LEGISLATIVE COUNCIL
OFFICIAL REPORT

RECORTYS OIKOIL
Y CHOONCEIL SLATTYSSAGH

PROCEEDINGS
DAALTYN

HANSARD

Douglas, Tuesday, 10th May 2016

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Present:

The President of Tynwald (Hon. C M Christian)

The Acting Attorney General (Mr J L M Quinn),
Mr D M Anderson, Mr M R Coleman, Mr C G Corkish MBE, Mr D C Cretney,
Hon. T M Crookall, Mr R W Henderson, Mr J R Turner and Mr T P Wild,
with Mr J D C King, Clerk of the Council.

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The Council met at 10.30 a.m.

[MADAM PRESIDENT in the Chair]

The President: Moghrey mie, Hon. Members.

Members: Moghrey mie, Madam President.

The President: I invite the Chaplain to lead us in prayers.

PRAYERS

The Chaplain of the House of Keys

Leave of absence granted

The President: Hon. Members, leave of absence has been given to the Lord Bishop.

Order of the Day

1. Local Government and Building Control (Amendment) Bill 2016 – Third Reading approved

Mr Corkish to move:

That the Local Government and Building Control (Amendment) Bill 2016 be read a third time.

The President: We turn to the Local Government and Building Control (Amendment) Bill 2016. I call on the Hon. Member, Mr Corkish, to take the Third Reading.

Mr Corkish: Thank you, Madam President.

In moving this, the Third Reading of the Bill, I thank my seconder, Mr Henderson, and I would like to thank Members for supporting the Bill through this Chamber thus far.

This legislation seeks to amend several enactments in relation to local government and building control and provides for the introduction of fixed penalties in connection with certain statutory notices and following contravention of certain by-laws. Specifically, the proposals are aimed at enhancing the management and control of land and buildings that have a detrimental impact on the appearance of local communities.
My hon. colleague, Mr Turner, raised a number of queries during the Second Reading and Clauses Stage relating to the enforcement of the Building Control Act: what is the appeal process for fixed penalty notices? Who would determine lack of cultivation in the new section 14 of the Local Government (Miscellaneous Provisions) Act 1984? And whether court fines go into the General Reserve?

In respect of enforcement against ruinous buildings under the Building Control Act 1991, the responsible body for enforcement is the local authority.

In respect of who would determine lack of cultivation in the new section 14 of the Local Government (Miscellaneous Provisions) Act 1984, subsection (1) gives the power to the local authority to serve notice. Therefore, the local authority would determine whether there is a lack of cultivation.

I understand that court fines do go into the General Reserve.

In respect of the appeal mechanism for fixed penalty notice, I can confirm there is no appeal process for fixed penalty notices. However, there is an important safeguard in relation to the issuing of the fixed penalty notice in the first place. If a person has failed to comply with a notice under the Local Government (Miscellaneous Provisions) Act 1984, Building Control Act 1991 or a by-law, they are guilty of an offence. An authorised officer may serve on that person a notice offering him or her the opportunity of discharging any liability to conviction for the offence.

It should be noted that a person does not have to accept a fixed penalty notice, as this provision is to allow that person to discharge the liability to conviction. If they wish to dispute the matter, the only course of action would be for the local authority or the Department, as the case may be, to seek a conviction through the courts. Furthermore, if a person is aggrieved by a statutory notice issued under section 14 of the Local Government (Miscellaneous Provisions) Act 1984 or section 24 of the Building Control Act 1991, that person is able to appeal against that notice under section 58 of the Local Government Act 1985. Such appeals are heard by the High Bailiff.

My hon. colleague, Mr Crookall, sought clarification on how old tholtans are applicable to section 24 of the Building Control Act 1991. In theory, if any building or structure, by reason of it being ruinous, dilapidated, in a neglected condition or unfinished state detrimental to the amenities of the neighbourhood or a detriment to the amenities of the neighbourhood, is likely to occur or recur for this reason, the owners of an old tholtan could be served a notice under section 24 to require works to be undertaken. However, I understand that such a notice under this section has never been served on the owner of an old tholtan. It must be acknowledged that very many tholtans are part of the Island's heritage and their loss would be regrettable.

I hope that Hon. Members will now give this Bill their full support.

Madam President, I beg to move the Third Reading of the Local Government and Building Control (Amendment) Bill 2016 and that it do pass.

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie, Eaghtyrane.

I beg to second and reserve my remarks.

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

I thank the Member for the explanation to some of the queries I raised at the previous Readings. I have to say, I am even less enthusiastic about this now than I was before, and the level of enthusiasm then was pretty low and possibly in negative territory.

What is this about? Well, this is about devolving some power to local authorities because it was the Minister’s own agenda. It completely flies in the face of everything else Government is doing by centralising services.
What we have here is a system we are bringing in to issue fixed penalties for unsightly buildings, land etc. when we already have enforcement action at a much heavier level being completely ignored. So what on earth does the mover think the owners of these properties are going to do with a fixed penalty notice, when they are already ignoring court orders to tidy up land? I just find it quite incredible.

It also concerns me that there is no right of appeal. So here we have the numerous – 24 – local authorities around the Isle of Man, all with their own ideas, all appointing their own officers to go round and decide what is and what is not unsightly and issuing fixed penalties. So in some parishes there will be one set of rules applied and, in another, another set of rules applied, with no appeal – so that concerns me.

If they decide to ignore it and the matter then goes to court, the fines are going to go to the General Revenue Fund of Government, not the local authority. So where are the costs being …? Who is meeting the costs? Because I would imagine, quite often, the costs do not actually meet the costs that are awarded, if any are awarded. So the loser in all of this will be the ratepayers of the various local authorities.

Then we come to the issue of tholtans. What we are now saying is, ‘Well, tholtans are run down, dilapidated buildings, but we like them.’ Some people might like them and others will not. So what we are doing is we are moving the goalposts again here, saying, ‘Well that run down property is okay because that we are going to call a tholitan, but this other one is not okay, because it is not!’ This is what I am struggling to grasp with this piece of legislation. I think it has been badly thought out. It is throwing the obligation onto the local authorities and I just do not think it is going to work.

The point I am making, Madam President, is that there is already the mechanism there to deal with these at a much higher level and it seems to still be failing. So how does bringing in a fixed penalty regime at a much lower level …? How is that going to solve the alleged problem we have? I understand that this has been driven through one or two particular cases, and is that why we are bringing forward primary legislation? I think it is a pointless piece of legislation.

On the surface, it shouts all the right messages. It says that we are going do this; we are going to do that; we are going to the other. But, once you start digging into it, you will find that the powers are already there at a much higher level, and that is what concerns me, Madam President: that those wanting to push this through would be saying, ‘Oh well, you know, he is objecting because he does not agree that these buildings should be tidied up.’ That is not what I am saying. What I am talking about is this piece of legislation and the effect it is going to have.

I also think that whilst we are trying to centralise and scale down Government, to start creating lots of functions for tiny little local authorities, some of which only have a couple of hundred people in their area, I just think is nonsensical for an Island which is 33 miles long by just over 12 miles at its widest point, and a population of 80,000 people – (Interjection by Mr Anderson) 86,000 people – we will get the update in the census no doubt.

But that is the point I am making and I think, given the reply from the Hon. Member, at this stage, as I said, I am even less enthused about it now than I was last week.

The President: The Hon. Member, Mr Anderson.

Mr Anderson: Thank you, Madam President.

Just following on from the Hon. Member who has just spoken, I am sorry it appears that he has a lack of confidence in his local authority.

Mr Turner: We could not even fill the seats!

Mr Anderson: Maybe in his area he could not fill the seats, but I have more confidence in the local authorities and I reckon that this legislation does improve the ability of local authorities to sort things out in their own areas.
I think that the mover of the Bill has already demonstrated that there are areas where – we are talking about tholtans – the legislation has not been brought forward because ... Or they have the ability to do so – because a lot of those tholtans are seen as iconic, if you like – but if there was something with a galvanised roof hanging off, they would have the ability to take appropriate action and it is pleasing to hear that has not been needed in the past.

I am very supportive of the Bill and I hope others will be as well.

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

**Mr Crookall:** Thank you, Madam President.

I would like to start by thanking the Hon. Member for bringing this forward and for his clarification on tholtans. I am still not sure how that will work in the foreseeable future but I thank him for the clarification from the Department.

I would just like to pick up on a couple of issues that the Hon. Member, Mr Turner, made about the centralisation. If that is the way the Department and Government seem to want to go – and I do support it in some respects – we need to back that up though. If we are to pass this onto local authorities to deal with, what we should be doing is making sure that their costs are covered, if they are to prosecute people and end up in court. For years we have been saying that. In the old days, when they took them to court for building regulation failures and things like, their costs were never covered.

If we are going to be fair and give these powers to the local authorities, we need to make sure – and I look forward to the Hon. Member, in his summing up as to those costs – that they are covered for the local authorities, otherwise I am very tempted to vote against that just on this point. Because it is something that we have been trying to do for a long time and here we are giving them something else that might cost them money.

**The President:** The mover to reply.

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

Can I thank the Members for their interest in this Bill.

The Bill, as I started off by saying in our First and Second Readings, was to enable Government/local authorities to tidy, clean up – all part, I suppose, of our regeneration work throughout the Island.

I must respect the views of Mr Turner in all Readings. He is less enthusiastic now, he said, than when he started. However, I hope the Hon. Member can see that by devolving these powers to our local authorities, it gives them more power. We said we would give local authorities more power in the hope that, yes, it attracts more people to serve on local authorities. That will be seen, perhaps, in the future.

But would the Hon. Member not agree with me that by giving more of these powers to the local authorities, they are closer to the problems in their particular areas and can more easily sort them out?

The original section 14 of the Local Government Act was pretty useless, and I again repeat what I said at the Second Reading, that this has been tried to work before and has not worked. This is a real effort for this section to work and for local authorities to have the power to enable this work to be done in cleaning up detrimental areas.

I thank Mr Anderson for his support. He has been a local authority member. He has been a constituency Member and a former Minister of the DoI and knows at first hand the problems that effect local communities. I can speak as a former constituency Member, too, of the stress and angst that is caused to people in neighbourhoods that are blighted by dreadful conditions and dilapidated buildings. The existing regulations did not work. **(Mr Turner: Why?)**
Ample notice and advice is given to owners of dilapidated buildings before any notice is served and it is important to note that a fixed penalty notice cannot be issued straight away. A notice under other provisions must be sent before the fixed penalty notice has an effect.

Mr Crookall: tholtans. I have already explained, I think, a little about the tholtans and the importance of them around the Isle of Man, if you like.

Costs from local authorities: unfortunately, I am afraid I cannot confirm whether local authorities can. I will certainly find that out for you, but nevertheless we have powers given to the local authorities now which do this and, if they cannot do it, of course, they can defer to the Department of DEFA for this.

I hope I have answered most of the questions but, again, just to repeat, Madam President, this is part of a tidying up of the Isle of Man – something which we all should be involved in and supportive of, I would think, in the regeneration of our Island, for the best possible reasons.

Madam President, I beg to move.

The President: Hon. Members, the motion is that the Bill be read a third time and do pass. Those in favour, please say aye; against, no. The ayes have it.

A division was called for and voting resulted as follows:

FOR
Mr Anderson
Mr Coleman
Mr Corkish
Mr Cretney
Mr Crookall
Mr Henderson
Mr Wild

AGAINST
Mr Turner

The President: There are 7 votes for and 1 against, Hon. Members. The motion, therefore, carries.

Procedural –
Item 3 to be taken as next business

The President: With your agreement, Hon. Members, I would like to take Item 3 next; the reason being that, if Members had any queries on the Equality Bill, it would be useful perhaps for the learned Attorney to have the facility of the draftsman being here and he cannot come until a little later.

Would Council agree then to move onto Item 3?

Members: Agreed.

3. National Health and Care Service Bill 2016 –
   Second Reading approved

Mr Coleman to move:

That the National Health and Care Service Bill 2016 be read a second time.
The President: I call on the Hon. Member, Mr Coleman, to take the Second Reading and clauses stage of the National Health and Care Service Bill.

Mr Coleman: Thank you, Madam President.

I would now like to move the Second Reading of the National Health and Care Service Bill for the Department of Health and Social Care.

The main aim of this important Bill is to replace the provisions of the National Health Service Act 2001 with a modern and equitable framework under which the Department can provide quality health and care services for the people of the Isle of Man.

The Bill will also allow the Department to deliver the five-year strategy for Health and Social Care that was unanimously approved in Tynwald Court last November.

The Bill has intentionally been drafted as a framework under which there will be supporting Schemes and procedures describing in more detail the services provided. This will ensure that the Department can continue to deliver its obligations, including where those obligations are closely linked to regulatory regimes in the United Kingdom.

This legislation deals mostly with health related matters but some relevant adjustments have been made to recognise the fact that the Department now has both health and social care responsibilities.

Hon. Members, the Bill has six key deliverables and these are: (1) an integrated Health and Care Service; (2) provision for a Health and Care Service Charter; (3) provision to create detailed Schemes; (4) a revised approach to charges and contributions; (5) strengthening our position with regard to commissioning and contracts, including our requirement to hold an approved service provider list; and (6) strengthening the role of our committees and complaints process.

The most significant change from the National Health Service Act 2001 is the proposed introduction of the National Health and Care Service Charter and the National Health and Care Service Schemes.

The Charter will be linked to the five-year strategy and will set out the Department’s general commitments around standards, values and behaviours in respect of the National Health and Care Service (NHCS).

The NHCS Schemes will provide the more detailed regulatory framework for how services will be provided in accordance with the established standards of care.

The Bill strengthens the Department’s ability to charge for, or to contribute towards the costs of, the services provided. The Department will still be able to make exemptions to charges where appropriate as it does now.

The Bill requires the Department to be fiscally aware of what it can afford to provide, in that it must have regard to the funds available to it when making any decisions regarding charges and contributions. This makes it clear that the Department cannot be expected to fund every possible element of health and care provision.

The Bill includes a framework for commissioning or contracting other persons to provide care on behalf of the Department, such as the current arrangements for GP and dental services.

Of the new provisions which have been included in the Bill, the most significant relates to the ability for the Department to charge for the occupation of any of its facilities. This will introduce a mechanism whereby the Department can facilitate the movement of ‘stranded patients’ to accommodation which is more suitable to their needs.

Stranded patients are individuals who have become stranded in the acute hospital, for a number of different reasons, sometimes for years. The hospital setting is not an ideal place for people to live for an extended time period and, in addition, adds to the workload of staff and puts their health and well-being at risk.

The new provision will allow a charge to be levied for the occupation of a hospital bed where an individual has been deemed fit for medical discharge and they or their family or relations have refused to accept more suitable accommodation and care for them.
The Department has a duty of care to support vulnerable people and the new provision, when used appropriately, will provide a mechanism which will encourage the securing of the most appropriate accommodation to fit the medical and care needs of people who are stranded in hospital.

Another new provision extends the potential for Department facilities to be used other than for NHCS purposes as long as this use does not reduce or impact on the Department’s ability to deliver its obligations to provide NHCS care. An example of this might include contracting with private consultants for the use of, say, the operating theatre at Ramsey Cottage Hospital.

Finally, the Bill introduces a requirement for the Department to arrange for regular and independent monitoring and review of the NHCS Schemes.

The remainder of the Bill simply re-enacts and updates existing provisions relating to the establishment of certain committees and the NHCS complaints procedure.

Madam President, I beg to move that the National Health and Care Service Bill be read for the second time.

The President: Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.
I beg to second and reserve my remarks.

The President: Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

As the Hon. Member who is moving this says, this is just a framework, so in terms of things happening there is not a lot in here, because most of it is going to come under the various Schemes, and that is where all the detail is going to be, no doubt.

I do notice that the procedure for these Schemes – and maybe the Member could enlighten us as to why this particular process was chosen. In Part 3, clause 8:

If Tynwald at the sitting at which a Scheme is laid or at the subsequent sitting resolves that it is to be annulled, the Scheme ceases to have effect.

I know, with regard to that type of procedure, it is usually when we have fast-moving situations – it might be we use it in various police legislation. I know Health have used it in the past when new substances that are open to abuse have come out and they have changed the chemical compound of a drug, so they have needed to get a scheme in quickly, so they are able to use that process. But I just wonder, for the purposes of this legislation, why that particular process has been chosen, given that many of these Schemes are going to be quite critical to the operation of the service going forward?

But I think, as a framework, it is something we have been asking for in the primary legislation for a while; that there should be frameworks for all Departments really, to enable them to adapt quite easily, but at the same time there has to be those safeguards that you cannot give Departments a complete blank cheque, and, of course, the Schemes approved by Tynwald Court.

I just have that query, but I think it is certainly going to be a new chapter for the Health Service.

A final comment: the Department itself has had Social Care under its wing once before, so that is not a new provision – it was only out of the Department for a few years, but it is not particularly a controversial point.

So those are my comments at this stage, Madam President.

The President: Hon. Member, Mr Cretney.

Mr Cretney: Yes, thank you.
Two brief points at this stage, if I can? Could I just seek confirmation from the mover of the Bill that in terms of, whilst this is a new era for the National Health Service, that the free National Health Service provision will continue to be available – just for the record – and that it will not be a first step towards privatisation?

The second point, if I can: I welcome the ability for the Department to enter into contracts with private sector providers for the use of theatre facilities. I do believe that may constitute the opportunity for new income to the Department. It is something I suggested 10 years ago. I sound a bit like Mr Karrahn, but I did! I do think this is something that should be welcomed and will, hopefully, assist the Department in its endeavours to provide the service which I referred to a moment ago.

**The President:** The mover to reply.

**Mr Coleman:** As I said in my speech, one of the reasons we have gone for the schemed approach is that there are many things within the remit of both medical care and social care where we are very closely aligned to what happens in the UK. In fact, one of the things you mentioned was actually changes in substances, in their content; that is a very fast changing thing. But there are many other areas where we do link, very closely, to what is going on in the United Kingdom, and what this does is ... In fact, you will note, when we go onto clauses, that the actual Bill itself does not become legislation until the first Scheme is approved by Tynwald. So it is coming in as a framework to start off with and then it will come into legislation when the first actual Scheme is approved by Tynwald – and it has to be. As you will probably have noted, Mr Thomas made an amendment to the original Bill where it was not going to be originally necessary for Schemes to be approved by Tynwald; this is now in.

