorset)*
Butterfill, John
Chapman, Sir Sydney *(Chipping Barnet)*
Chope, Christopher
Clappison, James
Clifton-Brown, Geoffrey
Colvin, Michael
Cormack, Sir Patrick
Cran, James
Curry, Rt Hon David
Davies, Quentin *(Grantham)*
Davis, Rt Hon David *(Haltemprice)*
Day, Stephen
Dorrell, Rt Hon Stephen
Duncan, Alan
Duncan Smith, Iain
Evans, Nigel
Faber, David
Fabricant, Michael
Fallon, Michael
Flight, Howard
Forsythe, Clifford
Forth, Rt Hon Eric
Fox, Dr Liam
Fraser, Christopher
Gale, Roger
Garnier, Edward
Gibb, Nick
Gillan, Mrs Cheryl
Gray, James
Greenway, John
Grieve, Dominic
Gummer, Rt Hon John
Hague, Rt Hon William
Hamilton, Rt Hon Sir Archie
Hammond, Philip
Heald, Oliver
Hogg, Rt Hon Douglas
Horam, John
Howard, Rt Hon Michael
Howarth, Gerald *(Aldershot)*

Hunter, Andrew
Jack, Rt Hon Michael
Jackson, Robert *(Wantage)*
Jenkin, Bernard
Johnson Smith,
Rt Hon Sir Geoffrey
Laing, Mrs Eleanor
Lait, Mrs Jacqui
Lansley, Andrew
Leigh, Edward
Letwin, Oliver
Lewis, Dr Julian *(New Forest E)*
Lidington, David
Lilley, Rt Hon Peter
Lloyd, Rt Hon Sir Peter *(Fareham)*
Loughton, Tim
MacGregor, Rt Hon John
McIntosh, Miss Anne
Maclean, Rt Hon David
McLoughlin, Patrick
Major, Rt Hon John
Malins, Humfrey
Maples, John
Mates, Michael
Maude, Rt Hon Francis
Mawhinney, Rt Hon Sir Brian
May, Mrs Theresa
Moss, Malcolm
Nicholls, Patrick
Norman, Archie
Paice, James
Paterson, Owen
Pickles, Eric
Prior, David
Randall, John
Robathan, Andrew
Robertson, Laurence *(Tewk'b'ry)*
Roe, Mrs Marion *(Broxbourne)*
Ross, William *(E Lond'y)*
Ruffley, David
St Aubyn, Nick
Sayeed, Jonathan
Shephard, Rt Hon Mrs Gillian
Simpson, Keith *(Mid-Norfolk)*
Smyth, Rev Martin *(Belfast S)*
Spelman, Mrs Caroline
Spicer, Sir Michael
Spring, Richard
Stanley, Rt Hon Sir John
Steen, Anthony
Swayne, Desmond
Syms, Robert
Tapsell, Sir Peter
Taylor, Ian *(Esher & Walton)*
Taylor, John M *(Solihull)*
Taylor, Sir Teddy
Townend, John
Tredinnick, David
Trend, Michael
Tyrie, Andrew
Viggers, Peter
Walter, Robert
Wardle, Charles
Waterson, Nigel
Whittingdale, John
Widdecombe, Rt Hon Miss Ann
Wilkinson, John
Willetts, David
Winterton, Mrs Ann *(Congleton)*
Woodward, Shaun
Yeo, Tim
Young, Rt Hon Sir George

Tellers for the Ayes:

Sir David Madel and
Mr. Tim Collins.

NOES

Adams, Mrs Irene *(Paisley N)*

Ainger, Nick
Allan, Richard
Allen, Graham
Anderson, Donald *(Swansea E)*
Anderson, Janet *(Rossendale)*
Armstrong, Ms Hilary
Ashton, Joe
Austin, John
Ballard, Jackie
Barnes, Harry
Barron, Kevin
Battle, John
Bayley, Hugh
Beard, Nigel
Beckett, Rt Hon Mrs Margaret
Begg, Miss Anne
Bennett, Andrew F
Benton, Joe
Bermingham, Gerald
Berry, Roger
Best, Harold
Betts, Clive
Blackman, Liz
Blears, Ms Hazel
Blizzard, Bob
Boateng, Paul
Bradley, Keith *(Withington)*
Bradley, Peter *(The Wrekin)*
Bradshaw, Ben
Brake, Tom
Brand, Dr Peter
Breed, Colin
Brinton, Mrs Helen
Brown, Rt Hon Nick *(Newcastle E)*
Brown, Russell *(Dumfries)*
Browne, Desmond
Buck, Ms Karen
Burden, Richard
Burgon, Colin
Burnett, John
Burstow, Paul
Butler, Mrs Christine
Byers, Stephen
Caborn, Richard
Campbell, Alan *(Tynemouth)*
Campbell, Mrs Anne *(C'bridge)*
Campbell-Savours, Dale
Cann, Jamie
Casale, Roger
Chapman, Ben *(Wirral S)*
Chaytor, David
Chisholm, Malcolm
Clapham, Michael
Clark, Dr Lynda
(Edinburgh Pentlands)
Clark, Paul *(Gillingham)*
Clarke, Tony *(Northampton S)*
Clelland, David
Clwyd, Ann
Coaker, Vernon
Coffey, Ms Ann
Coleman, Iain
Colman, Tony
Connarty, Michael
Cooper, Yvette
Corston, Ms Jean
Cotter, Brian
Cousins, Jim
Cranston, Ross
Crausby, David
Cryer, Mrs Ann *(Keighley)*
Cummings, John
Cunningham, Jim *(Cov'try S)*
Dalyell, Tam
Darling, Rt Hon Alistair
Davey, Edward *(Kingston)*
Davey, Valerie *(Bristol W)*
Davidson, Ian
Davies, Rt Hon Denzil *(Llanelli)*
Davies, Geraint *(Croydon C)*
Davies, Rt Hon Ron *(Caerphilly)*
Davis, Terry *(B'ham Hodge H)*
Dean, Mrs Janet
Denham, John
Dismore, Andrew
Dobbin, Jim
Donohoe, Brian H

Doran, Frank
Drew, David
Dunwoody, Mrs Gwyneth
Eagle, Angela *(Wallasey)*
Eagle, Maria *(L'pool Garston)*
Edwards, Huw
Efford, Clive
Ellman, Mrs Louise
Ennis, Jeff
Fatchett, Derek
Field, Rt Hon Frank
Fisher, Mark
Fitzsimons, Lorna
Flint, Caroline
Flynn, Paul
Foster, Rt Hon Derek
Foster, Don *(Bath)*
Foster, Michael Jabez *(Hastings)*
Foster, Michael J *(Worcester)*
Foulkes, George
Fyfe, Maria
Galbraith, Sam
Gapes, Mike
Gardiner, Barry
Gerrard, Neil
Gilroy, Mrs Linda
Godman, Dr Norman A
Goggins, Paul
Gorrie, Donald
Griffiths, Jane *(Reading E)*
Griffiths, Nigel *(Edinburgh S)*
Griffiths, Win *(Bridgend)*
Grocott, Bruce
Grogan, John
Gunnell, John
Hall, Patrick *(Bedford)*
Hamilton, Fabian *(Leeds NE)*
Hancock, Mike
Hanson, David
Heal, Mrs Sylvia
Henderson, Ivan *(Harwich)*
Hepburn, Stephen
Heppell, John
Hewitt, Ms Patricia
Hill, Keith
Hinchliffe, David
Hoey, Kate
Home Robertson, John
Hoon, Geoffrey
Hope, Phil
Hopkins, Kelvin
Howarth, Alan *(Newport E)*
Howarth, George *(Knowsley N)*
Hoyle, Lindsay
Hughes, Ms Beverley *(Stretford)*
Hughes, Kevin *(Doncaster N)*
Hughes, Simon *(Southwark N)*
Humble, Mrs Joan
Hutton, John
Iddon, Dr Brian
Illsley, Eric
Jackson, Helen *(Hillsborough)*
Jamieson, David
Jenkins, Brian
Johnson, Alan *(Hull W & Hessle)*
Johnson, Miss Melanie
(Welwyn Hatfield)
Jones, Barry *(Alyn & Deeside)*
Jones, Ms Jenny
(Wolverh'ton SW)
Jones, Jon Owen *(Cardiff C)*
Jones, Dr Lynne *(Selly Oak)*
Jones, Martyn *(Clwyd S)*
Jowell, Ms Tessa
Kaufman, Rt Hon Gerald
Keeble, Ms Sally
Keen, Alan *(Feltham & Heston)*
Keen, Ann *(Brentford & Isleworth)*
Keetch, Paul
Kennedy, Jane *(Wavertree)*
Khabra, Piara S
Kidney, David
King, Andy *(Rugby & Kenilworth)*
Kingham, Ms Tess
Ladyman, Dr Stephen
Lepper, David
Leslie, Christopher

Levitt, Tom
Lewis, Ivan *(Bury S)*
Liddell, Mrs Helen
Linton, Martin
Livingstone, Ken
Livsey, Richard
Llwyd, Elfyn
Lock, David
Love, Andrew
McAllion, John
McAvoy, Thomas
McCabe, Steve
McCafferty, Ms Chris
Macdonald, Calum
McDonnell, John
McFall, John
McGuire, Mrs Anne
Mackinlay, Andrew
Maclennan, Rt Hon Robert
McNamara, Kevin
McNulty, Tony
Mactaggart, Fiona
McWalter, Tony
McWilliam, John
Mahon, Mrs Alice
Mallaber, Judy
Marsden, Gordon *(Blackpool S)*
Marshall, David *(Shettleston)*
Marshall-Andrews, Robert
Martlew, Eric
Maxton, John
Meacher, Rt Hon Michael
Meale, Alan
Merron, Gillian
Michael, Alun
Milburn, Alan
Miller, Andrew
Mitchell, Austin
Moffatt, Laura
Moonie, Dr Lewis
Moore, Michael
Moran, Ms Margaret
Morgan, Ms Julie *(Cardiff N)*
Morgan, Rhodri *(Cardiff W)*
Morley, Elliot
Morris, Ms Estelle *(B'ham Yardley)*
Mudie, George
Mullin, Chris
Murphy, Jim *(Eastwood)*
Murphy, Paul *(Torfaen)*
Norris, Dan
Oaten, Mark
O'Brien, Bill *(Normanton)*
Olner, Bill
O'Neill, Martin
Osborne, Ms Sandra
Palmer, Dr Nick
Pearson, Ian
Pickthall, Colin
Pike, Peter L
Plaskitt, James
Pollard, Kerry
Pond, Chris
Pope, Greg
Pound, Stephen
Powell, Sir Raymond
Prentice, Ms Bridget *(Lewisham E)*
Prentice, Gordon *(Pendle)*
Prescott, Rt Hon John
Primarolo, Dawn
Purchase, Ken
Quin, Ms Joyce
Quinn, Lawrie
Radice, Giles
Rammell, Bill
Rapson, Syd
Raynsford, Nick
Reed, Andrew *(Loughborough)*
Rendel, David
Roche, Mrs Barbara
Rooker, Jeff
Ross, Ernie *(Dundee W)*
Rowlands, Ted
Roy, Frank
Ruddock, Ms Joan
Russell, Bob *(Colchester)*
Russell, Ms Christine *(Chester)*