But it gives flexibility. We have a framework and we can slot detailed legislation into it rather than having to go through the whole lot again.

With reference to Mr Cretney, I think I said in the speech that we are going to be obliged to manage the Health Service and social care part of the Health Service as well, based upon the funds we have available.

I think everyone is aware that there is a minor deficit within the DHSC budget accounts for the year that has just gone and what it means is that we have to look very seriously at how we spend and what we get. A part of that ... when it says ‘freely available as per Beveridge in 1948’ – you know, free and available at the point of contact – I think that the environment we operate in these days is a little bit different to the post-war environment.

I think we need to recognise that there may be ... Take prescriptions to start off with, I am a diabetic and I get my diabetic medicine free, but I also get everything else free as well, so if I have a fungal infection on my big toe, the medicine is provided free. If we look at things like that, (A **Member:** Hear, hear.) why should I get my prescription for my fungal infection on my foot based upon that fact that I have a lifelong medical problem?

So I think that we are not saying we are going to take away free services, but we are going to look at the reasonableness of how we actually apply the criteria. That was just a silly example, but that is the type of thing that we are looking at.

**Mr Cretney:** I just wonder would the Hon. Member give way for a moment? (Mr Coleman: Certainly.) I just think the analogy he has used is not a good one in terms of diabetics; their extremities are pretty important.

**The President:** I am sure Mr Coleman would ...

**Mr Corkish:** I am sure he will toe the line there!

**Mr Coleman:** In fact, the Hon. Member of Council is actually very correct; it was a bad analogy because diabetes can affect the extremities. But that was an example of the type of thing.
Mr Cretney: I know, yes.

Mr Coleman: I was just saying we have to make the free services – we have to target them properly.

On the second one, again, we have been looking very closely at not just the use, perhaps, of Ramsey's operation theatre for private things, but we are also looking at the way we actually run our private services at the Hospital. We are not certain that we are getting as much payback as we could get from those private services and there is a study going on at the present time to make sure that it is appropriate.

So really what we are saying is we are going to look at the things that people get free at the moment. We have charges. We already have the legislation in place for charges for dental work and stuff like that. So it will be free for just about everything that was there previously, but we have to make our suit to the width of our material really and serious studies are going on to enable us to make sure that we are doing that appropriately.

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

National Health and Care Service Bill 2016 – Consideration of clauses commenced

The President: We move onto the clauses.

Clause 1.

Mr Coleman: Madam President, Hon. Members, the National Health and Care Service Bill contains 27 clauses and a Schedule and, should the Branches support the Bill, it will come into effect on the day on which Royal Assent is announced in Tynwald.

Clause 1: Part 1 of the Bill is introductory with clause 1 confirming the short title of the Act as the National Health and Care Service Act 2016.

The word ‘Care’ has been included in the title of the Bill to reflect the fact that the remit of the Department of Health and Social Care includes the prevention of illness and services which support the vulnerable groups of our society such as children, young people and older people and adults with learning disabilities.

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

The President: Hon. Member.

Mr Henderson: Gura mie eu, Eaghtryrane. I beg to second and reserve my remarks.

The President: The motion is that clause 1 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 2

Mr Coleman: Clause 2 was amended in the House of Keys.

The revised clause 2 firstly allows for the Act to come into operation in accordance with appointed day orders, and for different days to be appointed for different purposes.

Subsection 2(2) then qualifies this by stating that whilst Parts 1 and 2, which deal with introductory provisions and the National Health and Care Service Charter, and sections 8 to 12, which deal with the establishment of Schemes, may be brought into operation at any time. The rest of the Act may not be brought in until at least one Scheme has been approved by Tynwald.
Subsection 2(3) allows an appointed day order to include any transitional or saving provisions which are necessary or expedient.

It is the Department’s intention to bring as much of the Act as possible into operation at the earliest possible time after Royal Assent is announced.

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

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

**Mr Henderson:** Gura mie eu, Eaghtyrane. I beg to second and reserve my remarks.

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

**Mr Cretney:** Yes, could I just ask the Hon. Member if I am right that the necessity to bring Schemes to Tynwald may well provide the comfort that I and others might wish to see in terms of the introduction of new charges?

**The President:** The mover to reply.

**Mr Coleman:** With the Schemes coming to Tynwald, the Court will have the opportunity to approve or not approve what is going through, and that means that Tynwald has an oversight on basically any charging mechanism, which the DHSC might wish to implement.

**The President:** The motion is that clause 2 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 3.

**Mr Coleman:** Clause 3 deals with necessary interpretation for the Bill and provides a list of definitions including: ‘Appointments Commission’, which is defined for the purposes of the appointment of committees; ‘Care’, which is defined to make it clear that the Department’s responsibilities under the Act include both health care and services and a wider responsibility to provide care which may be set out in other legislation; ‘Charter’, which is defined in accordance with Part 2 of the Bill; ‘Department’, which is defined as meaning the Department of Health and Social Care; ‘Independent Review Body’, which is defined as having the meaning given in section 23(2) of the Bill; ‘NHCS’, which is defined as meaning the National Health and Care Service; ‘Publish’, which is defined to make it clear that where the Bill requires information to be published the Department must do so in a way which will give the public free and convenient access to it; and finally ‘Scheme’, which is defined with reference to clause 8 of the Bill.

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

**The President:** Mr Henderson.

**Mr Henderson:** Gura mie eu, Eaghtyrane. I beg to second and reserve my remarks.

**The President:** The motion is that clause 3 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 4.

**Mr Coleman:** Clause 4 provides for a Scheme or Schemes established under the Act, and the care provided under those Schemes, to be collectively known as the Isle of Man National Health and Care Service.

I beg to move that clause 4 do stand part of this Bill.
**The President:** The Hon. Member.

**Mr Henderson:** Gura mie eu, Eaghtyrane. I beg to second and reserve my remarks.

**The President:** The motion is that clause 4 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 5.

**Mr Coleman:** Clause 5 was also amended in the Keys.

It introduces the first element of the new legislative framework by requiring the Department to publish and maintain a Charter in respect of the National Health and Care Service.

The amendment in the Keys added a requirement for the Charter to be laid before Tynwald before it is published.

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

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

**Mr Henderson:** Gura mie eu, Eaghtyrane. I beg to second and reserve my remarks.

**The President:** The motion is that clause 5 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 6.

**Mr Coleman:** Clause 6 covers the character of the Charter. It states that the NHCS Charter must set out the Department’s general commitments in respect of the NHCS and requires the Department to have regard to the Charter when it is providing care.

The idea for the Charter is based on the NHS Constitution in England, although it is intended that it will be adapted to reflect the scope of services offered by the Department.

It also reflects the recommendations from the Francis Report done into the Mid-Staffordshire hospital situation and is included as a recommendation in the version of the Francis Report that was laid before Tynwald in the Isle of Man.

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

**The President:** Hon. Member.

**Mr Henderson:** Gura mie eu, Eaghtyrane. I beg to second and reserve my remarks.

**The President:** The motion is that clause 6 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 7.

**Mr Coleman:** Clause 7 was also amended in the Keys.

Clause 7 requires the Department to review, and if appropriate, revise the NHCS Charter at least once every five years, and to amend it at any time.

The amendment in the Keys added a requirement for each revision or amendment of the Charter to be laid before Tynwald.

I beg to move that clause 7 do stand part of this Bill.

**The President:** Hon. Member.

**Mr Henderson:** Gura mie eu, Eaghtyrane. I beg to second and reserve my remarks.
The President: The motion is that clause 7 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Part 3, clause 8.

Mr Coleman: Clause 8 was also amended in the Keys.

Part 3 of the Bill deals with the second part of the new legislative framework and sets out how the Department will provide the NHCS in accordance with Schemes.

Clause 8 states that, subject to the requirements in clause 9 regarding standards of care, the Department must ensure that care is provided to individuals to the extent and in the manner set out in the Schemes.

It is anticipated that the first Scheme or Schemes will set out the current National Health Service model and thereafter the Department will, in accordance with its recently published five-year strategy, look to see how services might be delivered in a better and more efficient way, including through increased integration of health and social care, and develop new or amended Schemes.

The amendment in the Keys added a requirement for Schemes to be approved by Tynwald. This amendment was accepted by the Department after helpful discussions with Tynwald Members during the Keys’ process when it was conceded that a positive opportunity to debate the Schemes, which will contain the detail about how the Department will provide care, was more appropriate than simply dealing with them by negative resolution, as long as the Department could maintain a position of flexibility to develop services quickly and efficiently in the future.

I beg to move that clause 8 do stand part of this Bill.

The President: Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtryane.

I beg to second and reserve my remarks.

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

The Schemes obviously are going to be vitally important because this is where, as I said at the previous Reading, all the detail is going to be.

I just wonder whether the mover could give some commitment that, as each of these Schemes are made, they are easily catalogued for people to be able to understand because quite often, if we look, for example, at road traffic legislation, there are a whole raft of Schemes there and one finds it very difficult to actually find the information. So this obviously is the start of a new chapter for the Health Service and maybe he could give assurance that once these are produced and approved, they are made available in a very easy to follow format for those people who wish to access them.

The President: The mover to reply.

Mr Coleman: Thank you, Madam President.

I think, simply from pure housekeeping within DHSC, we would need to keep such a record or catalogue ourselves in an easily accessible and amendable fashion. So I think I can give assurance that the Department will provide that information and need to maintain that information for its own purposes, but will provide it in a meaningful and easily accessible fashion.

The President: The motion is that clause 8 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 9.
Mr Coleman: Clause 9 sets out the standards of care which the Department is required to meet in respect of the provision of care under a Scheme.

Paragraph 9(a) requires the Department to provide care in accordance with generally accepted standards. This term is deliberately not defined but would include best practice guidelines, professional care standards and legal standards. Given the fact that best practice guidelines on the delivery of care change on a regular basis, a definition would be unduly restrictive and would run the risk of being out of date quickly.

Paragraph 9(b) requires, subject to available resources, care to be provided to the highest levels of human knowledge and skill necessary to save lives and improve health.

Paragraph 9(c) requires care to be administered with compassion and concern for the wellbeing of the individuals to whom it is provided.

Paragraph 9(d) requires care to be comprehensive and to be provided to all – meaning everyone on the Island.

Paragraph 9(e) requires care to be designed to improve, prevent, diagnose and treat both physical and mental health conditions with equal regard.

Paragraph 9(f) requires the care provided to support individuals to promote and manage their own health. The Department recognises that this support should also extend to carers.

Finally, paragraph 9(g) requires care to provide the best value for money by using the resources allocated to a Scheme in the most effective, fair and sustainable manner.

I beg to move that clause 9 do stand part of this Bill.

The President: Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

The President: Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

In this, it sets out that the care would be extended to whoever might arrive on the Island. I understand that no doubt it will be the Schemes that will provide the detail as to how we look to recoup any charges in that, but I want the Member maybe to say whether the policy of the Department is to recoup charges from non-residents who may access our care; because it is normal that, when we travel anywhere around the world, we have taken out relevant insurance, of course, to ensure if we require treatments then that country, quite rightfully, requires paying for it.

So I just wonder if he can explain. I understand all of that detail will come in the Schemes but, as it is mentioned that they will have this duty to provide the care, do they have things in mind to ensure that the costs are recovered?

The President: The mover to reply.

Mr Coleman: Thank you, Madam President.

I can assure you that the Department is looking very carefully at the ability to claim back for care in the circumstances of visitors to the Island.

There is a very strange situation where someone who is Spanish comes through the UK, comes to the Isle of Man and they get their care and it is free. If we go on holiday to Spain, we have to pay for it or take out insurance for it. That obviously is not a fair situation. (A Member: Absolutely!)

We also are looking at people who live abroad and come here (A Member: Hear, hear.) for one or two months a year but go back with a year’s prescription medicine. (A Member: Hear, hear.) These are the sorts of things which we know of and we know they are recurring and we are endeavouring, through legislation – the Schemes – to try to do something positively about it.
The legislation section within the Department of Health and Social Care is looking at this and we have been looking at it for some time, but it gets to be very difficult. We also have a situation, strangely enough, that someone goes away and has private treatment in the UK and they come back, and then they use our services free for some of the additional things that are required, which the provider of their original care cannot do because they are not on the Island.

So I can assure you that this is one of the major things we are looking at within our Department.

**The President:** The motion is that clause 9 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 10.

**Mr Coleman:** Clause 10 requires the Department, when making a Scheme, to determine the care which will be provided under a Scheme, to determine how and under what terms and conditions that care will be provided, and to determine how the Scheme will be administered.

It is intended that there will be a full and open consultation about any new or amended Schemes before the Schemes are submitted to Tynwald for approval.

I beg to move that clause 10 do stand part of this Bill.

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

**Mr Henderson:** Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

**The President:** The motion is that clause 10 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 11.

**Mr Coleman:** Clause 11 continues the existing provision whereby the Department can make charges in respect of NHCS care.

Subsection 11(1) states that a Scheme must include details of any charges for the provision of care, for the use of Department facilities, and for how those charges will be calculated.

Subsection 11(2) makes it clear that the Department does not have to make a charge. Current charges include prescription and dental charges and charges to overseas visitors.

Subsection 11(3) confirms that the Department must be fiscally aware of the cost implications of providing care, by requiring it to have due regard to the funds and other resources available to it when setting a charge.

Subsection 11(4) continues the existing provision whereby the Department can exempt individuals from a charge for care or reduce the amount of the charge.

Subsection 11(5) sets out that a charge is a debt due to the Department or to the person providing the care, unless a Scheme states otherwise, and finally, subsection 11(6) confirms that the Department must pay any monies it receives into general revenue.

I beg to move that clause 11 do stand part of this Bill.

**The President:** Hon. Member.

**Mr Henderson:** Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

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

**Mr Anderson:** Thank you, Madam President.
Welcoming the continuation of this existing provision where the Department can make charges, I am well aware that it can make charges but has not done so for various political reasons, shall we say, in the past. I believe the previous Chief Minister was resistant to us bringing in charges for certain categories. The world has certainly changed since that time and the Department is under severe financial pressure.

Could the mover explain: is there an element of the future means testing have a bearing in this area, when eventually that means testing comes in, where people could be means tested?

In the Second Reading, when the mover gave an explanation of where he gets free medical care when he should not do, maybe a better example that could be given is that there are many retired people on the Island who have significant income – who have already, when I was Health Minister, made the point to me that they should not be getting their eyesight tested and dental treatments free just because they are over a certain age. Is there any movement in this area and maybe the mover could tell me: is there any movement in bringing in charges in this area?

**The President:** The mover to reply.

**Mr Coleman:** I thank Mr Anderson for his question.

I think that you are all aware of the problem we have with finance within the health and social care area and I think that it behoves the Department to look at any of the possible ways in future, as long as they are reasonable – bearing in mind that, as this clause actually says, there will be consultation and it will come to Tynwald anyway in a Scheme and that Tynwald will have the ability to amend that Scheme if they are not happy with it. But I think it would be wrong for the Department to exclude, certainly, the investigation of any options for the future.

**The President:** The motion is that clause 11 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

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**Welcome to visiting Members of the National Assembly of Kenya**

**The President:** At this point can I welcome our Kenyan visitors to Legislative Council. We hope you find it interesting observing proceedings here.

**Members:** Hear, hear.

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**National Health and Care Service Bill 2016 – Consideration of clauses concluded**

**The President:** Clause 12.

**Mr Coleman:** Clause 12 continues the current provision whereby the Department can make a contribution towards specified care-related costs which have been incurred, or may be incurred, in respect of an individual’s care under a Scheme. Existing payments include contributions towards the travel and accommodation costs of people who have been referred to the United Kingdom for care.

Subsection 12(2) confirms that the Department must also have due regard to the funds and other resources available to it when making contributions.

I beg to move that clause 12 do stand part of this Bill.
The President: Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.
I beg to second and reserve my remarks.

The President: The motion is that clause 12 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 13.

Mr Coleman: Clause 13 confirms that persons other than Department employees can provide care under a Scheme, and states that a Scheme may provide for all or any part of the care provided to be commissioned by, or on behalf of, the Department, or to be provided by a person who has entered into a contract with the Department.

The arrangements for the care of patients who need to be transferred to the United Kingdom for treatment are currently commissioned via the North West Regional Commissioning Group.

GP and community dental services are examples of where care is provided in accordance with contracts.

I beg to move that clause 13 do stand part of this Bill.

The President: Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.
I beg to second and reserve my remarks.

The President: The motion is that clause 13 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 14.

Mr Coleman: Clause 14 continues the existing provision whereby the Department is required to maintain a list of people that it is satisfied are qualified to provide care via commissioning or contractual arrangements.

The need to be on a list is a requirement for certain health care professions, such as GPs, in order to maintain their licence to practice. The list is also a mechanism for the Department to ensure that care provided on its behalf is provided by appropriately qualified people.

Subsection 14(2) allows for the list to also include the names of individuals who are providing care on behalf of the Department. This does not mean that every single NHCS care provider must be on the list but the option for an individual to be added to the list must be available.

The Department may publish the list in full or to such extent as it considers appropriate, and can keep the list in any form it considers appropriate.

UK regulators require specific information to be readily available to certain organisations, if they request to see it, and the Isle of Man is obliged to ensure that this can happen.

Subsection 14(4) states that the Department must publish details of the application and determination process for persons wanting to be added to the list. Subsections 14(6) and (7) establish an appeals process for anyone who the Department has determined should not be added to the list or should be removed from it.

I beg to move that clause 14 do stand part of this Bill.

The President: Hon. Member.

Mr Henderson: Gura mie eu, Eaghtyrane.
I beg to second and reserve my remarks.
The President: The motion is that clause 14 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 15.

Mr Coleman: Clause 15 allows the Department’s facilities to be used for the delivery of private care. This reflects the current situation, and the use of the private wing at Noble’s Hospital, and provides for the Department, in future, to look at using its facilities in a more flexible way for private care, should the demand arise.

Subsection 15(2) requires care or facilities provided otherwise than under a Scheme to be subject to terms and conditions determined by the Department. This will allow the Department to ensure that private care does not impact on the provision of National Health and Care Services.

I beg to move that clause 15 do stand part of this Bill.

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu.

I beg to second and reserve my remarks.

The President: The motion is that clause 15 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 16.