Ryan, Ms Joan
Salter, Martin
Sawford, Phil
Sedgemore, Brian
Shaw, Jonathan
Sheldon, Rt Hon Robert
Simpson, Alan *(Nottingham S)*
Singh, Marsha
Skinner, Dennis
Smith, Angela *(Basildon)*
Smith, Miss Geraldine
(Morecambe & Lunesdale)
Smith, Llew *(Blaenau Gwent)*
Smith, Sir Robert *(W Ab'd'ns)*
Soley, Clive
Southworth, Ms Helen
Spellar, John
Squire, Ms Rachel
Starkey, Dr Phyllis
Steinberg, Gerry
Stevenson, George
Stewart, David *(Inverness E)*
Stewart, Ian *(Eccles)*
Stinchcombe, Paul
Stoate, Dr Howard
Stott, Roger
Straw, Rt Hon Jack
Stringer, Graham
Stuart, Ms Gisela
Stunell, Andrew
Sutcliffe, Gerry
Taylor, Rt Hon Mrs Ann
(Dewsbury)
Taylor, Ms Dari *(Stockton S)*
Taylor, David *(NW Leics)*
Taylor, Matthew *(Truro)*
Thomas, Gareth *(Clwyd W)*
Timms, Stephen
Tipping, Paddy
Touhig, Don
Trickett, Jon
Truswell, Paul
Twigg, Derek *(Halton)*
Vaz, Keith
Vis, Dr Rudi
Walley, Ms Joan
Ward, Ms Claire
Wareing, Robert N
Watts, David
White, Brian
Wicks, Malcolm
Wigley, Rt Hon Dafydd
Williams, Rt Hon Alan
(Swansea W)
Williams, Alan W *(E Carmarthen)*
Willis, Phil
Wills, Michael
Winnick, David
Winterton, Ms Rosie *(Doncaster C)*
Wood, Mike
Woolas, Phil
Worthington, Tony
Wright, Anthony D *(Gt Yarmouth)*
Wright, Dr Tony *(Cannock)*

Tellers for the Noes:

Mr. Robert Ainsworth and
Mr. Jim Dowd.

Question accordingly negatived.

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Mr. Austin Mitchell (Great Grimsby): I beg to move amendment No. 107, in page 3, line 24, at end insert--

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'(f) in Jersey, the Royal Court or the Court of Appeal;
(g) in Guernsey, the Royal Court or the Court of Appeal;
(h) in the Isle of Man, the High Court'.

The First Deputy Chairman: With this, it will be convenient to discuss the following amendments: No. 108, in clause 5, page 3, line 40, after 'Scotland', insert

', the Channel Islands or the Isle of Man'.

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No. 109, in clause 21, page 13, line 34, at end insert--
'( ) law passed by the legislature of any of the Channel Islands or of the Isle of Man'. No. 110, in clause 22, page 14, line 22, at end insert--

'(6A) This Act extends to the Channel Islands and the Isle of Man, and shall have effect as if each of them were part of the United Kingdom.'.

Mr. Mitchell: The amendments would extend incorporation of the European convention to the Isle of Man and the Channel Islands. I suppose that the only phrase to describe them is "semi-independent statelets", but they have a unique status as dependencies of the Crown, too. They are Britain's offshore anomalies, because, although they are responsible for their own domestic law, financial affairs and tax regimes, the United Kingdom has the overall responsibility for good government in the islands. The United Kingdom can legislate for the islands; it has the paramount power to do so. However, in practice, it does not do so except on matters involving international treaties and international agreements--such as the incorporation of the European convention on human rights, which we signed on their behalf at the outset. Paragraph 1472 of the Kilbrandon commission's report on the constitution, dated 1973, said:

> "Parliament does have power to legislate for the Islands without their consent on any matter in order to give effect to an international agreement"-- such as the European convention on human rights. The power was used in relation to the Extradition Act 1989, which was extended to the Channel Islands as if they were part of the United Kingdom, and also in connection with the Marine, etc., Broadcasting (Offences) Act 1967, which was effectively imposed on the Isle of Man. The British Government's power to legislate is appropriate, as they have the responsibility to ensure that rights are maintained in the islands. Moreover, the British Government have to answer cases brought to Strasbourg about infringements of rights on the islands--we signed the convention on the islands' behalf. Indeed, in the birching case, the European Court ruled that convention rights applied to the Isle of Man. My argument is that the convention should be incorporated not only into British law but into the law of the islands. Rights should be protected in these small democracies and dependencies, which are intimate and closed--they are, in many respects, living loopholes from the 20th century. There is no real party democracy that could make the legislature accountable, no open government and no base for dissent. The islands have their own tax regimes, which must cost our Exchequer billions of pounds in lost revenues. They do not have clear, powerful, effective financial regulations--they have become little offshore entrepots for the manipulation of money. Powers are not separated: in Jersey, for example, the Bailiff--the Lord Chancellor--is also the Speaker of the States, the Attorney-General and the Solicitor-General sit in the States and there is no independent Director of Public Prosecutions. Women have no employment or benefits rights. The islands have all the intimacies and pressures of any small community--they are like Salem without the witches. In Jersey, which is the richest of them, power is, in effect, controlled by the wealthy island elite--the island

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establishment--which has a vested interest in providing services to finance. Many members of the elite are business men or maintainers of name plates for incoming companies; many are involved with Jersey banks and the offshoots of other banks in Jersey that manipulate money. The elite controls power through the parliamentary institutions. It also controls the media--Senator Walker owns the *Jersey Evening Post*, which is, therefore, hardly likely to be a vibrant source of dissent. The islands have been humorously described--by me--as one-party states run by the freemasons. There are no parties and no opposition, so the regimes are cloying and potentially corrupt, because, in Jersey in particular, the governing elite does so well out of the provision of facilities for financial services, which give such a rich living--£200 billion is handled in the Jersey banks and financial institutions, and financial services provide more than 50 per cent. of the gross domestic product of Jersey. If the people who control political power are also involved in the financial system, that system will be run for their interests and for those of the offshore capitalism that washes through, but leaves little residue for the people of the islands--there is no great trickle-down effect for the mass of the people. It is also possible that they will use their power to control legislation to further their own interests. In other words, legislation could be effectively up for sale. They resent any interference by the British Government or any attempt to control what is going on or to demand stricter regulation or a more effective tax regime. Two years ago, however, they were perfectly prepared to intervene in the financial affairs of the United Kingdom in respect of limited liability partnerships. Big accountancy firms, terrified of lawsuits resulting from bad audits, were lobbying the British Government, who were then of another party, to give them limited liability status. Rather than becoming joint stock companies as they were given the power to do under the Companies Act 1989--

The First Deputy Chairman: Order. I am very interested in what the hon. Gentleman has to say, but it does not fall within the scope of the amendments. He is talking about the status of the islands rather than the courts. The hon. Gentleman knows better than I do how to handle the amendments.

10.30 pm

Mr. Mitchell: Amendment No. 107 would extend the incorporation of the convention into the islands' legislation. Rights are threatened by the dominance of the financial interests. Those rights can best be protected by the incorporation of the convention.

A row that resulted in a real threat to rights in Jersey was caused by the attempt two years ago to interfere in the United Kingdom financial system in respect of limited liability partnerships in Jersey. Effectively, two accountancy houses bought legislation in Jersey to limit liability. The legislation was drawn up by a London barrister at a cost of £1 million, and was promised a fast-track passage into law by the Jersey States. They sought to interfere here, as the idea was that they would force the British Government to follow suit. The protest against the rapid passage of that legislation resulted in a threat to the rights of Senator Syvaret, whose case is an illustration of the need to incorporate the convention into the legislation of the islands.

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Any threat to intervene there is bitterly resented. The establishment in Jersey tries to maintain good relations with the Minister--usually a peer at the Home Office--who is richly and lavishly entertained. One establishment talks rhubarb to another establishment. Not satisfied with that, it employs extensive public relations advice, which is appropriate to the modern world of spin doctors and public relations.

The Max Clifford of Jersey is the Shandwick public affairs consultancy, which was paid £225,000 until the row over limited liability partnerships, when its fee was upped by another £200,000, so nearly £500,000 was paid out of the taxes of the people of Jersey to defend the interests of the elite. That involved all sorts of activities, which I shall not go into as they would divert me from the incorporation of the convention on human rights into the laws of Jersey.

However, I should mention in passing that part of the £500,000 that was spent on public relations as a result of the row over limited liability partnerships was paid in writing letters to me. Shandwick reported to the Jersey States about my article, saying:

"I have ensured that Labour party key people have been briefed on the Jersey line"--

which was against me. It continued:

"Mr. Mitchell is regarded as being a liability by the Labour party".

I am sure that my right hon. Friend will want to assure the people of Jersey that that is not the case, and that I am indeed regarded as an asset by the Labour party.

Mr. Straw: I give my very old and honourable Friend that categorical assurance.

Mr. Mitchell: I am most grateful to my right hon. Friend. That stage-managed intervention gives me a great deal of pleasure.

In contrast to what was said about me, it was said about my hon. Friend the Member for North Durham (Mr. Radice):

"He is not likely to be made a member of the Government but I think he is worth targeting because of his level of knowledge and because he is still listened to by those in senior positions."

That is picking and choosing in the Labour party, but it is part of public relations--*[Interruption.]* I am leaving the topic.

I want to deal with the abridgement of rights that resulted from the attempt to limit liability for partnerships of accountancy houses, which was passed, under the fast-track procedure, by the Jersey States. The problem is that, when the elite feels threatened--when there is a threat to its vested financial interests and the provision of services--whether it be by the British Government or by critics in this country, it is prepared to use all the power and resources at its disposal to beat off that threat, whether it is internal or external. That often produces abridgements of rights, which are endemic in a system where there is no separation of powers; where the Executive is also the legislature; where there is no meaningful opposition; and where there is no protection of rights.

I have already referred to the lack of protection of the rights of women. I was told in a telephone conversation today that a man in Sark still has the right to beat his

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wife, provided that the stick is thinner than his thumb and he does not draw blood. I do not want to provoke a rush of public school Conservatives wanting to settle in the island as a result of that revelation, but it is a sign of the feudal nature of the regime in Sark and the abuses of rights that it produces. The newspapers cite numerous instances of that.