Mr Coleman: Clause 16 introduces a new provision whereby the Department can address the ongoing issue of ‘stranded patients’. Stranded patients are patients who have been deemed fit for discharge but for one reason or another remain on wards at Nobles Hospital; thus reducing the number of available beds and intolerably adding to staff workloads.

An acute hospital ward is not the best place for people to live for an extended period, but over several years the acute services have seen an increase in the number of stranded patients.

Subsections 16(1) and (2) allow the Department to facilitate the movement of stranded patients through a charging regime when either they or their relatives or carers refuse to make provision to relocate individuals to more suitable accommodation.

The Department has a comprehensive discharge process which includes careful assessment of an individual’s care needs by both health and social care professionals and an assessment of their ability to fund those needs.

These assessments are done with the full involvement of the individual and their family, and it is only where everyone concerned in the assessment process is content that it would be in the best interests of the individual to move to an alternative facility, and they or their family still refuse to leave, that the Department may resort to making a charge.

Subsection 16(5) defines who can be deemed to have the relevant authority to be an ‘appropriate person’ for the purposes of communicating with an individual, or their family, about the final decision that they should vacate a facility.

Subsections 16(3) and (4) allow the Department to determine the level of charge to be levied; having regard to the means available from private sources to fund the individual’s care, and states how the charges can be collected.

Subsection 16(5) defines who can act as the ‘individual’s representative’ for the purposes of discussing and taking decisions about a person’s accommodation needs.

This recognises the Department’s duty to safeguard vulnerable people who may not have the capacity to make their own decisions about where they should live.

I beg to move that Clause 16 do stand part of this Bill.

The President: The Hon. Member, Mr Henderson.
Mr Henderson: Gura mie eu.
I beg to second and reserve my remarks.

The President: Hon. Member, Mr Wild.

Mr Wild: Thank you, Madam President.
Out of interest, more than anything, could I ask the mover to clarify, if possible, the scale of this problem and a feel for what sort of charge may come through, please? Thank you.

The President: The Hon. Member, Mr Crookall.

Mr Crookall: Thank you, Madam President.
I think we would all welcome this clause. I think for years we have been hearing about the issues up at the hospital and bed-blocking, for want of another word. I am sure as and when this is needed it will be used very carefully to make sure that it is done properly. There needs to be a safeguard there, but we know that the cost that this has brought on to the Department has been huge over the years, so I think we would all welcome this and I am glad to see it.

The President: The mover to reply.

Mr Coleman: Thank you, Madam President.
Of late, we have been short of a few beds at some times to the extent that maybe 30 beds were needed and we have been scrambling around trying to find a place for people who have acute care needs.

One of the suggestions that we have is that some of the people – and again, it is best based upon assessment – can move from an acute care bed on a ward, perhaps to a residential or a nursing home, which (a) would free up an acute care bed and (b) it might be more suitable.

One of the worst places to be, probably, from the point of view of catching an infection is being in a hospital ward, because other people are there, and it is probably, perhaps in older and more vulnerable people that they are going to be susceptible to these types of infection – and this is proven; the statistics show it.

There is also a cost element involved. The cost of an acute care bed is a lot more than it is to have – if it is suitable – a nursing home bed or a residential home bed.

This situation is actually happening as we speak and people are being moved into homes and things like that, and their families are helping out with financial issues here. This really is to provide us with a mechanism where the families can help but refuse to help, and this happens all too frequently.

With reference to the charge, if we move them to the nursing home charge, then they would get the standard benefit from the state and, if there is any extra then the family will have to make that up, but it is a lot less than making up the charge of having a hospital bed on a ward.

In the UK, bed-blocking is sorted out by an Act whereby – because health and social care are separate – if someone is deemed to be bed-blocking, the hospital can actually charge social care for the bed. So this is a somewhat less draconian method, but perhaps more suitable. But it does give us the flexibility and I can assure you that this would only be used with the maximum amount of sensitivity and feeling for the patient.

The President: The motion is then that clause 16 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
I understand you wish to take 17 and 18 together.

Mr Coleman: Thank you, Madam President.
Paragraph (a) of clause 17 allows the Department to establish a committee to provide it with scrutiny and advice on the provision of its services. This paragraph is written in such a way that the work of this committee is not restricted to just health care services.

In conjunction with regulations made under clause 23, this paragraph provides for the retention of the Health Services Consultative Committee (HSCC) from the National Health Service Act 2001.

Paragraphs (b) and (c) of clause 17 allow the Department to establish other committees to exercise its functions and to co-ordinate the provision and delivery of care under the Schemes.

An example of such a committee is the Clinical Recommendations Committee which prioritises services in order of effectiveness, based upon the needs of the population of the Isle of Man, and makes recommendations about the most pressing clinical needs to be progressed by the Department, and about those clinical interventions which should be a low priority.

Clause 18 states that the Department may seek advice from any of the committees it has established and must take account of any advice it receives. However, it is not bound by that advice.

I beg to move that clauses 17 and 18 do stand part of this Bill.

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eauchtynae.
I beg to second and reserve my remarks.

The President: The motion is that clauses 17 and 18 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 19 and 20.

Mr Coleman: Clause 19 confirms that complaints can be made by individuals about any element of care provided under a Scheme, whether that care is provided by the Department or by a commissioned or contracted service provider.

Subsection 19(2) lists the type of complaints that may be raised and addressed through this provision.

Clause 20 states that the Department must publish the procedure for making and considering a complaint. The procedure must ensure that the rules of natural justice are followed.

I beg to move that clauses 19 and 20 do stand part of this Bill.

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eauchtynae.
I beg to second and reserve my remarks.

The President: The motion is that clauses 19 and 20 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 21.

Mr Coleman: Clause 21 extends the existing provision so that either the complainant or the Department may refer a complaint which has not been resolved under the complaints procedure established under clause 20 to the Health Independent Review Body (the IRB).

Subsections (2), (3) and (4) explain how the IRB will consider and deal with a complaint and confirm that if an individual is not satisfied with the outcome of this process they can seek any other remedy they see fit.

I beg to move that clause 21 do stand part of this Bill.

The President: Hon. Member.
Mr Henderson: Gura mie eu, Eaghtyrane.
I beg to second and reserve my remarks.

The President: The motion is that clause 21 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Part 6, clause 22.

Mr Coleman: Part 6 of the Bill deals with final and supplemental provisions. Firstly, subsection 22(1) confirms that the Department may enter into a contract with any person for the use of its facilities for any purpose whatsoever and must pay any proceeds into general revenue. This provides the Department with the ability to ensure that its facilities are used to full effect and to give best value for money.

Subsection 22(2) requires the Department to ensure that the provisions of a Scheme are regularly and independently monitored and reviewed, and subsection 22(3) requires that the Department publishes any reports it receives on the findings of a review.

This is a new provision but it reflects the existing position whereby the Department has commissioned an external review of its health services by an external provider.

I beg to move that clause 22 do stand part of this Bill.

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.
I beg to second and reserve my remarks.

The President: The motion is then that clause 22 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 23.

Mr Coleman: Clause 23 involves regulations. Subsection 23(1) empowers the Department to make any regulations which are necessary or convenient for the administration of the Act, and subsection 23(2) then lists certain regulations which the Department might wish to make.

These include regulations covering the appointment, constitution and scope of the Health Services Consultative Committee and the Health Independent Review Body, and include provision for either or both of these to be given functions in addition to their basic roles.

Such a provision could be used, for example, if it was decided at some point in the future that it would be appropriate to appoint an NHCS Ombudsman.

Paragraph 23(2)(j) provides for regulations to stipulate a particular committee or body as being responsible for hearing and determining appeals by persons aggrieved by the exclusion or removal of their names from the list of qualified care providers, referred to in clause 14.

Subsection 23(3) requires regulations made under the Act to be approved by Tynwald.

I beg to move that clause 23 do stand part of this Bill.

The President: Hon. Member.

Mr Henderson: Gura mie eu, Eaghtyrane.
I beg to second and reserve my remarks.

The President: The motion is that clause 23 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 24.
Mr Coleman: Clause 24 provides for various regulations, made under the National Health Service Act 2001, to continue in force as if they were made under the new Act.

As a consequence of this Bill a number of existing sets of regulations will be reviewed and replaced, including by Schemes, but in the meantime they need to be retained.

The regulations to be saved are: The National Health Service (Appointment of Consultants) Regulations 2003; The National Health Service (General Ophthalmic Services) Regulations 2004; The National Health Service (Pharmaceutical Services) Regulations 2005; The National Health Service (Optical Payments) Regulations 2004; The National Health Service (Charges for Drugs and Appliances) Regulations 2004; The National Health Service (Dental Charges) Regulations 2006; The National Health Service (Overseas Visitors) Regulations 2011; The National Health Service (Expenses in Attending Hospital) Regulations 2004; The Health Services Consultative Committee Constitution Regulations 2012; The National Health Service (Independent Review Body) Regulations 2004; and The National Health Service (Complaints) Regulations 2004.

Subsections 24(2) and (3) repeal certain provisions from the NHS Independent Review Body Regulations and the Health Services Consultative Committee Constitution Regulations which will no longer be required as a consequence of this Act.

Subsection 24(5) provides for a scheme made under this Act to amend or repeal any of the regulations saved.

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

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtryane.

I beg to second and reserve my remarks.

The President: The motion is that clause 24 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 25.

Mr Coleman: Clause 25 provides for contracts that were entered into under the National Health Service Act 2001 to continue under the new Act as if they were entered into in accordance with a Scheme. Examples of such contracts are the arrangements for general practitioner and general dental practitioner services.

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

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtryane.

I beg to second and reserve my remarks.

The President: The motion is that clause 25 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 26 and the Schedule.

Mr Coleman: Madam President, clause 26 provides that the Schedule, which makes amendments to other legislation as a consequence of this Act, has effect.

For the most part, the amendments listed in the Schedule simply change references to the National Health Service or to previous National Health Service Acts in the following Acts to refer to the National Health and Care Service Act 2016: The Law Reform (Personal Injuries) Act 1949; The Children and Young Persons Act 1966; The Dental Act 1985; The Design Right Act 1991; The Sexual Offences Act 1992; The Access to Health Records and Reports Act 1993; The Termination of Pregnancy (Medical Defences) Act 1995; The Video Recordings Act 1995; The Mental Health Act

References to the term ‘hospital’ are also removed or amended as the term is not used in the new Act.

The Access to Health Records and Reports Act is also amended to insert a new definition of ‘general practitioner’ with reference to both the Health Care Professionals Act 2014 and the National Health and Care Service Act 2016.

The Medicines Act 2003 is amended to remove the term ‘health centre’, which is not used in the Bill, and to instead refer to premises provided under the National Health and Care Service.

I beg to move that clause 26 and the Schedule do stand part of this Bill.

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

The President: The motion is that clause 26 and the Schedule stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

And finally, clause 27.

Mr Coleman: Finally, clause 27 repeals the National Health Service Act 2001 which will be replaced by the new Act.

I beg to move that clause 27 do stand part of this Bill.

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

The President: The motion is that clause 27 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Hon. Members, that concludes consideration of the Second Reading and the clauses stage of the Bill.

Welcome to the Deputy Clerk of the Legislative Assembly of the Falkland Islands

The President: We now revert to our Order Paper at Item 2.

Before we do, I will take this opportunity to welcome another visitor: the Deputy Clerk from the Falkland Islands. You are very welcome to visit Council – and of course a visitor from another place.

2. Equality Bill 2016 –
Consideration of clauses continued

HM Acting Attorney General to move.
The President: We move now to the Equality Bill and recommence consideration of the clauses, Hon. Members, starting at clause 99. I call on the learned Acting Attorney General.

The Acting Attorney General: Thank you, Madam President.

As you will recall, last week we completed consideration of the clauses of the Equality Bill up to the end of Part 8. So, this morning I will be starting with the very important Part 9, which deals with how rights under the Bill can be enforced.

Clause 99, Madam President, establishes that, with certain specified exceptions, proceedings in respect of contraventions of the Bill can only be instituted in accordance with Part 9 of the Bill. The specified exceptions are: criminal proceedings, proceedings on a petition of doleance and proceedings under the Immigration Acts of Parliament or, if the Special Immigration Appeals Commission Act 1997 of Parliament is applied to the Island by an Order in Council, immigration appeals to which that Act applies.

I beg to move that clause 99 stand part of the Bill.

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

The President: The motion is that clause 99 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Now, clauses 100 to 102, that includes also Schedule 16.

The Acting Attorney General: Thank you, Madam President.

Clauses 100 to 102 and associated Schedule 16 deal with the constitution of the tribunal which will consider claims of discrimination and related matters under the Bill.

As the Hon. Members of Council will be aware, the intention is that the remit of the existing Employment Tribunal will be expanded and it will become the Employment and Equality Tribunal.

In addition to dealing with complaints under the existing employment statutes, such as the Employment Act 2006, the Tribunal will be responsible for dealing with employment-related claims that will be possible as a result of the Bill and also claims of discrimination in relation to the provision of goods and services.

This differs from the position under the UK Equality Act 2010, where claims of discrimination other than those relating to employment must be taken to the civil courts. It is considered that in a small jurisdiction such as the Isle of Man, avoiding the need for cases to be taken to the High Court will provide a quicker, easier and cheaper route for claimants seeking redress. It will also allow experience in dealing with discrimination issues to be concentrated in one body.

Hon. Members may wish to note that Jersey has taken a similar approach with its anti-discrimination legislation.

Madam President, taking the clauses in this group in turn, clause 100 provides definitions relating to the Tribunal and proceedings before it.

Clause 101 constitutes the Employment and Equality Tribunal, establishes its remit, and amends the Employment Act 2006 as a consequence of this Tribunal replacing the Employment Tribunal; this includes the repeal of the entirety of Part 12 and Schedule 3 of the 2006 Act, except for section 156 of that Act which is substituted by this clause.

Clause 101 also sets out how the transition from the Employment Tribunal to the Employment and Equality Tribunal will work and it gives effect to Schedule 16, which contains detailed provisions about the constitution, jurisdiction and operation of the Tribunal.

Schedule 16 is structured in a similar way to Schedule 3 to the Employment Act 2006, which it replaces.

Part 1 of Schedule 16, consisting of paragraphs 1 and 2, deals with the appointment of the members of the Tribunal by the Appointments Commission and the constitution of the Tribunal for hearing a complaint.
For employment-related cases, except where the chairperson can consider an issue sitting alone, the Tribunal for any particular case will consist of the chair and one member each drawn from the employee and employer panels, as at present.

For cases concerning discrimination in the provision of goods and services, the Tribunal will consist of the chairperson and two panel members drawn from either the employee or employer panel or from a new general panel. It may be noted that there is nothing to prevent a person who is a member of the employee panel or employer panel from also being a member of the general panel.

If the chairperson of the Tribunal is absent or unable to act, his or her place can be taken by a deputy chairperson selected from a panel of such persons by the Tribunals’ administration office.

Part 2 of Schedule 16, consisting of paragraphs 3 to 29, concerns proceedings before the Tribunal.

Paragraph 3 is an interpretation provision, and paragraph 4 allows the Council of Ministers, after consulting the Deemsters, to make rules governing the procedures of the Tribunal. The remaining paragraphs of Part 2 of Schedule 16 and also paragraph 30 of this Schedule set out some of the specific matters which may be dealt with in the rules. However, the specific matters referred to in those paragraphs do not limit the power in paragraph 4 so, if in the future the Tribunal rules need to deal with an issue that is not mentioned in paragraphs 5 to 30 of Schedule 16, this can be done.

I do not propose to list all of the matters referred to in respect of the Tribunal rules although I am happy to answer questions on any points that Hon. Members may have. I would, though, just like to highlight a couple of matters.

In paragraph 6 of this Schedule, it is explicitly stated that in non-employment cases, the Tribunal rules may make any provision that might be made in respect of a case before the High Court in proceedings in tort or doleance.

There is also an enabling power to allow for fees to be charged in respect of claims to the Tribunal. There are no plans, however, at the moment to charge fees at this time.

There was a very mixed response to the question about possible fees in the consultation on the Bill – from total opposition to any fee to strong support for fees in line with those applicable in the UK for employment tribunal cases. Fees which are so high as to potentially be a barrier to justice are unlikely to be appropriate in the Island, and Hon. Members may be aware that there is an appeal pending before the Supreme Court in the United Kingdom in respect of the level of fees for applications to employment tribunals. However, a lower level of fees, with the aim of deterring cases which are frivolous or vexatious, and which might contribute to the cost of the administration of the Tribunal, without deterring an average person from seeking to enforce their rights, may be appropriate.

In addition, again with the cost and effective operation of the Tribunal in mind, there will be a broader range of the more straightforward employment cases where the chairperson of the Tribunal will be able to sit alone to hear and determine the case. Such cases are listed in paragraph 17 of Schedule 16 and, with the approval of Tynwald, the Council of Ministers can amend this paragraph in future, if it is considered to be appropriate to add to, or remove items from the list.

Madam President, Part 3 of Schedule 16, consisting of paragraphs 30 to 33, deals with various miscellaneous issues.

Under paragraph 30 if a ‘relevant officer’ certifies to the Tribunal that he or she has brought about a conciliated settlement, whether during proceedings before the Tribunal or before proceedings are commenced, those proceedings must be stayed and not continued or commenced, as the case may be, without the approval of the Tribunal.

A relevant officer is an industrial relations officer for employment-related cases and an officer of the OFT in other cases.

Paragraph 31 of this Schedule provides that it is an offence, punishable with a fine of up to £5,000, not to comply with a requirement of the Tribunal rules in respect of providing evidence and documents or in respect of reporting restrictions.

Paragraph 32 provides that persons may represent themselves before the Tribunal or be represented by an advocate or another person.
And finally in this Schedule, Madam President, paragraph 33 allows the Council of Ministers, with the consent of Treasury, to make an order to provide for expenses to be paid to persons who may be involved in proceedings before the Tribunal.

Madam President, returning to the main body of the Bill, clause 102 deals with conciliation. As I have just mentioned in relation to paragraph 30 of Schedule 16, conciliation under the Bill in relation to employment cases will, as at present, be the responsibility of the Manx Industrial Relations Service while the Office of Fair Trading will be responsible for non-employment cases.

Officers in the OFT already carry out conciliation under the Financial Services Ombudsman Scheme so this is not something that will be entirely new to them; and that body will undoubtedly be the first port of call for any person who has had a complaint alleging discrimination in the provision of goods and services.

Training for relevant officers in the OFT will be provided as part of the implementation of the Bill; and, whilst it is to be sincerely hoped that there will be few such cases, resource issues will be reviewed in due course in the light of demands on this service.

Madam President, I beg to move that clauses 100 to 102 and Schedule 16 stand part of the Bill.

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

The President: The Hon. Member, Mr Cretney.

Mr Cretney: Yes, thank you. I have got an amendment to clause 100:

Amendment to clause 100
Page 103, line 7, after ‘industrial relations officer;’ (but before ‘and’) insert: ‘(b) in relation to proceedings under section 105, a person appointed by DEC to conciliate in proceedings under that section;’

Renumber the existing paragraph (b) of the subsection as paragraph (c) and adjust cross-references accordingly.

The function of a relevant officer is to try to promote a settlement through conciliation and other means so that complaints of discrimination do not have to be determined by the Employment and Equality Tribunal. Under the Bill there are three conciliation bodies or persons, which are: industrial relations officers, for cases with an employment element; officers of the Office of Fair Trading, for goods and services complaints; and, in addition, the Department of Education and Children must appoint an independent person to assist with the resolution of disputes involving schools with a view to avoiding claims being made to the Tribunal.

The definition of ‘relevant officer’ in clause 100 presently only comprises the first two categories of conciliators and the purpose of the amendment is to include persons appointed by the Department of Education & Children to conciliate in relation to education cases within the definition.

I beg to move the amendment standing in my name.

The President: Hon. Member, Mr Crookall.

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

The President: If no Hon. Member wishes to speak, I will first put to you clause 100. To that we have an amendment in the name of the Hon. Member, Mr Cretney.

I put to you the amendment to clause 100. Those in favour of the amendment, please say aye; against, no. The ayes have it. The ayes have it.

I now put to you clause 100, as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Now we will vote on clauses 101 and Schedule 16, and 102. Those in favour of those clauses and the Schedule, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 103 to 107, introducing Schedule 17 at clause 105.

**The Acting Attorney General:** Thank you, Madam President.

Clauses 103 to 107 and Schedule 17, deal with cases involving goods and services.

Clause 103 sets out the Tribunal’s general jurisdiction and powers in relation to goods and services cases, including cases relating to the provision of public functions.

Clause 104 sets out which claims under the Bill are outside the jurisdiction of the Tribunal because they are dealt with under immigration legislation. These are claims in relation to decisions on whether a person may enter or remain on the Island, and claims where the question of whether there has been a breach of Part 3 of the Bill concerning services and public functions has been raised in immigration proceedings and rejected, or could be raised on appeal.

Madam President, clause 105 gives effect to Schedule 17, which deals with the procedure where a claim of discrimination is made in respect of a school. Although the case can still be taken to the Tribunal, the Department of Education and Children must make arrangements to try to resolve the issue without reference to the Tribunal. This includes the appointment of an independent person or persons whose function is to facilitate the avoidance or resolution of disagreements between schools’ responsible bodies and children attending, or wishing to attend, a school or the parents of those children.

Clause 106 sets out the time limits for bringing a goods and services case to the Tribunal. In general this is six months, but the period can be extended by the Tribunal if it considers that it would be just and equitable to do so.

Clause 107 deals with the remedies that the Tribunal may grant if it finds there has been a contravention of the relevant goods and services provisions of the Bill. The Tribunal may grant any remedy which the High Court could have granted in proceedings in tort or on a petition of doleance, and any such remedy is enforceable as if it had been granted by the High Court.

In general, it is likely that in the majority of goods and services cases the remedy will be a financial award to the successful claimant for injury to feelings. However, in a case relating to an alleged failure to make reasonable adjustments for disabled persons, if on considering all the facts of the particular case, the Tribunal decided that a proposed adjustment would be reasonable it could order that adjustment to be made.

Madam President, there is a large amount of case law that has been built up in the UK in respect of reasonable adjustments, initially under the Disability Discrimination Act 1995 and more recently under the Equality Act 2010. Such case law, together with the guidance issued by the Equality and Human Rights Commission which it is intended will be adapted for use in the Island, will undoubtedly be of great assistance to the Tribunal in considering such cases.

Madam President, I beg to move that clauses 103 to 107 and Schedule 17 stand part of the Bill.

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

**The President:** The motion is that clauses 103 to 107 and Schedule 17 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 108 to 111.

**The Acting Attorney General:** Thank you, Madam President.

Clause 108 establishes the Employment and Equality Tribunal’s jurisdiction under the work-related provisions of the Bill.

Clause 109 sets out the remedies that the Tribunal may grant under the existing employment statutes, which are referred to in the Bill as ‘the relevant enactments’. The term is defined in clause 3 of the Bill but, for convenience, it means: the Redundancy Payments Act 1990; the Shops Act 2000; the Minimum Wage Act 2001; the Employment Act 2006; and any statutory document made, or
having effect, under any of those Acts. This clause re-enacts equivalent provision in the Employment Act 2006 and the remedies are the same as those available to the existing Employment Tribunal.

Clause 110 provides for references from the High Court to the Tribunal in cases involving a claim or counterclaim relating to a non-discrimination rule.

Clause 111 deals with time limits for bringing a work case under the Bill to the Tribunal. A person must bring a claim within three months of the alleged conduct taking place, although the Tribunal has discretion to accept a claim after that period if it considers that it would be just and equitable to do so.

If the conduct in respect of which a claim under the Bill arises continues over a period of time, the time limit starts to run at the end of that period. Where it consists of a failure to do something, the time limit starts to run when the person decides not to do the thing in question. This clause does not apply for equal pay cases; the time limits for those cases are set out in clause 118.

Madam President, I beg to move that clauses 108 to 111 stand part of the Bill.

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

The President: The Hon. Member, Mr Cretney.

Mr Cretney: Yes, thank you.

With your permission I would like to move the two amendments to clause 110, which are in my name and numbered 3 and 4 on the Order Paper, together.

These amendments reflect a difference of approach between the Equality Act 2010 and the Island’s Equality Bill. In England, certain cases may be determined by either the civil courts or employment tribunals, whereas in the Island all the proceedings will be dealt with by the Employment and Equality Tribunal.

The effect of the amendment is to require the High Court to either strike out a claim or counterclaim relating to a non-discrimination rule or to refer the claim to the Tribunal. Where a claim is referred to the Tribunal, the Tribunal must, for the purposes of establishing whether it should be accepted, ascertain whether the claim was submitted within the appropriate time limit. For this purpose, the date the claim was submitted to the High Court is the appropriate date.

I now beg to move amendment standing in my name.

Amendments to clause 110
Page 111, for lines 9 to 12 substitute:
‘(1) If proceedings are pending in the Court and it appears that a claim or counter-claim relates to a non-discrimination rule, the Court must strike out the claim or counter-claim, unless it proceeds as mentioned in subsection (2).’

Page 111 after line 18 insert:
‘(3) On a reference under subsection (2)(a) the Tribunal must determine whether the claim or counter-claim is to be accepted as having been made within the time limit which applies to it under section 111.
For the purposes of this subsection, the Tribunal must:
(a) in the case of a claim, treat a complaint as having been made to the Tribunal at the time when the proceedings in the Court were commenced; and
(b) in the case of a counter-claim, treat a complaint as having been made to the Tribunal at the time when the counter-claim was asserted in the proceedings before the Court.’

The President: Do we have a seconder, Hon. Members?

The Hon. Member, Mr Anderson.

Mr Anderson: Madam President, I beg to second.
The President: If no Member wishes to speak, I will move clauses 108 and 109 and then clause 110 with the amendments.

Clauses 108 and 109 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 110, to which we have the amendments in the name of the Hon. Member, Mr Cretney. I put to you the amendments, Hon. Members. Those in favour of both amendments, please say aye; against, no. The ayes have it. The ayes have it.

I now put to you the clause as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Finally in that group, clause 111: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 112 to 114.

The Acting Attorney General: Thank you, Madam President.

Clauses 112 to 114 deal with the remedies that the Tribunal may grant for breaches of the majority of the work-related provisions of the Bill. These clauses do not deal with the remedies in respect of equal pay and other equality terms cases, which are dealt with separately further on in this Part of the Bill.

Clause 112 deals with the remedies available to the Tribunal generally and under this clause the Tribunal can make a declaration regarding the rights of the complainant and/or the respondent; order compensation to be paid, including damages for injury to feelings; and make an appropriate recommendation.

Where the Tribunal makes a recommendation it does not only have to be aimed at reducing the negative impact on the individual claimant, it can also be aimed at reducing that impact on the wider workforce. Any recommendation must state that the respondent should take specific action within a specified period of time.

In cases of indirect discrimination where the respondent proves that there was no intention to treat the claimant unfavourably, the Tribunal must not award damages to a claimant unless it has first considered making either a declaration or recommendation.

The maximum compensation that can be awarded is the sum of the amounts provided for by section 144 of the Employment Act 2006.

Section 144(1) provides for payment of a compensatory award, presently set at £50,000.

Section 144(2) provides for an award for injury to feelings of up to £5,000. However, in cases under the Bill, the Tribunal does not have to limit an individual component of an award to either of these maxima provided that the overall limit of £55,000 is not exceeded. Hon. Members may be interested to know that, to date, the Employment Tribunal has never made a compensation award to the maximum amount.

Clause 113 sets out the specific remedies that are available to the Tribunal in cases involving occupational pension schemes. In these cases, the Tribunal can also make a declaration about the terms on which a person should be admitted as a member to a scheme, or a declaration about the right of an existing member of a scheme not to be discriminated against. However, the Tribunal can only award compensation for injured feelings or for failure to comply with a recommendation; it cannot compensate the claimant for loss caused by any unlawful discrimination.

Clause 114 permits the Department of Economic Development to exercise a remedy under Part 5 of the Bill, or any of the relevant employment enactments, on behalf of an employee or worker if the employee or worker gives his or her consent. Although this is not a power that the Department would expect to use routinely, it is thought to be a useful one. The power might be exercised, for example, if there were to be an important case in which it was in the public interest for the Tribunal to make a decision, but the claimant could not pursue the case; or where it might be considered overly onerous for an individual employee or worker to bring proceedings.

This clause also restricts the Tribunal from making more than one financial award where there are overlapping employment rights.
Madam President, I beg to move clauses 112 to 114 stand part of the Bill.

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

The President: The motion is that clauses 112 to 114 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 116 to 119. (Interjections) Sorry, I have missed the single one – 115.

The Acting Attorney General: Thank you, Madam President.

Clause 115 re-enacts, in almost identical terms, section 158 of the Employment Act 2006, which is repealed as part of the repeal of Part 12 of the 2006 Act by clause 101(2) of the Bill.

This clause enables the Treasury to make regulations so that, where an award or agreed payment is made to an employee who has received Jobseeker's Allowance or Income Support, all or part of the award or payment is to be paid to the Treasury, so as to recoup all or part of the benefits that have been paid to the person.

In 2010 Tynwald approved regulations under section 158 of the 2006 Act and, by virtue of the operation of the Island's Interpretation Acts, those regulations will continue to have effect under the Bill until any new regulations are made under this clause.

I beg to move that clause 115 stand part of the Bill.

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

The President: The motion is that clause 115 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 116 to 119.

The Acting Attorney General: Thank you, Madam President.

Clauses 116 to 119 deal with the Tribunal's jurisdiction in equal pay and other equality of terms cases.

Under clause 116 the Tribunal may hear and decide claims involving equality in the rules of occupational pension schemes and claims relating to an equality clause, including claims relating to pregnancy and maternity equality. A responsible person such as an employer, or a pension scheme trustee or manager can also ask the Tribunal for a declaration of each party's rights in relation to a dispute or claim about an equality clause or rule.

Clause 117 provides for the High Court to strike out a claim or counterclaim relating to an equality clause or equality rule and for it to be referred to the Tribunal.

Clause 118 prescribes the time limits in equality of terms cases. These time limits provide certainty by requiring claims to be brought within a specified period and also take into account factors which may affect a claimant's ability to assert his or her claim.

In general, a person who wishes to bring a claim for breach of an equality clause or rule, or to apply for a declaration about the effect of such a clause or rule, must normally do so within six months of the end of an employment contract. Although, just for the avoidance of doubt, a claim can of course also be made whilst the employment contract is still in effect. In a standard case, the time limit would start at the end of the contract of employment.

In a 'stable work case', proceedings are taken to relate to a period during which there was a stable working relationship between the worker and the responsible person, and the time limit only begins to run when the stable working relationship ends. A stable employment relationship is where there are successive contracts and/or periods of employment with the same employer.

In a 'concealment case', the employer deliberately conceals relevant information from the employee. As a result, the time limit starts to run when the employee discovers, or could reasonably have been expected to discover, that information.
In an ‘incapacity case’ the time limit starts to run on the day on which the worker ceases to have the incapacity. This type of case would be where, for example, a person has a health problem which prevents him or her from bringing the case within the normal time limit.

Clause 119 concerns the assessment by the Tribunal of whether work carried on by a claimant, or his or her comparator, is actually of equal value.

As I explained last week, such an assessment is, in effect, a mini job evaluation exercise and this clause gives the Tribunal the power to ask an independent expert to prepare a report on the matter. If, in fact, there has already been a job evaluation study in relation to the work involved and that study has found that the claimant’s work is not of equal value to the work of a comparator, the Tribunal must come to the same conclusion, unless it has a good reason to suspect that the study itself is discriminatory or unreliable.

Under this clause the Manx Industrial Relations Service has the role of entering into arrangements with a suitably qualified independent person, or persons, to assist the Tribunal in deciding whether jobs are of equal value. This could be someone from the Island or elsewhere.

Madam President, I beg to move that clauses 116 to 119 stand part of the Bill.

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

The President: The Hon. Member, Mr Cretney.

Mr Cretney: Yes, I have an amendment to clause 117:

Amendments to clause 117:
Page 117, line 8 omit ‘(a)’.

Page 117, after line 14 insert:
‘(3) On a reference under subsection (2)(a) the Tribunal must determine whether the claim or counter-claim is to be accepted as having been made within the time limit which applies to it under section 118.
For the purposes of this subsection, the Tribunal must:
(a) in the case of claim, treat a complaint as having been made to the Tribunal at the time when the proceedings in the Court were commenced; and
(b) in the case of a counter-claim, treat a complaint as having been made to the Tribunal at the time when the counter-claim was asserted in the proceedings before the Court.’

Again, with your permission, I would like to move the two amendments to this clause in my name, numbered 5 and 6 on the Order Paper, together.

These amendments have a very similar effect to the amendments I moved in respect of clause 110 as in that clause the High Court will be required to either strike out a claim or counter-claim relating to a non-discrimination rule or to refer the claim to the Tribunal.

Where a claim is referred to the Tribunal, the Tribunal must, for the purposes of ascertaining whether it should be accepted, establish whether the claim was submitted within the appropriate time limit. For this purpose the date the claim was submitted to the High Court is the appropriate date.

I now beg to move the amendment standing in my name.

The President: The Hon. Member, Mr Corkish.

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

The President: We will split the group up, Hon. Members, and we will take clause 116 first. Those in favour of clause 116, please say aye; against, no. The ayes have it. The ayes have it.
Clause 117, to which we have two amendments in the name of the Hon. Member, Mr Cretney. Those in favour of the amendments, please say aye; against, no. The ayes have it. The ayes have it.

I now put to you the clause as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Then clauses 118 and 119. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 120 to 123.

The Acting Attorney General: Thank you, Madam President.

Clauses 120 to 123 deal with the remedies that the Tribunal may grant if a claimant is successful in an equality of terms case.

Clause 120 sets out the remedies available in cases that do not involve pension rights. The Tribunal can make a declaration clarifying what the rights of the parties to the claim are and it can also order the employer to pay the claimant arrears of pay or damages.

The period used for calculating arrears depends on the type of case. As under the existing equal pay provisions of the Employment (Sex Discrimination) Act 2000, the basic minimum period is two years from the date on which a claim is made. This is different to the position under the Equality Act 2010 in England and Wales, where the maximum arrears period is six years.

There was a range of responses to the question about equal pay arrears in the consultation on the Bill – from suggestions that there should be no award of pay arrears, to having the same period as in England. On balance though, it was considered that maintaining the same period as under the 2000 Act of Tynwald was fair to both claimants and employers. However, special provision is made for claims involving concealment of relevant information by an employer and where incapacity meant that a claim could not be pursued earlier.

It should be noted, Madam President, that in equal pay for equal work of equal value cases no claim can be made in respect of any period before this right comes into operation; and, as I have said previously, it is intended that this will not be until two years after Royal Assent. This is to allow employers in the Island time to consider and, if necessary, amend their pay systems to take account of the expanded equal pay rights under the Bill.

Clause 121 deals with cases in respect of pensions, where the Tribunal finds that an equality rule or equality clause has been breached, it allows the Tribunal to declare that, in cases concerning membership of a pension scheme, the complainant is entitled to be admitted to the scheme from a date specified by the Tribunal; and, in relation to pension scheme rights, the complainant is entitled to have any rights which would have accrued under the scheme from a date specified by the Tribunal. The date specified by the Tribunal cannot be earlier than 6th April 2006. This is the date on which certain rights to equal treatment in respect of occupation pensions came into operation on the Island.

The clause also prevents the Tribunal from ordering an award of compensation to the complainant in a pension case. However, clause 122 allows the Tribunal to require compensation to be paid to a pensioner member for a breach of an equality clause or rule in relation to an occupational pension scheme and the clause sets out the period for which arrears may be awarded for different types of cases. Again, the standard maximum period is two years before the date on which a claim is made, but there is special provision for claims involving concealment of facts or incapacity of a claimant.

Clause 123 defines terms used in the previous clauses.

I am sorry, Madam President, if I could just correct something I have said. Apparently, I referred to the maximum arrears period for a standard case to be two years. I said a ‘minimum’ arrears period of two years; it should in fact be a maximum. So I have misled Hon. Members and I will just clarify that. (Interjections)

So on that basis, Madam President, I beg to move clauses 120 to 123 stand part of the Bill.

Mr Coleman: I beg to second, Madam President, and reserve my remarks.
The President: The motion is that clauses 120 to 123 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 124.

The Acting Attorney General: Thank you, Madam President.

Clause 124 permits a person who is aggrieved by any decision, determination, order or award of the tribunal, under this Bill or any of the relevant enactments, to appeal to the High Court on a question of law.