In Guernsey, not long ago, there was the case of three men being locked up over a bank holiday without trial. The case did not come to court until five months later, and they were acquitted. A construction worker on the island of Brecqhou who was arrested in a drugs case was taken from Guernsey to Sark and charged, probably in the wrong jurisdiction, subjected to a trial in French--a language that he did not speak--and then told by a lawyer on the telephone, "You might as well plead guilty and get it over with." His rights were abridged.

There is the case of the Barclay brothers, the owners of *The Scotsman*. It involved an abridgement of rights. David Barclay wrote to me saying:

"I have discovered by bitter experience over the past three or four years, and to my immense cost, the lack of natural justice and democratic rights in the Bailiwick of Guernsey and the island of Sark".

He said that, on Sark:

"The Seigneur is the head of the Chief Pleas, Sark's Parliament, which is made up of 40 unelected members and he collects a thirteenth of the price of every property purchased on the island. This money is for his own personal benefit"--

it is a marvellous racket--

"and serves no economic benefit whatsoever to the community. He appoints the Seneschal; he appoints the Prevot (Sheriff); he appoints the Greffier; he appoints the Treasurer and he approves the Constable."

What defence of rights is there in such a situation?

David Barclay continued:

"The previous owner of Brecqhou"--

which the Barclay brothers now own--

"was forced into a legal dispute to establish rightful ownership of the island under the feudal laws of primogeniture."

There was a long dispute over which court applied--Sark or Guernsey. The case was referred to Guernsey, but after six years it remained unresolved. The owner was told that the court case could go on for another six years. Justice denied is a loss of rights. There is no appeal; there is no check on that sort of excess, which is now affecting the Barclay brothers. That is an appalling situation. The Barclay brothers are wealthy enough to take care of themselves, but it is difficult to do so when there is no protection for rights.

The case of Senator Syvaret arose from limited liability partnerships. When a Bill was rushed through the Jersey States, he drew attention to a conflict of interest by pointing out that Senator Reg Jeune was part of Mourant, du Feu and Jeune, which was acting for Price Waterhouse and Ernst and Young in trying to pass the Bill. There is a fascinating precedent in that Bill, which we could observe. The introduction expresses Jersey's indebtedness to Ernst and Young and Price Waterhouse for writing the Bill. Perhaps we could have sponsored legislation, too. It is a marvellous system.

Thus the Bill was being handled by Mourant, du Feu and Jeune, while Senator Jeune was urging its speedy passage. When Senator Syvaret drew attention to that

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conflict of interest, he was suspended indefinitely, unless he withdrew his remarks and apologised. He was deprived of his rights as a legislator, and his constituents were deprived of representation. Basic rights were denied, and there was no appeal.

Appeals to the Home Office Minister then responsible produced no result. I tabled an early-day motion that was well supported, and which produced a change of heart in Jersey. Senator Syvaret was allowed back without making an apology. They huddled him in by the back door. He is involved in a legal action over the deprivation of his rights, so that the case can go to Strasbourg, but that will remain a long, difficult road unless we incorporate the convention into the laws of all the islands, as my amendments would do.

We have the power to do that, and we have a moral obligation to do it. If we do not, in my view, and in the view of lawyers whom I have read, we shall be in breach of article 14 of the convention, if it is read alongside article 6. We are responsible for the islands, and when Senator Syvaret's case reaches Strasbourg, it will be titled Syvaret *v.* the United Kingdom. What formidable odds the senator from little Jersey faces as he takes on the entire United Kingdom. We are responsible for derelictions of rights in the islands, and we have a right to act under the external

agreement. The royal commission on the constitution of 1973 made that explicit.

My right hon. Friend the Home Secretary is a canny man. Perhaps he is doing a nice guy, nasty guy routine, and he might portray me as a mean, moody monster who threatens the independence and integrity of the islands. My right hon. Friend knows that that is not my nature; I am warm and cuddly, and I have a vacuous smile for all, as any new Labour politician must. To portray me as some kind of brute or monster, trampling on the freedom of the islands, would be wrong.

I know--I have read it in the papers, and I have been handed letters that confirm it--that the fact that the amendments were tabled encouraged the Under-Secretary, Lord Williams of Mostyn, to go to Guernsey. He did not get to Jersey, because there was a strike, so the Jersey elite paddled over in rowing boats to consult him. They agreed to pass the legislation, but I want to know why it should be done that way. Would it not be better to do it for ourselves? Then there would be no backsliding, and it would be done without delay. The legislative processes in the islands are very slow--unless they are financed by Price Waterhouse or Ernst and Young. It can take three years, and rights would still be abused in that period.

I notice from the newspapers that Senator Pierre Horsfall of Jersey said that the Bailiff told Lord Williams that, when Sir Philip Bailhache was previously Attorney- General--he is now the Bailiff--

> "Jersey was on the verge of adopting the convention but was asked not to do so by the Home Office as the UK Government did not want to be seen to be following a dependency in adopting the provisions of the Human Rights Convention."

That cannot possibly be true. I should like my right hon. Friend to comment on it.

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10.45 pm

An editorial in the Guernsey *Evening Press* says, more or less, that I should mind my own business. It states:

> "We would rather see the Labour MP turn his attention to real problems in the UK, such as the growing hospital waiting lists, prison overcrowding and drugs".

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> That comes from an island where there is a shortage of nurses and prison staff because they are not paid enough and there is a growing drugs problem. The island cannot afford the latest medical technology, and urgent and serious cases are sent to Southampton for treatment. The British health service and all British social services are being drained of billions of pounds through the taxes and fiddles that are going on in the independent financial regime there.