I beg to move that clause 124 stand part of the Bill.

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

The President: The motion is that clause 124 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 125 to 133.

The Acting Attorney General: Thank you, Madam President.

These clauses are miscellaneous provisions relating to the operation of this Part of the Bill.

Under clause 125, if a complaint is made under certain provisions of the Employment Act 2006 or under this Bill, and it is shown that the action complained of was taken for the purpose of safeguarding national security, the tribunal must dismiss the complaint.

Clause 126 deals with proceedings brought before the tribunal by the Attorney General, where it is alleged that a person has instructed, caused or induced another person to carry out unlawful discrimination under the Bill or where a person has aided contravention of the Bill.

Clause 127 re-enacts section 159 of the Employment Act 2006, enabling the tribunal to enforce a decision, order or award made by it as though the decision, order or award were an order of the High Court.

Clause 128 provides that, in any claim where a person alleges discrimination, harassment or victimisation under the Bill, the burden of proving his or her case starts with the claimant. Once the claimant has established sufficient facts – which in the absence of any other explanation point to a breach having occurred – the burden of proof shifts to the respondent to show that he or she did not breach the provisions of the Bill. The exception to this rule is if the proceedings relate to a criminal offence under this Bill where the normal rules in respect of criminal proceedings – namely, broadly, that the burden is on the Crown to prove all the relevant elements beyond reasonable doubt – will apply.

Clause 129 provides that, if a person has brought a case under any of the anti-discrimination legislation listed in the clause which this Bill replaces, and a finding by the Employment Tribunal or the High Court had become final, the issues decided in that case cannot be reopened and litigated again under the provisions of this Bill.

Clause 130 enables the Council of Ministers to make an order, with the approval of Tynwald, providing for interest to be payable pursuant to a decision of the tribunal. This provision re-enacts a provision in Schedule 3 to the Employment Act 2006.

The existing order dealing with this issue actually pre-dates the 2006 Act, dating from 1992, but it continues to have effect as if it had been made under that Act. The order provides for interest to become payable on an award made by the Employment Tribunal if the respondent has not complied with the requirement to pay the award by the specified date.

The 1992 order is in need of re-enactment, but it is not envisaged that the replacement will provide for compound interest to be added to awards of pay arrears, as is the case in the UK under the Equality Act 2010. Such interest is only one reason why the cost of awards of pay arrears in some equal pay cases has been so high.

Madam President, clause 131 enables the Department of Economic Development to make regulations requiring the tribunal to order employers to carry out equal pay audits where they have
been found by the tribunal to have breached equal pay law or to have discriminated on the ground
of sex in respect of non-contractual pay such as discretionary bonuses.

Regulations made under this clause will be subject to the approval of Tynwald.

If this power is used, the first regulations made under it require that the tribunal may not order
an employer to pay a penalty exceeding £5,000 for failure to comply with an equal pay audit order.
The first regulations must also include an exemption for certain types of new or small businesses.

Clause 132 allows the Attorney General to apply to the tribunal for a restriction of proceedings
order where a person is responsible for making repeated frivolous or vexatious claims to the
tribunal. When issued, such an order would prevent the person against whom it is made from
instituting or continuing proceedings without leave of the tribunal. The tribunal must give the
person the opportunity of appearing before the tribunal before deciding whether an order should be
made.

Finally in this diverse group of clauses, Madam President, clause 133 explains certain concepts
and terms used in Part 9 of the Bill.

Madam President, I beg to move that clauses 125 to 133 stand part of the Bill.

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

The President: The Hon. Member, Mr Cretney.

Mr Cretney: Yes, thank you.

I have got an amendment to clause 131:

Amendment to clause 131
Page 126, line 13, omit ‘40(1)’.

The amendment omits an incorrect reference to contract workers which had originally been
requested by the Department of Economic Development in error.

I beg to move the amendment standing in my name.

The President: Hon. Member, Mr Wild.

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

The President: You cannot reserve on an amendment.

Mr Wild: Oh, sorry! Quite right, Madam President.

The President: The Hon. Member, Mr Anderson.

Mr Anderson: Thank you, Madam President.

The purpose of this new clause to the Bill is to seek to prevent an individual being funded by an
organisation seeking to further its own agenda through an individual using them as a Trojan Horse.
This would not stop an individual’s existing rights, as laid out and listed in section 2 and,
furthermore, in section 3, where it does not prevent an advocate being paid for their services to an
individual client.

Here I would disagree with the Rainbow Association who have emailed Hon. Members saying it
would not help their rights. I believe that, through section 2 and section 3, their rights and their
representations would be protected. Therefore, in my opinion, this is not against the principle of the
Act, but we will see when the mover replies.

To help Hon. Members interpret this, potential abuse would be a lobbying group – possibly a
large off-Island organisation – using an individual, through this legislation, and one does not have to
think too hard of where this might arise. An example might be somebody that wants the liberalisation of cannabis, where an organisation might help fund an individual to challenge it through such legislation as we are talking about here.

I do realise that I will probably be on a minority in this Council on this subject. However, if my concerns are valid, I will have to wait and see, but at least I will have got it onto Hansard.

I beg to move the amendment standing in my name.

Amendment: new clause

Page 128, after line 8 insert:

‘133 Prohibition on funding proceedings under this Act

(1) No person may enter into, or become concerned in, an arrangement as a result of which money is made available to fund (wholly or partly) the institution or conduct of proceedings by another under this Act.

This is subject to subsections (2) and (3).

(2) Subsection (1) does not apply to:

(a) proceedings instituted by or on behalf of a Department, Statutory Board or local authority;
(b) proceedings instituted by an employee or the holder of a public or personal office, or a former employee or former holder of such an office, if the money will be made available by a trade union registered under section 1 of the Trade Unions Act 1991;
(c) proceedings instituted by a member or former member of the police force, if the money will be made available by the Isle of Man Police Federation; 7 PP 2016/0081
(d) proceedings instituted by a litigation friend on behalf of a minor or a patient;
(e) proceedings funded in accordance with an insurance policy by an authorised insurer or a licenced foreign insurer.

(3) For the sake of clarity, subsection (1) does not prevent an advocate from entering into an agreement with a person who will thereby become the advocate’s client as to the payment of the advocate’s fees or the fees of counsel instructed by the advocate.

(4) Subsection (1) is enforceable only by the institution of proceedings in the Court by the Attorney General for an injunction or contempt of court against any party to the arrangement.

(5) In subsection (2):

(a) terms used in paragraph (c) have the same meaning as they have in the Police Act 1993;
(b) terms used in paragraph (d) have the same meaning as in the Rules of the High Court of Justice 2009; and
(c) terms used in paragraph (e) have the same meaning as in the Insurance Act 2008.’

Renumber following clauses and adjust cross-references accordingly.

The President: The Hon. Member, Mr Corkish.

Mr Corkish: Thank you, Madam President.

I beg to second, Madam President.

The President: You wish to speak, sir.

The Acting Attorney General: Yes, thank you, Madam President.

As the Hon. Member, Mr Anderson, has explained, the purpose of his proposed amendment – and when you read his specific terms – is to prevent a person from being funded in whole or in part in the making of a claim under the Act or under the Bill or conducting proceedings in relation to the Act. Those proceedings, as I have explained, Hon. Members, must be brought before the tribunal, so legal aid is not available. I think you have to bear that in mind. The prohibition proposed by the amendment is therefore aimed at both claimants and those defending any proceedings commenced under the Bill.
Although understanding the point that it is perhaps aimed at ensuring equality of arms and to prevent special interest groups, with funding available to them, funding litigation under the Bill, I urge Hon. Members to reject the amendment. I believe that the amendment will be likely to result in inequitable situations arising and I refer briefly to that.

Please bear in mind that the prohibition does not, of course, apply to Government and its various arms. It does not apply to local authorities who, with Government, employ thousands on the Island, and it could be considered that those persons have available funding and Government shared legal services. It does not apply to employees funded by trade unions, to the police or to people with insurance cover from an authorised insurer or foreign licence insurer. So, Hon. Members, a significant swathe of people will automatically be excluded from the prohibition and will have available funding, leaving the rest of the population exposed.

Hon. Members, you are considering the much needed equality legislation for the Island and I would put to you that the amendment you are asked to consider could itself lead to an unequal outcome.

There are many situations of which Hon. Members of Council will be aware, of people voicing concerns about the perceived inequitable result of funding being available to one party but not to the other, so one side has had to consider meeting the cost of answering proceedings at their own cost. If you are not lucky enough to have insurance or being a member of a trade union, you are a person who could therefore be without support. At times, people have, therefore, only been able to engage lawyers, for example, with the financial help of family or friends. If such circumstances arose in relation to proceedings under the Bill, any and all third party financial assistance would be outlawed. Is that fair? I suggest to Hon. Members it is not.

The President: No other Member wishes to speak. We will deal with the clauses in groups.

I will take, first, clauses 125 to 130. Those in favour of those clauses, please say aye; against, no. The ayes have it. The ayes have it.

Clause 131 – to which we have an amendment in the name of the Mr Cretney. I put to you the amendment. Those in favour of the amendment, please say aye; against, no. The ayes have it. The amendment carries.

I now put to you the clause, as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 132: those in favour, please say aye, against, no. The ayes have it. The ayes have it.

Now, the new clause, as tabled by the Hon. Member, Mr Anderson. Those in favour, please say aye; against, no. The noes have it.

A division was called for and voting resulted as follows:

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<tr>
<td>Mr Anderson</td>
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<td>Mr Corkish</td>
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The President: There are 2 votes cast in favour and 6 votes against, Hon. Members. The amendment in the form of the new clause fails to carry.

We move then, finally, to clause 133 in that group. Those in favour of clause 133 standing part of the Bill, please say aye; against, no. The ayes have it. The ayes have it.

We now come to Part 10 of the Bill. We will take clauses 134 to 139.

The Acting Attorney General: Thank you, Madam President.
Clauses 134 to 139 make up Part 10 of the Bill, which deals with contracts and other arrangements relating to vocational training, providing employees to undertake work and the provision of group insurance arrangements or insurance facilities.

Clause 134 makes void any contractual terms which would constitute, promote or provide for treatment prohibited by the Bill. In respect of disability, this clause also applies to terms of non-contractual agreements relating to the provision of employment services or group insurance arrangements for employees.

Clause 135 provides a mechanism for the removal or modification of terms which are unenforceable by virtue of clause 134 by order of the tribunal or an application by a person who has an interest in the contract or relevant non-contractual terms. Before making any such order the tribunal must ensure that anyone who would be affected has been informed of the proceedings and given an opportunity to make his or her views known.

Clause 136 provides that it is not permissible to contract out of the rights conferred by or under the Bill. But agreements to settle specified complaints, which have been reached with the assistance of an industrial relations officer or an officer of the Office of Fair Trading, are permitted exceptions to the non-contracting out rule.

Clause 137 makes collective bargaining terms void if they constitute, promote or provide for anything prohibited by the Bill. The clause also makes a rule of an undertaking unenforceable against a person in so far as it constitutes, promotes or provides for any treatment of the person that is prohibited by the Bill.

Clause 138 enables the tribunal to declare a term of a collective agreement void or a rule of an undertaking unenforceable, as set out in clause 137, on a claim from a person who believes that it may have the effect of discriminating against him or her if the tribunal finds that the complaint is well-founded.

Because collective agreements apply to many people in many, possibly varying, situations, it would not be appropriate for the tribunal to modify them and so they are made void. The parties can then renegotiate, bearing all those potentially affected in mind.

Clause 138 also sets out who can make a complaint in each type of case.

Clause 139 deals with the interpretation of terms used in this Part of the Bill.

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

The President: The Hon. Member, Mr Cretney.

Mr Cretney: Yes, thank you.

I have got an amendment to clause 136:

Amendment to clause 136
Page 130, line 14, after ‘industrial relations officer;’ insert:
‘(b) settles a claim under section 105 with the assistance of a person appointed by DEC to conciliate in proceedings under that section;’.

Renumber the existing paragraph (b) of the subsection as paragraph (c) and adjust cross-references accordingly.

The amendment is based on the same premise as my earlier amendment to clause 100. The clause sets out exceptions to the non-contracting out rule, which protects workers and service providers from being able to give up the rights provided for in the Bill. The clause makes exceptions to the non-contracting out rule in the case of settlements reached with the assistance of either an industrial relations officer or an officer of the Office of Fair Trading.

The amendment takes into account that there is a third class of conciliator provided for within the Bill; that is an independent person appointed by the Department of Education and Children to
assist with the resolution of disputes involving schools. Any agreement reached with the assistance of such person will be an additional exception to the non-contracting out rule.

I now beg to move the amendment standing in my name.

Mr Crookall: I beg to second, Madam President.

The President: Members do not wish to speak to the clauses.

I will move, first, clauses 134 and 135. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. Clause 136 – to which we have the amendment in the name of the Hon. Member, Mr Cretney. Those in favour of the amendment, please say aye; against, no. The ayes have it. The ayes have it.

I now put to you the clause, as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. And clauses 137 to 139: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Part 11, clauses 140 to 142, to start with.

The Acting Attorney General: Thank you, Madam President.

Part 11 of the Bill deals with the advancement of equality. It is split into two divisions, the first of which, consisting of clauses 140 to 142, concerns the public sector equality duty.

Clause 140 requires every public authority when exercising its functions to have due regard to the need to, firstly, eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Bill. Secondly, the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it, and also the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The clause goes on to explain exactly what is meant by having due regard to the need to advance equality of opportunity and having due regard to the need to foster good relations.

Subsection (6) makes clear that complying with the public sector equality duty might mean treating some people more favourably than others, but only where such treatment is allowed by the Bill. This includes treating disabled people more favourably than non-disabled people in respect of making reasonable adjustments for them, making use of exceptions which permit different treatment, and using the positive action provisions in division 2 of this Part.

The public authorities to which the duty applies are listed in subsection (9), although the duty also applies to a person who is not a public authority but who exercises public functions.

As Hon. Members may be aware, a public sector equality duty already applies in relation to the provision of goods and services for the protected characteristic of race under the Race Relations Act 2004.

Clause 141 set out persons and functions to which the public sector equality duty does not apply. These exceptions are with respect to: age, the education of pupils in schools and the provision of services to pupils in schools and in relation to children’s homes; immigration functions in respect of race – in so far as it relates to nationality and ethnic or national origin but not colour – and religion or belief and age; judicial functions or functions exercised on behalf of, or on the instructions of, a person exercising judicial functions; and functions under the Control of Employment Act 2014.

The Council of Ministers can, with the approval of Tynwald, add to, remove or amend these exceptions other than in relation to judicial functions.

Clause 142 confirms that the public sector equality duty does not create any private law rights for individuals. However, the duty would be enforceable by way of a petition of doleance.

Madam President, I beg to move that clauses 140 to 142 stand part of the Bill.

Mr Coleman: I beg to second, Madam President, and reserve my remarks.
The President: The motion is that clauses 140 to 142 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 143 and 144.

The Acting Attorney General: Thank you, Madam President.

Clauses 143 and 144 set out the limited circumstances where some form of positive action may be permitted.

Clause 143 establishes the general principle that the Bill does not prohibit the use of positive action measures to alleviate disadvantage experienced by people who share a protected characteristic, reduce their under-representation in relation to particular activities, or meet their particular needs.

Any such measures must be a proportionate means of achieving the relevant aim of: enabling or encouraging persons with a particular protected characteristic to overcome or minimise a disadvantage, or meeting their needs, or enabling or encouraging the participation of persons with a particular protected characteristic in an activity.

The extent to which it is proportionate to take positive action measures, which may result in people not having the relevant characteristic being treated less favourably, will depend on, amongst other things, the seriousness of the disadvantage experienced, the extremity of need or under-representation and the availability of other means of countering them.

To provide greater legal certainty about what action is proportionate in particular circumstances, the clause contains a power to make regulations setting out action which is not permitted under it.

The clause does not allow any action to be taken that would be prohibited by other legislation, and it does not apply to measures that are taken in relation to recruitment or promotion, which is dealt with in the next clause.

Madam President, clause 144 permits an employer to take a protected characteristic into consideration when deciding whom to recruit or promote, where people having the protected characteristic are at a disadvantage or are under-represented. But this can only be done where the candidates are as qualified as each other. The question of whether one person is as qualified as another is not a matter only of academic qualification, but rather a judgement based on the criteria the employer uses to establish who is the best person for a job. This could include matters such as suitability, competence and professional performance.

The clause does not allow employers to have a general policy or practice of automatically treating people who share a protected characteristic more favourably than those who do not have that protected characteristic. Each individual case must be considered on its merits.

An action taken under this clause must be a proportionate means of addressing a disadvantage or under-representation.

Madam President, I beg to move that clauses 143 and 144 stand part of the Bill.

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

The President: The motion is that clauses 143 and 144 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Part 12: clause 145 and Schedule 18.

The Acting Attorney General: Thank you, Madam President.

Clause 145 simply gives effect to Schedule 18, which contains supplementary provision about reasonable adjustments for disabled people.

This Schedule applies for the purposes of earlier Schedules in the Bill which deal with reasonable adjustments for disabled people where a person who is carrying out relevant activities is required to consider adjustments to rented premises for which the consent of the landlord would be required.

It sets out what steps it is reasonable for a person to take in discharging a duty to make reasonable adjustments in a case where a binding agreement requires that consent must be
obtained from a third party before that person may proceed to make the adjustment to let premises or the common parts of let premises.

Where a person wishes to make an adjustment in order to fulfil a duty to make reasonable adjustments but is unable to do so, the Schedule enables the adjustment to be made by deeming the tenancy to include a certain provision. For example, the tenancy may have effect as if a tenant were able to make alterations with the consent of the landlord.

If a landlord has refused consent to an alteration or gives consent subject to a condition, the person requesting the consent – or a disabled person who has an interest in the alteration being made – can refer the matter to the tribunal.

This Schedule also provides for a landlord to be joined as a party to proceedings where a disabled person is bringing an action under the reasonable adjustment duty.

Finally, Madam President, Schedule 18 provides a power for the Council of Ministers to make regulations, which require the approval of Tynwald, about matters such as when a landlord is taken to have refused consent, when such refusal is unreasonable and when it is reasonable.

I beg to move that clause 145 and Schedule 18 stand part of the Bill.

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

The President: The motion is that clause 145 and Schedule 18 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 146.

The Acting Attorney General: Thank you, Madam President.