We shall not ratify the fourth protocol at present, for reasons that were explained to me by the Home Office Minister. I wish to put a further question to my right hon. Friend about the fourth protocol, which has been put to me from Jersey. Is it possible to include the fourth protocol in any Jersey Bill if it is not included in the British Bill--and if not, why not? Is there any reason why Jersey or Guernsey could not introduce the fourth protocol in local Bills, even if the UK does not?

I am afraid that I have spoken for too long, so I shall bring my remarks to a conclusion. Many other hon. Members want to participate in the debate and give their views on offshore havens--those curious offshore anomalies. I know that my right hon. Friend is interested in and concerned about the issue. He has demonstrated his concern by initiating an inquiry into the regulatory regime. I hope that he will rush to accept my amendment, so that we can get the matter over with without delay or backsliding from the islands. If not, I hope that he has bankable assurances from the islands that they will legislate for themselves if he is anxious to maintain the convention. In my view, it is not necessary to do so because I want the rights of the masses of ordinary people in the islands--not those of the elite, who can take care of themselves--to be protected, so that we can make the islands fit for people, not just for money.

Mr. Maclennan: The hon. Member for Great Grimsby (Mr. Mitchell) has raised a valuable issue. In another place, my noble Friend Lord Lester of Herne Hill gave my party's view, which is broadly sympathetic to the hon. Gentleman's objectives, and we support the principle of incorporation for the offshore dependencies. It is not necessary to go into all the circumstances that he has adduced in support of his argument, or even to adopt his reasoning. However, there is no doubt about our ability to do what he suggests.

Mr. Mitchell: I omitted to express my indebtedness to Lord Lester, who wrote the amendments and provided me with helpful support and advice. I am grateful to him. I thank the right hon. Gentleman for giving me the opportunity to say that.

Mr. Maclennan: In turn, I am grateful to the hon. Member for Great Grimsby, as my noble Friend will be.

This country's obligation to take the rights of those living in those dependencies seriously is undoubted. How that is done--whether in the Bill or by the legislatures of the islands themselves--is of secondary importance. What is crucial is that it be done. The hon. Member for Great Grimsby has said that it is likely that it will be done within

the islands, or at least that such an intention has been expressed, and I am advised that it is at least probable. That would not necessarily have happened if the issue had not been pressed, as it has been by the hon. Gentleman, and if the House had not expressed strong concern about regularising the position.

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I do not doubt that one point that surprises many other countries about our adherence to the convention is that we did not long ago provide domestic remedies designed to give effect to the convention rights. Equivalent legislation was certainly passed in all the other signatory countries. It would be highly anomalous if the islands were to remain outwith the convention scheme under which domestic remedies are made available to give effect to the rights. I hope that that view will have been heard in all the islands and that we shall have no more Manx birching cases being contested in Strasbourg, because they can be handled in Douglas.

Mr. Straw: I am grateful to my hon. Friend the Member for Great Grimsby (Mr. Mitchell) for tabling the amendments and raising this important issue, just as the Government were grateful in the other place for the way in which Lord Lester raised the matter there.

As we have heard, the amendments would apply the Bill's provisions in various ways to the Channel Islands and the Isle of Man. My hon. Friend has pointed out that the United Kingdom is obliged to ensure that the islands comply with the convention and that there is a right of individual petition to the convention institutions in Strasbourg in respect of the islands, but that the convention does not at present have effect in their domestic law. I am happy to tell the Committee that the island authorities have made it clear that they want to bring rights home to the islands, just as we are doing in the United Kingdom.

Before I move on to the detail of that, it may assist the Committee if I say something about the constitutional relationship between the United Kingdom and the islands. That was set out in detail in the report of the royal commission on the constitution in 1973--the Kilbrandon report. My hon. Friend referred in particular to paragraph 1494 and the conclusions in paragraph 1513.

Briefly, the conclusion of the Kilbrandon report is that the United Kingdom Government are responsible for the defence and international relations of the islands, and the Crown is ultimately responsible for their good government. It falls to the Home Secretary to advise the Crown on the exercise of those duties and responsibilities. The United Kingdom Parliament has the power to legislate for the islands, but it would exercise that power without their agreement in relation to domestic matters only in the most exceptional circumstances.

A domestic circumstance that also affected all the countries that make up the United Kingdom--and, to some extent, had international effects--which was cited at length in the Kilbrandon report, was the issue, which those of us of a certain age remember only too well, of the so-called pirate radio stations that were set up off the shore of the Isle of Man in the early 1960s. Some of us still remember the catch tune of Radio Caroline. Much of the noise harassment that some of us now suffer could be said to have flowed from that experiment. Those were exceptional circumstances: legislation on domestic matters usually takes the form of laws enacted by the island legislatures, although they are subject to endorsement by me as Secretary of State for the Home Department and by the Privy Council.

United Kingdom laws are sometimes extended to the islands with their agreement. We consulted the island authorities about the extension of the Bill to them. All

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The Committee will be glad to know that my noble Friend Lord Williams, the Minister with responsibility for tl Channel Islands and the Isle of Man, has undertaken a series of visits to find out from the island authorities what

plans they have in the human rights field. I am pleased to say that their responses have all been positive. Each of the island authorities has made clear its intentions with respect to the Bill and the incorporation in its domestic law of the European convention. I have placed copies of their public statements and letters in the Library and have made them available to the official Opposition, to the Liberal Democrats and to my hon. Friend the Member for Great Grimsby.

It is worth pointing out that Jersey has fairly said that, six years ago, under the previous Administration, a proposal that the island should enact legislation to incorporate the European convention was raised with Home Office officials and was discussed informally with the Secretary-General of the Commission in Strasbourg. The island's Attorney-General was informed at that time by officials that the Home Office did not favour the island acting in advance of the United Kingdom, so the matter was shelved. Consultation goes both ways, and the previous Government, for reasons that I understand, but do not agree with, decided that they did not want incorporation of the convention in the United Kingdom of Great Britain and Northern Ireland, and asked the island authorities to follow suit.

The Bailiff of Jersey has now made it clear that the insular authorities

> "wish to confirm their previously declared intention to progress the matter of legislation to incorporate the European Convention on Human Rights into Jersey law, having regard to the particular circumstances of the Island, once the United Kingdom Bill has completed its progress through Parliament in Westminster."

The Bailiff's letter goes on:

> "The Insular Authorities confidently expect to have a draft law with the Home Office for pre audit in the normal way by the end of this year."

The States of Guernsey issued a public statement on 22 May. The President of the Advisory and Finance Committee said:

> "The States Advisory and Finance Committee intends to recommend to the States of Guernsey that legislation be enacted"--

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> "having regard to the particular circumstances of the Island".

He said that, once the Bill has become law, recommendations will be laid before the States of Guernsey. He added:

> "The Committee is confident that it will be possible to submit a draft law to the Home Office for pre-audit before the end of this year."

In December 1997, the Isle of Man made it clear that it intended to introduce legislation to give effect in Manx law to the convention on human rights. It says:

> "Before any Government Bill is introduced in the House of Keys, a draft is always sent to the Home Office for their comments, if necessary after consultation with other United Kingdom Departments, and appropriate measures are taken to consult local interests."

In the light of those statements, I hope that the Committee will recognise that the Governments of each of the three islands are committed to introducing

legislation fully to incorporate the European convention into their own law and to consult me, my officials and the Government more widely on the precise terms of that incorporation.

I believe that that is a satisfactory outcome.

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In the light of those statements, I hope that the Committee will recognise that the Governments of each of the three islands are committed to introducing

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legislation fully to incorporate the European convention into their own law and to consult me, my officials and the Government more widely on the precise terms of that incorporation.

I believe that that is a satisfactory outcome.

Mr. Jim Cousins (Newcastle upon Tyne, Central): Will my right hon. Friend give way?

11 pm

Mr. Straw: Of course, in a moment.

I hope that, in the light of those clear undertakings, my hon. Friend the Member for Great Grimsby will see fit to withdraw the amendment.

My hon. Friend asked whether any of the island authorities could incorporate into their domestic law the fourth protocol of the convention, even though it is not being incorporated into the Bill. The answer is that they cannot incorporate any part of the convention that the United Kingdom and the Crown, as high contracting party to the convention, have not accepted. That important part of our relationship with the islands gives the Crown and the United Kingdom Parliament ultimate authority over them: we, and not they, enter into all international obligations, which are then binding on the islands.

That said, it would none the less be open to each of the island authorities and Parliaments, should they want to, to write the terms of the fourth protocol, or of any other protocol not incorporated into the Bill, into their domestic law.

Mr. Cousins: My right hon. Friend's remarks have been extremely helpful--indeed, fascinating--but may I draw his attention to the fact that the third protocol of the treaty of accession to the treaty of Rome, which was passed by the United Kingdom Parliament, specifically exempts the Crown dependencies from participating in the European Union for the purposes of people, finance and capital? They participate in the EU solely for the purpose of movement of goods for trading. Is he satisfied that the rather anomalous position of the Crown dependencies within the EU provides the right constitutional foundation for fully satisfying the terms of the Bill?

Mr. Straw: My hon. Friend raises an interesting point. I shall not detain the Committee, because we are due to finish this business in 10 minutes, except to say that, as part of the somewhat onerous duties of the presidency of the European Union, I spent two and a half days in Brussels last week as President of the Justice and Home Affairs Council. A lot of time was devoted to the extent to which the islands were subject to various treaties under the treaty of Rome. We are dealing with a convention arising not under the treaty of Rome and the European Communities treaties, but under the Council of Europe, of which we have been a member for many more years than we have been a member of the European Communities.

The position in respect of the European Union and the islands is complicated, not only because of what the islands desire, but because of difficulties for Gibraltar and other places--not dependencies of the United Kingdom--over how such territories should be dealt with in those treaties. Similar problems arise in respect of Spanish dependencies, for example, but in the Justice and Home

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Affairs Council last week, we agreed that a convention on a European judicial network should apply to the islands. That will not directly impose obligations on them, but will give them some discretion.

As we had been unable to consult, I did not accept a proposal from other member states that the islands should, without consultation, be made subject to the Eurodac convention on the fingerprinting of asylum seekers and illegal immigrants, and to the convention on driving disqualifications.

Sark has been referred to. I had to point out to some colleagues in the Justice and Home Affairs Council that, whatever else one may worry about on Sark, driving disqualifications should not keep us up all night. As I think the Committee famously knows, there is only one vehicle on Sark, which I understand is a Daimler.

In the light of what I have said, and the clear undertakings given by the island authorities, I hope that my hon. Friend will seek leave to withdraw his amendment.