Clause 146 also deals with adjustments for disabled persons.

This clause provides a procedure for a disabled tenant or occupier of rented residential premises to seek consent to make a disability-related improvement to the premises where the lease allows a tenant to make an improvement only with the consent of the landlord.

The landlord may not unreasonably withhold consent, but may place reasonable conditions on the consent. A landlord who refuses consent must set out the reasons for that refusal. In deciding whether a refusal or condition is unreasonable, the onus is on the landlord to show that it is not.

This clause applies to residential property that a disabled person occupies or intends to occupy as their only or main home.

Madam President, I beg to move that clause 146 stand part of the Bill.

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

The President: The motion is that clause 146 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

I think that is a convenient point at which to adjourn, Hon. Members. (A Member: Hear, hear.) The adjournment will be until 2.30 p.m.

The Council adjourned at 1 p.m.

and resumed its sitting at 2.30 p.m.
Equality Bill 2016 –
Consideration of clauses concluded

HM Acting Attorney General to move.

The President: Fastyr mie, Hon. Members.

Members: Fastyr mie, Madam President.

The President: Now, we have reached Part 13, and we will now deal with clauses 147 to 153 and Schedules 19 and 20.

The Acting Attorney General: Thank you, Madam President.

Part 13 of the Bill deals with general exceptions to the underlying principle of equality of treatment set out in the Bill. This Part consists of clauses 147 to 153 together with Schedules 19 and 20.

Although it is quite diverse and lengthy, given the common theme, with your permission, Madam President, I would like to move the clauses and Schedules of Part 13 as a single group. I am happy, however, if it proves necessary – I very much doubt if it would – that they could be voted upon separately, if this would be preferable to Members.

Clause 147 simply gives effect to Schedule 19.

Paragraph 1 of this Schedule provides exceptions from several Parts of the Bill in relation to the protected characteristics of age, disability, religion or belief, sex and sexual orientation, for things done in accordance with what is, or may in future be, required because of some other law.

Paragraph 2 allows differential treatment based on sex or pregnancy and maternity at work, which is required to comply with laws protecting women who are pregnant or who have recently given birth, and in respect of risks specific to women.

Paragraph 3 provides an exception from the provisions on religious discrimination for certain posts in schools or institutions of further or higher education, where the governing instrument requires the head teacher or principal to be of a particular religious order. The Department of Education and Children has a power, subject to the approval of Tynwald, to modify the exception either in relation to a particular institution or a class of institutions.

Paragraph 4 of Schedule 19 allows restrictions on the employment of foreign nationals in employment in the service of the Crown; employment as a civil servant; employment by any other prescribed public body; and in relation to holding a public office.

Madam President, clause 148 ensures that the Bill does not make it unlawful to do anything which is proportionate in order to safeguard national security.

Under clause 149, charities are permitted to provide benefits only to people who share the same protected characteristic, if this is in line with their charitable instrument and if it is objectively justified or to prevent or compensate for disadvantage. It remains unlawful for a charity to limit its beneficiaries by reference to a person’s colour and, if a charitable instrument requires such a restriction, it must be discounted.

A person who provides supported employment is permitted to treat persons who have the same disability or a disability of a prescribed description more favourably than those who do not have that disability, and the Department of Health and Social Care can agree to arrangements for the provision of supported employment which will, or may, have that effect.

The clause also allows certain charities to make acceptance of a religion or belief a condition of membership and to refuse members access to benefits if they do not accept a religion or belief where membership itself is not subject to such a condition, but this exception only applies if the requirement existed prior to the Bill being introduced into this Hon. Council.

It also allows single-sex activities for the purpose of promoting or supporting a charity, such as, for example, the women only Race for Life cancer charity.
Finally, Madam President, this clause confirms that neither the High Court nor the Attorney General contravenes the Bill by exercising a function in a charity’s interests, taking account of what is said in its charitable instrument.

Clause 150 confirms that nothing which is done under the Control of Employment Act 2014 in relation to the operation of the Island’s work permit system contravenes the Bill.

Clause 151 allows separate sporting competitions to continue to be organised for men and women, where physical strength, stamina or physique are major factors in determining success or failure and in which one sex is generally at a disadvantage in comparison to the other.

Provision is also made so that age-banded competitive sporting activity is not unlawful, and for the participation of transsexual people to be restricted in competitions if this is necessary to uphold fair or safe competition, but not otherwise.

In addition, clause 151 allows the selection arrangements of national sports teams, regional or local clubs or related associations to continue. It also protects competitions where participation is limited to people who meet a requirement relating to nationality, place of birth or residence.

Madam President, clause 152 gives effect to Schedule 20, which contains a number of general exceptions.

Paragraph 1 of Schedule 20 permits direct nationality discrimination and indirect race discrimination on the basis of residency requirements where the discrimination is required by law or the executive.

Paragraph 2 provides an exception for religious or belief organisations with regard to the provisions in the Bill relating to services and public functions, premises and associations. The types of organisation that can use this exception are those that practice, advance or teach a religion or belief, allow people of a religion or belief to participate in an activity or receive a benefit related to that religion or belief, or promote good relations between people of different religions or beliefs. However, organisations whose main purpose is commercial cannot use this exception.

The exception allows an organisation, or a person acting on its behalf, to impose restrictions on membership of the organisation, participation in its activities, the use of any goods, facilities or services that it provides, and the use of its premises. But any restriction can only be imposed by reference to a person’s religion or belief or sexual orientation.

In relation to religion or belief, the exception can only apply where a restriction is necessary to comply with the purpose of the organisation or to avoid causing offence to members of the religion or belief whom the organisation represents.

In relation to sexual orientation, the exception can only apply where it is necessary to comply with the doctrine of the organisation or in order to avoid conflict with the strongly held conviction of members of the religion or belief that the organisation represents. However, if an organisation contracts with a public body to carry out an activity on that body’s behalf the organisation cannot discriminate because of sexual orientation in relation to that activity.

The exception also enables ministers of religion to restrict participation in the activities that they carry out in the performance of their functions as ministers and access to any goods, facilities or services they provide in the course of performing those functions.

So, Madam President, this exception would, for example, allow a church to refuse to hire its church hall for a gay pride celebration if it considered that such an event would conflict with the strongly held religious convictions of a significant number of its followers. But it would not allow a religious organisation which had entered into a contract with the Department of Health and Social Care to provide meals to elderly and other vulnerable people within the community to discriminate against people because of their sexual orientation.

Paragraph 3 provides an exception to the general prohibition of sex and gender reassignment discrimination. It allows communal accommodation to be restricted to one sex only, as long as the accommodation is managed as fairly as possible for both men and women. It sets out the factors which must be considered when restricting communal accommodation to one sex only, and provides that any discriminatory treatment of transsexual people must be objectively justified.
Paragraph 4 allows more favourable treatment because of a person’s nationality in relation to training and associated benefits that are intended for people who do not live in a country in the European Economic Area, as long as the training provider believes that the person will not subsequently use the skills obtained in the British Islands.

The main purpose of this provision is to enable people from developing countries to be able to come to the Island to acquire vital skills which may not be available in their country of residence, to which they will return on completion of the training.

Madam President, coming back to the main body of the Bill, clause 153 enables the Council of Ministers to make an order which can amend the Bill if necessary in future in respect of age discrimination, except in relation to work and further and higher education. This would permit further exceptions to be created if necessary or appropriate.

Such exceptions can relate to particular conduct or practices, or things done for particular purposes, or things done under particular arrangements, as set out in an order made under this clause. Such an order can make provision about guidance.

Any order made under this clause requires the approval of Tynwald for it to come into operation.

Madam President, I beg to move that clauses 147 to 153 and Schedules 19 and 20 stand part of the Bill.

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

The President: The motion is that clauses 147 to 153 and Schedules 19 and 20 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. Part 14, 154 to 156.

The Acting Attorney General: Thank you, Madam President.

We now come to Part 14 of the Bill which contains miscellaneous and closing provisions.

Taking clauses 154 to 156 as a group first, clause 154 enables the Council of Ministers to issue codes of practice in connection with any matter addressed by the Bill, with a view to ensuring or facilitating compliance with the Bill or secondary legislation made under it or promoting equality of opportunity.

The Council of Ministers may also issue a code of practice giving practical guidance to landlords and tenants about adjustments to their properties for a disabled person. Before issuing a code under this clause, the Council of Ministers must publish the proposals and consult relevant persons.

When a code of practice has been issued, the High Court or tribunal must, in determining any question arising in proceedings under the Bill, have regard to the content of the code insofar as it appears to be relevant.

Clause 155 contains supplemental provision about codes of practice. It confirms that the Council of Ministers may revise a code issued under clause 154. It also confirms that, although failure to comply with a provision of a code does not of itself make a person liable to criminal or civil proceedings, a code is admissible in evidence in such proceedings and will be taken into account.

Clause 156 permits the Council of Ministers to make any other appropriate arrangements that it considers would help the promotion of equality of treatment in relation to protected characteristics and facilitating understanding of and compliance with the Bill and any subordinate legislation, codes of practice or guidance made or issued under it.

Madam President, I beg to move that clauses 154 to 156 stand part of the Bill.

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

The President: The motion is that clauses 154 to 156 and Schedules 19 and 20 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. Clause 157.

432 C133
The Acting Attorney General: Thank you, Madam President.

Clause 157 provides that the Bill applies to Manx aircraft, ships and hovercraft and persons who are employed on such aircraft and vessels only to the extent, and with such modifications, set out in any order which might be made by the Department of Economic Development. Such an order would require the approval of Tynwald.

This clause recognises the fact that, for example, merchant ships registered in the Isle of Man may be sailing on the other side of the world and entirely crewed by people from outside the Island, so it may not be appropriate for this legislation to apply to such vessels.

Madam President, I beg to move that clause 157 stand part of the Bill.

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

The President: The Hon. Member, Mr Anderson.

Mr Anderson: Yes, Madam President.
Could I just ask the mover then, does this mean that this Bill applies to those in Manx territorial waters but, outside of those waters, it depends on circumstances?

The President: The learned Acting Attorney General to reply.

The Acting Attorney General: What the clause actually says, it does apply to:

(a) Manx aircraft;
(b) Manx ships;
(c) Manx hovercraft; and
(d) persons employed aboard such aircraft, ships or hovercraft;

What I have referred to is the fact that all this can be made extending that outside to the Manx territorial waters to merchant ships, for example, sailing at the other side of the world with foreign crews but otherwise, if they are Manx ships, aircraft, hovercraft operating from here, it will apply.

The President: The motion is that clause 157 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

The Acting Attorney General: Thank you, Madam President.

Clause 158 sets out how the Bill applies to Ministers, Government departments and certain statutory bodies — collectively known as ‘the Crown’.

The principle is that the machinery of Government, both elected and administrative, should be subject to the Bill in the same way as everybody else, unless there are good reasons for that not to be the case.

I beg to move that clause 158 stand part of the Bill.

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

The President: The motion is that clause 158 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 159.

The Acting Attorney General: Thank you, Madam President.
I am sure that clause 159 will be of particular interest to the Hon. Members Mr Corkish and to Mr Anderson.
This clause provides that the current Tynwald Advisory Council for Disabilities continues to exist, but that its name is changed to the Tynwald Equality Consultative Council (the TECC) to reflect a remit that is expanded to cover all of the protected characteristics.

Under this clause, the new Council will consist of seven members, two of whom are Members of Tynwald appointed by the Council of Ministers and five of whom are not members of Tynwald, to be appointed by the Appointments Commission as persons with experience or knowledge of disability or other protected characteristics. Tynwald approval will be required for the appointment of both the Tynwald members and the lay members of the Council.

It may be noted that having the Tynwald members of the TECC appointed by the Council of Ministers is simply a mechanism for bringing this matter to Tynwald and, in practice, the Council of Ministers would not nominate a Member who was not interested in the role; nor can I imagine that Tynwald would support the appointment of a Member who did not wish to undertake the role. It was considered that it was not appropriate for the Appointments Commission to deal with the appointment of Tynwald Members.

As at present, the term of appointment of the Members of the Council will be in accordance with section 3 of the Statutory Boards Act 1987. Madam President, one of the Tynwald Members will be appointed by the Council as its Chairperson and one of the other six members will be elected as Deputy Chairperson.

The TECC may give to the Council of Ministers, any Department or Statutory Board advice on matters relating to the Bill. In doing so, it may recommend changes to legislation.

When the clause comes into operation, the existing members of the Tynwald Advisory Council for Disabilities will become members of the TECC, but in making subsequent appointments to the TECC, the Appointments Commission must try to include among the TECC’s members persons with experience of protected characteristics other than disability.

However, the clause specifically provides that the lay persons on the TECC should continue to include, if practicable, a disabled person with relevant experience or knowledge.

Madam President, I beg to move that clause 159 stand part of the Bill.

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

The President: The Hon. Member, Mr Anderson.

Mr Anderson: Thank you, Madam President.

I wonder if the mover could indicate then, would the Appointments Commission be given the remit of who to appoint onto this body and that it would be wider than it is presently constituted as far as the membership of the lay people is concerned.

The President: The Hon. Member, Mr Corkish.

Mr Corkish: Thank you, Madam President.

I second the remarks – that was exactly around about what I was going to ask for. The rolling remit of the Tynwald Advisory Council on Disabilities will change and will have a broader remit now, so the roles and membership will, too, as a result, have to change.

The President: The Hon. Member, Mr Cretney.

Mr Cretney: All I was going to say is that surely when the Appointments Commission comes to make the appointments they will look at the law which applies.

Mr Corkish: We will need confirmation on that.

The President: The Acting Attorney General to reply.
The Acting Attorney General: Yes, thank you, Madam President.

If I could just encapsulate my response to all of those comments with Hon. Members approval?

As I described when dealing with an explanation of this clause, the subsequent appointments to the TECC: the Appointments Commission must try to include amongst the members persons with experience of protected characteristics other than disability, so it will be a broader range of people that the Appointments Committee will be looking to suggest to Tynwald to be appointed as members.

It will be wider in scope, and that is deliberate because, of course, the existing commission will be changing its role to deal with all of the protected characteristics under the Bill, not just simply disability.

I hope that is of assistance.

The President: The motion is that clause 159 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 160

The Acting Attorney General: Thank you, Madam President.

Clause 160 is an enabling power to allow the Council of Ministers by order to make such provision about equality of treatment in respect of protected characteristics and related matters in connection with the provision of information society services as it considers appropriate.

Madam President, this is intended to be a piece of future-proofing so that should it prove necessary, for the purposes of the Island’s communications industry, to adjust the Act resulting from the Bill, to keep in step with European developments, those adjustments can be made with relative ease and speed.

Such an order cannot be made without prior consultation with the Communications Commission and any other person as the Council of Ministers considers appropriate, and the order would require Tynwald approval to have effect.

‘Information society service’ is defined as having the same meaning as in the relevant European Union legislation.

Madam President, I beg to move that clause 160 stand part of the Bill.

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

The President: The motion is that clause 160 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 161 and Schedule 21.

The Acting Attorney General: Thank you, Madam President.

Clause 161 gives effect to Schedule 21 which makes miscellaneous amendments to employment law.

Some amendments are consequential on changes made by the Bill to the employment law framework. For example, references to the ‘Employment Tribunal’ established under the Employment Act 2006 have to be replaced throughout with references to the new ‘Employment and Equality Tribunal’ which will be established under the Equality Bill.

The Bill also makes a number of other amendments to existing employment law, which are generally unconnected to the main equality provisions in the Bill. These amendments were proposed by the Department of Economic Development, which has lead responsibility for employment law. Since the Bill deals in a large part with rights and obligations relating to employment, it was considered at the outset that it was both opportune and appropriate to include these amendments in a Schedule to the Bill rather than bring forward a separate Bill as had originally been planned.

The amendments concern some potential cost-saving measures and some other issues that have emerged since the Employment Act 2006 came into operation. The Schedule also makes some corrections to the existing employment statutes.
Schedule 21 could be considered as a Bill within a Bill. For this reason, I will explain the main effects of each paragraph in greater detail than the other Schedules. Further, in order for Hon. Members to understand the intentions of the Department, it is necessary to explain the context of some of the amendments and not just their effect.

The Schedule is divided into two Parts. Part 1 amends the Employment Act 2006, the principal statute which contains individual employment rights, and it consists of 34 paragraphs. Part 2 amends other employment statutes, including the Control of Employment Act 2014, and consists of four paragraphs.

Schedule 21, paragraph 1 is introductory.

Paragraph 2 replaces a reference to ‘the Employment Tribunal’ with ‘the Employment and Equality Tribunal’.

Paragraph 3 amends section 9(1) of the Employment Act to correct a numerical error.

Paragraph 4, Madam President: under Part 2 of the Employment Act, employers must give most employees a written statement of particulars of the terms of their contract of employment, which is a summary of the main terms of the contract, within four weeks of their commencing employment.

Paragraph 4 re-enacts section 17 of the Employment Act, with amendments. Section 17 enables an employee to complain to the Employment Tribunal if his or her employer fails to issue or update a written statement or issue an itemised pay statement. Under the existing law, where the employee has made a written request to the employer and the employer has not provided particulars to the employee within 14 days of receiving the request, the Tribunal must make an award of two to four weeks’ pay.

Paragraph 4 makes a number of changes to the existing provision. In the case of a complaint under section 17 of the Act, it is no longer necessary for an employee to make a written request to the employer that he or she be given a written statement as a pre-condition of receiving an award. This is because the requirement to issue a written statement is an important and long-established statutory requirement. A distinction is made between the case where particulars have been issued but are incomplete and the case where they have not been issued at all. In the former case an award will be limited to a maximum of two weeks’ pay and in the latter case to a maximum of four weeks’ pay.

At present, the Tribunal must order an employer who has not issued particulars or who has issued incomplete particulars to pay an award of at least two weeks’ pay to the employee. Under the revised provision, the Tribunal has discretion as to whether or not to make an award in the case where particulars have been issued but are incomplete. So it could, for example, choose to make no award where the employer has not complied with the statutory duty only in some minor respect.

The presently little-understood and complex remedy for breach of the statutory duty to issue pay statements is made consistent with the remedy for breach of the duty to issue written particulars. So where an incomplete statement has been issued, the Tribunal may make an award of up to two weeks’ pay. Where no statement has been issued, the Tribunal must make an award of at least two weeks’ pay and may make an award of up to four weeks’ pay, if it would be just and equitable to do so.