Mr. Michael Fabricant (Lichfield): I speak, as a good Tory grammar school boy--not, as the hon. Member for Great Grimsby (Mr. Mitchell) suggested, a Tory public school boy--to support the Home Secretary in his opposition to the amendments. I thought it particularly sad that the hon. Member cited the Marine, etc., Broadcasting (Offences) Act 1967 as a reason why Parliament should impose legislation on the states of Jersey and Guernsey and the House of Keys. The 1967 Act had a direct impact on me, although I was very young at the time. I remember who introduced the legislation: the notorious John Stonehouse, the then Postmaster General.

One of the reasons for my opposition to the implementation of the legislation on the islands is the fact of their independence. I felt that, in some ways, the hon. Member for Great Grimsby was rather xenophobic in his remarks about Jersey, Guernsey and the Isle of Man--although, of course, xenophobia is not the right word in this context, because it means a fear of foreigners. Those islanders are not foreigners at all; they regard themselves very much as part of the British isles, although not of the British isles.

I am not even convinced that whether those islanders choose to adopt the convention will make much difference. Two years ago, a constituent of mine, Stan Allsop, a truck driver, was arrested and held in France, which is a signatory to the convention. He was held in solitary confinement for 11 weeks. For five weeks, his wife, children and grandchildren were not even informed of his whereabouts. As my former right hon. Friend Malcolm Rifkind said to me at the time, France provided a marvellous example of habeas without the corpus. The convention clea gave Mr. Allsop no protection.

I do not believe that the Bill will have any impact on the United Kingdom, which will accept it; nor do I believe that we should impose it on the islands of Jersey and Guernsey and the Isle of Man. To do so would not set a precedent, because such legislation was imposed on those islands when the 1967 Act was implemented, but I think that, in the new generation that has grown up over the past 10 years, the Bill creates a dangerous precedent. The islands have secured independence; we have chosen not to involve them in our law, and I think that to do so now would be wrong.

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We should also remember the islands' special place in the European Union. They are not part of the EU as such; they have independence in the sense that they are not part of the customs union, and we respect that. I think we should say that they should either be incorporated totally in the EU, or not at all. To do it piecemeal would be completely wrong. Whether the Home Secretary is right to induce them to absorb the convention is for the House of Keys and the Jersey and Guernsey Parliaments to decide, but I feel that it should be their decision and not that of the Committee. For that reason, I oppose the amendments.

The long catalogue of personal objections raised by the hon. Member for Great Grimsby about why Jersey, Guernsey and the Isle of Man should have the legislation imposed on them seemed to be more related to personal slight by agencies or spin doctors than to any legal reasons. I therefore oppose the amendments.

Mr. Mitchell: I am grateful to the hon. Member for Lichfield (Mr. Fabricant) for sharply stating his objections. I am also grateful to my right hon. Friend the Home Secretary for his good reply, and I commend him for the effor that have been put into persuading the islands to pass the legislation in their own way. I would prefer it to be done

our way because that avoids delays, which will occur, and any backsliding, which might occur. I trust the Home Secretary more than I trust some legislators. Guernsey had to be pushed into this fairly rapidly.

The image of the islands might be "Bergerac", but the reality is lax financial and tax regulation which gives rise to scandals such as money laundering and BCCI. Some day, we shall have to grasp the nettle of this so-called independence. I am grateful to the Home Secretary, and I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 4 ordered to stand part of the Bill.

To report progress and ask leave to sit again.--*[Mr. Kevin Hughes.]*

Committee report progress; to sit again tomorrow.

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Local Agenda 21

Motion made, and Question proposed, That this House do now adjourn.--*[Mr. Kevin Hughes.]*

11.11 pm

Mr. David Drew (Stroud): I am delighted to be able to debate the topic of Local Agenda 21. It is ironic but pleasing that it is sandwiched between yesterday's debate on electoral reform and tomorrow's debate on the modernisation of the House. Local Agenda 21 and its constituent parts shows what is happening in the wider political field. It shows that there is much democratic engagement outside this place, and we must recognise that and view it as an opportunity and not as a threat.

Many hon. Members will know about Local Agenda 21, but it is important to discuss it and to speak about my experiences in my constituency and in Gloucestershire. The Government have already picked up the ball on the agenda and if in some small way I can help the process along, I am willing to do so. It is not for me to pre-empt what the Minister will say, but "Opportunities for Change", the Government's consultation document on sustainable development and sustainable local communities for the 21st century on why and how to prepare an effective Local Agenda 21 strategy, is an important statement. The Government have shown how the debate can be advanced.

What is Local Agenda 21 and its true meaning? It derives from the United Nations Conference on Environment and Development, the so-called Earth summit, which was held in Rio de Janeiro in 1992. At the conference, 179 countries, including, of course, the United Kingdom, signed up to an agenda for change in the 21st century, known as Agenda 21. Local Agenda 21 reflects the important part that was played by local government and local democracy at that conference, and important requirements were placed upon them to produce the necessary local change. That was not an imposition, but rather an evolution of what was happening and what could be achieved. The key element is the drive towards sustainable development that is most attainable locally.

As has been said:

> "Many of the problems and solutions being addressed by Agenda 21 have their roots in local activities . . . By 1996, most Local Authorities in each country should have undertaken a consultative process with their populations and achieved a consensus on 'a Local Agenda 21 for the community'.
>
> Through consultation and consensus-building, Local Authorities would learn from citizens and from local, civic, community, business and industrial organisations and acquire the information needed for formulating the best strategies. The process of