There is also new provision allowing the Department of Economic Development to prescribe exceptions or make modifications to the general rules in respect of payments to be made by employers to employees. A statutory document under these provisions would require the approval of Tynwald.

Paragraph 5 of Schedule 21 re-enacts, with amendments, section 18 of the Employment Act. At present, that section requires the Employment Tribunal to make an award of two to four weeks’ pay to an employee in certain proceedings – other than those under section 17 of the Act – where it finds that the employer has failed to issue or update a written statement. Some of the changes made by paragraph 5 to section 17 are the same as those made by paragraph 4 to section 16, which I have just explained.

As in the case of the amendment to section 17, a distinction is made between the case where written particulars have been issued but are incomplete and the case where none have been issued...
at all. In the former case, an award is to be limited to a maximum of two weeks’ pay and in the latter case to a maximum of four weeks’ pay.

Similarly, as in the revised section 17, the Tribunal is given discretion as to whether or not to make an award in the case where written particulars have been issued but are incomplete. This contrasts with the present position which requires an award to be made in all cases.

Paragraph 5 makes one further significant change to the existing provision. At present, the Tribunal is able to make an award only in the case where it finds in favour of the employee in respect of his or her principal complaint to the Tribunal, for example, an unfair dismissal claim.

Under the revised provision this is no longer the case.

Paragraph 6 of Schedule 21 amends section 25 of the Employment Act, which deals with complaints to the Tribunal by employees and other workers when an employer has made an unlawful deduction or received an unlawful payment from a worker’s wages. The effect of this paragraph is twofold. Firstly, the Tribunal is prohibited from making any award in respect of a deduction or payment made more than six years before a complaint was made. Secondly, the overlap between section 25 of the Employment Act 2006 and the Annual Leave Regulations 2007, both of which enable unpaid holiday pay to be recovered by workers, is removed by the insertion of section 25(9) which requires such claims to be dealt with under the Annual Leave Regulations.

Paragraph 7 of Schedule 21 makes a consequential amendment to section 66 of the Employment Act, arising out of the extension of the existing right of employees to make a request for flexible working – which I will speak about in relation to paragraphs 9, 10 and 11 of this Schedule.

Paragraph 8 amends section 72 of the Employment Act 2006, to limit the amount of compensation that can be awarded to a worker who has suffered a detriment – including termination of his or her contract – to the sum of the basic award and the compensatory award that could be awarded to an employee on a finding of unfair dismissal.

The amendment corrects an anomaly in the existing legislation as a result of which the amount of compensation that can be awarded to an employee is subject to limits, but the amount of compensation that can be awarded to a worker other than an employee, for example a casual worker, is not subject to any limits.

The new limit does not apply where the detriment is for a health and safety reason, or for making a protected disclosure. This is in line with the two exceptions in Part 10 of the Employment Act 2006, where the limit does not apply in respect of the dismissal of an employee on either of these grounds.

The President: It is fine. Take your time.

Mr Henderson: Could we have another door open, Eaghtyrane, to try and let in a bit of air?

The President: Yes, indeed, I did ask for the doors to be opened.

Mr Henderson: I guess we are at about 75⁰ Fahrenheit in here, or not far off!

Mr Corkish: It is getting warmer as the Bill progresses! (Interjection by Mr Coleman)

The Acting Attorney General: If I could move onto paragraph 9, 10 and 11 Schedule 21. (The President: Yes.)

As I mentioned in the context of paragraph 7, employees have an existing right to make a request for flexible working. The right applies if they are parents of children under 17, or 18 if disabled, or if they are carers.

In the UK this right has been available to all employees with 26 weeks’ service since 2014 and the Department of Economic Development consulted on extending the existing right in the Island as part
of the consultation on the Equality Bill. A majority of consultees supported the Department’s proposals.

The basic right to request flexible working will remain unchanged. Employees can make up to one written request every year; the employer needs to deal with it within three months and can refuse on any of eight very wide business grounds.

The Tribunal will not normally be able to investigate the rights and wrongs of a refusal, only whether the procedure has been properly followed. The maximum compensation for a failure to comply is eight weeks’ pay.

Paragraphs 9, 10 and 11 update the enabling powers in sections 99, 100 and 101 of the Employment Act for regulations which will give employees the right to request flexible working. Any regulations made under the new powers will require the approval of Tynwald.

Paragraph 12 of Schedule 21 is largely technical; it re-enacts section 105(1) of the Employment Act, which defines terms used in Part 8 of that Act, concerning disciplinary and grievance procedures, to widen the definition of ‘employer’ for the purposes of that Part.

Paragraph 13 of Schedule 21 amends section 107 of the Employment Act – that is ‘Rights of employee in period of notice’, to remove an anomaly. The existing section provides that Schedule 2 of the Act is to apply. The Schedule provides for employees who are on maternity leave to be paid during the notice period. However, section 107(3) provides that the Schedule does not apply where the notice to be given by the employer is at least two weeks more than the statutory notice period.

This creates an anomaly, so that an employee working for an employer whose notice period is more than two weeks longer than the statutory notice period may not receive pay in the notice period if she is on unpaid maternity leave. The amendment removes the anomaly by disapplying section 107(3) in the case where an employee has an entitlement under any other enactment to the benefit of the terms and conditions of employment despite her absence.

Paragraph 14 and 15 of Schedule 21 make changes to existing provisions on unfair dismissal in the Employment Act 2006. Firstly, a dismissal which would constitute unlawful discrimination under the Equality Bill is added to the existing categories of automatically unfair dismissals, which are set out in sections 124 to 128 of the Employment Act. Some of the existing provisions which provide for a dismissal on the grounds of race, religion or sexual orientation to be automatically unfair are consequentially repealed.

Secondly, a dismissal for a spent conviction under the Rehabilitation of Offenders Act 2001 is added to the categories of automatically unfair dismissals. Such protection does not, however, apply to those employments which are excluded from protection under the Act – for example, doctors, lawyers and accountants – by virtue of an order made under that Act.

Paragraph 15 makes parallel amendments which provide that it is automatically unfair to select an employee for redundancy if the reason is, or relates to, a protected characteristic under the Equality Bill or because the employee in question has a ‘spent’ conviction under the Rehabilitation of Offenders Act 2001.

Paragraph 16 of Schedule 21 is a consequential amendment to adjust cross-references in the light of other amendments in the Schedule.

Paragraph 17 re-enacts section 132 of the Employment Act, entitled ‘Qualifying period and upper age limit’, with amendments. The paragraph makes the following changes: firstly, the present exclusion on employees over retirement age claiming unfair dismissal is removed. This is in keeping with the protected characteristic of age in the Equality Bill.

Secondly, dismissal on the grounds of a protected characteristic under the Equality Bill or because the employee in question has a spent conviction under the Rehabilitation of Offenders Act 2001 are added to the list of exceptions in section 132(2) of the Employment Act to the usual requirement for an employee to have one year’s continuous employment with their employer to be able bring an unfair dismissal case. Thirdly, the qualifying period is disappplied in two further cases.

The first case is where the dismissal is, or is connected with, an employee’s membership of a reserve force. This is in line with changes made in the UK by the Defence Reform Act 2014. The background to the change is a request by the Ministry of Defence that the Island provide a similar
level of protection to reservists in the employment law of the Island as that in the UK. The Council of Ministers has agreed that such a change should be made.

The second case is where the reason for the dismissal is, or is connected with, the employee’s political affiliations or opinions. The UK has recently amended its employment law in the same respect. In neither case, however, will a dismissal on one of these grounds be automatically unfair; the effect of the provision is intended only to give the Tribunal jurisdiction to hear the case where the employee has less than a year’s continuous employment with the employer. Whether or not the Tribunal determines that a dismissal on one of these grounds is unfair will depend upon the circumstances of the individual case.

Paragraph 18 of Schedule 21 corrects a wrong cross-reference in section 140 of the Employment Act.

Paragraph 19 amends section 142 of the Employment Act to change the basis of calculation of the Basic Award, which is one of the standard elements of compensation in unfair dismissal cases.

Under the existing legislation the award is calculated on the basis of one week’s pay, presently capped at a maximum of £480 a week, multiplied by the number of years of continuous employment up to the effective date of termination. Paragraph 19 amends the calculation basis in two important ways.

Subsections (3) and (4), which provide for the reduction and extinguishment of the award, where the employee is older than the employer’s retirement age of less than 65, or 65 where there is no such age, are repealed. This is because the existing exclusion of employees over retirement age from eligibility to a Basic Award discriminates on the protected characteristic of age. It is to be noted that a redundancy payment, under the Redundancy Payments Act 1990, is calculated on an identical basis to that of the Basic Award in unfair dismissal cases and that a corresponding repeal of section 2(1) of the Redundancy Payments Act 1990 will remove the present restriction on employees over retirement age being able to claim a redundancy payment.

Secondly, in order to help balance the effect of removing the upper age limit of the award and to prevent any payments from being unduly onerous on employers, the number of years of continuous employment to be used in the calculation of both the Basic Award and a redundancy payment is to be capped at 26. It is to be noted that, while the method of calculating the Basic Award and a redundancy payment in the UK differs to that in the Island, there has long been a cap in the UK.

Paragraph 20 of Schedule 21 amends section 144 of the Employment Act to replace the amount of the compensatory award, which is the second of the standard elements of compensation in unfair dismissal cases, to reflect the present amount which was set by the Employment (Maximum Amount of Awards) Order 2009. In addition, the Department’s order-making powers are amended so that when a new a maximum amount is set by order the amount may be inserted at section 144.

Paragraph 21 of Schedule 21 replaces a reference to the Employment (Sex Discrimination) Act 2000 which is repealed by Schedule 23 of this Bill.

Paragraph 22 re-enacts section 147(1) of the Employment Act with amendments. At present subsection (1) requires the Treasury to pay certain debts due on the ‘relevant date’ to an employee whose employment has ceased and whose employer is insolvent. The sums are payable out of the Manx National Insurance Fund, but only if the employer made, or was liable to make, Class 1 National Insurance contributions in respect of the employee.

The re-enacted section 147(1) removes that condition, the effect of which was to exclude some part-time workers whose earnings fell below the point at which they are liable to pay NI contributions – known as ‘the primary threshold’ – from entitlement to compensation.

New subsection 147(1A) makes any payments made by the Treasury subject to various conditions, so that the Treasury takes over the rights to claim in the bankruptcy or liquidation for any amount which it has paid out.

In addition, as in the UK, debts owed to employees by their former employer – namely arrears of pay, payment in lieu of notice, accrued holiday pay and compensation for unfair dismissal – are to be made subject to the maximum amount of a week’s pay limit – presently £480 per week – which
currently applies to statutory redundancy payments, the Basic Award in unfair dismissal cases, and certain other Tribunal awards.

This change is intended to reduce the exposure of the Manx National Insurance Fund to potential liability while still maintaining a safety net for employees of insolvent employers, and it is supported by the Treasury.

Paragraph 23 of Schedule 21 re-enacts section 148(1) of the Employment Act with amendments. It makes similar provision to section 147(1), which apply where the employer is not insolvent, but has ceased to carry on business in the Isle of Man. As in the case of section 147, a new subsection (1A) imposes various restrictions on payments to be made by the Treasury.

Paragraph 24 of Schedule 21 re-enacts section 149 of the Employment Act, which makes similar provision to section 147(1) of that Act in relation to unpaid employees’ or employers’ contributions to an occupational pension scheme or personal pension scheme, with stylistic improvements. As in the two preceding sections various restrictions are imposed on payments to be made by the Treasury.

Paragraph 25 replaces references to the former Department of Social Care in section 153 of the Employment Act with references to the Treasury to reflect the transfer of functions from the former to the Social Security Division of the latter.

Paragraph 26 makes consequential amendments arising from the repeal and re-enactment of Part 12 of the Employment Act, that is, the provisions concerned with the Employment Tribunal etc., by this Bill.

Paragraph 27 enables the Department of Economic Development to make regulations about zero hours contracts and contains extensive enabling powers for this purpose.

Paragraph 28 of Schedule 1 makes a consequential amendment to section 171 of the Employment Act arising out of the Equality Bill. It removes the Department of Economic Development’s power to issue codes of practice relating to discrimination and equality of opportunity. This is in order to remove any overlap with clause 154 of the Equality Bill which gives the Council of Ministers powers to issue codes of practice in connection with any matter addressed by the Bill.

Paragraph 29 amends section 173 of the Employment Act, which deals with the general interpretation of that Act, to update the definition of certain terms.

Paragraph 30 of Schedule 21 amends section 174(3) of the Employment Act so that the ancillary powers conferred by the subsection on the Department of Economic Development also apply to a maker of subordinate legislation other than the Department. This is simply good housekeeping.

Paragraph 31, Madam President: as previously explained, paragraph 5 re-enacts section 18 of the Employment Act with amendments. Under that section the Employment Tribunal is required to make an award of two to four weeks’ pay to an employee in certain proceedings where it finds that the employer has failed to issue or update a written statement.

The purpose of paragraph 31 is to update the list of jurisdictions in Schedule 1 to the Employment Act in respect of which the Tribunal has a duty to check whether or not an employer is in breach of the duty to issue or update a written statement of employment particulars.

Paragraph 32 of Schedule 1 amends paragraph 1 of Schedule 4 to the Employment Act, which deals with the treatment of special categories of worker. It removes an exception which is otiose following amendments to sections 99 to 101, which concern insolvency of the employer, etc.

Paragraph 33 amends Schedule 5 of the Employment Act concerning the employment in a number of ways.
Paragraph 8 of Schedule 5 deals with the rules of continuous employment where there is a change of employer. In order for the legislation to be kept in step with changes to section 11 of the Redundancy Payments Act 1990 – which I will explain when I come to paragraph 35 – paragraph 8(2) of Schedule 5, which deals with the transfer of a trade, business or undertaking, is broadened to include the transfer of part of a trade, business or undertaking.

In addition, a note is added to paragraph 8(2) to clarify that a transfer of a business from one person to another for the purposes of which a person is employed may apply regardless of whether the business which is being transferred has been carried on by the person’s employer.

Also, in paragraph 8 of Schedule 5, new provision is made to enable an employee of a Department, Statutory Board or an office of the Government, who is not an employee of the Public Services Commission, to be transferred to another Department, Statutory Board or office and to retain his or her continuous employment built up with the first employer.

Paragraph 13 of Schedule 5 is amended to remove a reference to Class 1 National Insurance contributions in order to remove a requirement which had the effect of excluding some part-time workers from being able to accumulate ‘continuous employment’ for employment protection purposes in certain circumstances.

Finally, there is a new power to amend Schedule 5, which is fairly technical in nature, by order.

Such an order would require the approval of Tynwald.

Paragraph 34 of Schedule 21 amends Schedule 6 of the Employment Act on the calculation of normal working hours and a week’s pay in a number of ways.

Paragraph 8(3) of Schedule 6 is redrafted to omit the case of an employee suspended on medical grounds as there is no provision in the Island’s employment law covering suspension on these grounds.

Payments made by the Treasury under section 147 and section 148 are added to the list of payments at paragraph 10 of Schedule 6 which are subject to the maximum amount of a week’s pay. Members will recall that I explained the principle of treating these payments in the same way as other employment awards earlier with paragraphs 22 and 23. The maximum amount of a week’s pay is updated to substitute the present amount, £480, set by the Employment (Maximum Amount of a Week’s Pay) Order 2009 for the amount of £420 presently shown in paragraph 10 of the Employment Act.

Finally, there is a new power to amend the Schedule, which is technical in nature, by order. Such an order would require the approval of Tynwald.

Madam President, I now turn to Part 2 of Schedule 21 which amends employment legislation other than the Employment Act 2006.

Paragraph 35 amends the Redundancy Payments Act 1990.

Subparagraph (1) is introductory.

Subparagraph (2) amends section 11 of the Redundancy Payments Act. This section presently provides that, if the transferee of a business, before the termination, makes an employee an offer to renew his contract or to re-engage him or her under a new contract and the renewal or re-engagement takes effect not less than four weeks after the termination, then: if the employee accepts the offer, he or she is treated as not having been dismissed by the transferor, and therefore is not entitled to a redundancy payment; if the offer is of suitable employment and the employee unreasonably refuses it, or unreasonably terminates the contract within a trial period of four weeks, if the new contract terms differ from the old, he or she will lose the right to a redundancy payment.

Where a transfer takes place, paragraph 8 of Schedule 5 to the Employment Act provides that the continuity of employment of the affected employees with the transferor will be preserved for the purposes of statutory employment rights such as those in respect of entitlement to a statutory redundancy payment and unfair dismissal.

The amendments made by subparagraph (2) are intended to clarify the intended meaning of the section; in particular, that the section may apply regardless of whether the business which is being transferred has been carried on by the person’s employer. In addition, a correction is made to
subsection (2) and the definition of ‘business’ is broadened to include a trade or undertaking or part of a business, trade or undertaking.

Subparagraph (3) amends section 25(2) of the Redundancy Payments Act 1990 to remove a requirement that the earnings of an employee claiming a payment from the Manx National Insurance Fund in the event of the employer’s insolvency must have been subject to Class 1 National Insurance contributions. The effect of this change is that some part-time employees, previously excluded from eligibility to receive payments from the Fund will become eligible.

Subparagraph (4) updates references to social security legislation.

Subparagraph (5) amends section 38 of the 1990 Act which prohibits employees from contracting out of the rights conferred by the Bill. The amendment makes a new exception in the case of an agreement which is concluded with the assistance of an industrial relations officer. This makes the position consistent with other Isle of Man employment law.

Subparagraph (6) gives the Treasury enabling powers to abolish or modify redundancy rebates by order.

At present an employer with fewer than 40 employees who makes a statutory redundancy payment is entitled to a rebate from the Manx National Insurance Fund of a certain proportion of the payment. The amount of the rebate depends on the size of the workforce of the employer and varies from 30% to 60%. The UK rebate, upon which system the Island’s rebate was modelled, was phased out a considerable number of years ago, and was finally abolished in 1990.

An order to abolish or modify redundancy rebates would require the approval of Tynwald.

Subparagraph (7) updates the definition of ‘Tribunal’.

Subparagraph (8) inserts a new paragraph into Schedule 1 to the Redundancy Payments Act 1990 to change the basis of the calculation of a redundancy payment. Under the existing legislation, an award is calculated on the basis of one week’s pay, presently capped at a maximum of £480 a week, multiplied by the number of years of continuous employment up to the effective date of termination. Sub-paragraph (8) amends the calculation basis so that the number of years of continuous employment to be used in the calculation is to be capped at 26. This is intended to balance the removal of the upper age limit for entitlement to a payment which is brought about by the repeal of section 2(1) of the Redundancy Payments Act. Hon. Members will recall that the Bill will alter the basis of calculation of the Basic Award in unfair dismissal cases, discussed earlier in the context of paragraph 19, in an identical way.

Paragraph 36 of Schedule 21 makes amendments to the Shops Act 2000.

Subparagraph (1) is introductory.

Turning to subparagraph (2), the Act provides specific protection to shop workers working in a retail trade or business but, on occasion, there can be difficulties in determining whether a particular activity does or does not constitute such a retail trade or business. The Department of Economic Development is given a new power to amend the definition of ‘retail trade or business’ in section 1(1) of the Act by order. Such an order requires the approval of Tynwald.

Subparagraphs (3) and (4) make amendments which are consequential on substantive provisions elsewhere in the Equality Bill.

Subparagraph (5) adds two new subsections to section 19 of the Act. These limit the amount of compensation that can be awarded to a worker who has suffered a detriment, including termination of his or her contract, to the sum of the basic award and the compensatory award that could be awarded to an employee on a finding of unfair dismissal. These amendments are similar to those made by paragraph 8 of this Schedule to the existing provisions on detriment in the Employment Act 2006, which I discussed earlier.

Subparagraph (6) amends section 20 to allow an exception to the general non-contracting out rule in the case of an agreement which is concluded with the assistance of an industrial relations officer. This makes the law in respect of contracting out consistent with other Isle of Man employment law.

Subparagraph (7) substitutes a new section 22 to harmonise the Shops Act with both the Employment Act 2006 and the Equality Bill.
Subparagraph (1) is introductory.

Madam President, under section 4 of the Minimum Wage Act, the Department of Economic Development may make regulations preventing specified categories of persons from qualifying for the minimum wage or prescribing an hourly rate for the minimum wage other than the single hourly rate.

Subparagraph (2) of paragraph 37 broadens the existing category of persons over the age of 25 who are attending a course of further education requiring attendance for a period of work experience to include a course of higher education.

Subparagraph (3) amends section 21(7)(b) of the Act to limit the amount of compensation that can be awarded to a worker who has suffered a detriment, including termination of his or her contract, to the sum of the basic award and the compensatory award that could be awarded to an employee on a finding of unfair dismissal. This makes the position consistent with the remedy of a worker who suffers detriment either on a protected ground specified in Part 5 of the Employment Act 2006 or for asserting rights under the Shops Act 2000.

Subparagraph (4) amends section 37 to make additional provision about voluntary workers.
Subparagraph (5) updates the definition of 'Tribunal'.

Paragraph 38 of Schedule 21 amends the Control of Employment Act 2014.

Subparagraph (1) amends section 4 of the Act to create a new category of Isle of Man worker for the purposes of the Control of Employment Act. Under new subsection (8A) a person will be an Isle of Man worker if he or she is the grandchild of a person who, firstly, was born in the Island, and, secondly, was ordinarily resident in the Island for an unbroken period of at least five years immediately following the birth. The Department of Economic Development considered that this amendment was desirable to facilitate the ability of grandchildren of persons who were born and lived on the Isle of Man to live and work on the Island. The proposal is also consistent with the Government’s aim of increasing the working population of the Island.

Subparagraph (2), under section 9 of the Control of Employment Act, where a work permit holder or exempt person is engaged in permanent, regular full-time employment – referred to as ‘the primary employment’ – his or her spouse or civil partner is, upon application, entitled to a work permit. Such a spouse/civil partner permit is granted for a year at a time, beginning with the date on which it is granted or renewed. The permit will expire six months after the primary employment ceases or 12 months after it is granted or renewed, whichever is the sooner.

Subparagraph (2) amends section 9(1)(b) of the Act to extend the right to a spouse/civil partner permit to spouses and civil partners of persons from outside the European Economic Area who are working in the Isle of Man under the Points Based System. The Department of Economic Development may prescribe exceptions to the general rule. The Department’s intention is to make the Isle of Man more attractive to the workers that are needed and to increase the size of the working population.

Sub-paragraph (3) makes an amendment to Section 14 of the Control of Employment Act, through the re-enactment of subsection (1). The purpose of the amendment is to clarify that a decision to grant a permit, but in terms which differ from those in respect of which a person applied for the permit, is subject to appeal.

Madam President, I beg to move that clause 161 and Schedule 21 stand part of the Bill.

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

The President: Quite a marathon, (Interjections) bearing in mind that the Schedule is described as ‘a mini Bill’! I think in future we might take it in small chunks! (Laughter) But well done to the Acting Attorney General.

The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eagh tyrane.
I just need to ask why we have to have that in such detail – which really, for me anyway, has confused the heck out of me listening to each detail, on detail, on detail. I would ask the learned Attorney why it was necessary? Why could we not have had a synopsis and a briefing paper in layman’s terms of the nub of what that Schedule achieves – which we have seen in other complicated legislation? It would have made the action far easier to deliver to LegCo. I cannot even remember 50% of what you have just said, sir, to be quite honest – and I mean that in all sincerity, Eaghtryane, although I have some knowledge of this.

I hope this is not what is going to be inflicted on the Keys when we get to this bit, because I can seriously see some commentary. There must be – as you pointed out, Eaghtryane – a far simpler way of doing something like that, and perhaps in chunks.

The President: Well, before I let that pass, I would say it is entirely up to the mover how they present it and all Members should have been briefing themselves about the clauses we are going to deal with (Mr Henderson: We have!) in any case.

The Hon. Member, Mr Turner.

Mr Henderson: There is no need for it!

Mr Turner: Thank you, Madam President. I have some sympathy with the previous speaker, and indeed the mover for having to deliver such a weighty item. In fact, I think that was probably longer than most of the sections we have had for the rest of the Bill. We have seen this happen before where we almost have – well it is connected – something loosely connected with what we are doing piggybacking on another Bill. I think obviously the composition of Council is a bit different now than it was then, but I think there was a bit of a frown on doing it; that such weighty amendment should really be brought through as a separate Bill.

But I can appreciate why they have perhaps chosen to do it this way, because the Equality Bill does have considerable impact on the employment legislation. So I can understand why they have done it this way. But I would hope, really, that if we are going to get quite detailed, lengthy things, then really I do not think these things should be buried in amongst what is hailed as an Equality Bill, because there is a good chance that those outside, who it is going to affect, may not see it as something they need to take notice of when consultations are on. They are just comments, really, on that – but certainly very complex, very lengthy.

I have some comments to make at the Third Reading about the Bill broadly, so I will leave it at that, Madam President.

Mr Crookall: I just wonder, Madam President, in view of what the Hon. Member, Mr Henderson, said: that he missed half of it, whether the learned Attorney ought to repeat it! (Laughter)

The President: I call on the Acting learned Attorney to reply.

The Acting Attorney General: Thank you, Madam President. Sincerely, I do apologise if the presentation style was somewhat difficult to follow. As I said when the matter first came before you at the First and Second Reading stage, it is a complicated Bill and, intentionally, the Bill, at the wish of the Council of Ministers, started its journey here to enable Council to give the detailed consideration to its many provisions which you have had to listen to. I do apologise sincerely if it is felt by Members that it could have been presented to you in a different way.

The Bill is lengthy. It sets out, in as much detail as possible, its provisions and, of course, there is the explanatory memorandum circulated with the Bill, much of which I have repeated today simply to highlight those important aspects which I felt Council Members had to take cognisance of. (A Member: Hear, hear.) But I do apologise. It is as hard for me reading it as it was for you listening to
it, but I do feel that, certainly for the benefit of the public who might be listening in, they would also take something from it. They might take something from it, because of course they would not necessarily have had the opportunity of reading through all of the provisions. (A Member: Hear, hear.) So, I did my best.

If I ever have to do that again, I will take those comments into account, Madam President.

The President: The motion is that clause 161 and Schedule 21 do stand part of the Bill. Those in favour, please say aye – I have not had any indication that anyone wants to speak on the content. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 162.

The Acting Attorney General: Thank you, Madam President.

Clause 162 allows the Council of Ministers to amend the Bill by order, with the approval of Tynwald, to reflect certain changes that might in future be made to the UK’s Equality Act 2010, consequent to any changes in relevant European Union legislation.

Madam President, I beg to move that clause 162 stands part of the Bill.

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

The President: The motion is that clause 162 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 163 and 164.

The Acting Attorney General: Thank you, Madam President.

Clauses 163 and 164 deal with the subordinate legislation under the Bill.

Clause 163 sets out different ways that the powers to make subordinate legislation can be used. Essentially, the purpose of this clause is to allow a single statutory document to deal with related matters under different powers in the Bill which may, individually, provide for the making of orders or regulations by different bodies. So, for example, a single order could be made to deal with several matters in respect of disability.

Clause 164 sets out the Tynwald procedure that applies to subordinate legislation under the Bill. In the large majority of cases, Tynwald approval is required before the subordinate legislation can come into operation. The only exceptions are: appointed day orders to bring the Bill into operation; orders to bring guidance about disability into operation; orders designating schools as having a religious character; and also rules made under the Bill, such as those for the operation of the Employment and Equality Tribunal, which are subject to the negative procedure.

Madam President, I beg to move that clauses 163 and 164 stand part of the Bill.

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

The President: Hon. Member, Mr Cretney.

Mr Cretney: Yes, thank you.

I have amendments to clause 163:

Amendments to clause 163

Page 148, at the end of line 20 insert:

‘(2) If a provision of this Act confers a power to make an order or regulations, but does not specify by whom the power to make the order or regulations is exercisable, the power is exercisable by the Council of Ministers.’

Renumber succeeding subsections and adjust cross-reference.
With your permission I would like to move the two amendments to this clause in my name – number 10 and 11 on the Order Paper – together.

The purposes of the amendments are two-fold. Firstly, there are some places in the Bill where the authority to make an order or regulations is not attributed. The amendment number 10 clarifies that where this is the case the power rests with the Council of Ministers.

Secondly, the amendment number 11 clarifies that, where an order or regulations are made using multiple enabling powers in the Bill, as permitted by this clause, if none of the individual enabling powers require the approval of Tynwald, then the negative resolution procedure is to apply.

I beg to move the amendment standing in my name.

The President: Hon. Member, Mr Corkish.

Mr Corkish: I beg to second, Madam President.

The President: If no Member wishes to speak, I will put, first, clause 163 with the amendments standing in the name of Mr Cretney. Those in favour of the two amendments, moved as one, please say aye; those against, no. The ayes have it. The ayes have it.

I now put clause 163, as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 164: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Now, clauses 165 and 166 with Schedules 22 and 23.

The Acting Attorney General: Madam President, since we dealt with clause 167 and Schedule 24 at the start of the clauses stage, we now come to the final group of clauses and Schedules.

Clause 165 gives effect to Schedule 22, which contains consequential and minor amendments, and clause 166 gives effect to Schedule 23, which contains repeals.

The amendments in Schedule 22 are mostly necessary to ensure that the Acts which are amended refer accurately to the new provisions contained in the Bill and work properly with those new provisions.

The amendment to the Douglas Municipal Corporation Act 1895 substitutes a gender-neutral term for the pronoun ‘He’.

The amendment to the Housing (Miscellaneous Provisions) Act 1976 is to ensure the Department of Infrastructure has sufficient powers to assist with adaptations to a disabled person’s home now that responsibility for housing rests with that Department.

Section 31 of the Marriage Act 1984, which concerns the solemnisation of a religious marriage in a registered building which is a place of public religious worship, is amended so that the marriage cannot be solemnised in the building without the consent of the minister or one of the trustees, owners, deacons or managers of the building; or, in the case of a building of the Roman Catholic Church, without the consent of the minister of the registered building.

The amendment to section 35 of the Licensing Act 1995 is to ensure it is clear that the powers in subsections 35(1) and (2) of that Act: to refuse entry to or expel a person from licenced premises without giving a reason, are not to be used if the refusal or expulsion is incompatible with the provisions of the Bill. Licensees and their agents will be subject to the provisions of the Bill in respect of the prohibition of discrimination on the grounds of the protected characteristics in the same way as other providers of goods and services.
However, without this amendment, the exercise of the powers in section 35(1) and (2) of the 1995 Act ‘without having to give a reason’ might be seen as a potential loophole in the requirement on providers of goods and services not to discriminate on the grounds of a protected characteristic. For the avoidance of doubt, the amendment does not require a licensee or his or her agent to provide a reason when refusing to admit a person or when asking a person to leave licenced premises.

Section 37 of the Road Transport Act 2001 is amended to provide additional powers to the Department of Infrastructure to make regulations in respect of the obligation to carry passengers in relation to disabled persons with assistance dogs.

The amendment to the Construction Contracts Act 2004 is to update an outdated reference.

The Tribunals Act 2006 is amended to reflect the new name and expanded remit of the current Employment Tribunal.

Section 7 of the Civil Partnership Act 2011, which concerns places of registration, is amended to make a minor correction; to make further provision in respect of the guidance to be taken into account as to whether a place may be registered; and to confirm, for the avoidance of doubt, that a religious organisation is not obliged to permit the use of its premises for the purposes of civil partnership ceremonies if it does not wish to do so.

The Social Services Act 2011 is amended to remove a reference to the Disabled Persons (Employment) Act 1946, which is repealed by Schedule 23 as it is redundant.

And, finally, in Schedule 22 a typographical error in the Regulation of Care Act 2013 is corrected.

Madam President, Schedule 23 lists the legislative provisions which will cease to have effect when the relevant provisions in the Bill come into force. In addition to the enactments which are consequentially repealed because they are superseded or made redundant by the equality provisions of the Bill or because they are inconsistent with those provisions, certain employment law provisions are repealed as follows: in the Minimum Wage Act 2000, section 43(2)(b) is repealed to remove ‘compromise agreements’ as an exception to the non-contracting out rule. This makes the position consistent with all other Isle of Man employment law – the only exception which is permitted is in the case of a conciliated settlement concluded with the assistance of the Manx Industrial Relations Service; section 172 of the Employment Act 2006, which concerns the publication of employees’ rights, is repealed as the requirement to publish information in newspapers has been superseded by technological developments; and paragraph 14 to 19 of Schedule 7 to the Employment Act 2006 are also repealed. These are old transitional provisions which are now redundant.

Madam President, I beg to move that clauses 165 and 166 and Schedules 22 and 23 stand part of the Bill.

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

The President: The Hon. Member, Mr Anderson.

Mr Anderson: Madam President, I just want to put on record my thanks to the mover of this Bill and the way he has had to plough through it this afternoon, (Two Members: Hear, hear.) and the other two sections we have had as well. But maybe he would like to give me an interpretation of the word ‘finally’ as we have heard it several times this afternoon already! (Laughter) His definition of the word ‘finally’! Thank you.

The President: Perhaps it is ‘finally’ in respect of a certain section – but there we go. I am sure he will speak for himself.

If no other Member wishes to speak –

Mr Coleman: We have not done the glossary yet, Madam President!
The President: Pardon!

Mr Coleman: We have not done the glossary yet! So ‘finally’ might be in that.

The President: We have. We did it at the first consideration. The mover to reply.

The Acting Attorney General: Thank you, Madam President.

I thank Mr Anderson for his very kind comments. ‘Finally’: I think we will leave it at that point!

(Laughter)

Thank you, Madam President.

The President: The motion is that clauses 165 and 166 along with Schedules 22 and 23 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it.

A division was called for and voting resulted as follows:

FOR
Mr Anderson
Mr Coleman
Mr Corkish
Mr Cretney
Mr Crookall
Mr Henderson
Mr Turner
Mr Wild

AGAINST
None

The President: There are 8 votes for and no votes against, Hon. Members. The motion, therefore, carries.

That concludes consideration of the clauses stage of the Bill, Hon. Members, and concludes the consideration of our Order Paper for today.

Mr Anderson: Not quite, Madam President!

The President: Sorry!

Mr Anderson: Item 4.

Mr Henderson: There is a ‘finally’, Eaghtyrane!

A Member: We are not getting away that light! (Laughter)

The President: Oh, I am sorry! I am too keen.
4. Treasure Bill 2016 –
First Reading approved

Mr Anderson to move:

That the Treasure Bill be read a first time.

The President: We then move to the Treasure Bill for First Reading. Mr Anderson, my apologies.

Mr Anderson: Thank you, Madam President.

That was just the warm up act!

Madam President, the Treasure Bill 2016 will replace the existing Treasure Trove Act 1586, which is the current legislation governing finds of historical significance.

Hon. Members may recall that the lack of modern legislation led to difficulties in deciding the reward to be paid in the case of the Glenfaba hoard of Viking silver discovered in 2003 – on the wrong side of the river in my... [Inaudible] (Laughter)

The Council of Ministers subsequently directed the Treasury and Manx National Heritage to bring forward new legislation to govern the payment of ex gratia awards in respect of treasure trove.

The Treasure Bill introduces modern legislation to determine whether found objects are treasure.

It sets out the process for dealing with such finds and the determination of rewards for treasure which has vested in the Treasury in trust for the Crown.

The Treasure Bill broadens the categories of historic items to be protected and encourages the reporting and protection of discoveries of national significance. It will provide a clear, transparent and fair procedure to follow for all interested parties, for all stages of the process including the assessment of the level of reward.

The Treasure Bill provides that the Treasury must make a code of practice relating to treasure, keep the code under review and revise it when appropriate. The code of practice contains the detail and guidance and this will be introduced once the Bill, if passed, is enacted.

Madam President, I beg to move Item 4 on the Order Paper.

The President: The Hon. Member, Mr Henderson.

Mr Henderson: I beg to second, Eaghtyrane, and reserve my remarks.

The President: The motion is that the Treasure Bill 2016 be read a first time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

That does conclude consideration of our Order Paper today, Hon. Members. Council will now adjourn to Tynwald on 17th of this month, followed by a sitting in this Chamber on 24th May.

Congratulations to Mr Crookall

The President: Before we go, may we just extend congratulations to the Hon. Member, Mr Crookall, and his wife on their 30th wedding anniversary.

Members: Hear, hear.

The Council adjourned at 3.50 p.m.